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TO: Lloyd Aker, SNL/ITRI POC, DOE Oversight Bureau, NMED
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FROM: *Neil* Neil Weber, Chief, DOE Oversight Bureau, NMED

DATE: October 20, 1995

SUBJECT: **Draft Guidance for the Evaluation of No Further Action Proposals**

As part of their oversight activities, both Site staff and Technical Support staff have evaluated NFA proposals generated by Sandia National Laboratories and Los Alamos National Laboratory. In order to maintain a consistent approach to the evaluation of these proposals, Technical Support has developed the attached **Draft Guidance for the Evaluation of No Further Action Proposals**.

Work on this guidance began approximately one year ago, when DOE Oversight had staff in the Hazardous and Radioactive Materials Bureau (HRMB). Therefore, this document was developed with input from the HRMB. In particular, Ron Kern of RCRA Technical Compliance and Barbara Hoditschek of RCRA Permitting have commented during the preparation of this document. Lee Winn, now with the Ground Water Protection and Remediation Bureau, provided particularly valuable help throughout the process. Although staff of the HRMB have made contributions, the HRMB or its staff have expressed no concurrence. Therefore, this document has been generated for and by Oversight staff, for their use. It has no regulatory status, except that it may help Oversight staff provide consistent comments to regulators.



Draft Guidance for the Evaluation of NFA Criteria
October 20, 1995
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Please review this draft document and provide comments to Tim Michael
by November 30, 1995.

NW:TM:tm

Attachment

cc: John Parker, Program Manager, DOE OB Technical Support, NMED
Ron Kern, Program Manager, RCRA Technical Compliance, NMED
Barbara Hoditscheck, Program manager, RCRA Permitting, NMED
Tim Michael, DOE OB Technical Support, NMED
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Draft Guidance for the Evaluation of NFA Proposals

October 20, 1995

Tim Michael

**Technical Support Program
DOE Oversight Bureau
New Mexico Environment Department**

Introduction

Facilities regulated under the Hazardous and Solid Waste Amendments (HSWA) of the Resource Conservation and Recovery Act (RCRA) may request removal of Solid Waste Management Units (SWMUs) from their HSWA Permits by means of a Class III Permit Modification based on proposals for No Further Action (NFA). As part of their oversight activities, DOE Oversight Bureau staff have evaluated the proposals generated by Sandia National Laboratories and Los Alamos National Laboratory. In order to maintain a consistent approach to the evaluation of these proposals, the Bureau has developed the attached **Draft Guidance for the Evaluation of No Further Action Proposals**.

Although this guidance was developed with significant input from the Hazardous and Radioactive Materials Bureau, that Bureau has expressed no concurrence with this document. Therefore, this guidance has been generated by Oversight staff, for their use. It has no regulatory status, except that it may help Oversight staff provide consistent comments to regulators. To summarize, this document does not represent the regulatory position on the New Mexico Environment Department.

This guidance is divided into three sections. Section I lists **NFA Criteria**. Besides meeting specific NFA criteria, the evidence presented in the proposal must be relevant, accurate, consistent, traceable, and sufficient. Therefore, Section II, **Guidelines for Evidence**, is included. For the purposes of this guidance, certain words and phrases have been assigned specific meanings. The first time these terms are used, they are shown in **boldface** type. Definitions are found in Section III.

I. NFA Criteria

1. The **site** does not exist. If it can be adequately shown that the site does not exist, then a proposal may be made for NFA.

(see guidance for evidence)

2. The site was not used for the **management of hazardous constituents**. If this can be shown, then a proposal may be made for NFA.

3. There was no **release** of hazardous constituents to the environment. If it can be shown that there was not, nor is there likely to be a release, then a proposal may be made for NFA.

(see guidance for evidence)

4. There was a release, but the site was characterized and/or remediated under another authority. If the site was remediated under another authority, such as the New Mexico Underground Storage Tank Bureau, and documentation such as a closure letter is available, then the site may be proposed for NFA. [Regulation of a site by another authority is not, by itself, sufficient justification for a proposal for NFA.]

define

define

(2) wording is sufficient for a proposal per NFA
(e.g. closure letter)
Documentation

5. There was a release, but the site has been remediated. Typically, the site would have been remediated by means of a Voluntary Corrective Measure or an Expedited Cleanup. After remediation, evidence should show that either hazardous constituents at the site do not exceed background levels or that the risk due to all hazardous constituents in excess of background is at an acceptably low level. If the site has been remediated, then it may be proposed for NFA.

define

define

meets the criteria of being

For any proposal using the above criteria, appropriate evidence, as described in Section II, must be provided.

Release assessment sampling, combined with historical and other evidence, may be used to demonstrate items 1-3 above. For example, historical information may not be entirely adequate to show that there was not a release or that there are no hazardous constituents, but release assessment sampling may provide the additional required information.

define of should we refer to the evidence section?

If there was a release and the site has not been remediated, then either a release assessment should be performed, or the site should be evaluated within an approved RCRA Facility Investigation (RFI).

reword ?

if evidence of this fact is provided.

Note that ~~S~~ sites ^{can be} should not be proposed for NFA for the reason that they pose no threat to human health or the environment. For example, a site should not be proposed for NFA based solely on the justification that there are no receptors. In order to make a case for NFA using such a justification (no receptors), typically a human health and ecological risk assessment would be necessary. The complete risk assessment, and any ensuing NFA proposal, would then be evaluated as part of the evaluation of an RFI Report.

