



Environmental



Guidance

**Guide to
Selecting Compliant
Off-Site Hazardous Waste
Treatment, Storage and Disposal Facilities**

September 1994
(Revised May 2001)

U.S. Department of Energy
Office of Environmental Policy and Guidance
RCRA/CERCLA Division, EH-413
Washington, D.C.



Office of Environmental Policy and Guidance

RCRA/CERCLA Division, EH-413

ERRATA SHEET - *Guide to Selecting Compliant Off-site Hazardous Waste Treatment, Storage, and Disposal Facilities* (DOE/EH-0427)

Changes from September 1994 to May 2001

INTRODUCTION

In September 1994, DOE's Office of Environmental Policy and Guidance (formerly the Office of Environmental Guidance, EH-23), RCRA/CERCLA Division (EH-413) developed the *Guide* as to explain and clarify DOE policy regarding the selection of off-site hazardous waste management facilities. It summarizes applicable EPA regulations implementing RCRA and CERCLA, DOE policies published previously in DOE guidance documents and memoranda, and synthesizes these materials into an easily referenced regulatory road map to the process for selecting off-site hazardous waste TSD facilities. Although the overall discussion remains current, some notable changes have occurred; primarily involving the issuance of updated references and supplemental guidance, much of which are now Internet-accessible.

The following discussion highlights notable changes that have occurred since 1994 and, where appropriate, furnishes hyperlinks to the cited reference(s) and guidance. It is presented in two sections—General Comments and Specific Comments. Questions regarding the *Guide* or this ERRATA Sheet should be directed to Jerry Coalgate, Office of Environmental Policy and Guidance, RCRA/CERCLA Division **at 202-586-6075, via fax at 202-586-3915, or electronically to Jerry.Coalgate@eh.doe.gov**.

GENERAL COMMENTS

1. Since issuance of the *Guide*, the RCRA/CERCLA Division has posted supplemental guidance pertaining to EPA's Off-site Rule. The first is an *Environmental Guidance Information Brief* titled *Determinations of TSD Facility Acceptability Under the CERCLA Off-Site Rule* (DOE/EH-413/9707, June 1997) (accessible at <http://tis.eh.doe.gov/oepa/guidance/cercla/off-site2.pdf>). This guidance addresses implications of the Off-Site Rule on DOE-owned hazardous waste treatment, storage or disposal facilities that accept CERCLA remediation wastes from off-site locations. The second is an EH-413 memorandum dated January 8, 1998, which furnishes DOE elements with an updated listing of EPA Regional Off-site Contacts (ROCs) at <http://homer.ornl.gov/oepa/guidance/cercla/roc.pdf>.
2. Additional DOE guidance exists and should be considered by DOE waste managers that are transporting waste streams possessing a radioactive component. For example, DOE has posted updated guidance for establishing and coordinating authorized limits for off-site shipments of hazardous waste containing residual radioactive material to facilities not licensed to handle radioactive materials. These include *Establishment and Coordination of Authorized Limits for Release of Hazardous Waste Containing Residual Radioactive Material* (EM-37 memorandum dated January 7, 1997) and *Guidance on Establishment and Coordination of Authorized Limits for Release*

of Hazardous Waste Containing Residual Radioactive Material (January 1997), which are found as appendices to the proposed DOE standard entitled *GUIDE TO GOOD PRACTICE FOR ESTABLISHING AUTHORIZED LIMITS FOR THE RELEASE OF WASTE AND PROPERTY CONTAMINATED WITH RESIDUAL RADIOACTIVITY* at <http://tis.eh.doe.gov/techstds/tsdrafts/envr0012.pdf>.

3. The *Guide* cites superseded versions of EH-413 guidance, including the following:

- *RCRA Information Brief* titled *Corrective Action Management Units and Temporary Units* (DOE/EH-413-043r), March 1994, was reissued in January 2000 at <http://homer.ornl.gov/oepa/guidance/rcra/camu.pdf>
- *Environmental Guidance Regulatory Bulletin* titled *CAMU/TU Final Rule Issued*, May 1993, was reissued in January 2000 at http://homer.ornl.gov/oepa/guidance/rcra/camu_tu.pdf
- *Information Brief* titled *Manifest Requirements* (EH-231-038/0394), March 1994, was reissued in August 1997 at http://homer.ornl.gov/oepa/guidance/rcra/manif_rv.pdf
- *Information Brief* titled *Transportation of RCRA Hazardous Waste* (EH-231-013/0394); April 1994 was reissued in June 1999 at http://homer.ornl.gov/oepa/guidance/rcra/trans_rv.pdf.

Additional guidance is accessible at <http://tis.eh.doe.gov/oepa/> using the "Policy and Guidance" link or the "Search" capabilities. Also, additional DOE guidance pertaining to audits/assessments has been issued [e.g., DOE G 414.1-1A, *Management Assessment and Independent Assessment Guide* (May 31, 2001)]; however, such guidance does not address the analysis of off-site facilities and, therefore, is not cited in Section 6 ("References").

4. The *Guide* cites old series DOE directives (4-digit directives), however, most of the old series have been cancelled, or are undergoing cancellation. Table 1 outlines the changes

Table 1. Cancellation Status of DOE Orders, Guidance, and	
DOE O 1540.1A, Materials Transportation and Traffic Management (July 8, 1992)	Cancelled by DOE O 460.2 (Sept. 27, 1995)
DOE 5400.1	To be cancelled by DOE O 450.1
DOE 5400.4	Cancelled by DOE N 251.6
DOE 5820.2A	Cancelled by DOE O 435.1

DOE directives (old and new) can be accessed at <http://www.directives.doe.gov/index.htm>. Please note that more substantive comments pertaining to DOE Orders and the content of the *Guide* are described in the Specific Comments section below.

5. Personnel consider accessing the following Internet websites to obtain DOE-specific treatment/disposal and cost data:

- [<http://emi-web.inel.gov/contracts/clear.html>]. Serves as portal to TSCA, RCRA mixed, and low-level waste treatment options and disposal capabilities. Presents contract information outlining facility-specific and complex-wide ("Broad Spectrum Treatment Contracts") treatment, disposal, and treatability study contracts, and furnishes contract fees and unit prices (cubic yard)
- [<http://www.bechteljacobs.com/broadspectrum/bstihome.htm>]. Offers detailed information regarding a complex-wide privatization initiative for treating and disposing of a wide range of legacy and as-generated mixed low-level wastes. Website furnishes treatment and disposal contract information, including treatment categories and capabilities, vendor-specific waste acceptance criteria, and a downloadable, executable file

- Cost Estimation Calculator - that allows users to calculate costs based on waste categories, waste types ("organics" or "organics and metals"), and quantities, and distance to treatment facility.

The remaining discussion focuses on specific pages of the Guide and attempts to further clarify or expand upon the material contained therein.

SPECIFIC COMMENTS

-- Page 5 --

Page 5 of the Guide describes a DOE O 5820.2A requirement that radioactive waste be disposed of at a DOE facility except in limited cases. A new directive [DOE Order 435.1, Radioactive Waste Management] and its manual, however, cancelled DOE 5820.2A. The new directive and its manual do not contain a prohibition similar to that in DOE 5820.2A. Rather, the associated manual (DOE M 435.1-1) describes requirements and establishes specific responsibilities for implementing DOE O 435.1 when managing of radioactive waste, including the radioactive component of mixed waste, and should be observed (see Chap. 1, para. F.4 via the "Series 400 Work Process" link at: <http://www.explorer.doc.gov:1776/htmls/regs/doc/newserieslist.html>).

Also, DOE M 435.1-1 establishes additional requirements that must be observed prior to or during off-site transfers. For example, Chapter 2, Section N (Waste Transfer) requires high-level waste can be transferred to a storage, treatment, or disposal facility only after personnel responsible for the facility receiving the waste authorize the transfer. It should be noted that cancellation of DOE Order 5820.2A does not, by itself, modify or otherwise affect any contractual obligation to comply with the Order. Thus, if any provisions of the canceled Order have been incorporated by reference in a contract, they remain in effect until the contract is modified.

-- Page 9 --

The Guide lists and describes several waste categories. Noticeably missing, however, is EPA's definition of "remediation waste," which was recodified in the HWIR media final rule (63 FR 65937; November 30, 1998). "Remediation waste means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic and are managed for implementing cleanup" (40 CFR 260.10). This may be noteworthy since defining a waste stream as remediation waste has direct bearing on whether a facility owner/operator is eligible for obtaining a Remedial Action Plan (RAP) for remediation waste management activities at an off-site location (40 CFR 270.230). Also, there are a number of PCB-related waste categories (e.g., "PCB remediation waste"; "PCB bulk product waste") that were issued on June 29, 1998 (63 FR 35384) and may influence the selection of off-site treatment and disposal facilities.

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In describing RCRA manifesting requirements, the Guide indicates that generators must prepare a manifest if the hazardous waste is transported to an off-site TSD facility. Generally, this is correct. However, EPA amended its manifesting regulations in 1997 (February 12, 1997, 62 FR 6622). Provided the amendment was adopted by an authorized state, shipments of hazardous waste on public roads are eligible for an exemption from the manifesting if the public road is within or along the border of contiguous property controlled by the same person, even if the property is divided by a public or private right-of-way (i.e., off-site) [40 CFR 262.20(f)].

-- Page 22, Page 32, and Appendix B --

In describing the type of assistance that is available to Federal agencies, the Guide references an April 26, 1991 policy memorandum describing EPA's "Federal Hazardous Waste Generator Notification Policy." Although it is unclear whether EPA continues to rely on the two mechanisms--a quarterly list and formal notices of criminal investigations--for transferring enforcement information from EPA to Federal generators, that type of enforcement-related information appears accessible using the EPA Office of Enforcement and Compliance Assurance "Data Systems and Models" at <http://www.es.epa.gov/oeca/datasys/dsm1.html>. At least one resident database--the *Integrated Data for Enforcement Analysis (IDEA)* database at <http://es.epa.gov/oeca/idea/>--appears to be used by EPA to prepare reports highlighting inspections and enforcement actions at TSD facilities.

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The Guide indicates that information from EPA's Resource Conservation and Recovery Information System (RCRIS) can be purchased from NTIS. This information, however, is Internet-accessible at http://www.epa.gov/enviro/html/rcris/rcris_overview.html.

-- APPENDIX A --

The RCRA/CERCLA Division (EH-413) issued a memorandum dated January 8, 1998, which furnishes DOE elements with an updated listing of EPA Regional Off-site Contacts (ROCs) and EPA Headquarters contact. This memorandum is available at <http://tis.eh.doe.gov/oepa/guidance/cercla/rocs-mem.pdf>

-- APPENDIX B --

An electronic copy of the "Federal Hazardous Waste Generator Notification Policy" (dated April 26, 1991) is posted on the Internet as part of the *RCRA Enforcement Policy Compendium* at <http://es.epa.gov/oeca/ore/rcra/cmp/040091.pdf>. Although the EPA staff who worked on this policy have departed, as of April 2001, Chris McCulloch (Office of RCRA Enforcement, EPA) at 202-564-4008 is handling anything related to Safety Kleen, whereas, Nancy Parkinson or Jon Jacobs (202-564-4037) are dealing with criminal actions.

-- APPENDIX C --

See preceding General Comment 3.

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PREFACE

The Office of Environmental Guidance, RCRA/CERCLA Division (EH-231) is grateful for the support of several external organizations and internal Department of Energy (DOE) elements which provided valuable comments and assistance during preparation of this document. The external organizations are:

- U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, Office of Waste Programs Enforcement, RCRA Enforcement Division
- U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, Office of Emergency and Remedial Response, Remedial Operations and Guidance Branch.

The DOE elements are:

- Office of Environmental Management, Office of Waste Management, Office of Program Integration
- Office of Assistant Manager for Environment, Safety and Quality, Oak Ridge Operations Office, Environmental Protection Division
- Office of Environmental Management, Office of Western Waste Management Operations
- Office of Environment, Safety and Health, Office of Environmental Auditing
- Environment, Safety and Health Branch, Los Alamos Area Office.

