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

FEB 5 2001

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Comfort/Status Letters for RCRA Brownfield Properties

FROM: Barry Breen, Director
Office of Site Remediation Enforcement

TO: RCRA Senior Policy Managers
CERCLA Senior Policy Managers
Regional Counsel, Region 1-10

On November 8, 1996, the Office of Enforcement and Compliance Assurance (OECA) issued its "Policy on the Issuance of Comfort/Status Letters," which focuses on properties primarily associated with Superfund sites.[1] Since that time, regional staff and private parties have inquired about the applicability of that policy to property within or adjacent to facilities subject to RCRA.

EPA has not issued a policy on the use of RCRA comfort/status letters. However, there may be sites subject to RCRA requirements where the circumstances are analogous to the circumstances at Superfund sites where the Agency has determined that issuing Superfund comfort/status letters may be appropriate . This memorandum encourages you to use "comfort/status" letters at such RCRA facilities, where appropriate, and provides some examples of Regional RCRA comfort/status letters. Regional staff should look to the Superfund comfort/status letter policy for general guidelines on the issuance of RCRA comfort/status letters.

As stated in the Superfund comfort/status letter policy, it is not EPA's intention to become involved in typical private real estate transactions. Rather, EPA intends to limit the use of such letters to situations where it may facilitate the cleanup and reuse of brownfields,[2] where

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[1] You can access the Superfund Comfort/Status Letter policy at www.epa.gov/oeca/osre by clicking on Policy and Guidance Documents and then clicking on Liability under CERCLA enforcement documents.

[2] EPA defines brownfields as abandoned, idled, or under-used industrial or commercial facilities where expansion or redevelopment is complicated by real or perceived

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there is the realistic perception or probability of EPA initiating a RCRA cleanup action, and where there is no other adequate mechanism available to adequately address the party's concerns. See 62 Fed. Reg. 4624 (Jan. 30, 1997). Under these circumstances, it may be appropriate for regional offices to, at their discretion, issue comfort/status letters addressing RCRA concerns upon receiving a request from an interested party. Before issuing a comfort/status letter, please consult with other EPA offices to determine whether any enforcement action is planned or ongoing at the facility and to coordinate any EPA response at that facility.

The Superfund comfort/status letter policy specifically addressed four common inquiries regarding contaminated or potentially contaminated properties. Each of the scenarios discussed in the Superfund policy may have some RCRA analog. Site-specific circumstances determine whether a comfort/status letter, as well as which type of letter, is appropriate. For example, appropriate comfort/status letter situations may include brownfields associated with RCRA treatment, storage, or disposal facilities; "generator-only" sites; or other property where RCRA hazardous waste is discovered during cleanup and/or redevelopment activities.

Comfort/status letters are provided solely for informational purposes and relate only to EPA's intent to exercise its RCRA corrective action response and enforcement authorities at a property based upon the information presently known to EPA. EPA encourages the release of as much information as possible to enable the party to better understand the potential applicability of RCRA cleanup requirements to individual parcels of property and to make informed decisions. For example, EPA may need to take RCRA action at the property if conditions at the property change, or if new information becomes available indicating that present conditions warrant such a response. With the exception of sharing information already contained in EPA's files, the letters generally are not intended to express EPA's opinion as to possible contamination or extent of contamination at the property or provide any information on obligations associated with ownership or operation of the site. Additionally, the letters are not intended to limit or affect EPA's, or a state's, authority under RCRA or any other law or provide a release from RCRA liability. A comfort/status letter for a facility in a state authorized for corrective action should identify the authorized state agency to the requestor. As with the Superfund policy, the "comfort" comes from knowing what EPA knows about the property and what EPA's intentions are in terms of a RCRA action.

With the information provided by EPA, the party inquiring about the property can decide whether the risk of EPA action is enough to forego involvement, whether to proceed as planned, whether additional investigation into site conditions is necessary, or whether further information from EPA or other agencies is desired. Please note that, as with comfort/status letters issued under the Superfund policy, letters addressing RCRA environmental concerns are not "no action

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environmental contamination.

assurances."[3]

Attached to this memo are some examples of RCRA comfort/status letters that the Regions have used in response to inquiries regarding redevelopment of properties with potential RCRA environmental concerns. These examples generally fall into three categories: a comfort/status letter where the state is the lead at the facility; a comfort/status letter based on EPA's past and anticipated cleanup actions; and a comfort/status letter where EPA has not identified the property as being subject to RCRA. These letters, in addressing RCRA environmental concerns that may inhibit property reuse, are consistent with the intent of the Superfund comfort/status letter policy of facilitating property reuse by addressing Superfund environmental concerns. Of course, a comfort/status letter does not address potential regulatory violations.

