UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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SUBJECT: Coordination between RCRA Corrective Action and Closure and CERCLA Site Activities

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Good RCRA/CERCLA coordination has become increasingly important as our offices have reorganized and programs have assumed new organizational relationships. We believe that, in general, coordination of site cleanup activities among EPA RCRA, EPA CERCLA and state/tribal cleanup programs has improved greatly; however, we are aware of examples of some remaining coordination difficulties. In this memo, we discuss three areas: acceptance of decisions made by other remedial programs; deferral of activities and coordination among EPA RCRA, EPA CERCLA and state/tribal cleanup programs; and coordination of the specific standards and administrative requirements for closure of RCRA regulated units with other cleanup activities. We also announce a revision to the Agency's policy on the use of fate and transport calculations to meet the "clean closure" performance standard under RCRA. We hope the guidance offered here will assist in your continuing efforts to eliminate duplication of effort, streamline cleanup processes, and build effective relationships with the states and tribes.

This memorandum focuses on coordination between CERCLA and RCRA cleanup programs; however, we believe the approaches outlined here are also applicable to coordination between either of these programs and certain state or tribal cleanup programs that meet appropriate criteria. For example, over half of the states have "Superfund-like" authorities. In some cases, these state authorities are substantially equivalent in scope and effect to the federal CERCLA program and to the state or federal RCRA corrective action program. In accordance with the 1984 Indian Policy, EPA recognizes tribes as sovereign nations, and will work with them on a government-to-government basis when coordination cleanup efforts on lands under tribal jurisdiction.

In addition to the guidance provided in this memorandum, two other on-going initiatives address coordination of RCRA and CERCLA. First, EPA is currently coordinating an interagency and state "Lead Regulator Workgroup." This workgroup intends to provide guidance where overlapping cleanupauthorities apply at federal facilities that identifies options for coordinating oversight and deferring cleanup from one program to another. We intend for today's memorandum and the pending guidance from the Lead Regulator Workgroup to work in concert to improve RCRA/CERCLA integration and coordination. Second, EPA has also requested comment on RCRA/CERCLA integration issues in the May 1, 1996 Advanced Notice of

Proposed Rulemaking--Corrective Action for Releases From Solid Waste Management Units at Hazardous Waste Management Facilities (61 FR 19432; commonly referred to as the RCRA "Subpart S" ANPR). We intend to coordinate all of these efforts as we develop further policy on integration issues.

Acceptance of Decisions Made by Other Remedial Programs

Generally, cleanups under RCRA corrective action or CERCLA will substantively satisfy the requirements of both programs. **FOOTNOTE 1.** We believe that, in most situations, EPA RCRA and CERCLA site managers can defer cleanup activities for all or part of a site from one program to another with the expectation that no further cleanup will be required under the deferring program. For example, when investigations or studies have been completed under one program, there should be no need to review or repeat those investigations or studies under another program. Similarly, a remedy that is acceptable under one program should be presumed to meet the standards of the other.

It has been our experience that, given the level of site-specific decision-making required for cleaning up sites, differences among the implementation approaches of the various remedial programs primarily reflect differences in professional judgement rather than structural inconsistencies in the programs themselves. Where there are differences in approaches among remedial programs, but not in their fundamental purposes or objectives (e.g., differences in analytical QA/QC procedures), these differences should not necessarily prevent deferral. We encourage program implementors to focus on whether the end results of the remedial activities are substantively similar when making deferral decisions and to make every effort to resolve differences in professional judgement to avoid imposing two regulatory programs.

We are committed to the principle of parity between the RCRA corrective action and CERCLA programs and to the idea that the program should yield similar remedies in similar circumstances. To further this goal, we have developed and continue to develop a number of joint (RCRA/CERCLA) guidance documents. For example, the several "Presumptive Remedies," which are preferred technologies for common categories of sites, and the Guidance for Evaluating the Technical Impracticability of Groundwater Restoration (OSWER Directive 9234.2-25, September 1993), which recognizes the impracticability of achieving groundwater restoration at certain sites, are applicable to both RCRA and CERCLA cleanups. For more information on the concept of parity between the RCRA and CERCLA program see: 54 FR 41000, esp. 41006-41009 (October 4, 1989), RCRA deferral policy; 54 FR 10520 (March 13, 1989), National Priorities List for Uncontrolled Hazardous Waste Sites Listing Policy for Federal Facilities; 55 FR, 30798, esp. 30852-30853 (July 27, 1990), Proposed Rule for Corrective Action for Solid Waste Management Units at Hazardous Waste Management Facilities; 60 FR 14641 (March 20, 1995), Deletion Policy for RCRA Facilities; and, 61 FR 19432 (May 1, 1996), Corrective Action forReleases From Solid Waste Management Units at Hazardous Waste Management Facilities, Advanced Notice of Proposed Rulemaking.

