



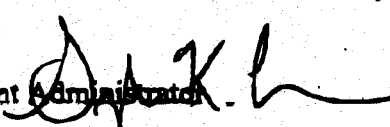
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 9 2002

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Headquarters Prior Written Approval Required for Prospective Purchaser Agreements under the Resource Conservation Recovery Act

FROM: Sylvia K. Lowrance
Principal Deputy Assistant Administrator 

TO: Regional Administrators, Regions I - X
Waste Management Division Directors, Regions I - X
Regional Counsels, Regions I - X

This memo is to request your coordination with my office if you are contemplating negotiations for a Prospective Purchaser Agreement (PPA) under the Resource Conservation and Recovery Act (RCRA). These settlements "break new ground in an important, sensitive area" because they present novel RCRA/CERCLA interface issues and address a new area of RCRA enforcement on which the Agency has little experience. As such, they require prior written approval of the OECA Assistant Administrator.¹ I believe, however, that the Agency has gained sufficient experience in the PPA area to justify redelegation of prior written approval of RCRA PPAs to the Director, Office of Site Remediation Enforcement (Director/OSRE). The process for seeking prior written approval before commencement of negotiations is detailed in Sandra Connors' memorandum of August 4, 1999, "Prior Written Approval Procedures for CERCLA Settlements" (copy attached).

As you may know, Region III recently successfully concluded negotiation of the Agency's first RCRA PPA for the Genicom Facility in Waynesboro, Virginia. We worked closely with Region III in development of this RCRA PPA using the current CERCLA Prospective Purchaser Guidance and the model CERCLA Prospective Purchaser Agreement. We would like to work closely with the Regions to ensure national consistency on a case-specific basis until we gain more experience with this type of settlement.

¹ See July 13, 2001 "OSRE CERCLA Prior Approval, Concurrence, and Consultation Roles Chart," issued pursuant to the September 30, 1998 "Revisions to OECA Concurrence and Consultation Requirements for CERCLA Case and Policy Areas."

We will evaluate with the Regions whether national guidance is needed in this area, but until such an evaluation is conducted, prior written approval at the Director/OSRE level will be required on all RCRA PPAs. When considering whether to enter into a RCRA PPA, there are a number of fundamental issues to consider to ensure national consistency, including but not limited to: the appropriate consideration from the prospective purchaser; the responsibility for the environmental problems at a facility and whether a prior owner will address them; and what will be the source of any cleanup required before the facility may be safely used.² When used in conjunction with an enforceable Corrective Action agreement, a RCRA PPA can provide for the productive reuse of a regulated hazardous waste facility.

Thank you in advance for your assistance in coordinating with my office on prior written approval of RCRA PPAs. For case-specific questions about potential CERCLA or RCRA PPAs, please contact Helen Keplinger of the Regional Support Division, at 202-564-4221. To discuss PPA policy in general or whether specific RCRA PPA guidance is needed, please contact Matt Sander of the Policy and Program Evaluation Division, at 202-564-7233.

Attachment

cc: Regional Counsel Branch Chiefs, Regions I - X

² The current prospective purchaser policy is "Guidance on Settlements with Prospective Purchasers of Contaminated Property" issued May 24, 1995, supplemented by "Support of Regional Efforts to Negotiate Prospective Purchaser Agreements (PPAs) at Superfund Sites and Clarification of PPA Guidance" issued January 10, 2001. Very few of the agreements entered into under this policy, or its predecessor policy from June of 1989, have included covenants under RCRA 7003, and none before Genicom in Region III has involved a site that had neither been the subject of a CERCLA response, nor listed on the NPL.