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U.S. EPA REGION 6
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COMMENTS:
Here is a draft of the NFA criteria that Barbara Driscoll developed for use at LANL. Also attached is LANL's NOD response that is referenced in Barbara's criteria. Please call Barbara with any immediate questions. I'm going to try to look at Sandia's NFA submittal later this week. Please tell Steve that I looked for his special book but could not find it.

Copies to:

15401

#5 NFA LANL 9/P/94

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Criteria for No Further Action

Criterion 1. The PRS has never been used for the management (that is generation, treatment, storage, or disposal) of RCRA solid or hazardous wastes, radionuclides or other CERCLA hazardous substances.

Examples/Explanations: For purposed of the HSWA permit, units falling under Criterion 1 may have been mistakenly identified as a SWMU in an earlier study. If this unit only has a radionuclide component then the site may be requested for a NFA under the permit, and may still be investigated as an area of concern by the Environmental Restoration program.

The unit may not be located or may have been found to never have existed.

Criterion 2. No release has occurred from the unit to the environment.

Definition of release: Release means any spilling, leaking, pouring emitting, emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing of hazardous wastes (including hazardous constituents) into the environment.

Examples/Explanations: A release of any hazardous constituents may also be unlikely due to the engineering (secondary containment or overflow prevention) or management (inspection or inventory) controls. A visual inspection of a unit may be satisfactory for documentation of a release. Complete containment of a unit within a building with no route to the environment is another example. This should also be verified by a visual inspection and examination of engineering drawings if available.

Criterion 3. The site is regulated or closed under a different authority which addresses corrective action.

Example/Explanation: An outfall may be permitted under the NPDES program, and still be required to be investigated under RCRA. The NPDES permit only addresses the actual water discharge from the outfall, and does not address corrective action or remediation of material deposited at the outfall over time. In this instance, the soil at the outfall may need to be sampled.

If a regulated unit is being closed under RCRA authority then this site will normally not be investigated under the HSWA program, as RCRA closure requirements under 40CFR$... would be more stringent.

Generally paragraphs 2, 3 and 5 are o.k.; it should be noted that this units are still SWMUs and NMED may choose to have any investigations conducted under the HSWA program if it is more expedient.

Criterion 4. O.k.

Strike paragraph 2, EPA retains the right to review cleanups under other regulatory programs if the unit is a SWMU.

Paragraph 3. Strike last 4 sentences. These do not apply to the NFA criteria and appear to be editorial comments.

RECOMMENDATIONS FOR NO FURTHER ACTION (NFA) CRITERIA

INTRODUCTION

In the proposed Subpart S rule and the 23 May 1990 HSWA Module of the Laboratory RCRA permit, the EPA state that at some facilities releases or suspected releases identified in the RCRA Facility Assessment (RFA) will be found to be non existent or do not pose a threat to human health or the environment. The EPA has proposed a procedural mechanism whereby a permittee may request through the submittal of a Class III permit modification a determination of no further action for specific SWMUs. The permittee must demonstrate by providing supporting documentation that there are no releases of hazardous wastes or constituents that may pose a threat to human health or the environment from the SWMUs proposed for NFA (proposed 40 CFR 264.514 [a][2]). The Determination of No Further Action (NFA) contained in the HSWA Module of the LANL RCRA permit is set out in much the same language as the Subpart S rule:

> Based on the results of the RFI and other relevant information, the Permittee may submit an application to the Administrative Authority for a Class III permit modification under 40 CFR 270.42(c) to terminate the RFI/CMS process for a specific unit. This permit modification application must contain information demonstrating that there are no releases of hazardous wastes including hazardous constituents from SWMU's at the facility that pose a threat to human health and the environment, as well as information required in 40 CFR 270.42 (c), which incorporates by reference 40 CFR 270.13 through 270.21, 270.62, and 260.63.
>
> If, based upon review of the Permittee's request for a permit modification, the results of the RFI, and other information, including comments received during the sixty (60) day public comment period required for Class III permit modifications, the Administrative Authority determines that releases or suspected releases which were investigated either are non-existent or do not pose a threat to human health and the environment, the Administrative Authority will grant the requested modification.

In both the Subpart S preamble and in LANL's HSWA Module permit, is language where the EPA states that they shall not be precluded from requiring monitoring, additional investigations, studies, or remediation where new information indicates a potential threat to human health or the environment.

CRITERIA Administrative-Type NFA

NFA Criterion 1. The PRS has never been used for the management (that is, generation, treatment, storage, or disposal) of RCRA solid or hazardous wastes, radionuclides, or other CERCLA hazardous substances.

Explanation/Example

Units falling under Criterion 1 may, for example, have been mistakenly identified in an earlier study. Upon review of available information, no evidence of a release is found. The unit will not be investigated if there has been no release of hazardous wastes or constituents.

Some non-RCRA-regulated constituents, such as radionuclides, may be addressed in the work plan and investigated, as appropriate, either as a result of potentially being present at a PRS as the result of internal DOE requirements, or because it is within the scope of CERCLA.