II. Guidelines for Evidence

An NFA proposal should contain or reference evidence which ^{demonstrates to} ~~is adequate to convince~~ regulators and the public that an NFA determination is appropriate. The evidence presented in the proposal should be relevant, accurate, consistent, traceable, and sufficient. The evidence should be documented and available for review by the regulators and the public. Some evidence may carry more weight than other evidence, and the term **acceptable knowledge** has been used to refer to the weight or acceptability of various kinds of evidence. A discussion of the acceptability of various kinds of evidence or knowledge is included below in order of increasing importance:

1. Interviews

Interviews may be used to investigate past activities at a site and verify location information. A written record of the interview should be maintained. Interviews alone are not sufficient evidence on which to base an NFA proposal.

2. Historical records

Historical records include ^{but is not limited to} information such as process descriptions, test reports, aerial photos, and bills of lading which ~~may~~ ^{indicates} the nature, amount, and period of use of hazardous constituents. Historical records should be documented and available for review. Historical records cannot by themselves prove the absence of a release, and are therefore not sufficient evidence on which to base an NFA proposal.

by the regulator and public.

3. Site visual inspections

Site visual inspections can be used to locate sites of potential contamination and to estimate pathways of migration. A record of site visual inspections should be maintained. Visual inspections alone are not sufficient evidence on which to base an NFA proposal.

should?

what type of record, is there a form available from the regulator? consistency of site visit reports would be helpful.

4. Site surveys

Site surveys may include but are not limited to radiation surveys, magnetic surveys, gravity surveys, and soil gas surveys. Surveys should be documented and available for review. It cannot be generally assumed that the absence of radioactive material indicates the absence of hazardous constituents. As with the previous kinds of evidence, site surveys should be used in combination with other evidence to complete a sufficient proposal package.

again, can we provide a method for consistency of these records.

5. Release assessment sampling

Release assessment sampling may be used to verify and evaluate a release or potential release. Documentation of sampling locations and documentation of sampling results should be available for review. As with other kinds of evidence, data from release assessment sampling alone is not sufficient basis for an NFA proposal. However, sampling results may be used in combination with other evidence to complete a sufficient NFA proposal package.

should?

if not this what else, it either should be release assessment sampling or other approved method

do we need a sampling plan before the sampling starts?

At sites where sampling indicates that there was a release of hazardous constituents, (concentrations in excess of background), then depending on the results of a risk assessment, NFA may be proposed or further investigation within an RFI may be needed.

III. Definitions

acceptable knowledge - information collected through a variety of methods including interviews, historical records investigations (process descriptions, test reports, aerial photographs, bills of lading etc.), site inspections, site surveys, and/or sampling, which is sufficiently documented and considered to be credible.

hazardous constituents - RCRA solid or hazardous wastes, radionuclides, or other CERCLA hazardous substances.

↑ do we mean QA/QC or something else?

management - the generation, treatment, storage, or disposal of RCRA solid or hazardous wastes or hazardous constituents, radionuclides, or other CERCLA hazardous substances.

release - any spilling, leaking, pouring, emitting, emptying, discharging, injecting, pumping, leaching, dumping, or disposing of hazardous wastes (including hazardous constituents or mixed wastes) into the environment either to the surface, subsurface, or outside the confines of a container, structure, or building (including the abandonment or discarding of barrels, containers, and other closed receptacles containing hazardous wastes, hazardous constituents, or mixed wastes).

release assessment - The definition of a release assessment is taken from EPA's RCRA Corrective Action Plan - Final (EPA 520-R-94-004; OSWER Directive 9902.3-2A; May 1994). As adapted for this guidance, a release assessment is intended to take place after identification of a site with a release or potential release through a RCRA Facility Assessment (RFA) and before initiation of a RCRA Facility Investigation (RFI). The release assessment provides a mechanism for the verification and evaluation of a release, if there is some uncertainty after the RFA. The release assessment may include field investigation and sampling as well as a risk assessment if hazardous constituents are found at concentrations in excess of background.

Depending on the results of the release assessment, NFA may be proposed or further investigation under an RFI may be required. A release assessment may not require a formal work plan, but it should address the following:

what determines if a formal work plan is req.?

1. Release assessment objectives
2. Project description/workplan
 - a) Work plan objectives
 - b) Field investigation (sample locations map, media to be sampled, number and location of samples, etc.)
 - c) Field sample collection procedures
 - d) Field measurements
 - e) QA/QC procedures
 - f) Sample analysis (methods, laboratories, etc.)
 - g) Data management
 - h) Schedule of activities, including findings report
3. Findings report
 - a) Confirmation of adherence to the plan
 - b) Identification and logging of sample locations
 - c) Summary of findings
 - d) Analysis of results
 - e) Assessment of type and known extent of release
 - f) Assessment of human health and ecological risks
 - g) Recommendation for further action or no further action (subject to regulatory approval)
 - h) Explanation of the rationale for the selected recommendation

site - A Solid Waste Management Unit regulated under the Resource Conservation Recovery Act (RCRA) or the Hazardous and Solid Waste Amendments of RCRA, or an Area of Concern regulated under DOE Orders.