

Attachment XVI

Procedures for Planning and Implementing
Off-Site Response Actions under CERCLA

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Procedures for Planning and Implementing Off-site
Response Actions

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TO: Regional Administrators
Regions I-X

This memorandum addresses procedures that must be observed when a response action involving off-site storage, treatment or disposal of hazardous substances is selected under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), and the Resource Conservation and Recovery Act (RCRA). It prohibits use of a RCRA facility for off-site management of Superfund hazardous substances if it has significant RCRA violations¹ or other environmental conditions that affect the satisfactory operation of the facility. It also addresses requirements for analyzing and selecting response actions that involve permanent methods of managing hazardous substances.

In November of 1984, amendments to the Resource Conservation and Recovery Act were enacted. These amendments impose new requirements for the safe management of hazardous wastes. In the case of land disposal facilities, the amendments require that certain types of units (new, replacement and lateral extensions) be double lined by May 9, 1985. The amendments impose technical requirements to ensure that when land disposal facilities are used they are used safely.

EPA intends to follow the direction established by Congress in the RCRA amendments when undertaking on-site response actions

¹ A significant violation includes a Class I violation as defined by the RCRA Enforcement Response Policy (December 21, 1984). This policy defines a Class I violation as a violation that results in a release or a serious threat of release of hazardous waste into the environment, or involves the failure to assure that ground water will be protected, that proper closure and post closure activities will be undertaken, or that hazardous wastes will be destined for and delivered to RCRA permitted or interim status facilities. The policy contains a list of examples of violations which are Class I violations. Regions should recognize that violations other than Class I violations may be significant for purposes of these procedures, depending on the situation at the facility.

and when response actions involve off-site management of hazardous substances. This memorandum details how the Agency plans to achieve these goals.

Section I of this memorandum discusses background issues. Section II A discusses the need to consider treatment, recycling and reuse before off-site land disposal is used. Section II B details procedures that must be followed in selecting any off-site facility for management of hazardous substances. This section also discusses the criteria to be used in making the selection. For facilities in assessment monitoring, this part states that conditions which lead to and result from being in assessment monitoring may constitute conditions that render the facility unsuitable for disposal of hazardous substances. Therefore, when a facility is in assessment, the conditions which lead to the required assessment, and any monitoring data, must be evaluated to determine if the facility poses such conditions. If so, the facility may not be used unless the owner or operator commits to correct the problems and the unit to be used for disposal poses no problems.

Section III discusses RCRA manifest requirements. Section IV discusses PCB disposal requirements. Finally, Section V details how this policy will be implemented. Attachment A is a chart summarizing the policy on use of off-site RCRA facilities. This chart should be used in conjunction with the policy document, not in lieu of it.

These procedures are applicable to all response and enforcement actions taken pursuant to CERCLA and section 7003 of RCRA.

This memorandum replaces guidance entitled "Requirements for Selecting an Off-Site Option in a Superfund Response Action", dated January 28, 1983. This policy is an interim one that the Agency intends to publish as a notice in the Federal Register in order to receive public comment on its provisions. After reviewing these comments EPA will determine whether revisions are necessary.

These revisions strengthen previous requirements in several ways:

- ° Coverage - This memorandum extends requirements to enforcement actions under §106 of CERCLA and §7003 of RCRA, and expands requirements for removal actions.
- ° Use of Treatment - These procedures require consideration of treatment, recycling or reuse for all response and

enforcement actions, to foster the use of more permanent solutions, and, in the case of remedial actions, where cost-effective. The Agency is not certain whether sufficient capacity is available at this time to use treatment in all cases where it is feasible. As more information on capacity becomes available, the Agency will re-examine requirements for treatment to determine whether they can be strengthened. The previous procedures did not address use of treatment.

