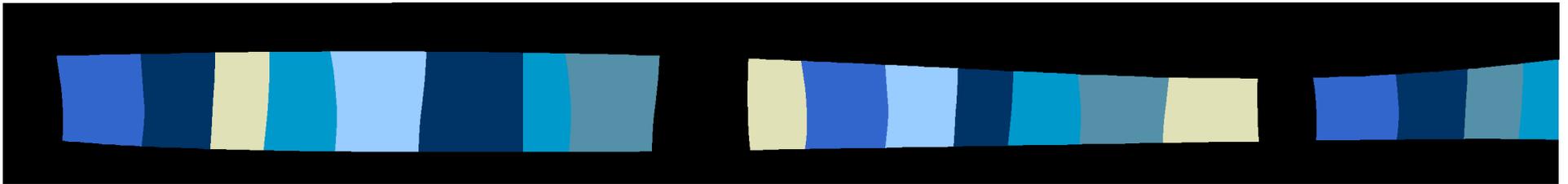


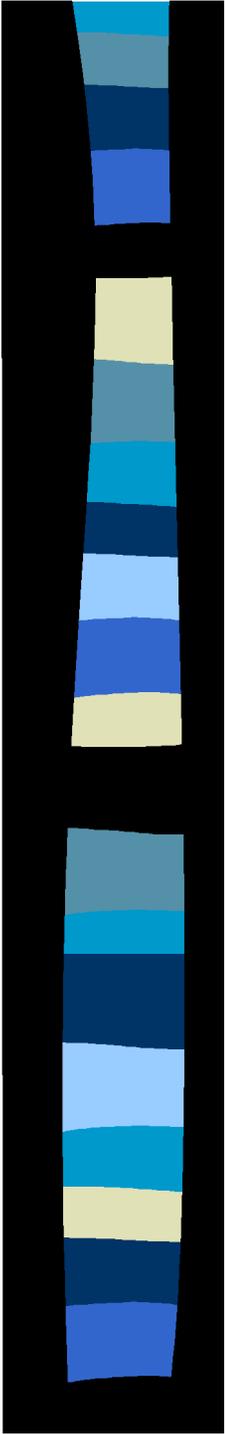
# **BRAC Cleanup Team (BCT) Workshop**

## **RCRA/CERCLA Coordination at Contaminated Federal**



Parker Wilson

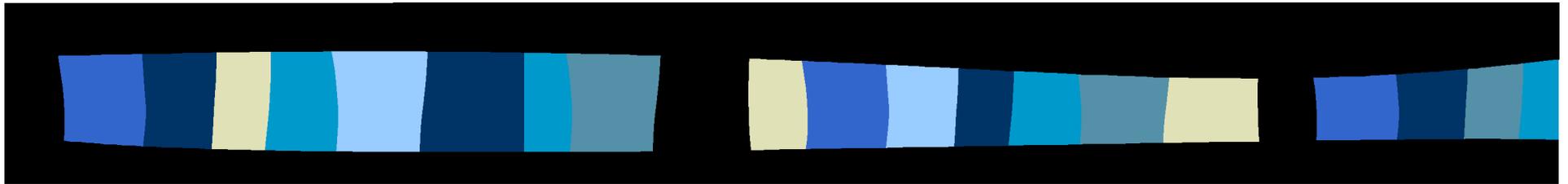
Texas Natural Resource Conservation Commission



# RCRA/CERCLA COORDINATION AT CONTAMINATED FEDERAL FACILITIES

- I. Self-regulation at Federal Facilities
- II. State regulation at Federal Facilities
- III. Coordination between RCRA and CERCLA: EPA Guidance, Sept. 24, 1996
- IV. Coordination between RCRA and CERCLA at Federal Facilities on NPL: EPA Lead Regulator Policy, Nov. 6, 1997
- V. Deferral of Federal Facility NPL Sites to RCRA: EPA Deletion Policy, Nov. 24, 1997
- VI. Coordination at Non-NPL Federal Facilities: “Common sense”

