



Administrative Approaches

This document is part of the training materials for the RCRA Corrective Action Workshop on Results-Based Project Management. It contains summaries of EPA statutory authorities, regulations, and guidance materials. This document does not substitute for any of these authorities or materials. In addition, this document is not an EPA regulation and therefore cannot impose legally binding requirements on EPA, States, or the regulated community. EPA may change this document in the future, as appropriate.

Objectives

Participants will be able to:

- Recognize the menu of potential State and/or Federal administrative/enforcement approaches (including facility-lead) for implementing Corrective Action
- Make an informed selection from that menu for a particular site
- Learn of successful approaches that have been used to encourage efficient Corrective Action
- Share approaches that are being used in the Regions



Introduction

- Objectives for Corrective Action should be the same whether implementation occurs through:
 - A permit
 - Enforcement mechanism
 - Other approach
- No matter which approach you choose, EPA believes public participation is critical



What are the administrative tools available to achieve the goals of RCRA Corrective Action at any given site?



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Notes:

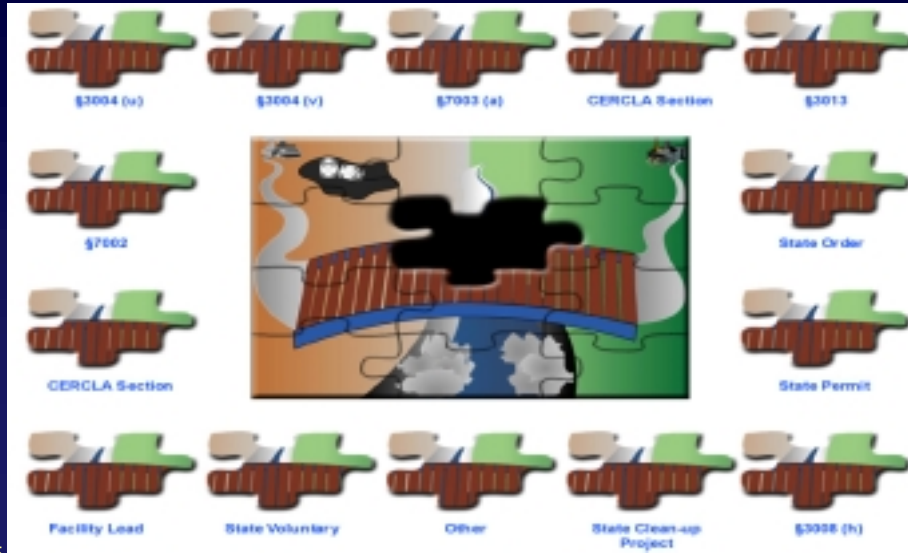
The Corrective Action program faces challenges over the next several years to meet GPRA goals for the high priority sites identified across the country. Regions should continue to use traditional regulatory tools (permits and administration orders) flexibly to require corrective action, and in appropriate cases use innovative approaches such as Facility-lead Corrective Action to achieve Corrective Action completion.

The goal of protecting human health and the environment from the effects of releases of hazardous waste or constituents may also be achieved, in appropriate circumstances, by tools outside the statute such as:

- Coordination with other Federal cleanup programs (e.g., Superfund);
- Coordination with analogous State cleanup programs; and
- Facility-lead Corrective Action

There are advantages and disadvantages to each of these tools that should be weighed in any given decision.

Picking the Right Implementation Approaches & Authorities for Site Cleanup



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Administrative Tools Available

- RCRA Corrective Action permit
- RCRA Corrective Action order
- CERCLA
- State-lead
- Facility-lead



What is a Facility-Lead Agreement?



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Notes:

Facility-lead Corrective Action agreements are simple letters of intent containing broad performance standards to provide the framework for guiding Corrective Action. The agreements express EPA's expectations regarding the facility's self-directed cleanup activities. These expectations are generally issued in the form of a letter from EPA and responded to by a facility's return letter of commitment. Model agreements currently in use in Regions I and III are included in the workshop handbook. The major topics covered in these agreements are:

- investigation performance standards,
- guidance sources to be utilized,
- public involvement expectations,
- interim measure and final remedy decision making criteria,
- stabilization and final remedy measures of success,
- project schedule expectations,
- reporting and coordination expectations, and
- reservation of rights.

Comparison of Mechanisms

- Facility-Lead Agreements
 - Set goals
 - Process flexible
 - Authority & penalties implicit
 - Discuss actual data gaps during updates
 - More focus on EIs
- Typical Permits and Orders
 - Set process
 - Process controlled
 - Authority & penalties explicit
 - Discuss potential data needs at start
 - No focus on EIs

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Notes:

Identification of issues, recommended criteria for selecting remedies, data to support decision making, and data quality control is generally the same.

Recommended Factors to look for in Facility-Lead Corrective Action

Region III

- Good enforcement record
- State approval
- Financial capability
- Technical capability
- Limited releases
- Small number of SWMUs
- Motivation
- Corrective Action started

Region I

- Good enforcement record
- Financial capability
- Technical capability
- Motivation



Additional Information

Region I:

- Ernie Waterman (617) 918-1369, or waterman.ernest@epa.gov

Region III:

- Denis Zielinski (215) 814-3431, or zielinski.denis@epa.gov
- www.epa.gov/reg3wmcd/correctiveaction.htm



Improving Pace of Cleanups

- Corrective Action enforcement authorities provide tools to compel and enforce remediation of hazardous releases
- Authorized States have their own enforcement authorities

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Notes:

The RCRA Corrective Action program is designed to identify and remediate releases of RCRA hazardous wastes or hazardous constituents. The Corrective Action enforcement authorities are tools for remediating such releases depending on the type, location, and character of the release and the type of site involved.

