

The HWP anticipates that expedited corrective action performed pursuant to LOAs will generally be sufficient to justify termination of a facility's interim status to the extent that: 1) the facility is no longer operating as a TSD; 2) the facility has completed closure and post-closure care (if required); 3) DNR and EPA have determined that no further corrective action is necessary; and 4) opportunities for meaningful public involvement were provided during the course of the LOA corrective action process.

Facility-specific LOAs will contain provisions requiring public participation, at a minimum, at the time of final remedy proposal to facilitate public review and comment on the proposed final remedy prior to agency approval and subsequent facility implementation. Additional opportunities for public participation may be necessary for significant interim measures or other administrative actions associated with corrective action (e.g., contained-in/-out determinations, treatability variances, post-closure rule determinations,). The HWP will ensure that the level of corrective action public involvement for specific actions at individual facilities is commensurate with the level of public interest in such actions/facilities and that public participation is handled in accordance with all applicable regulatory requirements.

Once DNR has determined that the four interim status termination criteria referenced above have been met, the HWP will transmit a complete copy (or portions thereof not previously provided to EPA) of the corrective action administrative record to EPA for facilities performing corrective action pursuant to LOAs. EPA will review DNR's recommendation and corrective action administrative record for the facility and, based on all relevant information and data, EPA will respond to specific requests for review of DNR's "no further corrective action" determination in accordance with the Facility Management Plan which is negotiated between DNR and EPA Region VII. The administrative record will be accompanied by the HWP's request that EPA review the corrective action administrative record within forty-five (45) days and render an independent determination concerning the need for further corrective action. EPA will attempt to expeditiously render any such determination and will transmit any "no further corrective action" determination via letter to the facility with a copy to the HWP. If EPA does not agree with DNR's "no further corrective action" determination, EPA shall notify DNR in writing, including the basis for the disagreement, and advise DNR as to what further corrective action EPA believes to be necessary. This matter will then be discussed between DNR and EPA until a mutually-agreeable resolution is reached.

Once the requested time frame for EPA's independent review has expired and EPA has issued its "no further corrective action" determination letter or has not taken action to do so, the HWP shall follow procedures for terminating interim

status as set forth in 10 CSR 25-7.270(2)(G). EPA reserves the right to comment and/or object during the comment period for terminating interim status.

For facilities that have already lost interim status through failure to comply with applicable requirements within statutory deadlines, the HWP will conduct the above "no further corrective action/termination of interim status" coordination procedures. For facilities that have lost interim status, the HWP is not required to follow the other termination of interim requirements set forth in 10 CSR 25-7.270(2)(G). At a minimum, the HWP will give public notice that these facilities, typically referred to as Loss of Interim Status or "LOIS" facilities, have completed all necessary corrective action, and the public will be given an opportunity to review and comment on the adequacy of such decision. EPA reserves the right to comment and/or object during the public comment period for such corrective action.

VI. Review of Corrective Action Deliverables

This section describes the various types of deliverables that may be required under corrective action instruments. EPA and the HWP recognize that application of these requirements is facility-specific and that all categories of the following work plans and reports will not necessarily be required at each facility.

RCRA Facility Sampling (RFS: Release Assessment) and RCRA Facility Investigation (RFI) Work Plans and Reports

The subject work plans and reports must address all elements and objectives established in the facility permit, order or expedited corrective action LOA and must be submitted according to the schedule(s) contained therein. EPA's RCRA Facility Investigation Guidance, Interim Final, May 1989, OSWER Directive 9502.00-6D; RFI Checklist; RCRA Corrective Action Plan, Final, May 1994, OSWER Directive 9902.3-2A; Subpart S Proposed Rule, July 27, 1990; and Advance Notice of Proposed Rulemaking, May 1, 1996; are available for use as guidance in reviewing RFS and RFI Work Plans and Reports. RFS and RFI Work Plan and Report comment letters, approvals and associated tracking will be handled in accordance with the Hazardous Waste Permits Section - Procedures Manual.

Oversight of RFS and RFI field activities will be the primary responsibility of the lead agency. The level of such oversight will vary and will be based on site-specific circumstances and conditions. Guidance contained in Region VII's Regional Policy on Differential Corrective Action Oversight and Corrective Action Oversight Guidance, OSWER Directive 9902.7, may be used in determining the appropriate level of oversight on specific projects.

