



AUG 22 1994

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MEMORANDUM

SUBJECT: Guidance on Accelerating CERCLA Environmental Restoration at Federal Facilities

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PURPOSE

The purpose of this guidance is to encourage and support efforts at federal facilities to accelerate and develop streamlined approaches to the cleanup of hazardous waste.

BACKGROUND

On July 7, 1992, U.S. Environmental Protection Agency's (EPA) Office of Solid Waste and Emergency Response (OSWER) issued OSWER Directive No. 9203.1-03, "Guidance on Implementation of the Superfund Accelerated Cleanup Model (SACM) under CERCLA and the NCP" to address accelerating cleanup of private Superfund sites. The OSWER directive stated that separate guidance would be issued for accelerating cleanup of federal facility sites. This guidance is being issued as a supplement to the OSWER guidance.

Washington, D.C.

In order to encourage and facilitate the acceleration of hazardous waste cleanup at federal facilities, the EPA Federal Facilities Enforcement Office (FFEO), the U.S. Department of Defense (DoD), and the Department of Energy (DOE) met to consider ways in which this goal could be achieved consistent with the requirements of §120 of the Comprehensive Environmental Response Compensation, and Liability Act (CERCLA), the National Contingency Plan (NCP) and Executive Order (E.O.) Number 12580, 3 C.F.R. 193 (1987).

CERCLA §120 and E.O. 12580 establish certain unique requirements with respect to federal facilities. In addition, the potential for cooperative decision making between the lead federal agencies, EPA and the states, in consultation with community groups, offers opportunities for flexibility at federal facility sites. To improve and accelerate cleanups at federal facility sites, it will be necessary to identify available opportunities, take creative approaches to managing uncertainty, empower field managers to make decisions, be prepared to review past conclusions when necessary and develop decisions that appropriately address the reduction of risk to human health and the environment as expeditiously as the law allows.

EPA also seeks to encourage accelerated cleanup at federal facilities through the use of innovative technologies, as appropriate. (See OSWER Directive 9380.0-17). Although the time constraints imposed by CERCLA §120(e) to initiate the Remedial Action (RA) within 15 months of remedy selection may discourage the use of federal facilities for research and development of new technologies, EPA is willing to explore, in appropriate circumstances, a "decision-sharing" approach in order to provide incentives to develop innovative technologies for environmental restoration. Where states are a party to the Interagency Agreement/Federal Facilities Agreement (IAG/FFA), they need to be a party to the decision making process. Where innovative technology may offer accelerated cleanup at federal facilities, EPA may allow for changes in scheduled activities, and provide technical support to the federal agency. Such an approach should be based on decisions acceptable to EPA, state environmental regulatory agencies, the lead federal agency and the public.

EPA is fully committed to improving the overall performance of environmental restoration activities at all federal facilities and to put into practice, in collaboration with federal agencies, the states and the public, strategies that accelerate the cleanup process. Potential areas for streamlining and accelerating the cleanup process are: standardize technical and field methodologies, use of removal actions to address imminent and substantial endangerment, use of non-time-critical removals and interim response actions, use of sampling data for both the Site Investigation (SI) and the Remedial Investigation (RI), use of focused Feasibility Studies (FS), use of presumptive remedies,

concurrent document review, early Remedial Design (RD) starts, plan, scope and use site assessment data for removal or remedial determinations, develop common measures of performance (e.g., risk reduction), delineate regulatory responsibilities (e.g., Resource Conservation and Recovery Act (RCRA), CERCLA) and improve team work at sites amongst regulators and the facility.

EPA has recently begun working with DOE on a joint pilot project to evaluate the effectiveness of a streamlining approach developed by DOE. The Streamlined Approach for Environmental Restoration (SAFER) is being implemented at four DOE facilities and is being closely monitored and evaluated by EPA and DOE. SAFER was developed by DOE to manage the uncertainty associated with environmental restoration activities and to address stakeholder concerns early in the process. DOE expects that this approach will result in more efficient and effective waste cleanups.

