

TOXIC SUBSTANCES CONTROL DIVISION

OFFICIAL POLICY/PROCEDURE

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TITLE: PERMITTING/SITE MITIGATION INTERFACE

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<input type="checkbox"/> Guidance Document	<input checked="" type="checkbox"/> Permitting	

DESCRIPTION:

This document sets forth criteria for the assignment under certain circumstances of specific program units within TSCD to conduct required cleanup actions. It also identifies incidents which fall under this policy. Finally, this document strongly encourages the use of the Facility Management Plan (FMP) by the Regions as the focal point for coordination of interface activities.

APPROVED BY: Alex R. Cunningham 5 Jan 89  
 Alex R. Cunningham Date  
 Chief Deputy Director

cc: C. David Willis, Deputy Director  
 TSCD Technical Reference Center

### SUMMARY

This policy and procedure defines how the Facility Permitting Unit (FPU), the Site Mitigation Unit (SMU) and the Surveillance and Enforcement Unit (SEU) take the lead on the Resource Conservation and Recovery Act (RCRA) closure sites which may have other ongoing regulated activities. Basically, the policy states that all RCRA closures and cleanups or corrective actions will be handled by FPU as the lead unit, with SEU acting as the enforcement arm. Only those RCRA sites which become bankrupt, which are recalcitrant or whom the Environmental Protection Agency (EPA) defines as a non-notifier will be handled by SMU as the lead unit.

### ACTION

This document sets forth criteria for the assignment, under certain circumstances, for specific program units in the Toxic Substances Control Division (TSCD or Division) to conduct necessary cleanup activities required under state and federal laws. Additionally, this document identifies the closure process which may be used at these interface sites. Finally, this document specifies the use of the Facility Management Plan (FMP) as the focal point for coordination of cleanup activities falling under this policy.

By approval of this document, it is the determination of the Chief Deputy Director that the policy and procedures set forth herein are consistent with applicable laws and regulations governing hazardous waste cleanup, and serves to clarify program requirements affecting specific types of hazardous waste cleanup. The policy and procedures contained below will be periodically reviewed for continued applicability to governing laws and regulations.

### PURPOSE

This policy and procedures document establishes a mechanism for assigning and managing hazardous waste remedial activities at sites which have regulated solid waste management units, while ensuring compliance with applicable laws and avoiding duplication of work.

The TSCD program units which will most directly be involved in carrying out this policy and procedures include FPU, SMU, and SEU of the TSCD's Regional Offices.

While this policy is specifically intended for TSCD, its implementation will also result in referral of some remedial actions to the EPA and appropriate Regional Water Quality Control Boards (RWQCB). In these cases, Memoranda of Agreement provide the mechanism by which remedial action work will be assigned. Exceptions to this policy and procedure will be entertained by TSCD Headquarters on a case-by-case basis, based on a request to the Division's Deputy Director from the Regional Office.

#### BACKGROUND

Because overlapping state and federal requirements apply to hazardous waste contamination, several sites in California are conducting remedial actions under state site mitigation programs and also need to comply with federal permitting or closure requirements.<sup>1</sup>

Under the hazardous waste permitting program, corrective action activities are most frequently handled during the permitting and closure/post-closure period. A facility is compelled to submit a plan for closure and provide post-closure care for landfills, surface impoundments and waste piles used to handle hazardous wastes. Closure is the period when hazardous wastes are no longer accepted at a hazardous waste management unit (HWMU) and steps are taken to control, minimize or eliminate the threat of future contamination from the site. Post-closure monitoring and corrective action activities are conducted in cases where some contamination remains on the site or in the groundwater following closure of the HWMU.

Under the site mitigation program, remedial actions may already be proceeding or scheduled to occur at the same subject facility pursuant to the terms of a Remedial Action Order issued under the federal Superfund program, and/or the state site mitigation program.

The procedures specified below detail the steps by which such remedial actions should be conducted at the state level and by which specific TSCD program unit. These procedures rely on recent legislation and regulations which refine and clarify the relationship between federal RCRA closure/postclosure and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) remedial action requirements.

## POLICY

It is the Division's policy to conduct corrective actions at sites in a manner which meets the requirements of applicable state and federal permitting and site mitigation laws and regulations. In performing these corrective actions, the Division will use EPA's proposed strategy as guidance for closure of RCRA hazardous waste units (see Attachment A), pending promulgation of a final rule in the Federal Register which amends regulations affecting landfill, surface impoundment and waste pile closures (see Attachment B for proposed rule, 52 FR 8712, although these changes would not change state law).

