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

JAN 9 2004

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: 2003 Revisions to the Hazardous Waste Enforcement Response Policy

FROM: Walker B. Smith, Director
Office of Regulatory Enforcement

TO: Regional Administrators
State Commissioners

The purpose of this memorandum is to transmit the 2003 Hazardous Waste Enforcement Response Policy (ERP) issued pursuant to the Resource Conservation and Recovery Act (RCRA). The 2003 ERP represents the collaborative effort of state hazardous waste agencies, RCRA Enforcement Managers in the Regions, and the Office of Enforcement and Compliance Assurance.

We revised the ERP to enhance the States' and EPA's ability to track Significant Non-Compliers (SNCs) that pose the greatest risk to human health and the environment; and to clarify that the policy is intended to be used as a framework for decision making. Major changes include incorporating the SNC criteria from the ERP Addendum (April 2000) and suggesting new language that Regions/States consider: environmental and health concerns, potential exposure to workers, and threatened releases. Additionally, definitions under the ERP were revised to reflect the true compliance status of violators and to clarify the appropriate enforcement response for SNCs. To enhance flexibility, we revised the enforcement response time line under the ERP by expanding the milestones by 60 days. With respect to EPA action in authorized states, we deleted text discussing circumstances where EPA can take direct enforcement action. EPA believes that this language is unnecessary and could create confusion in regard to the Harmon decision (Harmon Indus., Inc. v. Browner, 191 F.3d 894 (8th Cir. 1999)). Finally, to promote partnership with States, we included language to the effect that we will continue to consult with our State partners when considering actions.

I appreciate the time and effort expended by EPA representatives and State representatives in particular to develop a policy that promotes prompt enforcement and focuses our limited resources on addressing violators that pose the greatest risk of harm to human health and the environment.

The effective date of this policy will be February 15, 2004.

Attachment

cc:RegionalCounsels
WasteManagementDivisionDirectors
RegionalRCRAEnforcementManagers
ASTWMO