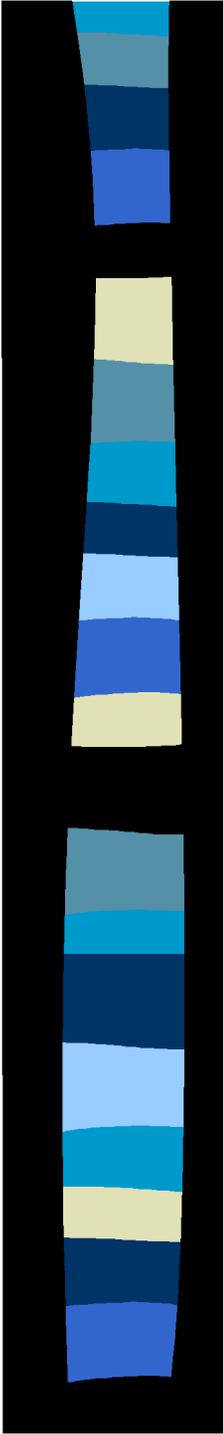
# SELF-REGULATION AT FEDERAL FACILITIES



# SELF-REGULATION AT FEDERAL FACILITIES

## ■ CERCLA Jurisdiction Exists at Federal Facilities

- CERCLA applicable to federal government §120(a)(1)
- President selects remedy §§121(a), 104(c)(4)
- State laws may be applied as ARARs § 121(d)
- No permits §121(e)
- State involvement and consultation §§121(f), 104(c)(2)



## SELF-REGULATION AT FEDERAL FACILITIES (cont.)

### ■ DoD is CERCLA “Lead Agent” at DoD Facilities

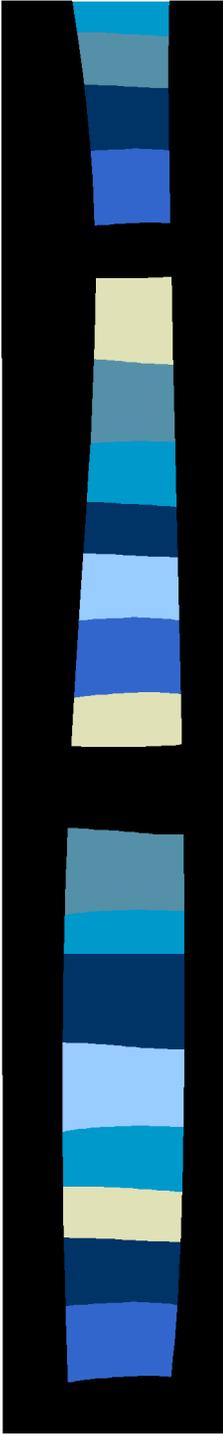
- Executive Order 12580

President delegated remedy selection authorities to Secretary of Defense under:

- CERCLA §§104(a), (b), (c)(4) -- (“Response Authorities”)
- CERCLA §121 (“Cleanup Standards”)

- 40 CFR §300.5

Where the release is on or from a DoD or DOE facility, then DoD or DOE will be the lead agency

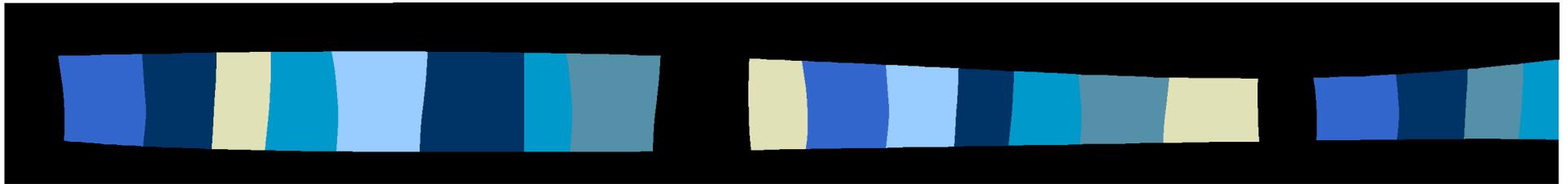


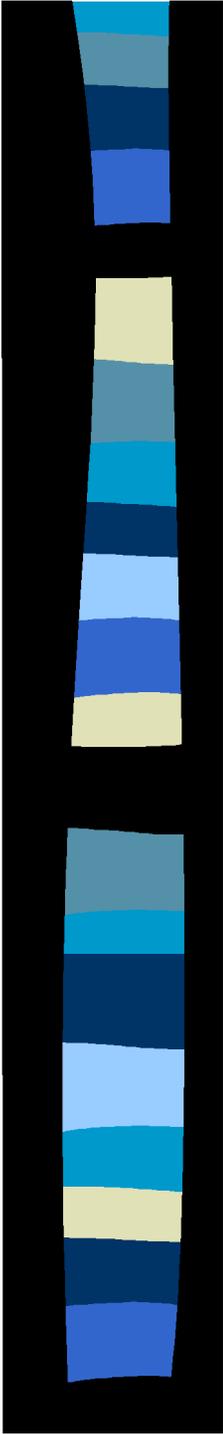
## SELF-REGULATION AT FEDERAL FACILITIES (cont.)

