


SELECTING THE RIGHT CLEANUP PROGRAM
SELECTING THE RIGHT AGENCY

- o **Author:** Mark Bilut
- o **Key Words:** environmental, cleanup, Brownfield, remediation, project management
- o **Abstract:** More than ever before, the scope and cost of a cleanup remedy can differ greatly based on the Agency involved in the cleanup and the regulatory program applied to the cleanup. Often the Company's actions can impact the choice of regulatory program and the choice administrative agency. Mr. Bilut will discuss the issues to consider and the techniques that can successfully steer a cleanup project to a cost-effective solution.

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Mark A. Bilut, Esq.
McDermott, Will & Emery

OUTLINE

- I. INTRODUCTION - THERE ARE OPTIONS
- II. WHAT ARE THE OPTIONS
- III. IF YOUR SITE IS DESTINED FOR RCRA CORRECTIVE ACTION
- IV. EXAMPLES
- V. STRATEGIES FOR GETTING INTO YOUR PREFERRED CLEANUP PROGRAM

I. INTRODUCTION - THERE ARE OPTIONS

- o Background
 - > Company -owned site impacted by past or present operations
- o Goal
 - > Getting to the preferred cleanup program
- o Assessing the Options
 - > It is not always the case that you do not have options about the cleanup program
- o Every Situation is Unique

II. WHAT ARE THE OPTIONS?

- o Federal or State RCRA Corrective Action Programs
- o CERCLA Program (Removal and Remedial)
- o State Voluntary Cleanup Programs
- o No Agency Involvement

RCRA CORRECTIVE ACTION PROGRAMS

- o "Cradle-to-Grave"
- o Consent Orders and Corrective Action Permits
- o Extensive Agency Involvement

CERCLA PROGRAM

o Two Separate Programs - Removal Action

"the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to public health or welfare or to the environment, which may otherwise result from a release or threat of release."

Source: 42 U.S.C. Section 9601(23)

CERCLA PROGRAM

o Two Separate Programs - Remedial Action

"those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment."

Source: 42 U.S.C. Section 9601(24)

CERCLA PROGRAM

o Regulatory Criteria for Removal Action

- > Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances
- > Actual or potential contamination of drinking water supplies or sensitive ecosystems
- > Hazardous substances in drums, barrels, tanks, or other storage containers, that may pose a threat of release
- > High levels of hazardous substances in soils, largely at or near the surface, that may migrate

CERCLA PROGRAM

- o Regulatory Criteria for Removal Action
 - > Weather conditions that may cause hazardous substances to migrate or be released
 - > Threat of fire or explosion
 - > Availability of other appropriate federal or state response mechanisms to respond to the release
 - > Other situations that may pose threats to public health or the environment

Source: 40 CFR Section 300.415(b)(2)

CERCLA PROGRAM

- o Despite these Definitions and Criteria, For Most Types of Response Actions Either the Removal or Remedial Action Programs are Available
- o The Preferable Program Often Depends on the Agency Personnel Involved with the Site
- o Use your Resources
- o Disadvantage of CERCLA-- U.S. EPA Cost Reimbursement is Expensive

STATE VOLUNTARY CLEANUP PROGRAMS

- o Often the Preferred Approach
- o Most States Offer Flexible Risk-Based Cleanup Approaches
 - > Flexible cleanup methodology
 - > Allow the exclusion of exposure pathways
 - > Less likely to require excavation (versus capping)
- o No Consent Orders/Corrective Action Permits
 - > No stipulated penalties
 - > Fewer deadlines

STATE VOLUNTARY CLEANUP PROGRAMS

- o Agency Reimbursement Typically Required, but More Cost Effective
- o Availability of No Further Remediation Letter
- o Not all States have Established Voluntary Cleanup Programs

NO AGENCY INVOLVEMENT

- o Should you Approach an Agency if you Discover Historic Contamination at your Site?
- o Not Always Clear if you have a Reporting Obligation in Many Instances, Especially when the Contamination is Historic and/or the Source is Unknown

NO AGENCY INVOLVEMENT

- o If there is No Affirmative Reporting Requirement, there are Several Key Considerations
 - > Do you plan to sell the property?
 - > Do you need a no further remediation letter?
 - > Do you need guidance from an Agency on a preferred cleanup approach?