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LIST OF ACRONYMS

AEA	Atomic Energy Act of 1954
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CFR	Code of Federal Regulations
CWA	Federal Water Pollution Control Act as amended by the Clean Water Act of 1977
CAMU	corrective action management unit
DEAR	Department of Energy Acquisition Regulation
DOE	U.S. Department of Energy
DOT	U.S. Department of Transportation
EH-5	DOE's Environment, Safety and Health Program, Office of Special Projects
EH-231	DOE's Environment, Safety and Health Program, Office of Environmental Guidance, RCRA/CERCLA Division
EH-24	DOE's Environment, Safety and Health Program, Office of Environmental Audit
EM-30	DOE's Environmental Restoration and Waste Management Program, Office of Waste Management

LIST OF ACRONYMS (cont'd)

EM-332	DOE's Environmental Restoration and Waste Management Program, Office of Waste Operations Technical Analysis Division [formerly EM-351]
EM-351	DOE's Environmental Restoration and Waste Management Program, Office of Waste Operations Technical Support [replaced by EM-332]
E.O.	Executive Order
EPA	U.S. Environmental Protection Agency
ERPMS	DOE Environmental Restoration Program Managers
FAR	Federal Acquisition Regulation
FGNS	Federal Generator Notification System
FOIA	Freedom of Information Act
FPIMS	Facility Profile Information Management System
FR	Federal Register
HFOs	DOE Heads of Field Organizations
HMTA	Hazardous Material Transportation Act
HSWA	Hazardous and Solid Waste Amendments of 1984
M&O	management and operating

LIST OF ACRONYMS (cont'd)

NCP	National Oil and Hazardous Substances Pollution Contingency Plan Under the Comprehensive Environmental Response, Compensation and Liability Act
NPL	National Priorities List established by the NCP
NRC	U.S. Nuclear Regulatory Commission
NTIS	U.S. Department of Commerce, National Technical Information Service
OSWER	U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response
POC	Performance Objectives and Criteria
RCRA	Resource Conservation and Recovery Act
RCRIS	EPA's Resource Conservation and Recovery Information System
RMW	radioactive mixed waste
SARA	Superfund Amendments and Reauthorization Act of 1986
TSCA	Toxic Substances Control Act
TSD	treatment, storage or disposal
USC	United States Code

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1. INTRODUCTION

1.1. PURPOSE AND SCOPE

This *Guide to Selecting Compliant Off-Site Hazardous Waste Treatment, Storage and Disposal Facilities* (i.e., the Guide) packages statutory, regulatory and policy requirements applicable to off-site transfers of hazardous wastes into a simple, portable document, similar in format to EPA's "pocket guide" format. The Guide summarizes applicable U.S. Environmental Protection Agency (EPA) regulations implementing the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Restoration, Compensation and Liability Act (CERCLA), as well as Department of Energy (DOE) policies and relevant EPA and DOE guidance. It then synthesizes these regulations and policies into a regulatory "road map" that DOE Heads of Field Organizations (HFOs),¹ Environmental Restoration Program Managers (ERPMS), and others, as appropriate, can use to effectively focus on compliance aspects of selecting off-site hazardous waste management facilities for

¹ Pursuant to Order DOE 5400.1, this Guide refers to the DOE management personnel who head "the first line DOE field element that carries the organizational responsibility for (1) managing and executing assigned programs, (2) directing contractors who conduct the programs, and (3) assuring that environment, safety, and health are integral parts of each program" as "Heads of Field Organizations (HFOs)." On April 1, 1993, a memorandum from Linda G. Sye (Acting Director of Administration and Management) announced the creation by the Secretary of DOE of a new DOE Office of the Associate Deputy Secretary for Field Management. The memorandum redesignated "DOE Field Offices" as "Operations Offices," but did not implicate a new term to replace "HFO."

hazardous environmental restoration and process wastes.² The Guide also provides guidance on selecting compliant hazardous waste transporters.

The DOE policies that underlie this Guide come from several pertinent DOE documents and memoranda, which were either developed in-house by the Office of Environmental Guidance (EH-23), or consist of EH-23 transmittals of EPA-produced guidance supplemented with DOE-specific information. DOE develops such guidance documents and memoranda when the Department believes environmental protection requirements applicable to DOE operations,

² EPA regulations do not define "off-site." Therefore, "off-site" must be interpreted as an extension of "on-site," which is defined. Under CERCLA, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) defines "on-site" as the aerial extent of contamination and all suitable areas in very close proximity to the contamination, and necessary for implementation of the response action [40 CFR 300.400(e)(1)]. Under RCRA, "on-site" includes: (1) the same or geographically contiguous property which may be separated by a right-of-way if access across the right-of-way is at right angles; and (2) non-contiguous properties owned by the same person and connected by a non-public right-of-way which s\he controls [40 CFR 260.10]. Notwithstanding the RCRA definition of "on-site," the U.S. Department of Transportation (DOT) interprets transport of hazardous materials across public access roads to be "transportation in commerce" to which the DOT hazardous materials regulations apply [Letter from DOT Office of the Chief Counsel to DOE Office of Technology Development, Transportation Management Program (April 23, 1991)]. This Guide assumes that DOE sites will block public access to roads within the site if hazardous materials are transported across or along such roads. Hence, for purposes of this Guide, "off-site" hazardous waste transfers from DOE sites include: (1) transfers from any DOE generator located on a DOE site to an independent, commercial treatment, storage or disposal (TSD) facility; (2) transfers from a DOE CERCLA "on-site" area to a RCRA TSD unit at the same DOE site, but located outside the CERCLA "on-site" area; and (3) transfers from any DOE generator located on one DOE site to a RCRA TSD unit located on a different DOE site.

or corresponding internal management responsibilities, warrant supplementation or clarification.

DOE has also developed Orders in accordance with the authorities of CERCLA and other environmental statutes. Such Orders have the same force for DOE facilities or "within DOE" as do promulgated regulations. The requirements in orders are legally enforceable by DOE against contractors that operate DOE installations.³ The DOE Order that directs EH-231's mission by establishing general environmental protection program requirements, authorities, and responsibilities is DOE 5400.1, "General Environmental Protection Program" (Nov. 9, 1988). The order responsible for establishing policies and procedures under the CERCLA program is DOE 5400.4, "Comprehensive Environmental Response, Compensation, and Liability Act Requirements" (Oct. 6, 1989).

Order DOE 5400.4 was developed under the authority granted by Executive Order (E.O.) 12580, "Superfund Implementation," (Jan. 23, 1987). E.O. 12580 delegates to a number of Federal departments and agencies the authority and responsibility to implement certain provisions of CERCLA. Among other things, it delegates to the Secretary of Energy certain responsibilities and functions related to hazardous substance response activities (e.g., remedial and removal investigations and actions, and creation of an information repository and administrative record) when the release is on, or the sole source of the release is from, any facility or vessel under the control of DOE.

³ The Department of Energy Acquisition Regulation (DEAR) (49 CFR parts 901 - 971) was recently amended to require a clause in contracts between DOE and management and operating (M&O) contractors which directs the contractor to comply with a list of Federal laws including CERCLA and RCRA [59 FR 5529, 5531 (Feb. 7, 1994) *codifying* 48 CFR 970.5204-62].

1.2. ASSUMPTIONS AND LIMITATIONS

This Guide will aid ERPMs, HFOs and others, as appropriate, in prudently formulating a detailed implementation program for selecting recipient treatment, storage, or disposal (TSD) facilities when off-site shipments of hazardous wastes are appropriate. However, certain issues need to be resolved prior to initiation of the selection process. This Guide assumes that its users have resolved such issues. Specifically, the following assumptions have been made, resulting in the indicated limitations on the guidance provided:

1. DOE is assumed to have determined that the waste should be managed at a RCRA TSD facility. No information is provided in this Guide on characterizing wastes. Such information is available, however, in the Office of Environmental Guidance, RCRA/CERCLA Division (EH-231) guidance document entitled "Preparation of RCRA Waste Analysis Plans (Interim Guidance)," DOE/EH-0306 (Mar. 1993).
2. DOE is assumed to have selected off-site management of the waste as optimal. No guidance is provided on assessing waste management options.

Additional limitations on the guidance provided in this Guide include:

1. Although DOE may own and operate the off-site TSD facilities eligible to be selected for managing DOE wastes, no guidance is provided in this Guide on obtaining a RCRA permit for such facilities, or on responding to an EPA determination under the Off-site Final Rule of unacceptability for receiving CERCLA wastes (referred to as an "acceptability determination." Guide section 2.2.1.2.3 (p.18) explains the basis for acceptability determinations.

2. This Guide is directed at off-site management of CERCLA and RCRA hazardous wastes, which may include radioactive mixed waste (RMW). However, no guidance is directed to the special radiological concerns which may arise with off-site management of RMW. Order DOE 5820.2A (Sept. 26, 1988) requires that all DOE radioactive wastes and RMW be disposed of at a DOE facility. This prohibition applies to RMW in all circumstances except: (1) when small volumes of RMW qualify on a case-by-case basis, as determined by the appropriate HFO, for off-site disposal pursuant to a conditional exemption granted by the DOE Assistant Secretary for Environmental Restoration and Management; or (2) when off-site disposal has been designated as the preferred alternative for RMW management in a site-specific treatment plan after consultation with EH-1 [Memorandum from DOE Assistant Secretary for Environmental Restoration and Management (Thomas P. Grumbly) to DOE Operations Office Managers regarding "Exemption from Department of Energy Order 5820.2A for Mixed Waste from Environmental Restoration and Waste Management Activities" (Oct. 12, 1993)].

Also, this Guide is not intended to be comprehensive. It summarizes certain materials and provides a guideline for selecting off-site TSD facilities, but it should be supplemented by referring to applicable laws and regulations, as well as applicable EPA policies and directives, and DOE Orders and guidance documents. Such supplemental authorities are cited throughout, and a list of references is provided in Section 6 (p.40).

1.3. GUIDE FORMAT

Section 2 of the Guide discusses the laws, regulations and policies applicable to selecting candidate off-site TSD facilities. EPA regulations applicable to both CERCLA and RCRA wastes that will be managed off-site are reviewed, as are DOE policy documents

germane to selecting off-site TSD facilities. Section 3 synthesizes the EPA regulations and DOE policies discussed in Section 2 to yield a regulatory road map which can be used by ERPMs, HFOs and others, as appropriate to formulate a process for selecting qualified, compliant off-site TSD facilities for managing hazardous waste. Section 4 addresses the regulations governing hazardous waste transporters, and suggests a road map for selecting such a transporter. Section 5 summarizes the Guide, and Section 6 provides a list of references.

In addition to the main text, the Guide contains five appendices. Appendix A lists the EPA Regional Off-site Contacts responsible for maintaining an up-to-date record of TSD facilities determined by EPA to be acceptable for receiving CERCLA wastes. Appendix B provides a Guideline for requesting information from EPA under the Federal Hazardous Waste Generator Notification Policy. Appendix C explains the DOE Environmental Audit Program. Appendix D lists various hazardous waste management facility directories. Appendix E provides information on placing orders with the National Technical Information Service (NTIS) and a sample letter to EPA requesting information pursuant to the Freedom of Information Act (FOIA).

2. WHAT EPA REGULATIONS AND DOE POLICY DOCUMENTS PERTAIN TO SELECTING OFF-SITE TSD FACILITIES?

2.1. WASTES COVERED BY THIS GUIDE

Wastes containing hazardous constituents may originate from a variety of actions at DOE sites. These actions include process operations and maintenance, as well as response actions taken pursuant to CERCLA, corrective actions taken pursuant to Subtitle C of RCRA, cleanups under section 311 of the Clean Water Act (CWA) [33 U.S.C. § 1321], state-authorized cleanup actions and voluntary cleanup actions. Table 1 (p.7) lists such actions, dividing them into those generating wastes potentially regulated under RCRA and those generating wastes potentially regulated under CERCLA.