Interim/Stabilization Measures Work Plans and Reports

The subject work plans and reports must address all elements and objectives established in the facility permit, order or expedited corrective action LOA and must be submitted according to the schedule(s) contained therein. EPA's RCRA Corrective Action Interim Measures Guidance, OSWER Directive 9902.4; RCRA Corrective Action Plan, Final, May 1994, OSWER Directive 9902.3-2A; Subpart S Proposed Rule, July 27, 1990; RCRA Stabilization Strategy; Advance Notice of Proposed Rulemaking, May 1, 1996; are available for use as guidance in reviewing Interim/Stabilization Measures Work Plans and Reports. Interim/Stabilization Measures Work Plan and Report comment letters, approvals and associated tracking will be handled in accordance with the Hazardous Waste Permits Section - Procedures Manual.

Corrective Measures Study (CMS) Work Plans

The subject work plans must address all elements and objectives established in the facility permit, order or expedited corrective action LOA and must be submitted according to the schedule(s) contained therein. EPA's CMS checklist, RCRA Corrective Action Plan, Final, May 1994, OSWER Directive 9902.3-2A; Subpart S Proposed Rule, July 27, 1990; and Advance Notice of Proposed Rulemaking, May 1, 1996; are available for use as guidance in reviewing CMS Work Plans. CMS Work Plans should be reviewed with emphasis on evaluation of a facility's conceptual approach to the more detailed evaluation of remedial alternatives to be presented in the CMS report, and the associated format/schedule for CMS completion. In a facility-specific context, the reviewer should ensure that any plausible remedial alternatives are not omitted from consideration in the CMS Work Plan. CMS Work Plan comment letters, approvals and associated tracking will be handled in accordance with the Hazardous Waste Permits Section - Procedures Manual.

Corrective Measures Study (CMS) Reports

The subject reports must address all elements and objectives established in the CMS Work Plan and facility permit, order or expedited corrective action LOA and must be submitted according to the schedule(s) contained therein. EPA's CMS checklist; RCRA Corrective Action Plan, Final, May 1994, OSWER Directive 9902.3-2A; Subpart S Proposed Rule, July 27, 1990; and Advance Notice of Proposed Rulemaking, May 1, 1996; are available for use as guidance in reviewing CMS Reports. CMS Report comment letters, approvals and associated tracking will be handled in accordance with the Hazardous Waste Permits Section - Procedures Manual.

Final Remedy Selection/Approval

The lead agency will prepare a Statement of Basis (SB), with input from the support agency, summarizing the corrective measures alternatives that were evaluated by a facility and specifying a preferred final remedy at each facility that requires a final remedy. EPA's Subpart S Proposed Rule, July 27, 1990; Statement of Basis, Final Decision and Response to Comments Guidance, February 1991, EPA/540/G-91/011; and Advance Notice of Proposed Rulemaking, May 1, 1996; are available for use as guidance in SB development.

The SB, draft permit modification (or proposed use of a draft order/order amendment for final remedy implementation) and all relevant work plans, reports and documents comprising the corrective action administrative record for a given facility will be made available for public review at a local information repository and at Missouri Department of Natural Resources' (DNR)/EPA's offices. The lead agency or the facility (in the case of LOAs) will publish a public notice in a local newspaper of general circulation announcing the proposed final remedy, the availability of the administrative record and the opportunity for public review/comment on the proposed final remedy prior to agency selection/approval. Proposed final remedies developed as part of expedited corrective action LOAs, as supported by a SB or a fact sheet containing equivalent information and a local information repository containing the corrective action administrative record, will be summarized as above and placed on public notice for review and comment prior to selection/approval of a final remedy.

The lead agency will prepare responses to any comments received during the public comment period on the proposed final remedy. If the technical lead and enforcement authority (i.e., the signatory on the current permit, order or LOA) are different agencies, a draft of the response to comments and a requested review time frame will be provided by the lead agency to the agency with the enforcement authority for review and comment prior to finalization. The lead agency will respond to all of the other agency's comments and will either accept the comments, modify the comments so as to be mutually acceptable, or notify the other agency if there is continuing disagreement.

