



## OFFICE OF LAND AND EMERGENCY MANAGEMENT

WASHINGTON, D.C. 20460

OLEM Directive # 9932.2

### MEMORANDUM

**SUBJECT:** Improved Procedures for Facility/Site Transfers Between RCRA Hazardous Waste Cleanup and CERCLA Cleanup Authorities

**FROM:** Carolyn Hoskinson, Director  
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**TO:** Land, Chemicals, and Redevelopment Division Directors, Regions 1 – 10  
Superfund and Emergency Management Division Directors, Regions 1 – 10

### PURPOSE

This memo and the attached appendix titled "Improved Procedures for Facility/Site Transfers Between RCRA Hazardous Waste and CERCLA Cleanup Authorities," describe updated procedures for processing program transfers of facilities/sites between the Resource Conservation and Recovery Act Hazardous Waste Cleanup Program (formerly known as the Corrective Action Program) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Program.<sup>1</sup> The updated procedures, which include documenting and tracking transfer-related information in both RCRAInfo and the Superfund Enterprise and Management System (SEMS),<sup>2</sup> will help ensure that facilities/sites transferred between these programs follow a consistent and complete process. The updated process will enable program managers to accurately identify a facility/site's administrative program management lead, transfer status in real time and improve overall program management at the state, regional, and national levels.<sup>3</sup>

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<sup>1</sup> This guidance is designed to implement national policy for these procedures and does not substitute for RCRA, CERCLA, or EPA's regulations; nor is it a regulation itself. Thus, it cannot impose legally binding requirements on EPA and may not apply to a particular situation based upon the circumstances.

<sup>2</sup> These procedures supersede those described in OSWER Directive 9200.1-31P, "Interim Guidance in Response to the OIG Audit "Superfund Sites Deferred to RCRA," December. 6, 1999; Elizabeth Cotsworth and Stephen Luftig. Available at <https://rcrapublic.epa.gov/files/14960.pdf> and <https://semsub.epa.gov/work/HQ/190119.pdf>.

<sup>3</sup> Section 3006(b) of RCRA, as amended, allows EPA to authorize state hazardous waste management programs. Authorized state programs assume primary responsibility for implementing the RCRA hazardous waste program in lieu of EPA. Authorized state programs are codified in 40 CFR part 272.

## **BACKGROUND**

This memo stems from recommendations included in the March 2021 U.S. Environmental Protection Agency's Office of Inspector General (OIG) report titled *EPA Does Not Consistently Monitor Hazardous Waste Units Closed with Waste in Place or Track and Report on Facilities That Fall Under the Two Responsible Programs (Report 21-P-0114)*. In that report, the OIG recommended the Office of Land and Emergency Management (OLEM) develop and implement controls to verify that RCRA referrals to the Superfund program and Superfund deferrals to the RCRA hazardous waste cleanup program are properly transferred and tracked in respective program databases for further attention. The provisions outlined in this memo build upon OLEM's response to the OIG's recommendations by adding additional notification, documentation, and database tracking steps to the transfer process and by establishing a standard six-month timeframe to complete the process.

## **IMPLEMENTATION**

### ***Terms***

To reduce confusion and promote consistency, program implementers should use the terminology defined and used in this memo when processing a transfer. When referring to a facility transfer from the RCRA Hazardous Waste Cleanup Program to the federal Superfund Program, the term *refer* should be used. A site transfer from Superfund to RCRA should use the term *defer*. The term *originating program* refers to the program under whose authority a facility/site is currently being addressed while the *receiving program* refers to the program that, if the transfer request is approved, will take over as the facility/site's program lead going forward.

### ***Applicability***

As of this document's issuance date, all procedural and code changes identified are limited in scope to prospective facility/site transfers between federal- or state-implemented RCRA Hazardous Waste Cleanup programs and the federal Superfund program. Further, these updated procedures apply to non-federal facilities with a potential risk that are referred from RCRA to Superfund for a CERCLA pre-remedial site assessment and to NPL-eligible sites deferred from the Superfund pre-remedial program to the RCRA Hazardous Waste Cleanup program pursuant to the agency's current NPL/RCRA Deferral Policy.<sup>4</sup> These procedures are not retroactive and do not apply to federal facilities. They also do not apply to sites subject to: (1) current Superfund removal assessment or response or (2) remedial response through a Superfund NPL or non-NPL (e.g., Superfund Alternative) cleanup approach. These procedures do not describe or recommend any changes to program management procedures, policies or decisions that may occur before or after the program transfer.

