



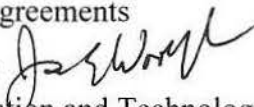
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460


OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

MAR 25 2015

MEMORANDUM

SUBJECT: Updated Statement of National Capacity Language for Superfund State Contracts and Remedial Cooperative Agreements

FROM: James E. Woolford, Director 
Office of Superfund Remediation and Technology Innovation

Barnes Johnson, Director 
Office of Resource Conservation and Recovery

TO: Superfund National Policy Managers (Regions 1-10)
RCRA Directors, Regions 1 – 10

PURPOSE

This Statement of National Capacity provides suggested new language for the hazardous waste management capacity assurance that is required in new or amended Superfund State Contracts (SSCs) or Remedial Action Cooperative Agreements (CAs) by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). This suggested new language has been prepared to guide the Environmental Protection Agency (EPA) and states in the preparation of SSCs and CAs.¹

BACKGROUND

Section 104(c)(9) of CERCLA has multiple requirements, which are provided in Attachment 1 to this memorandum. This memorandum provides support for states to assure the EPA that national capacity exists to treat or dispose of waste that they generate, as required under Section 104(c)(9), including the requirement for compliance with the Subtitle C requirements of the Resource Conservation and Recovery Act (RCRA).

¹ This new language to guide the preparation of SSCs and CAs is not a regulation, and does not create legal obligations. EPA may deviate from this recommended language depending on the facts of a particular case.

As noted above, Section 104(c)(9) requires that the EPA will not provide any remedial action within a state unless the state first enters into a SSC or CA and assures that adequate capacity exists to manage hazardous wastes generated in the state for 20 years following the date of the SSC or CA. The EPA implemented a national planning process to support states in fulfilling this statutory requirement. The Agency's 2009 Statement of National Capacity indicated that adequate capacity existed nationwide through the year 2034. The applicability of that statement for the 20-year assurance expired on December 31, 2014, thus triggering the need for a new Statement of National Capacity. This memorandum supersedes the 2009 Statement of National Capacity.

RESULTS OF THE NATIONAL CAPACITY ASSESSMENT

EPA periodically monitors the national capacity status and recently reassessed the future availability of national capacity. At this time, EPA concludes that there is expected to be adequate national capacity for the treatment and disposal of hazardous waste through December 31, 2039.

While the Agency's analysis has shown that there is adequate capacity through 2039, assuring adequate capacity requires active planning on the part of all parties including states, tribal governments, industry, and commercial management facilities. This necessitates that all states periodically examine their capacity situations, identify areas of concern, and develop plans that consider future needs. These planning exercises will add to states' knowledge of their hazardous waste management systems, help them implement waste minimization programs, and encourage companies to replace inefficient treatment technologies with safer and more innovative technologies. This can be especially important if studies of hazardous waste management data show capacity issues for specific waste streams that may reasonably be expected to be generated within a state's borders.

2014 CAPACITY ASSURANCE STATEMENT

Based on the new National Capacity Assessment Report (January 2015), the Agency has developed the following new capacity assurance language that can be used in all new SSCs or Remedial Action CAs signed between EPA and states, beginning immediately and through December 31, 2019.

EPA's 2014 National Capacity Assessment shows that there is adequate national capacity for the treatment and disposal of hazardous waste through calendar year 2039. This assessment included 2011 Biennial Report data provided by the state of (name of state).

Based upon the assessment and other data, as appropriate, EPA expects that there will be adequate national hazardous treatment and disposal capacity during the 20-year period following signature of this (contact or agreement). (Name of state) hereby assures the

availability of hazardous waste treatment or disposal facilities for the next 20 years, following signature of this (contract or agreement), pursuant to CERCLA 104(c)(9), 42 U.S.C. 9604(c)(9).

In order to ensure the continued availability of capacity for the treatment and disposal of hazardous waste, the state of (name of state) agrees to work with EPA to meaningfully participate in the national capacity planning process and any activities needed to either identify shortfalls in capacity or to address any identified shortfalls.

