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United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

July 11, 1990

SUBJECT: Requirements for Cleanup of Final NPL Sites
Under RCRA

FROM: Don R. Clay
Assistant Administrator

TO: Stephen R. Wassersug, Director
Hazardous Waste Management Division

Marcia Mulkey, Regional Counsel
Office of Regional Counsel

In your memorandum of May 16, 1990, you requested guidance on the applicability of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) to the final National Priorities List (NPL) sites being addressed pursuant to RCRA corrective action authorities. Specifically, you question whether the NCP mandates, for sites being addressed under RCRA, specific cleanup procedures and deletion criteria for site cleanup and ultimate removal from the NPL which are not requirements of RCRA 3008(h). You are concerned that a site that is considered by RCRA to be remediated, may not be able to be removed from the NPL due to a failure to address an administrative or procedural NCP requirement.

Your memo refers to language in the proposed NCP which states that "it is appropriate to apply different and more stringent criteria in actions to delete based on deferral to other authorities." It also mentions examples of NCP requirements (e.g., the ROD must detail how the selected remedy attains ARARs and utilizes permanent solutions; a five-year review of remedial actions is required if hazardous substances remain at the site above certain levels; and State involvement requirements must be met) which are not required by RCRA Section 3008(h) actions.

In response to your inquiry, it should first be noted that the

final NCP states that EPA "has the discretion to use its authorities under CERCLA, RCRA or both to accomplish appropriate cleanup at a site, even where the site is listed on the NPL." 55 FR 8698 (March 8, 1990). See also 54 FR 41009 (Oct. 4, 1989). Thus the Agency has clearly stated that RCRA authorities may be used at NPL sites.

Second, the "different" and "more stringent" criteria you referred to from the proposed NCP related to deletion of final NPL sites "based on deferral" to another authority. 53 FR 51421 (Dec. 21, 1988). That draft policy has not been adopted by the Agency, and therefore, the preamble language is irrelevant.

The criterion that must be met before a site on the final NPL is deleted is that "no further response [at that site] is appropriate." 40 CFR 300.425(e) (55 FR 8845, March 8, 1990). Where a remedial action has been carried out under RCRA and there is no significant threat to public health or the environment, a CERCLA response should not be necessary. (See 40 CFR 300.425(e)(1)(iii)). In effect, where the RCRA program takes action at an NPL site, the CERCLA program simply delays the start-up of its Remedial Investigation/Feasibility Study (RI/FS) site assessment process, in order not to interfere with or duplicate the ongoing RCRA work. When the RCRA remedy is complete, the Agency will do an abbreviated RI (incorporating by reference in most cases, information from the RCRA cleanup) and make a determination of whether any CERCLA action is required. The Agency expects that sites cleaned up under RCRA corrective action would be considered "no action" sites under CERCLA.

The finding of no action should be set out in a close-out report in preparation for deletion from the NPL. The site close-out report should include appropriate documentation on the RCRA action (and any other action at the site under RCRA or CERCLA), and a finding that no further action under CERCLA is warranted for any of the units and areas of contamination. Site deletion can proceed when all necessary response actions have been completed. For more information, refer to the April 1989 OSWER Directive 9320.2-3A entitled "Procedures for Deletion and Completion of NPL Sites."

You also asked whether actions taken under RCRA section 3008(h) at an NPL site must meet NCP requirements for remedy selection. Because no CERCLA remedy is being selected in a RCRA

corrective action situation, the remedy selection requirements in CERCLA Section 121 and NCP Section 300.430 do not have to be met in order to delete the site from the NPL. Therefore, the requirements of a ROD--for example, that it detail how the remedy will attain ARARs and utilize permanent solutions--do not apply to RCRA activities at NPL sites.

In addition, the formal State involvement discussed in Subpart F of the NCP does not apply to RCRA activities at NPL sites although the 3008(h) order should allow States to be kept informed of the progress of the RCRA corrective action activities, and include some type of State review of workplan submittals.

It should also be noted that State concurrence and public participation are required prior to the deletion of all NPL sites, even if much of the site was addressed under RCRA corrective action authorities. NCP Section 300.425(e)(2)(4) (55 FR 8845).

With regard to the five-year reviews under CERCLA, these reviews are required only at sites where a CERCLA remedy has been selected and thus would not apply to sites where no action is taken under CERCLA (e.g., RCRA corrective action sites). However, as a matter of policy, the Agency may decide to include in the CERCLA five-year review program no-action NPL sites where RCRA corrective action has occurred and hazardous substances remain on site above levels that allow for unrestricted use and unlimited exposure. The Agency is presently considering whether five-year review would be appropriate at NPL sites where monitoring is already being conducted under a RCRA post-closure permit.

If you have any questions regarding these issues, please call Nancy Parkinson, OWPE, at 475-8729 or Larry Starfield, OGC, at 245-3598.

cc: Hazardous Waste Division Directors, Regions I, II, IV-X;
Regional Counsels, Regions I, II, IV-X