It is also the Division's policy to exhaust all enforcement remedies available under the Hazardous Waste Control Act (HWCA), RCRA, and all applicable financial requirements, or other applicable laws and regulations. If or when the party responsible for a release at an interface site refuses or is unable to take appropriate action they may be considered for inclusion on the Bond Expenditure Plan (BEP) after ranking in accordance with the Hazard Ranking System (HRS). If a release at an interface site poses an immediate threat to public health or the environment, immediate remedial response action may be taken pursuant to the Hazardous Substance Account Act, after responsible party funds "if available", have been exhausted. The method for determining which program will assume lead responsibilities for the remedial or corrective action is delineated in the procedures set forth below. Exceptions to how these procedures are implemented by the Regions may be made on a case-by-case basis, but in any event should be undertaken only after due notification to and comment by TSCD Headquarters.

In carrying out this approach, the Regional Offices are strongly encouraged to utilize the FMP concept, as described below, to ensure that program units conducting the cleanups fully coordinate their activities.

## PROCEDURES

These procedures are intended to respond to various related permitting and site mitigation activities which occur in day-to-day operations in the Regional Offices. These activities can be broken down into two basic categories:

1. Those hazardous waste management facilities which contain RCRA units and appear on the BEP; and,

2. Those hazardous waste facilities which contain RCRA units and do not appear on the BEP or National Priority List (NPL), but which, for one of many reasons, are brought into the site mitigation program.

Figure 1 and the attached annotations both visually and verbally describe the steps which the Regional Offices should follow in establishing assignments for site remediation, dependent on the specific scenario.

Although these procedures are intended primarily for cleanups which are scheduled beginning in FY-88/89, a Regional Office may wish to apply the procedures on a case-by-case basis to activities which are currently ongoing. Following consideration of the flow chart (see Figure 1) and to the applicable site, the Regional Section Chief, with due notice to the Deputy Director, should make a determination as to whether activities at an existing site remediation should be reassigned to another program unit based on these procedures.

#### Facility Management Plan Process

To ensure proper coordination and communication among TSCD program units and other affected agencies conducting remediation at these sites, the utilization of the FMP process is strongly encouraged in all interface assignments.

Developed in conjunction with the RCRA program, facility management planning is used to facilitate permitting and closure of hazardous waste facilities. As such, the FMP process serves to identify the responsibilities of agencies involved in a site corrective or remedial action and promotes a coordinated effort rather than independent, duplicative or inconsistent actions.

Two distinct components of the FMP process are especially useful in successfully carrying out the interface procedures described in Figure 1. First, provision for a facility description/historical record in the FMP document enables staff assigned to a site to ascertain where the facility stands at any time in the permitting or closure process and what activities have taken place or still need to occur. In an interface situation, this documentation can be extremely valuable when several program units and agencies may be involved in different phases of the cleanup.

