

Understanding Oversight of DOE Cleanup Operations

November 21, 2019

Regulate (vb.)

“To control (an activity or process) esp.
through the implementation of rules”

Black’s Law Dictionary (11th ed. 2019)

Federal Facility Compliance Act

Codified in RCRA: 42 U.S.C. § 6961(a)

The federal government, including executive agencies, “shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural..., respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements.”

Atomic Energy Act

42 U.S.C. § 2021(k)

“Nothing in this section shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards.”

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VIRGINIA URANIUM, INC. v. WARREN

Opinion of GORSUCH, J.

with the States some of the powers previously reserved to the federal government. Even then, the statute explained in subsection (k) that States remain free to regulate the activities discussed in §2021 for purposes *other than* nuclear safety without the NRC’s consent. Indeed, if anything, subsection (k) might be described as a *non-preemption* clause.

RCRA

42 U.S.C. § 6905(a)

“Nothing in this chapter shall be construed to apply to (or to authorize any State, interstate, or local authority to regulate) any activity or substance which is subject to the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Atomic Energy Act of 1954 except to the extent that such application (or regulation) is not inconsistent with the requirements of such Acts.”

RCRA

42 U.S.C. § 6905(a)

Legal Environmental Assistance Foundation, Inc. v. Hodel
586 F. Supp. 1163, 1167 (E.D. Tenn. 1984)

The courts “must give full effect to a statute unless it is in ‘irreconcilable conflict’ with another statute.”

Energy has the burden of proof
“to show that such an inconsistency would result”

Edison Electric Institute v. U.S. Environmental Protection Agency
996 F.2d 326, 337 (D.C. Cir. 1993)

Must demonstrate that there is a “direct conflict”
with a “specific provision of the AEA”

RCRA/CERCLA Coordination

Authorized Changes

Modifications to the HFFACO are displayed by using double underline to indicate added text and ~~strikeout~~ to indicate deleted text.

5.5 Treatment, Storage, and Disposal Units and Past Practice Units Interface

In some cases, TSD units are closely associated with past-practice units at the Hanford Site, either geographically or through similar processes and waste streams. Although disposition of all TSD such-units must be managed in accordance with Section 6.0, a procedure to coordinate the TSD unit closure and ~~or other applicable dangerous waste~~ permitting activity with the past-practice investigation and and/or remediation activity is necessary to prevent overlap and duplication of work, thereby economically and efficiently addressing the contamination. In Appendix B, selected TSD groups/units, primarily land disposal units, were ~~have been~~ initially assigned to operable units based on the criteria defined in Section 3.3.

In order to coordinate the development and implementation of closure plans for such TSD units with the investigation and remediation of closely associated past-practice units, DOE will provide Ecology with ~~the~~ information necessary for performing RCRA closures/postclosures within an operable unit will be provided in various RFI/CMS documents to satisfy any outstanding closure plan requirements under WAC 173-303-610(3) in the form of one or more Coordinated Closure (CC) Proposals. Each CC Proposal will be submitted to Ecology as a permit modification request in accordance with WAC 173-303-830(4) and in conjunction with the submission of the associated past-practice document(s) to the lead regulatory agency for the operable unit, pursuant to the applicable milestone(s) set forth in Appendix D.¹

RCRA/CERCLA Coordination

Tentative Agreement on Tri-Party Agreement Revisions in Response to the Coordinated Closure Negotiations

Change Control Form M-37-19-01
Page 4 of 7

Number	Milestone	Due Date
<u>M-037-23</u> Lead Regulatory Agency: Ecology	<p><u>DOE shall submit a Coordinated Closure (CC) Proposal as a permit modification request pursuant to WAC 173-303-830(4) for the following TSD Units: 216-B-3 Main Pond system and 216-S-10 Pond and Ditch. The CC Proposal shall be submitted to Ecology within 270 days of the last ROD signature for the 200-OA-1 OU.</u></p> <p><u>The CC Proposal shall be prepared in accordance with the process described in TPA Action Plan Section 5.5 and include all outstanding closure information required by WAC 173-303-610(3)(a)(i)-(vii) and, as applicable, all outstanding post-closure information required by WAC 173-303-610(8)(b). If the use of alternative requirements has been requested for closure of any of these TSD Units under WAC 173-303-610(1)(e), the CC Proposal shall also include all outstanding information required by WAC 173-303-610(3)(a)(ix).</u></p>	<p><u>Within 270 days of the last ROD signature for the 200-OA-1 OU</u></p>