Department of Energy

Washington, DC
November 27, 2000

RCRA Docket Information Center
U.S. Environmental Protection Agency (EPA HQ)
Office of Solid Waste
Ariel Rios Building (5305G)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0002

Docket Number F-2000-RBAA-FFFFF

Dear Sir or Madam:

Re: *Results-Based Approaches to Corrective Action Draft Guidance*

On September 28, 2000, the Environmental Protection Agency (EPA) released for comment a draft guidance document, *Results-Based Approaches to Corrective Action (Overview and Tailored Oversight Guidance).* This letter transmits the Department of Energy's (DOE) comments on this Draft Guidance.

DOE supports EPA's continuing emphasis on the use of flexible, results-based approaches for implementing corrective action activities. DOE believes that its own experience shows that a results-based approach to corrective actions can substantially streamline the traditional regulatory process whereby each Remedial Facility Investigation (RFI)-Corrective Measures Strategy (CMS) document must be formally approved before the next stage of work can be undertaken. DOE supports a corrective action approach that defines how results can be achieved, relies on routine project team communications, has benchmarks at which progress is ascertained, and evaluates the success of a project based on achieving the desired objectives.

In light of the foregoing, DOE believes that EPA's Draft Guidance would be strengthened by:

- Providing specific examples and case studies of results-based corrective action projects.

- Providing more specific recommendations for implementation of tailored oversight, such as decision-steps, ways for choosing between results-based approaches, and instances where the previously utilized oversight procedures can be skipped or otherwise changed in accordance with the Guidance's recommendations.

DOE's specific comments are organized into three sections: General Comments, Detailed Comments on Guidance Overview, and Detailed Comments on Tailored Oversight Guidance.

If you have any questions or need further clarification of our comments, please contact Jerry Coalgate or my staff at 202-586-6075 or jerry.coalgate@eh.doe.gov.

Sincerely,

[signed]

Andy Lawrence
Director
Office of Environmental Policy and Guidance

Enclosure

UNITED STATES
DEPARTMENT OF ENERGY

Comments on Draft Results-Based Corrective Action Guidance
Docket # F-2000-RBAA-FFFFF

November 27, 2000

United States
Department of Energy
Comments on
Draft Results-Based Corrective Action Guidance
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General Comments

1. The Department of Energy (DOE) commends the Environmental Protection Agency (EPA) for continuing to emphasize the availability of flexible approaches when implementing corrective action activities. Like the earlier EPA guidance document (*Handbook of Groundwater Policies for RCRA Corrective Action*, March, 2000) that described approaches for remediating ground water effectively under RCRA policies, this document clearly outlines EPA's expectations that results-based corrective action and tailored oversight should be part of nearly every corrective action project (i.e., based on the conditions and circumstances outlined).

2. DOE commends EPA for addressing one of the most time consuming and often delaying aspects of corrective action -- the idea that the corrective action process can only proceed effectively through the traditional RFA-RFI-CMS process which requires that all documents be formally approved before undertaking the next stages of work. DOE's experience shows that a results-based approach can be superior to the traditional regulated approach at DOE sites: A results-based approach defines how results can be achieved, relies on routine project team communications, has benchmarks at which progress is ascertained, and evaluates the success of a project based on achieving the desired objectives.

3. DOE recommends that, in both guidance documents, EPA incorporate tangible examples of models for "results-based" corrective action projects and tailored oversight. This is particularly important because the concepts EPA is discussing are largely focused on better project management, more effective and fewer decision documents, and earlier consensus on what the results needing to be achieved should be. DOE has several excellent examples of sites (i.e., Savannah River, Mound, Nevada) where these results-based principles are applicable and have proven very successful. The following documents, which may be downloaded for viewing and printing from the OEPA World Wide Web site [http://www.eh.doe.gov/oepa/], describe some of these projects and the results achieved.

   A Monograph: Facility Disposition Lessons Learned from the Mound Site, DOE/EH-413/9909, July 1999.