Program Deferral

The concept of deferral from one program to another is already in general use at EPA. For example, it has long been EPA's policy to defer facilities that may be eligible for inclusion on the National Priorities List (NPL) to the RCRA program if they are subject to RCRA corrective action (unless they fall within certain exceptions, such as federal facilities). Recently, EPA expanded on this policy by issuing criteria for deleting sites that are on the NPL and deferring their cleanup to RCRA corrective action (attached). **FOOTNOTE 2.** When a site is deleted from the NPL and deferred to RCRA, problems of jurisdictional overlap and duplication of effort are eliminated, because the site will be handled solely under RCRA authority. Corrective action permits or orders should address all releases at a CERCLA site being deferred to RCRA; some RCRA permits or orders may need to be modified to address all releases before a site is deleted from the NPL.

While EPA's general policy is for facilities subject to both CERCLA and RCRA to be cleaned up under RCRA, in some cases, it may be more appropriate for the federal CERCLA program or a state/tribal "Superfund-like" cleanup program to take the lead. In these cases, the RCRA permit/order should defer corrective action at all of the facility to CERCLA or a state/tribal cleanup program. For example, where program priorities differ, and a cleanup under CERCLA has already been completed or is underway at a RCRA facility, corrective action conditions in the RCRA permit/order could state that the existence of a CERCLA action makes separate RCRA action unnecessary. In this case, there would be no need for the RCRA program to revisit the remedy at some later point in time. Where the CERCLA program has already selected a remedy, the RCRA permit could cite the CERCLA decision document (e.g., ROD), but would not

necessarily have to incorporate that document by reference. RCRA permits/orders can also defer corrective action in a similar way for cleanups undertaken under state/tribal programs provided the state/tribal action protects human health and the environment to a degree at least equivalent to that required under the RCRA program.

Superfund policy on deferral of CERCLA sites for listing on the NPL while states and tribes oversee response actions is detailed in the May 3, 1995 OSWER Directive 9375.6-11 ("Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions"). The intent of this policy is to accelerate the rate of response actions by encouraging a greater state or tribal role, while maintaining protective cleanups and ensuring full public participation in the decision-making process. Once a deferral response is complete, EPA will remove the site from CERCLIS and will not consider the site for the NPL unless the Agency receives new information of a release or potential release that poses a significant threat to human health or the environment. The state and tribal deferral policy is available for sites not listed on the NPL; deferral of final NPL sites must be addresses under the Agency's deletion policy, as described above.

Coordination Between Programs

While deferral from one program to another is typically the most efficient and desirable way to address overlapping cleanup requirements, in some cases, full deferral will not be appropriate and coordination between programs will be required. The goal of any approach to coordination of remedial requirements should be to avoid duplication of effort (including oversight) and second-guessing of remedial decisions. We encourage you to be creative and focus on the most efficient path to the desired environmental result as you craft strategies for coordination of cleanup requirements under RCRA and CERCLA and between federal and state/tribal cleanup programs.

Several approaches for coordination between programs at facilities subject to both RCRA and CERCLA are currently in use. It is important to note that options for coordination at federal facilities subject to CERCLA §120 may differ from those at non-federal facilities because of certain prescriptive requirements under §120. EPA anticipates issuing further guidance on coordination options specific to federal facilities through the interagency Lead Regulator Workgroup. Current approaches that are in use include:

Craft CERCLA or RCRA decision documents so that cleanup responsibilities are divided. CERCLA and RCRA decision documents do not have to require that the entire facility be cleaned up under one or the other program. For example, at some facilities being cleaned up under CERCLA, the RCRA units (regulated or solid waste) are physically distinct and could be addressed under RCRA. In these cases, the CERCLA decision documents can focus CERCLA activities on certain units or areas, and designate others for action under RCRA. When units or areas are deferred from CERCLA to RCRA, the CERCLA program should include a statement (e.g., in a ROD or memorandum submitted to the administrative record) that successful completion of these activities would eliminate the need for further cleanup under CERCLA at those units and minimal review would be necessary to delete the site from the NPL. Similarly, when units or areas are deferred from RCRA to CERCLA, RCRA permits or orders can reference the CERCLA cleanup process and state that complying with the terms of the CERCLA requirements would satisfy the requirements of RCRA.

