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

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OFFICE OF
SOLID WASTE AND EMERGENCY RES.

MEMORANDUM

SUBJECT: Contractor Signing of Uniform Hazardous Waste Manifests for Materials Leaving a Superfund Site

FROM: Russel H. Wyer, Director
Hazardous Site Control Division

TO: Superfund Branch Chiefs, Regions I-X

Purpose:

To resolve the issue of whether EPA's remedial action contractors may sign, on EPA's behalf, the uniform hazardous waste manifests without changing their generator status.

Background:

It has come to my attention that certain remedial action contractors working under contract for EPA at Superfund sites have been unwilling to sign the uniform hazardous waste manifest forms because they believe that, by signing, they would assume liability as hazardous waste generators. Of concern is whether EPA Regional Superfund staff would be required to be present during remedial actions at Superfund sites which involve off-site transport of hazardous wastes for the purpose of signing these forms. Regional Project Managers would be required to spend many hours at the site, diverting them from their appropriate program management roles.

Objective:

This memo will resolve this issue by referring to and applying the requirements of the applicable Federal regulation associated with manifests for hazardous wastes.

Implementation:

The applicable Federal regulation associated with this issue is 40 CFR 262, Appendix, Uniform Hazardous Waste Manifest Instructions, Item 16; it describes the uniform hazardous waste manifest certification requirements which are applicable to shipments of hazardous waste from TSD facilities. This instruction makes clear that generators may have contractors act on their behalf in signing the manifest forms. Specifically, the instruction says, "Generators may preprint the words, 'on behalf of' in the signature block or may hand write this statement in the signature block prior to signing the generator certifications." As explained in the Federal Register Notice on October 1, 1986 (51 Fed. Reg. 35192), EPA did not intend to impose personal liability on the individual who actually signs the certification. Further, EPA clarified that "employees or other individuals may sign the manifest certification for a generator who is a legal entity, such as a corporation". This statement makes clear that the generator may agree with persons on-site to sign for the generator, so long as the signor has clear authority from the generator to do so.

Thus, under the Federal regulations, contractors hired by EPA to perform on-site remedial actions who initiate the off-site shipment of hazardous wastes (such as on-site excavation, dewatering, and packaging of contaminated soils) may sign the manifests for EPA after receiving clear authority from the EPA Regional office to do so, and after writing the phrase "On behalf of the United States Environmental Protection Agency" or "U.S. E.P.A." in the signature block of the manifest. Contractors acting on behalf of EPA in this situation at Superfund sites do not become generators by signing the manifest (although they might be generators for other reasons). They would merely be performing a technical confirmation function for EPA in signing the manifest form.

For remedial actions when EPA provides the contracting mechanism (this excludes Corps of Engineers projects) through REM or ARCS, we should now use EPA contractors to sign manifests after writing in the phrase "On behalf of the United States Environmental Protection Agency" in the signature block. For this type of remedial action contracting, the architect/engineer firms that hold the prime contracts with EPA are the appropriate construction managers for these projects and should provide the individuals to sign the manifest. Be advised that you must give clear and specific authority in writing to the EPA contractors for each project to sign the manifests on behalf of the Agency.

Regulation of this matter by RCRA authorized States may differ from EPA's. The contractor or the Regional office should determine whether State regulations require EPA to be on-site. Please advise me whenever the Region believes State rules limit our use of contractors to sign manifests. We will request assistance from the Office of General Counsel in clarifying the matter.

Please contact John J. Smith, Chief, Remedial Action and Contracts Section at FTS: 382-7996, if there are any further questions regarding this issue.

cc: J. Bill Hanson, Chief, SPGB/HSCD/OERR
James Vickery, Chief, RPRB/HSCD/OERR
Harold J. Snyder Jr., Chief, DCMB/HSCD/OERR
Murray Newton, Chief, SLCB/HSCD/OERR
Walter Johnson, Acting Chief, RPAS/HSCD/OERR
Diane Regas, OGC