A Lessons Learned Review of the Double Tracks Project at the Nevada Test Site, DOE-EH-413-9803, March 1998.

Expediting the Removal Approach for Remediating and Releasing the Mound Plant, DOE-EH-413-9802, March 1998

Accelerating the RI/FS Process for the Old Radioactive Waste Burial Ground at the Savannah River Site, DOE-EH-413-9801, March 1998.

4. DOE believes the guidance would benefit from providing a methodology (perhaps step-by-step) for choosing which results-based approach(es) to pursue given the unique and varied scenarios that project managers face.

5. There is an inconsistent use of terms and phrases between the *Results-Based Approaches to Corrective Action: Overview* and *Results-Based Approaches to Corrective Action: Tailored Overview Guidance* and other relevant EPA guidance documents (i.e., Environmental Indicators training notes/slides, http://www.epa.gov/epaoswer/hazwaste/ca/eis.htm). For example, in the draft results-based guidance, EPA uses "groundwater releases controlled" rather than "contaminated groundwater migration controlled" which is used in the EI training notes, when describing the groundwater-related environmental indicator (EI).

   Furthermore, there are inconsistencies between terms and phrases both within and between the *Results-Based Approaches to Corrective Action: Overview* and *Results-Based Approaches to Corrective Action: Tailored Oversight Guidance*. For example, in Section E, 1st paragraph of the *Overview*, EPA states there are five overarching approaches that project managers and owner/operators should strive to incorporate into facility cleanup plans. The Agency continues in the next sentence by calling them five baseline approaches and subsequently describes each of the five approaches under the heading "Baseline Approaches".

   When describing "Procedural flexibility" on page 7 of 24 (*Overview*), EPA states "the corrective action process is generally structured around five ***core*** objectives common to most cleanup activities: facility-wide assessments, addressing all solid waste management unit (SWMU) releases, selecting remedies within an acceptable risk range and hazard index, public participation throughout corrective action, and preference for treatment of principle threats" (emphasis added). In a footnote on page 14 of 24 and 1st paragraph, line two on page 22 of 24 (*Tailored Overview Guidance)*, however, EPA lists these objectives as "***overall*** objectives" and "overall program objectives," respectively.

6. Because EPA did not number the draft guidance document, we have made all specific page references from the first page of the actual guidance and did not include the cover page or table of contents as numbered pages.

Specific Comments on Overview

1. ***Page 1. A. Overview, (paragraph 1): "The Resource Conservation and Recovery Act (RCRA) regulatory structure ensures that owners and operators generating hazardous waste from ongoing industrial operations properly manage their waste and do not contribute to a future generation of toxic waste sites."***

   We suggest "toxic waste sites" be changed to "hazardous waste sites." The use of "toxic" may be confusing and misleading. For example, some readers may interpret "toxic wastes" to mean hazardous waste that exhibits the "Toxicity Characteristic" (i.e., 40 CFR 261.24). Furthermore, we think some readers may confuse "toxic pollutant" and "toxic waste" and use the terms interchangeably. While hazardous wastes may be "toxic wastes/pollutants," "toxic wastes/pollutants" do not necessarily have to be hazardous wastes. Under the Clean Water Act, "toxic pollutants (40 CFR 401.15) may be radioactive materials, agricultural chemicals, non-hazardous industrial solid waste, etc., which are not RCRA hazardous wastes.

   "After 'hazardous waste,' insert 'and constituents.' Since the documents appears to be addressing SWMUs, the term 'constituents' would be appropriate."

2. ***Page 1 A. Overview (paragraph 2): "...Greater use of results-based corrective action approaches has been EPA's stated policy since the 1996 Advanced Notice of Proposed Rulemaking (ANPR), Corrective Action for Solid Waste Management Units at Hazardous Waste Management Facilities (61 FR 19432)***

   It would be useful if the URL is given for the EPA's World Wide Web site(s) where this document and others identified in this guidance have been posted.

