UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
J.F. KENNEDY FEDERAL BUILDING, BOSTON, MA 02203-2211

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SUBJ: **Region I Draft Administrative Procedures for Addressing Future Land Use Assumptions at Facilities under RCRA Corrective Action Prior to Final Remedy Selection**

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TO: RCRA Staff
RCRA Section Chiefs
WMD Branch Chiefs
RCRA ORC Attorneys

The purpose of this memo is to present the Region I administrative procedures for making future land use assumptions at facilities subject to RCRA Corrective Action prior to selection of a final remedy. Present and future land use assumptions are used in assessing baseline risks and in establishing Media Protection Standards for a facility. This memo replaces previous memos regarding future land use for facilities under RCRA Corrective Action. This memo is considered draft in light of ongoing consideration of future land use assumptions at the national level.

The following documents were relied upon in preparing this memo:

1. a letter dated February 25, 1993, Re: "Future Use Scenarios at the Engelhard Corporation Site" prepared by Andrea Simpson;

2. a letter dated October 14, 1993, Re: "Remington Arms Park Corrective Action .. Future Use Consideration" prepared by Deborah McKie;

3. Corrective Action for Solid Waste Management Units at Hazardous Waste Management Facilities, Proposed Rule (Subpart S), 55 Fed. Reg. 30796.

Traditionally, it has been Region I's practice to use a residential scenario, as well as other scenarios that may be appropriate, for the purpose of conducting baseline risk assessments at Corrective Action and Superfund sites. In a few instances the Region has designated a non-residential use (commercial or industrial use) for a site prior to the selection of a remedy. In the Superfund Program, those decisions typically have been made at the second Management Review Meeting during the RI/FS process.

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Decisions regarding current and future land use assumptions at Corrective Action facilities should be considered as early as possible in the Corrective Action process. A Management Review Meeting should be held when the RCRA Facility Manager (RFM) believes there is adequate information to consider whether a future non-residential use scenario is appropriate for a particular facility prior to remedy selection. If a non-residential facility use assumption is endorsed by management and if a risk exceedance is found, Media Protection Standards need to be developed based upon an on-site non-residential use, off-site groundwater use, or ecological risk. In this case, the appropriate exposure assumptions for on-site groundwater use is site-specific. Following the RFI/CMS, the selection of Media Protection Standards along with the appropriate institutional controls and financial assurance would be determined during the Management Review Meeting prior to issuing the Statement of Basis.

According to proposed Subpart S, contaminated soil should be remediated to levels consistent with plausible future patterns of use. For unrestricted access, soils would be remediated to levels appropriate for residential use. For sites located in industrial areas that are likely to remain industrial in the foreseeable future, exposure assumptions consistent with industrial land use and cleanup to less stringent levels might be appropriate, although institutional controls could be necessary to ensure that the use pattern did not change. See section V.B. (page 30804) of proposed Subpart S. Superfund is currently considering similar guidance for addressing current and reasonably expected land use for risk assessment early in the RI/FS process. In addition, the Administration's proposed Superfund re-authorization bill encourages early decisions on land use and early community involvement.

Local plans and community input are key factors for EPA in making current and future land use assumptions prior to selection of a remedy. Generally, EPA will not make a non-residential future use assumption prior to remedy selection without such community input. The burden rests with the facility to collect and present land use information if the facility feels making a non-residential future land use assumption prior to selection of the final remedy is appropriate. The consideration by EPA of a future non-residential use scenario early in the Corrective Action process typically will be triggered by a request from the facility or the community. In order to best determine the appropriate current and future use of a site prior to the time of remedy selection, the facility must submit supporting information including the following:

1. local zoning laws and zoning maps showing current zoning and future proposed changes,

2. location of the facility and surrounding land use;

3. proximity of the site to residential areas;

4. local development plans;

5. local population growth projections;

6. characteristics of neighboring properties;

7. concurrence of local officials;

8. groundwater use, groundwater classification, location of private wells, and the extent and characteristics of any off-site groundwater plume;

9. input from the public;

10. deed restrictions which the facility considers necessary to restrict the use of the land and groundwater to non-residential use;

11. a description of the institutional controls which the facility anticipates would be necessary to protect human health and the environment by preventing human exposure to contaminants; and

12. financial assurance mechanisms to fund future cleanup consistent with a residential use should conditions change.

The RFM should consult the previously mentioned letters sent to Engelhard and Remington Arms or other more recent correspondence for examples of these requirements. The RFM should review this information and hold technical discussions with his/her Section Chief, ORC, etc. prior to a Management Review Meeting.

Once there is adequate information to consider whether the future non-residential use of the property is appropriate, the RFM should prepare a recommendation regarding the current and future use of the site and convene a Management Review Meeting. The procedures for convening a Management Review Meeting are addressed in another, frequently updated memorandum. The possible outcomes of the Management Review Meeting include the following future use scenarios: residential, non-residential, or conditionally non-residential. If a residential future use scenario is chosen, the risk assessment and Media Protection Standards would be based on residential use (it is Region I policy to allow the facility to calculate baseline risks for other use scenarios as well). This does not preclude the later selection of a conditional remedy with institutional controls as the final remedy in a Statement of Basis. If a non-residential future use scenario is chosen, the risk assessment and Media Protection Standards need only be based on a non-residential

future use on-site, off-site groundwater and land use, and ecological risk, with the understanding that institutional controls and financial assurance will be part of the final remedy. If a conditional non-residential future use scenario is chosen, the risk assessment and Media Protection Standards would be provided for both residential and non-residential on-site future uses, and the final remedy would be conditioned on continued non-residential use of the site. In such a conditional remedy, the remedy would provide that if, in the future, use of the site were to change to something other than non-residential, additional remedial work would be necessary. Financial assurance typically would be part of the remedy to provide for this contingency.

Even if EPA accepts a facility's proposal to apply a non-residential scenario for the human health risk assessment for the site, the results of the ecological risk assessment and a review of the off-site exposures must still be considered when calculating the Media Protection Standards for the site. Based on the results of these two evaluations, the ecological risk assessment may be the driving factor in determining the cleanup levels for the facility.