- ° Requirements for a treatment, storage or disposal facility
Previous guidance required inspection within 12 months before contract award for storage, treatment or disposal. The revisions require inspection within six months of actual storage, treatment or disposal. It also stated that if a facility had deficiencies that resulted in unsound treatment, storage or disposal practices it should not be used. The guidance also required RCRA violations that adversely affected facility performance to be corrected prior to contract award. Under the revisions, a facility that has significant RCRA violations or other environmental conditions that affect its satisfactory operation may not be used unless certain conditions are met. First, there must be a compliance agreement in place to correct all deficiencies at the facility; second, the unit that is used must not cause or contribute to significant problems at the facility. This provision recognizes that in some situations it is infeasible to complete correction of all violations prior to using a facility (for example, it may take several years before pumping and treating of groundwater is completed) and that there may be a unit at such a facility that is sound.
- ° Land Disposal Facilities - The 1984 RCRA amendments impose new requirements on land disposal facilities. When use of such facilities is contemplated, the policy requires that the facility meet these minimum technical requirements.

I. BACKGROUND

Facilities that are not in compliance with RCRA requirements may be unacceptable to use for treatment, storage or disposal of hazardous substances from response actions. Facilities used for management of substances in connection with response actions should not pose a significant threat to public health, welfare or the environment.

CERCLA contains two references to off-site management of hazardous substances. First, CERCLA section 104(c) requires, as a condition of Fund-financed remedial response, that the State assure the availability of an acceptable facility in compliance with the requirements of subtitle C of RCRA for any off-site management of hazardous substances. Second, where remedial measures include off-site storage, treatment, destruction or secure disposition, the statute also requires such measures to be more cost-effective than other remedial measures, create new disposal capacity in compliance with Subtitle C of RCRA or be necessary to protect public health, welfare or the environment

from a present or potential risk which may be created by further exposure to substances. Section 300.65 (b)(6) of the National Contingency Plan (40 CFR 300) states that when off-site action is taken in connection with a removal action the facility used for off-site management must be in compliance with Subtitle C of RCRA. This memorandum establishes procedures for implementing these CERCLA and NCP provisions.

These procedures apply to all removal, remedial, and enforcement actions taken pursuant to CERCLA and section 7003 of RCRA. Any other parties undertaking cleanup under other authorities are urged to comply with these procedures. In the case of Superfund-financed removal actions or enforcement actions taken as a removal action in response to an immediate and significant threat, compliance with these procedures is mandatory unless the On-Scene Coordinator (OSC) determines that the exigencies of the situation require off-site treatment, storage or disposal without following the requirements. This exception may be used in cases where the OSC believes that the immediacy of the threat posed by the substances makes it imperative to remove the substances and there is insufficient time to observe these procedures without endangering public health, welfare or the environment. In such cases, the OSC should consider, to the extent possible, temporary solutions (e.g., interim storage) in order that the feasibility of using treatment can be evaluated prior to a decision to use land disposal. Also, in such cases, the OSC must provide a written explanation of his decision to the Regional Administrator. This explanation should be provided within 60 days of taking the action. In Regions in which authority to make removal decisions has not been fully delegated by the Regional Administrator, the decisions discussed above must be made by the Regional official that is delegated removal decision making authority.

II. PROCEDURES FOR SELECTING HAZARDOUS WASTE MANAGEMENT FACILITIES

This section discusses in detail the requirements Regions must follow in assessing and selecting an off-site RCRA facility for management of Superfund hazardous substances. Part A requires consideration of treatment, recycling or reuse for on-site and off-site actions in order to foster the use of more permanent methods of managing hazardous substances. These policies are consistent with directions taken by Congress in the 1984 amendments to the Resource Conservation and Recovery Act. Furthermore, Part B of this section establishes procedures Regions must use in selecting an off-site RCRA facility for management of hazardous substances. Where off-site land disposal must be used, this Part requires that disposal facilities be in compliance with the applicable technical requirements of RCRA.

A. Treatment

It is EPA's policy to pursue response actions that use treatment, reuse or recycling over land disposal to the greatest

extent practicable, consistent with CERCLA requirements for cost-effective remedial actions. EPA requires that such alternatives be considered for all Fund-financed and private party removal and remedial actions. For Fund-financed removals or enforced actions in response to immediate and significant threats, treatment, reuse or recycling must be considered, unless the OSC determines that treatment, reuse or recycling methods are not reasonably available considering the exigencies of the situation, or they pose a significant environmental hazard.

