



## OFFICE OF LAND AND EMERGENCY MANAGEMENT

WASHINGTON, D.C. 20460

December 30, 2024

### MEMORANDUM

**SUBJECT:** 2024 Guidance to Support the Preparation of National Capacity Assurance Statements

**FROM:** Larry Douchand, Director  
Office of Superfund Remediation and Technology Innovation

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Carolyn Hoskinson, Director  
Office of Resource Conservation and Recovery

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**TO:** Superfund and Emergency Management Division Directors, Regions 1 – 10  
Land, Chemicals and Redevelopment Division Directors, Regions 1 – 10

### **PURPOSE:**

This memorandum provides support for states to assure the U.S. Environmental Protection Agency that adequate capacity exists to treat or dispose of all hazardous waste that is reasonably expected to be generated within the state during the 20-year period following the date when they enter into a Superfund State Contract or remedial response Cooperative Agreement.<sup>1</sup>

### **BACKGROUND:**

Section 104(c)(9) of CERCLA has multiple requirements, which are provided in Attachment 1 to this memorandum.

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<sup>1</sup> Required under Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) Section 104(c)(9), including the requirement for compliance with the Subtitle C requirements of Resource Conservation and Recovery Act (RCRA).

Section 104(c)(9) prohibits the EPA from providing remedial action until a state enters an SSC or CA to assure that adequate capacity exists to manage hazardous wastes generated in the state for 20 years following the date of the SSC or CA. In order to support this activity, the EPA has implemented a national planning process to support states in fulfilling this statutory requirement. In 2019, the agency finalized a National Capacity Assessment that indicated that adequate capacity existed nationwide through the year 2044. The applicability of that 2019 statement expires on December 31, 2024, thus triggering the need for a new Statement of National Capacity. This memorandum supersedes the 2019 Statement of National Capacity.

This memorandum references an updated Statement of National Capacity and provides model language for the hazardous waste management capacity assurance for use by states in the preparation of new or amended SSCs or CAs.<sup>2</sup>

### **RESULTS OF THE NATIONAL CAPACITY ASSESSMENT:**

To support this national capacity Statement update, the EPA reassessed the future availability of national capacity as documented in the 2024 National Capacity Assessment Report. Once posted, the 2024 National Capacity Assessment Report can be found here:

<https://www.epa.gov/hwpermitting/assessment-national-capacity-hazardous-waste-management>

As required by CERCLA 104(c)(9)(D), the EPA has found that there are sufficient permitted facilities in compliance with RCRA Subtitle C to support management of hazardous waste over the near term.<sup>3</sup> Based on this review, the EPA concludes that there is expected to be adequate national capacity for the treatment and disposal of hazardous waste through December 31, 2049.

While the agency's analysis has shown that there is adequate capacity through 2049, assuring adequate capacity requires active planning on the part of all parties including states, Tribal governments, industry and commercial management facilities. This assurance necessitates that all states periodically examine their capacity situations, identify areas of concern and develop plans that consider future needs. These planning exercises will add to state and tribal knowledge of their hazardous waste management systems, help them implement waste minimization programs, and encourage companies to replace inefficient treatment technologies with safer and more innovative technologies. This knowledge gained from these planning

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<sup>2</sup> This model language to guide states in the preparation of SSCs and CAs is not a regulation and does not create legal obligations. States may deviate from this model language depending on the facts of a particular case. Moreover, the EPA may deviate from this model language should the EPA determine that circumstances warrant different language.

<sup>3</sup> RCRA Subtitle C permits are generally issued by states for a period of only 5 to 10 years, not the 20 years needed for capacity assurance under CERCLA.

exercises can be especially important if studies of hazardous waste management data show capacity issues for specific waste streams that may reasonably be expected to be generated within a state's borders.

Going forward, incineration and landfill categories may have limited capacity as facility operations and demands change over time. Moreover, the COVID pandemic revealed some vulnerabilities in the nation's hazardous waste management system. Specifically, generators had some issues shipping wastes to incineration facilities due to issues such as a trucking shortage, labor shortages, and supply chain disruptions of incinerator equipment replacement parts. Therefore, states are encouraged to engage in efforts to minimize hazardous wastes that will be managed via incineration or landfills by working with generators to reduce the generation of waste or find alternative management options. States are also encouraged to seek ways to develop new incineration and landfill capacity for the future. The shortage in the incineration category seems to be affecting primarily containerized wastes so finding solutions for these wastes should be a priority when feasible. The EPA is aware of onsite and captive units that have closed in recent years and expects this trend to continue as these units age and companies make decisions not to invest in new equipment but shift the waste demands to the commercial hazardous waste management sector. Moreover, economic trends and increases in manufacturing may increase hazardous waste generation and the demand for more management capacity.

