



Facility Lead Corrective Action Approaches

Voluntary Agreements

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Good afternoon. My name is Jennifer Shoemaker. I'm a Project Manager in the Corrective Action program at EPA in Region 3.

During this session, we will be discussing Facility Lead Approaches or what are also sometimes referred to voluntary approaches to RCRA Corrective Action.

By the way, feel free to stop me at any time with questions or you can wait until the end.

Overview

- EPA Region 3
 - Facility Lead Program
- EPA Region 6/Arkansas DEQ
 - Streamlining Corrective Action using a Facility Lead Approach

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First, I would like to give you an idea of what we plan to cover during this session. I'm going to start off by talking about some of the general principles of the facility lead approaches and how Region 3 is using their Facility Lead Program to help to meet our GPRA goals. Rick Ehrhart from Region 6 and Daniel Clanton from Arkansas' Department of Environmental Quality will talk about their program and how it is working.

Tools for Implementing Corrective Action

- Permits
- Orders
- Consent Decrees
- Alternate Authorities
- **Facility Lead/Voluntary Agreements**

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Depending on the site, there are many tools that can be used to implement Corrective Action. Facility Lead Agreements are tools that Region 3 has used recently and have gotten positive results. There are many facility lead or voluntary approaches being used in other states or regions. While I'm not versed on the details of all the other programs, I can talk about how Region 3 has chosen to implement the general ideas through our Facility Lead Program.

Sometimes these agreements are called "Voluntary Agreements". In Region 3, we refer to these documents as "Facility Lead Agreements" because we don't consider the work "voluntary" – it is performed by facilities to fulfill their RCRA Corrective Action responsibilities.

Facility Lead Agreements are...

- **Non-negotiable generic agreements between EPA and the facility**
- **Alternatives to Permits & Orders**
- **Non-enforceable**

Designed to achieve the same goals as Permits & Orders

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The Facility Lead Agreements that Region 3 uses are non-negotiable, generic agreements to perform Corrective Action activities at a particular site. It's basically a commitment by the facility that the work will be consistent with EPA's goals – both short term and long term. They are alternatives to permits or orders.

Because these are agreements or commitments – depending on the term you would like to use – they are not enforceable and are not meant to be. If an enforceable document is necessary to get the work done at a site, then one of the other tools I listed earlier would be a better fit.

I'm going to repeat this last concept a few times because I think it's really important to reinforce. Work performed under a Facility Lead Agreement will be equivalent in terms of quality to work performed under other legal mechanisms. Oversight by the Agency of corrective action remains the same once the Agreement is completed. We have the same expectations.

Why is Region 3 using Facility Lead Agreements?

- Achieving Environmental Indicator goals required creative ideas to get results
- Corrective Action Reforms in 1999 & 2000
 - Results oriented, less focus on process
- 284 high priority facilities
- By 1998, ~ 50% of sites were addressed
- Modeled from Region 1 program



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Again, like I mentioned earlier, there are many other facility lead or voluntary approaches being used across the country in other states or regions. Region 3 had specific reasons why this approach was a good fit.

In Region 3, Facility Lead Agreements came about as an outgrowth of the Environmental Indicator program and RCRA Reforms. The RCRA Reforms encouraged the Regions to think about how to focus less on process and become more results oriented. When the Environmental Indicator and GPRA goals were announced, Region 3 evaluated their universe of 284 high priority Corrective Action facilities and realized some creative ideas were needed to get work done faster and achieve these goals by 2005.

Region 1 had already started to implement a similar program and Region 3 used some of those same concepts to come up with our Facility Lead Program.

Goals of Facility Lead Agreements

- **Achieve objectives rather than focus on process**
- **Initiate Corrective Action quickly**
- **Optimize resources**
- **Rely on frequent communication**
- **Have same expectations as traditional approach**



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The goals of the Facility Lead Agreements are really focused on getting results as quickly as possible by optimizing our resources and relying on frequent communication. The lines of communication have to be well established for the program to work.