When developing remedial alternatives, treatment, reuse or recycling must be considered. Such alternatives should not be screened out on the basis of cost alone. Section 300.68(h)(1) of the NCP allows rejection of alternatives during the screening stage based on cost, only when the cost of the alternative far exceeds the cost of others (e.g., by an order of magnitude) and does not provide substantially greater public health and environmental benefits.

Detailed analysis of these alternatives should include consideration of long-term effectiveness of treatment and comparative long and short term costs of treatment as compared to other remedial alternatives. Finally, when recommending and selecting the appropriate remedial action, treatment, reuse or recycling may be found more protective of public health and the environment than land disposal. Such alternatives may be recommended as the appropriate remedial action where the detailed analysis of alternatives shows that the alternative is more cost-effective than others in minimizing the damage to public health, welfare or the environment. During the next six months, EPA will be developing additional guidelines for evaluating the comparative long-term costs of treatment and land disposal.

At this time, the Agency does not know the current and projected treatment capacity available, nor the needs or capacity that will be required for Superfund actions in the future. Over the next several months, the Agency plans to undertake a study of available treatment and interim storage capacity and needs. Once completed, this analysis will provide information on treatment facilities currently operating for Regions to use. Additional information on capacity will be provided at a later date through a more comprehensive capacity survey being undertaken in support of the implementation of the 1984 RCRA amendments.

B. Requirements for selecting storage, treatment or disposal facilities

Selection of an appropriate facility for off-site management of hazardous substances requires that a judgment be made as to the overall acceptability of the facility to receive the substances and the acceptability of the unit that will receive the hazardous substances. In making this judgment the following steps must be observed:

1. The owner or operator of any hazardous waste management facility under consideration for off-site storage, treatment or

actions under CERCLA or section 7003 of RCRA must have an applicable RCRA permit or interim status.²

2. A RCRA compliance inspection must be performed at any hazardous waste management facility before it can receive hazardous substances from a response action. This inspection must assess whether there are any significant violations or other environmental conditions that affect the satisfactory operation of the facility. The RCRA compliance inspection must have taken place not more than six months prior to the storage, treatment or disposal of the hazardous substances from a response action. If the inspection has not taken place or is not scheduled, REM/FIT contractor personnel may conduct the inspection under the direction of the Deputy Project Officer, working in cooperation with RCRA Regional personnel. If Regions use contractor personnel, the Region should ensure that such personnel are adequately trained to conduct inspections. Further guidance on conducting inspections when a facility is being considered for management of hazardous substances will be issued in the near future. The FY 85 and FY 86 RCRA Implementation Plans establish compliance monitoring and enforcement targets. For FY 85 the guidance requires Comprehensive Ground-Water Monitoring Evaluations (CGMEs) at one third of the ground water monitoring facilities. Top priorities for this type of inspection are all facilities receiving wastes from Superfund sites.

In States with Phase I or II interim authorization or final authorization, the inspection should be conducted in accordance with State regulations or permit conditions. EPA Regions should always involve States when undertaking an inspection at a RCRA facility that is likely to accept Superfund wastes.

Regions must use the results from the inspection, along with other information, to determine whether the facility is an acceptable one.

² Both permits and interim status apply to specific wastes and specific storage, treatment or disposal processes. The Remedial Project Manager (RPM) or OSC must determine that the facility's permit or interim status includes the wastes that would be transported to the facility and the type of process for which wastes are being taken to the facility. Because of these concerns, it is important that facility selection be coordinated with RCRA personnel. However, not all CERCLA substances are hazardous wastes under RCRA. Therefore, it is possible that a particular permit may not cover a hazardous substance that may be taken to the RCRA facility if it is not a hazardous waste. Moreover, in some situations a hazardous substance under CERCLA may trigger disposal requirements under other laws (for example, PCBs and some radioactive substances). In such cases the applicable requirements of these other laws must be observed.

