

US EPA ARCHIVE DOCUMENT

Clinton Administration's Remediation Waste Legislative Specifications
April 15, 1998

This proposal would:

- ▶ Provide environmental benefits by fostering or accelerating protective site remediation that otherwise might not occur, or might be delayed, by providing appropriate, targeted changes to RCRA land disposal restrictions, minimum technology requirements and permitting requirements for hazardous remediation waste.
- ▶ Maintain RCRA Subtitle C jurisdiction and enforcement by keeping hazardous remediation waste within the definition of hazardous waste.
- ▶ Ensure hazardous remediation wastes are managed safely by granting EPA the authority to develop alternative, tailored, requirements to replace the existing land disposal restrictions, minimum technology, and permitting requirements.
- ▶ Provide relief quickly by establishing interim requirements specific to hazardous remediation waste and granting EPA and authorized states the ability to impose these interim requirements using a hazardous remediation waste permit or order.
- ▶ Provide meaningful public involvement in remediation waste management decisions with emphasis on notice to and inclusion of communities from the onset of remediation waste management.
- ▶ Provide for review and authorization of state hazardous remediation waste management programs.

In General

1. Find that:

- ▶ application of RCRA hazardous waste land disposal restrictions, minimum technology and permitting requirements to wastes generated during site remediation may deter or slow down cleanup activities; and
- ▶ providing opportunities to tailor RCRA hazardous waste land disposal restrictions, minimum technology and permitting requirements to hazardous remediation waste may enhance environmental protection by encouraging aggressive remediation of contaminated sites where such remediation might not otherwise occur, might occur more slowly, or might occur in a way that emphasized less treatment and/or less permanent remedies.

2. Limit reform to the minimum changes necessary to address application of the land disposal

Clinton Administration's Remediation Waste Legislative Specifications
April 15, 1998

restrictions, minimum technology and permitting requirements to hazardous remediation waste.

3. Do not affect or limit application of any RCRA requirement to any non-remediation or non-hazardous waste. Except as specifically provided in paragraph 26, do not affect or limit any Federal or state cleanup or remediation authority (e.g., RCRA corrective action, CERCLA) or the ability of EPA and states to require and impose remedial actions.
4. Minimize or eliminate incentives to mismanage non-remediation waste and maintain incentives to properly manage waste generated by on-going industrial processes.
5. Do not affect or limit jurisdiction of other Federal, state or local agencies over the non-hazardous component of remediation waste (e.g., jurisdiction over source, special nuclear or by-product materials as defined by the Atomic Energy Act).

Definition of Remediation Waste

6. Define hazardous remediation waste to include any of the following, when managed as a result of remediation:

- ▶ all media and debris which contain a listed hazardous waste or exhibit a characteristic of hazardous waste;
- ▶ all solid wastes disposed of* prior to November 19, 1980 which, if now managed, would be considered listed or identified hazardous wastes; and,
- ▶ listed or identified hazardous wastes disposed* prior to the effective date of an applicable land disposal prohibition, provided the disposal occurred in a unit authorized to operate under RCRA Section 3005 or was otherwise authorized under Subtitle C.

* Note storage and accumulation of hazardous waste in intact containers is not considered disposal.

7. For mixtures, all materials must meet the definition of remediation waste for the mixture to be considered remediation waste.

8. Grant EPA and authorized states the discretion to include other hazardous wastes in the definition of hazardous remediation waste, even if they were land disposed after the effective date of an applicable LDR prohibition without meeting treatment standards, if the wastes are released or threaten release into the environment and the Administrator determines that costs are unlikely to be recovered from liable persons and:

Clinton Administration's Remediation Waste Legislative Specifications
April 15, 1998

- ▶ in the case of EPA, management of the remediation waste will be pursuant to a “Fund-lead” response under CERCLA or, in the case of an authorized state, management of the remediation waste will be pursuant to a State response action funded under a similar state statute; or
- ▶ on a site-by-site basis only, the person performing or financing the cleanup of the remediation waste is an “innocent land-owner” (as defined in current law) or a “bona fide prospective purchaser.”

9. Grant EPA and authorized states the discretion, only on a site-by-site basis, to include other hazardous wastes in the definition of hazardous remediation waste if the wastes are released or threaten release into the environment, such inclusion would facilitate a remedy that involves active management or treatment of the waste, the waste met applicable treatment standards at the time of land disposal, and the waste was land disposed in a unit authorized to operate under RCRA Section 3005.

Land Disposal Restrictions

10. Require compliance with minimum national treatment standards for hazardous remediation waste that will be land disposed.

