



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

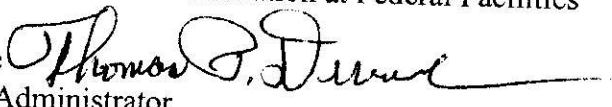
DEC 21 2005

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

OSWER Directive 9272.0-22

MEMORANDUM

SUBJECT: Improving RCRA/CERCLA Coordination at Federal Facilities

FROM: Thomas P. Dunne 
Acting Assistant Administrator

TO: Regional Administrators, Regions I-X

This memorandum reemphasizes EPA's Policy regarding coordination of Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response Compensation and Liability Act (CERCLA) site cleanup activities at federal facilities, and encourages early and continued coordination between the facilities and the regulatory agencies including authorized states. Policies issued previously by the Office of Solid Waste and Emergency Response (OSWER) were designed to promote coordination of the two response/cleanup programs and minimize or eliminate duplication. (See Attachments 1 & 2). Although reforms aimed at improving the CERCLA program and streamlining the RCRA corrective action program have been successfully implemented during the past decade, issues sometimes have arisen relating to duplicative RCRA and CERCLA procedural requirements at federal facilities where both regulatory regimes are applicable.

Under the One Cleanup Program Initiative launched in 2003, the Federal Environmental Work Group (Work Group) identified improved RCRA/CERCLA coordination between states and EPA at federal facilities, including National Priorities List (NPL) sites and non-NPL sites, as one of the top ways to increase the efficiency and effectiveness of cleanups.¹ In keeping with the Work Group's recommended solution, OSWER is restating its policy to ensure a full understanding of the Agency's perspective on how best to achieve RCRA/CERCLA integration.

During Work Group deliberations on this topic, both federal and state participants gained increased knowledge and sensitivity to each other's perspectives. In addition, outside of the Work Group, EPA, states and the Department of Defense have taken steps to educate each other on the topic. For example, the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) sponsored a session on RCRA/CERCLA coordination during its annual

¹ Because the Federal Environmental Work Group focus was on potentially overlapping state and EPA requirements, this policy focuses on EPA and states, but not tribes. To the extent that tribes are also regulating or involved in cleanups at federal facilities, all parties are encouraged to provide effective coordination with the tribes.

meeting in October 2004 and again at its November 2004 Federal Facilities Conference. The Federal Environmental Work Group will continue to research solutions and share information to improve RCRA/CERCLA integration at Federal Facilities. As appropriate, additional information will be disseminated among states, federal agencies and EPA on this topic.

EPA continues to stress that, generally, cleanup conducted pursuant to RCRA corrective action or CERCLA will substantively satisfy the requirements of both programs. We encourage program implementers to focus on whether the end results of remedial activities are substantively similar regardless of which cleanup authority is used. In integrating the programs, a primary goal should be to minimize duplication of effort and second-guessing of cleanup decisions. To this end, EPA Regions, States and Federal agencies are encouraged to coordinate early and throughout the response process regarding actions, documentation and public participation.

Background

The two primary federal cleanup statutes (RCRA and CERCLA) and associated regulations addressing releases or threats of releases of hazardous waste or constituents from solid waste management units, hazardous substances and pollutants, and contaminants, have specific procedural requirements that may cause redundant or additional efforts when both are applied at a site. Additionally, the RCRA program is a federal program that allows States to be authorized to implement the program "in lieu of" the federal government. Under RCRA, such authorized states may impose requirements that are more stringent than the federal requirements, and they are responsible for making specific permit decisions and other types of regulatory determinations within the scope of their authority. Unless efforts are made to identify all requirements of RCRA and CERCLA that are applicable to a facility and to minimize duplication, the process requirements of both programs have the potential to add time and costs to the response.

RCRA/CERCLA integration clauses for Federal Facilities Agreements (FFAs) and similar state-federal agreements were crafted specifically to address this potential problem. Recently a few states, referencing the U.S. Environmental Protection Agency's (EPA's) February 25, 2003 Final Guidance on Completion of Corrective Action at RCRA Facilities (68 Federal Register 8757, February 25, 2003), have sought to require corrective action closeout steps in addition to those being conducted by federal agencies under CERCLA.² A few states have expressed the opinion that their RCRA process provides for more public involvement opportunities in the context of property transfer. The RCRA closeout process recommended in the RCRA completion guidance, in particular, provides for final review and approval of implementation that includes a public review period.

