



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

OSWER Directive 9360.0-3

SUBJECT: Transmittal of Superfund Removal Procedures -- Revision Number Two
(Formerly Superfund Removal Guidance -- Revision Number One)

FROM: William N. Hedeman, Jr., Director
Office of Emergency and Remedial Response *Bill Hedeman*

TO: Addressees

Attached is the Superfund Removal Procedures -- Revision Number Two which supercedes the Superfund Removal Guidance -- Revision Number One. The revision is largely procedural in nature and only addresses policy insofar as it clarifies the purpose or intent of the procedures. This document is to be considered as supplementary to the Superfund Implementation Plan for FY85 which will be issued in final form this summer. This revision is designed to provide Headquarters and Regional personnel with updated information on policies and procedures that affect the conduct of removal actions. The document contains the following additional changes:

- o Section C: Initiating Removal Actions - This section contains a number of significant changes. First, an Immediate Removal Action Memorandum replaces the previously-used 10-point document for requesting and approving immediate removals. Second, the Regional Administrators' authority for removals was expanded significantly on April 16, 1984, pursuant to new delegations of authority signed by the Deputy Administrator. These changes are incorporated in Section C. Third, the decision framework has been modified to reflect the use of the action memorandum and the new delegations. Fourth, the section includes new information on processing ceiling increases, and, fifth, it gives detailed instructions on cost share calculations. Please note that information on planned removals has been retained for use until revisions to the National Contingency Plan are finalized.

Section D: Removal Contracting Procedures - This section has been completely revised because of the implementation of the Emergency Response Cleanup Services (ERCS) contracts. It describes how OSCs can access the ERCS contracts. ERCS contractors may be used for both immediate and planned removals. It also describes procedures for procurement outside the ERCS system, and includes information on contractor oversight.

- o Section H: Financial Management - Changes to financial management procedures brought about by fund decentralization are described in this section. It describes procedures for both ERCS and non-ERCS accounting.
- o Section J: State Role - Since the Removal Guidance was issued in December 1982, policy on the use of cooperative agreements and Superfund State Contracts has been clarified and is summarized in this section.
- o Section K: Securing Private Party Response - This section summarizes current policy and guidance and notes that OWPE has developed further guidance on the use of administrative orders for immediate removals.
- o Section O: Role of Other Federal Agencies - Replacing the former Section N on the Coast Guard, this section now discusses the role of all other Federal agencies in removal responses at non-Federal facilities. It lists each agency's technical capabilities and expertise, highlights the authorities delegated to the USCG and FEMA and describes administrative procedures for obtaining and paying for another agency's involvement in removal response activities.

Finally, the document contains several new sections entitled Response at Federal Facilities, Requirements of Other Environmental Laws at Removals, Native American Lands, Radioactive Wastes, and Claims Against the Fund.

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SUPERFUND REMOVAL PROCEDURES
Revision #2

INTRODUCTION

1. Purpose

The purpose of this document is to provide EPA response officials with uniform, Agency-wide, guidance on immediate and planned removal actions. This document is to be considered as supplementary to the Superfund Implementation Plan for FY85 which will be issued in final form this summer. In most cases, response officials will be On-Scene Coordinators (OSCs), however, each Region may designate appropriate program officials to carry out response and related coordination and enforcement functions. Therefore, for the purposes of this guidance, the term OSC shall mean any such Regionally designated response official.

The basis for this document is the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (Public Law 96-510), commonly referred to as "Superfund." This guidance shall augment policies contained in the National Oil and Hazardous Substances Contingency Plan (NCP, 40 CFR 300) for all removal actions taken pursuant to section 104 of CERCLA. Although revisions to the NCP are being developed, this guidance reflects the existing program under the currently published NCP. Therefore, information is presented on planned removals for use until such time as the NCP revisions are finalized. Additionally, new delegations of authority to the Regions were signed April 16, 1984, which increase Regional responsibilities for the removal program. New procedures have been included to reflect these changes. Further, fund management responsibilities are being decentralized and new financial management procedures have been developed and are included in this guidance. Guidelines for the remedial program have been provided separately.