### ■ Installation Restoration Program

- Established under, and pursuant to DERP, 10 U.S.C. §§2701-2707

# STATE REGULATION AT FEDERAL FACILITIES



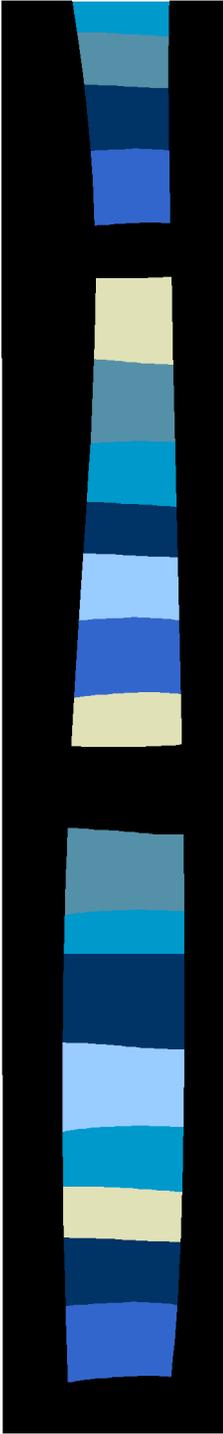


# STATE REGULATION AT FEDERAL FACILITIES

## ■ RCRA Waives Sovereign Immunity

- 42 U.S.C. §6961, *Application of Federal, State, and local law to Federal facilities*, reads in pertinent part:

“Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government . . . shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits . . . ), respecting control and abatement of solid waste or hazardous waste disposal in the same manner, and to the same extent, as any person is subject to such requirements.”

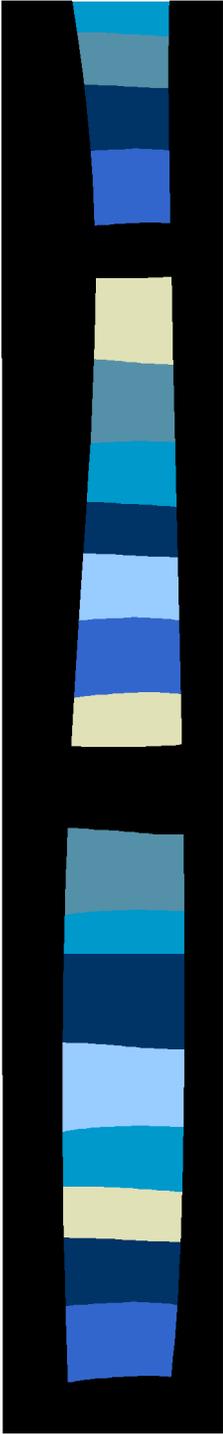


## STATE REGULATION AT FEDERAL FACILITIES (cont.)

### ■ Federal Facilities Compliance Act of 1992

- Expanded the definition of “person” in 42 U.S.C. §6903(15) to include “each department, agency, and instrumentality of the United States.”

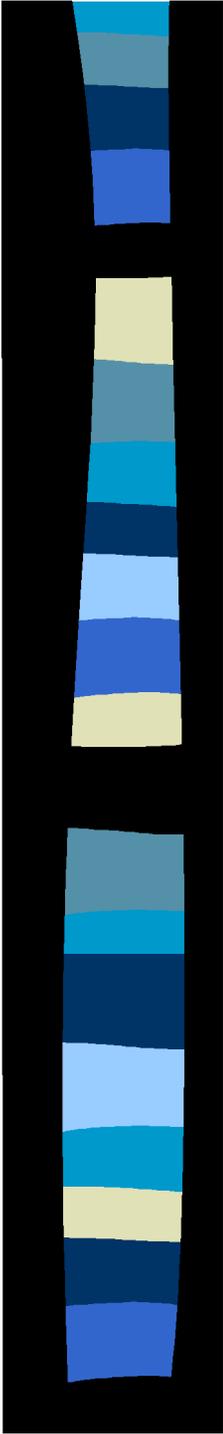
“The term “person” means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body *and shall include each department, agency, and instrumentality of the United States.*” (Emphasis added)
- Broadened the waiver of sovereign immunity in 42 U.S.C. § 6961 to cover “all administrative orders and all civil and administrative penalties and fines.”



