



DIRECTIVE NUMBER: 9992.01a

TITLE: Elevation Process for Achieving Federal Facility
Compliance under RCRA

APPROVAL DATE: 3/24/88

EFFECTIVE DATE: 3/24/88

ORIGINATING OFFICE: OWPE/FFHWCO

☐ **FINAL**

☐ **DRAFT**

LEVEL OF DRAFT

☒ **A — Signed by AA or DAA**

☐ **B — Signed by Office Director**

☐ **C — Review & Comment**

REFERENCE (other documents):

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| United States Environmental Protection Agency Washington, DC 20460 | | 1. Directive Number 9992.01a |
| OSWER Directive Initiation Request | | |
| 2. Originator Information | | |
| Name of Contact Person Jacqueline Thiell | Mail Code WH527 | Office OWPE |
| Telephone Code 475-8727 | | |
| 3. Title Elevation Process for Achieving Federal Facility Compliance under RCRA. | | |
| 4. Summary of Directive (include brief statement of purpose) Sets for an elevation process for settling disputes between EPA and a Federal agency to assure that compliance agreements are settled in a timely fashion. | | |
| 5. Keywords Federal facility, RCRA, dispute resolution, Federal facility compliance agreement, elevation. | | |
| 6a. Does This Directive Supersede Previous Directive(s)? <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes </div> What directive (number, title) | | |
| b. Does It Supplement Previous Directive(s)? <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes </div> What directive (number, title) | | |
| 7. Draft Level <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <input checked="" type="checkbox"/> A - Signed by AA/DAA <input type="checkbox"/> B - Signed by Office Director <input type="checkbox"/> C - For Review & Comment <input type="checkbox"/> D - In Development </div> | | |

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| 8. Document to be distributed to States by Headquarters? <div style="display: flex; justify-content: flex-end; margin-top: 5px;"> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No </div> |
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| This Request Meets OSWER Directives System Format Standards. | |
| 9. Signature of Lead Office Directives Coordinator | Date |
| 10. Name and Title of Approving Official | Date |

EPA Form 1315-17 (Rev. 5-87) Previous editions are obsolete.

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

MAR 24 1988

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Elevation Process for Achieving Federal Facility
Compliance Under RCRA

FROM: J. Winston Porter, Assistant Administrator
Office of Solid Waste and Emergency Response

TO: Regional Administrators
Regions I-X

In my memorandum of January 25, 1988 I outlined the various enforcement mechanisms that EPA is able to use at Federal facilities under RCRA and CERCLA. The purpose of this memorandum is to set forth an elevation process for settling disputes between EPA and a Federal agency to assure that compliance agreements are settled in a timely fashion.

BACKGROUND

The Federal Facilities Compliance Task Force recently collected RCRA compliance information from the Regional offices in preparation for a Congressional Hearing before the Subcommittee on Transportation, Tourism, and Hazardous Materials. This information consistently showed that in cases where EPA had the enforcement lead at a Federal facility, negotiations between EPA and the Federal facility on the terms of a FFCA had been ongoing for extended periods of time. In some cases, negotiations between EPA and the Federal facility had exceeded the two year mark. Many Regions have expressed frustration in their apparent inability to compel the conclusion of these negotiations.

At the Hearing I expressed concern over the length of time it was taking to conclude settlement negotiations for compliance agreements at Federal facilities. I also described a process that the agency was developing for elevating disputes between EPA and Federal facilities to Headquarters for resolution. This elevation process for resolving disputes between EPA and a Federal facility when negotiations for a Federal Facility Compliance Agreement are not concluded in a timely fashion is described below. This process clearly would not apply if the initial enforcement action was taken against the contract-operator of a government-owned facility (GOCO).

NEGOTIATION AND ELEVATION PROCESS

As described in the January 25, 1988 memorandum, EPA will issue a Notice of Noncompliance (NON) to a Federal facility as the initial notification of RCRA class 1 violation(s) that are classified as high priority. The NON should be consistent with a RCRA 3008(a) complaint in format and content. The timeframes for the issuance of the NON should be in accordance with the RCRA Enforcement Response Policy for timely and appropriate enforcement actions.

The followup to a Notice of Noncompliance is the development of a Federal Facility Compliance Agreement (FFCA). The FFCA at a Federal facility is parallel to a final order at a private facility. It should contain a schedule of discrete actions for returning the facility to compliance. In addition to the provisions usually found in a final order under RCRA Section 3008(a), the FFCA must include an enforceability clause that is identical to the model language found in the January 25, 1988 memorandum and the model dispute resolution language for settling disputes within the context of implementing the compliance agreement.

After the issuance of a Notice of Noncompliance, the period for negotiating a Federal Facility Compliance Agreement should not exceed one hundred twenty (120) days. At day ninety (90), the Region should evaluate whether negotiations will be concluded within the next thirty days. If it appears that negotiations are close to settlement, the Region should aggressively pursue the finalization of the agreement within that thirty day period.

If it does not appear at day ninety (90) that negotiations for the FFCA will be completed within the following thirty days, the Region should refer the dispute to Headquarters for final resolution. The dispute should be formally referred to the Assistant Administrator for the Office of Solid Waste and Emergency Response within thirty (30) days of the expiration of the ninety day negotiation period. A notification of the elevation to Headquarters should also be sent to the Assistant Administrator for the Office of External Affairs and the Assistant Administrator for the Office of Enforcement and Compliance Monitoring. At the time of referral, the Region should consider issuing a press release on the compliance status of the facility.

When a dispute is elevated to Headquarters for resolution, the referral package should consist of a chronology which details the correspondence between the regional office and the Federal facility regarding the compliance status of the facility. The chronology should highlight the Region's efforts at reaching agreement with the facility. The referral package must also include a description of the specific issues in the FFCA that remain unresolved and the position of both the regional office

and the Federal facility on these issues. Any background documents that substantiate the dispute(s) should also be included in the package.

My discussions and/or meetings with the equivalent representative from the Headquarter's office of the affected Federal agency to resolve the dispute shall take place for a period not to exceed thirty (30) days. Regional representatives may be asked to participate in these discussions. In any case, Headquarters will keep the Region apprised of the status of discussions. If the dispute is not resolved within the thirty (30) day period, the dispute will be elevated to the EPA Administrator and his Federal agency counterpart for resolution.

CONCLUSIONS

I would like to reiterate my request in the January 25, 1988. enforcement guidance to send copies of all Federal Facility Notices of Noncompliance and draft and final Federal Facility Compliance Agreements to the Federal Facility Compliance Task Force. The Task Force is reviewing the draft FFCAs to ensure that EPA's enforcement approach at Federal facilities is nationally consistent. Collection and review of this information will keep the Task Force up-to-date on Federal facility compliance issues. Copies of correspondence that indicate the lack of progress in negotiations between EPA and the Federal facility for an FFCA should also be forwarded to Headquarters. This information will allow the Task Force to anticipate the elevation of a case to Headquarters for resolution.

Let me close by noting that timely escalation of disputes is important to ensure compliance at Federal facilities. I urge you to apply these timeframes seriously and to communicate them to the Federal agency during the early stages of the negotiation of an FFCA. Federal facility compliance with the hazardous waste laws and regulations is one of my highest priorities. I would appreciate your full support in implementing this elevation process. If you or your staff have any questions, please contact Christopher Grundler, Director, Federal Facilities Compliance Task Force, Office of Waste Programs Enforcement, or Jacqueline Thiell of his staff.

cc: Hazardous Waste Management Division Directors, Regions I-X
Regional Counsels, Regions I-X