2. Scope

Guidance provided in this document is essentially procedural and focuses on implementation of the hazardous substances removal program for multi-media (air, land, surface water, or ground water) releases from facilities and vessels within EPA's area of responsibility. Specifically, the guidance addresses the following topics:

	<u>Page</u>
A. Types of Response Actions	5
B. Notification of Incidents	9
C. Procedures for Initiating Removal Actions	10
D. Removal Contracting Procedures on EPA Lead Projects	23
E. Special Exemptions to Limits on Removal Actions	26

	<u>Page</u>
F. Studies and Investigations Related to Response Actions Under Section 104(b)	30
G. Allowable Costs For Removals	31
H. Financial Management Procedures	33
I. Reporting Requirements	36
J. State Role	38
K. Securing Responsible Party Responses	40
L. Worker and Visitor Health and Site Safety	43
M. Documentation for Cost Recovery	45
N. Response at Federal Facilities	46
O. Role of Other Federal Agencies at Non-Federal Facilities	47
P. Coordination with RRT and NRT	54
Q. Provision of Alternate Water Supply	55
R. Cost Control for Superfund Removal Actions	56
S. TAT Special Projects	58
T. Operation and Maintenance Costs	59
U. Community Relations Plans During Removal Actions	60
V. Requirements of Other Environmental Laws at Removal Actions	62
W. Native American Lands	63
X. Radioactive Wastes	64
Y. Claims Against the Fund	65
Appendices	

The following abbreviations and acronyms are used in this document:

CERCLA — Comprehensive Environmental Response, Compensation, and Liability Act of 1980

CDC — Centers for Disease Control

CRP — Community Relations Plan

DCN — Document Control Number

DO — Duty Officer

DOD — Department of Defense

DOJ — Department of Justice

EERU — Environmental Emergency Response Unit

ERCS — Emergency Response Cleanup Services

ERD — Emergency Response Division

ERT — Environmental Response Team

FCC — Financial Control Center

FEMA — Federal Emergency Management Agency

FIT — Field Investigation Team

FMO — Financial Management Officer

Fund — Hazardous Substance Response Trust Fund (Superfund)

HHS — Health and Human Services

HQ — EPA Headquarters

IAA — Interagency Agreement

JLC — Justification for Limited Competition

JNCP — Justification for Non-competitive Procurement

MOU — Memorandum of Understanding

NCLP — National Contract Laboratory Program

NCP — National Oil and Hazardous Substances Contingency Plan

NEIC -- National Enforcement Investigation Center
NPL -- National Priorities List
NRC -- National Response Center
NRT -- National Response Team
OERR -- Office of Emergency and Remedial Response
OECM-W -- Office of Enforcement and Compliance Monitoring - Waste
O&M -- Operations & Maintenance
OMB -- Office of Management and Budget
OPA -- Office of Public Affairs
OSC -- On-Scene Coordinator
OSHA -- Occupational Health & Safety Administration
OSWER -- Office of Solid Waste and Emergency Response
OWPE -- Office of Waste Programs Enforcement
PCMD -- Procurement and Contracts Management Division
POLREP -- Pollution Report
PR -- Procurement Request
RFP -- Request for Proposal
RRC -- Regional Response Center
RRT -- Regional Response Team
SSC -- Superfund State Contract
SOW -- Statement of Work
TAT -- Technical Assistance Team
TPC -- Total Project Cost
USCG -- United States Coast Guard
USDA -- United States Department of Agriculture

A. TYPES OF RESPONSE ACTIONS

CERCLA and the NCP define "removal" as the cleanup or removal of released hazardous substances from the environment; such actions as may be necessary to monitor, assess and evaluate the release or threat of release of hazardous substances; the offsite disposal of removed material; or the taking of other such actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or the environment, which may otherwise result from such release or threat of release.

The NCP has further divided the statutory concept of removal into immediate and planned removals as explained below.

1. Immediate Removal

Immediate removals are actions taken to prevent or mitigate immediate and significant risk of harm to human life or health or to the environment from actual or threatened events such as:

- o Human, animal, or food chain exposure to toxic substances;
- o Contamination of a drinking water supply;
- o Fire and/or explosion;
- o Similarly acute situations.