11. Grant EPA the authority to modify, by rule, after notice and opportunity for comment, existing land disposal restriction requirements to establish alternative levels or methods of treatment for hazardous remediation wastes taking into account the special circumstances associated with remediation (such as oversight and the goal of encouraging remediation in the first instance) and any special characteristics, including treatability characteristics, of remediation waste, provided the Administrator determines that such alternative treatment standards are protective of human health and the environment.

12. Grant EPA the authority, by rule, after notice and opportunity for comment, to identify specific hazardous remediation wastes, if any, which do not require the treatment discussed above to protect human health and the environment.

Clinton Administration's Remediation Waste Legislative Specifications
April 15, 1998

13. In the interim, establish a presumptive hazardous remediation waste treatment standard that:

- ▶ would apply only to principal threats to be identified in accordance with the Guide to Principal Threat and Low Level Threat Wastes (EPA 9380.3-06FS, November 1991);
- ▶ for principal threats, requires treatment to 90% reduction in concentrations of hazardous constituents or ten times the universal treatment standard, whichever is higher, subject to adjustment based on appropriate factors [*placeholder -- these factors to be determined in legislation*].
- ▶ All hazardous remediation waste is subject to the 90% capped by 10xUTS treatment standards unless EPA or an authorized state determines it is not a principal threat or approves adjusted treatment standards. Public notice and opportunity for comment on these determinations and approvals is required.

The interim standards would apply immediately and remain in effect until EPA takes new action to establish remediation waste specific treatment standards as discussed in 10, 11 and 12, above.

14. Clarify that environmental media and debris which have been determined (by EPA or an authorized state) to no longer contain hazardous waste and do not or no longer exhibit a characteristic of hazardous waste, and non-media hazardous remediation wastes that were hazardous solely because they exhibited a characteristic of hazardous waste and that no longer exhibit a characteristic of hazardous wastes, are not subject to the land disposal restrictions.

Minimum Technology Requirements

15. Specify that hazardous remediation waste must be managed in accordance with minimum technological requirements to ensure hazardous remediation waste units are designed, operated and closed in a manner that protects human health and the environment.

16. Grant EPA the authority to modify, by rule, after notice and opportunity for comment, existing minimum technological requirements to establish alternative requirements for hazardous remediation waste taking into account the special circumstances associated with remediation (such as oversight and the goal of encouraging remediation in the first instance) and any special characteristics of remediation waste, provided the Administrator determines that such alternative requirements are protective of human health and the environment.

17. In establishing the hazardous remediation waste specific minimum technological requirements authorized above, require EPA to, at a minimum, require alternative hazardous remediation waste minimum technological requirements provide that:

Clinton Administration's Remediation Waste Legislative Specifications
April 15, 1998

- ▶ Hazardous remediation waste treatment, storage and disposal units be designed and operated in a manner that controls, prevents or minimizes releases of hazardous remediation waste and hazardous constituents into the environment; and
- ▶ Hazardous remediation waste treatment, storage and disposal units be designed and operated in a manner which will ensure detection and allow characterization of any releases of hazardous remediation waste or hazardous constituents into the environment; and
- ▶ Hazardous remediation waste treatment, storage and disposal units be closed in a manner that minimizes the need for further maintenance, controls or eliminates post-closure escape of hazardous remediation wastes and hazardous constituents.

18. As interim minimum technological requirements for hazardous remediation waste, ratify the existing Corrective Action Management Unit (CAMU) rule (58 FR 8658, February 16, 1993), which requires among other things, compliance with certain unit design, operating, closure and post-closure performance standards, to apply until EPA takes new action to develop remediation waste specific minimum technological requirements.

19. As part of the interim requirements, specify that:

- ▶ CAMUs may be approved at any facility where hazardous remediation waste generated at that facility will be managed, but are limited to on-site (that is, cannot accept remediation waste generated at other facilities); and
- ▶ hazardous remediation waste which will remain in a CAMU after closure must be treated to compliance with remediation waste specific land disposal restriction treatment standards (either the interim standards or any new remediation waste treatment standards developed by EPA).

20. Require that combustion of hazardous remediation waste continue to meet the combustion standards promulgated under RCRA Section 3004(o), including existing applicable permitting requirements.

Clinton Administration's Remediation Waste Legislative Specifications
April 15, 1998

Permitting

21. Establish a special form of RCRA Subtitle C permit for hazardous remediation waste treatment, storage and disposal facilities (except combustion facilities). These permits apply only to the permittee. Facilities which already have a RCRA Subtitle C permit (i.e., for treatment, storage or disposal of non-remediation hazardous waste) and are also treating, storing, or disposing of hazardous remediation waste could use their existing RCRA permit to specify remediation waste requirements.

