**DATES:** The comment period expires November 6, 1995. Comments received after this date may be considered, if it is practical to do so, but the Agencies are only able to assure consideration for comments received on or before this date.

ADDRESSES: Interested individuals should send their written comments to: David L. Meyer, Chief, Regulatory Publications Branch, Division of Freedom of Information and Publication Service, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or hand deliver comments to the Commission's offices at 11545 Rockville Pike (Room T6–D59), Rockville, MD 20555.

BACKGROUND: Mixed waste is defined in the Federal Facility Compliance Act (FFCA) as "waste that contains both hazardous waste and source, special nuclear, or byproduct material subject to the Atomic Energy Act of 1954.' Persons who generate, treat, store or dispose of mixed wastes are subject to the requirements of the Atomic Energy Act of 1954, as amended (AEA) and the Solid Waste Disposal Act (SWDA) as amended by the Resource Conservation and Recovery Act (RCRA), and the Hazardous and Solid Waste Amendments of 1984 (HSWA). The Federal Agencies responsible for ensuring compliance with the implementing regulations of these two statutes are the NRC and EPA.

The Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA) established a series of milestones, penalties and incentives to ensure that States or regional compacts provide for the disposal of radioactive waste. Although mixed waste was not specifically addressed in the LLRWPAA, States must ensure adequate disposal capacity for most types of commercially generated low-level radioactive wastes, including mixed wastes. To date, progress in meeting the milestones in the LLRWPAA has been limited. In addition, uncertainties about the amounts and types of mixed waste, along with the complexities in complying with the regulations for these wastes, have hindered development of treatment and disposal facilities for mixed waste. As a result, licensees may be required to store mixed waste on-site until adequate treatment and disposal capacity has been established.

NRC and EPA have developed the draft guidance to assist persons currently storing mixed waste to meet the regulatory requirements of both the AEA and RCRA. The guidance describes procedures that are generally acceptable to both NRC and EPA and that resolve

issues of concern that have been identified to the Agencies by licensees. It also addresses similar storage issues identified by the Department of Energy (DOE). The guidance first summarizes the general requirements that licensees must meet to store mixed waste in accordance with NRC and EPA regulations, then addresses specific storage issues that have been brought to the Agencies' attention by mixed waste generators. Finally, the guidance discusses EPA's RCRA enforcement policy for mixed waste in storage. NRC and EPA will review all comments submitted by interested individuals and incorporate appropriate comments into the final guidance document.

FOR FURTHER INFORMATION CONTACT: Dominick A. Orlando, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6749, or Newman Smith, Permits and State Programs Division, Office of Solid Waste, U.S. Environmental Protection Agency, Washington DC 20460, telephone (703) 308–8757.

Dated at Rockville, MD, this 28th day of July, 1995.

For the U.S. Nuclear Regulatory Commission.

Michael F. Weber,

*Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.* 

# Appendix A—Note to Readers

The information contained in this guidance is intended for use by Nuclear Regulatory Commission licensees who may not be familiar with the hazardous waste storage requirements that apply to mixed waste. However, much of the document may also be useful for Federal facilities that generate mixed waste. The guidance assumes that the reader already possesses a valid NRC or Agreement State radioactive materials license, but may not possess an Environmental Protection Agency or authorized State storage permit.

EPA and NRC recognize that the radioactive component of mixed waste may pose hazards from external radiation and from potential internal exposures. Individuals that may be exposed to radiological and non-radiological hazards from mixed waste should be trained in radiation and chemical safety. In addition, mixed waste generators should ensure that the hazards associated with the mixed waste are fully evaluated prior to generating the waste.

This guidance presumes that both radiological and industrial hygiene safety programs are in place and will be followed by the reader. The Agencies did not consult with the Occupational Safety and Health Administration or States agencies responsible for workplace safety in developing this guidance. However, nothing in this guidance supersedes the OSHA safety requirements. NRC licensees are expected to comply with OSHA requirements, as well as all other applicable regulations.

## Appendix B—Disclaimer

The policies discussed herein are not final agency actions, but are intended solely as guidance. They are not intended, nor can they be relied upon, to create any rights enforceable by any party in litigation with the United States. Environmental Protection Agency or Nuclear Regulatory Commission officials may decide to follow the policies provided in this guidance or to act at variance with the policies, based on an analysis of specific site circumstances. The Agencies also reserve the right to change these policies at any time without public notice.

## Appendix C—Joint Guidance on the Storage of Mixed Low-Level Radioactive and Hazardous Waste

#### August 1995.

#### I. Introduction

Mixed low-level radioactive and hazardous waste (mixed waste) is waste that satisfies the definition of low-level radioactive waste in the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA)<sup>1</sup> and contains hazardous waste that either: (1) Is listed as a hazardous waste in Subpart D of 40 CFR Part 261; or (2) causes the waste to exhibit any of the hazardous waste characteristics identified in Subpart C of 40 CFR Part 261. Persons who generate, treat, store or dispose of mixed wastes are subject to the requirements of the Atomic Energy Act of 1954, as amended (AEA) and the Solid Waste Disposal Act (SWDA) as amended by the Resource Conservation and Recovery Act (RCRA), and the Hazardous and Solid Waste Amendments of 1984 (HSWA). The Federal agencies responsible for ensuring compliance with the implementing regulations of these two statutes are the Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA).<sup>2</sup> In October 1992, Congress enacted the Federal Facilities Compliance Act (FFCA) which, among other things, added a definition of mixed waste to RCRA. Mixed waste is defined in the FFCA as "waste that contains both hazardous waste and source, special nuclear, or byproduct material subject to the Atomic Energy Act of 1954" (RCRA Section 1004(41), 42 USC 6903(41)).

The LLRWPAA established a series of milestones, penalties and incentives to ensure that States or Regional Compacts provide for the disposal of radioactive waste. Although mixed waste was not specifically

<sup>&</sup>lt;sup>1</sup>The LLRWPAA defines low-level radioactive waste as "radioactive material that (A) is not highlevel radioactive waste, spent nuclear fuel, or byproduct material as defined in section 11e.2 of the Atomic Energy Act of 1954 and; (B) the Nuclear Regulatory Commission, consistent with existing law and in accordance with paragraph (A), classifies as low-level radioactive waste."

<sup>&</sup>lt;sup>2</sup> Note that most radioactive material under the control of the Department of Energy is not regulated by NRC.