

Comparing RCRA and CERCLA

The U.S. Environmental Protection Agency (EPA) is working to ensure that contamination from the former DuPont East Chicago facility at 5215 Kennedy Avenue in East Chicago is properly addressed and that people living in the community are protected, informed and involved in the cleanup process. EPA's authority to compel cleanup of contamination at the former DuPont facility is derived from the Resource Conservation & Recovery Act (RCRA). When RCRA and Superfund, also known as the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA) are related, EPA coordinates the two cleanup programs to eliminate duplication of effort and streamline cleanup processes. EPA encourages close coordination among RCRA and Superfund cleanup programs.

Why the Former DuPont East Chicago Facility is Under RCRA Corrective Action Implementation

RCRA established a system for managing hazardous waste at facilities from the time the hazardous waste is generated until its ultimate disposal. On August 19, 1980, DuPont submitted a RCRA "Part A" Permit Application to EPA that identified the East Chicago facility as both a large quantity generator of hazardous waste and a treatment, storage and disposal facility for waste solvents.

DuPont continues to be subject to RCRA corrective action cleanup requirements at the East Chicago facility. These cleanup requirements apply to facilities that, at any time, had RCRA interim status, as well as facilities that operated without a RCRA permit when they should have had one. Any facility that had or should have obtained interim status is subject to RCRA's corrective action requirements. In 1997, EPA entered into a Corrective Action Order with DuPont that states, "[DuPont] is the owner or operator of a Facility that has operated, is operating, should be, or should have been operating under interim status subject to § 3005(e) of RCRA, 42 U.S.C. § 6925 (e)."

As required by the 1997 Corrective Action Order, Chemours conducted a facility investigation, limited interim cleanup actions and a corrective measures study at the former DuPont East Chicago facility. Although the facility was historically one of the largest chemical manufacturing operations in the United States, by the early 2000s, DuPont had completely dismantled nearly all of the former manufacturing facilities and ceased operations there. In February 2015, following a corporate reorganization, DuPont transferred the facility property to Chemours, a new wholly-owned subsidiary of DuPont. After EPA issues a final RCRA cleanup decision and response to public comments, EPA anticipates entering into another corrective action order with DuPont and Chemours that will require them to conduct the remaining cleanup work at the facility.

In response to questions from the East Chicago community about the differences between RCRA and CERCLA, EPA developed the answers to some of the more frequently asked questions (see page 3) about how things may or not be different if the efforts were administered under CERCLA rather than RCRA.

For more information:

USS Lead Superfund Site

Janet Pope
Community Involvement
Coordinator
312-353-0268
pope.janet@epa.gov

Charles Rodriguez
Community Involvement
Coordinator
312-886-7472
rodriguez.charles@epa.gov

DuPont Facility

Rafael Gonzalez
Community Involvement
Coordinator
312-886-0269
gonzalez.rafaelp@epa.gov

Different Statutes, Consistent Outcome

RCRA and CERCLA are two different statutes that govern the federal management and cleanup of hazardous waste facilities (RCRA) and response to abandoned, uncontrolled hazardous waste sites (CERCLA). They are not identical statutes but there are many similarities that consistently achieve protection of human health and the environment.

Similar Process, Different Terminology

The Superfund and RCRA programs use different terminology to describe similar activities. See the diagram on the last page for a side by side comparison of the two programs. For example, in CERCLA, an investigation (with sampling) is called a “Remedial Investigation” (RI) and an evaluation of the relative feasibility of different remedy options is known as a “Feasibility Study” (FS). In RCRA, these efforts are named a “RCRA Facility Investigation” (RFI) and a “Corrective Measures Study” (CMS). Under CERCLA, when the investigation has been completed and EPA is ready to select a cleanup plan, EPA issues a Proposed Plan identifying the preferred cleanup approach for the site and solicits and considers public comment before issuing a Record of Decision. Likewise, under RCRA, after the RFI and CMS are completed, EPA issues a Proposed Statement of Basis and solicits and considers public comment before issuing a Final Decision and Response to Comments.

Public Outreach

Public outreach and involvement are similar whether work is done under RCRA or CERCLA. Both CERCLA and RCRA encourages public involvement throughout the investigation and cleanup, and requires public participation during the selection of response actions. At certain CERCLA sites, EPA develops a community relations plan, and at both CERCLA sites and RCRA facilities, EPA makes documents available to the public throughout the investigation and cleanup in a public document repository, typically in a public library in the affected community. During the investigation and cleanup at Superfund sites, EPA may also facilitate the formation of a Community Advisory Group (CAG).

When EPA presents the Proposed Plan to the public, the Superfund program holds a public meeting, and prepares a transcript to record the comments. The public may also submit written comments during the public comment period. EPA then prepares a responsiveness summary to respond to the public comments, and that becomes part of the record for the remedy selection.

Likewise, at the former DuPont East Chicago facility, EPA has followed the public involvement and outreach process that is normally conducted at a RCRA Corrective Action site which has included assignment of a community involvement coordinator, a public notice and comment period, and public meetings.

