

memorandum

DATE: December 23, 1997

REPLY TO
ATTN OF: Office of NEPA Policy and Assistance:Osborne:202-586-4596

SUBJECT: Guidance on National Environmental Policy Act (NEPA) Review for Corrective Actions under the Resource Conservation and Recovery Act (RCRA)

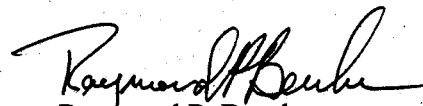
TO: NEPA Compliance Officers and Assistant Managers for Environmental Management

I am pleased to provide the attached guidance on NEPA review for corrective actions under RCRA. This guidance results from the work of a Task Team formed by Environmental Management's NEPA Compliance Officer to study streamlining the NEPA process for RCRA corrective actions, in response to a recommendation in the National Academy of Sciences Report on "Improving the Environment: An Evaluation of DOE's Environmental Management Program" (1995).

My staff developed this guidance in partnership with Environmental Management and General Counsel staff and in coordination with Task Team members from Operations Offices' waste management and environmental restoration, environmental compliance, and NEPA staffs. In addition, my staff received helpful comments on the draft version of this guidance in discussions at the June 1997 NEPA Community Meeting and in subsequent written suggestions.

Our approach to NEPA review for RCRA corrective actions is project-specific. This approach allows the Department to consider the circumstances associated with specific RCRA corrective actions and streamline the NEPA review process for RCRA corrective actions accordingly, consistent with legal requirements. We will continue to be alert to any opportunities for further streamlining.

Please direct any questions to Carolyn Osborne in the Office of NEPA Policy and Assistance on 202-586-4596 (fax 202-586-7031; e-mail: carolyn.osborne@eh.doe.gov).


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Deputy Assistant Secretary
for Environment

Attachment

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Guidance on Compliance with the National Environmental Policy Act for Corrective Actions Conducted under the Resource Conservation and Recovery Act

The purpose of this guidance is to assist Department of Energy (DOE) managers in determining the appropriate environmental review process for corrective actions undertaken pursuant to the Resource Conservation and Recovery Act (RCRA). This guidance relies in part on, and therefore briefly reviews, the Department's policy on the appropriate environmental review process for response actions undertaken pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The guidance addresses circumstances in which (1) a consolidated CERCLA/RCRA process incorporating National Environmental Policy Act (NEPA) values may be sufficient, or (2) a NEPA review process is needed for RCRA corrective actions.

1.0 BACKGROUND AND CURRENT POLICY

Section II.E of the Secretarial Policy Statement on NEPA, dated June 1994, states that DOE will rely on the CERCLA process for environmental review of actions to be taken under CERCLA, and in so doing, will take steps to ensure opportunities for early public involvement and incorporate, to the extent practicable, NEPA values, such as analysis of cumulative, off-site, ecological, and socioeconomic impacts.

This DOE NEPA policy regarding environmental review of CERCLA actions was coordinated with the Department of Justice, the Council on Environmental Quality, and the Environmental Protection Agency (EPA). Because of inherent differences between the CERCLA and RCRA statutes, the policy does not apply to DOE's RCRA corrective actions.

The Secretarial Policy Statement, however, did address NEPA review¹ for RCRA corrective actions as follows:

For proposed corrective actions under RCRA at sites that are listed on the National Priorities List (NPL) under CERCLA, project managers should consult with the Environmental Management NEPA Compliance Officer, who will involve the Offices of Environment, Safety and Health and General Counsel as necessary to make determinations about how to proceed under NEPA.

¹The NEPA review process for a proposed action is normally conducted at one of three levels -- preparation of an environmental impact statement, preparation of an environmental assessment (to determine if an environmental impact statement is necessary), or application of a categorical exclusion (when preparation of neither an environmental impact statement nor an environmental assessment is necessary).

In addition, the Policy Statement stated that NEPA reviews will be undertaken for siting, construction, and operation of treatment, storage, and disposal facilities that, in addition to supporting CERCLA actions, also serve waste management or other purposes.