With respect to CERCLA, this memorandum focuses on accelerating cleanup of those facilities which either are "National Priorities List (NPL) caliber" (i.e., likely to be listed on the NPL), proposed for or listed on the NPL, because the scope of EPA involvement at federal facility Superfund sites is defined in CERCLA §120 and E.O. 12580 as focused at NPL sites. It is intended, however, that approaches to accelerated cleanup will also be applicable to cleanups under RCRA and cleanups undertaken in the context of military base closure. EPA's RCRA program is currently developing guidance on the use of a streamlined approach for the corrective action process.

EPA also is in the process of issuing guidance on future land use and innovative technology. These documents may be useful for implementing acceleration measures.

Site Assessment

Efforts should be made to simplify or consolidate site assessments by planning and performing required studies and collecting data in such a way that the studies and data collected can be used to satisfy multiple purposes. Under current practices, hazardous waste sites may receive numerous sequential assessments prior to the inception of cleanup. Rather than sequentially conducting a Removal Preliminary Assessment (PA), Removal SI, Remedial PA and Remedial SI, where possible, the studies should be consolidated in one site assessment and one site report, provided the report includes findings required by the NCP for moving from one phase of site assessment to another.

A more flexible approach to site assessment will generally require the agencies that either own or operate the facility to improve the quality of the information collected in order for it to be useful beyond the PA/SI stage. Improved levels of quality

Assessment/Quality Control (QA/QC), identification of background levels and adequate sampling and analysis methods may facilitate multiple use of the data. To facilitate the regulatory process under CERCLA or RCRA, early consultation with EPA and states and early involvement of the public will be essential. This approach will also help in the determination of clean parcels based on Community Environmental Response Facilitation Act (CERFA) requirements.

Lead agencies are encouraged to adopt innovative approaches to field sampling with the understanding that they will sample to a level that will produce a defensible level of data that will allow sound cleanup decisions to be made. (EPA and the Air Force are currently piloting a field method of site characterization.) In order to balance the uncertainty that may arise from less detailed initial site assessment, it may be necessary to develop Contingent Records of Decision (RODs) that will provide for alternative remedies should additional data be uncovered that makes the preferred remedy impracticable.

"Early Actions" v. "Long-Term Actions"

Although federal facilities are encouraged to take early actions at any facility where risk reduction can be accomplished promptly, the response action chosen must be one that will satisfy CERCLA and its implementing regulations. ~~Early interaction with EPA, the state and the public will help ensure that removal actions are consistent with long-term actions and that cleanup levels will be based on risk assessment and~~ Applicable or Relevant and Appropriate Requirements (ARARs) that will be sufficient to be the final action, whenever possible.

The need to promptly address sources of contamination, without compromising environmental requirements, at all federal facility sites should be addressed by means of a removal, operable unit RODs, and/or interim remedial actions, once a federal facility has been listed on the NPL. Strong consideration should be given to non-time-critical removals (NTRCs) (i.e., where an estimated 6 month planning period is required), that will achieve results comparable to a remedial action, but which may be completed in less time. The NCP provides that in selecting a NTRC action, the alternatives must be evaluated in an engineering evaluation/cost assessment (EE/CA) which must be provided to the public for no less than a thirty

When using removal authorities delegated by Executive Order 12580, other federal agencies should consult with EPA, states and the public to ensure that the action is consistent with overall facility restoration goals and will result in cleanups consistent with the operable unit ROD and/or the final installation-wide ROD to delete the site from the NPL.

(30) day comment period prior to the selection of the action.
(See 40 CFR 300.415(b)(4) and (e)(4)).