ACTIONS GENERATING WASTE THAT MAY CONTAIN HAZARDOUS CONSTITUENTS

Actions Generating Wastes Potentially Regulated Under RCRA

- Process Operation and Maintenance
- Corrective Action at RCRA Permitted or Interim Status Facilities
- RCRA §7003 Imminent Hazard Action
- Voluntary Cleanup Without a CERCLA Order or Decree (whether site is NPL listed or not)
- State Authorized Cleanup Using State Funds
- RCRA Unit Closures
- Cleanups Under CWA §311

Actions Generating Wastes Potentially Regulated Under CERCLA*

- CERCLA §104 Remedial and Removal Actions
- State Remedial and Removal Actions Under a CERCLA Cooperative Agreement
- CERCLA §106 Abatement Action
- Cleanups at Federal Facilities Under CERCLA §120

* Many CERCLA wastes are also regulated under RCRA.

TABLE 1

Table 2 (p.8) lists categories of potentially hazardous wastes that may be generated by the activities on Table 1.

**CATEGORIES OF WASTES THAT MAY CONTAIN
HAZARDOUS CONSTITUENTS**

- As-Generated Wastes
- Treatability Study Wastes
- Laboratory Sample Wastes
- Investigation-Derived Wastes
- Response Action Wastes
- Emergency Response Wastes

TABLE 2

Table 3 (p.9) describes each category identified on Table 2.

The road map presented in the Guide for selecting off-site hazardous waste management facilities can be followed for wastes in any of the categories described on Table 3.

2.2. EPA REGULATIONS

2.2.1. CERCLA Wastes

Generally, "CERCLA wastes" are wastes containing any hazardous substance, pollutant, or contaminant as defined by CERCLA §§ 101(14) and (33). Included are substances, compounds, mixtures and solutions which, if released to the environment, might cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, or physical deformation. Also included are substances, compounds, mixtures and solutions designated as hazardous or toxic by specified sections of the Federal Water Pollution Control Act, the Resource Conservation and Recovery Act, the Clean Air Act and the Toxic Substances Control Act. This Guide deals with the subset of

WASTE CATEGORY DESCRIPTIONS

- As-Generated Wastes - "New" wastes (either hazardous or non-hazardous) that are generated from ongoing industrial operations at a facility.
- Treatability Study Wastes - Any unused sample or residues generated by a treatability study as defined by 40 CFR 260.10.
- Laboratory Sample Wastes - Any unused samples of solid waste, water, soil, or air, collected for the sole purpose of determining sample characteristics or composition, and any discarded test residues.
- Investigation-Derived Wastes - Drilling muds, cuttings and purge water from test pit and well installations, well development purge water, residues from testing of treatment technologies and pump and treat systems, and potentially contaminated soil, ground water, used personal protective equipment, decontamination fluids and disposable sampling equipment generated in the process of collecting environmental samples during site inspections.
- Response Action Wastes - Any of the following three types of wastes: (1) all solid and hazardous wastes, and all media (including groundwater, surface water, soils and sediments) and debris that contain any hazardous substance, pollutant or contaminant as defined by CERCLA §§ 101(14) and (33) and that are managed at a facility for purposes of implementing: remedial or removal actions under CERCLA §104, or an abatement action under CERCLA §106, or remedial or removal actions at Federal facilities under CERCLA §120, or state remedial or removal actions under a CERCLA Cooperative Agreement; or a state authorized cleanup using state funds; or a voluntary cleanup; (2) all solid and hazardous wastes, and all media (including groundwater, surface water, soils and sediments) and debris that contain listed hazardous wastes, or which themselves exhibit a hazardous waste characteristic pursuant to 40 CFR Part 261, that are managed at a facility for purposes of implementing corrective action requirements under 40 CFR 264.101 or RCRA §3008(h); and (3) all cleanup wastes resulting from a removal action taken under CWA §311(c) that contain substances designated as hazardous pursuant to CWA §311(b).
- Emergency Response Wastes - Response action wastes generated by emergency actions taken as a result of a release, or the threat of release, of a hazardous substance that has created an imminent and substantial endangerment to public health and welfare or the environment.

TABLE 3

CERCLA wastes generated during CERCLA-authorized or

CERCLA-funded response actions. Off-site management of such wastes is presently governed by CERCLA §121(d)(3) [added by the Superfund Amendments and Reauthorization Act of 1986 (SARA)] as implemented by the "Off-site Final Rule" [40 CFR 300.440, "Procedures for Planning and Implementing Off-Site Response Actions" (58 FR 49200, Sept. 22, 1993)] which is further described below.

2.2.1.1. Background

From the beginning of the CERCLA program, Congress mandated that CERCLA wastes be treated, stored, and disposed of in an environmentally sound manner. To that end, Section 104(c)(3) of the original legislation [CERCLA (Dec. 1980)] required states to ensure the availability of hazardous waste disposal facilities in compliance with RCRA Subtitle C for receipt of waste generated by CERCLA-financed remedial actions. In January 1983, EPA issued "Guidance on the Requirements for Selecting an Off-Site Option in a Superfund Response Action." This first guidance on the off-site transfer of CERCLA wastes applied only to wastes from removal and remedial actions under CERCLA §104. It stipulated that an off-site facility be inspected and that all major violations at the facility be corrected in order for the facility to be acceptable for the receipt of CERCLA wastes from remedial or removal actions.

In May 1985, EPA issued "Procedures for Planning and Implementing Off-Site Response Actions" (hereinafter "Off-site Policy"), detailing criteria for evaluating the acceptability of facilities for receiving Superfund wastes. [50 FR 45933, Nov. 5, 1985]. Unlike the 1983 Guidance, the 1985 Off-site Policy covered not only CERCLA removal actions, but also wastes generated as a result of enforcement actions under CERCLA §106 and RCRA §7003.

The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) [40 CFR Part 300] which implements CERCLA was revised extensively in November 1985. [See 50 FR

47912, November 20, 1985]. As revised, it required, among other things, that off-site TSD facilities have permits, or other appropriate authorization to operate, in order to be acceptable for receiving CERCLA removal action and remedial action waste, but it did not include the detailed criteria for evaluating acceptability found in the Off-site Policy. [40 CFR 300.65(g) and 300.68(a)(3) (1985) (~~deleted~~ by an ensuing NCP reorganization and contents relocated, 55 FR 8666, Mar. 8, 1990)].

It is important to recognize that the January 1983 Guidance and the May 1985 Off-site Policy were EPA internal pronouncements. EPA often uses such informal mechanisms to articulate regulatory and statutory interpretations because internal memoranda can be issued quickly, without adhering to the time-consuming procedural notice and comment requirements of the rulemaking process. Although these internal, unpublished policy and guidance memoranda generally have no legally binding effect, they communicate the Agency's interpretation of how statutes and regulations should be implemented and enforced. In contrast, the NCP contains promulgated regulations which set mandatory, enforceable procedures to be followed at all CERCLA sites.

In 1986, the Superfund Amendments and Reauthorization Act (SARA) added §§ 121(a) through 121(d) to CERCLA. These new sections supplement §§ 104 and 106 by (1) stipulating general rules for the selection of remedial actions, (2) providing for periodic review of the results of remedial actions that leave contaminants at the site to assess the need for additional action, and (3) describing requirements for the degree of cleanup. If the remedial action involves transfer of CERCLA wastes originating after the effective date of SARA (Oct. 17, 1986), CERCLA §121(d)(3) explicitly requires that the transfer be made only to a facility that complies with RCRA (as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA)), or other applicable Federal laws, and applicable state requirements. Additionally, if the off-site facility is a land disposal facility, the unit to which the transfer

occurs must not be releasing hazardous substances, and if releases from non-receiving units are occurring at the same facility, they must be controlled pursuant to corrective action provisions in the facility's RCRA permit, or an appropriate order.

EPA first implemented CERCLA §121(d)(3) in 1987 with an internal memorandum from the EPA Assistant Administrator of Solid Waste and Emergency Response to EPA Regional Administrators regarding "Revised Procedures for Planning and Implementing Off-Site Response Actions" (hereinafter "the Revised Off-site Policy"). The memorandum updated the May 1985 Off-site Policy and provided detailed procedures whereby EPA, or the responsible state, would issue and review determinations of unacceptability. [OSWER Directive No. 9834.11 (Nov. 13, 1987)]. The Revised Off-site Policy has now been superseded by regulations incorporated into the NCP. These regulations are commonly called the Off-site Final Rule. [58 FR 49200, Sept. 22, 1993 (codifying 40 CFR 300.440)]. The following paragraphs detail the requirements of the Off-site Final Rule which are legally enforceable with respect to all hazardous wastes generated by CERCLA-authorized or CERCLA-funded remedies and by cleanups under CWA § 311.

2.2.1.2. Off-Site Final Rule

2.2.1.2.1. Applicability

The Off-site Final Rule applies to wastes generated by actions being taken under CERCLA authority or using CERCLA funds, and by cleanups under CWA § 311. Wastes generated by actions taken under CERCLA authority or using CERCLA funds include wastes in all of the categories listed on Table 2 (p.8, above) that are generated by CWA §311 cleanups, CERCLA § 104 response actions, CERCLA § 106 actions, cleanups at Federal facilities under CERCLA §120, and state response actions under a CERCLA Cooperative Agreement entered pursuant to CERCLA § 104(d)(1). EPA excluded some waste types, however, from the scope of the

Off-site Final Rule. Laboratory sample wastes, for example, are exempt based on small sample size, the need for prompt and frequent laboratory analysis, and the high level of confidence that lab samples - due to their value to the sending facility - will be properly handled. [58 FR 49202, Sept. 22, 1993]. Additionally, those CERCLA-site wastes that are hazardous under RCRA, and are being sent off-site for treatability studies, are exempt from the Off-site Final Rule if they meet the requirements for an exemption from RCRA under 40 CFR 261.4(e). Similarly, non-RCRA hazardous wastes that are being sent off-site for treatability studies and that are below the quantity thresholds established by 40 CFR 261.4(e)(2) are also exempt from the requirements of the Off-site Final Rule. [58 FR 49203 and 40 CFR 300.440(a)(5)]. The applicability of the Off-site Final Rule is summarized on Table 4 (p.14).

Actions that do not trigger the Off-site Final Rule (i.e., are neither CERCLA-funded or -authorized, nor CWA §311 cleanup wastes) include voluntary cleanups without a CERCLA order or decree (whether the site is listed on the National Priorities List (NPL) or not), state-authorized cleanups using state funds, and other non-CERCLA actions such as emergency response actions under RCRA § 7003, RCRA corrective actions and RCRA unit closures. [58 FR 49203, Sept. 22, 1993]. Wastes generated by emergency removals and emergencies occurring during CERCLA remedial actions (e.g., occurrence or substantial threat of occurrence of fire or explosion) also may not be subject to the Off-site Final Rule. In such emergency situations, the CERCLA On-Scene Coordinator has discretion to apply the Off-Site Final Rule, or not.⁴ [58 FR 49204, Sept. 22, 1993 and 40 CFR 300.440(a)(2)]. Nevertheless, if wastes generated in emergency situations are hazardous under RCRA, they

⁴ The On-Scene Coordinator at a CERCLA hazardous release response site is the official designated by the lead agency to coordinate and direct removal actions under the NCP. [40 CFR 300.5]. At a DOE CERCLA site, where DOE is the lead agency, this official would be designated by DOE.

