

**Government Regulating Government:
Mixed Waste at the Department of Energy**

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As a result of weapons production, the Department of Energy (DOE) has generated large volumes of hazardous and radioactive waste. Through some DOE industrial processes, these two categories of waste have been combined. This waste that has both hazardous and radioactive components is called mixed waste. Over 95 percent of the mixed waste in the United States is generated by DOE at their 15 production facilities across the country. The Department generates approximately 14 million gallons of mixed waste each year.

The Atomic Energy Act (AEA), the Low-Level Radioactive Waste Policy Act (LLRWPA), and the Resource Conservation and Recovery Act (RCRA) are the three statutes that have jurisdiction over the regulation of mixed waste. The AEA gives DOE the power to regulate itself so as to protect the safety and health of the public and the environment from the activities at the facilities. Because of this power, DOE resisted the application of RCRA, which regulates the treatment, storage, and disposal of hazardous waste, to its facilities. In 1984, a lawsuit brought against DOE by the Legal Environmental Assistance Foundation (LEAF) resulted in the application of RCRA to all DOE facilities. Mixed waste was not cited specifically in that case and, because of the dual nature of the waste, there was some question as to whether RCRA should apply to mixed waste. In 1987, a joint resolution by the Environmental Protection Agency (EPA) and DOE resolved that DOE would regulate the radioactive components of mixed waste and EPA would regulate the hazardous components.

One of the problems that DOE faces with mixed waste regulation under RCRA, is a provision called the land disposal restrictions (LDRs). These regulations allow land disposal of hazardous wastes only if they meet certain treatment standards. For two-thirds of the mixed waste generated by DOE, there is no treatment technology. Thus, DOE cannot dispose of the waste because they cannot treat it. Presently, the mixed waste is in storage at the facilities. Other difficulties that DOE has had in attempting to integrate RCRA and the AEA are inconsistent regulations, meeting EPA deadlines, and the differing approaches of the two statutes.

With the application of RCRA to all DOE facilities, an intragovernmental regulatory system was established. The case of one federal agency regulating another presents unique barriers to effective regulation. I identified five potential barriers to effective EPA regulation of DOE. They are statutory conflicts, a lack of expertise by EPA, budget constraints, the Department of Justice (DOJ) policy of not allowing one federal agency to sue another, and the threat to an agency's autonomy. The conclusions that I reached are that statutory conflicts and the threat to an agency's autonomy are the most significant barriers in the case of mixed waste. The DOJ policy could become an extremely significant barrier if DOE does not comply with agreements that both DOE and EPA have entered into to bring DOE's facilities into compliance with RCRA. These Federal Facility Compliance Agreements, as they are called, are vital to the regulatory relationship that has been established between DOE and EPA.

After examining these barriers, I suggest ways that EPA can more effectively regulate mixed waste at DOE. The first of these is by promulgating specific mixed waste regulations and not trying to force-fit a radioactive waste to exclusively hazardous waste regulations as is currently being done. EPA could also have a more unified approach to negotiation and enforcement. DOE has been frustrated by the need to renegotiate the same provisions for the Federal Facility Compliance Agreements with each separate regional EPA office. My third suggestion is that EPA should be granted greater enforcement powers over other federal agencies. The ability to assess fines and civil penalties would increase their regulatory effectiveness.