### ***Updated RCRA-to-Superfund Referral Process***

The decision by the RCRA Hazardous Waste Cleanup Program to refer a facility to the Superfund Program for pre-remedial site assessment should be preceded by an informal inquiry, research, and discussion between regional RCRA and Superfund staff regarding the potential referral. Regional RCRA program managers should work with their state RCRA program counterparts to ensure that the

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<sup>4</sup> The current NPL/RCRA Deferral Policy is described at [54 FR 41004](#) (October 4, 1989), see pp. 41004-41006.

updated steps in the transfer process are completed for state-led sites. Staff are encouraged to check both RCRAInfo and SEMS for existing data and any available records during this step.

Upon determining a proposed referral to Superfund is needed to address a potential risk, the regional RCRA branch manager should send written notification of the proposed referral along with all relevant facility information to the appropriate Superfund branch manager for review. After confirming receipt of the proposed referral, the Superfund branch manager or their staff should review the referral package and determine whether the proposed action is appropriate and supported by existing CERCLA authorities. The Superfund branch manager should notify the referring RCRA branch manager in writing of the decision to accept or decline the program transfer. A decision to decline the transfer should include a rationale for declining the referral. Both the RCRA and Superfund programs should document and track the notification of the proposed referral facility/site in RCRAInfo and SEMS, accordingly.

The referral action is incomplete until the RCRA program receives a formal written response from the Superfund program. If the Superfund program accepts the referral, the facility becomes a Superfund Program-led site. A new SEMS site record should be created as necessary, and, when possible, the Superfund program should adopt the RCRAInfo Handler ID of the transferred facility as the SEMS EPA ID. This approach will facilitate the cross-walking of sites/facilities between programs.<sup>5</sup> If the Superfund program declines the referral, RCRA will remain the facility's program lead.

The written notification of a final decision on the proposed referral (accepted or declined) should be maintained in site records within each program. The transfer decision should be entered into both SEMS and RCRAInfo once these systems are updated to track this information.

See Figure 1 in the appendix for a visual representation of this process.

### ***Updated Superfund-to-RCRA Deferral Process***

Similar to the RCRA-to-Superfund referral process, a decision by the Superfund program to defer an NPL-eligible site (Preliminary Assessment or subsequent assessment with a preliminary Hazard Ranking System score at or above 28.5) to the RCRA Hazardous Waste Cleanup Program per the Agency's NPL/RCRA Deferral Policy may be preceded by informal inquiry, research, and discussion between regional Superfund and RCRA staff regarding the potential deferral. Staff are encouraged to check both SEMS and RCRAInfo for existing data and any available records during this step.

Upon concluding that a proposed deferral to RCRA is needed to address a potential risk, the regional Superfund branch manager should send written notification of the proposed deferral along with all relevant site information to the appropriate RCRA branch manager for review. The RCRA branch manager should confirm receipt of the proposed deferral with the Superfund branch manager. The Superfund and RCRA programs should document and track the notification of the proposed deferral in SEMS and RCRAInfo, accordingly.

Once the RCRA branch manager or their designated staff review the relevant information for the proposed deferral and evaluate its appropriateness and whether existing RCRA authorities support a

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<sup>5</sup> Transfer proposals may involve new facility/site transfers as well as facilities/sites that have previously been transferred between the RCRA and Superfund programs.

deferral<sup>6</sup> the RCRA branch manager should notify the deferring Superfund branch manager in writing of the decision to accept or decline the program transfer. A decision to decline the transfer should include a rationale for declining the deferral<sup>7</sup> and should not contradict the requirements described in the agency's current NPL/RCRA Deferral Policy. The deferral action is incomplete until the Superfund program receives a formal written response from the RCRA program. If the RCRA program accepts the deferral, RCRA becomes the designated lead program for the facility. A new RCRAInfo facility record should be created as necessary. If the RCRA program declines the proposed deferral, Superfund will retain program lead for the site.