3. ***Page 1. A. Overview (Paragraph 3): "...Project managers should weigh the facility-specific circumstances, including the cooperativeness and technical capability of the facility."***

   The use of the term "project managers" requires clarification. We suggest that when referring to the EPA project manager, EPA use the term "EPA Project Manager." If "project manager" refers also to non-EPA project managers, this should be clarified as well.

4. ***Page 1. B. Why are we issuing this document? (paragraph 1): "We are providing this overview so that EPA and state agency project managers ("project managers") and owner/operators will begin to understand and routinely incorporate results-based approaches where appropriate into their cleanups."***

   We suggest changing to: "We are providing this guidance so that EPA and state agency

project managers ("project managers") and owner/operators enhance their understanding of results-based corrective action and routinely incorporate this approach, where appropriate, into their cleanups."

5. ***Page 2. B. Why Are we issuing this document? (paragraph 2): "In response to the Government Performance and Results Act of 1994 (GPRA) EPA has set challenging goals to ensure near-term protection of human health and the environment at RCRA Corrective Action facilities."***

It would be useful if "near-term protection" were defined.

6. ***Page 2, Text Box. Environmental Indicators (paragraph 1):***

We suggest changing to: "Environmental Indicators (EIs) are results-based measures of corrective action progress..."

In presenting its definition for Environmental Indicators, EPA states EIs "are the primary measures of EPA's interim cleanup goals." The Department questions EPA's use of the phrase "interim ***cleanup***goals" (emphasis added) when defining EIs. Specifically, EIs serve as interim milestones/near-term objectives that are designed to assist decision makers by identifying those sites that require stabilization. For example, the "Groundwater releases migration under Control" EI is a resource protection-based measure pertaining only to the physical migration of contaminated groundwater (i.e., prevention of further contamination), which does not appear to reflect EPA expectations for groundwater cleanup (i.e., restoration). DOE is concerned that owners/operators might think that all they need to do is control groundwater migration and, thereby, achieve cleanup. Accordingly, DOE suggests EPA simply delete cleanup or replace the phrase "interim cleanup goals" with another phrase such as interim milestones, near-term objectives, short-term protectiveness goals, or early risk reduction.

7. ***Page 2, text box, (paragraph 2)In restating its Government Performance and Results Act of 1994 (GPRA) environmental indicator (EI) goals, EPA states that "70% of high priority RCRA facilities have met the groundwater releases controlled environmental indicator."***

EPA has previously acknowledged that some stakeholders have taken the title/phrase *groundwater releases controlled* to imply that the EI included elements of source control. Similarly, other stakeholders have taken this title/phrase to imply that physical remedial measures were taken, when remedial actions (other than site investigation, evaluation, and continued monitoring) may not have been necessary to ensure that contaminated groundwater was not migrating. The Department suggests EPA consider rewriting this sentence such that it more closely reflects the current groundwater EI phrasing (e.g., met the "contaminated groundwater migration controlled environmental indicator").

8. ***Page 2. B. Why are we issuing this document? (paragraph 2): "Approaches that focus owner/operators on program goals and appropriately reduce the process towards attaining those goals are termed "results-based" and are the primary subject of this document.***

This appears to be a definition of "results-based corrective action." It is unclear as to why it appears here. There is a more comprehensive definition of "results-based corrective action in section "C."

9. ***Page 2. C. What do we mean by results-based approaches to corrective action? "The purpose of the corrective action program is to address releases of hazardous waste at RCRA facilities in a timely manner."***

In this sentence,"...in a timely manner" is unclear. It would be useful if EPA were to provide more details about deciding what is a "timely manner." For example, will "timely manner" be defined taking into consideration site conditions, the complexity of cleanup, etc.