Please contact Elisabeth Freed at (202) 564-5117 or Greg Madden at (202) 564-4229 if you have any questions, or wish to discuss appropriate language for a RCRA comfort/status letter.

Attachments

cc: Elizabeth Cotsworth, OSW
Matt Hale, OSW
Steve Heare, PSPD
Bob Hall, PSPD
Linda Garczynski, OSWER
Larry Reed, OERR
Susan Bromm, OSRE
Paul Connor, PPED
Sandra Connors, RSD
Brian Grant, OGC
Lori Boughton, PGB
RCRA Brownfields Prevention Initiative Work Group members
ASTSWMO

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[3] The Agency's "Policy Against No Action Assurances" issued November 16, 1984, reaffirms EPA's policy against giving definitive assurances outside the context of a formal enforcement proceeding that EPA will not proceed with a particular enforcement response. Consistent with that policy, EPA may only provide site-specific, no action assurances with the approval of the Assistant Administrator of the Office of Enforcement and Compliance Assurance. Because comfort/status letters do not provide assurance of no action, approval of the Assistant Administrator of the Office of Enforcement and Compliance Assurance is not required.

EXAMPLE OF STATE-LEAD LETTER

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

D-8J

JUL 16 1998

[redacted], Director Environmental Affairs
[redacted]

Re: [redacted]

I am writing in response to your letter addressed to Mr. Joseph Boyle, dated May 1, 1998, which included a letter from the Michigan Department of Environmental Quality (MDEQ) letter dated April 16, 1998, concerning the facility referenced above. My response is based upon the facts presently known to the United States Environmental Protection Agency ("USEPA") and is provided for informational purposes.

The Federal Resource Conservation and Recovery Act (RCRA) Subtitle C Program was established to, among other things, set standards for and regulate the generation, treatment, storage and disposal of hazardous wastes, as well as provide for the cleanup of hazardous waste treatment, storage and disposal facilities. This program is delegated to authorized states, including the State of Michigan. Unless exempt by law, facilities that treat, store or dispose of hazardous wastes are subject to the requirements of RCRA. These requirements include applying for and obtaining operating permits, implementing closure and post-closure of regulated units, and performing corrective action to address releases of hazardous waste.

The U.S. EPA supports State programs to address contaminated facilities, and supports the action which MDEQ has taken to address environmental conditions at the [redacted] Based on the information in your letter and the letter from MDEQ, and on the information currently in our possession, U.S. EPA neither plans nor anticipates pursuing any further corrective action at this facility. In addition, U.S. EPA intends to rely on MDEQ to resolve any current or future closure and corrective action issues associated with this facility. Please note, however, that this does not preclude U.S. EPA from undertaking any action at the facility at a later date if the U.S. EPA obtains any information indicating that such action is necessary to protect human health, welfare or the environment.

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The EPA Region VII has reviewed the RFI Report and the administrative record. Based on the currently known information and site conditions, EPA does not currently plan to take any further corrective action at the [redacted] Facility. The EPA does, however, reserve the right to require additional corrective action should information become available or should there be a change in site conditions that indicate that there was/is a release of hazardous constituents to the environment which may pose a threat to human health and the environment, or that the information contained in the RFI Report or administrative record is invalid or inaccurate.

The above also does not apply to potential releases of hazardous constituents as a result of activities of future property owners. Because Missouri is an authorized state for administration and implementation of the RCRA Corrective Action Program, EPA does not need to provide concurrence with MDNR's decision to release the facility from interim status.

If you have any questions regarding this letter, please do not hesitate to contact me at (913) 551-7629 or Ms. Stephanie Doolan of my staff at (913) 551-7719.