The written notification of a decision on the proposed deferral (accepted or declined) should be maintained in site records within each program. The site decision should be entered into both RCRAInfo and SEMS once these systems are updated to track this information. Throughout the deferral process, EPA RCRA staff should coordinate with their authorized state counterparts, if applicable, to establish which office will serve as the lead on subsequent work at the facility.

Throughout the transfer process ORCR Cleanup Programs Branch staff and OSRTI Site Assessment and Remedy Decisions Branch staff are available to provide support or consultation to regional staff as requested.

### ***Timeline for Processing Proposed Transfers***

The 1999 "Interim Guidance in Response to the OIG Audit 'Superfund Sites Deferred to RCRA'" clarifies that regions must establish timeframes for performing deferral approvals. Consistent with that guidance, and to prevent cleanups from languishing in the transfer process, the programs should aim to complete the steps described in this memo within six (6) months of the initial proposed transfer action. The date of the originating program's transmission of written notification to the receiving program establishes the beginning of the six-month period.

### ***Database Reporting Requirements and Related Updates***

RCRA and Superfund program representatives should document transfer decisions and related records in written (electronic) form. Headquarters staff will make RCRAInfo and SEMS database changes and develop data entry guidance as necessary to support tracking these new transfer steps to clearly identify which program has current administrative lead in the transfer process. Regions should continue to use existing RCRAInfo and SEMS procedures to track referrals and deferrals until the databases are updated to accommodate the more detailed transfer process. Once database changes are implemented, the RCRA and Superfund programs should update site information as soon as possible in RCRAInfo and SEMS after completing each step in the decision-making process and upload all pertinent transfer-related documents for future reference.

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<sup>6</sup> Various RCRA cleanup authorities may be applicable, depending on site-specific facts. Generally, a proposed deferral site that could be cleaned up using a non-RCRA state cleanup authority could be a candidate for a different CERCLA referral process known as "Other Cleanup Activity – State Lead Cleanup".

<sup>7</sup> For example, in the event of a bankruptcy or similar financial assurance concern which would result in the inability or unwillingness of the owner/operator to pay for addressing contamination at the site, the RCRA and Superfund programs may conclude that deferral is not a desired course of action.

## **CONCLUSION**

Thank you for your attention to these updated procedures. We believe their implementation will help ensure that facilities/sites transferred between RCRA and CERCLA authorities will follow a consistent and complete process, leading to improvements in the programs' overall programmatic management at the state, regional, and national levels. Our offices stand ready to help facilitate the updated transfer process; to that end, please contact the Cleanup Programs Branch in the Office of Resource Conservation and Recovery or the Site Assessment and Remedy Decisions Branch in the Office of Superfund Remediation and Technology Innovation with questions or concerns.

APPENDIX: Improved Procedures for Facility/Site Transfers Between RCRA Hazardous Waste and CERCLA Cleanup Authorities

Contents

Introduction ..... 1
Scope..... 2
Terminology Used for Program Transfers..... 2
Procedures for Facility/Site Transfers Between RCRA and CERCLA..... 2
Figure 1: General Process Flow for Program Transfers ..... 3
Collecting Supporting Information for a Potential Transfer (Originating Program) ..... 4
Proposing a Program Facility/Site Transfer (Originating Program) ..... 4
Reviewing a Proposed Program Transfer (Receiving Program) ..... 5
Transfer Decision and Outcomes (Receiving Program) ..... 6
Database Tracking Steps and Considerations ..... 6
Creating Facility/Site Records in RCRAInfo/SEMS ..... 7
Relating CERCLA Sites to RCRA Facilities in SEMS ..... 8
Support/Consultation ..... 8

Introduction

This appendix is a companion document to the memo "Improved Procedures for Facility/Site Transfers Between RCRA Hazardous Waste Cleanup and CERCLA Cleanup Authorities" (OLEM Directive #9932.2 December 2024). The memo describes updated procedures for processing program transfers of facilities/sites between the Resource Conservation and Recovery Act Hazardous Waste Cleanup Program (formerly known as the Corrective Action Program) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This appendix's purpose is to support the memo's implementation by providing additional detail concerning administrative and documentation requirements.

