



Qs & As on RCRA vs. CERCLA at the DuPont Pompton Lakes Works Site

Pompton Lakes, New Jersey

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The U.S. Environmental Protection Agency (EPA) is working closely with the New Jersey Department of Environmental Protection (NJDEP) and partnering health agencies to ensure that contamination from the DuPont Pompton Lakes Works site is properly addressed and that people living in the community are protected, informed and involved in important site cleanup decisions. These efforts are being administered by the agencies under the Resource Conservation & Recovery Act (RCRA). In response to a number of questions from the Pompton Lakes community about the differences between RCRA and CERCLA (the Comprehensive Environmental Response, Compensation & Liability Act, also known as Superfund) EPA developed the answers below to some of the more frequently asked questions about how things may or not be different if the efforts were administered under CERCLA rather than RCRA.

If the status of the DuPont Corporation's work here changed from RCRA remediation to CERCLA (Superfund) remediation, would there be any change to what is occurring here in our town? Negative or positive?

Different Statutes, Consistent Outcome:

RCRA and CERCLA are two different statutes that govern the federal management of hazardous waste facilities (RCRA) and response to abandoned, uncontrolled hazardous waste sites (CERCLA). They are not identical statutes but there are many similarities and consistent outcomes. DuPont is conducting the investigative and cleanup work at the DuPont Pompton Lakes Works site in accordance with a federal RCRA permit issued by EPA, since the facility was in operation until 1994 and there is a responsible party that is willing to conduct the investigation and remediation. DuPont has also signed an Administrative Consent Order (ACO) with NJDEP. The ACO includes reimbursement of NJDEP oversight costs. In addition, New Jersey has issued permits governing air stripper emissions and discharges of treated ground water to the aquifer.

If this became a Superfund site, and DuPont continued to conduct site investigation and remediation as a responsible party, DuPont would be subject to many of the technical requirements and remediation standards that apply under the RCRA process. However, the enforcement documents would be different. DuPont would undertake investigative work under an agreement with the EPA Superfund Program under an ACO, and cleanup work would be conducted under a judicial Consent Decree rather than through the existing EPA RCRA Permit. A change from RCRA to Superfund would take time since an ACO and a Consent Decree would have to be negotiated. If DuPont and EPA were not able to reach agreement on the terms of the agreements, EPA would have the option of issuing a CERCLA Unilateral Administrative Order to DuPont, requiring DuPont to perform the required work.

Similar Process, Different Nomenclature:

The Superfund program uses different terminology from the RCRA process. For example, in CERCLA a field investigation (with sampling) is called a “Remedial Investigation” (RI) and an evaluation of the relative feasibility of different remedy options is known as a “Feasibility Study” (FS). In RCRA, these are a “RCRA Facility Investigation” (RFI) and a “Corrective Measures Study” (CMS). Under CERCLA, when the investigation has been completed and EPA is ready to select a cleanup plan, it issues a Proposed Plan identifying the preferred cleanup approach for the site or an element of the site (referred to as an "operable unit"). After soliciting public comment, EPA issues a final decision in a document known as the Record of Decision. The RCRA program relies on a permit modification process to incorporate the selected remedies but, also solicits public comment before a remedy is selected.

Public Outreach:

Public outreach would be essentially the same at this site whether work is done under RCRA or CERCLA. The CERCLA process anticipates and encourages public involvement throughout the investigation and cleanup, and requires public participation during the selection of response actions. EPA develops a community relations plan, and makes documents available to the public throughout the investigation and cleanup in a public document repository, typically in a public library in the affected community. During the investigation and cleanup, EPA may also facilitate the formation of a Community Advisory Group (CAG). When EPA presents the Proposed Plan to the public, the Superfund program holds a public meeting, and prepares a transcript to record the comments. The public may also submit written comments during the public comment period. EPA then prepares a responsiveness summary to respond to the public comments, and that becomes part of the record for the remedy selection. This public comment process is somewhat similar for RCRA proposed remedies but, in routine cases may not be as comprehensive.

For the DuPont Pompton Lakes site, EPA has committed to making the public outreach and involvement similar to the process used in CERCLA, such as through formation of the CAG, assignment of a community involvement coordinator and holding of numerous public meetings. Many of these elements of public outreach are not required under RCRA, but EPA has decided they are appropriate for this site.

Different Program Administration:

Superfund is managed at EPA Region 2 by the Emergency and Remedial Response Division. The RCRA Corrective Action Program is managed by the Division of Environmental Planning and Protection. Both divisions report to the EPA Region 2 Administrator. Site technical staff and managers and legal personnel would likely change if the site were to be managed under CERCLA in the future.