OFF-SITE FINAL RULE APPLICABILITY

Potentially Regulated Actions

- CERCLA § 104 Remedial and Removal Actions
- CERCLA § 106 Abatement Actions
- CERCLA § 120 Federal Facility Cleanups
- State Remedial and Removal Actions Under a CERCLA Cooperative Agreement
- CWA § 311 Cleanups

Regulated Waste Categories

- Investigation Derived Wastes
- Response Action Wastes

Exempt Waste Categories

- Laboratory Sample Wastes*
- Treatability Study Wastes
- Emergency Response Wastes

* CERCLA treatability study waste samples that are hazardous under RCRA are exempt provided that: (1) the treatability study uses no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1,000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, or 2,500 kg of media contaminated with acute hazardous waste; (2) the mass of each sample being shipped off-site does not exceed 10,000 kg (composed either entirely of media contaminated with non-acute hazardous waste, or may include 2,500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste); (3) the sample will not leak, spill or vaporize from its packaging during shipment, and meets applicable shipping requirements; (4) the receiving laboratory meets applicable permitting requirements; (5) the generator maintains specified records; and (6) the generator files reports as required. For CERCLA wastes that are not RCRA hazardous wastes, the exemption applies to samples that are below the quantity thresholds indicated by items (1) and (2).

TABLE 4

still must be managed at RCRA-authorized treatment, storage or

disposal facilities. Table 5 (p.15) lists examples of waste-generating actions that are not subject to the Off-site Final Rule.

**EXAMPLES OF ACTIONS GENERATING WASTES
NOT SUBJECT TO THE OFF-SITE FINAL RULE**

- Voluntary cleanups without a CERCLA order (whether or not the site is listed on the NPL)
- State-authorized cleanups using state funds
- Emergency response actions under RCRA §7003
- RCRA corrective actions
- CERCLA emergency removals (with CERCLA On-Scene Coordinator approval)
- Emergencies during CERCLA remedial actions (with CERCLA On-Scene Coordinator approval)

TABLE 5

The Off-site Final Rule establishes the same criteria for evaluating the acceptability of a TSD facility to receive pre-SARA wastes (i.e., wastes generated pursuant to CERCLA decision documents signed before October 17, 1986) and for evaluating post-SARA wastes (i.e., wastes generated pursuant to CERCLA decision documents signed after October 17, 1986), even though the statutorily mandated acceptability criteria are different. Table 6 (p.17) summarizes the differences. As mentioned on page 12 above, CERCLA § 121(d)(3), which the law imposes only on post-SARA wastes, requires that the receiving TSD facility be compliant with applicable laws, and restricts releases of hazardous substances from units located at the facility. In contrast, pre-SARA wastes are subject to CERCLA § 104(c)(3) which mandates that states ensure the

availability of hazardous waste disposal facilities compliant with RCRA Subtitle C for receipt of hazardous waste from Fund-financed remedial actions. CERCLA § 104(c)(3) places no release restrictions on the receiving facilities. When the Off-site Final Rule was proposed, the contemplated rule distinguished between facilities receiving pre-SARA versus post-SARA wastes. [53 FR 48220, Nov. 29, 1988]. Based on comments received during the public comment period, however, EPA determined that eliminating the pre-SARA/post-SARA distinction would not disrupt contracts and actions already in place at the time SARA was enacted, and would simplify understanding and implementation of the Off-site Final Rule. [58 FR 49205, Sept. 22, 1993]. For these reasons, the Off-site Final Rule regulates pre-SARA and post-SARA CERCLA wastes in the same way.

2.2.1.2.2. Federal Facilities

The Off-site Final Rule specifically addresses the off-site transfer of CERCLA wastes generated at Federal facilities. First, if a Federal agency plans to transfer CERCLA wastes to an off-site TSD facility from a Federal facility undergoing remediation pursuant to CERCLA authority, or using CERCLA funds (as compared to transferring the remediation wastes subject to statutory authority other than CERCLA), the Off-site Final Rule applies in the same manner as described in Section 2.2.1.2.1 (p.12) of this Guide. However, if remediation wastes are transferred from a Federal facility CERCLA site to RCRA TSD units located on the same Federal property, but off the CERCLA site, then the Off-site Final Rule regulates that entire Federal facility just like an off-site RCRA TSD facility. This means that if a DOE CERCLA site sends CERCLA wastes to a RCRA TSD unit (including permitted corrective action management units (CAMU)) at the same DOE site, but located outside the CERCLA "on-site" area (see Footnote 2, p.2) all RCRA TSD units at the DOE site must adhere to the criteria for acceptability established by the Off-site Final Rule. [58 FR 49204, Sept. 22, 1993].

**CERCLA REQUIREMENTS FOR OFF-SITE
DISPOSAL OF PRE- AND POST-SARA WASTES**

CERCLA DECISION DATE	STATUTORY REQUIREMENTS
Pre-SARA Wastes-- Decision Document Signatures before SARA (10/17/86)	CERCLA §104(c)(3)-- <ul style="list-style-type: none"> • Off-site disposal facilities must comply with RCRA Subtitle C.
Post-SARA Wastes-- Decision Document Signatures after SARA (10/17/86)	CERCLA §121(d)(3)-- <ul style="list-style-type: none"> • Off-site TSD facility must comply with all applicable laws. • Off-site receiving land disposal unit must not be releasing hazardous substances. • Non-receiving units at off-site TSD facility, if releasing hazardous substances, must be controlling the release(s) pursuant to either corrective action provisions of a RCRA permit, or an appropriate RCRA corrective action order (e.g., §3008(h) order).

The Off-site Final Rule applies the requirements of CERCLA §121(d)(3) to both Pre- and Post-SARA wastes.

TABLE 6

For clarity, Table 7 (p.18) explains the applicability of the Off-site Final Rule to CAMUs located at DOE facilities under two scenarios. Guidance on regulations governing CAMUs is provided in: (1) EH-231 RCRA Information Brief entitled "Corrective Action Management Units and Temporary Units," EH-231-043/0394 (March 1994); (2) EH-231 Environmental Guidance Regulatory Bulletin entitled "CAMU/TU Final Rule Issued" (May 12, 1993); and (3) EH-231 Environmental Guidance entitled "RCRA Corrective Action

**APPLICABILITY OF OFF-SITE FINAL RULE TO
CAMUS AT DOE FACILITIES**

Scenario 1

- DOE facility holds a RCRA permit.
- Same DOE facility contains a CERCLA site.
- CAMU is a RCRA permitted TSD unit located outside the CERCLA on-site area.

In this case, transfer of remediation wastes from the CERCLA on-site area to the CAMU is transfer to an off-site RCRA TSD unit. Therefore, the CAMU and all other TSD units covered by the RCRA permit must meet the requirements of the Off-site Final Rule.

Scenario 2

- DOE facility has no RCRA permit.
- Same DOE facility contains a CERCLA site.
- CAMU is designated as part of the CERCLA site remedy in the Record of Decision.
- CAMU is not a permitted RCRA TSD unit, but is authorized under ARARs.

In this case, transfer of remediation wastes to the CAMU is not transfer to an off-site RCRA TSD unit, even though the CAMU might be located outside the CERCLA on-site area, because the CAMU was not constructed and permitted under RCRA authority. Therefore, the Off-site Final Rule does not apply.

TABLE 7

Program Guide (Interim)," DOE/EH-0323 (May 1993).

2.2.1.3. Requirements

The Off-site Final Rule requires EPA to determine the acceptability of an off-site TSD facility before CERCLA wastes are transferred there, whether or not EPA is the lead agency at the

CERCLA site generating the wastes. [40 CFR 300.440(a)(4)]. The acceptability standards set by the Off-site Final Rule are presented on Table 8 (p.19).

**OFF-SITE FINAL RULE ACCEPTABILITY
STANDARDS FOR TSD FACILITIES**

- Compliance with RCRA or other applicable Federal laws (e.g., the Toxic Substances Control Act (TSCA)) [40 CFR 300.440(b)(1)].
- Compliance with applicable state laws [40 CFR 300.440(b)(1)].
- Adherence to the following criteria:
 1. No receiving unit can be releasing any hazardous wastes, hazardous constituents or hazardous substances [40 CFR 300.440(b)(2)(ii)(A)].
 2. All receiving units at a land disposal facility must meet minimum technology requirements [40 CFR 300.440(b)(2)(ii)(A)].
 3. All releases from non-receiving units at a land disposal facility must be addressed by an enforceable corrective action program prior to using any unit at the facility for managing CERCLA wastes [40 CFR 300.440(b)(2)(ii)(B)].
 4. Environmentally significant releases from non-receiving units at RCRA Subtitle C treatment and storage facilities, and from all units at non-Subtitle C facilities (e.g., TSCA-permitted), must also be addressed by an enforceable corrective action program prior to using any unit at the facility for managing CERCLA wastes [40 CFR 300.440(b)(2)(ii)(C) and (D)].

TABLE 8

If a TSD facility wants to manage CERCLA wastes, the facility should notify EPA and the state in which it is located. The Off-site Final Rule does not require such notice, but as a practical

matter, the regulatory agencies need a mechanism for distinguishing the TSD facilities located within their jurisdiction for which acceptability determinations must be made from those that have no intention of managing CERCLA wastes. If the CERCLA On-Scene Coordinator, Remedial Project Manager, Potentially Responsible Party(s), or other person(s) having responsibility for waste management at a CERCLA site wants to send CERCLA wastes to a TSD facility that has not already initiated an acceptability determination, then that responsible person may request the determination.

The State will inspect the TSD facility and report any releases found and any non-compliance with state law requirements to EPA, including non-compliance with the requirements of any Federal program for which the State has been authorized. [40 CFR 300.440(c)(1) & (2)]. EPA will consult with the State, as appropriate, and determine whether the releases or violations are relevant to acceptability under the Off-site Final Rule. Finally, if relevant releases or violations are confirmed, EPA will independently issue an initial determination of unacceptability. [40 CFR 300.440(c)(1) & (2)]. In states with no RCRA authority, EPA conducts the facility inspection. [40 CFR 300.440(c)(3)].

If the off-site facility receiving CERCLA wastes that are subject to the Off-site Final Rule is TSCA-permitted, rather than RCRA-permitted, acceptability is still based on compliance and release findings. As with a RCRA-permitted facility, the compliance finding at a TSCA-permitted facility hinges on the absence of relevant violations of any applicable Federal or state law requirements at or affecting the receiving unit. The release finding for a TSCA-permitted facility is based on the presence or absence of environmentally significant releases anywhere at the facility (i.e., not just at the receiving unit). Such releases must be addressed by corrective action under a state or Federal program before the TSCA-permitted facility can be judged acceptable to receive CERCLA wastes. [58 FR 49201, Note 1, Sept. 22, 1993].

The Off-site Final Rule specifies procedures whereby EPA must notify the TSD facility if the Agency determines that the facility is unacceptable. [40 CFR 300.440(d)(1) and (2)]. It also provides an opportunity for the owner/operator to discuss the determination of unacceptability with the appropriate regulatory official, and if still unsatisfied, to obtain review by the Regional Administrator. [40 CFR 300.440(d)(4) through (8)].

EPA maintains an up-to-date record of the acceptability status of commercial facilities in each EPA Regional office. This information is available to parties directly involved in locating sites for disposal, and to the interested public, from the EPA "Regional Off-Site Contact." A list of these Regional coordinators and their telephone numbers is included as Appendix A to this Guide. Updates to the list are available from the EPA RCRA/Superfund Hotline (800-424-9346), Monday through Friday, 8:30AM to 6:30PM [EDT].

2.2.2. RCRA Wastes

Unlike CERCLA, RCRA establishes no statutory acceptability standards for off-site facilities managing wastes defined by the Act as hazardous. Instead, RCRA requires EPA to promulgate regulations establishing a manifest system to assure that all hazardous wastes generated are designated for treatment, storage, or disposal in, and arrive at treatment, storage, or disposal facilities (other than facilities on the premises where the waste is generated) for which a permit has been issued. [RCRA § 3002 (a)(5), 42 U.S.C. 6922(a)(5)]. The Code of Federal Regulations, Title 40, implements this RCRA provision by requiring waste generators to prepare a manifest designating a facility authorized to handle waste defined as hazardous by RCRA if the generator transports it, or offers it for transportation, to an off-site TSD facility. [40 CFR 262.20(a) and (b)]. This requirement applies to RCRA as-generated wastes, RCRA investigation-derived wastes, RCRA response action wastes and RCRA emergency response wastes. Unless these wastes

are also CERCLA wastes, or wastes generated as a result of a CWA §311 cleanup, the Off-site Final Rule does not apply. Therefore, while the law requires generators of RCRA hazardous wastes who ship such wastes off-site to determine whether the off-site receiving TSD facility is authorized to receive it, generators are left to determine for themselves any other criteria for evaluating the off-site facility's acceptability.