The lead agency will issue the response to public comments, select/approve the final remedy (unless it is otherwise determined that selection/approval by the agency with the enforcement authority is required) and create/modify the regulatory mechanism used to implement the final remedy. If no comments are received during the public comment period or those that are received are successfully resolved without significantly affecting the proposed final remedy, the lead agency will select/approve the proposed final remedy set forth in the SB or equivalent fact sheet. Approval of a final remedy by the HWP and associated

tracking will be performed in accordance with the Hazardous Waste Permits Section - Procedures Manual.

Corrective Measures (Final Remedy) Implementation (CMI)

The selected/approved final remedy will be implemented in accordance with the schedule contained in the approved CMS report or equivalent and/or the schedule of compliance contained in the modified permit, order or LOA. Financial assurance for corrective action under permits will be required, typically within 120 days of permit modification to incorporate the approved final remedy. Financial assurance for corrective action under other regulatory mechanisms will be handled on a case-by-case basis pursuant to applicable federal and state laws, regulations, policies and facility-specific agreements.

The lead agency will be responsible for review and tracking of all CMI deliverables including work plans and reports. Design documents will be reviewed against accepted engineering and/or geologic practice and applicable portions of EPA's RCRA Corrective Action Plan, Final, May 1994, OSWER Directive 9902.3-2A; CMI checklist; Subpart S Proposed Rule, July 27, 1990; and Advance Notice of Proposed Rulemaking, May 1, 1996. Appropriate lead agency oversight will be provided during each CMI phase including construction, start-up and operation and will include evaluation of the final remedy in meeting performance standards and clean-up goals. Review of CMI elements and associated tracking will be performed in accordance with the Hazardous Waste Permits Section - Procedures Manual.

RCRA Stabilization and Environmental Indicator Evaluations

The HWP will prepare and/or participate in the preparation of RCRA corrective action Stabilization and Environmental Indicator (EI) Evaluations. The number and timing of these evaluations will be negotiated with EPA during the FMP process. Appropriate EPA stabilization and EI evaluation guidance will be utilized to guide the preparation of these evaluations. This guidance includes Guidance on Managing the Corrective Action Program for Environmental Results: The RCRA Facility Stabilization Effort, October 25, 1991; EPA's Interim Final Guidance for RCRA Corrective Action Environmental Indicators, February 5, 1999, all worksheets and RCRIS data element dictionary information associated with the foregoing; and any new guidance developed by EPA. Preparation of Stabilization/EI evaluations and associated tracking will be performed in accordance with the Hazardous Waste Permits Section - Procedures Manual.

VII. Compliance with Permits and Orders

Enforcement of corrective action permits and orders will be consistent with existing enforcement agreements and principles. Where EPA is the issuing authority for a permit or an order, but the HWP has lead technical oversight responsibility, the HWP will provide EPA notice of any initial determinations of non-compliance by a facility. The HWP will advise EPA as to the nature and scope of these determinations and may provide recommendations to EPA regarding enforcement action(s) based on the nature of any violation(s) to respond to such violations and to effectively return the facility to compliance. EPA will coordinate with the HWP on any final determinations of non-compliance with corrective action requirements for facilities where the HWP has the technical lead and will provide the HWP notice prior to commencement of any enforcement action related to non-compliance with such requirements.

The HWP may make determinations of compliance or non-compliance with state-issued corrective action permits and orders and communicate such determinations directly to facilities without prior notice to EPA. Where the state has found significant violations of permits that may be defined as "high priority violations," the HWP will consult with EPA regarding such violations. EPA reserves the right to comment on, determine compliance with and/or enforce state-issued permits as set forth at 40 CFR § 271.19. The HWP will ensure that all violations identified by the state are entered into and accurately reflected in EPA's RCRIS/RCRA Info database.

