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OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

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MEMORANDUM

SUBJECT: Interim Guidance for the Determination of Significant and Substantial Harm Facilities For Oil Pollution Act Response Plans

FROM: Henry L. Longest II, Director
Office of Emergency and Remedial Response

TO: Director, Waste Management Division
Regions I, IV, V, VII
Director, Emergency and Remedial Response Division
Region II
Director, Hazardous Waste Management Division
Regions III, VI, VIII, IX
Director, Hazardous Waste Division
Region X
Director, Environmental Services Division
Regions I, VI, VII

This transmits the "Interim Guidance for the Determination of Significant and Substantial Harm Facilities." This Interim Guidance supplements the proposed response plan revisions to 40 CFR Part 112 of February 17, 1993. The purpose of this guidance is to assist Agency personnel in determining whether a facility could reasonably be expected to cause "significant and substantial harm to the environment." The Oil Pollution Act (OPA) of 1990 requires that such facilities must have their facility response plans reviewed and approved by the Agency. The Interim Guidance includes a description of the screening process, forms to document the determination process, and an attachment that explains the justification for each criterion.

The Interim Guidance was prepared with the input of Regional On-Scene Coordinators (OSCs), the Office of General Counsel (OGC), the Office of Waste Programs Enforcement (OWPE), the US Coast Guard (USCG) and the Research and Special Programs Administration (RSPA) of the Department of Transportation (DOT), the National Oceanic and Atmospheric Administration (NOAA), and the Minerals Management Service (MMS).

The Interim Guidance has three screens for use in determining if a facility poses a risk of significant and substantial harm to the environment. The screens are organized according to the ease of obtaining the required information. To evaluate a particular facility, the three screens should be used sequentially. The first two screens evaluate information from the facility plan. The third screen performs two functions:

(1) to allow facilities to be designated as significant and substantial risk based on site-specific characteristics that are not captured under the first two screens, and

(2) to re-evaluate those facilities that were designated as significant and substantial risk under the first two screens, but that may have unique locational or facility-specific circumstances that mitigate the potential to cause significant and substantial harm.

If a facility is not identified by any of the three screens, the facility would not reasonably be expected to cause significant and substantial harm to the environment.

To ensure national consistency in making these determinations, I strongly suggest that the screening process described in the guidance be documented on the attached forms for each facility identified as reasonably expected to cause significant and substantial harm.

Facilities designated as significant and substantial risk should be notified of their status and be requested to provide to EPA by July 18, 1993 a certification of the implementation of resources described in their response plan. This will enable EPA to evaluate a facility's certification prior to the August 18, 1993, statutory deadline. Approval of a facility's certification will allow it to remain in operation until February 18, 1995, or until its response plan is approved prior to February 18, 1995.

If you have questions on the use of the criteria, please contact Bobbie Lively-Diebold at (703) 356-8774.

Attachment

cc: Regional Removal Managers
Cecilia Smith, OWPE
Tom Beisswenger, OGC
Superfund Document Center, (OS-245)