To assist Federal agencies and departments in evaluating the suitability of off-site TSD facilities to receive RCRA hazardous waste generated by the United States, EPA published a policy memorandum on April 26, 1991 setting forth its "Federal Hazardous Waste Generator Notification Policy." The Policy was established to improve the ability of Federal generators to make informed decisions regarding whether to ship their RCRA hazardous wastes to particular off-site TSD facilities. This was to be accomplished by making information available to the Federal generators regarding EPA's civil enforcement actions and criminal investigations at such facilities. The Policy sets up two independent mechanisms for transferring information from EPA to Federal generators of RCRA hazardous waste.

First, upon written request from a Federal generator, EPA will share relevant, publicly available data about a TSD facility which the Agency has used in making a final acceptability determination under the Off-site Final Rule (i.e., 40 CFR § 300.440). Second, EPA uses the Federal Generator Notification System (FGNS) to share with Federal generators certain types of information regarding TSD facilities. The FGNS has two components: (1) a quarterly list of EPA's pending civil and criminal hazardous waste enforcement cases; and (2) formal notices, with supporting documents, that particular TSD facilities are under criminal investigation.

Appendix B provides guidance on how DOE personnel can access the two information transfer mechanisms established by

EPA's Federal Hazardous Waste Generator Notification Policy.

2.3. DOE POLICY

2.3.1. 1986 Interim Policy on Off-site Treatment, Storage, and Disposal of Non-radioactive Hazardous Waste

DOE acted in June 1986 to establish its own policy concerning off-site disposal of non-radioactive RCRA, TSCA and CERCLA wastes. A Memorandum to DOE Secretarial Officers and Heads of Field Organizations from the DOE Assistant Secretary of Environment, Safety and Health (June 24, 1986) presented the policy on an interim basis, stating that such policy would eventually be incorporated into appropriate DOE Orders. The interim policy set forth in the Memorandum was:

Where DOE determines that it is necessary to send hazardous wastes off-site, it is the Department's policy to send such wastes to off-site facilities which have been identified by EPA or state regulatory agencies as suitable for treatment, storage, or disposal of such wastes. DOE will select facilities for treatment, storage or disposal of hazardous wastes based on EPA's recently announced quarterly facility eligibility reports, consultation with designated EPA Regional Office contacts, and consultation with state regulatory officials, as appropriate, to clarify the status of a facility.

To date, no DOE Orders directly addressing hazardous waste off-site transfers have been developed. Therefore, the 1986 interim policy quoted above still represents DOE policy. Table 9 (p.24) summarizes this policy as well as pertinent implementing steps set forth in the 1986 interim policy memorandum.

**SUMMARY OF CURRENT DOE POLICY
ON
OFF-SITE HAZARDOUS WASTE TRANSFERS**

Policy Statement

DOE will send hazardous wastes to off-site TSD facilities only if such facilities are deemed acceptable by EPA and the appropriate state.

Implementing Steps

- Before contracting, each DOE site should consult EPA and the appropriate state regarding acceptability of candidate off-site TSD facilities.
- Off-site TSD facilities with "significant violations" should be used only if the destination unit is compliant and the facility is under an enforcement order to correct violations at other units at the facility.
- Each DOE site should develop contingency plans for unacceptability determinations during the terms of contracts with TSD facilities.
- Each DOE site should minimize the volume and toxicity of hazardous wastes generated.

Source: U.S. Department of Energy, Memorandum from DOE Assistant Secretary of Environment, Safety and Health to Secretarial Officers and Heads of Field Organizations concerning "Policy on Off-site Treatment, Storage, and Disposal of Non-Radioactive Hazardous Waste" (June 24, 1986).

TABLE 9

3. WHAT PROCESS IS APPROPRIATE FOR SELECTING A QUALIFIED OFF-SITE TSD FACILITY?

3.1. SCOPE OF THE ROAD MAP

DOE has adopted as part of its environmental audit program⁵ a performance objective for off-site facility evaluations which states that each DOE site should have a program in place to evaluate off-site commercial TSD facilities to ensure proper waste handling. [DOE/EH-0358 (Jan. 1994), p. 72]. The off-site facility evaluation program anticipated by this performance objective extends to both hazardous and non-hazardous waste, and to facilities currently receiving DOE wastes, as well as facilities being newly considered to receive such wastes. Therefore, each DOE site's off-site facility evaluation program is likely to consist of several procedures, including:

- Procedures for selecting off-site treatment, storage and disposal facilities for *non-hazardous* waste to which, at the time of the facility's selection, DOE has not previously shipped the type of waste for which the Department seeks an off-site management option;
- Procedures for evaluating the continued acceptability of off-site *non-hazardous* waste treatment, storage and disposal facilities;
- Procedures for selecting off-site *hazardous* waste TSD facilities to which, at the time of the facility's selection, DOE has not previously shipped the type of waste for which the Department seeks an off-site management option; and
- Procedures for evaluating the continued acceptability of off-site *hazardous* waste TSD facilities.

⁵ Appendix C presents background information explaining DOE's environmental audit program.

Presented below is a road map dealing only with the selection of an off-site *hazardous waste* TSD facility to which, at the

**HIGHLIGHTS OF ROAD MAP FOR
SELECTING OFF-SITE HAZARDOUS WASTE
TSD FACILITIES**

- Step 1 Identify candidate facilities.**
- ☛ ***Consult the appropriate DOE Contracting Officer.***
 - ☛ ***Generate list of candidate TSD facilities.***
 - Establish initial screening criteria.
 - Consult information resources.
 - Commercially available and EPA directories
 - EPA Regional lists
 - Former or existing waste contractors
 - Professional contacts
- Step 2 Narrow candidate list by reviewing acceptability.**
- ☛ ***Communicate with EPA Regional Off-site Contact.***
 - Verbally request acceptability determination status.
 - File written request for additional information.
 - ☛ ***Use Federal Generator Notification System.***
 - ☛ ***Review state agency files.***
 - ☛ ***Verify candidate capabilities.***
 - ☛ ***Investigate other DOE site acceptability reviews.***
- Step 3 Conduct facility evaluations of remaining candidates.**
- ☛ ***Consult with appropriate DOE Contracting Officer.***
 - ☛ ***Cooperate with regulators.***
- Step 4 Select an off-site TSD facility.**

TABLE 10

time of the facility's selection, DOE has not previously shipped the type of waste for which the Department seeks an off-site management option. Highlights of the road map are presented on Table 10 (p.26). *Non-hazardous* waste management is beyond the scope of this Guide, and evaluating the continued acceptability of off-site hazardous waste TSD facilities is an auditing function also beyond the scope of this Guide. (See Appendix C for a description of DOE's environmental auditing program.)

The road map below provides the basic steps for hazardous waste off-site TSD facility selection. However, detailed implementation procedures must be developed on a site- or program-specific basis due to the variability among sites of such factors as job responsibilities and approval requirements. The guideline is intended to aid ERPMs, HFOs and others, as appropriate, in prudently formulating the necessary detailed implementation program.

DOE's 1986 Interim Policy on off-site waste treatment, storage and disposal indicated that the Department's policy of sending hazardous wastes only to off-site facilities identified as suitable by EPA or state regulatory agencies applies equally to non-radioactive RCRA, TSCA and CERCLA wastes. For this reason, the road map is intended to apply to all such wastes, even though EPA's Off-site Final Rule applies only to hazardous wastes generated by CERCLA-authorized or -funded actions and CWA § 311 cleanups.

3.2. ROAD MAP FOR SELECTING HAZARDOUS WASTE TSD FACILITIES

DOE sites that do not have an existing off-site facility evaluation program are encouraged to use the following road map as a basis for identifying and developing the detailed implementation procedures necessary for dealing with selection of off-site hazardous waste TSD facilities to which, at the time of the facility's selection, DOE has not previously shipped the type of waste for which the

Department seeks an off-site management option. Also, DOE sites with established off-site facility evaluation programs can use the road map to evaluate the completeness of the portion of their existing program that addresses this subject.

The process of identifying, evaluating and selecting off-site hazardous waste TSD facilities can be lengthy. Therefore, the need for such facilities should be anticipated and the selection process initiated as early as possible. If feasible, pre-screening of off-site facilities should be used in order to expedite off-site waste transfers, should they become desirable.

Step 1 - Identify candidate facilities.

1.1 Consult the appropriate DOE Contracting Officer.

DOE must comply with the applicable requirements of the Federal Acquisition Regulation (FAR) and the Department of Energy Acquisition Regulation (DEAR) when procuring services such as off-site hazardous waste treatment, storage, or disposal. The DOE Contracting Officer must be consulted to ensure that early activities associated with identifying qualified candidate TSD facilities comply with the FAR governing such regulated aspects of the selection process as publicizing contract actions (48 CFR part 5), competition requirements (48 CFR part 6) and acquisition planning (48 CFR part 7). Any detailed implementing procedures which incorporate the steps of this road map must be consistent with the limitations of the FAR.

1.2 If appropriate, generate a list of candidate TSD facilities.

1.2.1 *Establish initial screening criteria.*

In order to generate a list of candidate off-site TSD facilities, facility information from multiple resources should be considered. The following two broad initial screening criteria are suggested for picking potential candidate facilities to include on the list:

- (1) Does the facility offer the type of hazardous waste management services that DOE needs?
- (2) Does the facility accept the type of hazardous waste that DOE will send?

Geographical proximity can also be an initial screening criteria, but should be used to exclude facilities only if a sufficient number are otherwise available.

1.2.2 *Consult multiple resources for facility names and information.*

1.2.2.1 Directories

Commercially available directories of hazardous waste management facilities are one source of TSD facility names and information. EPA has also occasionally published directories of permitted hazardous waste management facilities that list the facilities and provide information about types of commercial services offered and types of waste managed. Appendix D lists some commercially available directories, as well as some EPA directories.

1.2.2.2 EPA Regional Lists

An alphabetical listing of RCRA-permitted TSD facilities located within an EPA Region can be a source from which to

identify candidate facilities in some Regions. The Regional Off-site Contact may be willing to provide the list, if requested. However, many Regional Off-site Contacts are reluctant to provide the information because it can be voluminous. Instead, they advise inquiring parties to either file a request for the list under the provisions of the Freedom of Information Act (FOIA), or contact the National Technical Information Service (NTIS).

Information from EPA's Resource Conservation and Recovery Information System (RCRIS) can be purchased from NTIS. RCRIS tracks a range of information related to facilities involved with hazardous waste, including handler identification, permit application status, compliance monitoring and enforcement information, RCRA program management information, and facility management planning information. RCRIS also tracks corrective action information which supports the permit writing and enforcement activities of EPA's corrective action program. The general public can access RCRIS through NTIS document purchases, with the exception of enforcement-sensitive information. Direct, on-line access to RCRIS, however, is available only to EPA and state RCRA implementers and their approved contractors because of the presence of enforcement-sensitive information.

Appendix D provides a sample FOIA request letter as well as NTIS ordering information and forms.

1.2.2.3 *Former and Existing Waste Contractors*

Former and existing off-site waste management contractors that have served DOE sites can be candidate facilities if they have performed satisfactorily in the past.

1.2.2.4 *Professional Contacts*

Off-site waste management contractors that have satisfactorily served others can be candidate facilities. Such TSD facilities could be identified by DOE personnel through professional contacts.

Step 2 - Review candidate facility acceptability to narrow the list.

Each candidate site included on the list generated by Step 1 should be evaluated for acceptability to DOE, EPA and the state where it is located. If possible, this process should be used to significantly narrow the list of candidates (e.g., to no more than five).

