



OFFICE OF LAND AND EMERGENCY MANAGEMENT

WASHINGTON, D.C. 20460

OLEM Directive # 9932.2

MEMORANDUM

SUBJECT: Improved Procedures for Facility/Site Transfers Between RCRA Hazardous Waste Cleanup and CERCLA Cleanup Authorities

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TO: Land, Chemicals, and Redevelopment Division Directors, Regions 1 – 10
Superfund and Emergency Management Division Directors, Regions 1 – 10

PURPOSE

This memo and the attached appendix titled “Improved Procedures for Facility/Site Transfers Between RCRA Hazardous Waste and CERCLA Cleanup Authorities,” describe updated procedures for processing program transfers of facilities/sites between the Resource Conservation and Recovery Act Hazardous Waste Cleanup Program (formerly known as the Corrective Action Program) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Program.¹ The updated procedures, which include documenting and tracking transfer-related information in both RCRAInfo and the Superfund Enterprise and Management System (SEMS),² will help ensure that facilities/sites transferred between these programs follow a consistent and complete process. The updated process will enable program managers to accurately identify a facility/site’s administrative program management lead, transfer status in real time and improve overall program management at the state, regional, and national levels.³

¹ This guidance is designed to implement national policy for these procedures and does not substitute for RCRA, CERCLA, or EPA’s regulations; nor is it a regulation itself. Thus, it cannot impose legally binding requirements on EPA and may not apply to a particular situation based upon the circumstances.

² These procedures supersede those described in OSWER Directive 9200.1-31P, “Interim Guidance in Response to the OIG Audit “Superfund Sites Deferred to RCRA,” December, 6, 1999; Elizabeth Cotsworth and Stephen Luftig. Available at <https://rcrapublic.epa.gov/files/14960.pdf> and <https://semspub.epa.gov/work/HQ/190119.pdf>.

³ Section 3006(b) of RCRA, as amended, allows EPA to authorize state hazardous waste management programs. Authorized state programs assume primary responsibility for implementing the RCRA hazardous waste program in lieu of EPA. Authorized state programs are codified in [40 CFR part 272](#).

BACKGROUND

This memo stems from recommendations included in the March 2021 U.S. Environmental Protection Agency's Office of Inspector General (OIG) report titled *EPA Does Not Consistently Monitor Hazardous Waste Units Closed with Waste in Place or Track and Report on Facilities That Fall Under the Two Responsible Programs (Report 21-P-0114)*. In that report, the OIG recommended the Office of Land and Emergency Management (OLEM) develop and implement controls to verify that RCRA referrals to the Superfund program and Superfund deferrals to the RCRA hazardous waste cleanup program are properly transferred and tracked in respective program databases for further attention. The provisions outlined in this memo build upon OLEM's response to the OIG's recommendations by adding additional notification, documentation, and database tracking steps to the transfer process and by establishing a standard six-month timeframe to complete the process.

IMPLEMENTATION

Terms

To reduce confusion and promote consistency, program implementers should use the terminology defined and used in this memo when processing a transfer. When referring to a facility transfer from the RCRA Hazardous Waste Cleanup Program to the federal Superfund Program, the term *refer* should be used. A site transfer from Superfund to RCRA should use the term *defer*. The term *originating program* refers to the program under whose authority a facility/site is currently being addressed while the *receiving program* refers to the program that, if the transfer request is approved, will take over as the facility/site's program lead going forward.

Applicability

As of this document's issuance date, all procedural and code changes identified are limited in scope to prospective facility/site transfers between federal- or state-implemented RCRA Hazardous Waste Cleanup programs and the federal Superfund program. Further, these updated procedures apply to non-federal facilities with a potential risk that are referred from RCRA to Superfund for a CERCLA pre-remedial site assessment and to NPL-eligible sites deferred from the Superfund pre-remedial program to the RCRA Hazardous Waste Cleanup program pursuant to the agency's current NPL/RCRA Deferral Policy.⁴ These procedures are not retroactive and do not apply to federal facilities. They also do not apply to sites subject to: (1) current Superfund removal assessment or response or (2) remedial response through a Superfund NPL or non-NPL (e.g., Superfund Alternative) cleanup approach. These procedures do not describe or recommend any changes to program management procedures, policies or decisions that may occur before or after the program transfer.

Updated RCRA-to-Superfund Referral Process

The decision by the RCRA Hazardous Waste Cleanup Program to refer a facility to the Superfund Program for pre-remedial site assessment should be preceded by an informal inquiry, research, and discussion between regional RCRA and Superfund staff regarding the potential referral. Regional RCRA program managers should work with their state RCRA program counterparts to ensure that the

⁴ The current NPL/RCRA Deferral Policy is described at [54 FR 41004](#) (October 4, 1989), see pp. 41004-41006.

updated steps in the transfer process are completed for state-led sites. Staff are encouraged to check both RCRAInfo and SEMS for existing data and any available records during this step.

Upon determining a proposed referral to Superfund is needed to address a potential risk, the regional RCRA branch manager should send written notification of the proposed referral along with all relevant facility information to the appropriate Superfund branch manager for review. After confirming receipt of the proposed referral, the Superfund branch manager or their staff should review the referral package and determine whether the proposed action is appropriate and supported by existing CERCLA authorities. The Superfund branch manager should notify the referring RCRA branch manager in writing of the decision to accept or decline the program transfer. A decision to decline the transfer should include a rationale for declining the referral. Both the RCRA and Superfund programs should document and track the notification of the proposed referral facility/site in RCRAInfo and SEMS, accordingly.

