

CORRESPONDENCE/MEMORANDUM

State of Wisconsin
Department of Natural Resources

DATE: May 20, 1997

TO: Waste Management Team Members
Remediation and Redevelopment Management Team Members

FROM: Paul P. Didier - WA/3 *Paul*
Mark F. Giesfeldt - RR/3 *MFG*

SUBJECT: Guidance and Direction on the Handling of Hazardous Waste Remediation Cases.

As you know, hazardous waste remediation cases are being transferred to the Bureau for Remediation and Redevelopment as part of the Department's reorganization. As a result, it is important that everyone have clear guidance on how hazardous waste cases are to be transferred and what standards and procedures should be used in the handling of these cases. This memo provides direction that hazardous waste remediation cases follow the requirements of chs. NR 700 to 726 Wis. Adm. Code, with certain exceptions that are identified in greater detail later. It is important this guidance be followed to ensure consistency within the Remediation and Redevelopment program and to ensure we maintain Hazardous Waste authorization under RCRA.

BACKGROUND

Hazardous Waste remediation includes two types of cases: hazardous waste closure cases where there has been an unlicensed release of hazardous waste and RCRA corrective action cases. State authority for hazardous waste closure of unlicensed facilities is found in s. 291.29, Stats, and requires the investigation and remediation of the resulting hazardous waste contamination through submittal and implementation of a closure plan. These releases are typically discovered by a hazardous waste inspector conducting a generator inspection or when responding to a complaint. Guidance for handling hazardous waste closure remediation cases was originally contained in a March 1, 1994 memo. This memo is intended to supplement that document.

Current hazardous waste RCRA corrective action cases cover facility wide contamination at hazardous waste treatment, storage or disposal (TSD) facilities that are licensed, were formerly licensed, or should have sought a license. The authority for requiring compliance with the RCRA corrective action provisions is contained in s. 291.37 Stats., and can be used to address releases of either hazardous waste or hazardous constituents. WDNR was authorized by EPA in April 1992 to implement RCRA corrective action as part of the hazardous waste licensing program.

Our existing Memorandum of Agreement with EPA requires that we follow specific Federal corrective action guidance unless an alternative approach is approved by EPA. WDNR developed state specific guidance which significantly streamlines the federal process. Most of this guidance was prepared before the NR 700 series was finalized, however in implementing the program we have required compliance with many of the provisions in NR 700.

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A series of discussions on the potential for developing a consolidated cleanup program took place with EPA during the fall of 1995 and on December 15, 1995 EPA provided their initial feedback (see Attachment A). The letter indicates they generally support our approach provided that certain key hazardous waste requirements remain in place. This includes: 1) preserving our ability to enforce closure and corrective action provisions if a voluntary approach does not work, 2) TSD's subject to permitting must be placed on enforceable schedules as part of a license or plan approval condition to ensure corrective action is completed, and 3) proof of financial responsibility is required unless the owner/operator voluntarily completes the corrective action activities in advance of the specified schedule in which case this requirement would be waived. Additional discussions with EPA on the implementation of these provisions are on-going.

EXISTING APPROACH

Hazardous Waste Closure Cases - State hazardous waste statutes and rules require facilities to investigate and remediate contamination resulting from releases of hazardous waste. Under the approach set out in the March 1, 1994 memo, the level of oversight is dependent upon the seriousness of the contamination problem. For example, low priority cases typically do not receive direct oversight of their activities and instead would be directed to investigate and remediate the site following the NR 700 series. Investigation and remediation reports for high priority cases are typically reviewed and approved by the Department. However, project management for most cleanups has been redefined based upon resources, program redirection and the number of sites requiring cleanup. The impact of this decision is discussed later in this memo.

If reports were reviewed and approved, then the plan submittal and approval provisions of the hazardous waste program (including the notification of appeals rights and hazardous waste plan review fees) were followed. EPA Region 5 has indicated that this approach to remediating hazardous waste releases is acceptable (see Attachment B). There are approximately 100 such cases statewide, with several advancing to formal enforcement. A majority of the projects are located in SER.