22. Require the permit applicant to show to the satisfaction of or in a manner acceptable to the Administrator that the waste proposed to be covered by the hazardous remediation waste permit meets the definition of hazardous remediation waste.

23. Grant EPA the authority to modify, by rule, after notice and opportunity for comment, facility standards implemented through the permitting process, as they apply to hazardous remediation waste management only, to take into account the special circumstances associated with remediation and any special characteristics of remediation waste, provided the Administrator determines that such modified standards are protective of human health and the environment. Except as already provided in the sections on LDRs and MTRs, above, require that such modified standards meet the requirements established in RCRA Section 3004(a).

24. In establishing the hazardous remediation waste permits authorized above, require EPA to, at a minimum require these permits:

- ▶ identify the hazardous remediation waste which is the subject of the permit;
- ▶ specify the principal threats, if any, associated with the hazardous remediation waste;
- ▶ specify measures (in addition to compliance with the interim remediation waste standards or subsequent standards established by EPA) which will be taken to address such principal threats;
- ▶ describe the on-site management of the subject hazardous remediation waste and specify a schedule for waste management activities; and
- ▶ specify record keeping and reporting requirements as necessary to monitor compliance with and enforce permit conditions and keep the public informed of remediation waste management activities.

25. Grant EPA and authorized states the discretion, after notice and opportunity for comment, to

Clinton Administration's Remediation Waste Legislative Specifications
April 15, 1998

add additional requirements to hazardous remediation waste permits, as necessary to protect human health or the environment.

26. Effective immediately, establish that facility-wide corrective action under RCRA Sections 3004(u) and (v) is not required in permits for facilities which manage only hazardous remediation waste. Corrective action would still be required for facilities that treat, store or dispose of non-remediation hazardous waste.

27. Grant EPA the authority to modify, by rule, after notice and opportunity for comment, the permit review and termination time frames specified in Section 3005(c)(3) to develop permit review and termination time frames appropriate to hazardous remediation waste permits.

28. Establish meaningful opportunities for public participation in development and approval of hazardous remediation waste permits including, at a minimum public notice and a reasonable opportunity for comment. Grant EPA the authority to modify, by rule, the specific notice mechanisms established in RCRA Section 7004(b)(2).

29. Provide judicial review of hazardous remediation waste permits in accordance with RCRA Section 7006(b) and require authorized states to provide equivalent judicial review in state court for state approved hazardous remediation waste permits.

30. Grant EPA the authority to provide technical assistance grants to communities and Indian Tribes affected by remediation waste management activities, to establish criteria for awarding technical assistance grants, to define maximum grant amounts, and to define the types of remediation waste management facilities that must fund technical assistance grants; provide that EPA and authorized states will award technical assistance grants funded by remediation waste permit applicants in accordance with the established technical assistant grant criteria, grant amounts and definitions described above.

Off-Site Management

31. Require compliance with applicable Subtitle C manifesting and transportation requirements when hazardous remediation waste is removed from the site at which it was generated and require that manifest identify the subject waste as "hazardous remediation waste."

32. Require that hazardous remediation waste removed from the site at which it was generated be clearly labeled "hazardous remediation waste."

33. Limit facilities which can receive hazardous remediation waste to:

- ▶ facilities authorized to operate under Section 3005; and,

Clinton Administration's Remediation Waste Legislative Specifications
April 15, 1998

- ▶ facilities which comply with the Part 258 Subtitle D requirements, receive a hazardous remediation waste permit, and comply with any facility-specific requirements established in the hazardous remediation waste permit (see #25).

Enforcement

34. Maintain existing enforcement provisions under RCRA Subtitle C, including opportunities for enforcement by citizens, for alternative remediation waste requirements.
35. Ensure EPA has the ability to use orders to compel cleanup of releases from hazardous remediation waste management units at cleanup-only facilities (i.e., non TSDFs).
36. Ensure that EPA can impose the alternative remediation waste requirements in orders, for example, at a facility undergoing cleanup under a 3008(h) order.
37. In a civil enforcement action, place the burden on the defendant to show that wastes are hazardous remediation wastes.
38. In an enforcement action where the United States is seeking injunctive relief, provide that the United States could require that hazardous remediation waste be managed in compliance with the requirement applicable to non-remediation hazardous wastes.

State Authorization

39. Require compliance with Section 3006.
40. Ensure EPA retains the ability to impose alternative remediation waste requirements in authorized states at facilities undergoing cleanup under a 3008(h), 7003 or 3013 order or under the CERCLA process.
41. As a condition of state authorization, require states to provide EPA with an annual list of hazardous remediation waste management facilities and their locations. Require EPA to compile this information and make it available electronically and by other means.
42. Require GAO to provide an annual report to Congress on the status of state authorization applications and EPA's progress in authorizing states.