## STATE REGULATION AT FEDERAL FACILITIES (cont.)

### ■ Authorization of State Programs, 42 U.S.C. §6926(b):

- Any state which has submitted a complete application for authorization to the Administrator “*is authorized to carry out such program in lieu of the Federal program under this subchapter in such State and to issue and enforce permits for the storage, treatment, or disposal of hazardous waste . . .*” (Emphasis added)
- *Unless* the Administrator finds that the State program is (1) not equivalent to the federal program, (2) not consistent with the Federal or State programs applicable in other States, or (3) does not provide adequate enforcement of compliance with the requirements of RCRA



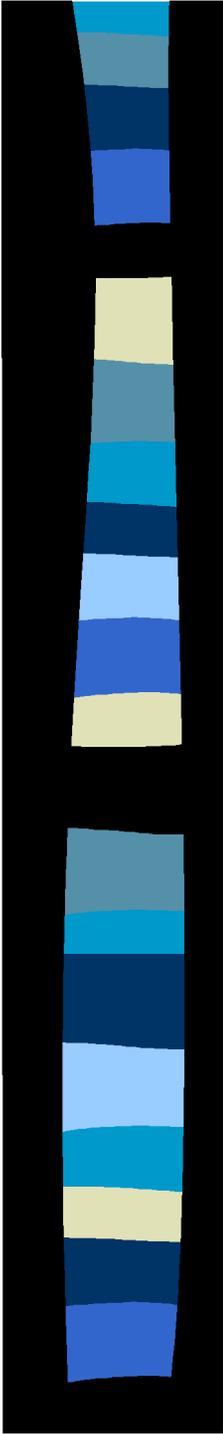
# STATE REGULATION AT FEDERAL FACILITIES (cont.)

## ■ U.S. v. Colorado

This case stands for the proposition that States may enforce their own hazardous waste laws at Federal facilities, even if there is an ongoing CERCLA response action, regardless of whether the facility is on the NPL, and not merely as an ARAR:

### **States May Enforce Their Hazardous Waste Laws at CERCLA sites**

- “While the decision to use CERCLA or RCRA to cleanup a site is normally a policy question appropriate for agency resolution, the plain language of both statutes provides for state enforcement of its RCRA responsibilities despite an ongoing CERCLA response action.” (Page 1579)
- “[Sections 9614(a) and 9652(d) of CERCLA] expressly contemplate the applicability of other federal and state hazardous waste laws regardless of whether a CERCLA response action is underway.” (Page 1581)
- “While CERCLA citizens suits cannot be brought prior to the completion of a CERCLA remedial action, RCRA citizen suits to enforce its provisions at a site in which a CERCLA response action is underway can be brought prior to the completion of the CERCLA response action.” (Page 1577)



## STATE REGULATION AT FEDERAL FACILITIES (cont.)

### ■ U.S. v. Colorado (cont.)

#### **Placement on the NPL does not lessen state enforcement**

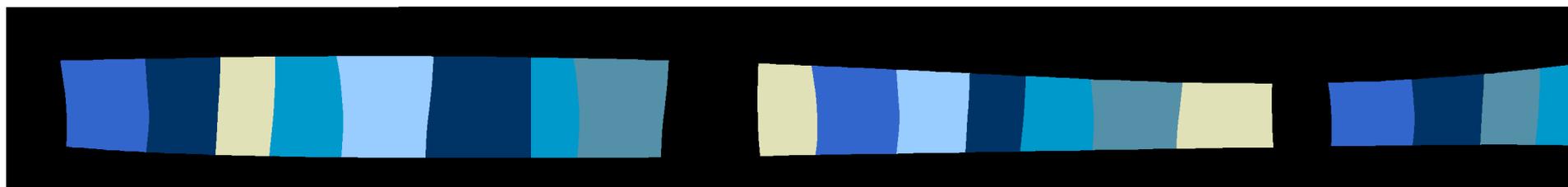
- “Placement on the national priority list simply has no bearing on a federal facility’s obligation to comply with state hazardous waste laws which have been authorized by an EPA delegation of RCRA authority or a state’s ability to enforce such laws.” (Page 1580)