3. It is EPA's policy to minimize the use of land disposal in accordance with the direction taken by Congress in amending RCRA. Where land disposal is used, these amendments establish new technical standards for land disposal facilities. New disposal units, lateral expansions and replacement units (defined as of November 8, 1984) of interim status landfills and surface impoundments must have at least two liners and a leachate detection, collection and removal system above (in the case of landfills) and between the liners, if they receive wastes after May 8, 1985. All Fund-financed and enforced response actions (removal and remedial) involving the off-site disposal of hazardous substances must involve use of disposal facilities that are in compliance with applicable RCRA minimum technical requirements. This means that units first receiving wastes after November 8, 1984 cannot receive wastes after May 8, 1985 if not double lined. The RCRA statute does allow continued use of existing units after that date. In considering whether to use an existing unit that does not meet the double liner requirements, the Agency will consider the toxicity, persistence and mobility of the hazardous substances and the need to segregate these substances from others. Such a unit can be used only if it is shown to adequately protect public health and the environment.

CERCLA hazardous substances which are not hazardous wastes under RCRA may, in some circumstances, be disposed of in other legal units. In such cases, disposal should take place in accordance with other legal requirements. Hazardous substances which are not hazardous wastes may be taken to a RCRA unit under the terms outlined in the preceding paragraph, or to a unit legal under other statutory provisions (for example, PCBs may be disposed of in a TSCA approved disposal facility and radioactive materials in a radioactive materials disposal facility). This disposal must be consistent with Section 104(c)(3) of CERCLA, when applicable.

4. Interim status land disposal facilities under consideration for off-site disposal must have adequate ground water monitoring data to assess whether the facility poses a threat to ground water.³ Due to the lack of compliance with RCRA ground water requirements, available data may not be adequate to assess the facility. Moreover, lack of evidence of contamination from the monitoring data does not necessarily mean the facility is secure. The monitoring data may be faulty. In addition, there may be other problems at the facility such as air emissions or surface run-off. Where doubt exists concerning the acceptability of a facility, an on-site inspection should be undertaken to specifically address these concerns. Where possible, this on-site inspection should be part of the required RCRA compliance inspection.

³ All remaining land disposal permit applications will be requested in FY 1985. These applications contain summaries of ground water monitoring data obtained during the interim status period, and are required to identify any plume contamination.

5. Using information gathered from the compliance inspection, other data sources (e.g., RCRA facility permit data), any other facility visits and all other relevant information, Regional Offices must evaluate and make a judgment on the acceptability of using the facility for storage, treatment or disposal of hazardous substances. For the facility as a whole, this evaluation should consider whether there are any RCRA violations or other environmental conditions⁴ at the facility which affect its satisfactory operation. This evaluation should include consideration of facility operations as well as whether there are physical conditions at the facility that pose a significant threat to public health, welfare or the environment. For facilities in assessment monitoring, the conditions which lead to required assessment monitoring, as well as resulting monitoring data, must be evaluated. The evaluation also should consider the nature and quantity of the substances and whether it is feasible to treat the substances prior to land disposal to mitigate any adverse effects.

No Superfund hazardous substances shall be taken off-site to a RCRA facility if the Region determines that the facility has significant RCRA violations or other environmental conditions that affect the satisfactory operation of the facility, unless both the following conditions are met:

- (1) The owner or operator must commit, through an enforceable agreement (i.e., consent order or decree), to correct the problem. The agreement must be signed before the facility may receive the hazardous substances. In addition, the Regional Administrator must determine that the agreement is likely to result in correction of the problem and the owner or operator of the facility is capable of compliance with the terms of the agreement; and
- (2) Disposal only occurs within the facility at a new or existing unit that is in compliance with RCRA requirements. The new or existing unit must not contribute in any significant way to adverse conditions at the facility.