2.1 *Communicate with the EPA Regional Off-site Contact in the Region where the facility is located concerning acceptability determinations under the Off-site Final Rule.*

DOE's 1986 Interim Policy (which remains effective) indicates that DOE will send CERCLA, TSCA and hazardous RCRA wastes only to off-site TSD facilities which EPA has determined to be acceptable under the Off-site Final Rule to receive CERCLA wastes. Therefore, DOE personnel must communicate with the EPA Regional Off-site Contact to determine the status of a TSD facility's acceptability determination. EPA anticipates that information about the outcome of TSD facility acceptability determinations must be disseminated verbally to ensure that such information is accurate and up-to-date [58 FR 49214 (Sept. 22, 1993)]. Appendix A provides details on reaching EPA Regional Off-site Contacts by telephone.

Note: It is EPA's policy that an off-site TSD facility need not be acceptable under the Off-site Final Rule to **bid** on accepting CERCLA wastes. However, to be **awarded a contract**, the facility must first be found acceptable [58 FR 49214 (Sept. 22, 1993)].

Compliance and hazardous constituent release information collected by EPA in making the Off-site Final Rule acceptability determination for a TSD facility is also accessible, but must be requested in writing. Appendix B contains guidance on filing such requests.

2.2 Use the Federal Generator Notification System to obtain information about civil and criminal enforcement actions.

DOE personnel should be aware of and consider the relevance to a TSD facility's acceptability of any pending civil or criminal enforcement actions. Appendix B contains guidance on obtaining such information through the Federal Generator Notification System (FGNS).

2.3 Review state agency permit and compliance files.

DOE personnel should be aware of a TSD facility's history of permitting and compliance under state laws. Such information is available by visiting the responsible state agency offices and reviewing permit and compliance files.

Additionally, any state with delegated RCRA enforcement responsibility will have inspected the TSD facilities located within its boundaries and reported compliance and release information to EPA for the Agency's use in completing an acceptability determination under the Off-site Final Rule. DOE personnel should inquire whether the report to EPA for a candidate TSD facility is available. This is important because the State may disagree with EPA's acceptability determination. This sometimes occurs if state hazardous waste regulations are different from EPA regulations, and a TSD facility has been found non-compliant with state regulations that are not part of the Federal program. Therefore, even though EPA lists the facility as acceptable, the State may believe it is not.

2.4 *Verify that candidate TSD facilities can manage the waste of concern in a manner acceptable to DOE.*

If the waste of concern can be treated or disposed using more than one known technology, but DOE requires a particular technology, DOE personnel should investigate whether candidate TSD facilities will use the required technology. Similarly, DOE personnel should discover whether candidate facilities can meet other DOE-specific requirements, if any. The mechanism for accomplishing these investigations should be closely coordinated with the appropriate DOE Contracting Officer to ensure compliance with the FAR.

2.5 *Determine whether another DOE site has judged the candidate TSD facility as acceptable.*

If a candidate TSD facility has previously been evaluated by another DOE site (e.g., another DOE field organization), the prior results can be substituted after obtaining complete documentation of the earlier evaluation.

Step 3 - Conduct facility evaluations of remaining candidates.

A facility evaluation of each candidate TSD facility remaining on the list after Step 2 should be conducted in cooperation with EPA/State regulators. Cooperation with the regulators could include discussing the site evaluation plan with regulatory personnel in advance, or submitting it for prior regulatory agency review.

Facility evaluations must also be planned in consultation with the appropriate DOE Contracting Officer to ensure compliance with the FAR. Further, they must be conducted in accordance with any existing DOE site-specific program for evaluating off-site waste management facilities.

Step 4 - Select an off-site TSD facility.

Final selection of and contract negotiation with an off-site TSD facility must be completed according to applicable sections of the Department of Energy Acquisition Regulation (DEAR) and the FAR. The details of this process, including evaluating relative costs, should be undertaken only with the guidance of the appropriate DOE Contracting Officer and are beyond the scope of this Guide.

4. HOW SHOULD A HAZARDOUS WASTE TRANSPORTER BE CHOSEN?

4.1. WHAT REGULATIONS GOVERN HAZARDOUS WASTE TRANSPORTERS?

RCRA, the Hazardous Materials Transportation Act of 1990 (HMTA), and the Atomic Energy Act of 1954 (AEA), as well as state laws, regulate the transport in commerce of hazardous wastes, including RMW. This Guide describes the Federal regulatory requirements which, if met, qualify a transporter to handle non-radioactive hazardous materials. It also deals with choosing an appropriate waste transporter. State hazardous waste transporter requirements, other Federal pre-transport requirements, and Nuclear Regulatory Commission (NRC) regulations applicable to radioactive materials transport under the AEA (10 CFR part 71) are not covered. However, information on EPA, DOT and NRC packaging, marking and labeling requirements for hazardous wastes, low-level radioactive wastes and RMW, as well as NRC pre-transport notification requirements, is provided in the EH-231 RCRA Information Brief entitled "Pretransport Requirements for Waste Generators," EH-231-037/0494 (April 1994). Also, manifesting is covered by the EH-231 RCRA Information Brief entitled "Manifest Requirements," EH-231-038/0494 (April 1994), and general information on transporter requirements can be found in the EH-231 RCRA Information Brief entitled "Transportation of RCRA Hazardous Waste," EH-231-013/0494 (April 1994).

4.1.1. U.S. Department of Transportation Regulations

The U.S. Department of Transportation (DOT) has adopted regulations pursuant to the HMTA governing the transportation of hazardous materials. [49 CFR Parts 107 and Parts 171 through 179]. All transporters of hazardous materials must comply with these regulations, which apply to both interstate and intrastate

transportation in commerce of hazardous waste. The regulations require transporters of hazardous materials to submit complete and accurate registration statements [49 CFR 107.608(a)] and pay an annual fee [49 CFR 107.612]. In addition, vehicles used to transport hazardous waste must be properly marked [49 CFR 171.3(b)(1)], manifest requirements must be met [49 CFR 171.3(b)(2)], and delivery must be made as designated on the manifest [49 CFR 171.3(b)(3)].

4.1.2. EPA Regulations

Generators of RCRA hazardous waste are prohibited from offering hazardous waste to transporters that have not received an EPA identification number. [40 CFR 262.12]. Also, transporters are prohibited from transporting hazardous wastes without having received an EPA identification number. [40 CFR 263.11(a)]. To receive an EPA identification number, the transporter must file EPA Form 8700-12 (Rev. 9-92) with the EPA Regional Administrator. [40 CFR 263.11(b)]. This form identifies the transporter and specifies the hazardous wastes that the transporter intends to handle.

4.2. WHAT ARE THE HAZARDOUS WASTE TRANSPORTATION OPTIONS AND THE PROCESS FOR SELECTING A TRANSPORTER?

4.2.1 Transportation Options

Hazardous waste transportation may be provided by the off-site TSD facility if a commercial off-site facility is used. Other possible transportation alternatives include generator-owned transport and third-party commercial transport. This Guide assumes that DOE will not provide transport. Therefore, the sections below assume that a decision to manage hazardous waste at an off-site TSD facility will include consideration of whether to use the transportation

provided by the facility (if a commercial off-site facility that offers transportation is chosen), or to contract separately with a third-party commercial transporter. This decision must be based on DOE site-specific procedures, criteria and guidelines developed pursuant to Order DOE 1540.1A, "Materials Transportation & Traffic Management," (July 8, 1992). Therefore, DOE personnel are encouraged to consult the Order and the appropriate DOE Contracting Officer before choosing.

If DOE decides to provide its own hazardous materials transportation, it must comply with DOT hazardous materials regulations whenever the transport is across or along roads to which the public has access, unless a Government vehicle is used. If a DOE contractor provides such transportation, the contractor must comply with DOT regulations even when a Government vehicle is used. In either case, if the roads are located on DOE property, and all public access is blocked during the shipment, then the transportation is not "in commerce," and DOT regulations do not apply [Letter from DOT Office of the Chief Counsel to DOE Office of Technology Development, Transportation Management Program (April 23, 1991)].

4.2.2 Identifying Transporter Candidates

If DOE decides to contract separately with a third-party commercial transporter, candidates can be identified using the directories identified in Appendix D.

4.2.3 Qualifying Transporter Candidates

Using a method developed in consultation with the appropriate DOE Contracting Officer, DOE personnel should verify that candidate transporters have the following credentials:

- (1) Is registered with the DOT, and has paid the required fees;

- (2) Has obtained an EPA Identification Number;
- (3) Has vehicles which can be properly marked, and has, or will obtain, the DOT placards necessary to appropriately mark the vehicle for the waste of concern;
- (4) Understands and has an established manifest record keeping system as required by RCRA and DOT;
- (5) If required, is registered and/or licensed by all states through which the waste must be transported, and has paid all required state fees; and
- (6) Has a demonstrated record of compliance with state and Federal hazardous waste transportation requirements.

4.2.4 Selecting a Hazardous Waste Transporter

At each DOE site, the final transporter selection must be made based on site-specific factors, in accordance with the FAR and Order DOE 1540.1A, "Materials Transportation & Traffic Management," (July 8, 1992). Therefore, no generalized transporter selection criteria are presented here. DOE personnel are encouraged to consult with the appropriate DOE Contracting Officer to determine the appropriate site-specific process for making the final transporter selection.

5. SUMMARY

EH-231 has developed this Guide as a current statement of DOE policy regarding the selection of off-site hazardous waste management facilities. The Guide summarizes applicable EPA regulations implementing RCRA and CERCLA, as well as DOE policies published previously in DOE guidance documents and memoranda. In addition, the Guide synthesizes these materials into an easily referenced regulatory road map to the process for selecting off-site hazardous waste TSD facilities to which, at the time of the facility's selection, DOE has not previously shipped the type of waste for which the Department seeks an off-site management option.

EH-231 anticipates that HFOs, ERPMS, and others, as appropriate, at each DOE site will use this Guide in conjunction with the applicable laws, regulations, policies, guidance documents and memoranda from which it was derived to either formulate or evaluate the site's detailed implementing procedures for selecting compliant off-site hazardous waste TSD facilities and hazardous waste transporters.

Questions regarding the Guide should be directed to Katherine Nakata, Office of Environmental Guidance, RCRA/CERCLA Division (EH-231), (202) 586-0801.

6. REFERENCES

6.1. STATUTES

Atomic Energy Act of 1954 (AEA), as amended, Pub.L. 83-703 (1954) [42 U.S.C. § 2011 et seq.].

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Pub.L. 96-510 (1980) as amended, § 101 (14) and (33) [42 U.S.C. § 9601.(14) and (33), defining "hazardous substance" and "pollutant or contaminant," respectively].

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Pub.L. 96-510 (1980) as amended, § 104 [42 U.S.C. § 9604, "Response Authorities"].

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Pub.L. 96-510 (1980) as amended, § 106 [42 U.S.C. § 9606, "Abatement Actions"].

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Pub.L. 96-510 (1980) as amended, § 121 (added by Pub. L. 99-499, 1986) [42 U.S.C. § 9621, "Cleanup Standards"].

Federal Water Pollution Control Act (as amended by the Clean Water Act of 1977) (CWA) as amended, Pub.L. 92-500 (1972) (as amended by Pub.L. 95-217 (1977)) as amended, § 311 [33 U.S.C. § 1321, "Oil and Hazardous Substance Liability"].

Hazardous Material Transportation Act of 1990 (HMTA), Pub.L. 101-615 § 1a (1990) as amended [49 U.S.C. § 1801 et seq.].

Resource Conservation and Recovery Act (RCRA), Pub.L. 94-580 (1976) as amended, § 7003 [42 U.S.C. § 6973, "Imminent Hazard"].

Resource Conservation and Recovery Act (RCRA), Pub.L. 94-580 (1976) as amended, § 3008(h) (added by Pub.L. 98-616, 1984) [42 U.S.C. § 6928(h), "Interim Status Corrective Action Orders"].

