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

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OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MEMORANDUM

TO: Regional Administrators (Regions 1-10), RCRA Senior Policy Advisors (Regions 1-10), Regional Counsels (Regions 1-10)

FROM: Marianne Lamont Horinko, Assistant Administrator
Office of Solid Waste and Emergency Response

John Peter Suarez, Assistant Administrator
Office of Enforcement and Compliance Assurance

SUBJECT: Prospective Purchaser Agreements and Other Tools to Facilitate Cleanup and Reuse of RCRA Sites

This memo highlights three tools useful to EPA and Resource Conservation and Recovery Act (RCRA) authorized States for overcoming real or perceived barriers to cleanup and reuse at RCRA sites: RCRA Prospective Purchaser Agreements (PPAs), the February 2003 Final Guidance on Completion of Corrective Action Activities at RCRA Facilities, and RCRA comfort/status letters. This memo also provides some factors we recommend you consider when evaluating a request for a RCRA PPA.

The revitalization of contaminated properties is a key part of EPA's cleanup mission. EPA's Land Revitalization Agenda identifies actions that facilitate the cleanup and reuse of contaminated properties. Various state programs, the Brownfields Program, the Superfund Revitalization Initiative, the RCRA Brownfields Prevention Initiative and "USTfields" demonstrate that reuse potential can be an incentive for cleanup, creating benefits for both the environment and economy of the communities (sometimes environmental justice communities) in which these properties are located. Additionally, the cleanup and redevelopment of contaminated sites, frequently in urban areas, provide an alternative to developing farmland and other "greenfields," thereby mitigating the environmental pressures of such development.

In developing the Land Revitalization Agenda, we have heard from the regulated community, developers, and municipalities that there may be certain perceived barriers to the redevelopment of sites subject to RCRA corrective action. We believe that these perceived barriers can be overcome through appropriate use of the tools described below. We encourage

EPA Regions and States, where states are authorized for corrective action, to consider using these and other tools, where appropriate, to facilitate RCRA site cleanup and reuse. It should be noted that this memo does not contain a comprehensive list of all tools available to facilitate cleanup and reuse. Because most states are authorized for RCRA corrective action, we expect that most of the activity will be at the state level and encourage states to share information about their experiences.

Prospective Purchaser Agreements

In some situations where a party is interested in acquiring a property potentially subject to RCRA corrective action, RCRA PPAs can be effective in encouraging site cleanup and reuse. RCRA PPAs are used at both the state and federal level and may specify the activities related to corrective action for which the purchaser is responsible. The purpose of a Federal RCRA PPA is to provide the acquiring entity, who seeks to reuse the site, a Federal covenant not to sue, subject to conditions specified in the RCRA PPA, in return for some specified benefit to the community, environment, or government. EPA is only recently gaining experience with using PPAs for RCRA facilities, although we have used them at Superfund sites since 1989. EPA Headquarters plans to continue to work with interested Regions to develop PPAs for RCRA sites where cleanup and reuse are unlikely without them. In three cases, a RCRA PPA has facilitated property reuse: the Genicom Facility in Waynesboro, Virginia, the former Northwestern Steel and Wire Company Plants 2 and 3 in Sterling, Illinois, and the Allied-Signal/Honeywell facility in Baltimore, Maryland. At Genicom, a previous owner was performing remedial measures but the redevelopment occurred only after EPA issued a RCRA PPA. At Northwestern Steel and Wire, the new owner is willing and able to participate in the Illinois State Voluntary Cleanup Program, but additional assurance from EPA regarding RCRA liability was instrumental in encouraging redevelopment. At Allied-Signal/Honeywell, the remediation was performed by the previous owner/operator, Allied-Signal, with the new leasee agreeing to comply with the institutional controls and bring no new hazardous waste activities to the property.

Federal RCRA PPAs typically entail extensive research, coordination and negotiation among all parties to the agreement, including State programs and the Department of Justice (DOJ), which must approve all RCRA PPAs. They are highly resource intensive and are reviewed and considered on a case-by-case basis. RCRA PPAs are used when the benefits to the government, community, environment, or benefits from the redevelopment at the facility, warrant the required time and expense. We recommend you consider the following factors when determining whether or not to do a RCRA PPA:

- Whether a comfort/status letter or other less resource intensive option will suffice, rather than a RCRA PPA;
- Whether the facility in question, or portion thereof, will be cleaned up/addressed as a result of the RCRA PPA;
- Whether EPA and its resources have been directly involved in the cleanup activities at the site;
- Whether there will be significant benefits to the community, environment, or

government through remediation of the site and benefits from the redevelopment at the site (new jobs, increased tax base, etc.) that would not occur otherwise;

- Whether the owner/operator has extremely limited or no resources to address corrective action and the prospective purchaser intends to address the cleanup of the property; and
- EPA and DOJ staff availability.

Completion Guidance

On February 25, 2003, EPA published the Final Guidance on Completion of Corrective Action Activities at RCRA Facilities which provides the EPA Regions, the States, Tribes, regulated community and others, with guidance on significant issues related to completion of Corrective Action activities at RCRA facilities. The guidance identifies two types of completion determinations: Corrective Action Complete without Controls (when long term protection of human health and the environment is not dependent upon the maintenance of institutional or engineering controls), and Corrective Action Complete with Controls (when institutional or engineering controls are necessary for long term protection of human health and the environment). Both forms of completion determinations recognize final remedies that are protective of human health and the environment. The guidance recommends procedures that the overseeing agency might use to process completion determinations. For permitted facilities, these include permit modification procedures. For non-permitted facilities, these include the termination of RCRA Interim Status. A determination, made through appropriate procedures by EPA or an authorized State, that corrective action is complete at a RCRA facility, or portion of the facility, should eliminate liability concerns at that property and make the property more attractive for purchase and reuse. The RCRA completion guidance can be found at http://www.epa.gov/swerosps/rcrabf/complete.htm.

Comfort/Status Letters

EPA and States are issuing comfort/status letters at RCRA sites that indicate EPA's or the State regulator's current knowledge about particular properties targeted for redevelopment or reuse. These letters provide some information to prospective purchasers, lenders, and insurers about the current regulatory and environmental status of the site. They help interested parties better understand the likelihood of EPA or State involvement at a potentially contaminated property. The release of as much information as possible enables the party to better understand the potential applicability of RCRA cleanup provisions to individual parcels of property and to make informed decisions. Comfort/status letters are not "no action assurances." Comfort/status letters can be and are often used by authorized States and by EPA where a State is not authorized or at facilities where EPA has had the lead in conducting the cleanup. Guidance on comfort letters can be found at http://epa.gov/rcrabrownfields/pdf/comfort.pdf.

We encourage EPA Regions and States to consider using all available tools to stimulate the cleanup and reuse of RCRA sites. With regard to RCRA PPAs, please work with EPA's Office of Enforcement Compliance Assurance (OECA), pursuant to the May 9, 2002

memorandum titled, "Prior Written Approval Required for Prospective Purchaser Agreements under the Resource Conservation Recovery Act" (see attachment). Inquiries about RCRA PPAs can be brought to the attention of Helen Keplinger at (202) 564-4221. We look forward to continuing our work with you on cleanup and reuse of sites subject to RCRA.

Attachments

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