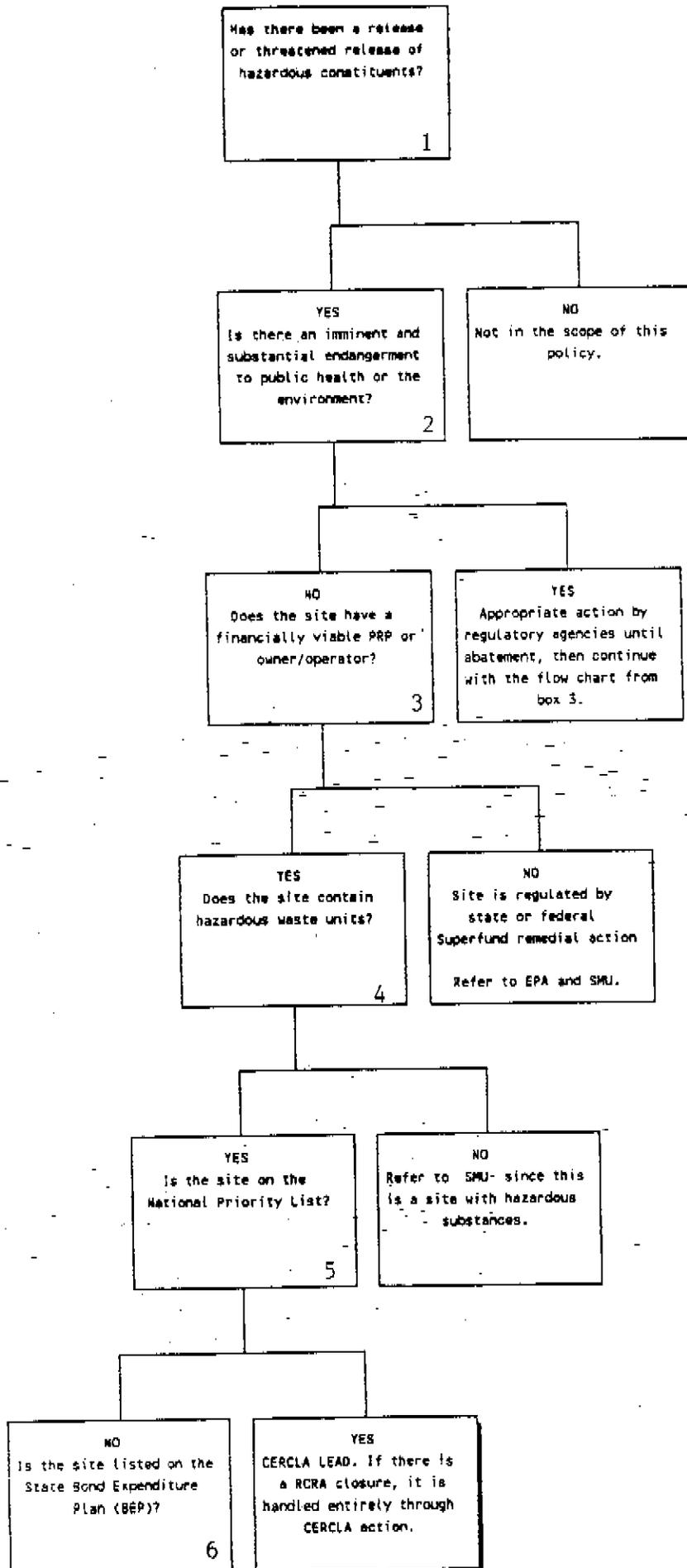
Second, the FMP process requires the establishment and tracking of a schedule for the accomplishment of assigned tasks by those agencies/program units charged with permitting and/or site closure responsibilities for the specific site. Upon approval of an FMP by participating agencies, the schedule represents an identification and commitment of resources to accomplish specific tasks by the signatories to the document and acts as a tool to coordinate staff charged with permitting/closure responsibilities.

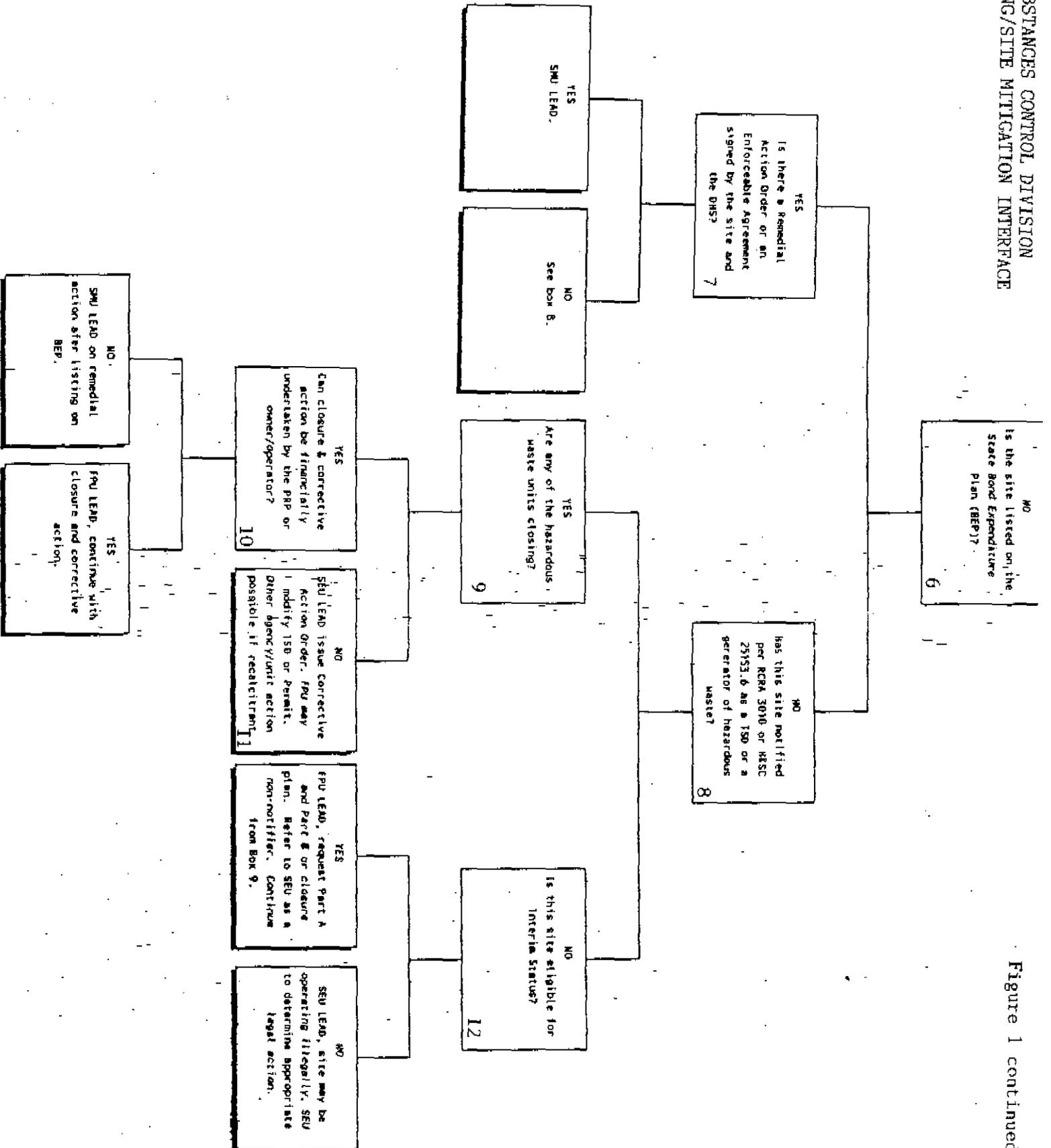
At this time, these procedures will not require the use of the FMP process to commit resources from applicable TSCD program units or other participating agencies to interface cleanups which go beyond strictly RCRA activities. Nevertheless, TSCD Headquarters expects quarterly FMP status meetings with the Regional Offices and EPA to include a status report on key interface sites.