6.2. REGULATIONS

U.S. Environmental Protection Agency, Code of Federal Regulations Title 40, Part 300, [National Oil and Hazardous Substances Pollution Contingency Plan] (1993).

U.S. Environmental Protection Agency, Code of Federal Regulations Title 40, Part 262 [Standards Applicable to Generators] (1993).

U.S. Environmental Protection Agency, Code of Federal Regulations Title 40, Part 263 [Standards Applicable to Transporters] (1993).

58 Fed. Reg. 49200, Sept. 22, 1993 (codifying Code of Federal Regulations Title 40, § 300.440 [Procedures for Planning and Implementing Off-Site Response Actions]).

U.S. Department of Transportation, Code of Federal Regulations Title 49, Parts 107 [Hazardous Materials Program Procedures] and 171 through 179 [Hazardous Material Regulations] (1993).

U.S. Nuclear Regulatory Commission, Code of Federal Regulations Title 10, Part 71 [Packaging and Transportation of Radioactive Material].

Federal Acquisition Regulations System, Code of Federal Regulations Title 48, Part 5 [Publicizing Contract Actions], Part 6 [Competition Requirements], and Part 7 [Acquisition Planning] (1993).

Federal Acquisition Regulations System, Code of Federal Regulations Title 48, Parts 901 - 971 [Department of Energy Acquisition Regulation] (1993).

6.3. DOE ORDERS

U.S. Department of Energy, Order DOE 1540.1A, "Materials and Transportation & Traffic Management" (July 8, 1992).

U.S. Department of Energy, Order DOE 5400.1, "General Environmental Protection Program" (June 29, 1990).

U.S. Department of Energy, Order DOE 5400.4, "Comprehensive Environmental Response, Compensation, and Liability Act Requirements" (Oct. 6, 1989).

U.S. Department of Energy, Order DOE 5820.2A, "Radioactive Waste Management" (Sept. 26, 1988).

6.4. PROCEDURES AND GUIDANCE

U.S. Environmental Protection Agency, "Guidance on the Requirements for Selecting an Off-Site Option in a Superfund Response Action" (Jan. 1983).

U.S. Environmental Protection Agency, "Procedures for Planning and Implementing Off-Site Response Actions" (May 1985) [50 FR 45933, Nov. 5, 1985].

Memorandum from EPA Assistant Administrator of Solid Waste and Emergency Response (Don R. Clay) and EPA Acting Assistant Administrator of Enforcement (Raymond B. Ludwiszewski) to EPA Regional Waste Management Division Directors and Regional Counsels concerning "Federal Hazardous Waste Generator Notification Policy" (April 26, 1991).

Memorandum from EPA Assistant Administrator (J. Winston Porter) to EPA Regional Administrators concerning "Revised Procedures for Planning and Implementing Off-Site Response Actions," OSWER Directive No. 9834.11 (Nov. 13, 1987).

Memorandum from DOE Assistant Secretary, Environment, Safety and Health (Mary L. Walker) to DOE Secretarial Officers and Heads of Field Organizations concerning Off-Site Disposal Policy (June 24, 1986).

Memorandum from DOE Assistant Secretary for Environmental Restoration and Waste Management (Thomas P. Grumbly) to DOE Operations Office Managers, Fernald Field Office Acting Manager and Rocky Flats Office Acting Manager concerning "Exemption from Department of Energy Order 5820.2A for Mixed Waste from Environmental Restoration and Waste Management Activities" (Oct. 12, 1993).

U.S. Department of Energy, Office of Environmental Audit, "Performance Objectives and Criteria for Conducting DOE Environmental Audits," DOE Guidance Document No. DOE/EH-00358 (Jan. 1994).

U.S. Department of Energy, Office of Environmental Audit, "DOE Environmental Audit Program Guidance Manual," Vol. 1 of 2 (Jan. 1994).

U.S. Department of Energy, Office of Environmental Audit, "Administrative Procedures Manual for Conducting Environmental Audits/Assessments," Vol. 2 of 2 (Jan. 1994).

U.S. Department of Energy, Office of Environmental Audit, "Standard Operating Procedures" (Jan. 1994).

U.S. Department of Energy, Office of Environmental Audit, "Protocols for Conducting Environmental Management Assessments of DOE Organizations," DOE Guidance Document No. DOE/EH-0326 (undated).

U.S. Department of Energy, Office of Environmental Guidance, RCRA/CERCLA Division (EH-231), "RCRA Corrective Action Program Guide," DOE Guidance Document No. DOE/EH-0323 (May 1993).

U.S. Department of Energy, Office of Environmental Guidance, RCRA/CERCLA Division (EH-231), "Preparation of RCRA Waste Analysis Plans (Interim Guidance)," DOE/EH-0306 (Mar. 1993).

U.S. Department of Energy, Office of Environmental Guidance, RCRA/CERCLA Division (EH-231), "CAMU/TU Final Rule Issued," Environmental Guidance Regulatory Bulletin (May 12, 1993).

U.S. Department of Energy, Office of Environmental Guidance, RCRA/CERCLA Division (EH-231), "Executive Order 12580," CERCLA Information Brief EH-231-015/0593 (May 1993).

U.S. Department of Energy, Office of Environmental Guidance, RCRA/CERCLA Division (EH-231), "The Off-Site Rule," CERCLA Information Brief EH-231-020/0394 (March 1994).

U.S. Department of Energy, Office of Environmental Guidance, RCRA/CERCLA Division (EH-231), "Corrective Action Management Units and Temporary Units," RCRA Information Brief EH-231-043/0394 (March 1994).

U.S. Department of Energy, Office of Environmental Guidance, RCRA/CERCLA Division (EH-231), "Pretransport Requirements for Waste Generators," RCRA Information Brief EH-231-037/0494 (April 1994).

U.S. Department of Energy, Office of Environmental Guidance, RCRA/CERCLA Division (EH-231), "Manifest Requirements," RCRA Information Brief EH-231-038/0494 (April 1994).

U.S. Department of Energy, Office of Environmental Guidance, RCRA/CERCLA Division (EH-231), "Transportation of RCRA Hazardous Waste," RCRA Information Brief EH-231-013/0494 (April 1994).

6.5. OTHER REFERENCES

Executive Order 12580, "Superfund Implementation" (Jan. 23, 1987).

U.S. Department of Energy, Environment, Safety and Health Program, Office of Special Projects (EH-5), "Facility Profile Information Management System (FPIMS)," [Electronic Database].

Letter from DOT Office of the Chief Counsel (Judith S. Kaleta) to DOE Office of Technology Development, Transportation Management Program (Susan H. Denny) (April 23, 1991).

APPENDIX A

EPA REGIONAL OFF-SITE CONTACTS

EPA REGIONAL OFF-SITE CONTACTS (ROCs)

REGION I

Primary Contact: Lynn Hanifan (617) 573-9662
Secondary Contact: Austine Frawley (617) 573-1754

REGION II

Primary Contact: Greg Zaccardi (212) 264-9504
Secondary Contact: Joel Golumbek (212) 264-2638

REGION III

Primary Contact: Naomi Henry (215) 597-8338
Secondary Contact: Mary Letkus (215) 597-9189

REGION IV

Primary Contact: Edmund Burks (404) 347-7603
Secondary Contact: John Dickinson (404) 347-7603

REGION V

Primary Contact: Gertrud Matuschkovitz (312) 353-7921
Secondary Contact: Uylaine McMahan (312) 886-4445

REGION VI

Primary Contact: Ron Shannon (214) 655-2282
Secondary Contact: Joe Dougherty (214) 655-2281

REGION VII

Primary Contact: Gerald McKinney (913) 551-7816
Secondary Contact: David Doyle (913) 551-7667

REGION VIII

Primary Contact: Terry Brown (303) 293-1823
Secondary Contact: George Dancik (303) 293-1506

REGION IX

Primary Contact: Diane Bodine (415) 744-2130
Secondary Contact: Gloria Brownley (415) 744-2114

REGION X

Primary Contact: Ron Lillich (206) 553-6646
Secondary Contact: Kevin Schanilec (206) 553-1061

☞ **NOTE: TO OBTAIN UPDATES TO THE LIST** ☞
☞ **OF ROCs, CALL THE EPA** ☞
☞ **RCRA/SUPERFUND HOTLINE AT** ☞
☞ **(800) 424-9346** ☞
☞ **MONDAY - FRIDAY** ☞
☞ **8:30AM TO 6:30PM [EST]** ☞

APPENDIX B

**GUIDELINE FOR
REQUESTING INFORMATION FROM EPA
UNDER THE
FEDERAL HAZARDOUS WASTE GENERATOR
NOTIFICATION POLICY**

**GUIDELINE FOR
REQUESTING INFORMATION FROM EPA
UNDER THE
FEDERAL HAZARDOUS WASTE GENERATOR
NOTIFICATION POLICY**

Introduction

The Federal Hazardous Waste Generator Notification Policy, as set forth in a memorandum from EPA Assistant Administrator of Solid Waste and Emergency Response to EPA Regional Counsels and Waste Management Division Directors (April 26, 1991), establishes two independent mechanisms for the transfer of relevant information regarding TSD facilities from EPA to Federal generators of RCRA hazardous wastes. Details concerning each of the two transfer mechanisms and how DOE personnel can access them are provided below. The Policy was established to improve the ability of Federal generators to make informed decisions regarding whether to ship their RCRA hazardous wastes to particular off-site TSD facilities by making information available to the Federal generators regarding civil enforcement actions and criminal investigations at such facilities.

Use of CERCLA Off-site Policy Data

EPA has determined that much of the data which is utilized by an EPA Regional Off-site Contact to make a final determination under the CERCLA Off-site Rule regarding the acceptability of a particular TSD facility to receive CERCLA wastes (generally referred to as an "acceptability" determination) may be useful to Federal generators in selecting off-site TSD facilities for management of their RCRA hazardous wastes. To access this information, DOE personnel must submit a written request to the EPA Regional Off-site Contact in the Region where the TSD facility of interest is located. (See Appendix A for a list of EPA Regional Off-site Contacts).

The written request must:

1. Identify the particular TSD facility of interest. EPA requires a separate written request for each TSD facility;
2. Ask for the release of relevant, publicly available data utilized by the Regional Off-site Contact in making a final CERCLA Off-site Rule acceptability determination; and
3. Limit the information request to: (a) current authorized hazardous waste management operating parameters for the TSD facility (Part A permit information); (b) inspection reports for the past three years for the TSD facility; and (c) hazardous waste management information for the past three years for the TSD facility which the Regional Off-site Contact finds to be relevant.

EPA will respond to DOE's request with a simple transmittal of publicly available data. However, the Regional Off-site Contact's conclusion regarding the acceptability of the TSD facility to receive CERCLA wastes may not be included. Also, if no acceptability determination has been made, no data will be provided.

Use of the Federal Generator Notification System

The Federal Generator Notification System (FGNS) is designed to share with Federal generators certain types of information regarding TSD facilities which has been drawn from EPA's Hazardous Waste Data Management System, from the Office of Enforcement's judicial enforcement docket, and from EPA's criminal investigations. The FGNS has two components: (1) a quarterly list of EPA's pending civil and criminal hazardous waste enforcement cases; and (2) a formal notice, with supporting documents, when a criminal investigation of a particular TSD facility is undertaken. With respect to the first component of the FGNS, EPA regularly distributes the quarterly list of pending enforcement

cases to Federal agencies or departments, including DOE, known to be generating significant volumes of hazardous wastes. However, with respect to the second component, EPA will send DOE a formal notice of a pending criminal investigation only when the Department is known, or believed to be, utilizing the TSD facility being investigated.

DOE personnel who want further relevant and publicly available information about an enforcement action mentioned on the quarterly list of enforcement cases should inquire at the appropriate EPA Regional office. The inquiry should be precise and as streamlined as possible so as to minimize EPA's resource burdens.

