

CHAPTER 7: STATUTES, REGULATIONS, CONSULTATIONS, AND OTHER REQUIREMENTS

This chapter provides information concerning the environmental standards that regulate or guide proposed plans for Y-12. This section presents primary environmental compliance requirements that would result from implementation of the proposed action or alternatives. These requirements are found in Federal and state statutes, regulations, permits, approvals, and consultations and in Executive and DOE Orders, consent orders, FFCAs, and a Federal Facility Agreement. These citations identify the standards to be used for evaluating the ability of the alternative actions to meet the environmental, safety, and health requirements and for obtaining required Federal and state permits and licenses.

Y-12 was constructed during the 1940s and 1950s, when national security requirements were the dominant considerations for facilities design and operation. In the interim, emphasis on operational safety, worker health and safety, and public and environmental health and safety has resulted in DOE shifting resources to achieve compliance with all applicable requirements. Today, both Federal and state agencies have several types of regulatory authority over Y-12 operations because of compliance agreements between DOE and regulators. These agreements detail schedules for achieving compliance with applicable environmental, health, and safety requirements.

At Y-12, the application of evolving requirements to facilities that are more than 40 years old makes achieving or maintaining compliance an expensive challenge. However, all facilities at Y-12, whether they are newly constructed or existing, must comply with the increasing number and complexity of regulations. Any action to continue operations or to change operations at Y-12 must comply with the applicable environmental, safety, and health regulations.

An overview of the roles and regulations of DOE, Federal, and state agencies is provided in the following sections. Section 7.1 presents Federal and state environmental, safety, and health regulating agencies in which DOE must cooperate in operation of Y-12 facilities. Section 7.2 presents the regulatory requirements employed by DOE and the cooperating regulators to help guide decisions and determine regulatory compliance for continued operation as well as for the SWEIS proposed action and alternatives. Section 7.3 identifies and discusses regulations requiring DOE consultations with other agencies that may also be required to be completed as part of this SWEIS.

7.1 REGULATORY FRAMEWORK

Federal and state governments mandate environmental, safety, and health requirements for operations at Y-12 through the U.S. Congress, Federal agencies, Executive Orders, the Tennessee State Legislature, and state agencies. Federal statutes establish national programs and policies, create broad legal requirements, and authorize Federal agencies to promulgate regulations that conform to the statutes. Detailed implementation of these statutes is delegated to various Federal agencies including DOE, EPA, Department of Transportation (DOT), and the U.S. Department of Labor. Executive Orders are issued by the President and establish policies and requirements for Federal Executive Branch agencies, but do not have the force of law or regulation. Many programs under the jurisdiction of the EPA, such as permitting and enforcement, go to state agencies with EPA retaining oversight of the delegated program.

State legislatures issue their own statutes to authorize and mandate promulgation of state regulations. State statutes, like Federal statutes, establish broad legal requirements. State regulations, developed by state agencies, then promulgate specific requirements to enforce state statutes. In Tennessee, statutes passed by the Tennessee State Legislature are found in the Tennessee Codes Annotated. Most state regulations for environmental requirements are in chapter 1200 of the TDEC Rules (TDEC 1999a).

7.2 STATUTES AND REGULATIONS

NEPA requires that before action is taken at Y-12, the proposed action and alternatives be evaluated for their environmental impact. Regulatory environmental protection requirements are designed to protect human health and the environment, including the air, water, and land. Identification of environmental protection statutes, regulations, and orders with requirements that would be triggered by the alternatives is one means for examining actions that may harm the environment before making a decision to carry out an action. Principal requirements are identified by the applicable environmental statutes, regulations, and approval requirements. Compliance with these requirements would allow DOE to accomplish the actions being considered to at least a threshold level of safety. It does not evaluate the significance of the potential effects, but does provide a basis for relative comparison between the alternatives.

The Atomic Energy Act of 1954 (42 U.S.C. §2011 *et seq.*) makes the Federal government responsible for regulatory control of production, possession, use, and disposal of source, special nuclear, and radioactive material. Included in this responsibility is authorization for DOE to establish standards that protect health and minimize danger to life or property from activities under DOE's jurisdiction. The *Federal Compliance with Pollution Control Standards*, Executive Order 12088, requires Federal agencies, including DOE, to comply with applicable administrative and procedural pollution control standards established by, but not limited to, the CAA, *Noise Control Act*, *Clean Water Act*, *Safe Drinking Water Act*, TSCA, and RCRA. The *General Environmental Protection Program*, DOE Order 5400.1, establishes the environmental protection program requirements, authorities, and responsibilities for DOE operations for ensuring compliance with applicable protection laws and regulations, executive orders, and internal DOE policies. It establishes formal recognition that DOE's environmental management activities are extensively, but not entirely, regulated by EPA and state and local environmental agencies, and it provides requirements for satisfying these externally imposed regulations. DOE must comply with applicable Federal and state requirements to the same extent as any other entity. Noncompliance with these requirements can lead to enforcement actions. As a result, all environmental protection and compliance activities at Y-12, with the exception of radioactive materials, are externally regulated by other Federal and state agencies.