The referral action is incomplete until the RCRA program receives a formal written response from the Superfund program. If the Superfund program accepts the referral, the facility becomes a Superfund Program-led site. A new SEMS site record should be created as necessary, and, when possible, the Superfund program should adopt the RCRAInfo Handler ID of the transferred facility as the SEMS EPA ID. This approach will facilitate the cross-walking of sites/facilities between programs.⁵ If the Superfund program declines the referral, RCRA will remain the facility's program lead.

The written notification of a final decision on the proposed referral (accepted or declined) should be maintained in site records within each program. The transfer decision should be entered into both SEMS and RCRAInfo once these systems are updated to track this information.

See Figure 1 in the appendix for a visual representation of this process.

Updated Superfund-to-RCRA Deferral Process

Similar to the RCRA-to-Superfund referral process, a decision by the Superfund program to defer an NPL-eligible site (Preliminary Assessment or subsequent assessment with a preliminary Hazard Ranking System score at or above 28.5) to the RCRA Hazardous Waste Cleanup Program per the Agency's NPL/RCRA Deferral Policy may be preceded by informal inquiry, research, and discussion between regional Superfund and RCRA staff regarding the potential deferral. Staff are encouraged to check both SEMS and RCRAInfo for existing data and any available records during this step.

Upon concluding that a proposed deferral to RCRA is needed to address a potential risk, the regional Superfund branch manager should send written notification of the proposed deferral along with all relevant site information to the appropriate RCRA branch manager for review. The RCRA branch manager should confirm receipt of the proposed deferral with the Superfund branch manager. The Superfund and RCRA programs should document and track the notification of the proposed deferral in SEMS and RCRAInfo, accordingly.

Once the RCRA branch manager or their designated staff review the relevant information for the proposed deferral and evaluate its appropriateness and whether existing RCRA authorities support a

⁵ Transfer proposals may involve new facility/site transfers as well as facilities/sites that have previously been transferred between the RCRA and Superfund programs.

deferral⁶ the RCRA branch manager should notify the deferring Superfund branch manager in writing of the decision to accept or decline the program transfer. A decision to decline the transfer should include a rationale for declining the deferral⁷ and should not contradict the requirements described in the agency's current NPL/RCRA Deferral Policy. The deferral action is incomplete until the Superfund program receives a formal written response from the RCRA program. If the RCRA program accepts the deferral, RCRA becomes the designated lead program for the facility. A new RCRAInfo facility record should be created as necessary. If the RCRA program declines the proposed deferral, Superfund will retain program lead for the site.

The written notification of a decision on the proposed deferral (accepted or declined) should be maintained in site records within each program. The site decision should be entered into both RCRAInfo and SEMS once these systems are updated to track this information. Throughout the deferral process, EPA RCRA staff should coordinate with their authorized state counterparts, if applicable, to establish which office will serve as the lead on subsequent work at the facility.

Throughout the transfer process ORCR Cleanup Programs Branch staff and OSRTI Site Assessment and Remedy Decisions Branch staff are available to provide support or consultation to regional staff as requested.

Timeline for Processing Proposed Transfers

The 1999 "Interim Guidance in Response to the OIG Audit 'Superfund Sites Deferred to RCRA'" clarifies that regions must establish timeframes for performing deferral approvals. Consistent with that guidance, and to prevent cleanups from languishing in the transfer process, the programs should aim to complete the steps described in this memo within six (6) months of the initial proposed transfer action. The date of the originating program's transmission of written notification to the receiving program establishes the beginning of the six-month period.

Database Reporting Requirements and Related Updates

RCRA and Superfund program representatives should document transfer decisions and related records in written (electronic) form. Headquarters staff will make RCRAInfo and SEMS database changes and develop data entry guidance as necessary to support tracking these new transfer steps to clearly identify which program has current administrative lead in the transfer process. Regions should continue to use existing RCRAInfo and SEMS procedures to track referrals and deferrals until the databases are updated to accommodate the more detailed transfer process. Once database changes are implemented, the RCRA and Superfund programs should update site information as soon as possible in RCRAInfo and SEMS after completing each step in the decision-making process and upload all pertinent transfer-related documents for future reference.

⁶ Various RCRA cleanup authorities may be applicable, depending on site-specific facts. Generally, a proposed deferral site that could be cleaned up using a non-RCRA state cleanup authority could be a candidate for a different CERCLA referral process known as "Other Cleanup Activity – State Lead Cleanup".

⁷ For example, in the event of a bankruptcy or similar financial assurance concern which would result in the inability or unwillingness of the owner/operator to pay for addressing contamination at the site, the RCRA and Superfund programs may conclude that deferral is not a desired course of action.

CONCLUSION

Thank you for your attention to these updated procedures. We believe their implementation will help ensure that facilities/sites transferred between RCRA and CERCLA authorities will follow a consistent and complete process, leading to improvements in the programs' overall programmatic management at the state, regional, and national levels. Our offices stand ready to help facilitate the updated transfer process; to that end, please contact the Cleanup Programs Branch in the Office of Resource Conservation and Recovery or the Site Assessment and Remedy Decisions Branch in the Office of Superfund Remediation and Technology Innovation with questions or concerns.