OSWER POLICY DIRECTIVE #9522.00-2

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

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MEMORANDUM

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

SUBJECT: RCRA Permit Requirements for State Superfund Actions

FROM: J. Winston Porter
Assistant Administrator

TO: Regional Administrators
Regions I - X

On a number of occasions, the question has been raised as to whether RCRA permits are required for cleanup actions taken by States under State Superfund or other authorities. The answer to this question will depend on whether the State is authorized for the RCRA program and on the details of the State's own statutory and regulatory authority. In general, however, a State authorized to conduct the RCRA base permit program will have the authority to waive RCRA permit requirements for State Superfund actions as long as: (1) the State has the authority under its own statutes or regulations to grant permit waivers, and (2) the State waiver authority is used in no less stringent a manner than allowed under Federal permit waiver authority, for example, §7003 of RCRA or §121(e) of CERCLA.

Some States now authorized to conduct the RCRA program currently have permit waiver authority within their statutes or regulations. For example, some States may have authority comparable to RCRA §7003, which allows EPA to order response action in the case of imminent and substantial endangerment to health or the environment "notwithstanding any other provision of this Act." Assuming the "imminent and substantial" test were met, EPA therefore may require persons contributing to the endangerment to treat, store, or dispose of the hazardous waste without securing a permit. An authorized State that has a §7003-type authority may in the same way use its own authority to compel remedial action at a State Superfund site and may waive RCRA permitting requirements for that action.

Similarly, CERCLA §121(e) grants a RCRA permit waiver for Federal response actions taken under CERCLA §104 (where imminent and substantial endangerment is not always required). A State with its own permit waiver authority, therefore, may waive RCRA

permit requirements for a State Superfund action under similar circumstances. However, the State may exercise this permit waiver only if it does so in a manner no less stringent than allowed under the Federal waiver authority, that is, in a manner consistent with the CERCLA §104 program.

EPA has reviewed and in some cases restricted State permit waiver authority during the RCRA authorization process and, as part of the Memorandum of Agreement with the State, prohibited the State from exercising its waiver authority in a way that would make its program less stringent than the Federal program. This restriction would not prohibit a State from waiving RCRA permit requirements at a Superfund site. As long as the State restricts permit waivers to Superfund site actions and other situations where a comparable Federal waiver exists, the State would be acting within its authorization and within the terms of the Memorandum of Agreement

In general, we believe that States should be encouraged to move ahead on cleanups under their own Superfund authorities, and that it does not make sense to delay action until a RCRA permit can be issued, as long as an appropriate waiver mechanism applies and adequate measures are taken to protect human health and the environment. In these cases, we understand that States may find it desirable to waive RCRA permits for State Superfund site cleanups. When a RCRA authorized State chooses under its own authority to waive RCRA permits for State Superfund actions, EPA Regional Offices should recognize that, under the conditions described above, the State would not be prohibited from doing so, and that such waivers may promote more timely cleanup of contaminated sites.

cc: Regional Counsels, Regions I-X
Waste Management Division Directors, Regions I-X