#### **RCRA is more than just an ARAR**

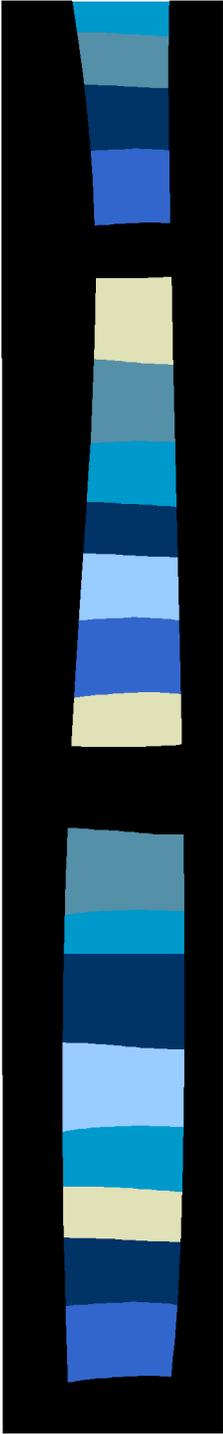
- “[N]othing in CERCLA supports the contention that Congress intended the ARAR’s provision to be the exclusive means of state involvement in hazardous waste cleanup.” (Page 1581)

*See, also, In the Matter of: Altus Air Force Base, U.S. EPA Docket No. RCRA-VI-002(h)95-H, October 28, 1996. (RCRA and CERCLA can operate independently but together at the same site.)*

# **COORDINATION BETWEEN RCRA AND CERCLA:**



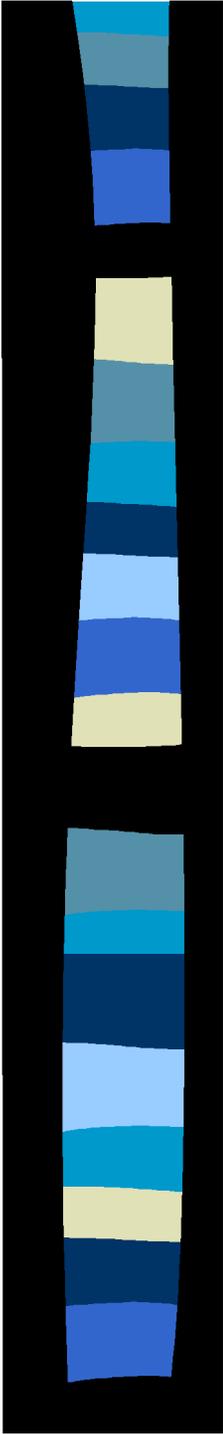
**EPA GUIDANCE  
SEPTEMBER 24, 1996**



# COORDINATION BETWEEN RCRA AND CERCLA: EPA GUIDANCE, SEPT. 24, 1996

## ■ Deferral, generally CERCLA to RCRA, is favored by EPA

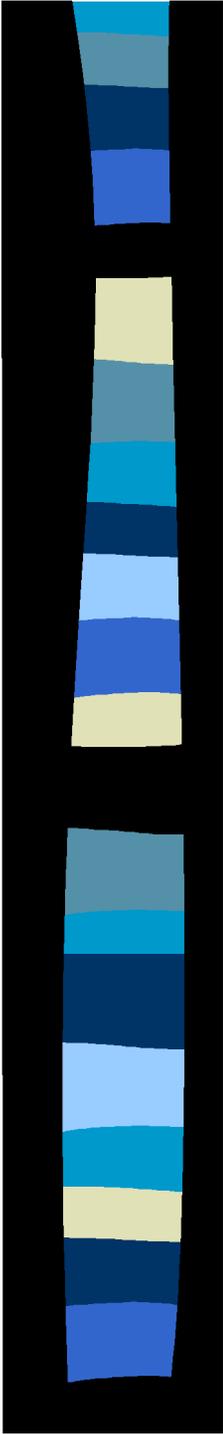
- “EPA’s general policy is for facilities subject to both CERCLA and RCRA to be cleaned up under RCRA.” (Page 4)
- “Generally, cleanups under RCRA corrective action or CERCLA will substantively satisfy the requirements of both programs.” (Page 2)
- “[I]n most situations, EPA RCRA and CERCLA site managers can defer cleanup activities for all or part of a site from one program to another with the expectation that no further cleanup will be required under the deferring program.” (Page 2)
- “Corrective action permits or orders should address all releases at a CERCLA site being deferred to RCRA.” (Page 3)