Establish timing sequences in RCRA and CERCLA decision documents. RCRA and CERCLA decision documents can establish schedules according to which the requirements for cleanup at all or part of a facility under one authority would be determined only after completion of an action under the other authority. For examples RCRA permits/orders can establish schedules of compliance which allow decisions as to whether corrective action is required to be made after completion of a CERCLA cleanup or a cleanup under a state/tribal authority. After the state or CERCLA response is carried out, there should be no need for further cleanup under RCRA and the RCRA permit/order could simply make that finding. Similarly, CERCLA or state/tribal cleanup program decision documents could delay review of units or areas that are being addressed under RCRA, with the expectation that no additional cleanup will need to be undertaken pending successful completion of the RCRA activities, although CERCLA would have to go through the administrative step of deleting the site from the NPL.

A disadvantage of this approach is that it contemplates subsequent review of cleanup by the deferring program and creates uncertainty by raising the possibility that a second round of cleanup may be

necessary. Therefore, we recommend that program implementors look first to approachesthat divide responsibilities, as described above. A timing approach, however, may be most appropriate in certain circumstances, for example, where two different regulatory agencies are involved. Whenever a timing approach is used, the final review by the deferring program will generally be very streamlined. In conducting this review, there should be a strong presumption that the cleanup under the other program is adequate and that reconsidering the remedy should rarely be necessary.

The examples included in this memo demonstrate several possible approaches to deferring action from one cleanup program to another. For example, under RCRA, situations are described where the RCRA corrective action program would make a finding that no action is required under RCRA because the hazard is already being addressed under the CERCLA Program, which EPA believes affords equivalent protection. In other examples, the RCRA program defers not to the CERCLA program per se, but either defers to a particular CERCLA ROD or actually incorporates such ROD by reference into a RCRA permit or order. In addition, there are examples where the Agency commits to revisit a deferral decision once the activity to which RCRA action is being deferred is completed; in other situations, reevaluation is not contemplated. As discussed in this memorandum, no single approach is recommended, because the decision of whether to defer action under one program to another and how to structure such a deferral is highly dependent on site-specific and community circumstances. In addition, the type of deferral chosen may raise issues concerning, for example, the type of supporting documentation that should be included in the administrative record for the decision, as well as issues concerning availability and scope of administrative and judicial review.

Agreements on coordination of cleanup programs should be fashioned to prevent revisiting of decisions and should be clearly incorporated and cross-referenced into existing or new agreements, permits or orders. We recognize that this up-front coordination requires significant resources. Our expectation is that, over the long-term, duplicative Agency oversight will be reduced and cleanup efficiency will be enhanced.

RCRA Closure and Post-Closure

Some of the most significant RCRA/CERCLA integration issues are associated with coordination of requirements for closure of RCRA regulated units **FOOTNOTE 3.** with other cleanup activities. Currently, there are regulatory distinctions between requirements for closure of RCRA regulated units and other cleanup requirements (e.g., RCRA corrective action requirements). RCRA regulated units are subject to specific standards for operation, characterization of releases, groundwater corrective action and closure. Coordination of these standards with other remedial activities can be challenging. In the November 8, 1994 proposed Post-Closure Rule (59 FR 55778), EPA requested comment on an approach that would reduce or eliminate the regulatory distinction between cleanup of releases from closed or closing regulated units and cleanup of non-regulated unit releases under RCRA corrective action. The Office of Solid Waste will address this issue further in the final Post-Closure and Subpart S rules.

At the present time, however, the dual regulatory structure for RCRA closure and other cleanup activities remains in place. There are several approaches program implementors can use to reduceinconsistency and duplication of effort when implementing RCRA closure requirements during CERCLA cleanups or RCRA corrective actions. These approaches are analogous to the options discussed above for coordination between cleanup programs. For example, a clean-up plan for a CERCLA operable unit that physically encompasses a RCRA regulated unit could be structured to provide for concurrent compliance with CERCLA and the RCRA closure and post-closure requirements. In this example, the RCRA permit/order could cite the ongoing CERCLA cleanup, and incorporate the CERCLA requirements by reference. RCRA public participation requirements would have to be met for the permit/order to be issued; however, at many sites it may be possible to use a single process to meet this need under RCRA and CERCLA.

