



Oak Ridge Reservation Compliance Order, September 26, 1995

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:)	
)	
)	DIVISION OF SOLID WASTE
UNITED STATES DEPARTMENT OF)	MANAGEMENT
ENERGY)	
)	CASE NO. 95-0514
RESPONDENT)	

Commissioner's Order

NOW COMES Don Dills, Commissioner of the Department of Environment and Conservation, and states that:

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Parties

I.

Don Dills is the duly appointed Commissioner of the Tennessee Department of Environment and Conservation ("the Department").

II.

The United States Department of Energy ("DOE") is a department, agency and instrumentality of the United States Government. Process may be served on the Secretary of the Department of Energy, U.S. Department of Energy, Washington, D.C. 20585 and Jim Hall, Manager of Oak Ridge Operations, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831.

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Jurisdiction

III.

Pursuant to Section 3021(b) of the *Resource Conservation and Recovery Act* (RCRA), 42 U.S.C. 6939(c), as amended by Section 105(a) of the *Federal Facility Compliance Act* (FFC/ACT), P.L. 102-386, DOE submitted to the Department a plan for treatment of mixed waste that is subject to certain land disposal restrictions. The Department has reviewed and modified that plan in accordance with Section 3021(b)(2)(A) of RCRA. Therefore, this Order is being issued pursuant to Section 3021(b)(2)(C) to require the implementation of said plan.

IV.

Pursuant to T.C.A. Section 68-212-111, when the Commissioner finds upon investigation that any provisions of this part are not being carried out, the Commissioner may issue an order for correction to the responsible person, and this order shall be complied with within the time limit specified in the order. Further, whenever the Commissioner finds that any person is engaging in an unauthorized activity which is endangering or causing damage to the public health or environment the Commissioner may, without prior notice, issue an order reciting the existence of such unauthorized activity and requiring that such action be taken as the Commissioner deems necessary.

V.

The Respondent is a "person" within the meaning of T.C.A. Section 68-212-104.

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Facts

VI.

DOE is the owner of a large complex of facilities located near Oak Ridge in Anderson and Roane Counties, Tennessee, commonly known as the Oak Ridge Reservation.

VII.

The Department of Energy -- Oak Ridge Reservation (DOE-OR) consists of approximately fifty-eight thousand (58,000) acres of federally owned land near the City of Oak Ridge, which is located in both Anderson and Roane Counties, Tennessee. DOE-OR consists of three major operating facilities: K-25 Site, Oak Ridge National Laboratory, and Y-12 Plant.

VIII.

DOE-OR is a "facility" used for the "treatment", "storage", and "disposal" of hazardous waste, as terms are defined in T.C.A. Section 69-212-101 *et. seq.*

IX.

On July 3, 1986, EPA published a notice in the Federal Register (51 FR 24504), announcing that in order to obtain and maintain authorization to administer and enforce a RCRA Subtitle C Hazardous Waste Program, states must apply for authorization to regulate the hazardous waste components of radioactive mixed waste. The notice stated that the radioactive waste component of radioactive mixed waste is subject to the Atomic Energy Act, and that the hazardous waste component is subject to RCRA. This statement was repeated in EPA's September 23, 1988 notice of clarification in the Federal Register (53 FR 37045). The DOE Byproducts Rule, which discusses how RCRA applies to radioactive wastes that contain components of hazardous wastes within the meaning of RCRA, was published on May 1, 1987 (52 FR 15937).

X.

On August 11, 1987, the State of Tennessee received authorization to regulate the hazardous waste component of radioactive mixed waste.

XI.

Rule 1200-1-11-10 of the *Rules and Regulations of the State of Tennessee* ("Rules") prohibits the disposal of hazardous wastes that have not been pretreated to standards established by the Department. These prohibitions are commonly referred to as the Land Disposal Restrictions (LDRs).

XII.