Immediate removal actions may include but are not limited to:

- a. Collecting and analyzing samples to determine the source and dispersion of the hazardous substance and documenting those samples for possible evidentiary use;
- b. Providing alternative water supplies;
- c. Installing security fencing or other measures to limit access;
- d. Controlling the source of the release;
- e. Measuring and sampling;
- f. Moving hazardous substances off-site for storage, treatment, destruction, or disposal, provided that the substances are moved to a facility in compliance with Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (present policy being updated);
- g. Placing physical barriers to deter the spread of the release;
- h. Controlling the water discharge from an upstream impoundment;
- i. Recommending to appropriate authorities the evacuation of threatened individuals;

j. Using chemicals and other materials in accordance with Subpart H to restrain the spread of the substance and to mitigate its effects. (Subpart H of the NCP only addresses oil spills and was revised and published in the Federal Register July 16, 1984.)

k. Executing damage control or salvage operations.

An immediate removal should be terminated when the release has been stabilized, i.e., the release is under control and the criteria justifying initiation of action are no longer met. However, termination should not occur if it will result in a renewed immediate threat, or if any contaminated waste materials transported off site have not been properly disposed of or treated. In addition, in the case of classic releases, the hazardous substance will generally be completely cleaned up, not just stabilized, unless circumstances indicate termination to be advisable before that point. Classic releases are those that 1) have been released to the environment a relatively short time; and/or 2) have been released as a result of an accident, fire, explosion, or failure of a container or handling system, and/or 3) have been released from a transportation related source or from an active or operating facility; and/or 4) have been intentionally released in an isolated (one-time) incident to an area not used (presently or previously) to store or dispose of chemical wastes (i.e., "midnight dump").

Immediate removals shall not continue after \$1 million has been obligated for the action or six months have elapsed from the date of initial on-site Federal response, unless an exemption is obtained as discussed in Section E of this document.

Finally, an immediate removal undertaken at a site currently or subsequently placed on the National Priorities List (NPL), that was owned by a State or its political subdivision at the time any hazardous wastes were disposed of there, is subject to a minimum 50% cost share, in accordance with CERCLA and the NCP. This cost share is payable upon commencement of any subsequent remedial action. If there is no subsequent remedial action, no cost share for the immediate removal will be required.

2. Planned Removal

Although pending revisions to the NCP will likely eliminate the category of planned removals, the following information is provided for use until the NCP revisions are finalized. Planned removals may include the activities itemized above and may be considered for release incidents that allow more time than an immediate removal to plan the response, but that still require expeditious attention to prevent/mitigate risk to public health or the environment.

a. A planned removal may be undertaken pursuant to a contract or cooperative agreement when the lead agency determines that:

(1) The action is a continuation of an immediate removal taken at a release which would provide substantial cost savings by using the equipment and resources mobilized for the immediate removal; or

(2) The public and/or environment would be at risk from exposure to hazardous substances if response is delayed at a release not on the NPL.

b. A planned removal must be requested by the Governor of the affected State or his designee. This request must include, among other items of information, assurances that the State will pay the appropriate cost share (see NCP, section 300.67(b) or Section C.5.b. of this document). The State's cost share for a planned removal is 10% for sites privately owned at the time of disposal of hazardous substances and at least 50% for a site owned by a State or political subdivision thereof at the time of disposal of hazardous substances. In addition, the State must pay for all future operation and maintenance (see Section T of this document for details).

c. Among the factors to be considered to determine whether a planned removal is appropriate are the following:

(1) Actual or potential direct contact with hazardous substances by nearby population;

(2) Contaminated drinking water at the tap;

(3) Hazardous substances in deteriorating drums, barrels, tanks, or other bulk storage containers, that are known to pose a serious threat to public health or the environment;

(4) Highly contaminated soils largely at or near surface, posing a serious threat to public health or the environment;

(5) Serious threat of fire or explosion;

(6) Weather conditions that may cause substances to migrate and pose a serious threat to public health or the environment.

A planned removal cannot last longer than 6 months or exceed \$1 million in costs. Special exemptions, as discussed in Section E of this document, will not be granted for planned removals, unless conditions at the site deteriorate to the point where there is an immediate and significant risk of harm to human life, health, or the environment.

