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To: Cheryl Barnett
From: Brian Higgins

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

SEP - 8 1987

FYI. Dave Oloogian working with EPA and NEESA to see how we will handle this. He and Carl Zilly aren't too

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

concerned if we don't get the info in by Oct 15. Carl's comment was that the old HRS wasn't too

MEMORANDUM

SUBJECT: Pre-Remedial Activities at Federal Facilities

FROM: Gene A. Lucero, Director
Office of Waste Programs Enforcement

Gene A. Lucero

favorable to us.

Henry Longest, Director
Office of Emergency and Remedial Response

Walter W. Karalich
for

Brian

TO: Addressees

As you are aware, Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA), specifically addresses Federal facilities. The purpose of this memo is to provide guidance on the implementation of §120(d), "Assessment and Evaluation."

BACKGROUND

SARA Pre-Remedial Requirements

Section 120 of SARA sets out the requirements for pre-remedial activities at Federal facilities. Section 120(a)(2) provides that all EPA guidelines, rules, regulations, and criteria are applicable to Federal facilities. Federal facilities may not adopt or use any guidelines, rules, regulations, or criteria which are inconsistent with those established by EPA. To facilitate Federal facility compliance with this provision, this memo and attachments provide a summary of requirements and EPA guidelines and procedures applicable to the pre-remedial process.

Section 120(c) requires EPA to establish a special Federal Agency Hazardous Waste Compliance Docket (docket) based on information submitted by Federal agencies under the Resource Conservation and Recovery Act (RCRA) §3016, 3005, and 3010, and CERCLA §103. The docket consists of information reported to EPA by October 17, 1986, the date of enactment of SARA; however, the information must be coordinated and compiled from the various data sources into one quality

assured/quality controlled list. We anticipate publication of the docket in the Federal Register in late fall. The docket will be available to the public and will be updated every six months. All facilities in the docket are subject to the deadlines for assessment and evaluation found in §120(d).

Section 120(d) requires EPA, within 18 months of the date of enactment (April 1988), to "take steps to assure that a preliminary assessment (PA) is conducted for each facility on the docket." While EPA has the responsibility to assure a PA is conducted, Executive Order 12580, dated January 23, 1987, delegates the responsibility for the conduct of the assessment to the Federal agencies.

Following the PA, EPA shall, where appropriate, evaluate and list facilities on the National Priorities List (NPL) using the same criteria that are applied to other facilities; i.e., the Hazard Ranking System (HRS). The statute states that, "Evaluation and listing under this subsection shall be completed not later than 30 months after such date of enactment," or April 1989. Section 120(d) also provides that, "Upon the receipt of a petition from the Governor of any State, the Administrator shall make such an evaluation of any facility included in the docket." Beyond this petition provision, SARA mandates at §120(f) State involvement generally in the Federal facilities effort.

In addition to the PA requirement in §120, §105(d) provides that "any person who is, or may be, affected by a release or threatened release of a hazardous substance or pollutant or contaminant, may petition the President to conduct a preliminary assessment of the hazards to public health and the environment which are associated with such release or threatened release." E.O. 12580 delegates responsibility to respond to a PA petition to the Federal agencies. The Federal agency has 12 months after receipt of the petition to complete the assessment or provide an explanation of why the assessment is not appropriate.

Finally, §105(c) requires EPA to propose amendments to the HRS within 18 months of the date of enactment. The effective date for the amendments is not later than 24 months after the date of enactment. The manner in which the HRS revisions and schedules affects our ability to address the §120 deadlines for assessment and evaluation is discussed below.

Ability to Meet SARA

Section 120(d) establishes a 30 month deadline for EPA evaluation and listing of Federal facilities. Section 105(c) requires that EPA amend the HRS by April 1988. SARA also states that the current HRS is not effective after October 17, 1988.