² It is important to note that the Final Guidance does not consider whether a CERCLA response is underway and, thus, does not discuss how the CERCLA response and public participation processes could be used to satisfy RCRA corrective action requirements. As noted *infra*, the goal should be to promote consistency and eliminate duplication, when possible.

Depending on the specific state, this process may be considered especially important in the property transfer context, where, under CERCLA, a state's involvement may be more limited. For example, some states have asked that RCRA permits be modified and RCRA corrective actions be closed out in accordance with approaches recommended in state and EPA guidance even where the response actions were conducted under CERCLA. In some cases, this has delayed planned property transfers because of the uncertainty related to the status of the RCRA permit. On the other hand, when a facility's RCRA closeout process is identified and integrated with the facility's site closeout and property transfer processes under CERCLA (e.g., Finding of Suitability to Transfer), concerns about potential added costs and delays associated with separate review and/or separate public notification can be minimized or eliminated.

Addressing RCRA Permit Obligations

EPA is committed to the principle of parity between the RCRA Corrective Action and CERCLA programs and to the idea that the programs should generally yield similar remedies in similar circumstances. The facility and the EPA Region or authorized State should agree early on an exit strategy in the cleanup process that allows a facility where appropriate, to be released from the RCRA permit once the cleanup is completed. Although this applies to all federal properties, it is especially critical for federal properties that may be subject to property transfer. If a final remedy will be selected that will leave some contamination in place, any issues about how this might affect property transfer after corrective action is complete should also be addressed up front in the planning process.

As stated in the September 1996 Policy on Coordinating RCRA and CERCLA (see Attachment 1), program implementers can use several approaches to reduce inconsistency and duplication of effort. For example, deferral from one program to another is often the most efficient and desirable way to address overlapping requirements. Another way to coordinate RCRA and CERCLA might be for one program to accept the decisions made under the authority of the other program. This is what was envisioned by the RCRA/CERCLA integration clause in the model EPA/DoD Federal Facility Agreement (FFA) for NPL facilities.³ As called for in the 1996 policy, we encourage EPA Regions, State environmental programs and federal agencies to periodically review existing RCRA requirements, permits and corrective action orders or CERCLA IAG/FFA requirements or other federal response actions under CERCLA but not in an IAG/FFA. The goal of such a review is to identify opportunities for integrating cleanup activities and regulatory requirements to ensure the activities proceed as expeditiously and efficiently as possible.

³ For example, the cleanup actions for a CERCLA operable unit that physically encompasses a RCRA regulated unit could be structured to provide for concurrent compliance with CERCLA and RCRA closure and post-closure requirements.

requirements may not be adequately addressed by deferring to another cleanup program.⁴ The facts regarding a specific contaminant or situation need to be considered in relation to statutory and regulatory authorities. Again, all parties should work together to ensure continued coordination and communication.

Please note that this memorandum is not a regulation itself, nor does it change or substitute for any regulations. Thus, it does not impose legally binding requirements on EPA, States, or the regulated community. This memorandum does not confer legal rights or impose legal obligations upon any member of the public. Interested parties are free to raise questions and objections about the substance of this memorandum and the appropriateness of the application of this memorandum in a particular situation. EPA and other decision makers retain the discretion to adopt approaches on a case-by-case basis that differ from those described in this memorandum. The use of the word "should" or "may" in this document means that something is suggested or recommended, but not required.

Questions about this Policy should be addressed to Dianna Young (703-603-0045) in the Federal Facilities Restoration and Reuse Office, Mike Fitzpatrick (703-308-8411) in the Office of Solid Waste or Robin Anderson (703-603-8747) in the Office of Superfund Remediation and Technology Innovation.

Attachments

- 1) 1996 RCRA/CERCLA Integration Policy
- 2) Lead Regulator Policy

cc: Superfund National Program Managers, Regions I - X
RCRA National Program Managers, Regions I - X
James Woolford, FFRRO
Matt Hale, OSW
Mike Cook, OSRTI
David Kling, OECA/FFEO
Scott Sherman, OGC
Dianna Young, FFRRO
Mike Fitzpatrick, OSW
Robin Anderson, OSRTI
Terry Gray, ASTSWMO
Tom Kennedy, ASTSWMO
Federal Facilities Leadership Council
OCP Federal Environmental Work Group

⁴ RCRA does not address certain contaminants, such as radionuclides, so in these instances, it is appropriate to use CERCLA authority.