FOOTNOTES

<sup>1</sup>TSCD is authorized to oversee or perform specific remedial or corrective actions under state and federal hazardous waste permitting and site mitigation laws and regulations. Where applicable, federal law requires compliance with sections of the Resource Conservation and Recovery Act (RCRA) as amended by the Hazardous and Solid Waste Amendments (HSWA), and/or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), more commonly referred to as Superfund, as amended by the Superfund Amendments and Reauthorization Act (SARA). The state's counterpart to the federal hazardous waste program (RCRA) is governed by requirements under Title 22 of the California Code of Regulations, and Division 20, Chapter 6.5 of the California Health and Safety Code, while the California site mitigation program, which parallels CERCLA, falls under Chapter 6.8 of the Health and Safety Code.

<sup>2</sup>In this regard, on March 19, 1987 EPA proposed a hybrid approach for establishing closure and post-closure requirements (52 FR 8712) which allows increased technical flexibility, on a case-by-case basis, for situations not adequately addressed by existing nationwide closure standards. Additionally, in a December 16, 1986 letter to TSCD from EPA Region 9, EPA proposed several options for conducting "hybrid closures". These options, which range from clean to limited to stabilized closures, appear to be consistent with the March 19, 1987 Federal Register proposal. This hybrid approach draws upon methods used under the site mitigation remedial action program. In fact, in the March 1987 Federal Register proposal it is stated that remedial actions under CERCLA are in many ways analogous to RCRA closures.





Explanation of Boxes in Figure 1 - Flow Chart

1. This question starts the flow chart by creating the universe of this policy. This policy deals only with sites where there is or may be a hazardous substance or waste released to the environment. If there is no release, the site is not within the scope of this policy.
2. On any site with an imminent and substantial endangerment, immediate action is necessary to abate the hazard. The authority to abate this endangerment is found in the Hazardous Substance Account. Depending on the seriousness of the release, the response could be from the county, the state or the federal government. Once the abatement is completed, the abatement or the mechanism used may negate the use of the chart, but if there is still a release, the procedures outlined in the flow chart from Box 3 should then be followed.
3. If the site does not have a viable Potential Responsible Party (PRP) or owner/operator, RCRA permitting requirements cannot be enforced. Rather, through statutorially authorized funding mechanisms, state and federal Superfunds can conduct remedial actions when a PRP is unavailable, unwilling or incapable, and then pursue cost recovery at a later date.
4. The criteria for determining a hazardous waste are found in 40 CFR Part 261 and Title 22, Section 66693 et. al. A solid waste management unit (SWMU) is defined in 50 FR 135, July 15, 1985 to include.. "any unit at the facility from which hazardous constituents might migrate, irrespective of whether the units were intended for the management of solid and/or hazardous wastes....[Such] unit refers to containers, tanks, surface impoundments, waste piles, land treatment units, landfills, incinerators, and underground injection wells."
5. Sites already on the NPL will have a CERCLA lead, with either the EPA or state SMU having technical lead. According to the preamble to 51 FR 21059, June 10, 1986, RCRA sites will not be listed on the NPL unless the site is a non-notifier, is recalcitrant, or bankrupt. Any RCRA site with a previously signed Section 106 order will remain under CERCLA lead.
6. As with the NPL, the State Bond Expenditure Plan does contain RCRA/Permit sites. It is expected that, as with the revisions to the NPL policy, the BEP will list only those RCRA/Permitting sites where owner/operators are not financially viable or, in certain situations, are unwilling to complete closure and corrective action where all RCRA, Hazardous Waste Control Law (HWCL) and appropriate enforcement actions have been exhausted.