RCRA Corrective Action Cases - There are currently 26 cases in the RCRA corrective action pipeline statewide. Of this total, 12 are EPA lead projects with the enforceable mechanism being either a federal order or permit. The remaining 14 are either under a state order or license. Each year during negotiations of the Federal grant, WDNR identifies which facilities we believe are appropriate to transfer from EPA authority to state authority. Efforts are currently underway to transfer at least one facility to state lead this fiscal year. Most of these 26 sites have significant soil and groundwater contamination problems and are ranked as high priority using EPA's ranking system.

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Statewide there are about 130 additional facilities that are also subject to RCRA corrective action authorities, but most are not being actively worked on by the waste program because they are no longer seeking a hazardous waste operating license or are not identified as high priority. Where action has been taken we have typically used our hazardous waste closure authority or spill law authority to compel the investigation and cleanup.

Staff from the former Hazardous Waste Management Section have been responsible for project management on the state lead cases and, in general, these facilities have made good progress in completing the necessary remedial actions. In addition, we provide comments to EPA on all federal lead projects. While EPA tends to incorporate a majority of the comments we provide, we do not have direct control over these projects and in particular the schedules for initiating and completing the work.

NEW APPROACH

WDNR is continuing to work with EPA on the development of a consolidated remediation program, including those cleanup actions being compelled under hazardous waste authority. Based on the direction they have provided thus far, the approach detailed below should be used in handling hazardous waste remediation cases from this point forward. -This will allow for hazardous waste remedial activities to be blended into the NR 700 process, while providing the continuity necessary for on-going enforcement cases and for ensuring that our federal authorization is not jeopardized. Depending on the outcome of our on-going discussions with EPA it may be necessary to further refine this approach in the future.

Hazardous waste closure cases¹: Existing remediation cases should be notified of their opportunity to complete a voluntary cleanup in accordance with the NR 700 rules series, unless an administrative order has been issued, a referral made or a court judgement signed which requires the investigation and remediation of contamination under the hazardous waste authorities. The level of oversight necessary will be determined on a site specific basis however, the majority of cases will not be project managed in accordance with the approach developed by the Bureau for Remediation and Redevelopment.

¹ As a means of clarification, this approach would apply to persons who cause contamination resulting from improper management of hazardous waste. State law and administrative code require that when a TSD obtains a hazardous waste operating license, it also prepare a closure plan for that unit and provide a financial proof mechanism to the department to assure proper closure.

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This same approach should be used for newly discovered contamination from the release of hazardous waste. Department personnel identifying the release, most likely the hazardous waste Inspector, should notify the facility of the requirements in NR 700 for investigating and remediating contamination and provide the opportunity to voluntarily address the problems. They should also be informed that if they fail to adequately address the contamination under the NR 700 rules the hazardous waste laws will be used to compel clean-up, and that successful voluntary remediation does not mean that they won't be referred to DOJ for civil or criminal hazardous waste penalties for past violations, if appropriate.

Attachment C is the template to be followed when informing a facility of its voluntary opportunity and responsibility to remediate. Section 291.29, Stats, requires that anyone operating a hazardous waste facility such as a landfill, surface impoundment, waste pile, tank or container storage facility without a license, close the facility. If a facility fails to adequately address the contamination, then hazardous waste closure authorities should be used to compel the investigation and cleanup. In any event, regardless of the actions taken by the facility to address the cleanup, the initial letter to the facility should reserve our ability to take enforcement action for any hazardous waste violations at the facility, especially any violations that may have led to the contamination.

RCRA Corrective Action Cases: Until an alternative approach can be developed with EPA, facilities that are currently in the RCRA corrective action pipeline under state lead actions should be required to follow the approved state corrective action process. This will provide assurance that these facilities have completed a RCRA equivalent cleanup which meets the requirements of our program authorization from EPA.