The planned removal is considered complete when it has been determined that the risk to the public health or the environment has been abated. In making this determination, EPA shall consider whether factors, such as those listed in A.2.c. above, continue to apply to the release and whether any contaminated waste materials transported off-site have been treated or disposed of properly.

-8-

Response actions that are likely to be prolonged or costly (in excess of statutory limitations) should be considered for corrective measures through a remedial response. If site conditions merit, a planned removal may be conducted as a self-contained unit while the State or EPA nominates the site for the National Priorities List for completion under a remedial response.

3. Remedial Actions

Remedial actions are longer term cleanups for sites on the NPL. This document does not address remedial actions.

B. NOTIFICATION OF INCIDENTS

Under section 103(a) and (b) of CERCLA, any person in charge of a vessel or an onshore or offshore facility is required, as soon as he has knowledge of any hazardous substance release, to notify the National Response Center (NRC) of such a release involving a reportable quantity (measured for a 24-hour time period). The NRC shall expeditiously convey the notification to all appropriate Government agencies including the Governor of the affected State. As per agreement with the U.S. Coast Guard the NRC notifies the OSC in the appropriate EPA Regional or U.S. Coast Guard District Office, who in turn notifies the Governor or the Governor's designee of the affected State.

In accordance with CERCLA and the NCP, all Federal agencies are responsible for reporting releases of hazardous substances from facilities or vessels which are under their jurisdiction or control.

EPA has promulgated a proposed rulemaking on reportable quantities and notification requirements (48 FR 23552, May 25, 1983). Comments are being analyzed for promulgation of the final rule, scheduled for summer, 1984.

C. PROCEDURES FOR INITIATING REMOVAL ACTIONS

As noted in Section A, the NCP sets forth criteria for determining whether a release qualifies for an immediate or planned removal. Further, the NCP establishes a procedural framework for arriving at that determination. This chapter provides detailed guidelines to response personnel on how to apply the NCP framework.

1. Conducting the Preliminary Assessment

The NCP requires a preliminary assessment of reported releases before initiating a CERCLA-financed response. The purpose of the assessment is to provide an initial indication of the need for a Federal response, in the form of an immediate removal, planned removal or remedial action. If the reported release potentially requires an immediate removal, the OSC should conduct the assessment as promptly as possible, based on readily available information. Other releases shall be assessed as soon as practicable. The preliminary assessment may include:

- a. Evaluation of the magnitude of the hazard;
- b. Identification of the source and nature of the release;
- c. Determination of the existence of a non-Federal party (or parties) that is ready, willing and able to undertake a proper response; and
- d. Evaluation of factors necessary to determine whether an immediate removal is necessary.

The NCP notes that a preliminary assessment at a hazardous waste management facility may involve the review of data and photographs, personal interviews, a perimeter (off-site) inspection and, where needed, an on-site inspection if conditions are such that it may be performed safely.

During the assessment, the OSC should determine whether the release or potential release involves a designated hazardous substance or a non-designated pollutant or contaminant. CERCLA requires that the release or threat of release of pollutants and contaminants may present an imminent and substantial danger to public health or welfare before response can be undertaken.

A preliminary assessment should be terminated when the OSC determines: there is no release; the source is neither a vessel nor a facility; the release involves neither a hazardous substance, nor a pollutant or contaminant that may pose an imminent and substantial danger to public health or welfare; the amount released does not warrant Federal response; a party responsible for the release, or any other person, is providing appropriate response, and on-scene monitoring by EPA is not recommended or approved, or the assessment is complete.

When the completed preliminary assessment indicates the potential need for an immediate removal, the OSC should further determine the appropriateness of the immediate removal using the decision rationale set forth in Section C.2 below. When the preliminary assessment indicates that a planned removal may be appropriate, the OSC should conduct an evaluation and determination of appropriate response as required by the NCP and described in Section C.5 of this document.