7. An Enforceable Agreement or Remedial Action Order is the means used by Site Mitigation Units to implement and access the Bond Expenditure Plan funds and begin remedial action activities. If there is a RCRA closure, a "hybrid" approach will be taken.
8. Notification is required for all facilities which generate or manage hazardous waste. This notification was required by EPA in 1980, and California's statute becomes effective 1-1-89. For facilities operating without providing requisite notice, enforcement action may be necessary.
9. A RCRA closure will trigger action by the EPA RCRA unit or FPU to begin the Closure Plan review and approval process.
10. It is important to determine if the owner/operator has financial assurance and insurance liability, as required by both RCRA and HWCL. If the facility becomes bankrupt, or exhausts financial assurance, or refuses to cooperate, the site will be referred to SMU or EPA CERCLA, since RCRA can not recover costs.
11. Under HSWA, if a RCRA site has or develops contamination, the cleanup can be overseen via a corrective action order. FPU can modify the ISD or permit to incorporate corrective action.
12. A site is eligible for interim status if it was in operation in October 1980 and treats, stores, or disposes of hazardous waste on-site. A site which is eligible but did not file is a non-notifier and enforcement action is required.
- 12A. If the site is not eligible, if it began operating after October 1980, it was required to receive a permit first. Enforcement action may be necessary.

PROPOSED EPA STRATEGY:  
CLOSURE OF RCRA HAZARDOUS WASTE UNITS

Note: This strategy is to be applied primarily to surface impoundments, but may also be applied to waste piles.

Assumptions: Unit has received hazardous wastes since July 26, 1982, and has not closed before January 26, 1983.

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CATEGORY A: Closure with no further RCRA obligations. No post-closure permit required. No cover system required.  
No post-closure ground water monitoring required.  
Commonly known as "clean closure." EPA-preferred category.

1. Facility must remove all hazardous wastes from the unit.
2. Facility must remove all liner components from the unit.
3. Facility must remove all contaminated subsoils down to non-detectable or established background levels for all Appendix VIII constituents of concern.
4. Facility must demonstrate to regulatory agencies that the ground water beneath the unit has not been contaminated with any Appendix VIII constituents of concern.

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CATEGORY B: Closure with limited closure and post-closure obligations.  
Post-closure permit is required. Possible less stringent cover system. Possible less stringent ground water monitoring.  
Built-in incentive category.

1. Facility must remove all hazardous wastes from the unit.
2. Facility must remove all liner components from the unit.
3. Facility must remove all substantially contaminated subsoils down to levels very close to non-detectable, background, or health-based.
4. Facility must construct and install a cover system, but cover may not have to fully meet the cover system recommendations in EPA guidance documents.

Attachment A  
(cont.)

5. Facility must obtain a post-closure permit which may contain less stringent post-closure care of the cover system and may contain less stringent postclosure ground water monitoring conditions.

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CATEGORY C: Closure with full RCRA obligations. Post-closure permit required. Full cover system required. Ground water monitoring required. Least preferred category.

1. Facility chooses not to remove or decontaminate hazardous wastes remaining in the unit. (However, facility is required to stabilize remaining hazardous wastes in the unit.)
2. Facility chooses not to remove or decontaminate liner components in the unit.  
  
Facility chooses not to remove or decontaminate contaminated subsoils beneath the unit.
3. Facility must construct and install a cover system which is in full conformance with cover recommended in EPA guidance document.
4. Facility must obtain a post-closure permit which fully entails post-closure care of the cover system and post-closure ground water monitoring.