

United States
Environmental Protection
Agency

Office of
Solid Waste and
Emergency Response

Publication 9834 13FS
May 1991

EPA

Summary of "Interim Policy on CERCLA Settlements Involving Municipalities and Municipal Wastes"

Office of Waste Programs Enforcement
CERCLA Enforcement/GES/OS-510

Quick Reference Fact Sheet

EPA has developed the municipal settlement policy to provide a consistent Agency-wide approach for addressing municipalities and municipal wastes in the Superfund settlement process. The policy also addresses settlements with private generators and transporters of hazardous waste trash derived from a commercial, institutional, or industrial process or activity.

This summary is to be used as a supplement, not a replacement, to the "Interim Policy on CERCLA Settlements Involving Municipalities and Municipal Wastes," OSWER Directive #9834.13, issued December 12, 1989.

CERCLA Liability

CERCLA does not provide an exemption from liability for municipalities. Municipalities may be considered potentially responsible parties (PRPs) if they fall within the categories of liability outlined in section 107(a) of CERCLA. Similarly, municipal wastes may be considered hazardous substances if they satisfy the definition of hazardous waste in section 101(14) of CERCLA.

Information Gathering

Municipal owners/operators and generators/transporters should receive 104(e) information request letters and should be fully included in the information gathering process.

Notification of Potential Responsibility

Owners/Operators. Municipal owners/operators will be treated like any PRPs during the settlement process.

Generators and Transporters. Generators and transporters of municipal solid waste (MSW) and sewage sludge generally will not be notified as PRPs unless:

- The Region obtains site-specific information that the MSW or sewage sludge contains a hazardous substance; and
- The Region has reason to believe that the hazardous substance is derived from a commercial, institutional, or industrial process or activity.

Generators and transporters of trash from a commercial, institutional, or industrial entity will be notified as PRPs unless the generator/transporter shows EPA that none of the hazardous substances contained in the trash is derived from a commercial, institutional, or industrial process or activity.

The Regions should consider both the volume and the toxicity of the commercial, institutional, and industrial hazardous waste when determining whether it is insignificant when compared to the MSW.

Settlements

At sites for which there are both municipal and private PRPs, the Agency's goal is to include both types of parties in one settlement agreement. Separate settlements, such as de minimis settlements and cash-outs, may be used at any site to facilitate settlement.

Some provisions may facilitate settlement with certain municipal PRPs. Delayed payments, delayed payment schedules, and in-kind contributions may be used when valid ability to pay or procedural constraints that affect the timing of payment exist.

For further information or questions about this policy, contact the Guidance and Evaluation Branch, OWPE, FTS 475-6770.