In addition to EPA's enforcement authorities, authorized States have their own regulations and enforcement authorities that can be used, in appropriate circumstances, to require Corrective Action. For authorized States, both Regional and State personnel should look at those regulations and authorities in considering the appropriate Corrective Action enforcement vehicle. For example, some States have imminent and substantial endangerment authorities that may be used to require interim measures.

Improving Pace of Cleanups (Cont.)

- Enforcement authorities can accelerate the pace of a cleanup under two general scenarios:
 - Encouraging/compelling a reluctant/recalcitrant party to perform investigative and/or cleanup work
 - Expediting cleanup where awaiting issuance of a permit would slow a cleanup that would otherwise be proceeding rapidly

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Notes:

The Corrective Action enforcement authorities are used to address releases sooner rather than later and the enforcing agency should proceed with that objective in mind. In particular, with a noncooperative party, EPA and/or the authorized State should act quickly to gather necessary information and make decisions regarding the appropriate enforcement vehicle(s) for ensuring a timely cleanup.

Enforcement Scenarios

RCRA enforcement authorities are generally exercised at three categories of sites

- At sites that are not required to have a permit
- At facilities requiring a permit, when the facility is not operating with a permit
- At facilities with permits

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Notes:

In general, the first category involves any sites where hazardous waste and, in some cases, solid waste are handled (e.g., generator sites).

The second category involves facilities “authorized to operate” in interim status—facilities that have interim status, facilities that should have had interim status, and some facilities that had interim status at one time.

The third category includes treatment, storage, or disposal facilities that have a permit containing Corrective Action conditions.

Site Categories

- Waste Generators or Handlers
- Interim Status Facilities
- TSDFs with Permit



Waste Generators or Handlers

- §3007 - Information gathering
- §3013 - Information and investigation
- §7003 - Imminent and substantial endangerment

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Notes:

§3007 provides a broad information-gathering and investigation authority allowing inspections and sampling at most past or present hazardous waste handlers. Its foremost limitation is that it cannot be used to require cleanup activities.

§3013 provides a broad information-gathering and investigation authority allowing monitoring, testing, analysis, and reporting, and can be used at most past or present hazardous waste handlers.

The primary advantages of using §3013 are that it: (a) has a very low threshold for obtaining relief — a situation that “may present a substantial hazard,” and (b) provides EPA with broad discretion to require activities as necessary to evaluate the hazard.

The primary disadvantage is that §3013 cannot be used to require actual cleanup.

Notes (Cont.):

§7003 provides a broad cleanup authority applicable to all solid or hazardous waste handlers. The advantages of the §7003 authority are that it:

- (a) applies to any person who is or has contributed to waste handling;
- (b) has a low threshold for obtaining relief — a situation “may present an imminent and substantial endangerment;”
- (c) applies to both hazardous and solid waste;
- (d) applies “notwithstanding” any other RCRA provision; and
- (e) provides EPA with broad discretion to both restrain and require actions, including activities necessary to evaluate or monitor or protect against a hazard.

These authorities may also be used at interim status or permitted facilities and are discussed in more detail in the background materials.

Interim Status Facilities

- Subpart F* - Regulatory groundwater monitoring requirements
 - §3008(h) - Statutory corrective action authority
 - §3007, §3013 and §7003 may also be used
- * States may be authorized for implementing analogous statutes and programs

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Notes:

Subpart F - groundwater monitoring requirements applicable to all “regulated units” at interim status facilities.

§3008(h) has been the most commonly used Corrective Action authority and is used to clean up releases from interim status facilities. The primary advantages of §3008(h) are that: (a) there need only be a determination of a release into the environment, not a finding of a violation; and (b) there is broad discretion to order Corrective Action as necessary to protect human health and the environment.

The primary limitation of §3008(h) is that it applies only to facilities “authorized to operate” in interim status.

These authorities are discussed in more detail in the background materials.

Treatment, Storage, and Disposal Facilities (TSDFs) With Permits

- §3004 (u)&(v)* - Statutory corrective action requirements
 - Subpart F* - Regulatory groundwater monitoring and cleanup requirements
 - §3008 (a) - Statutory enforcement/cleanup authority
 - §3007, §3013 and §7003 may also be used
- * States may be authorized for implementing analogous statutes and programs

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Notes:

§3004(u) & (v) - cleanup authority used to impose permit conditions requiring facilities to address releases.

§3008(a) - authority used to require compliance with a RCRA Subtitle C permit requirement when a violation occurs. The advantage of using §3008(a) is that there is broad authority to require any actions necessary to ensure compliance. The primary limitation is that there is a higher threshold for requiring corrective action, a finding of a violation.

Subpart F - groundwater monitoring requirements for regulated units and cleanup requirements applicable to solid waste management units (SWMUs).

These authorities are discussed in more detail in the background materials.

Parting Thought

“You don’t screw nails and you don’t hammer screws. Think about what you are trying to do and choose the right tools for the job.”