In addition to prohibiting disposal before appropriate treatment, LDRs prohibit any storage of an LDR prohibited hazardous waste (including a radioactive mixed waste containing an LDR prohibited hazardous waste component) except "for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal". This storage prohibition is set forth in Rule 1200-1-11-10. The Department has determined that storage of a hazardous waste pending development of treatment capacity does not constitute storage to accumulate sufficient quantities to facilitate proper recovery, treatment, or disposal.

XIII.

DOE has notified the Department that DOE is currently generating and storing radioactive mixed waste, including land disposal restricted waste, at DOE-OR, as set forth in the Federal Facility Compliance Agreement (Docket No. 92-02 FFR) and the inventory required under Section 3021 of the Solid Waste Disposal Act.

XIV.

The State of Tennessee has authority under the *Tennessee Hazardous Waste Management Act of 1977*, and under Section 3006 of RCRA, to regulate the hazardous components of mixed waste. Therefore, the State of Tennessee has the authority to review and approve, modify, or disapprove plans developed under the *Federal Facility Compliance Act of 1992*.

XV.

On or about April 4, 1995, DOE submitted to TDEC a "Proposed Site Treatment Plan for the Oak

Ridge Reservation". Following a review conducted in accordance with Section 3021(b)(2) of RCRA, the Department has modified that proposal. A copy of the modified site treatment plan for the Oak Ridge Reservation (hereinafter, "the Plan") is attached hereto and the same is incorporated herein by this reference.

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Order

XVI.

WHEREFORE, PREMISES CONSIDERED, it is ORDERED that the Respondent shall implement the Plan. All work shall be completed in accordance with the schedules contained in, and/or developed pursuant to, the Plan. Any and each failure by DOE to complete work in accordance with the Plan, or to provide information required by the Plan, is a violation of this Order. All previous Orders issued to DOE, including but not limited to No. 92-0412 and 94-0067, and all agreements entered into by DOE and TDEC, including but not limited to the CERCLA Section 120 Federal Facility Agreement, effective January 1, 1992, remain in effect and shall continue to be complied with by DOE.

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Reservation of Rights

XVII.

Issuance of the foregoing ORDER shall not be construed as waiving any right or authority of the Commissioner to issue orders and/or to assess penalties for violations not specifically addressed herein. The right to order other and further corrective action is expressly reserved.

XVIII.

This Order applies only to violations of storage restrictions imposed by LDR. It does not address, waive or in any manner affect any other violation of the *Tennessee Hazardous Waste Management Act of 1977*.

XIX.

Except as specifically provided herein, this Order does not address corrective action or remedial action, pursuant to RCRA or CERCLA. All other corrective or remedial action issues are reserved and have been or shall be addressed by the CERCLA Section 120 Federal Facility Agreement (FFA), effective January 1, 1992; any Hazardous Waste permits issued or to be issued by TDEC and/or EPA, pursuant to RCRA; and/or by an agreement, order or legal action under the *Tennessee Hazardous Waste Management Act of 1977*, RCRA or CERCLA.

Issued this 26th day of September 1995, in the Office of the Commissioner of the Te

DON DILLS, Commissioner
Tennessee Department of Environment

and Conservation

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Notice of Rights

The Respondent is hereby advised that in accordance with Tennessee Code Annotated Sections 68-212-113 and 4-5-307, this Order may be appealed by filing an appropriate Petition with the Solid Waste Disposal Control Board. Any such Petition must be filed within thirty (30) days from service of this Order or the Order will become final and not be subject to review.

Correspondence regarding this Order should be sent to E. Joseph Sanders, 20th Floor, L&C Tower, 401 Church Street, Nashville, Tennessee 37243-1548, PH. 615-532-0131.

E. Joseph Sanders, BPR # 006691
Deputy General Counsel
Department of Environment and Conservation
Office of General Counsel
401 Church Street, 20th Floor
Nashville, Tennessee 37243-1548

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