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MAY 10 1994

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COMMENTS ON ACCELERATED SOILS IM/IRA PROPOSAL

Location

Comment

DRAFT TRANSMITTAL MEMO

- page 1, par. 1 Need to state that under the current IA, there are two broad groupings for accelerated actions: (1) CERCLA and RCRA/CHWA corrective action and (2) CERCLA and RCRA/CHWA closure. The distinction between closure and corrective action is very important and needs to be explicitly stated. In addition, closure needs to address complete closure versus partial (or dirty) closure and post-closure monitoring.
- page 1, par. 2 In addition to excavation and capping, alternatives should consider surface controls (diversion, grading, soil stabilization), fencing, and in-situ or ex-situ treatment. Some treatment can be very expedient and low cost.
- With regard to limited field investigations, we need to explicitly follow the Data Quality Objective Process (DQO). Thus, state that the DQO process will be utilized as well as outlining how it will be utilized. Accelerated cleanup is no excuse for ignoring data DQOs. In fact, DQO's can be an effective tool in limiting the scope to the minimum required investigations.
- page 1, par. 3. Interim remedial actions (IRAs) under CERCLA must achieve the nine criteria listed in the National Contingency Plan (NCP). This is burdensome and can be simplified by utilizing CERCLA removal actions also described in the NCP. Thus, CERCLA IRA's should be de-emphasized, maybe even abandoned, in favor of CERCLA removal actions for this proposal.
- page 2, par. 2 See comment at location "page 1, par. 2" above.
- page 2, par. 3 See second comment at location "page 1, par. 2" above.
- page 2, last par. There is new guidance coming from DOE/HQ that will likely eliminate the requirement for NEPA/CERCLA integration. However, we need to be cognizant of language in Section 107 of CERCLA regarding Environmental Impact Statements. In addition, we must still follow ARARs related to wetlands, threatened and endangered species, and migratory birds.
- page 3, 2nd bullet ARARs (chemical-specific) are not an issue for soils since there are none. However, both location- and action-specific ARARs will be important. This distinction should be made.
- page 3, 3rd bullet The Colorado Department of Health's conservative screen should be utilized as the process for assessing risks. A copy is provided as an attachment. In general, early action should not be taken if the risks for an appropriate land use fall below 1 in 10,000. However, if there is solid information that early action is necessary for a site in the risk range of 1 in 1,000,000 to 1 in 10,000 in order to circumvent a greater risk in the future, early action could be considered. We need to focus accelerated cleanup on significant risks in order that we can defend our expenditures of public funds.
- Reference the CDH Conservative screen and describe how it will be used to identify (1) no further action, and (2) potential early action.

page 3, par. 4

A graded approach is needed for regulator involvement. The following is suggested as an approach:

(1) If radionuclide risk is less than 1 in 1,000,000 and hazardous constituents give a risk greater than 1 in 1,000,000, CDH will be the sole regulatory agency and EPA will not be directly involved. Pursue no further action under CERCLA. This will be difficult for EPA, but we need to push.

(2) If hazardous constituents risk is less than 1 in 1,000,000 and radionuclide risk is greater than 1 in 1,000,000, EPA will be the sole regulatory agency and CDH will not be directly involved. Pursue no further action under RCRA/CHWA.

(3) If radionuclide risk is less than 1 in 10,000 and hazardous constituents give a risk greater than 1 in 10,000, CDH will be the lead regulatory agency and EPA will be directly involved with a defined, minimal role.

(4) If hazardous constituents risk is less than 1 in 10,000 and radionuclide risk is greater than 1 in 10,000, EPA will be the lead regulatory agency and CDH will be directly involved with a defined, minimal role. This will be difficult for CDH, but we need to push.

This graded approach will further influence the groupings for accelerated cleanup. However, if we cannot eliminate the duplicity of CERCLA and RCRA/CHWA, accelerated cleanup may not be possible. Similarly, if we cannot get EPA to allow removal action, significant accelerated cleanup may not be possible. The current RCRA permit structure and approach for modifications of the permit need to be addressed as part of this concern.

MOA

The Memorandum of Agreement should be replaced by text that can be inserted into the current IA under Part 41, Amendment of Agreement. Our strategy should be to amend the IA, not to develop yet one more agreement.

The amendment language needs to include removal actions instead of IRAs and also needs to detail the proposed graded regulatory involvement suggested above. In addition, the CDH conservative screen needs to be included to anchor when early actions will be considered. We need to fight to prevent additional political remedies that do not substantively reduce risk. Finally, we do not want to set a precedent for cleanup to a risk of 1 in 1,000,000 just because it can be done in an expedient manner.

FLWSHEET

The flowsheet needs to be revised to address the selection/decision tree approach to accelerated response. We would like to use an accelerated process for soil response as described above which allows use of RCRA or CERCLA, IM/IRA or removal action, closure or corrective action, as appropriate. The decision nodes should be driven by the nature of the contamination and its risk to select the most expedient regulatory path. We should not use IM/IRA as the predetermined correct path, even if it is an 'umbrella' IM/IRA.

DECISION DOCUMENT OUTLINE

The outline needs complete rework to meet the comments above for a broader process perspective. Several key points:

- 1) Both regulators may be concerned that by enforcing a clear regulator lead the other agency will be out of the process. In all cases these are intermediate actions, therefore the final actions will still have involvement of both EPA and CDH.
- 2) Use of the 'umbrella' IM/IRA is not described anywhere in the National Contingency Plan of EPA implementing guidance. It is a vehicle that our local regulators may feel comfortable with, but it may leave us all vulnerable to challenges from citizens or activist groups. RCRA closures and CERCLA removal actions are clearly described and recognized administrative processes.
- 3) Collection of any soils will quickly create hazardous waste, which will likely involve CDH in a role of regulating storage of the waste. This is a key point of coordination to be addressed. The ultimate disposal location specifically, compliance with Nevada waste stream approval procedures needs to be addressed.
- 4) Definitions should be clear on sizing of contamination 'hot spots', including margin for error and latitude in selection.
- 5) The decision process should focus on high risks, those that need response, but not attempt to seek the greatest risk as the first project. Screening level characterization and risk analysis is needed to find the best group of first priority risks, but not try to define the number one risk.
- 6) It is suggested that the first document the regulators see still be largely conceptual. This should allow the regulators to help in evolution of the concept, provided they support it, and build support and commitment to the overall process for accelerated response.