UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 26 1996

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

OSWER Directive No. 9835.15c

MEMORANDUM

SUBJECT: Revised Policy on Performance of Risk Assessments During Remedial Investigation/Feasibility Studies (RI/FS) Conducted by Potentially Responsible Parties

FROM: Stephen D. Luftig, Director
Office of Emergency and Remedial Response

TO: Director, Office of Site Remediation and Restoration
Region I
Director, Emergency and Remedial Response Division
Region II
Director, Hazardous Waste Management Division
Regions III, IX
Director, Waste Management Division
Region IV
Director, Superfund Division
Regions V, VI, VII
Assistant Regional Administrator, Office of Ecosystems Protection and Remediation
Region VIII
Director, Environmental Cleanup Office
Region X

Purpose

As part of the recently announced administrative reforms to the Superfund program, the Administrator stated that EPA would reaffirm its commitment to "allow PRPs to conduct risk assessments under proper circumstances as part of the overall site study (RI/FS)." This memorandum announces EPA's revised policy on allowing PRPs to conduct the risk assessment portion of the RI/FS.

Background

This supersedes the previous Directives issued on this subject: No. 9835.15 issued on August 28, 1990, which stated that EPA would perform all risk assessments as part of PRP RI/FSs; No. 9835.15a issued on July 21, 1991, which gave guidance on risk-

related deliverables tnat EPA was to provide PRPs to allow them to complete the RI/FS; and No. 9835.15b issued on September 1, 1993, which gave EPA Regions the option of allowing PRPs to perform the risk assessment under certain specified conditions.

Since issuing the 1993 Directive, PRPs have been allowed to perform the risk assessment at most sites. The Agency's experience with these risk assessments has shown that with appropriate oversight, PRPs can perform acceptable risk assessments. EPA has found that letting the PRPs perform the baseline risk assessment can be the most effective and efficient way to complete the RI/FS.

New Policy

EPA has determined that it will generally be appropriate for PRPs to conduct the risk assessment at most sites, subject to adequate EPA oversight. EPA maintains its rights not to let PRPs perform the risk assessment in certain circumstance under section 104(a)(1) of CERCLA which states that "no remedial investigation or feasibility study (RI/FS) shall be authorized except on a determination by the President that the party is qualified to conduct the RI/FS."

Although this new policy does not require a Headquarters Consultation, the Regions should continue to consider the six criteria presented in Directive No. 9835.15b, and listed below (slightly modified), when deciding whether or not to allow the PRPs to perform the risk assessment:

- EPA's prior experience with the requesting PRPs at this or other sites and in particular whether excessive oversight and revisions were necessary when that PRP previously conducted a risk assessment;
- PRP or PRP contractor's experience in conducting acceptable human health and ecological risk assessments at Superfund sites;
- PRP or PRP contractor's willingness to follow current Superfund risk assessment processes and guidances;
- PRP or PRP contractor's demonstrated ability to submit data to EPA in the proper format;
- Available EPA resources and schedule for RI/FS completion; and
- Level of public concern at the site.

We anticipate that there may be some sites where EPA will not allow the PRP to perform the risk assessment based on an evaluation of these six criteria. If any Region wishes to

consult with HQ on making such a determination using these criteria, they may consult with David Bennett, OERR Senior Process Manager for Risk at (703) 603-8800.

Regions may amend existing RI/FS Consent Orders to allow PRPs to conduct the risk assessment as long as this will not significantly delay completing the RI/FS.

This administrative reform complements other reforms that are designed to make the Superfund program faster, fairer, and more efficient. Under another reform, EPA is exploring ways to reduce oversight of PRPs that have performed high quality work and have cooperated with EPA throughout the cleanup process.

Further Information

If you have any questions about this policy, please contact Stephen Ells at (703) 603-8822.

NOTICE: The policies set out in this memorandum are intended solely as guidance. They are not intended, nor can they be relied upon, to create any rights enforceable by any party in litigation with the United States. EPA officials may decide to follow the guidance provided in this memorandum, or to act at variance with the guidance, based on analysis of specific site circumstances. The Agency also reserves the right to change this guidance at any time without public notice.

cc: Regional Superfund Branch Chiefs
Regional Superfund Toxics Integration Coordinators
Regional Biological Technical Assistance Group Coordinators