

Defining Common Regulatory Ground: RCRA in Utah

EVS is supporting the U.S. Department of the Army in work with the state of Utah. The goal is to develop regulations to govern the management of chemical warfare agent (CWA) and associated wastes. The work involves identifying CWAs and associated compounds that should be regulated as hazardous, defining primary and secondary process wastes that may contain these constituents, establishing treatment standards for land disposal restrictions (LDRs) to minimize risk to human health and the environment following disposal, and establishing exemptions from regulations for wastes that pose minimal risk.

PROBLEM/OPPORTUNITY

In 1988, the state of Utah listed residues resulting from the demilitarization, treatment, and testing of CWAs as hazardous waste. However, the residues are not listed as hazardous waste under the Resource Conservation and Recovery Act (RCRA), the primary law governing management of hazardous waste in the United States. As a result, the U.S. Environmental Protection Agency (EPA) did not establish LDRs for these wastes.

In February 1995, Utah announced an initiative to develop LDRs for the wastes and solicited data from the Army. EVS, which was then working with the Army at Dugway Proving Ground in Utah to develop ultra-sensitive methods for analyzing CWAs, recognized an opportunity for the Army and state to work together to develop mutually acceptable regulations that would protect human health and the environment, provide a level of stringency commensurate with the risk, and be compatible with existing Army and public policies.

APPROACH

In November 1995, the Soldier and Biological Chemical Command (SBCCOM) was designated as the lead Army entity to work with Utah in the rulemaking activities. Shortly thereafter, SBCCOM established the Land Disposal Restrictions Utah Group (LDRUG), and the project with EVS began.

EVS helped LDRUG formulate a plan for the work. Then a meeting was held with Utah regulators to gain insight into their concerns. EVS recommended

that the Army prepare the initial draft of the rule for consideration by the state. General operating principles were established, issues were analyzed, and the regulatory concept was created. The proposed rule, preamble, and background documentation are now nearing completion.

RESULTS

EVS worked with the Army to develop the Utah Chemical Agent Rule (UCAR) by assisting in a number of activities.

- Helped the Army and Utah regulators find common regulatory ground
- Pioneered a risk-based regulatory approach that ensures protection of human health and the environment at minimal cost
- Developed supporting databases (e.g., chemicals, waste streams, and analytical methods).
- Critically reviewed Army inputs in areas like risk assessment, treatment technologies, and analytical methods
- Developed a two-level Web site to coordinate LDRUG activities
- Conducted regulatory and scientific analyses and studies of technical issues such as treatment technologies for specific wastes
- Conducted planning and analyses for a Pentagon-level standards steering committee.

FUTURE

The approach being taken to develop the UCAR is unique. It uses the RCRA program as a springboard for incorporating risk-based regulatory provisions tailored to the Army's needs while also addressing state objectives and public concerns.

The proposed UCAR, which consists of a rule, preamble, and nine background documents, is in the final stages of development. After the Army approves it, the Army will provide the package to the state. The state will review the proposed UCAR and modify it as necessary, obtaining any additional information it needs from the Army. The state will then issue the proposed rule. Following a period of public comment and review, the state will issue a final rule. Thus, although the Army has a significant stake in the UCAR, the rule will "belong" to the state.

LDRUG anticipates working with other states to develop UCAR-like rules, and EVS expects to support LDRUG in these activities. The work also has potential application to other federal agencies as well as private sector companies responsible for managing toxic materials.

COMMUNICATION OF RESULTS

A paper entitled "Regulation of Military CWAs under the Nation's Hazardous Waste Laws: Current Programs and New Initiatives" was published in the *Federal Facilities Environmental Journal* in the fall of 1998. A presentation on the LDRUG effort was given by EVS at the annual meeting of the National defense Industry Association in the spring of 1997.