# COORDINATION BETWEEN RCRA AND CERCLA: EPA GUIDANCE, SEPT. 24, 1996 (cont.)

- **Absent Deferral, Coordinate RCRA and CERCLA**

“While deferral from one program to another is typically the most efficient and desirable way to address overlapping cleanup requirements, in some cases, full deferral will not be appropriate and coordination between programs will be required.” (Page 4)

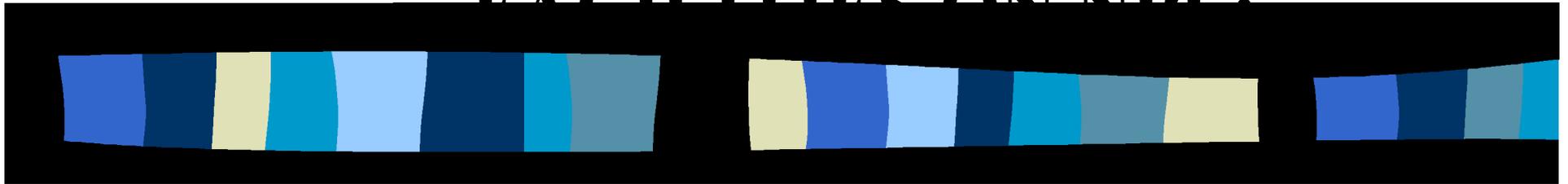


# COORDINATION BETWEEN RCRA AND CERCLA: EPA GUIDANCE, SEPT. 24, 1996 (cont.)

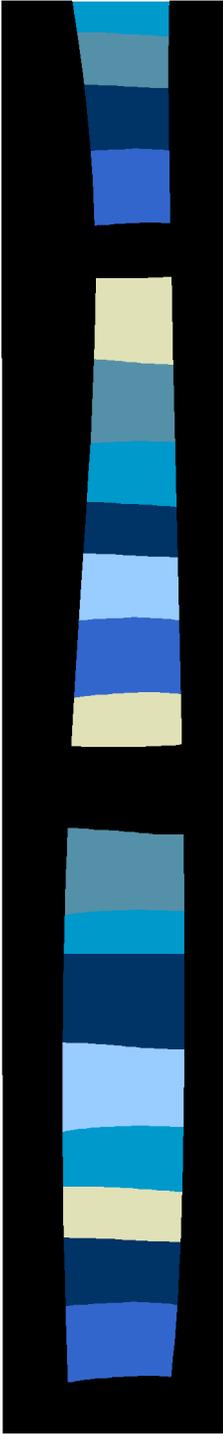
## ■ Approaches to RCRA / CERCLA Coordination

- “Craft CERCLA or RCRA decision documents so that cleanup responsibilities are divided.” (Page 5)
- “Establish timing sequences in RCRA and CERCLA decision documents.” (Page 5)

# **COORDINATION BETWEEN RCRA AND CERCLA AT FEDERAL FACILITIES ON NPL**



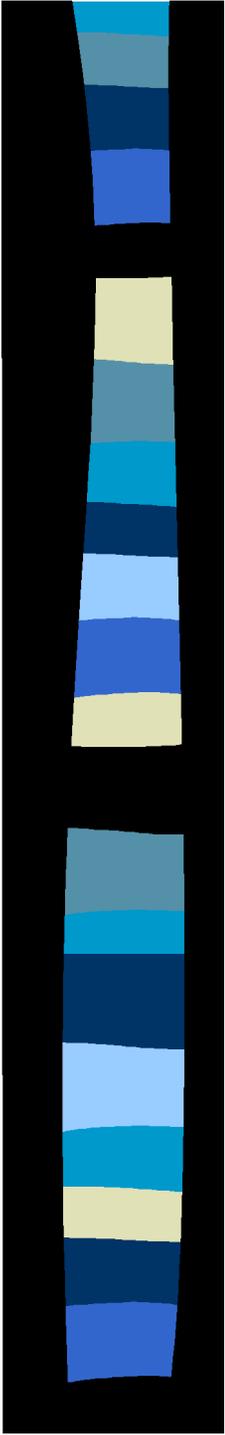
**EPA LEAD REGULATOR POLICY  
NOVEMBER 6, 1997**



# COORDINATION BETWEEN RCRA AND CERCLA AT FEDERAL FACILITIES ON NPL: EPA LEAD REGULATOR POLICY, NOVEMBER 6, 1997

## I. Policy Expands EPA's RCRA/CERCLA Guidance

- However, the September 24, 1996 guidance “should continue to be used as the controlling guidance for private sites and for non-NPL federal facilities.” (Page 1)