The timing of the HRS revisions significantly impacts our ability to meet the §120(d) deadline for listing facilities on the NPL. The current HRS cannot be used after October 17, 1988, and all sites proposed under the current HRS must go final under the current HRS. Therefore, sites proposed under the current HRS must be listed in final on the NPL by October 17, 1988. Usually, this would require an October proposal to allow time for the normal rulemaking process (approximately one year). While this timeframe is the case for non-Federal facilities, EPA's short-term strategy is to publish a separate proposed rule for Federal facility sites in the second quarter of FY88 (See "Pre-Remedial Schedule" in Attachment A). This short-term strategy is an effort to maximize compliance with deadlines for evaluation and listing and accommodate the schedule for revisions to the HRS.

It is important to note that facilities not included in this Federal facility second quarter proposed rule are subject to evaluation under the new HRS which is anticipated to require additional data. Any proposal under the new HRS cannot occur until after the effective date of the new HRS (October 1988). Therefore, rulemaking under the new HRS would be beyond the 30 month deadline set forth in the statute. The process for facilities to be evaluated under the new HRS is addressed in the long-term strategy.

STRATEGY

Short-Term Strategy: Listing Under the Current HRS

The goal of the short-term strategy is to evaluate and, where appropriate, list facilities under the current-HRS for the FF proposal in the second quarter of FY 88. This effort to evaluate and list facilities will involve evaluating pre-remedial information previously submitted by Federal agencies as well as new reports not yet submitted. All reports must be received by October 15, 1987 and should be sent by the Federal agencies to the EPA Regional Federal facility contacts found in Attachment B.

Federal agencies can help EPA streamline the process so that the maximum number of sites can be scored, proposed, and promulgated under the current HRS by 1) providing one point of contact for each facility, 2) submitting complete reports, and 3) setting priorities.

Federal agencies should be sure that the EPA Regional office knows the name and telephone number of the appropriate contact person for each facility in the docket. While this is a simple concept, it is extremely important to have a designated contact person in the event that additional information or verification of information is necessary. Federal agencies should provide the EPA CERCLA Federal facility contact (See Attachment B) with this information as soon as possible.

It is critical that the reports submitted by Federal agencies are complete and consistent with the data requirements of the HRS. Our experience with reports previously submitted is that they vary in scope and quality, and are often insufficient to perform an HRS evaluation. Clearly, the completeness of existing reports and those to be submitted by October 15, 1987 will determine to a large degree the number of Federal facilities that can be proposed in the special Federal facility proposed rule.

State agencies may have done, but not submitted to EPA, PAs and HRS scoring packages for Federal facilities. States can assist EPA by submitting any such packages to the EPA CERCLA Federal facility contact by October 15, 1987.

The reports to be submitted must contain the information necessary for EPA to score sites using the HRS. While EPA will determine the actual HRS score, it is recommended that Federal agencies develop draft HRS scores, or index the reports in a manner to facilitate HRS scoring, to ensure that all of the necessary information has been collected and documented. It is important to recognize that the sole purpose of the draft HRS score is an indicator for Federal agencies of adequate information collection; EPA maintains full authority and responsibility for determining the actual HRS score. Attachments C ("Guidance on Preliminary Assessments and Site Inspections Under CERCLA"), D ("Documentation Requirements in Support of the HRS"), and E ("Uncontrolled Hazardous Waste Site Ranking System - A Users Manual"), describe the requirements and formats Federal agencies should use for developing and submitting information for HRS evaluation.

EPA must evaluate a very large number of Federal facility pre-remedial reports in a short amount of time. At this time we would like your input as we set priorities for evaluating the reports/facilities. Please send your list of priorities for evaluation to Christopher Grundler, Director, Federal Facilities Compliance Task Force, WH-527, 401 M Street, S.W., Washington, D.C. 20460 as soon as possible. Suggested factors to consider include completeness of the report, facilities with ongoing remedial investigation/feasibility studies or targeted for remedial actions, level of community concern, level of State interest, etc.

An approach which has been under discussion to further streamline the process is whether to do an HRS/NPL evaluation on one appropriate area of a facility and list the entire facility if the area scores high enough; or to do HRS/NPL evaluations on each appropriate area and thus have multiple NPL sites listed for one facility. While site-specific circumstances and discussions with the State may dictate which approach to take, as a general matter we have decided to use the NPL to list the entire facility where there is

at least one NPL-eligible site at the facility. Following the NPL listing, and separate from the NPL process, EPA and the State will then work with the facility to design a comprehensive strategy which would address both RCRA and CERCLA requirements at the facility. As stated in the proposed EPA Federal facility listing policy (52 FR 17991, May 13, 1987), NPL listing in no way preempts applicable RCRA requirements.