7.2.1 Federal and State Environmental Statutes and Regulations

Applicable regulatory environmental laws and regulations can be categorized by environmental pathways: air, water, land (which includes waste management and pollution prevention), and the subsequent impact to worker safety and health, the public, and the natural environment. Table 7.2.1-1 lists Federal statutes, Executive Orders, and state statutes that pertain to control, remediation, and/or regulation of the environment and worker safety, grouped by the resources to which each requirement pertains. For most requirements identified, the statute and corresponding regulatory citations are listed. The description providing the basic environmental actions resulting from each of the Federal and state statutes and Executive Orders is also provided.

DOE is committed to fully comply with all applicable environmental statutes, regulatory requirements, and Executive and internal orders. Table 7.2.1-2 lists the most pertinent DOE Directives (orders, manuals, and notices) for implementation of ES&H regulations.

TABLE 7.2.1-1.—Major Federal and State Requirements Regulating Environmental Control Remediation and Worker Safety Arranged by Topic [Page 1 of 9]

Statute/Regulation/ Order	Statute Citation	Regulatory Citation	Responsible Agency	SWEIS-Level Potential Applicability; Permits, Approvals, and Notifications
Air Resources				
<i>Clean Air Act</i> , as amended	42 U.S.C. § 7401 <i>et seq.</i>	40 CFR Subchapter C	EPA	Requires sources to meet standards and obtain permits to satisfy NAAQS, Tennessee State Implementation Plans, Standards of Performance for New Stationary Sources, NESHAP, and Prevention of Significant Deterioration.
<i>Tennessee Air Quality Act</i>	TCA, Sect. 53-3408 <i>et seq.</i>	TDEC Rules 1200-3	TDEC, Division of Air Pollution Control	Permits required to construct, modify, or operate an air contaminant source; sets fugitive dust requirements.
National Ambient Air Quality Standards/State Implementation Plans	42 U.S.C. § 7409 <i>et seq.</i> 42 U.S.C. § 7410	40 CFR 50-52	EPA	Includes requirements for compliance with primary SO _x , NO _x , CO, O ₃ , Pb and particulate matter and secondary ambient air quality standards and emission limits/reduction measures as designated in each state's implementation plan. Additional emission standards under 40 CFR 63 are also applicable.
Air Pollution Control	TCA, 68-201-105, 4-5-202	TDEC Rules 1200-3-3	TDEC, Division of Air Pollution Control	Adopts the primary NAAQS of Federal regulations for state enforcement.
Procurement Requirements and Policies for Federal Agencies for Ozone-Depleting Substances	Executive Order 12843		DOE/EPA	Requires Federal agencies to minimize procurement of ozone depleting substances and comply with Title VI of CAA Amendments with respect to stratospheric ozone protection and to recognize the limited availability of Class I substances until final phaseout.
Greening the Government through Efficient Energy Management	Executive Order 13123		EPA	Calls for Federal agencies to reduce greenhouse gas emissions by 30 percent and establish energy improvement goals.
Standards of Performance for New Stationary Sources	42 U.S.C. § 7411	40 CFR 60	EPA	Establishes control/emission standards and record keeping requirements for new or modified sources specifically addressed by a standard.

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Statute/Regulation/ Order	Statute Citation	Regulatory Citation	Responsible Agency	SWEIS-Level Potential Applicability; Permits, Approvals, and Notifications
National Emission Standards for Hazardous Air Pollutants	42 U.S.C. § 7412	40 CFR 61	EPA	Requires sources to comply with emission levels of radiological, carcinogenic, or mutagenic pollutants; may require a preconstruction approval, depending on the process being considered and the level of emissions that will result from the new or modified source.
Hazardous Air Contaminants	TCA, 68-201-105, 4-5-202 <i>et seq.</i>	TDEC Rules 1200-3-11	TDEC, Division of Air Pollution Control	Adopts the primary NESHAP of Federal regulations for state enforcement.
Prevention of Significant Deterioration	42 U.S.C. § 7470 <i>et seq.</i>		EPA	Applies to areas that are in compliance with NAAQS. Requires comprehensive preconstruction review and the application of Best Available Control Technology to major stationary sources (emissions \$100 t/yr) and major modifications; requires a preconstruction review of air quality impacts and the issuance of a construction permit from the responsible state agency setting forth emission limitations to protect the Prevention of Significant Deterioration increments.
<i>Noise Control Act of 1972</i>	42 U.S.C. § 4901 <i>et seq.</i>	40 CFR Subchapter G	EPA	Requires facilities to maintain noise levels that do not jeopardize the health and safety of the public.