Components Similar to Traditional Mechanisms

- Environmental Indicator Assessment
- Workplan development
- Investigation
- Risk evaluation
- Reporting
- Risk management (Interim Measures)
- Clean up
- Reservation of rights
- Public participation

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I've listed some of the components of a Facility Lead Agreement that are similar to traditional mechanisms.

Just like work performed under a permit or an order, meeting the Environmental Indicators is our primary short term goal – the EI Assessment identifies data gaps early and focuses the beginning stages of work. Workplans are developed by the facility for EPA review and comment, just like under the traditional permits or orders. An investigation is undertaken, the details of which would vary depending on the complexity of the facility.

In the Facility Lead Agreement, the Agency's rights are reserved in a similar fashion to a permit or an order. And, public participation plays just as important of a role during the process.

Components Different from Traditional Mechanisms

- Can address all stages of Corrective Action



- Performance based language
- No stipulated penalties
- No dispute resolution
- Does not prescribe schedule
- More reliance on informal communication

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Here I've listed a few areas where Facility Lead Agreements differ from traditional mechanisms. Since the Facility Lead Agreement documents the facility's commitment to achieving the RCRA goals, it can be used during all stages of corrective action – from investigation through remedy selection and implementation to completion.

As opposed to some permits and orders, Region 3's Facility Lead Agreements measure progress through performance based language. This includes committing to determining the nature and extent of contamination, evaluating and MEETING (which is a key concept) the EIs, conducting effective public participation, and communicating frequently with the regulator.

Because this document is not enforceable, no stipulated penalties are included. Also, dispute resolution sections are not in the Agreement. If the project needs those components to move the project forward, then a Facility Lead Agreement is not really the right tool.

And there really is an expectation that very frequent, informal communication, such as through email, telephone or face-to-face meetings, will be how decisions are made at the site. Communicating this way makes the project move faster.

Advantages for the Regulator

Save Time

- No resource intensive negotiation of enforceable document
- No development of findings of fact
- No initial creation of administrative record

Get In The Field

- Field work is initiated faster

Low Risk

- Facility is cooperative
- Order/permit is available as fallback

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There is an upfront time saving for the regulator by eliminating the resource intensive development and negotiation period for a permit or an order. Since the facility is agreeing to perform the work, there is no need to develop a findings of fact section. Region 3 has developed a generic Facility Lead Agreement that is non-negotiable.

An administrative record is not required upfront during the execution of the facility lead/voluntary agreement. However, an administrative record will become important later and preparation will eventually become necessary to support public participation when significant interim measures and/or remedies are proposed. So, ultimately, eliminating these pieces leads to getting in the field quickly and getting started.

The risk for the regulator is low because, if the relationship under the Agreement falls apart, a permit or an order is always available as a fallback. Plus, the data that's been collected or progress that was made can provide additional support for issuance of a permit or order later if the facility does not follow the terms of the Agreement. In the Agreement, all of the Agency's rights are reserved.

Advantages for the Facility

- **No negotiation - minimizes legal fees**
- **More control on schedule and budgeting**
- **No stigma associated with order**
- **Gain Agency approval of work**
- **Ability to withdraw from program**



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I'm putting myself in the facility's shoes to give you some of what we see are some of the advantages for a facility to commit to Region 3's Facility Lead Agreement. There is the same resource savings with eliminating the negotiation period. The facility has more control on their schedule and budgeting since this isn't included in the Agreement but decided as the process moves forward.

Some facilities feel there is a stigma attached to being issued an order, which is not there for an "Agreement". Also, it provides a mechanism for the facility to get Agency feedback and approval of work before resources are committed.

And, in the end, since this is not an enforceable document, the company can withdraw from the program if it isn't working for them and fall back on the more traditional options.

Potential Disadvantages for the Facility

- Facilities needing an enforceable document to get funding for Corrective Action
- Facility lead agreement is not transferable



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These are just a couple of disadvantages that we have heard from facilities regarding having a Facility Lead Agreement in place. There are probably others and maybe they will come up later in the session.

Some facilities need an enforceable document to get funding for corrective action activities. The Agreement sometimes can't be used for that purpose.