Sincerely,

William F. Pedicino

for William Pedicino
Chief, RCRA Corrective Action and Permits Branch
Air, RCRA, and Toxic Division

cc: Fuad Marmash, MDNR HWP
Richard Nussbaum, MDNR HWP

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

OCT 07 1999

[redacted]

Dear Mr. [redacted]:

RE: [redacted]

The U. S. Environmental Protection Agency (EPA) Region VII is in receipt of the Final RCRA Facility Investigation (RFI) Report, dated March 1999, for the former [redacted] in [redacted] The report documents the investigation and corrective measures undertaken by DuPont, at the above-referenced facility, pursuant to the RFI Work Plan and Work Plan Supplement approved by the Missouri Department of Natural Resources (MDNR) Hazardous Waste Program (HWP) on October 29, 1998. In addition to the field investigation, the RFI Report documents the remediation of contaminated soils identified during the field investigation. The [redacted] Facility was a "prototype" cleanup in MDNR's Expedited Corrective Action Program which is currently under review by EPA Region VII. As you may be aware, Missouri is an authorized state for implementation of the RCRA corrective action program.

Cleanup of contaminated soils was conducted following a 30-day public comment period advertised by MDNR for the remedial action(s) proposed by [redacted] in its RFI Report dated November 1998. MDNR reportedly received no comments on the proposed cleanup. Following [redacted] implementation of the proposed cleanup, and upon review of the RFI Report dated March 1999, MDNR has concluded that the nature and extent to contamination have been adequately defined at the [redacted] Missouri, Facility and that the cleanup addressed potential threats to human health and the environment based on currently known site information and conditions. Investigative and cleanup activities were overseen by MDNR and reported in a memorandum, to the file, dated June 10, 1999. MDNR approved the RFI Report and concluded that no further action is necessary at the facility in a correspondence to [redacted] dated May 11, 1999.

RECYCLE

If you have any questions, or we can be of any further assistance, please do not hesitate to contact me or Mr. Gerald W. Phillips, of my staff at (312) 886-0977.

Sincerely,

Norman R. Niedergang, Director
Waste, Pesticides and Toxics Division

cc: Mike Anastasio (C-14J)
Hedi Bogda-Cleveland (C-14J)
G. W. Phillips (D-8J)
J. Sygo, MDEQ

EXAMPLE OF LETTER BASED ON PAST AND ANTICIPATED CLEANUP ACTIONS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

MAY 0 3 1999

[redacted]
[redacted]c.
[redacted]
[redacted]
[redacted]

RE: [redacted]

Dear Mr. [redacted]

This letter is in further reply to a request from Richard H. Mays, attorney for [redacted], for a Prospective Purchaser Agreement ("PPA") with [redacted] that would limit [redacted] future liability for past storage, treatment or disposal of hazardous substances at a site located in [redacted] referred to as the [redacted] ("site"). [redacted] is interested in approximately 153.52 acres of this 977-acre facility. See enclosed Exhibit 1, a map of the 153.52 acre tract of property which is referred to as [redacted] My response is provided solely for informational purposes and is based upon the Environmental Protection Agency's ("EPA") current knowledge of existing contamination at the site.

EPA is pleased to learn that [redacted] intends to locate its operation at an existing facility. The commitment to establish the operation in an already existing industrial area is a positive example of EPA's goal to redevelop previously used facilities. EPA intends this letter to provide [redacted] with information regarding EPA's activities to investigate and address contamination at this site.

To my knowledge, this site has never been investigated under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). Instead, the existing contamination on the site is being addressed under the Resource Conservation and Recovery Act ("RCRA") by [redacted] in accordance with an EPA-approved work plan as detailed below.

EPA completed an assessment of the [redacted] Site, which includes [redacted] pursuant to RCRA, in 1990, and determined the presence of hazardous waste on portions of the facility currently or formerly owned by [redacted]. In 1991, EPA entered into an Administrative Consent Order ("AOC" or "Order") with [redacted] under section 3008(h) of RCRA, to further characterize the extent of hazardous waste contamination, to evaluate alternatives for clean-up, and to perform interim measures. Pursuant to the AOC, [redacted] has operated a groundwater pump and treat system at the site to remediate the groundwater at [redacted]

At this time, [redacted] has nearly completed the RCRA facility investigation required by the AOC. In addition to completing the investigation requirements, EPA expects that by August of 1999, [redacted] will have completed all necessary soil remediation at the site pursuant to an EPA-approved plan. For groundwater, data submitted by [redacted] indicate that clean-up goals have been met at Solid Waste Management Unit ("SWMU") 12 and EPA, based upon current information, anticipates that no further action to address groundwater will be necessary after a confirmatory sampling program is completed by [redacted] Monitored natural attenuation has been proposed by [redacted] as a groundwater remedy for the other unit of concern at the facility, SWMU 13, and EPA is reviewing the company's proposal at this time.