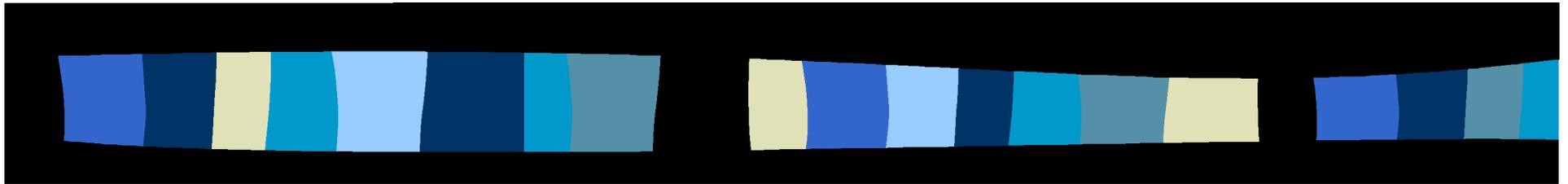


# COORDINATION BETWEEN RCRA AND CERCLA AT FEDERAL FACILITIES ON NPL: EPA LEAD REGULATOR POLICY, NOVEMBER 6, 1997 (cont.)

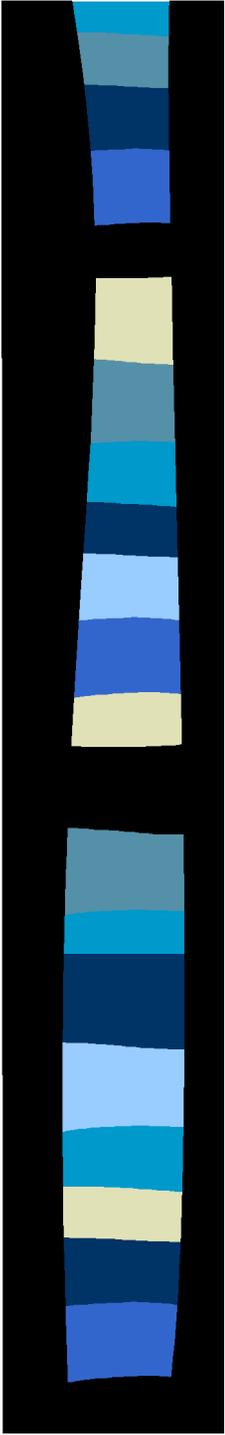
## II. Policy Encourages the Identification of a Single Lead Regulator

- “[T]his approach would enable states to oversee sites on a federal facility using a state program authorized under RCRA or other state cleanup authority provided that at a minimum the CERCLA process is integrated with the applicable RCRA or other state law process to satisfy the requirements of both statutes and the results are protective of human health and the environment.” (Page 3)

# **DEFERRAL OF FEDERAL FACILITY NPL SITES TO RCRA:**



**EPA DELETION POLICY  
NOVEMBER 24, 1997**



# DEFERRAL OF FEDERAL FACILITY NPL SITES TO RCRA: EPA DELETION POLICY, NOVEMBER 24, 1997

- **March 20, 1995 Deletion Policy (60 FR 14641)**

- Allows deletion of RCRA t/s/d facilities from NPL

- Four Criteria:

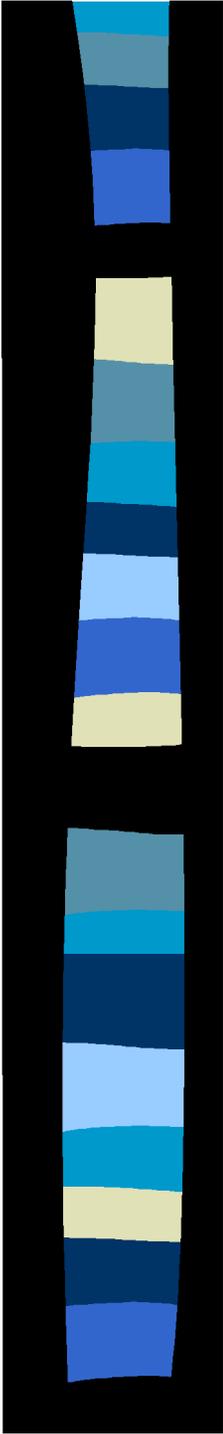
1. Site would be eligible under RCRA / NPL deferral policy

