



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

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

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MEMORANDUM

SUBJECT: Resource Conservation and Recovery Act (RCRA) Biennial Report Requirements for Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Response Actions

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TO: Superfund National Policy Managers, Regions 1-10
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Purpose

This memorandum reaffirms the need for the regions to be aware of biennial reporting requirements under the Resource Conservation and Recovery Act (RCRA) and their applicability to the cleanup process under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. § 9601, *et. seq.*¹ The intent of this memo is to serve as a reminder

¹This document provides guidance to Regional staff regarding how the Agency interprets and implements the National Oil and Hazardous Substance Pollution Contingency Plan (NCP), which provides the blueprint for CERCLA implementation. However, this document does not substitute for those provisions or regulations, nor is it a regulation itself. Thus, it cannot impose legally binding requirements on EPA, states, or the regulated community, and may not apply to a particular situation based upon the circumstances. Any decisions regarding a particular situation will be made based on the statute and the regulations, and EPA decision-makers retain the discretion to adopt approaches on a case-by-case basis that differ from the guidance where appropriate.

that compliance with biennial reporting requirements is a continuing obligation which must be addressed throughout the CERCLA cleanup process, and to provide guidance in determining under what circumstances a Biennial Report must be submitted by a hazardous waste large quantity generator (LQG) to its authorized state, or EPA regional office if there is no authorized state.

Background

What is the RCRA Biennial Report?

The RCRA Biennial Report, undertaken pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.*, requires that at least every two years LQGs² report to EPA or authorized states, the quantities, nature and disposition of generated hazardous waste, and the treatment, storage and disposal facilities report on the wastes they manage.³ This information is used to develop a National Biennial Report that summarizes the reported data for the public, government agencies and the regulated community.

Biennial reporting requires LQGs to report by March 1 of every even-numbered year, their hazardous waste management activities for the previous odd-numbered calendar year. States authorized by EPA to implement the RCRA biennial reporting portions of the program may have their own forms and may have more frequent reporting schedules.⁴ A list of state contacts, reporting frequency and form information can be found at: <http://www.epa.gov/epawaste/inforesources/data/biennialreport/index.htm>.

Biennial Reporting Requirement for CERCLA Response Actions

EPA considers the RCRA biennial reporting requirement an administrative requirement for purposes of CERCLA response actions. EPA has determined that CERCLA response actions conducted on-site⁵ generally should be subject only to substantive, not administrative requirements of state and other federal environmental protection laws, and that it would be inappropriate to formally subject on-site

²While RCRA regulations specifically define the quantities of hazardous waste generated on a monthly basis that constitute conditionally exempt small quantity generators (CESQGs), and small quantity generators (SQGs), RCRA regulations require reporting from Large Quantity Generators (LQG). However, by defining what constitutes CESQGs and SQGs, one can determine what constitutes a LQG; a generator that generates 1,000 kilograms or more of hazardous waste in a calendar month; a total of one kilogram of acute hazardous waste listed in 40 CFR 261.31-33 in a calendar month, or a total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous wastes listed in 40 CFR 261.31-33 in a calendar month. (See 40 CFR 261.5(e).)

³ The information is submitted on EPA Form 8700-13 A/B. RCRA sections 3002 and 3004 (42 U.S.C. §§ 6922 and 6924) require EPA to establish standards for recordkeeping and reporting of hazardous waste. Section 3002 applies to hazardous waste generators and section 3004 applies to hazardous waste treatment, storage, and disposal facilities. The implementing regulations are found at 40 CFR §§ 262.40(b) and (d); 262.41(a)(1)-(5), (a)(8), and (b); 264.75(a)-(e) and (j); 265.75(a)-(e) and (j); and 270.30(l)(9). The respondents' submissions (reports) describe each generated hazardous waste, the activity by which they generated the waste, and the waste quantity; the reports also list the management method by which each waste is treated, recycled, or disposed and the quantity managed.

⁴ States requiring annual reporting include: (Region 1) Maine, New Hampshire; (Region 2) New Jersey, New York; (Region 3) Delaware, District of Columbia; (Region 4) Georgia, Kentucky, Mississippi, South Carolina, Tennessee; (Region 5) Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin; (Region 6) Arkansas, Louisiana, Oklahoma, Texas; (Region 7) Kansas, Missouri; (Region 8) Montana; (Region 9) Arizona, California, Guam; (Region 10) Idaho, Oregon, Washington.