Opportunities for accelerated cleanup may be the greatest for actions that fall between time critical removals and remedial actions; i.e., for NTCR at which rapid risk reduction is possible. All parties will benefit if the lead federal agency provides EPA and the state with an adequate regulatory role in the removal planning and decision process, including consultation on the removal action decision and monitoring progress of the action. Such an approach gains the regulatory assurances that the removal actions will be consistent with the final remedy. Without this early participation, the federal agency, EPA and the state may later be required to expend additional resources if there is an inconsistency.

Careful consultation with EPA and the states will be essential in the identification of ARARs in the removal or remedial decision process. ARARs analysis remains a part of the removal decision process since the NCP requires that in removals, ARARs be met to the extent practicable. As noted in the OSWER directive (OSWER Directive No. 9203.1-03, July 7, 1992, at 7), it should generally be practicable to meet ARARs in NTCR actions. However, to the extent that the scope of those actions is limited, the issue of attaining ARARs may be deferred to later remedial actions.

Presumptive Remedies

Historically, a substantial amount of time and money has been expended in the remediation process to address similar or recurring contamination problems. EPA and federal agencies have received substantial criticism for studying sites too long and not moving ahead with response actions. Federal agencies, with the cooperation and concurrence of EPA and the states, should focus on developing standardized solutions consistent with the requirements of the NCP (i.e., 40 CFR 300.420(b)(iv)). Standardized approaches offer the opportunity to streamline the investigation and cleanup process, provide consistency in dealing with recurring problems and should result in significant saving of resources at all agencies. EPA has developed presumptive remedies for CERCLA municipal landfill sites (OSWER Directive Number 9355.0-49FS) and CERCLA sites with Volatile Organic Compounds (VOCs) in soils (OSWER Directive Number 9355.0-48FS). EPA in consultation with other federal agencies will begin the development of presumptive remedies more specifically relevant to federal facilities such as remedies for jet fuel spills (e.g., Jet Propulsion 4 (JP4)).

Presumptive remedies are expected to improve the focus of data collection efforts during the site assessment, site inspection and remedial investigation activities. Employing a

presumptive remedy approach, data collection efforts should focus on seeking information adequate to confirm the site type. If the site type is one for which a presumptive remedy has been developed, data collection should next be focused on characterization needs for that particular type of site. Following site characterization, a focused Feasibility Study (FS) or Engineering Evaluation/Cost Analysis (EE/CA) may be sufficient when employing the presumptive remedy approach.

These focused analyses may be streamlined using presumptive remedies by limiting, as appropriate, the discussion of the identification and screening of technologies and response action alternatives. Similarly, the Proposed Plan and ROD or Action Memorandum may be streamlined by focusing primarily on the presumptive remedies being considered. Finally, the remedial design may be streamlined by using the data collected earlier in the process and drawing on the existing programmatic knowledge of the design of the particular presumptive remedy.

The following are some initial steps which could lead to the development of presumptive remedies at federal facilities:

- Identifying types of contamination for which such an approach is feasible;
- Establishing a structure for getting state/federal/local regulators and facility staff together early in the process to decide on cleanup methods, and Data Quality Objectives required; and
- Identifying pilot sites at which to test the feasibility of the approach.

If studies at pilot sites validate the use of a presumptive remedy, information on that remedy will be made available to similar sites. Proposed presumptive remedies will be evaluated and addressed consistent with OSWER Publication 9203.1-021, Superfund Accelerated Cleanup Bulletin/Presumptive Remedies.

Sites that have common contamination problems that lend themselves to presumptive, standardized approaches may also be good candidates for innovative technology development. Innovative technologies that are developed for a cluster of similar sites could result in significant cost and time savings.

Public Participation

Accelerating cleanups may require employing new and innovative strategies and processes that may be of concern to affected stakeholders. Choosing removal and interim remedial responses may raise policy and legal questions related to ARAR compliance and the merits of early action. Affected public

stakeholders should be given an early and meaningful opportunity to participate in a comment and response process that results in decision-making. Federal facilities should consider establishing site-specific Advisory Boards (SSABs) or their equivalent, early in the decision-making process for the purpose of sharing technical and regulatory concerns and providing a forum for dialogue on cleanup decision related issues.