TABLE 7.2.1-1.—Major Federal and State Requirements Regulating Environmental Control Remediation and Worker Safety Arranged by Topic [Page 3 of 9]

Statute/Regulation/ Order	Statute Citation	Regulatory Citation	Responsible Agency	SWEIS-Level Potential Applicability; Permits, Approvals, and Notifications
Water Resources				
<i>Clean Water Act</i> , as amended	33 U.S.C. § 1251 <i>et seq.</i>	40 CFR Subchapter D	EPA	Requires EPA or state-issued permits and compliance with provisions of permits regarding point source and nonpoint source discharge of effluents to surface water or other activities affecting water quality.
<i>Tennessee Water Quality Control Act</i>	TCA, 69-3-101 <i>et seq.</i> , 70-324-70	TDEC Rules 1200-4	TDEC, Divisions of Groundwater Protection, Water Pollution Control, Water Supply	Establishes state authority to issue new or modify existing NPDES permits required for a water discharge source and mandates protection of water quality.
National Pollutant Discharge Elimination System (Section 402 of <i>Clean Water Act</i>)	33 U.S.C. § 1342	40 CFR 122	EPA	Requires permit to discharge effluents (pollutants) and storm waters to surface waters; permit modifications are required if discharge effluents changed.
Tennessee National Pollutant Discharge Elimination System	TCA, 69-3-108	TDEC Rules, 1200-4-10	TDEC, Division of Water Quality	In accordance with 33 U.S.C. 1342, Tennessee enforces an EPA-authorized state program that administers both Federal and state requirements for point and nonpoint source discharges to surface water.
Dredged or Fill Material (Section 404 of CWA)	33 U.S.C. § 1344	33 CFR 320, 325, 326, 329, 330, 335-338	COE	Requires permits to authorize the discharge of dredged or fill material in wetlands and to authorize certain work in or structures affecting wetlands.
Aquatic Resource Alteration		TDEC Rules, 1200-4-7 <i>et seq.</i>	TDEC, Division of Water Quality	Any activity which involves the alteration of waters of the state typically requires a state aquatic resource alteration permit, including activities in, but not limited to, wetlands, culverts, and road crossings over surface water.

TABLE 7.2.1-1.—Major Federal and State Requirements Regulating Environmental Control Remediation and Worker Safety Arranged by Topic [Page 4 of 9]

Statute/Regulation/ Order	Statute Citation	Regulatory Citation	Responsible Agency	SWEIS-Level Potential Applicability; Permits, Approvals, and Notifications
<i>Safe Drinking Water Act</i>	42 U.S.C. § 300h-3	40 CFR 31, 34, 35, 124, 125, 143-146, 233, 270, 271	EPA	Requires permits for construction/operation of underground injection wells and subsequent discharging of effluents to ground aquifers and establishes minimum standards for drinking water at the tap.
<i>Safe Drinking Water Act</i>	TCA, 68-221-701	TCEC Rules, 1200-5-1	TDEC, Division of Water Supply	Adopts the Federal standards for drinking water.
Cultural Resources				
<i>National Historic Preservation Act</i> , as amended	16 USC 470 <i>et.seq.</i>	C7 CFR 656, 36 CFR 61, 63, 65, 68, 78, 79, 800-811	DOE, Tennessee Historical Commission (SHPO), Advisory Council on Historic Preservation (ACHP)	Requires the DOE to take into account the effect of its actions on the historic properties present. Requires consultation with SHPO and interested parties regarding determinations of effect and in mitigations developed to avoid or minimize adverse effects to cultural resources. The ACHP may choose to participate in the consultation and any subsequent agreements.
<i>Archaeological Resource Protection Act</i> , as amended	16 USC 470aa <i>et seq.</i>	43 CFR 7	DOE, SHPO	Requires a permit for the removal of archaeological resources from public land. If archaeological resources are discovered during construction, provides penalties for unauthorized removal or destruction.
<i>Native American Graves Protection and Repatriation Act</i>	25 USC 3001	43 CFR 10	DOE, Native American tribe(s), SHPO	Describes the procedures to be followed if Native American cultural items and human remains are discovered during construction and the conditions under which these items can be removed or excavated.
<i>American Indian Religious Freedom Act (AIRFA)</i>	42 USC 1996		DOE, Native American tribe(s)	AIRFA affirms the right of Native Americans to have access to their sacred places. AIRFA promotes consultation with Indian religious practitioners to identify, maintain access, and avoid impacts to places of religious importance to Native Americans.
<i>Indian Sacred Sites</i>	Executive Order 13007	NA	DOE, Native American tribe(s)	Requires the DOE to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and avoid adversely affecting the physical integrity of such sacred sites.