VIII. Training

EPA will provide training to the HWP on various aspects of corrective action and related topics, as resources allow. The HWP will also provide for non-EPA training, as appropriate, to ensure long-term success in state implementation of the Corrective Action Program. Introductory training will continue to be necessary to address the needs of new corrective action staff. Advanced training will be necessary to address the needs and enhance the skills of more experienced corrective action staff. The following general areas have been identified as those for which training will be required:

- Federal/State Regulations and Guidance (e.g., Corrective Action/Permitting Overview and related regulations training)
- Site Assessment and Investigation (e.g., RFA/RFI, groundwater)
- Risk Assessment, Management and Decision-Making
- Remedial Alternatives Evaluation and Implementation (e.g., CMS/CMI)
- Corrective Action Order Development and Negotiation
- Project Management, Communication and Leadership Skills
- Public Participation and Systematic Development of Informed Consent

IX. Use of Contractors

Contractors may be used in review and evaluation of corrective action deliverables. The HWP may use its own resources for this purpose and may, depending upon availability, be able to utilize EPA's resources on a site-specific basis for this purpose.

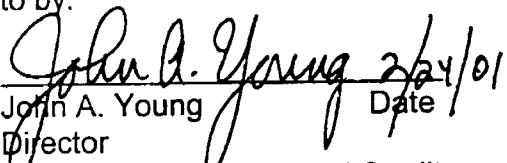
X. Resources


It is understood by the Missouri Department of Natural Resources (DNR) and EPA that adequate financial and human resources are necessary to carry out this plan, including performance of corrective activities to meet the goals established in the State-EPA Performance Partnership Agreement and associated Facility Management Plan. As necessary and appropriate, the HWP shall obtain technical, legal and/or other assistance from other state Departments, DNR Divisions and Division of Environmental Quality (DEQ) Programs in carrying out implementation of the state's Corrective Action Program. These include, but are not limited to, the Missouri Department of Health, the Missouri Attorney General's Office, the DNR's Division of Geology and Land Survey and DEQ's Environmental Services Program.

XI. Modification and Termination

The Missouri Department of Natural Resources (DNR) and EPA may periodically modify the MOCAP to simplify, clarify, and/or revise the specifications contained herein. DNR and EPA shall keep each other informed of any proposed or actual amendments to applicable state or federal statutory/regulatory authority, directives, guidance, and legal/regulatory interpretations as may impact the MOCAP. The MOCAP will be periodically reviewed by DNR and EPA to determine if revisions are necessary. Any revision of the MOCAP must be mutually agreed to in writing by DNR and EPA, and the revised MOCAP must be signed by the signatories or their designees to be effective. DNR and EPA may unilaterally terminate this MOCAP at any time. Any notice of termination must be in writing and shall be effective no sooner than 30 calendar days from the date the termination notice is received.

This Missouri Corrective Action Plan is effective upon signature of both parties. Agreed to by:


John A. Young Date 2/24/01
Director
Division of Environmental Quality
Missouri Department of Natural Resources


William A. Spratlin Date 1/24/01
Director
Air, RCRA, and Toxics Division
U. S. EPA Region VII

Attachment I



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March 18, 1997

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EPA, Region VII
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Kansas City, KS 66101

Re: Missouri Corrective Action Authority

Dear Ms. MacDonald

At your request, our office has reviewed the Missouri Hazardous Waste Management Law (MHWML) at §§ 260.350-.552, RSMo and its accompanying regulations and is hereby providing this statement that the laws of the state of Missouri contain adequate authority to carry out a corrective action program in Missouri which is equivalent to and consistent with the federal corrective action program under the Resource Conservation and Recovery Act (RCRA).

As you know, the RCRA corrective action provisions are found at 42 U.S.C. § 6924(u)-(v), 42 U.S.C. § 6928(h), 42 U.S.C. § 6973 and, to a limited extent, 42 U.S.C. § 6934. Each of these provisions and their Missouri equivalent will be discussed below.

A. 42 U.S.C. § 6924(u)-(v).

Section 6924(u) provides that treatment, storage and disposal (TSD) facility permits issued after 1984 shall require corrective action for all releases of hazardous waste or constituents from any solid waste management unit, regardless of the time at which the waste was placed in such unit. Where corrective action can not be completed prior to issuance of the permit, the permit shall contain a compliance schedule and assurances of financial responsibility. Section 6924(v) provides that corrective action may be taken beyond the facility boundary where necessary to protect human health and the environment unless the owner or operator of the facility can adequately demonstrate that, despite the owner or operator's best efforts, it was unable to obtain the necessary permission to undertake such action.