III. SITES IN RCRA CORRECTIVE ACTION

- o Voluntary Agreements with U.S. EPA
- o Streamlined Orders

VOLUNTARY AGREEMENTS

- o Example -- Midwest Manufacturer Voluntary Agreement
- o Features
 - > Not an enforceable document (U.S. EPA cannot enforce in courts)
 - > No stipulated penalties for failure to follow Agreement
 - > If not satisfied, U.S. EPA can issue a Unilateral Order
 - > Allows Site-Owner Greater Control of the Process

VOLUNTARY AGREEMENTS

- o Informal Eligibility Criteria
 - > Company must be economically viable
 - > Matter cannot be enforcement sensitive
 - > Generally limited to two year cleanup
 - > Only has been used in certain U.S. EPA Regions (Regions I, III, V)

STREAMLINED ORDERS

- Example: General Motors Corporation Agreement
- Features
 - Contains fewer performance measures (fewer decision points)
 - Investigation completion date
 - Remedy completion date
 - Enforceable in courts
 - Stipulated penalties included

STREAMLINED ORDERS

- Informal Eligibility Criteria
 - Company must be economically viable
 - Matter cannot be enforcement sensitive

IV. EXAMPLES

- Pesticide Manufacturing Facility with Historic Pesticide and Dioxin Contamination
 - Moved from CERCLA remedial to removal programs
- Scrap Yard with Dioxin and PCB Contamination
 - Moved from U.S. EPA CERCLA Program to Illinois EPA Voluntary Cleanup Program

IV. EXAMPLES

- o Appliance Manufacturing Facility with Chlorinated Solvent Groundwater Contamination
 - > Moved from State RCRA Corrective Action Program to Voluntary Agreement with U.S. EPA RCRA Program

PESTICIDE MANUFACTURING FACILITY

- o 1984 - Contamination Discovered During U.S. EPA FIT Sampling
- o 1984 - Remedial Action Program Requires Installation of Temporary Limestone Cover
- o 1985 - U.S. EPA Issues Order Requiring RI/FS
- o 1988 - RI Submitted to EPA. EPA approves RI in 1998
- o 1999 - Facility Purchased by New Owner

PESTICIDE MANUFACTURING FACILITY

- o 2000 - Remedial Action Program Requests Additional Sampling, Followed by Extensive Excavation. Facility Proposes Asphalt Cover
- o 2000 - U.S. EPA Agrees to Allow Removal Action, Rather than FS, ROD and Remedial Action
- o 2001 - Facility Wants to Complete Site Work by end of 2001
- o 2001 - Facility involves Removal Action Personnel, who Approve Limited Excavation and Asphalt Cover. Work to be Completed by November 2001

SCRAP YARD

- o 1984 - Dioxin & PCB Contamination Discovered by EPA Sampling
- o 1987 - U.S. EPA Issues Order Requiring Facility to Install Temporary Cover over Dioxin Contamination and Conduct Remedial Investigation/Feasibility Study
- o 1995 - Facility Conducts Remedial Investigation/Feasibility Study
- o 2000 - Facility Approaches U.S. EPA Concerning Transfer of Site to Illinois EPA
- o 2000 - U.S. EPA Approves Transfer of Site to Illinois EPA
- o 2001 - Illinois EPA Indicates it will Approve a Cap Remedy

APPLIANCE MANUFACTURING FACILITY

- o 1989 - Facility Submits Closure Plan to Ohio EPA to Address Groundwater Contamination (Chlorinated Solvents) from Drum Storage Area
- o 1997 - Amended Closure Plan Submitted and Approved by Ohio EPA
- o 1999 - Facility Enters into Voluntary Agreement with U.S. EPA to Remediate Groundwater Contamination and Other SWMUs on the Property

V. STRATEGIES

- o Act Early
- o Be Proactive
- o Be Direct with Both Programs
- o Find Out What Each Program Needs