Direct such inquiries to the following officials at the appropriate EPA Regional office:

1. *For civil enforcement actions:*

Regional Waste Management Division Section Chief

OR

Branch Chief for RCRA Enforcement

2. *For criminal matters:*

Regional Office of Criminal Investigations

APPENDIX C

DEPARTMENT OF ENERGY

ENVIRONMENTAL AUDIT PROGRAM

**DEPARTMENT OF ENERGY
ENVIRONMENTAL AUDIT PROGRAM**

In 1985, DOE created an Environmental Audit Program with the goal of providing a continuing program of internal, independent oversight of line management's environmental performance, in support of DOE's broader goal of achieving full compliance and excellence in the environmental area. The Environmental Audit Program operates as an integral part of the overall mission of the Deputy Assistant Secretary for Environment, Safety and Health, and consists of several components which are summarized on Table C-1 (p. C-2). The first two components of the program, which are largely completed, consisted of: (1) the environmental portion of Tiger Team Assessments conducted on selected DOE facilities through 1992; and (2) the environmental portion of Progress Assessments. The other components of the Environmental Audit Program are either ongoing or planned and include: comprehensive, baseline environmental audits of non-major DOE facilities that did not receive Tiger Team Assessments; routine environmental audits of major and other DOE facilities; assessments of environmental management programs within line organizations; focused, special issue reviews, on an as-needed basis, to assess high priority issues at a particular site, or which demonstrate cross-cutting issues.

Tiger Team Assessment reports and all other completed audit/assessment reports are electronically accessible through the DOE Environment, Safety and Health Program, Office of Special Projects (EH-5) Facility Profile Information Management System (FPIMS), which acts as a central, computer-based repository for baseline compliance assessments and DOE oversight documents.

DOE's Office of Environmental Audit (EH-24) has primary responsibility for the Environmental Audit Program, including environmental audit training, development of audit protocols and procedures, performance objectives, and criteria. Consistent with this, EH-24 has produced Guidance Document No. DOE/EH-0358,

COMPONENTS OF DOE'S ENVIRONMENTAL AUDIT PROGRAM	
Completed Components	
•	Environmental portion of Tiger Team Assessments
•	Environmental portion of Progress Assessments
Ongoing and Planned Components	
•	Comprehensive Baseline Environmental Audits for Non-major DOE facilities
•	Routine Environmental Audits of Major DOE facilities
•	Environmental Management Assessments
•	Focused Special Issue Reviews

TABLE C-1

"Performance Objectives and Criteria for Conducting DOE Environmental Audits," [Jan. 1994] which contains performance objectives and criteria (POC) intended to guide assessment team members in evaluating the effectiveness of the programs and systems used by a DOE facility to establish and implement environmental protection standards. The POC cover eleven technical disciplines: air quality protection; surface water and drinking water quality; groundwater; waste management; toxic and chemical materials; inactive waste sites and releases; environmental radiation protection; environmental quality assurance; ecological and cultural resources; the National Environmental Policy Act (NEPA); and environmental management systems. A portion of the waste management (WM) POC directly addresses the performance of DOE sites in evaluating the continued acceptability of off-site commercial TSD facilities. Performance Objective WM.7, "Offsite Facility Evaluations," [p.72] states that each DOE facility should have a program in place "to evaluate offsite commercial facilities used for waste storage, treatment, or disposal to ensure that wastes are properly handled." Five criteria are provided against which DOE internal auditors are instructed to evaluate a DOE site to assess whether the site has

achieved the performance objective. These criteria are presented on Table C-2 (p. C-4).

EH-24 has also developed an environmental audit guidance manual consisting of three volumes: "DOE Environmental Audit Program Guidance Manual," Vol. 1 of 2 (Jan. 1994); "Administrative Procedures Manual for Conducting Environmental Audits/Assessments," Vol. 2 of 2 (Jan. 1994); and "Standard Operating Procedures" (Jan. 1994). These volumes serve as implementing guidelines for the POC in DOE/EH-0358. Also, Guidance Document No. DOE/EH-0326, "Protocols for Conducting Environmental Management Assessments of DOE Organizations," contains protocols applicable to the POC for the environmental management systems (EM) technical discipline. While these guidance documents do not apply directly to evaluating off-site hazardous waste management facilities, they are comprised of valuable information concerning the DOE Environmental Audit Program.

In 1991, DOE's Environmental Restoration and Waste Management Program began using "road map" methodology as a decision-making tool to provide for comprehensive and systematic issue identification and resolution planning. Among other things, the road map process identified the need for a standardized approach among DOE sites for auditing commercial off-site hazardous waste management facilities. In response, the Office of Waste Operations Technical Analysis Division (EM-332) [formerly EM-351, Office of Waste Operations] is currently preparing guidance that will specifically address auditing of off-site TSD facilities.

**PERFORMANCE OBJECTIVES AND CRITERIA (POC)
ADDRESSING CONTINUED ACCEPTABILITY OF
OFF-SITE TSD FACILITIES**

Performance Objective

A program should be in place to evaluate off-site commercial facilities used for waste storage, treatment, or disposal to ensure that wastes are properly handled.

Criteria

- A formal Plan, including evaluation criteria, for conducting offsite facility investigations of TSD facilities to which wastes are sent has been prepared.
- Appropriate personnel are assigned to implement the offsite facility evaluations. These personnel are adequately trained in conducting audits, and their training is documented.
- Formal record keeping and reporting requirements are prepared for each assessment or audit conducted, and the findings of the assessment or audit are used to determine the suitability of a facility for receiving DOE wastes. When decisions about the suitability of a TSD facility are based on audits conducted by other DOE organizations, complete documentation of assessments, audits, and other evaluations is maintained.
- Coordination of offsite evaluations occurs with Federal and state regulatory agencies, where appropriate, prior to the conduct of such an audit.
- Formal determinations of site compliance with waste analysis plans of offsite TSDFs have been made.

Source: "Performance Objectives and Criteria for Conducting DOE Environmental Audits," DOE/EH-0358 (Jan. 1994), WM.7, "Offsite Facility Evaluations," p. 72.

TABLE C-2

APPENDIX D

**LIST OF HAZARDOUS WASTE
MANAGEMENT FACILITY
DIRECTORIES**

**LIST OF HAZARDOUS WASTE
MANAGEMENT FACILITY DIRECTORIES**

COMMERCIALY AVAILABLE DIRECTORIES

- Title: Hazardous Waste Management Directory
- Publisher: Pennsylvania Environmental Research Foundation
Philadelphia, PA
- Year Published: 1985
- Abstract: Lists firms that are able to design hazardous waste treatment facilities, laboratories that can identify constituents of a waste stream, facilities that can recycle, treat or incinerate the wastes, and sites that can provide for their disposal.
- * * * * *
- Title: Hazardous Waste Services Directory: Transporters, Disposal Sites, Laboratories and Consultants
- Publisher: J.J. Keller & Associates
Neenah, WI
- Year Published: 1986
- Abstract: Provides generators of hazardous waste with comprehensive listing of services organized alphabetically by state/city/name of firm. Updated periodically.
- * * * * *

Title: Hazardous Materials Control Directory 1989-1990.
4th Ed.

Publisher: Hazardous Materials Control Research Institute
Silver Spring, MD

Year Published: 1988

Abstract: Provides names, addresses, and specialty areas of 5,000 companies that manage industrial and municipal sludge, hazardous materials, volatile emissions and Superfund waste, or perform consulting and engineering functions. Also lists Federal and state agencies.

* * * * *

Title: EI Environmental Services Directory, Vols. 1 - 3

Publisher: Environmental Information, Ltd.
Minneapolis, MN

Year Published: 1992

Abstract: Focuses on hazardous waste facilities and transportation services as well as spill response services across the country. Presents information alphabetically state by state, or by a particular service. Updated periodically.

* * * * *

Title: California Hazardous Waste Directory: 1991 - 1992

Publisher: In Media Research
San Francisco, CA

Year Published: 1991

Abstract: Directory identifies organizations that are sources of hazardous waste information. Entries are categorized by type of business or service: private companies, government agencies, academics, organizations, conference and seminars.

* * * * *

Title: Hazardous Waste Management Facilities Directory: Treatment, Storage, Disposal and Recycling

Publisher: Noyes & Andrews, Inc.
Park Ridge, NJ

Year Published: 1990

Abstract: Directory is a list of 1,045 commercial hazardous waste management facilities. Includes information on types of commercial services offered, Facility location and types of wastes managed. Listings by facility, location and type of service.

* * * * *

EPA DIRECTORIES

Title: Directory of Commercial Hazardous Waste Treatment and Recycling Facilities

Author: Office of Solid Waste

Publisher: U.S. Environmental Protection Agency
Washington, DC

Year Published: 1985

EPA Report No.: 530-SW-85-019

Abstract: List of commercial facilities that accept hazardous waste for treatment and/or recycling. Provides facility name, address, phone number, contact, categories of treatment, and types of waste managed.

* * * * *

Title: Directory of Commercial Hazardous Waste Management Facilities

Author: Office of Solid Waste

Publisher: U.S. Environmental Protection Agency
Washington, DC

Year Published: 1987

EPA Report No.: 530-SW-87-024

Abstract: Listing of commercial hazardous waste management facilities, which provides information about types of commercial services offered and types of waste managed.

APPENDIX E

NTIS ORDERING INFORMATION

AND

SAMPLE FOIA REQUEST LETTER

**SAMPLE FOIA REQUEST LETTER
FOR LIST OF TSD FACILITIES**

[DATE]

U.S. Environmental Protection Agency
Freedom of Information Officer
**[INSERT ADDRESS OF APPROPRIATE USEPA REGION (see
attached list)]**

RE: Request for Information Pursuant to
Freedom of Information Act (FOIA)

Dear Sir/Madame:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552,
the following information is requested:

A listing from USEPA's Resource Conservation and
Recovery Information System (RCRIS) of the name, address,
telephone number and contact person for each hazardous
waste treatment, storage and disposal facilities located within
USEPA Region **[INSERT REGION #]** which, as of the date
of this letter, has either qualified for interim status or been
granted a permit pursuant to the Resource Conservation and
Recovery Act.

Please forward the requested information to: **[INSERT
MAILING AND TELEPHONE INFORMATION AS
APPROPRIATE]** Your prompt attention in this matter is
appreciated.

Sincerely,

[SIGNATURE]

NOTE: IF YOU WANT INFORMATION FOR ALL EPA REGIONS, THE PARAGRAPH DESCRIBING YOUR REQUEST IN THE ABOVE LETTER SHOULD READ:

A listing from USEPA's Resource Conservation and Recovery Information System (RCRIS) of the name, address, telephone number and contact person for each hazardous waste treatment, storage and disposal facility located in the United States which, as of the date of this letter, has either qualified for interim status or been granted a permit pursuant to the Resource Conservation and Recovery Act.

AND BE ADDRESSED TO:

**U.S. Environmental Protection Agency
Freedom of Information Officer, A-101
401 M Street, S.W.
Washington, D.C. 20460**

**ADDRESSES OF USEPA REGIONAL
FREEDOM OF INFORMATION OFFICES**

REGION I (Massachusetts, Connecticut, Maine, New Hampshire, Rhode Island Vermont)

Room 2303, John F. Kennedy Federal Building
Boston, MA 02203

Region II (New Jersey, New York Puerto Rico Virgin Islands)

Room 900, 26 Federal Plaza
New York, NY 10007

Region III (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia)

841 Chestnut Street
Philadelphia, PA 19107

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

345 Courtland Street, N.E.
Atlanta, GA 30365

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

77 West Jackson Boulevard
Chicago, IL 60604

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)

First International Building, 12th Floor
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

Region VII (Iowa, Kansas, Missouri, Nebraska)

726 Minnesota Avenue
Kansas City, MO 66101

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

One Denver Place
999 18th Street, Suite 1300
Denver, CO 80202

Region IX (Arizona, California, Hawaii, Nevada, American Samoa, Guam, Trust Territory of Pacific Islands)

75 Hawthorne Street
San Francisco, CA 94105

Region X (Alaska, Idaho, Oregon, Washington)

1200 Sixth Avenue
Seattle, WA 98101