Process

We intend to use the Technical Enforcement Support (TES) contract for the evaluation and scoring of Federal facility reports currently in the pipeline and those received by October 15, 1987. The work will be initiated in the Regions. We will forward a memo explaining how to access and initiate tasks under the TES contract. TES has been trained by the pre-remedial program contractors familiar with the HRS and the evaluation of Federal facilities.

Where the information in the reports is minimally inadequate for scoring purposes, the EPA contractor will attempt to supplement the information by telephone with the designated facility contact. However, if there are major gaps in available data, we will have to use the time consuming process of identifying the inadequacies and the Federal agency will have to supplement the information.

Once the EPA contractor has completed the HRS scoring, those sites that score above 25 will be sent to the Regional NPL Coordinators for a quality control review, followed by quality assurance in the Hazardous Site Evaluation Division in Headquarters, and finally proposal for the NPL if the score is above 28.5.

Long-term Strategy and Process: Future Listing Under the New HRS

Consistent with §120(a)(2), EPA strongly recommends that all Federal agencies adopt EPA terminology; e.g., Preliminary Assessment (PA), Site Inspection (SI), etc. The Department of Defense and Department of Energy have already committed to using EPA terminology.

The long-term strategy applies to those facilities in the docket not evaluated for/listed on the special Federal facility proposal. The new HRS will be used for evaluation of these facilities. Federal agencies are responsible for collecting, within 18 months of the date of enactment, the information necessary for EPA to determine which facilities should be listed on the NPL. Determinations for inclusion on the NPL are based primarily on a score developed as a result of application of the HRS. The information required by the National Contingency Plan (NCP) for applying the HRS is equivalent to an EPA PA and SI.

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Federal agencies should conduct a PA on these facilities consistent with SARA and the NCP. Federal agencies should notify the State of PAs to be initiated in the State pursuant to §121(f). If the Federal agency determines that no further action is required, the PA report should be submitted to the EPA CERCLA Federal Facilities Contact (see Attachment B) and to the State. EPA will review the report and concur or nonconcur with the Federal agency determination that no further action is required pursuant to the authority in §120(d) that EPA assure that a PA is conducted. The State will have the opportunity to review and comment on the PA pursuant to Section 121(f). If EPA agrees with the no further action determination, this information will be entered into the docket. If EPA does not agree, EPA will notify the Federal agency that more information is needed for the required evaluation.

If, based on the PA, the Federal agency determines an SI is necessary, the Federal agency should perform an SI on the facility consistent with SARA and the NCP by April 1988 and submit the PA/SI report to the EPA CERCLA FF Contact and to the State. Federal agencies should notify the State of SIs to be initiated in the State.

The PA/SI report must contain the information necessary for EPA to score sites using the HRS. Again, EPA recommends that Federal agencies develop draft HRS scores to ensure that all of the necessary information has been collected and documented. Guidance on use of the new HRS will be developed and training for Federal agencies will be provided.

The standard quality control/quality assurance process in the Region and Headquarters will be followed.

Conclusion

SARA sets out very stringent deadlines for both EPA and other Federal agencies. In order to address these deadlines, good communication and a clear understanding of the requirements is essential. EPA is committed to assisting the other Federal agencies in meeting their obligations under SARA. Please direct any questions you have to Christopher Grundler, Director, Federal Facilities Compliance Task Force at 475-8800 or Linda Southerland of the Task Force staff at 382-2035.

Attachments

Addressees: Federal Agency Environmental Contacts
State Environmental Agencies
Waste Management Division Directors, Regions I-X

cc: Regional Counsel, Regions I-X
Federal Facilities Task Force
Federal Facilities Coordinators, Regions I-X
Marcia Williams, OSW
Lee Herwig, OFA
Mark Greenwood, OGC