NFA Criterion 2. ~~Site design, conditions, or institutional controls prohibit releases from the PRS that would pose a threat to human health or the environment.~~ No release has occurred from the unit to the environment

Visual inspection or sampling results

Release of any hazardous constituents may also be unlikely due to engineering (such as secondary containment or overflow prevention) or management (such as inspection or inventory) controls. Impacts to human health (excluding on-site workers) or the environment (outside of a building or other containment) would not be discernible above background levels for potential contaminants.

The unit is regulated or closed under a different authority

NFA Criterion 3. The PRS is part of a process operating under the Laboratory's current RCRA Part B permit, NPDES, or other applicable discharge permit. While potential release sites that fall under other regulatory programs *may* be exempt from further action under RCRA corrective action and *may* undergo corrective action under CERCLA, such sites will still be investigated and evaluated for discharges and releases occurring prior to being permitted under another regulatory program or applicable discharge permit. A PRS presently in compliance with other regulatory programs or discharge permits does not preclude review under RCRA where the current program does not ensure cleanup of past activities.

that addresses corrective action. For example

NPDES

Non land-based RCRA TSD facilities (such as containers or tanks) are generally not considered under RCRA corrective action, because requirements under interim status and RCRA permits will adequately address releases from these units.

Temporary storage areas (less than 90 days and satellite storage areas) are regulated by generator requirements. To avoid further consideration, engineering and management controls must be applied. If there is evidence of a possible release, whether visual staining, vapor releases, or analytical data indicating a release has occurred (and remediation has not been accomplished), and if the unit qualifies under the HSWA Module or under CERCLA, it may undergo corrective action measures under the ER Program.

Potentially contaminated sediments downstream of a surface water outfall are subject to consideration for corrective action, and attention should be focused on the impacts of potential contaminants in the sediment as a source of release, not the water. If a PRS is not vegetated or covered, windblown dust will be a concern under RCRA, and further investigation may be necessary.

Releases to groundwater from land-based RCRA TSD units should be addressed under RCRA detection and compliance monitoring programs. However, under HSWA corrective action, EPA can address releases from PRS to other media, such as soil, air, or surface water. Even though it may be more expedient and convenient to address release pathways under corrective action, the State of New Mexico will ultimately have to approve the closure plan for the regulated unit. The EPA can also require corrective action beyond closure, if warranted.

NFA Criterion 4. The PRS has been characterized or remediated in accordance with current applicable state or federal regulations, facility RCRA permits, and proposed Subpart S rule guidance, where, the available data indicate that the contaminants of concern are either not present or are present in concentrations near background levels, or have attained the risk-based levels negotiated and approved by the NMED or EPA regulators.

Cleanups under other regulatory programs, if essentially remediated to either approximate background or to negotiated risk-based levels, should not be re-evaluated under corrective action. Groundwater and soil cleanups, if successful so

that no significant impact can be detected, need not be re-evaluated. If cleanup is in progress, no additional evaluation is necessary if done under regulatory agency approval and the cleanup levels are comparable to those under RCRA regulations, facility RCRA permits, proposed Subpart S rule guidance, or cleanup levels negociated and approved by the regulators.

A one-time spill of raw material would not normally result in a release that is to be considered under RCRA corrective action. The RCRA process is specifically concerned with routine and systematic releases of hazardous wastes and constituents. However, unless there is documentation that the spill was cleaned up to levels that would be acceptable under RCRA or other applicable standards, the possible area of impact may be an area of concern (AOC) and would remain under consideration in an Operable Unit (OU) work plan. In addition, possible future releases are not to be considered under RCRA corrective action. The RCRA corrective action program is not a spill prevention program and should focus on past or continuing releases. Voluntary corrective action measures will reduce the time and cost required to cleanup many PRSs. If a release has occurred and it will eventually be cleaned up, it can be addressed voluntarily, and the work plan can be implemented to show that the PRS is clean.

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Rec 7/1/94

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Re: Response to NOD OU 1157 Question 9

Dear Ms. Driscoll:

In the recent NOD for OU 1157, EPA requested that a criteria be developed for determining when a finding of no further action (NFA) may be made at a SWMU. It was also suggested that this criteria should be applicable across the entire Los Alamos National Laboratory (LANL) Facility. Enclosed is the proposed criteria as requested.

The approach proposed for ensuring consistent application of these NFA Criteria is to include the criteria in Chapter 4 of the LANL Environmental Restoration Program Installation Work Plan (IWP). The annual revision of the IWP is currently undergoing internal review in order to meet the November submittal date to EPA and NMED. Therefore, please provide comments on the proposed criteria as soon as possible so that your comments may be incorporated into the IWP. Also, if necessary, we would be like to arrange a conference call to discuss any comments you or your counterparts at the state may make.

Upon evaluation of the OU 1157 deficiency number nine, it appears that EPA's primary concern is with NFA Criterion Number 3. This section has been amended to clarify that while Potential Release Sites (PRS) which fall under other regulatory programs, may be exempt from further action under RCRA corrective action, each qualifying site will have been investigated and evaluated for past releases occurring prior to the issuance of other regulatory program permits. This will ensure that such sites are not precluded from examination under RCRA.

If you have any questions, please call me at (505) 667-7203 or Court Fesmire at (505) 665-4718.

Sincerely,

Theodore Taylor
Program Manager
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Enclosure

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