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United States Environmental Protection Agency
Washington, D.C. 20460
Office of Solid Waste and Emergency Response

January 7, 1991

Richard G. Stoll
Freedman, Levy, Kroll & Simonds
1050 Connecticut Ave. N.W.
Washington, D.C. 20036-5366

Dear Mr. Stoll,

This letter is in response to your inquiry dated August 22, 1990 concerning the applicability of EPA's "Superfund LDR Guides." As you asserted, those interpretations of RCRA were found in the 1990 NCP and other CERCLA documents, but you asked whether those interpretations apply at all sites, regardless of whether the cleanup activity is being conducted under federal CERCLA authorities.

The preamble to the 1990 NCP represents an official Agency-wide position concerning the interpretation of RCRA and other statutes relevant to federally-mandated CERCLA cleanups (see 53 FR 51394, 51443-45 (December 21, 1988) and 55 FR 8666, 8758-62 (March 8, 1990)). The LDR Guides implement these interpretations in more detail. These interpretations of RCRA would apply at Superfund sites and at non-Superfund sites. Therefore, in general, the answer to your question about the applicability of the LDR Guides and NCP interpretations is that they apply wherever the cleanup involves a RCRA waste. However, it is conceivable that some of the interpretations of RCRA developed to apply to federal CERCLA sites may not exactly match non-CERCLA circumstances because of different statutory constraints or authorities. With that caveat, let me address the specific issues and questions raised in your letter.

First, your comments focus on the interpretations of Area of Contamination (AOC), "placement," and the presumption of entitlement to treatability variances for contaminated soil and debris. Your principal concern focused on whether the interpretations offered of these issues in the NCP and LDR Guides apply at all sites. The answer is yes.

Second, you also questioned whether the NCP interpretations and the LDR Guides noted above apply equally where "a party may want to move or treat contaminated soil and debris as part of a RCRA corrective action, as part of a cleanup carried out under State law, and/or as part of a voluntary cleanup." The answer is yes.

Third, you asked whether in situ treatment that is not "placement" at a CERCLA site is also not placement at a non-CERCLA site (site A in your letter). The answer is yes.

Fourth, you question whether excavation and movement of contaminated soil within a certain area would be "placement" at a non-CERCLA site (site B), since you interpret it not to be placement at a CERCLA site. The limited facts given in that question do not allow us to unambiguously state whether there is "placement" at either site, although as a general rule the AOC concept is operable at RCRA corrective action sites. It should be noted, however, that designation of an AOC is a function performed by the regulating agency.

Fifth, you asked whether the presumption in favor of treatability variances and definition of appropriate alternative treatment would be the same for a non-CERCLA site (site C). The answer is that any presumption in favor of a treatability variance would be the same whether the site is a RCRA site or a federal or private party CERCLA site.

I hope that this response meets your needs. If you need additional information or clarification, please contact Steve Golian at (703) 308-8360.

Sincerely,
Don R. Clay
Assistant Administrator