10. ***Page 2. C. What do we mean by results-based approaches to corrective action? "Results-based approaches involve setting goals and, where appropriate, allowing owner/operators to move toward those goals without the implementing agency unnecessarily dictating how owners or operators will attain the goals. Under such approaches, owners/operators are held accountable for the results they agree to with their project manager."***

It is unclear as to how owners/operators will be held accountable under the proposed approach. It is assumed that many of the facilities that might choose to follow a "results-based" path are operating under a RCRA permit, or have a consent order or, in the case of some federal facilities, an interagency agreement (IAG) in place "directing" cleanup. If this indeed the case, the Agency should discuss the requirements for modifying a permit, order, etc., to adopt a results-based approach. Furthermore, even though the permit/order may be negotiated, the final permit/order "dictates" what the owner/operator must do. Consequently, the statement that this approach avoids the regulatory agency dictating what is to be done seems misleading.

If this statement means that results-based corrective action may take place outside of the above enforcement mechanisms, it is unclear as to how owners/operators will be "held accountable." Therefore, DOE requests EPA discuss applicable enforcement mechanisms to ensure that corrective action proceed according to the mutually agreed upon plans.

11. ***Page 2, D. What are the benefits of results-based corrective action? "The benefits are: Program Managers and Owner/operators....implementing agency"***

The reference to "unnecessary adherence to a predetermined administrative process" implies that DOE would not have to go through the current rigorous linear document submission process. Based on our experience, some State regulators seem to think that they need all of these documents for the Administrative Record. Therefore, the Department suggests that EPA, or a delegated State program, develop guidance which allows a State to 'streamline' the process.

12. **Page 3, E.*What Are the Expected Program Results? The Corrective Action Results-Based Project Management Workshop has some good information regarding results. For more information please see the Corrective Action Homepage at www.epa.gov/correctiveactionEPA also expects the public to be meaningfully involved in the selection of a final remedy and at points throughout the cleanup process.***

EPA should clarify the meaning of "...meaningfully involved in the selection of a final remedy..."

13. ***Page 3, F., What Are the Some Approaches To Results-Based Corrective Action? "These five baseline approaches are the foundation for results-based corrective action. Four supplemental approaches are also described that may serve to further reduce process in appropriate circumstances, and expedite cleanup depending upon site specific factors. These approaches will not make sense to implement at all sites. While the Agency encourages project managers and owners/operators to view sites holistically, maximum procedural flexibility, tailor oversight, establish clear, reasonable, and protective performance standards, and target data collection, we also encourage project managers and owners/operators to use as many of the supplemental approaches as appropriate. The extent to which these approaches are taken depends on facility-specific circumstances. While described briefly here, guidance is available on some of the approaches (e.g., presumptive remedies), and where available, is referenced at the end of each description. As mentioned earlier, we plan to issue additional guidance on some of the approaches in this section in the future.***

We suggest revising to "These five baseline approaches are the foundation for results-based corrective action. Four supplemental approaches are also described that may serve to expedite cleanup depending upon site specific factors. These approaches will not make sense to implement at all sites.

The Agency encourages project managers and owners/operators to view sites holistically; maximize procedural flexibility; tailor oversight; establish clear, reasonable, and protective performance standards; and target data collection. The EPA also encourages project managers and owners/operators to use as many of the supplemental approaches as appropriate. The extent to which these approaches are taken depends on facility-specific circumstances. While briefly described here, guidance is available on some of the

approaches (e.g., presumptive remedies), and where available, is referenced at the end of each description. As mentioned earlier, we plan to issue additional guidance on some of the approaches in this section in the future. "

14. Page 3, Baseline Approaches - Tailored Oversight. "Oversight, in general, is the management of all activities related to corrective action.....established for their facility.... "

This discussion is confusing. First, the Department does not view oversight by the regulatory entity as the "management of all activities related to corrective action." The Department views regulatory oversight as a process by which the regulatory agency conducts on-site inspections and investigations as needed (for corrective action activities, reviews and approval of remedial work plans, reports, etc.) and interacts directly with facility project managers to ensure the project satisfies all regulatory requirements. However, the "regulatory project manager" does not necessarily "manage" all aspects of a project.