⁵ Onsite response actions are those where EPA treats and/or disposes of the hazardous waste on-site that was generated by a remedial or removal action.

CERCLA response actions to the multitude of administrative requirements of other federal and state offices and agencies.⁶ Administrative requirements do not, in and of themselves, define a level or standard of control; they include the approval of, or consultation with, administrative bodies, issuance of permits, documentation, and reporting and recordkeeping.

In contrast, CERCLA cleanup actions involving treatment, storage and disposal of RCRA hazardous wastes at an off-site RCRA permitted facility are subject to all RCRA requirements, including administrative requirements such as biennial report submissions, for those wastes sent off-site.

Therefore, biennial report submissions for hazardous waste generated as a part of CERCLA response action should be consistent with the following:

- *On-site Hazardous Waste Management:* Any RCRA hazardous waste generated on-site as part of a Superfund response action and managed on-site must comply with all substantive RCRA requirements but need not comply with administrative requirements, such as RCRA biennial reporting requirements.
- *Off-site Hazardous Waste Management:* Any RCRA hazardous waste generated on-site as part of a Superfund response action and managed off-site is subject to all RCRA requirements, including, where applicable, biennial report requirements.⁷

On-scene coordinators (OSCs), remedial project managers (RPMs), potentially responsible parties (PRPs), and federal facility site managers have two options for complying with the biennial reporting requirements. These options are:

1. report all RCRA hazardous waste managed off-site without evaluating whether they are a LQG; or
2. determine if, in any single calendar month, the site is a LQG, by following the requirements in 40 CFR §§ 261 and 262; and if so, report all RCRA hazardous waste that is generated on-site, but managed off-site for the entire biennial reporting calendar year.⁸

Under Option 1, a facility/site would submit a Biennial Report of all RCRA hazardous waste shipments sent off-site during the biennial reporting calendar year (i.e., odd-numbered year). This would generally be the same as reporting the total amount of hazardous waste leaving the site and recorded in the hazardous waste manifest system during the year. Under this option, some Superfund sites would submit a Biennial Report even if they are not LQGs. If the site manager chooses to follow Option 1 but turns out to not be a LQG they would be considered a protective filer.

⁶ See Preamble to 1990 National Contingency Plan (NCP), 55 FR 8756.

⁷ Note: On average, about five full 55 gallon drums of hazardous waste is equal to 1,000 kilograms or more, which would trigger the LQG regulatory threshold for reporting.

⁸ LQGs are required to submit, by March 1 of each even-numbered year, a Biennial Report detailing their hazardous waste management activities for the previous odd-numbered calendar year.

Under Option 2, Superfund site managers would determine if the site is a LQG. In determining whether a site is a LQG the site manager must account for all waste generated each month by following the requirements in 40 CFR §§ 261 and 262, regardless of whether the waste is managed on-site or off-site. If the site is a LQG, then Superfund site managers would need to submit a Biennial Report for that portion of the hazardous waste that was generated on-site, but managed off-site for the entire biennial reporting calendar year.

For Superfund fund-lead response actions, EPA or their agents (i.e., U.S. Army Corps of Engineers or a contractor) would submit a Biennial Report. For PRP-lead cleanups, the PRP is responsible for reporting. For federal facilities, the lead federal facility overseeing the cleanup or their agent is responsible for reporting. Those responsible for reporting should carefully consider and clarify who should fill out and submit the report and work with their states (or the regional office if the state is not authorized) to ensure that required information is submitted to the appropriate entity. Attachment A provides questions and answers to address biennial reporting requirements for CERCLA response actions.

Training

In an effort to aid in completing the Biennial Report for CERCLA response actions, we will update Superfund training materials to highlight this reporting requirement.

Modifying Contracts to Address Biennial Reporting

Contractors are expected to support EPA site managers in performing biennial reporting functions. Regions are requested to incorporate into their existing response contracts and agreements the need to fulfill biennial reporting requirements and to submit the appropriate forms to the state environmental agency (or the regional office if the state is not authorized). Headquarters will also be modifying contracts that support regional cleanup work to include this evaluation and reporting requirement as a part of the standard statement of work.

