



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

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OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

MEMORANDUM

**SUBJECT:** New Waste Capacity Assurance Language for Superfund State Contracts and Remedial Cooperative Agreements

**FROM:** Stephen D. Luftig, Acting Director  
Office of Emergency and Remedial Response

*Stephen D. Luftig*

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

**PURPOSE**

The purpose of this memorandum is to provide you with new language to include in new State Superfund Contracts or Remedial Action Cooperative Agreements regarding the hazardous waste management capacity assurance required by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA).

**BACKGROUND**

Section 104(c)(9) of CERCLA requires that the President will not provide any remedial action within a State unless the State first enters into a contract or cooperative agreement assuring that adequate capacity exists to manage hazardous wastes generated in the State for 20 years following the date of the response agreement. Under a program the Environmental Protection Agency (EPA) implemented to help States fulfill this statutory mandate, States submitted Capacity Assurance Plans (CAPs) as the basis for this assurance. The Agency then conducted an assessment of data from these plans to analyze the future availability of management capacity nationally for the next 20 years. The Agency's 1995 National Assessment indicates that adequate capacity exists nationwide through the year 2013.

## IMPLEMENTATION

Based on the National Assessment, the Agency has developed the following new capacity assurance language that should be used in all new Superfund State contracts or remedial action cooperative agreements signed between EPA and States. Previous language based on 1992 CAP updates is obsolete as a result of the assessment.

EPA's 1995 National Assessment of hazardous waste treatment and disposal capacity shows that there is adequate national capacity through the year 2013. This assessment included data provided by the State of (name of State). Based upon the assessment and other data, as appropriate, EPA believes that there will be adequate national hazardous waste treatment and disposal capacity during the 20-year period following signature of this (contract 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).

If you have any questions regarding this language, please contact Laura Lopez of the Capacity Programs Branch of the Office of Solid Waste at 703-308-8440 or Alan Youkeles of the State and Local Coordination Branch of the Office of Emergency And Remedial Response at 703-603-8784.

cc: Assistant Regional Administrator for  
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