Different Program Administration

Superfund is managed at EPA Region 5 by the Superfund Division. The RCRA Corrective Action Program is managed by the Land and Chemicals Division. Both Divisions report to the EPA Region 5 Administrator.

Technical Assistance Differences

A Technical Assistance Grant (TAG) may be awarded to eligible groups at sites listed on the National Priorities List (NPL) or proposed for the NPL where a response action is underway. An initial grant of up to \$50,000 is for a community group to contract a technical advisor to help the community understand CERCLA site documents and actions. The community group manages their TAG and technical advisor. The TAG is not offered under RCRA. However, the Technical Assistance Services for Communities (TASC) program may be available for both CERCLA and RCRA programs. TASC provides technical assistance services to communities through a contract managed by EPA.

Frequently Asked Questions Regarding using RCRA or CERCLA Authority

Would the federal government buy our homes or move us during the remediation?

Section 104j of CERCLA limits the acquisition of real property, which is necessary as part of a permanent relocation, to only that property that the President determines is “needed to conduct a remedial action ...” EPA does not have authority to acquire property for relocation under a CERCLA removal action (a short term, urgent or time sensitive type of cleanup). Thus, EPA can incorporate relocation into a CERCLA remedial action only when EPA has made a finding that relocation of residents is required to successfully conduct the remedial action.

Are there more stringent standards for the remediation under CERCLA that Chemours would be held to if we change the lead program to CERCLA?

There is broad overlap in the process for establishing cleanup standards under CERCLA and RCRA. Both programs stress protection of human health and the environment, and both require that a cleanup meet applicable substantive provisions of State law. The long and short term remedial actions being carried out under RCRA at the site would be consistent with the kind of remedial actions that would likely be required under CERCLA.

Can EPA use RCRA to request a thorough investigation of all areas of concern at a facility without changing the progress of current activities?

Yes. Under RCRA, EPA can require additional investigative work or submission of information it determines necessary to effectively remediate the facility as well as any contamination released from the facility.

Does the community get to decide how the remediation is conducted if we change programs (RCRA/CERCLA)?

At the DuPont facility, EPA has decision-making authority over cleanup decisions, in consultation with the community. Input from the community throughout the decision-making process at both CERCLA and RCRA sites is extremely important to achieving effective cleanups. Although the processes are at times different, public participation is important under both statutes. For the former DuPont East Chicago facility, the community outreach and input has been over that which would normally occur at a RCRA corrective action site and is on par to that which would occur under CERCLA. EPA makes the final decision of the remedy to be implemented at the Chemours site, with input from the community.

Will EPA do the remediation and send Chemours the bill if the lead program was changed to CERCLA?

The substantial majority of Superfund cleanups are performed by potentially responsible parties under EPA oversight. EPA's Superfund program has an enforcement first principle and seeks to have the responsible parties pay for and perform necessary work, rather than using taxpayer funds. EPA-funded cleanups are generally performed only when there are no viable parties in existence to perform the work. Thus, if this were a Superfund site, EPA's approach would likely be to allow Chemours to perform the cleanup work, either under a CERCLA Consent Decree or, failing that, under an EPA-issued Unilateral Administrative Order.

Comparing RCRA and CERCLA

Specific to USS Lead Superfund Site/DuPont Facility

DuPont/OU2

RCRA Resource Conservation and Recovery Act

Ongoing Businesses

RCRA Facility Assessment (RFA)
The First Look

RCRA Facility Investigation (RFI)
A Closer Look

Interim
Response Action
(if necessary)

Corrective Measures Study (CMS)
What Works?

Proposed Statement of Basis
Public Comment

Final Decision
Response to Public Comment

Corrective Measures
Workplan Implementation

Corrective Action Order
Cleanup

Operation, Maintenance,
and Monitoring

Corrective Action Complete

EPA's Involvement
Cleanup Oversight

USS Lead/OU1

CERCLA Comprehensive Environmental Response, Compensation, and Liability Act (Superfund)

Non-operational Facilities and Other Sources of Contamination

Preliminary Assessment/Site Inspection
The First Look

Identify High Hazard Sites
Listing on the National Priorities List

Remedial Investigation
A Closer Look

Time Critical
Removal Action
(if necessary)

Feasibility Study
What Works?

Proposed Plan
Public Comment

Record of Decision
Response to Public Comment

Remedial Design
Plan for Cleanup

Remedial Action
Cleanup

Operation, Maintenance,
and Monitoring

Delete from NPL

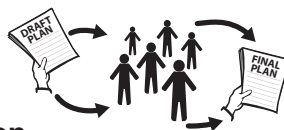
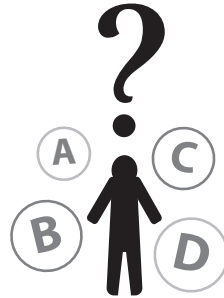
EPA's Involvement
Cleanup Implementation
Cleanup Oversight

IDENTIFY PROBLEMS

SET GOALS

DEVELOP SOLUTIONS

IMPLEMENT PLAN



DONE