TABLE 7.2.1-1.—Major Federal and State Requirements Regulating Environmental Control Remediation and Worker Safety Arranged by Topic [Page 5 of 9]

Statute/Regulation/ Order	Statute Citation	Regulatory Citation	Responsible Agency	SWEIS-Level Potential Applicability; Permits, Approvals, and Notifications
<i>Curation of Federally Owned and Administered Archaeological Collections</i>	16 U.S.C. 470 et seq.	36 CFR 79	DOE	Requires the DOE to take responsibility for the curation of archaeological collections that are recovered from lands under its control or from DOE projects. The DOE must assure through funding agreements and inspections that archaeological collections are properly curated in a facility that meets the standards outlined in the regulations.
<i>Tennessee Burial Law</i>	TCA 39-17-311, TCA 39-17-312		DOE, local law enforcement and coroner	Provides for the respectful treatment of human remains that may be encountered during construction excavation.
<i>Tennessee Native American Cemetery Removal and Reburial</i>	TCA 11-6-116	0400-9-1	DOE, Tennessee Commission on Indian Affairs, SHPO	Provides additional guidance for the removal and reinternment of Native American human remains that may be encountered during construction excavation.
Soil/Waste Management				
<i>Resource Conservation and Recovery Act/Hazardous and Solid Waste Amendments of 1984</i>	42 U.S.C. § 6901 et seq. 42 U.S.C. § 6991	40 CFR Subchapter I	EPA	Requires notification and permits for operations involving hazardous waste treatment, storage, or disposal facilities; changes to site hazardous waste operations could require amendments to RCRA hazardous waste permits involving public hearings.
<i>Tennessee Hazardous Waste Management Act</i>	TCA 68-46-101 et seq., 68-211-101& 1001 et seq., 68-212-101 et seq., 68-215-107, 4-5-202	TDEC Rules, 1200-1-11, 14, 15	TDEC, Divisions of Solid Waste Management, Hazardous Waste Management, Underground Storage Tanks	Tennessee is authorized by EPA to administer and enforce hazardous waste standards; the Tennessee RCRA requirements mirror the Federal RCRA requirements.

TABLE 7.2.1-1.—Major Federal and State Requirements Regulating Environmental Control Remediation and Worker Safety Arranged by Topic [Page 6 of 9]

Statute/Regulation/ Order	Statute Citation	Regulatory Citation	Responsible Agency	SWEIS-Level Potential Applicability; Permits, Approvals, and Notifications
<i>Toxic Substances Control Act</i>	15 U.S.C. § 2601 <i>et seq.</i>	40 CFR Subchapter R	EPA	Provisions of TSCA require inventory reporting and chemical control provisions to protect the public from the risks of exposures to chemicals; strict limitations on use and disposal imposed on polychlorinated biphenyl, lead-based paint, and asbestos-contaminated equipment and material.
<i>Comprehensive Environmental Response, Compensation, and Liability Act/Superfund Amendments and Reauthorization Act of 1986</i>	42 U.S.C. § 9601 <i>et seq.</i>	40 CFR Subchapter J	EPA	Requires cleanup and notification if there is a release or threatened release of a hazardous substance; requires DOE to enter into Interagency Agreements with EPA and state to control the cleanup of each DOE site on the National Priorities List.
Superfund Implementation	Executive Order 12580	3 CFR 33 CFR 1, 138, 153 40 CFR 35, 300, 303-305, 307 44 CFR 220- 222	DOE/EPA	DOE shall comply with the National Contingency Plan in addition to the other requirements of the Order, as amended.
Worker Safety and Health				
<i>Occupational Safety and Health Act</i>	29 U.S.C. 651 <i>et seq.</i> , 655	29 CFR Chap. XVII	OSHA	Employers shall comply with all applicable worker safety and health standards including, but limited to, requirements for protection from physical and chemical hazards, training, medical monitoring as needed, and information available such as Material Safety Data Sheets.

TABLE 7.2.1-1.—Major Federal and State Requirements Regulating Environmental Control Remediation and Worker Safety Arranged by Topic [Page 7 of 9]

Statute/Regulation/ Order	Statute Citation	Regulatory Citation	Responsible Agency	SWEIS-Level Potential Applicability; Permits, Approvals, and Notifications
Chronic Beryllium Disease Prevention Program Final Rule December 8, 1999	42 U.S.C. § 2011 (i)(3), 29 U.S.C. 688	10 CFR Part 850	DOE	Establishes a chronic beryllium disease prevention program that supplements and is integrated into existing worker protection programs that are established for DOE employees and contractor employees.
Radiological				
<i>Atomic Energy Act of 1954</i>	42 U.S.C. § 2011 <i>et seq.</i>	10 CFR 835, 830, 120, 820	DOE	DOE shall develop and follow its own standards and procedures, particularly with respect to radioactive substances, to ensure the safe operation of its facilities.
<i>Nuclear Waste Policy Act of 1982</i>	42 U.S.C. § 10101 <i>et seq.</i>	40 CFR 191, 194	DOE	DOE shall complete all required permits and dispose of spent nuclear fuel, high level, and TRU radioactive waste; certification and compliance of Waste Isolation Pilot Plant.
<i>Low Level Radioactive Waste Policy Act</i>	42 U.S.C. § 2021b - 2021d	NA	DOE/TDEC	DOE shall dispose of low-level radiological waste off-site in accordance with State of Tennessee rules.
Occupational Radiation Protection	42 U.S.C. § 2201; 7191	10 CFR 835	DOE	Establishes limits for worker exposure to radioactivity.
Other				
<i>National Environmental Policy Act of 1969</i> , as Amended/Council on Environmental Quality Regulations Implementing the Procedural Provisions of NEPA	42 U.S.C. § 4321 <i>et seq.</i>	10 CFR 1021 40 CFR 6 40 CFR Subchapter V	CEQ	DOE shall implement NEPA and comply with the Council on Environmental Quality procedures.