The Department suggests that EPA expand upon this discussion to clearly delineate the respective roles of the EPA and facility managers in implementing corrective action.

15. Page 4,*Holistic Approach."For example, if several Solid Waste Management Units (SWMUs) may have contributed to off-site ground water contamination, a holistic approach would focus on addressing human exposures due to an off-site ground water plume in advance of conducting a SWMU -by-SWMU analysis that would ultimately deal with source control"*

The term "holistic approach" is good conceptually, but needs further explanation as to what it means and how decision-makers could specifically employ it.

The intent and meaning of this paragraph is unclear, particularly the reference to "source control." The Department suggests revising to: "For example, if several Solid Waste Management Units (SWMUs) may have contributed to off-site ground-water contamination, a holistic approach would focus on addressing human/environmental exposures, due to an off-site ground water plume, in lieu of conducting a SWMU-by-SWMU analyses."

To ensure the regulated community recognizes that the holistic approach extends beyond facility-wide measures, DOE suggests EPA consider highlighting one of its recently issued tools for integrating a holistic approach into ongoing, facility-wide corrective actions. Specifically, the final rule titled *Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities: Post-Closure Permit Requirement and Closure Process* (63 *FR* 56710; October 22, 1998), allows EPA and state regulators to conduct remediation of regulated units with releases into the environment as part of the

facility-wide corrective action program. Specific to this section, DOE suggests that EPA insert an example that describes a site at which the default requirements for regulated unit closure/post closure care (capping and groundwater monitoring) are replaced with alternative requirements that allow its cleanup to be integrated into the corrective action activities for adjacent SWMUs/areas of concern [40 CFR 264.110(c)/265.110(d)].

16. Page 4, Procedural Flexibility. "Project managers and facility owner/operators should place their primary focus on environmental results rather than process steps and ensure that each corrective action - related activity... These five elements should be viewed as evaluations generally necessary to make good cleanup decisions."

This discussion needs to expanded upon and made more clear as to what exactly EPA means by "Procedural Flexibility."

Our editorial comments on this section are as follows:

- Line 6 — The Department suggests EPA define "principal threats" (note the proper spelling for "principal" as outlined in EPA Superfund Guidance).
- Line 7 — We suggest revising to "EPA emphasizes that no individual results-based.."
- Line 8-9 — The Department requests EPA clarify what is meant by the statement "...a successful corrective action program should be procedurally flexible."
- Line 10 — We request clarification of what is meant by "mechanistic cleanup process."
- Lines 11-13 — We suggest revising to "The five core objectives identified above should be viewed, as appropriate, as critical elements of effective cleanup decision-making. In focusing on results, project managers are encouraged to use the most effective approaches for facility management and oversight."

17. Page 4, Targeted Data Collection. "Project managers and facility owner/operators should tailor data gathering strategies to the purpose for which the data will be used. The data gathered should support selection and implementation of appropriate responses at the facility".

We suggest revising to: "Project managers and facility owner/operators should tailor data gathering strategies to support selection and implementation of appropriate responses at the facility." It would also be helpful if EPA were to discuss what to tailor (i.e., leave out).

18. Page 5, Presumptive Remedies: EPA cites and describes "Presumptive Remedies" as one of four supplemental approaches and lists select presumptive remedies guidance.

The Department suggests that EPA list (with its existing group of guidance) *Presumptive Response Strategy and Ex-Situ Treatment Technologies for Contaminated Ground Waste at CERCLA Sites* (October 1996, EPA540-R-96-023) and *Presumptive Remedy for Metals-in-Soil Sites* (September 1999, EPA540-F-98-054), since each of these have such broad applicability. These were omitted from EPA's original list.

