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RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

SEPTEMBER 86

5. RCRA Enforcement

When can the §3008(h) authority be used? How can a §3013 order support the §3008(h)?

The Hazardous and Solid Waste Amendments of 1984 (HSWA) added §3008(h), one of the corrective action authorities, to the Solid Waste Disposal Act. Section 3008(h) allows the Agency to require corrective action or any other response necessary to protect human health or the environment when a release of hazardous waste is identified at an interim status hazardous waste treatment, storage or disposal facility.

Section 3008(h) provides: "Whenever on the basis of any information the Administrator determines that there is or has been a release of hazardous waste into the environment...". Appropriate information can be obtained from a variety of sources, including data from laboratory analyses of soil, air, surface water or ground water samples, observations recorded during inspections, photographs, and facts obtained from facility records.

Actual sampling data is not necessary to show a release. Other evidence that a release has occurred might be a broken dike at a surface impoundment discovered by an inspector. Less obvious indications of a release might also be adequate to make the determination. For example, the Agency could have sufficient information on the contents of a land disposal unit, the design and operating characteristics of the unit, and the hydrogeology of the area in which the unit is located to conclude that there has probably been a release to groundwater. The Agency could then order the owner or operator to perform an investigation to confirm the presence of contamination, and, after confirmation, to undertake corrective action.

However, to exercise the interim status corrective action authority, the Agency must first have information that there is or has been a release at the facility. Additional sources that may provide information on releases include: Inspection reports, RCRA Part A and Part B permit applications, responses to RCRA §3007 information requests, information obtained through RCRA §3013 orders, notifications required

by CERCLA §103, information gathering activities conducted under CERCLA §104, and informants' tips or citizens' complaints corroborated by supporting information.

§3013 order may be used in some instances in which EPA does not have adequate information that there is or has been a release. Section 3013 provides that the Agency may compel monitoring, testing and analysis if the presence of hazardous waste at a facility or site at which hazardous waste has been treated, stored or disposed of may present a substantial hazard to human health or the environment.

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