TABLE 7.2.1-1.—Major Federal and State Requirements Regulating Environmental Control Remediation and Worker Safety Arranged by Topic [Page 8 of 9]

Statute/Regulation/ Order	Statute Citation	Regulatory Citation	Responsible Agency	SWEIS-Level Potential Applicability; Permits, Approvals, and Notifications
<i>Hazardous Material Transportation Act</i>	49 U.S.C. § 5101 <i>et seq.</i>	49 CFR Chapter 1 Subchapters A & C 40 CFR 263	DOT	DOE shall comply with the requirements governing hazardous materials and waste transportation.
<i>Hazardous Materials Transportation Uniform Safety Act of 1990</i>	49 U.S.C. § 5105	10 CFR 71 49 CFR 173, 174, 397	DOT	Restricts shippers of overland route-controlled quantities of radioactive materials to use-only permitted carriers.
<i>Emergency Planning and Community Right-to- Know Act of 1986</i> (SARA Title III)	42 U.S.C. § 11001 <i>et seq.</i>	40 CFR 350- 374	EPA	Requires the development of emergency response plans and reporting requirements for chemical spills and other emergency requirements covering storage and use of chemicals which are reported in toxic chemical release forms.
Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements	Executive Order 12856	NA	DOE/EPA	Requires Federal agencies to achieve 50 percent reduction of agency's total releases of toxic chemicals to the environment and offsite transfers, to publicly report toxic chemicals entering any waste stream from Federal facilities, including any releases to the environment, and to improve local emergency planning, response, and accident notification.
<i>Pollution Prevention Act of 1990</i>	42 U.S.C. 13101 & 13102	NA	EPA	Establishes a national policy that pollution should be reduced at the source; requires DOE to submit a toxic chemical source reduction and recycling report for Y-12, a facility required to file an annual toxic chemical release form under section 313 of SARA.
<i>Federal Facility Compliance Act of 1992</i>	42 U.S.C. § 6961	40 CFR 255	TDEC	Waives sovereign immunity for Federal facilities under RCRA and requires DOE to develop plans and enter into agreements with states as to specific management actions.

TABLE 7.2.1-1.—Major Federal and State Requirements Regulating Environmental Control Remediation and Worker Safety Arranged by Topic [Page 9 of 9]

Statute/Regulation/ Order	Statute Citation	Regulatory Citation	Responsible Agency	SWEIS-Level Potential Applicability; Permits, Approvals, and Notifications
Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition	Executive Order 13101	NA	DOE	<p>States a national policy preference for pollution prevention (reducing the generation of waste at its source) over waste recycling, treatment, and disposal. If pollution prevention is not feasible, waste should be recycled or treated in an environmentally safe manner. Disposal should be used only as a last resort. The Secretary of Energy is required to incorporate waste prevention and recycling into daily operations. In addition, DOE must implement cost-effective procurement programs that favor the purchase of environmentally preferable products and services. There are products or services with a lesser or reduced effect on human health and the environment compared to competing products and services used for the same purposes.</p> <p>This EO would require the incorporation of waste prevention and recycling into construction and operation of the proposed HEU Materials Facility or Upgrade Expansion of Building 9215, and the Special Materials Complex, consistent with the demands of efficiency and cost-effectiveness.</p>
Federal Compliance with Pollution Control Standards	Executive Order 12088		Office of Management and Budget/DOE/ EPA	Requires Federal agency landlords to submit to the Office of Management and Budget an annual plan for the control of environmental pollution and to consult with EPA and state agencies regarding the best techniques and methods.