As with the Baseline Approaches, the Department thinks a more exhaustive list of "supplemental approaches" is warranted. For example, DOE thinks that the use of a site conceptual model can significantly assist regulators and owners/operators and streamline the process. By synthesizing data from historical research and site characterization and stabilization efforts, SCMs can assist in identifying data needs, uncertainties, and exposure concerns. The Department thinks inclusion of additional "Baseline Approaches" is warranted in that risk-based corrective action can serve as an integral component to reduce process and expedite cleanup at certain sites. DOE suggests EPA consider integrating and describing "Risk-based corrective action" as another Baseline Approach.

19. Page 5 - Presumptive Remedies: "...We expect project managers to use presumptive remedies at appropriate RCRA facilities to help ensure consistency in remedy selection and implementation and to reduce the cost and time required to investigate and remediate similar types of sites. In general, even though the Agency's presumptive remedy guidances were developed for CERCLA sites, project managers should use them at appropriate RCRA corrective action facilities..."

The phrase "appropriate RCRA corrective action facilities" should be clarified. EPA should clearly define what an "appropriate" RCRA corrective action facility is in terms of facility and contamination characteristics.

20. Page 5, Innovative Technologies: "In some cases, results-based cleanups may allow for innovative approaches as long as the owner or operator achieves and documents the agreed-upon results."

The Department requests EPA define the specific instances where innovative cleanups would be allowed. Furthermore, clarification is needed regarding what EPA means by "innovative approaches to cleanups." Examples of innovative approaches to cleanup should be provided along with examples of situations where such approaches might be applied.

Specific Comments on Tailored Oversight Guidance

1. ***Page 1, General Information: "EPA chose tailored oversight as the first approach on which to provide more detail, because we believe the concepts discussed in this guidance should be considered at all facilities at all facilities subject to corrective action, particularly those sites that are part of the RCRA cleanup baseline."***

   The Department suggests EPA clarify what the "RCRA cleanup baseline" is.

2. ***Page 1. b. Why Are We Issuing This Guidance? (paragraph 2):. "As part of this reassessment effort, EPA, in July 1999, announced in RCRA Cleanup Reforms"***

   The Department suggests EPA provide the URL for EPA's World Wide Web page where RCRA reforms information may be obtained.

3. ***Page 2, What Is Tailored Oversight? (paragraph 1): "Oversight in general, is the management of all activities related to corrective action at a site"***

   As stated in a previous comment (see comment #3 on Overview section, page 4), the Department views oversight differently than what is implied in the draft guidance. Therefore, DOE requests that EPA further clarify what it means by "management of all activities related to corrective action."

4. ***Page 2, What Is Tailored Oversight? (paragraph 3): "The Corrective Action Oversight Guidance (OSWER Directive EPA/9902.7, issued in January 1992 addressed the subject of tailored oversight at corrective action facilities"..***

   If the OSWER directive is on World Wide Web, its URL should be added.

5. ***Page 2, What are the benefits of tailored oversight? EPA discusses some of the benefits of tailored oversight and specifically lists "2. Potential for achieving results faster because expectations are clearly communicated and documented and unnecessary administrative steps are eliminated (e.g. interim deliverables, duplicative federal/state reviews)"***

   Although DOE concurs that clearly communicating and documenting expectations potentially will expedite corrective action activities, DOE requests that EPA discuss the relationship between clearly communicating and documenting expectations and how that eliminates unnecessary administrative steps (e.g., interim deliverables, duplicative federal/state reviews). Also, the Department suggests that EPA consider compiling examples of interim deliverables and duplicative federal/state reviews that might be eliminated and inserting them as the answer to a new question such as "**What types of interim deliverables and duplicative federal/state reviews might be good candidates**

for elimination when using a tailored oversight approach? Candidate examples could be based on programmatic experience and/or compiled from existing documents. For example, EPA's *RCRA Corrective Action Plan* (OSWER Dir. 9902.3-2A) discusses the use of an optional phase, the "Release Assessment" or "Phase I RFI" (RCRA Facility Investigation), that can be performed by a permittee before an RFI to determine whether interim measures are necessary and/or to focus an RFI (see pp. vi, 18-19). DOE thinks that use of RAs in place of RFIs could represent the Tailored Oversight Approach. Another example might be supplanting the Conceptual Design, Intermediate Plans and Specifications, and Construction Workplan with a single plan–the CMI Workplan [see Chapter V, Introduction (p. 70)].