#### **2024 CAPACITY ASSURANCE STATEMENT:**

Based on the 2024 National Capacity Assessment Report (December 2024), the agency has developed the following new capacity assurance language that can be used in all new or amended SSCs or Remedial Action CAs signed between the EPA and states, beginning immediately and through December 31, 2029.

*The EPA's 2024 National Capacity Assessment Report shows that there is adequate national capacity for the treatment and disposal of hazardous waste through calendar year 2049. This assessment included 2021 Biennial Report data provided by the state of (name of state).*

*Based upon the assessment and other data, as appropriate, the EPA expects that there will be adequate national hazardous waste treatment and disposal capacity during the 20-year period following signature of this (contract or agreement). (Name of state) hereby assures the availability of hazardous waste treatment or disposal facilities for the next 20 years, following signature of this (contract or agreement), pursuant to CERCLA 104(c)(9), 42 U.S.C. 9604(c)(9).*

*In order to ensure the continued availability of capacity for the treatment and disposal of hazardous waste, the state of (name of state) agrees to work with the EPA to meaningfully participate in the national capacity planning process and any activities needed to either identify shortfalls in capacity or to address any identified shortfalls.*

Previous language based on the 2019 National Statement of Capacity is obsolete and should not be used. States should refer to this 2024 National Statement of Capacity memorandum and the above data sources as a basis for assuring adequate hazardous waste management capacity in their CAs or SSCs.

Available information indicates that RCRA facility compliance status has not constrained capacity to create a shortfall, and we do not have any information to suggest compliance status would constrain capacity for the next 25 years. The EPA does not expect facility noncompliance to be an issue if the EPA, states and facilities continue to work quickly to identify and to correct any significant noncompliance issues. Continued correction of noncompliance is important to maintaining national capacity. To support this Statement of National Capacity, the EPA will continue to review the compliance status of hazardous waste facilities, monitor the operating status of these facilities, and adjust the national capacity planning estimates if needed.

This estimate of capacity may be affected should permitted capacity for the treatment, storage and disposal of waste fail to be permitted. Incineration facilities will age with time and replacement facilities may be needed should the waste streams that these facilities treat continue to be generated. Similarly, permitted landfill capacity may need to be expanded to provide for future waste disposal.

**CONCLUSION:**

We recommend that states use the model language in this memorandum to satisfy the CERCLA 104(c)(9) requirement in SSCs or CAs. EPA regional offices should share this memorandum with their states to facilitate inclusion of the updated waste capacity assurance in new and amended SSCs and remedial action CAs.

If there are questions on the preparation or requirement for a capacity assurance statement in CAs or SSCs, please contact Ellyn Fine in OSRTI's Assessment and Remediation Division at [fine.ellyn@epa.gov](mailto:fine.ellyn@epa.gov).

If at any time a state or a region has reason to believe that there is a shortage of any specific type of capacity that would justify a closer review, please contact Sonya Sasseville, Director of the Program Implementation and Information Division, ORCR at [sasseville.sonya@epa.gov](mailto:sasseville.sonya@epa.gov). For information on ORCR's efforts to characterize National Capacity for the management of hazardous waste, please contact Laura Lopez of the Information Collection and Analysis Branch of the Office of Resource Conservation and Recovery at [lopez.laura@epa.gov](mailto:lopez.laura@epa.gov).

Attachment

1. CERCLA Statutory Requirements

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Subpart O Network  
Dania Rodriguez, Association of State and Territorial Solid Waste Management Officials

*CERCLA Sec. 104(c)(9)*

- ▶ *(9) Siting. Effective 3 years after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President providing assurances deemed adequate by the President that the State will assure the availability of hazardous waste treatment or disposal facilities which -*

*CERCLA Sec. 104(c)(9)(A)*

- ▶ *(A) have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the 20-year period following the date of such contract or cooperative agreement and to be disposed of, treated, or destroyed,*

*CERCLA Sec. 104(c)(9)(B)*

- ▶ *(B) are within the State or outside the State in accordance with an interstate agreement or regional agreement or authority,*

*CERCLA Sec. 104(c)(9)(C)*

- ▶ *(C) are acceptable to the President, and*

*CERCLA Sec. 104(c)(9)(D)*

- ▶ *(D) are in compliance with the requirements of subtitle C of the Solid Waste Disposal Act*