

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 23 1986

9360.0-8

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSEMEMORANDUM

SUBJECT: CERCLA Removal Actions at Methane Release Sites

FROM: Henry L. Longest II, Director /s/
Office of Emergency and Remedial Response

TO: Basil G. Constantelos, Director
Waste Management Division
Region V

This memorandum clarifies Office of Emergency and Remedial Response policy on the appropriateness of removal actions at methane gas release sites under authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). This issue was recently brought to our attention as a result of response actions which were being considered at the Industrial Excess Landfill (IEL) site in Lake Township, Ohio.

Because methane gas is not listed or designated under any of the statutory provisions in section 101(14) of CERCLA it is not a "hazardous substance." However, response actions under CERCLA section 104 are not limited to hazardous substances. Section 104(a)(1) authorizes responses to actual or potential releases of "pollutants or contaminants." The definition of hazardous substance in section 101(14) and pollutant or contaminant in section 104(a)(2) excludes certain types of natural gas and petroleum. Naturally occurring methane gas found in or associated with petroleum deposits is a type of natural gas and is therefore exempted from CERCLA coverage. However, methane gas emanating from a landfill is not considered to be "natural gas" and such releases may therefore be eligible for response under section 104(a)(1) if methane gas otherwise meets the definition of pollutant or contaminant under section 104(a)(2).

With respect to the response authority for pollutants or contaminants, response action under section 104(a)(1) is authorized only if there is a threatened or actual release of such substances which may present an "imminent and substantial danger to the public health or welfare." The potentially explosive gas levels, detected during daily monitoring at the perimeter of the landfill and nearby homes and businesses, appear to meet the criterion of imminent and substantial danger. Therefore, because the methane gas is not excluded as a "natural gas," if it is determined to be a "pollutant or contaminant" as defined in section 104(a)(2) and to pose an "imminent and substantial danger to the public health and welfare," response under CERCLA is authorized.

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Although the proposed removal action is authorized under CERCLA section 104(a)(1), the responsible party may not be liable under section 107 for removal action costs since liability under that section is limited to releases of hazardous substances.

As a matter of policy, CERCLA responses to methane gas releases should be carefully evaluated on a case-by-case basis. Approval of the removal action at IEL should not be considered as setting a general precedent for future actions involving methane gas. Methane gas is produced in most landfills, and response authorized under CERCLA section 104(a)(1) for release of a "pollutant or contaminant" must be carefully evaluated and documented for the presence of an "imminent and substantial danger to the public health or welfare."

In a related issue, please note that methane control measures may be taken as part of a response action that controls a release of a hazardous substance. These measures would be taken to protect public health and the environment and to ensure the integrity of the remedy.

cc: Waste Management Division Directors, Regions I-IV and VI-X
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