The process described within the memo and this appendix offers program implementers a roadmap to reference when processing a transfer action from one program to the other. Given the variability and complexity associated with RCRA and Superfund workloads, the EPA Headquarters recognizes that the steps and timeline of the transfer process may differ depending on the circumstances of a given facility/site. Considering the potential variability in these transfers, this process is designed to establish consistency and offer best practices for

program implementers when processing a program transfer, helping ensure that transfer steps are appropriately tracked, reported, and executed. The process's objective is to ensure that both RCRA and Superfund program managers implement a consistent and complete facility/site transfer from one program to the other while also being able to readily identify which program is responsible for any facility/site throughout the transfer process.

### Scope

The program transfer process effecting a change in administrative program lead focuses exclusively on facilities being referred from RCRA to Superfund for pre-remedial site assessment and NPL-eligible sites (Preliminary Assessment or subsequent assessment with a preliminary Hazard Ranking System score at or above 28.5) deferred from the Superfund pre-remedial program to RCRA for potential attention under the Hazardous Waste Cleanup Program, per the agency's current NPL/RCRA Deferral Policy. Due to their unique circumstances or requirements, this appendix and associated memorandum do not pertain to sites proposed to, currently on, or deleted from the Superfund National Priorities List; sites currently being addressed in part (integrated assessment) or exclusively through the EPA's removal program (removal-only); and Federal facilities. Components of complex facilities/sites addressed under RCRA and CERCLA may be within scope, though these facilities/sites could require additional tracking considerations beyond what is covered in this appendix. Regions should consult with ORCR and OSRTI in these situations to determine the preferred method of tracking the transfer activity in program databases.