Technical Assistance Differences:

Under CERCLA, eligible community group(s) could be awarded \$50,000 in federal assistance funds for technical assistance to help the community understand site reports and decisions. The technical assistance grant (TAG) program is not offered under RCRA, however, the Technical Assistance Support for Communities (TASC) program is available under both CERCLA and RCRA. The TASC funding is not limited to \$50,000, although the assistance is managed by EPA's contractor rather than through a community group technical advisor under TAG.

Would our town receive Natural Resource Damages (NRDs) from the DuPont Corporation because of this change?

Federal and state natural resource trustees could pursue claims for natural resource damages regardless of whether a site was being addressed by EPA as a CERCLA or RCRA site. Examples of federal trustees are the Department of the Interior (e.g., U.S. Fish & Wildlife Service) and the Department of Commerce (e.g., National Oceanic and Atmospheric Administration). The trustees, and not EPA, perform natural resource damage assessments and pursue claims, according to their statutory authority.

Would the federal government buy our homes or move us during the remediation?

Section 104j of CERCLA limits the acquisition of real property, which is necessary as part of a permanent relocation, to only that property that the President determines is "needed to conduct a remedial action ..." EPA does not have authority to acquire property for relocation under a CERCLA removal action (a short term, urgent or time sensitive type of cleanup). Thus, EPA can incorporate relocation into a CERCLA remedial action only when EPA has made a finding that relocation of residents is required to successfully conduct the remedial action.

At the DuPont Pompton Lakes site, the installation of the vapor mitigation systems in the plume homes at DuPont's expense as part of the RCRA cleanup is providing an effective remedy from any real or threatened vapor intrusion. For the long term RCRA remediation, a ground water remediation pilot will test enhanced anaerobic bioremediation to treat the contaminants, and if the pilot is successful, remediation of the ground water contaminant plume will commence within a couple of years. EPA does not anticipate that it will be necessary to relocate residents during the implementation of the long term remedy. Conducting the cleanup under CERCLA rather than RCRA would not lead to a different result.

Note that relief from real or perceived reductions in property values because of vapor intrusion does not provide a legal basis for relocation under the Superfund program.

Are there more stringent standards for the remediation under CERCLA that DuPont would be held to if we change? Or do Federal standards supersede the NJDEP standards here already

There is broad overlap in the process for establishing cleanup standards under CERCLA and RCRA. Both programs stress protection of human health and the environment, and both require that a cleanup meet applicable substantive provisions of State law. The sediments in Pompton Lake do not exceed human health standards, so standards for the dredging are being set based on ecological considerations. The long and short term remedial actions being carried out under RCRA at the site would be consistent [with the kind of remedial actions that would likely be required under CERCLA].

Can the USEPA request a thorough investigation of the entire site (all areas of concern) without changing the status?

Yes. Under RCRA, EPA can require investigative work or submission of information it determines necessary to effectively remediate the site. EPA has been doing this. EPA has incorporated the required plans and reports and schedule into the federal RCRA permit that DuPont must comply with or risk penalties.

Does the community get to decide how the remediation is conducted if we change?

EPA and the State of New Jersey have decision-making authority over site cleanup decisions, in consultation with the community. Input from the community throughout the decision making process at both CERCLA and RCRA sites is extremely important to achieving effective cleanups. Although the processes are at times different, public participation is important under both statutes. For the DuPont Pompton Lakes site, EPA has committed to making the outreach and input equivalent to that which would occur under CERCLA, to the extent feasible.

Will the USEPA do the remediation and send DuPont the bill if the status were changed?

The substantial majority of Superfund cleanups are performed by potentially responsible parties under EPA oversight. EPA's Superfund program has an enforcement first principle and seeks to have the responsible parties pay for and perform necessary work, rather than using taxpayer funds. EPA-funded cleanups are generally performed only when there are no viable parties in existence to perform the work. Thus, if this were a Superfund site, EPA's approach would likely be to allow DuPont to perform the cleanup work, either under a CERCLA Consent Decree or, failing that, under an EPA-issued Unilateral Administrative Order.

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Need More Information?

EPA's DuPont Pompton Lakes Works Web site @ http://www.epa.gov/region02/waste/dupont_pompton/index.html

New Jersey DEP Web Site @ http://www.state.nj.us/dep/srp/community/sites/dupont_pompton_lakes/

"EPA's Pompton Lakes/Dupont" group page @ www.facebook.com for community discussions, links to recent news articles, events and more.