With respect to any existing contamination known to EPA at this time, EPA does not expect that any further investigation or remediation of [redacted] will be necessary under CERCLA, after successful completion of the activities being performed under RCRA.

If you have questions or concerns regarding EPA's position, please contact me to discuss the matter further.

Sincerely,

W. Michael McCabe
Regional Administrator

enclosure

EXAMPLE OF LETTER FOR PROPERTY THAT HAS NOT BEEN IDENTIFIED AS SUBJECT TO RCRA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

6/22/98

SE-4J

[redacted]
Director Environmental
[redacted]

Re: [redacted]

Dear Mr. [redacted]

I am writing in response to your letter, dated May 20, 1998, concerning the property referenced above. My response is based upon the facts presently known to the U.S. Environmental Protection Agency ("EPA") and is provided for informational purposes.

The federal Superfund Program, established to cleanup hazardous waste sites, is administered by EPA in conjunction with individual states and local and tribal governments. Sites are discovered by citizens, businesses, and local, state or federal agencies. When a potential hazardous waste site is reported, EPA records the available information in its database, the Comprehensive Environmental Response, Compensation, and Liability Information System ("CERCLIS"). The fact that a site is listed in CERCLIS, however, does not mean that an EPA response action will occur at the site or that ownership or operation of the site is restricted or may be associated with liability. The fact that a property is not listed in CERCLIS does mean that EPA is not currently planning to take any action under the federal Superfund program to evaluate the site for inclusion on the National Priorities List ("NPL") or to conduct removal or remediation activities.

The federal RCRA Subtitle C Program, established to, among other things, set standards for and regulate the generation, treatment, storage and disposal of hazardous wastes as well as provide for the cleanup of hazardous waste treatment, storage and disposal facilities. This program is delegated to authorized states, including the State of Ohio. Unless exempt by law, facilities that treat, store or dispose of hazardous wastes are subject to the requirements of RCRA. These requirements include applying for and obtaining operating permits, implementing closure and post-closure of regulated units, and performing corrective action to address releases of hazardous waste.

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The above-referenced property was not identified in a search of the active and archived records in the CERCLIS database. Furthermore, the property was not identified as a current or former hazardous treatment, storage or disposal facility in a search of the active and archived RCRA records at U.S. EPA. Please note that this does not represent a finding that there are no environmental conditions at this property that require action or that are being addressed under another federal or state program or an off-site source. It does mean that, at this time, EPA is not aware of any information indicating that soils at the property need to be assessed as a source of contamination by the federal Superfund program and that no such assessment has been performed by EPA in the past. Furthermore, that EPA is not aware of any information indicating that the property served as a location for a hazardous waste treatment, storage or disposal facility subject to the requirements of RCRA.

In summary, based on the information at hand, EPA does not anticipate initiating any response actions at the [redacted] property referenced above and as such, future enviromental questions should be addressed to Ohio EPA. I encourage you to contact the Ohio EPA, Southwest District Office to determine if they have information regarding the property and requirements for its sale and reuse.

If you would like more comprehensive information on current or historical CERCLIS data or to request an additional search, please contact the National Technical Information Service ("NTIS"), a publishing clearinghouse for government information. The address is: U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161 (telephone: (703) 487-4650; fax: (703) 321-8547). CERCLIS information is also available on the Internet at http:\\www.epa.gov\superfund\index.html#Products. Should you have any other questions about Superfund or the property, please feel free to contact me at (312) 886-1960.

Sincerely,

Joseph Dufficy
Brownfield and Early Action Section

cc: Amy Yersavich, OEPA
Hedi Bogda-Cleveland (C-14J)
Mike Anastasio (C-14J)
Gerry Phillips (D-8J)