TABLE 7.2.1-2.—Selected Department of Energy Directives

DOE Directive	Directive Title
5400.1	General Environmental Protection Program
5400.5	Radiation Protection of the Public and the Environment
5480.4	Environmental Protection, Safety, and Health Protection Standards
5480.19	Conduct of Operations
5480.21	Unreviewed Safety Questions
5480.22	Technical Safety Requirements
5480.23	Nuclear Safety Analysis Reports
5484.1	Environmental Protection, Safety, and Health Protection Information Reporting Requirements
5530.1A	Accident Response Group
5530.4	Aerial Measuring System
470.2A	Security and Emergency Management Independent Oversight and Performance Assurance Program
5632.1C	Protection and Control of Safeguards and Security Interests
M 231.1 Chg 2	Environment, Safety, and Health Reporting Manual
N 441.1	Radiological Protection for DOE Activities
O 151.1A	Comprehensive Energy Management System
O 225.1A	Accident Investigations
O 231.1 Chg 2	Environment, Safety and Health Reporting
O 232.1A	Occurrence Reporting and Processing of Operations Information
O 414.1A	Quality Assurance
O 420.1 Chg 2	Facility Safety
O 430.1A	Life Cycle Asset Management
O 435.1	Radioactive Waste Management
O 440.1A	Worker Protection Management for DOE Federal and Contractor Employees
O 450.5	Line Environment, Safety and Health Oversight
O 451.1A	<i>National Environmental Policy Act Compliance Program</i>
O 460.1A	Packaging and Transportation Safety
O 460.2 Chg 1	Departmental Materials Transportation and Packaging Management
O 470.1 Chg 1	Safeguards and Security Program

7.2.2 Other Pertinent Laws and Requirements

DOE has entered into agreements with Federal and state regulatory agencies that have substantive provisions in effect for Y-12. These agreements establish a schedule, the means, interim conditions or actions for achieving full compliance at the DOE facility. Table 7.2.2-1 lists environmental agreements with Federal and state regulatory agencies that have substantial provisions in effect for Y-12.

7.3 CONSULTATION

Some environmental laws and Executive Orders are integrated into the NEPA process and establish guidelines for review. Pursuant to NEPA and DOE Regulations (10 CFR 1021), consultations are conducted with outside Federal and state agencies having jurisdiction or special expertise. Agencies involved include those responsible for protecting significant resources, such as, endangered species, critical habitats, or historic resources. Federal and state agencies with jurisdiction or expertise in these areas have been, and will be, consulted during the development of the Y-12 SWEIS. Representatives of Federal and state agencies were involved in scoping activities for this SWEIS and will be consulted in the preparation of the Final Y-12 SWEIS. Copies of letters from DOE inviting the participation of consulting agencies and response letters received by DOE are included in Appendix C.

Table 7.3-1 provides laws and Executive Orders that involve consultation for this SWEIS and that are applicable to the Y-12 proposed actions and alternatives. Accompanying each law or Executive Order is a brief description of the purpose of the cited statutes and the consultation occurring for the current Y-12 proposed actions and alternatives.

TABLE 7.2.2-1.—*Agreements Between DOE-ORO and Other Regulatory Agencies*

Areas of Agreement	Regulation for Which Agreement Reached	Regulatory Agency	Explanation and Summary of Agreement
TSCA Storage Requirements for PCBs	40 CFR 761.65	EPA and TDEC	PCBs and PCB-contaminated items with concentration above 50 ppm must be disposed of within 1 year. Agreement set milestones for disposal of various PCB-contaminated materials, providing wastes could be stored for more than 1 year provided milestones met and complete disposal of all PCB wastes be achieved before the year 2016.
Programmatic Agreement on Historic Preservation	16 U.S.C. 470	TSHPO	A Programmatic Agreement for the Management of Historical and Cultural Properties at the ORR, Memorandum of Agreement, was executed on May 6, 1994. The three-party agreement was among DOE/ORO, the Tennessee State Historic Preservation Officer (TSHPO) and the National Advisory Council on Historic Preservation to fulfill DOE's responsibilities under Section 106 and 110 of the <i>National Historic Preservation Act</i> .
Mixed Waste	40 CFR 268.50	EPA and TDEC	Storage of RCRA LDR waste for other than accumulation of sufficient quantities to facilitate proper recovery, treatment, or disposal is prohibited. Storage of mixed LDR wastes pending development of treatment capacity is not an approved reason for accumulation. EPA granted a national capacity variance for mixed LDR wastes; however, the variance expired on May 8, 1992. In June 1992, an agreement to make past, present, and future LDR waste generation and storage facilities on the ORR in compliance with environmental laws. Mixed waste covered in this agreement includes flammable and corrosive liquids, solvents, paint waste, waste oils and organics, and solid mixed wastes.
DOE-ORO Placed on the National Priorities List on November 21, 1989, and effective December 21, 1989	NA	EPA and TDEC	As a result of the listing, DOE entered into an agreement (effective date January 1, 1992). Agreement coordinates RCRA corrective actions underway with response action under CERCLA to ensure comprehensive remediation at ORR. Environmental media and inactive facilities known or suspected to contain hazardous material would be addressed under this agreement pursuant to CERCLA or RCRA.
<i>National Historic Preservation Act</i> , as amended	36 CFR 800	DOE, Tennessee Historical Commission (SHPO), Advisory Council on Historic Preservation (ACHP)	Programmatic Agreement (1994). Allows an alternative compliance procedure for NHPA requirements for certain routine and/or repetitive activities defined in the agreement. Commits DOE-ORO to the preparation of a Cultural Resource Management Plan to address compliance with the full range of cultural resource requirements.