2. Recommending an Immediate Removal

If a preliminary assessment has indicated the potential need for an immediate removal, the OSC must further determine the appropriateness of a Fund-financed immediate removal and whether the response will require RA or HQ approval. The following decision rationale is suggested for use by the OSCs when further evaluating the need for an immediate removal action (also see Appendix 1) and preparing an action memorandum as described in Appendix 2. This action memorandum replaces the 10-point document previously required.

a. Initial Emergency Screen

This step is designed to facilitate responses to clear-cut, time-critical emergencies for which only limited data are available. In those cases, OSCs may have to rely primarily on the findings of the preliminary assessment, without significant additional data collection. Nevertheless, the analysis and interpretation of that data must be sufficiently rigorous to document that the immediate removal action would be consistent with the NCP. Factors the OSC should consider are the characteristics of the incident, the substances involved, the probable impact of the release on public health and environment, and selection of a mitigative action. Most of these incidents will fall within the RA's authority, as outlined in Section C.3.a below. If the incident falls outside the RA's authority, the Region should notify HQ that an immediate removal request requiring quick approval will be forthcoming. Procedures for HQ approval are set forth in Section C.3.b. of this document.

b. Health/Environmental Threat Review

Where the OSC has determined that the incident is not time-critical, a more thorough analysis of the health and environmental threats (e.g., through further sampling and analysis) will be possible before recommending a CERCLA response. In conducting this analysis, the OSC should consider the threat factors outlined in the sample action memorandum in Appendix 2 such as threat to the public health or the environment, and the extent of the release.

c. Potential for Non-Federal Action

The Agency does not intend to conduct a CERCLA-financed immediate removal where timely action by a potentially responsible party is expected or the response is within the independent financial or technical capabilities of State and local agencies. Thus, after characterizing the threat and ascertaining that it meets the NCP criteria for an immediate removal, the OSC should examine the alternatives to a CERCLA removal action. Factors to consider are the status of enforcement actions and the ability and willingness of State and local agencies to take action.

d. Recommendation of Response Action

If the review and analysis conducted in steps b and c above verify the need for a CERCLA immediate removal, the OSC next should identify and evaluate response options. These options should be directly related to mitigation of the release threat or threats. Factors to be considered include the technical feasibility and probable effectiveness of each alternative, the duration and cost of each response option, public acceptance, opportunities for State and local participation, and legal implications. Based on this analysis, the OSC should select the preferred cleanup option for mitigation of the threat.

3. Initiating the Immediate Removal

After selecting a preferred immediate removal response action, the OSC must obtain the appropriate Regional or HQ approval to commence the immediate removal.

a. Regional Authority and Approval Procedures

On April 16, 1984, the Deputy Administrator signed a new delegation of authority to Regional Administrators (RAs) concerning the selection and performance of all removal actions costing up to \$1,000,000 (see Appendix 3). By Delegation 14-1-A, RA's may approve removal actions costing up to \$1,000,000 that are: 1) expected to last up to 6 months, 2) expected, from the outset of the project, to last longer than 6 months and 3) expected originally to last up to 6 months, but are later determined to require continuation. Thus, in addition to the \$1 million approval authority, this delegation also gives RAs the authority to grant exemptions to the 6 month limit (see Section E of this document for exemption procedures).

With this delegation RAs are authorized to initiate removal actions for releases at both National Priorities List (NPL) sites and non-NPL sites in accordance with the criteria of the NCP. RAs may redelegate to their Division Directors the authority to approve expenditures up to \$1,000,000 for projects lasting up to 6 months. Further, RAs may redelegate to OSCs authority to approve actions costing up to \$50,000. Removal actions costing more than \$1,000,000 and continued removal actions after obligations of \$1,000,000 must be approved by the AA, OSWER in accordance with Delegation 14-2, described in Section C.3.b of this document.

-13-

When the RA approves an immediate removal, he/she should make the determination that the criteria established by Section 300.65 of the NCP have been met. These criteria are also discussed in Section A of this guidance. Coordination with Regional enforcement and remedial staff is important to assure that appropriate enforcement actions and/or subsequent remedial responses are initiated.