This new language can be incorporated into new or amendments to SSCs and CAs. Previous language based on the 2009 National Statement of Capacity is obsolete and should not be used. States should refer to this memorandum and the above data sources as a basis for assuring adequate hazardous waste management capacity in their CAs or SSCs.

As required by CERCLA 104(c)(9)(D), the President has found that there are sufficient permitted facilities in compliance with RCRA Subtitle C to support disposal of hazardous waste over the near term². Moreover, EPA analysis projects that there is adequate capacity for the treatment and disposal of hazardous waste through 2039.

Available information from the past 20 years indicates that RCRA facility compliance status has not constrained capacity to create a shortfall; and we do not have any information to suggest compliance status would constrain capacity for the next 25 years. EPA does not expect facility noncompliance to be an issue provided that EPA, states, and facilities continue to work quickly to identify and correct any significant noncompliance issues. Continued correction of noncompliance is important to maintaining national capacity. To support this Statement of National Capacity, EPA will continue to review the compliance status of hazardous waste facilities, monitor the operating status of these facilities, and adjust the National Capacity Planning estimates if needed.

CONCLUSION

EPA suggests that states use the example language in this memorandum as a part of their assurance to satisfy the CERCLA 104(c)(9) requirement in the preparation of SSCs or CAs. Moreover, EPA regional offices should share this memorandum with their states to facilitate the preparation of state assurances.

If there are questions on the preparation or requirement for a capacity assurance statement in CAs or SSCs, please contact Dana Stalcup, Director of the Assessment and Remediation Division at 703-603-8701 (stalcup.dana@epa.gov).

If at any time a state or a region has reason to believe that there is a shortage of any specific type of capacity that would justify a closer review, please contact Sonya Sasseville, Acting Director of the Program Implementation and Information Division, Office of Resource Conservation and Recovery (ORCR) at 703-308-8648 (sasseville.sonya@epa.gov). For information on ORCR's

² RCRA Subtitle C permits are generally issued by states for a period of only 5 to 10 years, not the 20 years needed for capacity assurance under CERCLA.

efforts to characterize National Capacity for the management of hazardous waste, please contact Laura Lopez of the Information Collection and Analysis Branch of the ORCR at 703-308-8482 (lopez.laura@epa.gov).

cc: Mathy Stanislaus, OSWER
Barry Breen, OSWER
Reggie Cheatham, OEM
Cyndy Mackey, OSRE
David Kling, FFEO
Charlotte Bertrand, FFRRO
Lia Parisien, ECOS
Dania Rodriguez, ASTSWMO
Earl Salo, OGC
Charles Openchowski, OGC
Wendel Askew, OGC
Superfund Branch Chiefs, Regions 1-10
RCRA and Superfund Lead Region Coordinators
Offices of Regional Counsel
Offices of Regional Counsel Subpart O Contacts
Subpart O Network
Kenneth C. Schefski, OECA
Dana Stalcup, OSRTI
Suzanne Wells, OSRTI
Ellyn Fine, OSRTI
Sonya Sasseville, ORCR
Laura Lopez, ORCR
Larry Zaragoza, OSRTI

Attachment 1: CERCLA Statutory Requirements

CERCLA Sec. 104(c)(9)

- ▶ *(9) Siting. Effective 3 years after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that the State will assure the availability of hazardous waste treatment or disposal facilities which--*

CERCLA Sec. 104(c)(9)(A)

- ▶ *have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the 20-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed,*

CERCLA Sec. 104(c)(9)(B)

- ▶ *(B) are within the State or outside the State in accordance with an interstate agreement or regional agreement or authority,*

CERCLA Sec. 104(c)(9)(C)

- ▶ *(C) are acceptable to the President, and*

CERCLA Sec. 104(c)(9)(D)

- ▶ *(D) are in compliance with the requirements of subtitle C of the Solid Waste Disposal Act.*