Under § 260.370.3(1)(b) and (d), RSMo, the Missouri Hazardous Waste Commission (the Commission) has broad authority to adopt rules and regulations governing the treatment, storage and disposal of hazardous waste and governing the issuance, modification, suspension, revocation

or denials of permits as are consistent with the purposes of the MHWML. Under § 260.375(12)-(13) and (15), RSMo, the Missouri Department of Natural Resources (MDNR) must require all hazardous waste facility owners and operators to obtain a permit. MDNR has the authority to issue, continue in effect, revoke, modify or deny such permits to hazardous waste facilities and may issue such orders necessary to fulfill the provisions of the MHWML and permit terms and conditions issued thereunder. Further, MDNR has the authority to include any term or condition in a hazardous waste permits which it determines to be necessary to protect human health and the environment. § 260.395.9-12, RSMo. See also 10 CSR 25-7.264(1), incorporating by reference 40 C.F.R. § 270.32 (allowing MDNR to establish necessary permit conditions to protect human health and the environment).

In its hazardous waste facility permit regulations, the Commission has incorporated the federal corrective action regulations at 40 C.F.R. § 264.100-.101. See 10 CSR 25-7.264(1). Additionally, the Commission has included certain requirements governing releases from solid waste management units which mirror the federal requirements noted above. 10 CSR 25-7.264(2)(F). This regulation has several noteworthy provisions:

1. MDNR has the authority, during the issuance, reissuance or modification of a permit, to place conditions on the permit if it believes there is a significant risk to human health or the environment resulting from ground or surface water contamination from operation of a hazardous waste facility or any solid waste management unit.
2. The owner/operator must document all efforts taken to monitor groundwater or take corrective action beyond the facility boundary.
3. The facility permit must include a course of action for completing corrective action.
4. The facility is required to establish a surface water monitoring program designed to protect human health and the environment, with certain minimum requirements.
5. If MDNR determines that there is a substantial threat to human health and the environment from reports submitted under a surface water monitoring program, it will direct the owner/operator to take corrective action through a permit modification.

Based upon the foregoing statutes and regulations, it is our opinion that Missouri had adequate authority to carry out corrective action under its permit program, which is at least as stringent as the federal requirements at § 6924(u) and (v).

B. 42 U.S.C. 6928(h).

This section provides that EPA may order corrective action or any other necessary response measure if it determines that there is or has been a release of a hazardous waste into the environment from an interim status facility. Failure to comply with a corrective action order under this provision may result in civil penalties up to \$25,000 for each day of noncompliance.

MDNR has been given broad statutory authority under § 260.375(29), RSMo, to "control, abate or clean up any hazardous waste placed into or on the land in a manner which endangers or is reasonably likely to endanger the health of humans or the environment" MDNR, through the Attorney General's Office or a prosecuting attorney, may seek mandatory or prohibitory injunctive relief or other appropriate relief to address hazardous waste contamination. MDNR may also take "such action as is necessary" to recover its response costs associated with the cleanup of hazardous waste from any person responsible for the waste. *Id.*

Missouri also has a specific statute, § 260.420, RSMo, which contains broad imminent hazard provisions serving the same function as § 6938(h). *See also* § 260.375(16), RSMo (granting MDNR authority to enter such orders or cause to be instituted such legal proceedings as may be necessary in a situation of imminent hazard). If MDNR determines that any hazardous waste activity may present an imminent hazard "by placing or allowing escape of any hazardous waste into the environment or exposure of people to such waste which may be cause of death, disabling person injury, serious acute or chronic disease or serious environmental harm," then MDNR or the Commission may take whatever action necessary to protect human health and the environment. MDNR and the Commission's authority under this statute includes, but is not limited to, the authority to:

1. Issue orders to the generator, transporter, facility operator or any other person having custody or control of the hazardous waste to eliminate the hazard, which may include the temporary or permanent cessation of activity at the facility.
2. Issue orders directing a permitted TSD facility to treat, store or dispose of any waste cleaned up under this statute.
3. Acquire lands if necessary to protect human health and the environment (only if cost effective and all other options exhausted).
4. Sell or lease any property that has been cleaned up so as to no longer constitute threat to human health or the environment.
5. Cause to be filed a temporary restraining order, temporary injunction or permanent injunction.