### Terminology Used for Program Transfers

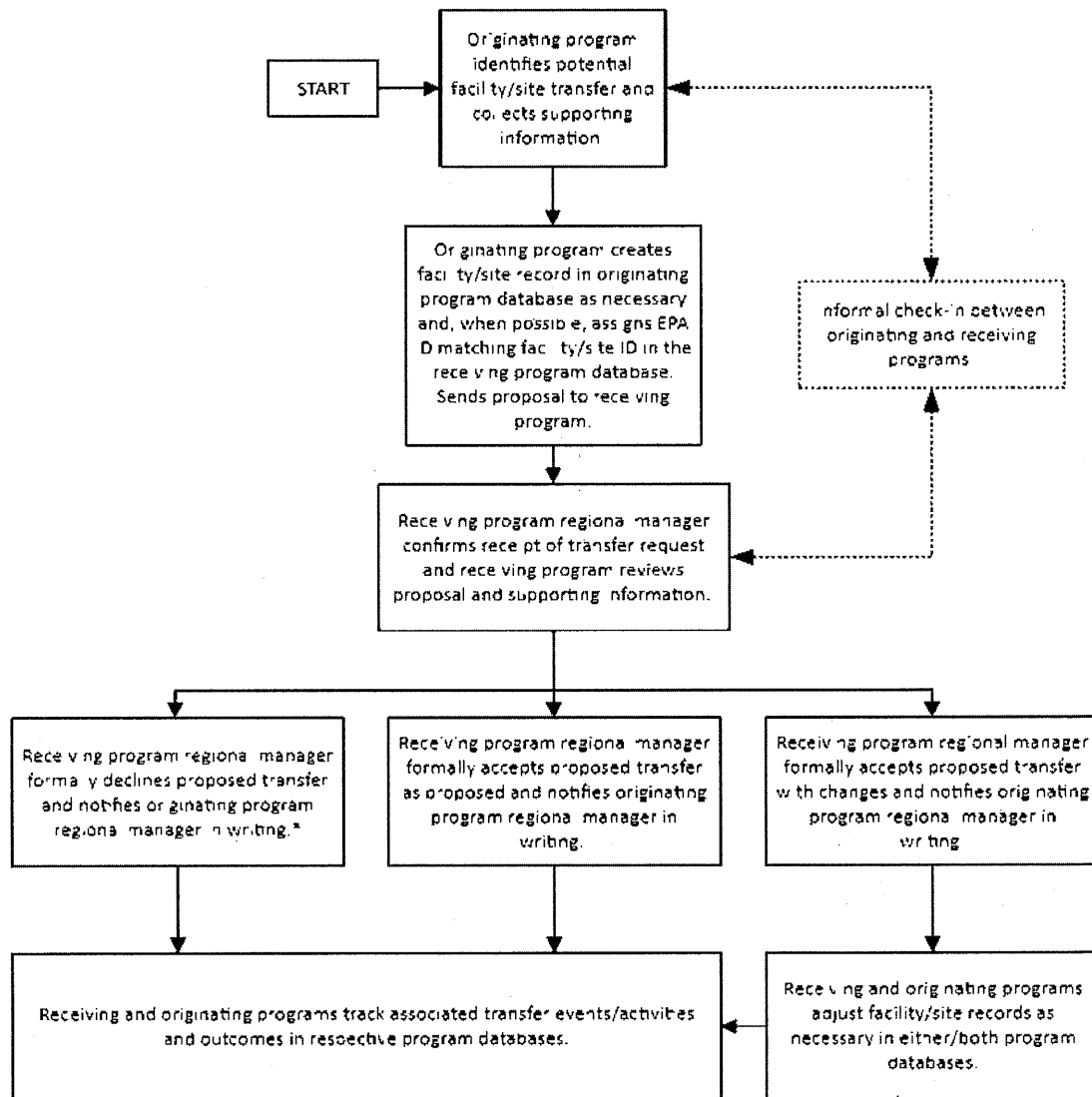
The use of the terms *defer* and *refer* apply to the specific direction of the transfer action. RCRA-to-Superfund transfers are described as "referrals" and Superfund-to-RCRA transfers as "deferrals." This wording is based on long-standing RCRAInfo and SEMS data entry instructions and data system coding. Uniform and appropriate use of these terms will streamline and improve communication between the two programs and will help ensure consistency when entering and reporting information using RCRAInfo or SEMS. The terminology defined in this document is not affected by different terminology appearing in relevant legally enforceable documents, such as RCRA hazardous waste permits.

### Procedures for Facility/Site Transfers Between RCRA and CERCLA

Figure 1 is a high-level overview of the transfer process. It refers to originating program and receiving program, generically, rather than identifying either the regional RCRA or Superfund programs. The flowchart provides a visual description of the workflow to aid overall understanding of how the process works, from initiation of a transfer proposal through either the decision to accept or decline a transfer by the receiving program and associated next steps. The steps in this flowchart supersede the process described in OSWER Directive 9200.1-31P,

“Interim Guidance in Response to the OIG Audit ‘Superfund Sites Deferred to RCRA.’”<sup>1</sup> Some of the steps are new and address documentation and tracking steps not addressed in the interim guidance.

Figure 1: General Process Flow for Program Transfers



\* If/as necessary, originating program may start a new proposed transfer as warranted by new information.

<sup>1</sup> OSWER Directive 9200.1-31P, Interim Guidance in Response to the OIG Audit “Superfund Sites Deferred to RCRA,” December, 6, 1999; Elizabeth Cotsworth and Stephen Luftig. Available at <https://rcrapublic.epa.gov/files/14960.pdf> and <https://semsub.epa.gov/work/HQ/190119.pdf>.