TABLE 7.3-1.—Applicable Laws and Executive Orders Y-12 Proposed Action and Alternatives [Page 1 of 5]

Statute/Executive Order	Statute Citation	Regulatory Citation	Consulting Agency	SWEIS- Applicability; Consultations, and DOE involvement
<i>Endangered Species Act</i>	16 U.S.C. 1531 <i>et seq.</i>	19 CFR 10, 12 30 CFR 773 32 CFR 190 43 CFR 8340 50 CFR 17, 23, 81, 225, 230, 402, 424, 450- 453	USFWS	Ensures that actions authorized, funded, or carried out by DOE are not likely to jeopardize the continued existence of any federally listed threatened or endangered species or destroy or adversely modify their critical habitat. A biological assessment and a Section 7 Endangered Species Consultation for proposed activities included in the SWEIS shall be conducted by DOE in consultation with the U.S. Fish and Wildlife Service.
Endangered and Threatened Wildlife and Plant/Interagency Cooperation		50 CFR 17 50 CFR 402	USFWS	Describes interagency implementation regulations for the <i>Endangered Species Act</i> .
<i>Migratory Bird Treaty Act</i> , as amended	16 U.S.C. 703 <i>et seq.</i>	30 CFR 773 50 CFR 14, 20	Department of the Interior, USFWS	Federal statute mandates protection of sensitive or otherwise regulated wildlife species making it unlawful to pursue, hunt, take, capture, or kill (or attempt any of the preceding) any migratory bird, nest, or eggs of such birds.
Taking Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of Wildlife and Plants/Migratory Bird Hunting		50 CFR 10 50 CFR 20	USFWS	Implementation regulations for the <i>Migratory Bird Treaty Act</i> .

TABLE 7.3-1.—Applicable Laws and Executive Orders Y-12 Proposed Action and Alternatives [Page 2 of 5]

Statute/Executive Order	Statute Citation	Regulatory Citation	Consulting Agency	SWEIS- Applicability; Consultations, and DOE involvement
<i>National Historic Preservation Act</i> , as amended	16 U.S.C. 470	7 CFR 656 36 CFR 61,63, 65, 68, 78, 79, 800-811	SHPO	Protects sites with significant national historic value, placing them on the National Register of Historic Places (NRHP). DOE, as a governmental agency, must locate and inventory historic properties and cultural resources under their jurisdiction prior to undertaking an activity that might remove or alter their appearance. As required by Section 106 of the <i>National Historic Preservation Act</i> and per DOE's Memorandum of Agreement with the TSHPO, proposed Y-12 activities shall be evaluated in consultation with the SHPO.
National Historic Preservation	Executive Order 11593	NA	DOE	DOE, in consultation with the Advisory Council on Historic Preservation (16 U.S.C. 470i), is to institute procedures to assure Federal plans and programs that contribute to historic preservation and to proactively interact with the SHPO to identify structures, buildings, and properties to nominate for listing in the NRHP.
<i>Native American Graves Protection and Repatriation Act of 1990</i>	25 U.S.C. 3001	43 CFR 10	CIN	Tribal descendants shall own American Indian human remains and cultural items discovered on Federal lands after November 16, 1990. Notification of tribal governments by DOE is required if and when items are discovered during an activity at Y-12 or elsewhere on the DOE ORR.
Protection of Wetlands	Executive Order 11990	NA	USACE	Federal activities are required to avoid short- and long-term adverse impacts to wetlands whenever a practicable alternative exists.
Floodplains Management	Executive Order 11988	NA	USACE	DOE is directed to establish procedures to ensure that the potential effects of flood hazards and floodplain management are considered for any action undertaken. Impacts to floodplains are to be avoided to the extent practicable.
Wetland Protection and Floodplain Management		10 CFR 1022	DOE	Regulations establish requirements for compliance with Executive Orders 11990 and 11988. No floodplain impacts are identified for the SWEIS; wetland impacts are under consultation.