Effect on Existing Federal Facility Interagency Agreements

Federal facilities listed on the NPL are subject to IAGs under CERCLA §120(e)(2) which provide for enforceable schedules for the conduct of RI/FS work and for the implementation of selected remedies, including interim remedial actions. The implementation of the IAGs is also subject to the public participation requirements of CERCLA §117. Most IAGs do not provide enforceable schedules for removal actions.

IAGs provide for the opportunity to change or modify milestones. To the extent that acceleration efforts affect milestones, the parties to the IAG should review the schedules and modify as appropriate. The statutory mandate for IAGs must be considered in the evaluation of the restoration strategy at federal facilities. CERCLA §120(e)(2) provides that IAGs be entered into at or about the time of remedy selection. No explicit role is defined for EPA in CERCLA §120 relative to removal actions. However, in consideration of the Congressional mandate for EPA involvement in the remedy selection process, the federal facility must exercise its removal authority with prudence. That is to say that not all response actions should be categorized as removals, thereby obviating regulatory involvement.

Decision Teams

Under the SACM model, OSWER views Regional Decision Teams (RDTs) as the key to the successful implementation of accelerated

² The role of Site Specific Advisory Boards is discussed more fully in the Interim Report of the Federal Facilities Environmental Restoration Dialogue Committee, February 1993. The Report recommends that SSABs include individual residents of communities where the site is located, representatives of citizen, environmental and public interest groups in communities where the site is located, workers or representatives of workers involved in site cleanup and representatives of Indian Nations and other indigenous people with rights affected by cleanup activities at the site. A Technical Review Committee (TRC) or Restoration Advisory Board (RAB) with sufficiently broad membership and involvement at a site may provide the mechanism for this purpose.

cleanup at private sites. While it is suggested that the make-up of the RDTs may vary from region to region, the general assumption is that a team would include an EPA Branch Chief, On-scene Coordinator (OSC), Remedial Project Manager (RPM), Office of Regional Counsel and site assessment representative. The purpose of the RDTs is to provide continuity throughout a project and to centralize and expedite decision making.

Under Executive Order No. 12580 and CERCLA §120, federal agencies, other than EPA, have jurisdiction for carrying out most response actions at federal facility sites. As EPA is not the lead agency at such sites, its role is different from that at other Superfund sites.

To achieve the purpose intended for RDTs at a federal facility, the lead agency could create an empowered site-specific team to perform a number of the RDT functions, such as establishing a site-wide sampling strategy, deciding whether to use early or long term actions, making recommendations for approval of the Action Memorandum and screening proposed remedial actions. A team including representatives of EPA, the state, the community and the federal agency could accomplish the overall goal of accelerating cleanup by improved coordination and simplification. This cooperative model is currently being employed in the base closure program.

Improved planning and cooperative decision making between lead agencies, EPA and the states will be necessary because of fixed and often limited resources. A decision to proceed with a removal may result in delaying other activities at the site. A site-specific team should consider the implications of available alternatives and seek buy-in from affected stakeholders early in the decision-making process.

CONCLUSION

As described above, there are significant opportunities for the acceleration of environmental restoration at federal facility sites on the NPL. EPA is supportive of coordinated efforts between agencies on the development and initiation of projects that accelerate the cleanup process. EPA views the focus on accelerated cleanup of hazardous waste sites as an opportunity to work cooperatively with other federal agencies in order to more effectively achieve our joint goal: protecting human health and the environment.

PURPOSE AND USE OF THIS GUIDANCE

This policy and any internal procedures adopted for its implementation are intended exclusively as guidance for employees of the U.S. Environmental Protection Agency. This guidance does not constitute rulemaking by the Agency and may not be relied

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