## Collecting Supporting Information for a Potential Transfer (Originating Program)

When program staff for RCRA or Superfund identify a potential transfer, the first step is to gather supporting information for proceeding with the proposed transfer action. Examples of supporting information include:

- Identification (ID) numbers used to track the facility/site and any associated or related facilities/sites in the originating program's database (RCRAInfo or SEMS) and, if known, in the receiving program's database. The "Creating Facility/Site Records in RCRAInfo/SEMS" section below provides more details for creating facilities/sites in program databases.
- Name of the facility/site and name(s) of any associated/related facilities/sites tracked in RCRAInfo or SEMS (e.g., prior names, alias names, child, or parent names).
- Location data of the facility and location data of any associated/related facilities/sites (e.g., street, city, zip-code, county, state, facility/site coordinates).
- Facility/site contact information, if known (e.g., owner/operator name and mailing address).
- Available information related to site assessment/site characterization, response, and enforcement activities at the facility/site (e.g., reports, maps, sampling data, internal and external communications).
- Any other relevant and appropriate information that may be useful to the receiving program when determining whether to accept or decline the proposed transfer.

## Proposing a Program Facility/Site Transfer (Originating Program)

The originating program formally proposes a program transfer from RCRA to Superfund (referral) or Superfund to RCRA (deferral) by sending the receiving program a signed and dated document accompanied by the following information:

1. All applicable originating program ID numbers associated with the location and any confirmed or potentially matching ID numbers in the receiving program's database identified during collection of supporting information.
2. The facility/site name, address, and any available contact information such as the owner/operator's name, if known.
3. When the proposed transfer applies to either a portion of a facility/site or to multiple facilities/sites, a brief description of the areas or components subject to the transfer.
4. A narrative justification for the proposed transfer action describing the reasons for the proposed transfer.

In addition to the signed document, the originating program should provide the receiving program with all supporting facility/site documentation collected that may be relevant and useful.

#### Reviewing a Proposed Program Transfer (Receiving Program)

Upon receiving a proposed facility/site transfer from the originating program, the receiving program must formally confirm receipt of the proposed transfer in a signed and dated document issued to the originating program. The originating program should confirm receipt of the receiving program's decision as soon as possible so both programs can keep transfer tracking information current. This confirmation may include a request for additional information from the originating program.

In cases where no additional information from the originating program is needed for the receiving program to decide on the proposed referral, the receiving program may combine confirming receipt of the proposed transfer and the receiving program's decision whether to accept or decline the proposed transfer into the same document issued to the originating program. When the receiving program needs more time or information to process the transfer, the receiving program should identify what additional information is needed and work with the originating program to obtain this information, should it be available.

The process may require a series of informal discussions and exchange of information between both programs depending on facility/site specific complexities and other facility/site or programmatic events that impact the transfer decision. For transfers involving novel or unusual facility/site-specific circumstances, regions are encouraged to consult with ORCR or OSRTI to identify solutions that support national consistency.

A key aspect of managing the transfer process is maintaining a facility/site record in the receiving program's database (RCRAInfo or SEMS) to reflect the facility/site proposed for transfer. As necessary, the receiving program should create a new facility/site record in the receiving program's database as soon as possible after receiving a proposed transfer request from the originating program. The "Creating Facility/Site Records in RCRAInfo/SEMS" section below provides more details for creating facilities/sites in program databases.

## Transfer Decision and Outcomes (Receiving Program)

Upon making a final decision regarding the proposed transfer, the receiving program should formally respond to the originating program's request by sending the originating program a signed and dated document accepting or declining the proposed deferral or referral. The following information should be included, as applicable:

1. The rationale behind the final decision.
2. When the proposed transfer applies to either a portion of a facility/site or to multiple facilities/sites, a description of the areas or components of the facility/site subject to the transfer decision.
3. All applicable facility/site ID numbers and names associated with the transfer. ID numbers should be qualified as RCRA or Superfund for clarification since the same facility/site may be tracked in RCRAInfo and SEMS under a different ID number.

In addition to the signed document, the receiving program should provide the originating program with any additional documents or other information relied on to make the decision that may be of use to the originating program.

Receiving program decisions are generally expected to reflect one of the following options:

- A. Accept the transfer as proposed;
- B. Accept a transfer with ID, name, or other changes; or
- C. Decline the transfer in its entirety.

A decision to accept a transfer with changes should be based on preceding discussions and agreement between the receiving and originating programs. The receiving program's response to the originating program's proposal should include supporting detail when either a transfer with changes is accepted or a transfer is declined. During the receiving program's review and decision-making process, Regions are encouraged to consult with ORCR or OSRTI as necessary for decisions involving unique situations to identify solutions that support national consistency.