Reference Materials

Additional information on the Biennial Report can be found at the following website:
<http://www.epa.gov/epawaste/inforesources/data/biennialreport/index.htm>

The RCRA Orientation Manual can be found at:
<http://www.epa.gov/epawaste/inforesources/pubs/orientat/>

For a detailed understanding of RCRA hazardous waste generator regulatory requirements, please see:
<http://www.epa.gov/epawaste/hazard/downloads/tool.pdf>

Conclusion

CERCLA response actions conducted entirely on-site generally should be subject only to substantive, not administrative, requirements of state and other federal environmental protection laws. RCRA biennial reporting requirements do not apply to CERCLA actions as long as hazardous waste is not

shipped off-site. However, CERCLA cleanup actions involving treatment, storage and disposal of RCRA hazardous wastes off-site are subject to all RCRA requirements, including biennial reporting requirements, for those wastes sent off-site.

To satisfy their biennial reporting requirement during a biennial reporting calendar year, hazardous waste generators at CERCLA sites may either: (1) report the total amount of waste leaving the site and recorded in the hazardous waste manifest system during the year, regardless of their generator status; or (2) determine if, in any single calendar month, the site is a LQG, and if so, report all RCRA hazardous waste that is generated on-site, but managed off-site for the entire calendar year.

For questions on addressing biennial reporting requirements under CERCLA, please contact the following staff:

- For issues concerning non-time critical removals and remedial actions contact Larry Zaragoza (Office of Superfund Remediation and Technology Innovation) at 703-603-8867.
- For issues concerning time critical and emergency removals contact Gilberto Irizarry (Office of Emergency Management) at 202-564-7982.
- For issues concerning working with PRPs contact Manuel Ronquillo (Office of Site Remediation Enforcement) at 202-564-6065.
- For RCRA-specific questions related to the Biennial Report contact Jim O’Leary (Office of Resource Conservation and Recovery) at (703) 308-8827.

Thank you for your time and attention in this matter.

Attachment

Attachment A Questions and Answers

Question: What RCRA regulatory requirements must EPA or its agents comply with when hazardous waste is shipped off-site as a result of a CERCLA response action?

Answer: EPA or its agents should follow the directions described under the Superfund document, "RCRA-Specific ARARs" found at:
<http://www.epa.gov/superfund/policy/remedy/sfremedy/arars/rcra.htm> .

Another useful document for providing additional information related to RCRA hazardous waste generator regulations is the *Hazardous Waste Generator Regulations: A User-Friendly Reference Document*. This document can be found at:
<http://www.epa.gov/epawaste/hazard/downloads/tool.pdf> .

Question: If RCRA hazardous wastes and other wastes are shipped to a facility for treatment, storage or disposal, what should be done to separate RCRA hazardous wastes and other wastes for reporting purposes?

Answer: The hazardous waste manifest form should be filled out so that it distinguishes between RCRA hazardous waste and other waste components, because any other waste component does not need to be reported in the Biennial Report. The RCRA hazardous waste component must always have a RCRA hazardous waste code for each hazardous waste shipped off-site to a RCRA treatment, storage, or disposal facility. Generally, only the RCRA hazardous waste should be reported when supplying information for the Biennial Report, but hazardous waste generators must be mindful that there may be additional state requirements for reporting.

Question: Who should report?

Answer: For Superfund fund-lead response actions, EPA or its agents (e.g. contractor, U.S. Army Corps of Engineers) should report the information required in the Biennial Report. For PRP-lead cleanups, the PRP is responsible for reporting. For federal facilities, the lead federal facility overseeing the cleanup or their agent is responsible for reporting.

Question: Where should EPA or its agents submit the Biennial Report?

Answer: You should send the report to the authorized state where the hazardous waste is generated, or if the state is not authorized, to the respective EPA Region. A list of state addresses and contacts can be found at
<http://www.epa.gov/osw/inforesources/data/form8700/contact.pdf> .

In addition, a copy of the instructions for the 2009 Biennial Report cycle can be found at <http://www.epa.gov/wastes/inforesources/data/br09/br2009rpt.pdf>.

Question: What action should be taken if the reporting threshold amount for a LQG is no longer met?

Answer: If a CERCLA response action had previously resulted in the site meeting the definition of LQG and a portion of that waste had been reported in a biennial reporting cycle, but the cleanup activity no longer qualifies as such, the site manager should let the RCRA federal or RCRA authorized state know of the change in status. This change is accomplished by filling out the RCRA Subtitle C Site Identification Form (EPA Form 8700-13 A/B found at <http://www.epa.gov/wastes/inforesources/data/br09/br2009rpt.pdf> .) and submitting it to either the authorized state office or Regional RCRA unit responsible for this reporting.