III. MANIFEST REQUIREMENTS

If an off-site option is chosen, a manifest for the transportation of the hazardous waste must be obtained. The manifest must

⁴ It is recognized that the RCRA regulations may not at this time cover all environmental conditions at a facility. Regional offices may consider other environmental factors at a facility under consideration including other State and/or Federal environmental laws. If a facility is in assessment monitoring, the conditions which lead to assessment monitoring may constitute environmental conditions that adversely affect facility operations. In such cases, Regions should assess the conditions at the facility prior to using the facility for Superfund purposes.

be in compliance with RCRA for the transportation of hazardous wastes. The manifest must be a Uniform Hazardous Waste Manifest in compliance with requirements at 40 CFR 262 (see 49 FR 10490, March 20, 1984). The lead agency or other party undertaking the cleanup must ensure that the transporter properly notifies under RCRA section 3010. Where the lead agency allows contractors to fill out the manifest, the agency should ensure that the manifest is properly filed.

IV. PCB DISPOSAL REQUIREMENTS

Requirements for the disposal of PCBs are established in 40 CFR 761.60. Generally, these regulations require that whenever disposal of PCBs are undertaken, they must be incinerated, unless the concentrations are less than 50 ppm. If the concentrations are between 50 and 500 ppm, the rule provides for certain exceptions that provide alternatives to the incineration requirements. The principal alternative is disposal in an EPA approved landfill for PCBs. Landfills used for PCB disposal must be inspected within six months prior to disposal. Regions must determine the acceptability of the facility based on the same criteria used to evaluate RCRA facilities in Section II.B.5.

V. IMPLEMENTATION

Beginning (30 days from date this document is signed) all Records of Decision (RODs) and Enforcement Decision Documents (EDDs) for Superfund-lead and enforcement lead actions, respectively, must include a discussion of compliance with these procedures for alternatives involving off-site management of Superfund hazardous substances at RCRA facilities. Decision documents for removal actions also should include discussion of compliance with these procedures. It is recognized that actual offsite facility information will not be available at the ROD stage. However, the RI and FS should use actual off-site facilities in costing remedial alternatives, in order to have cost figures that are as accurate as possible. It is recognized that additional facilities are likely to be considered during the bidding process. Any facility ultimately selected for disposal, treatment or storage must meet the requirements of this policy.

Provisions requiring compliance with these procedures must be included in any contracts for response, cooperative agreements with States undertaking Superfund response and all enforcement agreements. For ongoing projects, these provisions will be implemented as follows:

RI/FS: The Regions shall immediately notify Agency contractors and States that 1) alternatives for off-site management of wastes must be evaluated pursuant to the provisions of this policy, and 2) consistent with the policy on other environmental laws, treatment alternatives should not be dropped during the screening stage.

RD: The Regions shall immediately notify Agency contractors, the States, and the U.S. Army Corps of Engineers that

all remedies that include off-site disposal of hazardous substances must comply with the provisions of this policy pertaining to selection of an acceptable off-site facility.

RA: The Regions shall immediately assess the compliance status of land disposal facilities receiving hazardous wastes from ongoing projects. For a facility not in compliance, the Region should take immediate steps to bring the facility into compliance with the policy.

Enforcement: Actions currently under negotiation and all future actions must comply with these procedures. Existing agreements need not be amended. However, EPA reserves the right to apply these procedures to existing agreements, to the extent it is consistent with the release and reopener clauses in the settlement agreement (See the Interim CERCLA Settlement Policy, Part VII; Thomas, Price, Habicht; December 5, 1984).

If the response action is proceeding under a Federal-lead, the Regions should work with the Corps of Engineers or EPA Contracts Officer to negotiate a contracts modification to an existing contract, if necessary. If the response action is proceeding under a State-lead, the Regions should amend the cooperative agreement. Exceptions for existing contracts and cooperative agreements may be allowed on a case-by-case basis by the appropriate Headquarters Office Director.

All Regions must adopt procedures to implement and continually monitor compliance with these requirements. The procedures must include designation of a management official who is responsible for providing information on RCRA facilities in the Region to other Regions. It is the responsibility of the Region in which the RCRA offsite facility is located to assess the acceptability of the facility in consultation with the Region planning to ship wastes to the facility. The names of these officials should be provided to the Office of Waste Programs Enforcement by May 21, 1985. These names will then be forwarded to all Regions. If you have any questions concerning these procedures, please contact Sylvia K. Lowrance (FTS 382-4812).

Attachments