



Environmental Fact Sheet

Interim CERCLA Municipal Settlement Policy

Overview

The Environmental Protection Agency (EPA) has developed an interim policy on how municipalities and municipal waste will be included in the Superfund settlement process under Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). This interim policy focuses on situations where EPA is seeking voluntary settlement of cleanup at Superfund sites that involve municipalities or municipal wastes. It also addresses EPA's treatment of private parties and certain kinds of commercial, institutional, or industrial wastes. Its publication follows nearly two years of discussions with state and local governments and organizations, industry and

environmental groups, as well as Congressional staff. EPA has listened to all points of view in developing the new approach, which it believes is both fair and manageable.

EPA is publishing the interim policy at this time to inform the public about the proposed new nationwide approach and to solicit public comment. The policy provides EPA's Regional offices for the first time with nationally consistent guidelines for exercising their enforcement discretion in dealing with municipalities and municipal wastes in the Superfund settlement process. It also provides municipalities and private parties who may be potentially liable for the cost of Superfund cleanups with a sense about how EPA will treat them in the settlement process.

Content

The interim policy generally provides that wastes from households will not be included by EPA in the Superfund settlement process, and that, when municipalities are potentially liable for cleanup, they will be treated in the same manner as private parties.

EPA generally will continue to pursue both municipal and private-party owners or operators of facilities that have become Superfund sites. EPA generally will also continue to pursue both municipal and private-party generators or transporters of hazardous substances.

EPA generally will not pursue municipalities and private parties who are generators or transporters of **municipal solid waste or sewage sludge** to help pay for Superfund cleanup costs when the waste is believed to be derived from households, except in some truly exceptional situations. EPA may pursue such parties, however, if either waste contains a

hazardous substance from a commercial, institutional, or industrial process or activity. EPA generally will not pursue generators or transporters of **trash from a commercial, institutional, or industrial entity** when the content of the waste is believed to be very similar to that derived from households. EPA generally will pursue generators or transporters of **low-hazardous industrial wastes** such as certain paint sludges and industrial wastewaters because such wastes are derived from a commercial, institutional, or industrial process or activity.

When municipalities are considered to be potentially liable for cleanup costs, they will be treated essentially the same as private parties in the Superfund settlement process although delayed payments, delayed payment schedules, and in-kind contributions may be available to some municipalities under certain circumstances.

Significance

Involving municipalities and municipal wastes in the settlement process is an issue because questions have been raised about how such parties and wastes should be treated in the settlement process. Until the development of this interim policy, EPA had not addressed these questions from a national perspective.

This issue is important because about 25 percent of the sites proposed for or actually included on EPA's National Priorities List (NPL) for Superfund cleanup are sites that involve municipalities or municipal wastes. Of those, about one in five sites is a municipal landfill. EPA expects the number of NPL sites involving municipalities or municipal waste to increase in the future. This issue is particularly complex because sites that typically involve municipalities or municipal waste are often municipal landfills that include multiple responsible parties

Public Involvement

In March 1988, EPA sponsored a Municipal Settlement Conference that was attended by over 100 representatives of state and local governments and organizations; industry, environmental, and other groups; as well as Congressional staff. To continue this dialogue with interested parties, EPA established the Municipal Settlement Discussion Group which met in June, August, and October 1988. These forums have been open to the public and have been organized primarily as information exchange mechanisms; EPA has used these forums to inform interested parties about the issues EPA is addressing as part of the interim policy as well as to stimulate public debate on these issues.

Comments Sought

The interim policy is expected to be published in the Federal Register for public comment on December 12, 1989. The public will be provided with 60 days from the date of publication to review and comment on the interim policy. EPA

Who To Contact

For further information on this interim policy, please contact Kathleen MacKinnon in the Office of Waste Programs Enforcement at 202-475-6771.

(sometimes hundreds of parties), multiple sources of wastes (often municipal and industrial wastes), as well as diverse waste streams (in terms of amount and toxicity).

The important questions addressed in the interim policy are who should be included in the information gathering process, who should be considered potentially responsible for cleanup costs by EPA, how municipalities should be treated in the settlement process once they are considered potentially liable by EPA, and how the treatment of municipalities and municipal wastes affect EPA's treatment of private parties and certain kinds of commercial, institutional, or industrial wastes. Private parties and certain kinds of commercial, institutional, or industrial wastes are an issue for this interim policy because private parties sometimes handle municipal waste or generate waste streams that may be considered to be similar to municipal wastes, and because municipal and industrial wastes are often co-disposed at individual sites.

Forum Participants have included: the National League of Cities; the U.S. Conference of Mayors; the National Association of Towns and Township Officials; National Association of Counties; the International City Managers Association; the Government Refuse Collection and Disposal Association; the National Governors' Association; the National Association of Attorneys General; the Association of State and Territorial Solid Waste Management Officials; the U.S. Chamber of Commerce; the National Solid Waste Management Association; the National Association of Manufacturers; the Chemical Manufacturers Association; the American Petroleum Institute; Waste Management, Inc.; Browning-Ferris, Inc.; the Natural Resources Defense Council; the Conservation Foundation; and Congressional staff. Other representatives from private companies, individual state and local governments, and law firms representing municipal and private party clients have either attended and participated in these forums or have been kept informed through EPA's minutes of these meetings.

may change the interim policy at a later date or address additional issues in response to public comment or as EPA gains experience in implementing it over the next several months.