TABLE 7.3–1.—Applicable Laws and Executive Orders Y-12 Proposed Action and Alternatives [Page 3 of 5]

Statute/Executive Order	Statute Citation	Regulatory Citation	Consulting Agency	SWEIS- Applicability; Consultations, and DOE involvement
Right-to-Know Laws and Pollution Prevention Requirements	Executive Order 12856	NA	DOE	Expands the 33/50 Pollution Prevention Program (<i>Superfund Amendments and Deauthorization Act</i> , Section 313). Under the expanded program, DOE is requiring each of its sites to establish site-specific goals to reduce the generation of all waste types. This order also requires DOE to (1) report toxic chemicals entering waste streams; (2) improve emergency planning, response, and accident notification; and (3) encourage clean technologies and the testing of innovative pollution prevention technologies.
Environmental Justice	Executive Order 12898	NA	DOE	Federal entities are directed to identify and address disproportionately high adverse human health or environmental impacts on minority and low-income populations resulting from an agency’s program, policies, or activities. Data must be collected, analyzed, and made publicly available on race, national origin, and income level of populations in areas surrounding the Federal facility expected to have a substantial environmental, human health, or economic effect. Environmental justice issues for Y-12 have been identified and addressed prior to preparation of this SWEIS, are further addressed through this SWEIS; the policies requirements of this Executive Order remain applicable to future actions at Y-12.
Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition	Executive Order 13101	NA	DOE	States a national policy preference for pollution prevention (reducing the generation of waste at its source) over waste recycling, treatment, and disposal. If pollution prevention is not feasible, waste should be recycled or treated in an environmentally safe manner. Disposal should be used only as a last resort. The Secretary of Energy is required to incorporate waste prevention and recycling into daily operations. In addition, DOE must implement cost-effective procurement programs that favor the purchase of environmentally preferable products and services. There are products or services with a lesser or reduced effect on human health and the environment compared to competing products and services used for the same purposes. This EO would require the incorporation of waste prevention and recycling into construction and operation of the proposed HEU Materials Facility or Upgrade Expansion of Building 9215, and the Special Materials Complex, consistent with the demands of efficiency and cost-effectiveness.

TABLE 7.3-1.—Applicable Laws and Executive Orders Y-12 Proposed Action and Alternatives [Page 4 of 5]

Statute/Executive Order	Statute Citation	Regulatory Citation	Consulting Agency	SWEIS- Applicability; Consultations, and DOE involvement
Greening the Government Through Leadership in Environmental Management	Executive Order 13148	NA	EPA	<p>Gives responsibility to each Federal agency for ensuring that all necessary actions are taken to integrate environmental accountability into agency day-to-day decisionmaking and longterm planning processes, across all agency missions, activities, and functions. Environmental management must be considered in all Federal Government policy making, operations, planning, and management. The goals set forth by this EO focus on pollution prevention through the development of effective environmental management systems; establishment of environmental compliance audit programs and policies; implementation of Community Right-To-Know; reductions in both the use of release of toxic chemicals, hazardous substances, and other pollutants; reductions in the use of ozone-depleating substances; and promotion of environmentally and economically beneficial landscaping.</p> <p>Under this EO, DOE is required to implement these goals through effective pollution prevention practices and the introduction of new technologies that will reduce waste and toxic chemicals for both current and future operations at the Y-12 National Security Complex to the extent practical.</p>
Greening the Government through Federal Fleet and Transportation Efficiency	Executive Order 13149	NA	EPA/DOE/OMB/GSA	<p>The purpose of this EO is to ensure that the Federal Government exercises leadership in the reduction of petroleum consumption through improvements in fleet fuel efficiency and the use of alternative fuel vehicles (AFVs) and alternative fuels. Each agency operating 20 or more motor vehicles within the U.S. shall reduce its entire fleets annual petroleum consumption by at least 20 percent by the end of FY 2005 (compared to FY 1999 levels). This EO lists a number of strategies to achieve this reduction and requires Federal agencies to use alternative fuels to meet fuel requirements of AFVs (established by section 303 of <i>Energy Act of 1992</i>) by the end of FY 2005. This EO also calls for an increase in the average EPA fuel economy rating of passenger cars and light trucks acquired by at least 1 mile per gallon (mpg) by the end of FY 2002 and at least 3 mpg by the end of FY 2005 (compared to FY 1999 acquisitions).</p>

TABLE 7.3–1.—Applicable Laws and Executive Orders Y-12 Proposed Action and Alternatives [Page 5 of 5]

Statute/Executive Order	Statute Citation	Regulatory Citation	Consulting Agency	SWEIS- Applicability; Consultations, and DOE involvement
Federal Workforce Transportation	Executive Order 13150	NA	EPA/DOT/Treasury Dept/OMB/GSA	<p>Directs DOT, EPA, and DOE to implement a “transit pass” transportation fringe benefit program as part of a three-year Nationwide Pilot Program no later than October 1, 2000. Before extending the program to other Federal agencies and their employees nationwide, results from the pilot program will be analyzed by an entity to be determined by the consulting agencies to determine if it is effective in reducing single occupancy vehicle travel and local area traffic congestion. Federal agencies are encouraged to use any nonmonetary incentive that the agencies may otherwise offer under any other provision of law or other authority to encourage mass transportation and vanpool use.</p> <p>Under this EO, DOE is required to implement a carpool program for all Federal employees working at ORR facilities, including Y-12.</p>

Notes: EO - Executive Ord