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FROM: *NW* Neil Weber, Chief, DOE Oversight Bureau, NMED

DATE: November 30, 1995

SUBJECT: Guidance for the Evaluation of No Further Action Proposals

I appreciate the input of you and your staffs in reviewing the draft version of the attached document: **Guidance for the Evaluation of No Further Action Proposals**. I am issuing this guidance to help promote consistency in reviewing proposals for No Further Action (NFA), and to help provide a common basis for communicating the recommendations of this Bureau to regulators and other stakeholders in the Environmental Restoration process at the National Laboratories. Please begin using this document in your reviews of NFA proposals.

If you have any questions or suggestions, please contact Tim Michael (505-827-1536) of the DOE Oversight Bureau's Technical Support Staff.

NW:TM:tm

Attachment

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Guidance for the Evaluation of NFA Proposals  
November 30, 1995  
Tim Michael

Technical Support Program  
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## 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 In order to maintain a consistent approach to the evaluation of these proposals, the Bureau has developed this **Draft Guidance for the Evaluation of No Further Action Proposals**.

This document was developed for the evaluation of NFA proposals, and may or may not affect the regulatory decisions of the New Mexico Environment Department (NMED). It should be noted that the determination of NFA does not preclude the NMED from requiring further investigation or remediation at a later date, if new information indicates that a release may threaten human health or the environment. Although this document was prepared with significant input from the NMED Hazardous and Radioactive Materials Bureau, that Bureau has not expressed its concurrence. Therefore, it does not represent the regulatory position of the NMED. It has no regulatory status, except that it may help oversight staff provide consistent comments to regulators.

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 shown that the site does not exist, then a proposal may be made for NFA.
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.
4. There was a release, but a release assessment indicates that concentrations of hazardous constituents are at acceptably low levels as determined by regulators. The release assessment includes site characterization, release assessment sampling, and risk assessment.
5. 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, necessarily, sufficient justification for a proposal for NFA.
6. There was a release, but the site has been remediated. Typically, the site would have been remediated by means of **Voluntary Corrective Actions** or **Expedited Cleanups/Voluntary Corrective Measures**. After remediation, evidence should show that concentrations of hazardous constituents are at acceptable levels as determined by regulators. If the site meets the criteria for remediation, then it may be proposed for NFA.

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

Release assessment sampling may be used to demonstrate items 1-4 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.

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). Note that sites are not proposed for NFA for the reason that they are not a threat to human health or the environment. Decisions regarding sites considered to pose no threat will be made by regulators, and may require an evaluation of potential impacts to both human health and the environment.

## II. Guidelines for Evidence

An NFA proposal should contain or refer to evidence which demonstrates to 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:

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

### 3. Site visual inspections

Site visual inspections should be used to locate sites of potential contamination and to estimate pathways of migration. A record of site visual inspections should be maintained by the facility. Visual inspections alone are

not sufficient evidence on which to base an NFA proposal.

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 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.

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.

Where sampling indicates that there was a release of hazardous constituents, (concentrations in excess of background), and adequate characterization has been done, then depending on the results of a risk assessment, NFA may be proposed. However, sampling and characterization may also indicate the need for further investigation within an RFI.

### III. Definitions

**acceptable knowledge** - documented information collected through a variety of methods including, but not limited to, interviews, historical records investigations (process descriptions, test reports, aerial photographs, bills of lading etc.), site inspections, site surveys, and/or sampling.

**area of concern (AOC)** - sites that contain radioactive or other hazardous substances not defined by RCRA.

**characterize** - the process of defining the nature, rate, and extent of a release of hazardous constituents.

**expedited cleanups/voluntary corrective measures** - remedial

processes intended to address only SWMUs identified in the HSWA permit, and where the remedy is obvious. These processes allow for regulatory and public review of remedy selection prior to implementation.

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

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

**potential release site (PRS)** - sites which may be either SWMUs as defined in facility HSWA Permits or AOCs that contain radioactive or other hazardous substances not defined by RCRA.

**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 conceptually address the following:

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

**remediate** - the performance of a remedy at a location where hazardous constituents have been found. The remedy generally involves the reduction of concentrations of hazardous constituents to levels acceptable to regulators.

**site** - A Solid Waste Management Unit (SWMU) 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.

**solid waste management unit** - defined in the facility HSWA Permits as "...any discernible unit at which solid wastes have been placed at any time, irrespective of whether it was intended for the management of solid or hazardous waste. Such units include any area at or around a facility at which solid wastes have been routinely and systematically released."

**voluntary corrective action** - a process for addressing small-scale potential release sites (PRSSs), mostly areas of concern (AOCs) and some solid waste management units (SWMUs), where an obvious remedy may be implemented with a minimum of administrative requirements. Liability for performance of the voluntary corrective action is borne by the implementing organization.