6. Page 3, Recommended Evaluation Criteria: EPA provides a number of criteria that it generally expects project managers will use to evaluate opportunities for tailoring oversight at a particular facility.

Although they do not currently appear in EPA's list, DOE suggests EPA consider the appropriateness of including one or more of the following bullets as Recommended Evaluation Criteria in addition to the original seven bullets identified in the draft guidance:

8. whether cleanup is being conducted at a federal facility that is listed on the National Priorities List (NPL);
9. regional and localized environmental setting (e.g., area-wide contamination of ground and surface waters, including off-site sources of contamination);
10. national security interests and clearances required to access the area(s) of contamination;
11. additional authorities (beyond RCRA) that can be invoked or are otherwise available to compel facility cleanup (e.g., Interagency Agreements/Federal Facility Agreements (IAGs/FFAs);
12. results of previous inter-agency/cross-program collaborative efforts, if any;
13. availability of oversight resources (EPA Regional offices and headquarters, other EPA offices, other Federal agencies, state and local assistance) and implementing agency oversight priorities;
14. previously established cleanup priorities (i.e., RCRA stabilization versus CERCLA early actions; RCRA corrective measures versus CERCLA remedial action) and budget limitations;
15. current status of the cleanup; and
16. rate of progress that has been made.

The first of these bullets is drawn from an EPA memorandum dated November 6, 1997 (*SUBJECT: Lead Regulator Policy for Cleanup Activities at Federal Facilities on the National Priorities List*), which outlines criteria and considerations for determining which implementing agency (Federal or state) will fulfill the lead oversight role. The last two bullets are site-specific factors taken from OSWER Directive No. 9230.0-75 dated

November 29, 1996 (*SUBJECT: Federal Facilities Streamlined Oversight Directive*). DOE suggests that EPA integrate, to the extent practicable, any of the above bullets and/or "Criteria for Evaluating Federal Facility Sites" (listed on page 4 of 9) it considers appropriate for inclusion, and cite both memoranda as part of the group of other previous EPA guidance from which criteria are taken, where appropriate.

7. Page 4-5, b. How Are Results-based Corrective Action Objectives Established under Tailored Oversight Approaches?: "The cornerstone of effective oversight for corrective action activities is a clear - and documented understanding of site-specific objectives and expected results".

The Department requests that EPA clarify the requirements that facilities will have to meet in order to document they have a "clear and documented understanding" of the expected cleanup objectives and results.

8. *Page 5, a. Recommended Evaluation Criteria (paragraph 1): "Please note that you should weigh each criterion separately against site-specific conditions that exist at the facility."*

The Department requests that EPA describe in detail and/or develop guidance on how the criterion should be weighed in the context of this evaluation to ensure equity and objectivity between facilities being evaluated.

9. Page 5, d. What Should Be Done To Communicate Cleanup Objectives To All Stakeholders?: "These should include written goals and objectives that direct the remediation efforts."

For those cases where results-based corrective action is conducted outside of the permit/order scheme, it is unclear what mechanisms should be implemented to ensure that timely information relating to the cleanup is effectively communicated to all interested stakeholders. Therefore, the Department requests EPA provide additional guidance on stakeholder involvement in results-based corrective action.