(1) The RA has the authority to obligate up to \$1,000,000 in removal costs for each site. This limit includes any previous obligations at a site and includes all extramural costs and Headquarters and Regional intramural costs, except for all enforcement costs. This means that costs associated with commercial cleanup contractors, letter contracts for procurement with States and localities, interagency agreements (IAGs), response-related national contracts such as the Technical Assistance Team (TAT), the National Contract Laboratory Program (NCLP), and the Environmental Response Team's Environmental Emergency Response Unit (EERU), EPA Regional Laboratories and Headquarters and Regional direct intramural costs (site specific salaries, travel, per-diem, overtime) are to be included in the limit. Because these costs must all be tracked against the \$1 million limit and the total project ceiling, all action memos must include an estimate of these costs and an estimated total project ceiling. For example, the RA may set a total project ceiling in the following manner:

Cleanup contractors	\$750,000
Letter contract for procurement w/State	5,000
Other Federal Agency cost through an Interagency agreement (i.e. FEMA, USCG Strike Team)	7,000
TAT costs	10,000
NCLP analytical services	20,000
ERT/EERU	20,000
Regional laboratory services	5,000
Intramural (HQ and Region)	45,000
TOTAL PROJECT CEILING	\$857,000

(2) The \$1,000,000 limit excludes all enforcement costs. Enforcement costs are defined as:

(a) Payroll hours charged to the site by technical enforcement personnel in the Regions and Headquarters.

(b) Payroll hours charged to the site by Regional and Headquarters legal personnel.

(c) Enforcement related contract support tasks such as responsible party searches and financial assessments. (This work is generally contracted under the Technical Enforcement Support (TES) contract.)

(d) Travel costs charged to the site for technical enforcement and legal personnel in the Regions and Headquarters.

Also excluded from the \$1 million limit are costs associated with CERCLA 104(b) investigative activities undertaken before the initiation of onsite cleanup work. However, the routine documentation and evidence collection (e.g. sampling to document presence of a hazardous substance) to support the initiation of removal activity and possible future cost recovery action should not be considered as enforcement costs, and thus do count against the \$1 million limit.

(3) The RA may redelegate to On-Scene Coordinators (OSCs) authority to approve actions costing up to \$50,000 at 1) classic releases from transportation accidents, active or operating facilities, or deliberate dumps; or 2) when there is a risk of death, injury, or catastrophic environmental damage from hazardous substance releases at inactive or abandoned facilities or sites. For purposes of this delegation the following definitions are provided.

- o Classic releases mean those incidents in which hazardous substances have been released to the environment for a relatively short time from either a transportation related source or from an active or operating facility. Such release is either the result of an accident, fire, explosion, or failure of a container or handling system or the intentional disposal in a one time incident to an area not used (previously or presently) to dispose of hazardous substances (i.e. midnight dump).
- o Risk of death, injury, or catastrophic environmental damage from hazardous substance releases at abandoned or inactive facilities includes imminent or actual events such as 1) fire and explosion, 2) release of acutely toxic liquids or vapors, or 3) acute contamination of a water supply at the tap in a matter of hours or days.

The OSC's \$50,000 authority is part of the RA's \$1,000,000 authority, it is not in addition to that authority. The OSC must document in a memo to the record in accordance with the action memo format in Appendix 2 (but addressed to the Division Director, instead of the RA) the activation of the \$50,000 authority. This memo must be prepared within 24 hours of initiating action. The \$50,000 authority can be used to initiate response and can be used more than once at a site for project restarts due to new life threatening events, but not for continuations of work in progress. It may be used for a restart that would exceed the six-month limit if new life threatening events occur, but not for continuations of routine work. For such a restart, a request for an exemption to the six-month limit must be prepared in accordance with the format in Appendix 8 (but addressed to the Division Director, instead of the RA). The \$50,000 authority may not be used for a restart that would cause total removal costs to exceed the RAs \$1,000,000 approval authority, unless a ceiling increase is obtained; nor may it be used past the \$900,000 checkpoint (described in Section E of this document) unless an HQ exemption to the \$1 million limit is obtained. In these emergency circumstances verbal approval may be obtained, but it must be followed up within 24 hours

with a ceiling increase request in accordance with the action memo format in Appendix 4. When activating the OSC's \$50,000 authority the Region must send a copy of the action memo to ERD within 5 days.