The receiving program's signed and dated decision to accept a proposed transfer effectively changes administrative program lead at the applicable facility/site to the receiving program. A decision to decline the transfer leaves the originating program as the current administrative program lead for the proposed facility/site.

## Database Tracking Steps and Considerations

RCRAInfo and SEMS facility/site tracking data should be updated as soon as possible following the receiving program's decision. This section includes general database tracking steps and considerations. ORCR and OSRTI are working on database updates to track significant steps within the updated transfer process and associated transfer outcome at the facility/site level.

ORCR and OSRTI plan to provide regions with more detailed data tracking information as database changes are implemented. Regions should continue to use existing RCRAInfo and SEMS procedures to track referrals and deferrals until the databases are updated to accommodate the more detailed transfer process.

#### *Creating Facility/Site Records in RCRAInfo/SEMS*

If a facility/site record for the proposed transfer does not exist in the originating program's database, a new facility/site record must be created in the originating program's database as necessary prior to proposing the transfer. Similarly, the receiving program may need to create a facility/site record in the receiving program's database.

When a proposed transfer requires creation of these facility/site records, regions should attempt to sync ID numbers, names, and location data to the extent practical. These facility/site attributes are used in EPA tools such as the Federal Registry Service (FRS) which display information on facilities/sites that may be addressed under multiple EPA programs.

Before creating new ID numbers, the programs should undertake an extensive search for already-assigned ID numbers and coordinate with the other program to minimize the creation of multiple ID numbers for the same facility/site tracked in both RCRAInfo and SEMS. (Note: RCRA EPA ID numbers are required for hazardous waste handlers under Section 3010(a) of the RCRA statute.<sup>2 3</sup>)

Within RCRAInfo, the RCRA EPA ID Number is called a HANDLER ID. The HANDLER ID is necessary for efficiently locating the EPA and state RCRAInfo records associated with hazardous waste activity at the associated location. In the Superfund Program, a comparable ID number – called a SEMS EPA ID – functions similarly and allows staff to locate records associated with active or archived Superfund sites.

In many cases the SEMS EPA ID number will be identical to the RCRA EPA ID number. In instances where the SEMS EPA ID number differs from the RCRA EPA ID, a best practice is to include the program identifier in communications between the two programs (i.e., SEMS EPA ID, RCRA EPA ID or RCRA HANDLER ID) to reduce confusion over which program's ID number is being cited.

When the receiving program accepts a transfer with changes, both programs may need to adjust existing database tracking information to reflect the changes (e.g., create an additional facility/site record).

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<sup>2</sup> Title 42 U.S.C. Section 6930(a)

<sup>3</sup> Defined in Title 40 of the Code of Federal Regulations at section 260.10. Use of the RCRA EPA ID number is mandatory in most situations involving federally regulated hazardous waste, and violations can be subject to enforcement action.

*Relating CERCLA Sites to RCRA Facilities in SEMS*

SEMS includes the ability to relate CERCLA sites to other CERCLA sites as well to relate CERCLA sites to non-CERCLA sites. Regional Superfund programs should ensure SEMS “Related Sites” information is updated in a timely manner by relating a CERCLA site to a RCRA facility when either: (1) Superfund creates a SEMS CERCLA site record or otherwise identifies an existing SEMS matching CERCLA site in response to a proposed facility referral from RCRA to Superfund, or (2) Superfund receives RCRAInfo facility information (RCRA EPA/Handler ID, facility name, etc.) from the RCRA program following a proposed site deferral from Superfund to RCRA. This information in SEMS is a key variable used in the SEMS CERCLA to RCRA Site Associations (FOIA-8) report posted on the [Superfund Data and Reports](#) public webpage.

Support/Consultation

We encourage program staff to consult with the EPA headquarters RCRA Hazardous Waste Cleanup Program staff and Superfund site assessment program staff for assistance regarding the updated transfer process, complex and novel facility/site transfer issues, and unique database tracking approaches when transfers involve multiple facilities/sites.