2. Site is currently being addressed by RCRA Corrective Action

3. Response under RCRA is progressing adequately

4. Deletion would not disrupt an ongoing CERCLA response action

- Originally did not apply to Federal Facilities



## DEFERRAL OF FEDERAL FACILITY NPL SITES TO RCRA: EPA DELETION POLICY, NOVEMBER 24, 1997 (cont.)

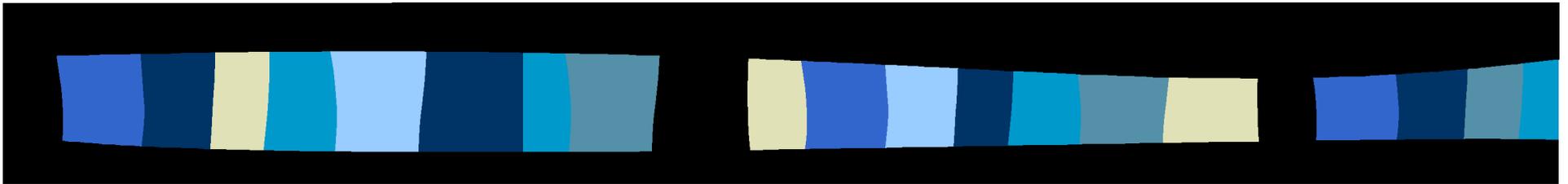
- **November 24, 1997 Deletion Policy for Federal Facilities (62 FR 62523):**

- EPA Deletion Policy now applicable to Federal facilities

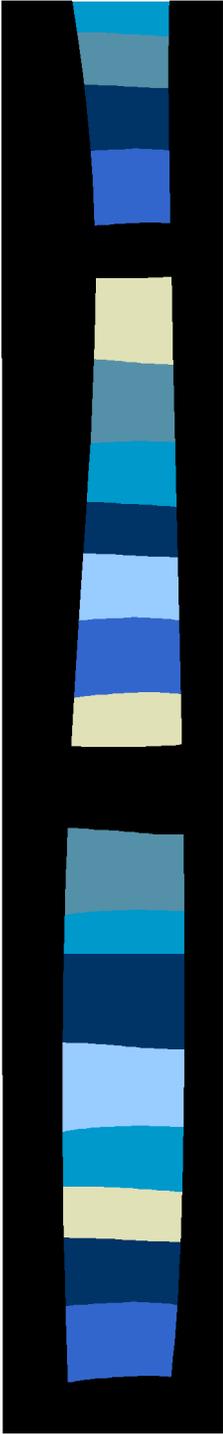
“[T]he criteria and process stated in the March 20, 1995 RCRA deletion policy are now applicable for deleting Federal facility sites from the NPL.”

- Interim Final Policy Effective Immediately
- First Potential Case in Texas: Pantex Plant (DOE)

# COORDINATION AT NON-NPL FEDERAL FACILITIES:



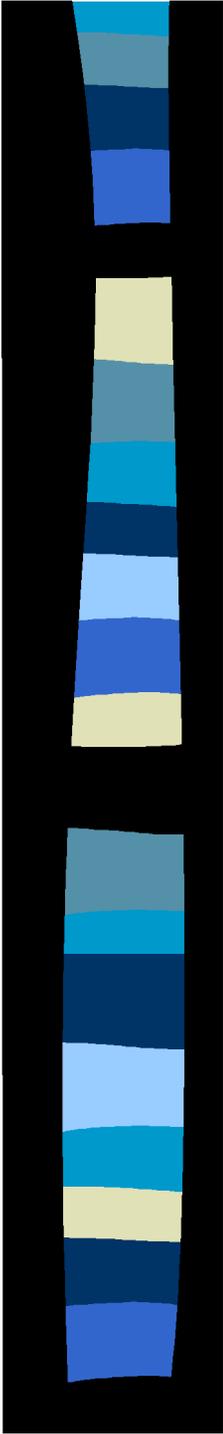
**“COMMON SENSE”**



# COORDINATION AT NON-NPL FEDERAL FACILITIES : “COMMON SENSE”

## ■ Three Scenarios:

1. Federal facilities defer to States /EPA RCRA Corrective Action, *or*
2. States defer to Federal facilities and their CERCLA-based IRP, *or*
3. States and Federal facilities COORDINATE their programs.



## COORDINATION AT NON-NPL FEDERAL FACILITIES : “COMMON SENSE” (cont.)

### ■ Three Case Studies and Success Stories:

- Reese AFB, Lubbock
- Bergstrom AFB, Austin
- Kelly AFB, San Antonio