10. Page 6, f. Where Can a Project Manger Tailor Oversight Using This Results-Based Approach? (Entire Section):

As with previous comments, the Department questions whether oversight should be defined as "the management of all activities related to the corrective action process." The activities identified under this section do not reflect what the definition implies. That is, oversight management does not include the day-to-day management of the various activities going on "on the ground" at the corrective action project. Therefore, DOE requests the Agency revise its definition of Oversight to reflect the fact that oversight consists of on-site inspections, review of various documents, conduct of meetings, etc., and does not include all activities being conducted.

11. Page 10, i. How does tailored oversight ensure public involvement? (bulleted list): EPA restates its commitment to "substantial and meaningful involvement of communities" throughout RCRA corrective action process. EPA encourages implementing agencies (project managers) and owner/operators to develop a strategy at the beginning of the corrective action process that, at a minimum, includes public participation at five junctures: (1) initiation of corrective action; (2) selection of significant interim measures, as appropriate; (3) prior to remedy proposal, when community acceptance is weighed as a remedy balancing factor, (4) selection of final remedy; and (5) completion of corrective action.

In a final rule titled *Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities: Post-Closure Permit Requirement and Closure Process* (63 *FR* 56710; October 22, 1998), EPA provided regulators with the option of using alternative mechanisms (i.e., "enforceable documents") in lieu of RCRA post-closure permitting at non-permitted land disposal units (i.e., land disposal units that are closing (or closed) under interim status). Regulations for non-permit mechanisms (i.e., generally enforcement orders compelling corrective action) include opportunities for public involvement that differ from those governing RCRA permit issuance and permit modification procedures at 40 CFR Parts 124 and 270.

In order to assure "meaningful opportunity for public involvement," regulators are required to provide, at a minimum, ample time for public notice and an opportunity to comment during three stages:

- when the regulators become involved in a remediation at the facility as a regulatory or enforcement matter [40 CFR 265.121(b)(1)(i)];
- when the preferred remedy and its underlying assumptions (e.g., future land use, site characterization) are proposed [40 CFR 265.121(b)(1)(ii)]; and
- prior to making the final decision that the remedial action is complete (i.e., no further action is required) [40 CFR 265.121(b)(1)(iii)].

This rule, however, does not limit public involvement to these three stages of cleanup. Rather, it encourages early, open, and continuous involvement of the public when alternate authorities are used (63 *FR* 56720). This rule also recognizes two instances–emergencies and sites where cleanup activities were initiated before October 22, 1998–in which public involvement may be delayed until the earliest opportunity presents itself. In all cases, however, at least one opportunity for public involvement must be provided once it is decided that additional remedial actions are no longer necessary [40 CFR 265.121(b)(2) and (b)(3)].

An obvious discrepancy exists between the minimum number of opportunities for public involvement at sites using a tailored oversight approach (five opportunities) versus the minimum at facilities performing corrective action under enforceable documents in lieu of

post-closure permits (one opportunity). DOE requests that EPA clarify whether public participation strategies should include opportunities for participation at all five junctures, even where a facility is performing post-closure/corrective action under an enforceable document in accordance with the 40 CFR 265.121 provisions.

12. Page 10, m. How will the overseeing agency use enforcement under tailored oversight approaches?: In describing enforcement under the tailored oversight approach, EPA indicates that its Office of Site Remediation Enforcement is drafting a memorandum to the EPA Regional offices that discusses creative approaches for ensuring timely corrective action.

DOE suggests EPA consider exploring the appropriateness of using its revised final Audit Policy, which took effect May 11, 2000 (65 *FR* 19618, April 11, 2000), as one of these approaches. Under this policy, entities subject to corrective action would disclose a violation or anticipated violation (e.g., missed milestone, deadline, or result) in writing to EPA within 21 days or less of systematic/voluntary discovery. Within 60 calendar days of discovery, the entity must correct the violation, which would include taking appropriate measures to remedy any environmental harm, and submit to EPA written certification that the violation has been corrected. If it will take more than 60 days to fully correct the violation, DOE must notify EPA in writing ***before*** the 60 day period has passed. Moreover, the entity must agree in writing to take steps to prevent a recurrence of the violation.