However, the NR 700 series should continue to be utilized to the greatest extent possible. For example, we should continue to use NR 720 for determining appropriate soil cleanup standards and inform facilities that the new "closure flexibility" rule is applicable to RCRA corrective action sites.

Federal lead facilities where only limited progress has been made should be evaluated as time and resources allow to determine if transferring the lead to the state could speed up the process. A list of these facilities that identifies the lead and mechanism is included in Attachment E.

² Informing a person of the opportunity to voluntarily investigate and remediate contamination under NR 700 does not constitute a proceeding against them under spill law (s. 292.11(11), Stats.). By not proceeding with enforcement action against a facility under spill law, we preserve our right to seek hazardous waste civil and criminal penalties for past and on-going violations. See July 15, 1996 memo from Jim Kurtz to Paul Didier - (Attachment D.)

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The remainder of these facilities (approximately 130 closed facilities or generators that were formerly TSDs) should follow the NR 700 series investigation and remediation process. As mentioned before, these facilities are typically not high priority and most are not believed to have significant contamination based on existing information.

GENERAL HAZARDOUS WASTE REQUIREMENTS APPLICABLE TO ALL CLEANUPS

For remedial actions, it is necessary to determine whether the contaminated material is a hazardous waste. Two guidance memos dated April 28, 1989 and October 31, 1989 (Attachment F) provide direction on what information should be evaluated in making this decision. If the contaminant is a listed hazardous waste that was either accidentally or intentionally discharged, then any excavated soil or extracted groundwater that is contaminated must be managed as a hazardous waste due to the "contained in" provisions of s. NR 605.04(1)(b)4. Under current rules and guidance, this principle continues to apply as long as the hazardous waste constituents are present above soil standards established under ch. NR 720, Wis. Adm. Code or groundwater standards contained in ch. NR 140, Wis. Adm. Code.

Soil or groundwater contaminated by a characteristic hazardous waste or other contaminants would only be considered hazardous waste if they contain constituents above the toxicity characteristic levels set forth in ch. NR 605.

In addition, when it is necessary for hazardous waste soil or groundwater to be treated, the Department may grant a written variance under s. NR 680.50, Wis. Adm. Code. This will allow for the treatment of this contaminated material without the need for a hazardous waste treatment license which can be time consuming process.

SUMMARY

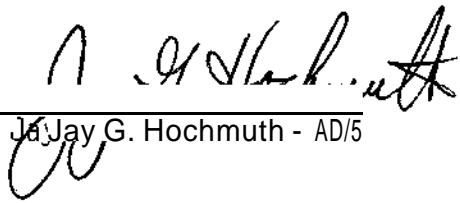
Implementation of this new approach serves 3 major purposes. First, hazardous waste remediation cases will utilize the same approach and standards that apply to all other remedial actions under NR 700. Second, we will maintain our hazardous waste program authorization and third, it will allow for the continued use of our hazardous waste enforcement authorities for those cases where it is necessary. If you have any questions regarding this memo please contact Mark Gordon at 608-266-7278.

- Attachs:*
- A. December 15, 1995 letter from EPA on implementation of WDNR's consolidated cleanup program.
 - B. August 12, 1994 letter from EPA on WDNR's Closure Guidance.
 - C. Template for release notification letter.
 - D. July 15, 1996 memo from Jim Kurtz to Paul Didier
 - E. List of RCRA corrective action facilities.
 - F. WDNR Guidance Memos.

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c: Jay Hochmuth - AD/5
David Meier - AD/5
Air and Waste Regional Leaders
Waste Management Staff
Remediation and Redevelopment Staff
Pete Flaherty - LS/5
Linda Meyer / Deb Johnson / Judy Ohm / Joe Renville - LS/5
Brenda Hagman - EE/5

APPROVED: _____


Jay G. Hochmuth - AD/5


Date