

OSWER POLICY DIRECTIVE #9502.00-2

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

APR 18 1986

MEMORANDUM

SUBJECT: RCRA, Corrective Action at Federal Facilities

FROM: J. Winston Porter
Assistant Administrator

TO: Regional Administrators, Regions I - X

On March 5, 1986, we published two notices in the Federal Register (copies attached) about corrective action at Federal facilities. I am writing to clarify some possible misconceptions are the two March 5 notices.

The first notice states: (1) §3004(u) applies to Federal facilities; (2) Federal agencies are subject to the same "property-wide" definition of facility as other owner/operators; and (3) the term "owner" applies to individual Federal departments, agencies, and instrumentalities rather than the U.S. government. The second notice announces EPA's intent to promulgate rules to further clarify Federal ownership and to establish a scheme of priorities for corrective action at Federal facilities.

Our office has heard conflicting statements on the effect of EPA's intent to promulgate a rule on national priorities. Some Federal agencies may incorrectly believe that corrective action has been "put on hold" until EPA issues a final regulation. This is not true. Until EPA issues a final rule on priorities for corrective action at Federal facilities, the Regions must continue to process and issue permits, including negotiating corrective action schedules of compliance under §3004(u). Current permitting negotiations on corrective action between EPA and Federal agencies must not be affected by the two Federal Register notices. EPA shall continue to require corrective action at Federal facilities and EPA shall continue to require schedules of compliance in the permits of Federal facilities. Where appropriate, administrative orders under §3008(h) should also be issued to direct Federal agencies to conduct corrective action activities prior to issuance of the permit.

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In negotiating schedules of compliance, the Federal agencies may legitimately raise the issue of the relative priority of the facility in question. Where EPA, the State and the Federal agency agree that the facility is of lesser importance, the timeframes for conducting corrective action activities in the schedule of compliance should reflect this. Where the three parties are unable to agree on the schedule for conducting corrective action activities, these disputes should be referred to Bruce Weddle, Director, Permits and State Programs Division, OSW, or Lloyd Guerci, Director, RCRA Enforcement Division, OWPE, to resolve permitting or enforcement issues, respectively. We are prepared to work with the Federal agency Headquarters to obtain resolution of these problems.

I have already written to the major Federal agencies (Departments of Energy, Defense and the Interior) to explain our intent to continue the permit process and to negotiate schedules of compliance for corrective action. I urged each of them to begin considering their own priorities to facilitate the negotiation process, and I will meet with each agency to discuss its plans.

While negotiation of corrective action schedules off compliance may be handled on a case-by-case basis until the final rule is promulgated, there is one area discussed in the Federal Register notice which we cannot address without a regulation. The notice states that in some situations where a private party has partial property interests such as leases or mineral extraction rights, it may be appropriate to define the facility boundary in terms of the private party's property interest rather than the Federal agency's property interest. In these limited situations the private party would be responsible for taking corrective action rather than the Federal government. In all such cases prior to issuance of the final rule, the Federal agency will be considered the owner of such property and will be held responsible for releases from such operations and for releases on its contiguous Federal lands.

I hope this will help to clarify corrective action at Federal facilities. Questions on this subject may be addressed to Paul Connor, Federal Facility Coordinator in OSW (FTS 475-7066) for permitting issues or to Tony Baney, Federal Facility Coordinator in OWPE (FTS 382-4460) for enforcement issues.

Attachments

cc: Director, Hazardous Waste Division,
Regions I-X
Chief, Hazardous Waste Branch,
Regions I-X
Allan Hirsch, OFA
Regional Federal Facility Coordinators,
Regions I-X