In cases where sites change owners or change who is responsible for the cleanup, the agreement is not transferable. Some other arrangement would need to be made in those cases.

Good Candidates for Facility Lead

- Good compliance history 
- Facility agrees not to contest jurisdiction
- Facility is motivated to cleanup
- State & EPA concurrence

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For the Facility Lead Program to work, we have seen that there are certain criteria that make facilities good candidates. The facility should have a good compliance history and a cooperative attitude. The facility has to agree not to contest jurisdiction to complete Corrective Action. Probably one of the most important things is that the facility is motivated to investigate and cleanup the site. And lastly, EPA and the State both need to agree that the site would benefit from having an Agreement in place, in lieu of another instrument.

Region 3 Facility Lead Initiation

- Invite facility into program
- Discuss goals and current status of site
- Region 3 initial requirements....
 - Letter of Commitment
 - Workplan submission
 - Environmental Indicator evaluation
- Meet to discuss data gaps
- Develop Workplan
- Initiate field work

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When we decide that a facility could be a good candidate for the program, we have a meeting where we discuss the details and current status of the site and then brief them about how the Agreement would work. If the facility is willing, the Agreement is then mailed to them with an invitation into the program. The letter asks for a letter of commitment from the company that they will fulfill the goals of the program within 30 days. A workplan is due 60 days later.

We then follow the more traditional routes of reviewing the work plan, meeting to resolve issues and try to get in the field as soon as possible.

Region 3 Facility Lead Investigation

- Facility conducts field work
- Regulator provides tailored oversight
- Facility evaluates data
- Communicate results to regulator
- Agree on next steps



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After the Agreement is in place, the investigation begins. The facility conducts the field work with the regulator providing some level of oversight. The facility evaluates the data and communicates the results to the regulator. Sometimes, the facility doesn't go through the exercise of preparing a complete investigation report at this time. EPA, the State, and the facility will plan a working meeting to go through the data together and mutually agree on the next investigation steps. The decision is documented through some type of correspondence – like a letter or email. Then, the facility moves right into developing a workplan for the next phase of work. A final report is prepared at the end.

This process works well to remobilize field equipment quickly and keep the project moving forward.

Region 3 Facility Lead Cleanup

- Facility meets with regulator to assess options
- Facility proposes remedy
- Meet to discuss data gaps
- Revise work as necessary
- Public participation
- Cleanup initiated



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If some type of cleanup is necessary, the remedy selection or interim measure cleanup under a Facility Lead Agreement is the same process as under a permit or order. The facility proposes the remedy, we discuss the options, put it out for public comment and get started.

Region 3 Facility Lead Completion

- Regulator issues Statement of Basis
- Public Comment Period
- Regulator issues Final Decision
- Regulator issues Completion Determination
- Facility Lead Agreement for Corrective Measures Implementation



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When it becomes time to make the determination that a site has completed corrective action – either with controls or without – Region 3 issues a Statement of Basis and provides an opportunity for public comment. The Statement of Basis is a document that will describe the history, the investigation results, the details of any cleanup implemented and the details of the completion proposal.

If there are no significant comments on the proposal, we issue a Final Decision that includes the Completion Determination. If controls are needed (engineering or institutional) then we've used a Facility Lead Agreement to implement the details.

Region 3 Facility Lead Participation

- **25 facilities currently in Facility Lead Program (1 removed)**
- **More information? Visit our website to find...**
 - Copy of the Agreement
 - Case Examples
 - Frequently Asked Questions
 - Resource Documents



www.epa.gov/reg3wcmd/ca/ca_facilitylead.htm

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Region 3 currently has 25 facilities participating in the Facility Lead Program.

If you would like some more information, you can visit the section of our regional website that is dedicated to the Facility Lead Program. I've included the web address here. You can take a look at the Agreement, read about a few of our success stories and get some additional details.

Questions?



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That pretty much ends my part of the presentation. Before I turn it over to Rick and Daniel, I'd like to open it up to any questions you may have.

Thanks.