2.0 DISCUSSION

2.1 When DOE May Be Able to Rely on a Consolidated CERCLA and RCRA Process Incorporating NEPA Values

If the cleanup or compliance agreement for a DOE NPL site integrates the requirements of CERCLA and RCRA to such an extent that the requirements are largely inseparable in a practical sense, then, pursuant to the Secretarial Policy Statement on NEPA, DOE may be able to rely on the CERCLA process for environmental review of actions (including RCRA corrective actions) to be taken under the agreement. NEPA values should be incorporated to the extent practicable. Project managers should consult with their Operations Office or Area Office NEPA Compliance Officers and field counsel (who in turn should consult with the Office of General Counsel) on a case-by-case basis regarding how to proceed.

2.2 When DOE Needs to Use the NEPA Review Process for RCRA Corrective Actions²

A NEPA review should be conducted for any proposed DOE RCRA corrective action that: (a) would occur at a site not listed on the NPL, (b) is not included in a cleanup agreement that integrates RCRA and CERCLA at an NPL site, or (c) involves siting, construction, and operation of a treatment, storage, or disposal facility that, in addition to supporting CERCLA actions, also serves waste management or other purposes.

o Application of NEPA Categorical Exclusions for RCRA Corrective Actions

Most of the Department's RCRA corrective actions to date have fit within categorically excluded classes of actions listed in the Department's NEPA regulations (Appendix B to Subpart D, 10 CFR Part 1021). Categorical exclusion B6.1 (for small scale, short-term cleanup actions under RCRA, the Atomic Energy Act, or other authorities) is the categorical exclusion that has been used most often for RCRA corrective actions. It applies to cleanup actions that would cost less than approximately \$5 million and be of less than five years in duration. Many future RCRA corrective actions likely will fall within the scope of this or another categorical exclusion.

²The statement in 40 CFR 124.9(b)(6) that specific permits are not subject to the environmental impact statement provisions of NEPA refers to the permitting authority of the Environmental Protection Agency and applies to that Agency's granting of permits. The exemption from NEPA under 40 CFR 124.9(b)(6) does not apply to DOE's proposed corrective actions.

o ***NEPA Documents for RCRA Corrective Actions Not Categorically Excluded (Environmental Assessment or Environmental Impact Statement Level of Review)***

If a RCRA corrective action is not categorically excluded or is not already otherwise adequately considered in a NEPA document (project-specific review in a site-wide NEPA document, for example), project managers should consider the specific circumstances associated with the proposed corrective action when choosing the NEPA review approach and could:

- prepare a NEPA document and provide public involvement opportunities, separately from the RCRA documentation (e.g., corrective measures study) and public involvement process, or
- integrate requirements of both the RCRA and NEPA environmental review processes into one document and one process.

Project managers, in consultation with their Field Office NEPA Compliance Officers and field counsel, may choose between these two options based on regulator preferences and based on the nature of and schedule for document preparation and public participation under a State or EPA permitting or administrative order process. Therefore, project managers need to determine case-by-case how best to coordinate schedule and documentation requirements for the RCRA corrective action process and the NEPA review process. If separate NEPA and RCRA environmental reviews are conducted, project managers, to the extent possible, should use the same information and analysis in the reviews and conduct parallel reviews, but ensure that the NEPA review process is completed before RCRA decisionmaking.

In the event that State agencies need to comply with a State environmental policy act, project managers should cooperate with the State agencies to reduce duplication between NEPA and comparable State requirements (pursuant to the Council on Environmental Quality regulation at 40 CFR 1506.2(c)).

3.0 FUTURE ACTIONS

EPA's advance notice of proposed rulemaking for RCRA Subpart S, governing corrective actions for releases from solid waste management units at hazardous waste management facilities (61 FR 19432, May 1, 1996), stated that as a general philosophy, EPA believes that the RCRA and CERCLA remedial programs should operate consistently and result in similar environmental solutions when dealing with similar circumstances. The Office of Environment, Safety and Health, in consultation with the Offices of Environmental Management and General Counsel, will continue to monitor this rulemaking and, consistent with applicable legal requirements, to explore opportunities for further streamlining of the NEPA process in the context of RCRA corrective actions.