At some sites, inconsistent cleanup levels have been applied for removal and decontamination ("clean closure") of regulated units and for site-wide remediation under CERCLA or RCRA corrective action. Where this has happened, clean closure levels have been generally set at background levels while, at the same site, cleanup levels have been at higher, risk-based concentrations. To avoid inconsistency and to better coordinate between different regulatory programs, we encourage you to use risk-based levels when developing clean closure standards. The Agency has previously presented its position on the use of background and risk-based levels as clean closure standards (52 FR 8704-8709, March 19, 1987; attached). This notice states that clean closure levels are to be based on health-based levels approved by the Agency. If no Agency-approved level

exists, then background concentrations may be used or a site owner may submit sufficient data on toxicity to allow EPA to determine what the health-based level should be.

EPA continues to believe, as stated in the March 19,1987 notice, that risk-based approaches are protective and appropriate for clean closure determinations. In EPA's view, a regulatory agency could reasonably conclude that a regulated unit was clean closed under RCRA if it was cleaned up under Superfund, RCRA corrective action, or certain state/tribal cleanup programs to the performance standard for clean closure. This performance standard can be met with the use of risk-based levels. RCRA units that did not achieve the closure performance standard under a cleanup would remain subject to RCRA capping and post-closure care requirements.

The 1987 federal register notice described EPA's policy that the use of fate and transport models to establish risk levels would be inappropriate for clean closure detections. This discussion, however, also included the statement that, after additional experience with clean closures, "the Agency may decide that a less stringent approach is sufficiently reliable to assure that closures based on such analyses are fully protective of human health and the environment." After nine years of further experience, EPA believes that, consistent with the use of risk-based standards in its remedial programs, use of fate and transport models to establish risk levels can be appropriate to establish clean closure determinations. EPA today announces that it is changing its 1987 policy on evaluating clean closure under RCRA to allow use of fate and transport models to support clean closure demonstrations. EPA intends to publish this change in the Federal Register in the near future.

We encourage you to consider risk-based approaches when developing cleanup levels for RCRA regulated units and to give consideration to levels set by state/tribal programs which use risk-based approaches. EPA is developing guidance on risk-based clean closure and on the use of models to meet the clean closure performance standard.

Since almost all states oversee the closure/post-closure process and more than half implementRCRA corrective action, coordination of RCRA corrective action and closure will often be solely a state issue. However, if a state is not authorized for corrective action, or if a facility is subject to CERCLA as well as RCRA corrective action, close coordination between federal and state agencies will be necessary. As discussed above, actual approaches to coordination or deferral at any site should be developed in consideration of site-specific and community concerns.

Summary

We encourage you to continue your efforts to coordinate activities between the RCRA and CERCLA programs and between state, tribal and federal cleanup programs. We are aware that several of the EPA Regions are considering developing formal mechanisms to ensure that coordination will occur among these programs. We endorse these efforts and encourage all Regions, states and tribes to consider the adoption of mechanisms or policies to ensure coordination. If you have any questions on the issues discussed in this memorandum, or on other RCRA/CERCLA issues, please call Hugh Davis at (703)308-8633.

attachments

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John Thomasian, National Governors Association
Brian Zwit, National Association of Attorneys General

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1. In a few, limited cases, program differences may be sufficiently great to prevent deferral to the other program (e.g., the inability of CERCLA to address petroleum releases or RCRA to address certain radioactive materials). In these instances we encourage remedial programs to coordinate closely with each other to minimize duplication of effort, including oversight. ***Return to Document***

2. Currently, the RCRA deletion policy does not pertain to federal facilities, even if such facilities are also subject to Subtitle C of RCRA. Site Managers are encouraged to use interagency agreements to eliminate duplication of effort at federal facilities; the Lead Regulator Workgroup intends to provide additional guidance on coordinating oversight and deferring cleanup from one program to another at federal facilities. ***Return to Document***

3. In this document the term "regulated unit" refers to any surface impoundment, waste pile, land treatmentunit or landfill that receives (or has received) hazardous waste after July 26, 1982 or that certified closure after January 26, 1983.
Return to Document

Links to Relevant Code of Federal Regulations **(CFR)**

Vol. 60. No. 53. Monday, March 20, 1995, 40 CFR Part 300

- ***The National Priorities List for Uncontrolled Hazardous Waste Sites; Deletion Policy for Resource Conservation and Recovery Act Facilities***
- ***The National Oil and Hazardous Substances Contigency Plan; National Priorities List Update***

Vol. 52. No. 53. Thursday, March 19, 1987, 40 CFR Part 265

- ***Intermi n Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Final*** **Rule** EXIT EPA

Cleanup Compendium Table of Contents

[FFRRO Initiatives & Guidance

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