(4) When using the RA's authority, the Region must prepare an action memo in accordance with the format in Appendix 2. The request should be originated by the OSC and forwarded to the RA (or the Division Director, if the RA has redelegated that authority). The Region must submit to the Emergency Response Division (ERD), within 5 days of the initiation of an RA approved response activity, a copy of the signed action memorandum. This submission may be made by Telefax (#202-755-2155) or by overnight Regional pouch mail. The Region should also notify the Removal Operations Team by phone (#8-382-2188) or TWX (#710-822-9269) as soon as possible when the RA has approved any removal.

(5) If it is necessary at any time to discuss a potential immediate removal action with ERD, contact the Removal Operations Team, Response Operations Branch, at 8-382-2188. Removal Operations Team staff are available to assist in the preparation of immediate removal requests either in Regional offices or on-site.

b. HQ Authority and Approval Procedures

In accordance with Delegation 14-2, signed by the Deputy Administrator on April 16, 1984 (see Appendix 3), the AA, OSWER will approve immediate removal actions for all cleanups initially or ultimately requiring over \$1,000,000 in obligations (as defined in Section C.3.a.1 above).

Procedures for contacting HQ during duty and non-duty hours are as follows.

(1) During REGULAR WORKING HOURS the following approval sequence shall be used:

(a) The OSC shall notify the Removal Operations Team, Emergency Response Division (ERD) of the Region's intent to request HQ approval to initiate an immediate removal. (Phone # 8-382-2188, Magnafax # 202-755-2155, TWX # 710-822-9269).

(b) The OSC shall then provide the information set forth in the action memo format in Appendix 2 (previous 10 point document). The request must be signed by the RA, and be addressed to the AA, OSWER, through the Director, OERR, to the attention of the Director, ERD.

(c) The Removal Operations Team, ERD, will review the action memo, coordinate and gain concurrences from other offices as necessary (e.g., the Office of Waste Programs Enforcement, OGC, and Remedial), and relay the request and a recommendation for approval/denial to the Director, Office of Emergency and Remedial Response (OERR). The Director, OERR, will review the request and forward it with his recommendation to the AA, OSWER, for final approval.

(d) The ERD will then communicate the OSWER decision back to the OSC as quickly as possible. Written confirmation of the decision will be forwarded to the OSC by ERD as soon as practicable.

(e) In an emergency, the initial request or request to exceed \$1 million may be made verbally. Within 24 hours, the OSC shall provide the information set forth in the action memo format in Appendix 2 and Appendix 4 respectively. The request must be signed by the RA.

(2) During NON DUTY HOURS (after 5:00 p.m. EST on weekdays, on Saturday, Sunday, and holidays), the following approval sequence will be used:

(a) The OSC will call the National Response Center (NRC), 800-424-8802, identify himself/herself, and ask to be put in contact with the EPA ERD duty officer.

(b) The NRC will contact the EPA ERD duty officer.

(c) The ERD duty officer will contact the OSC and ask for the information listed in Appendix 2, and notify the supervisory duty officer, the Director, OERR, and the Assistant Administrator, OSWER, who will approve or deny the request.

(d) The ERD duty officer will communicate the decision and the appropriate accounting information to the OSC as quickly as possible and will confirm the decision in writing by the end of the next work day. Until the end of the fiscal year, if the decision is to proceed and the site is new and has no previous site identifier, the ERD duty officer will provide the OSC with a site identification number. All other accounting information (i.e. account number using the new identification number, or the document control number) should be obtained from the Regional Office in accordance with established procedures. After October 1, 1984, the site identification number also will be obtainable from the Regional Office.

(e) The formal request from the RA in action memo format, shall be sent to ERD within 24 hours or on the next working day.

4. Ceiling Increases

As discussed in Section C.3. above, immediate removals are approved by the Regional Administrator or the AA, OSWER, with an estimated total project ceiling level specifying the amount of funds available for the project. In order to exceed this ceiling, a formal ceiling increase request (see Appendix 4) must be approved by the RA or the AA, OSWER, as detailed below.

The amount of information required in a ceiling increase request will vary from site to site, depending on the circumstances. In general, the request should include information on the current site conditions, actions taken to date, costs to date, and the reasons why the ceiling increase is required (e.g., changed site conditions, increased volume of waste, revised estimates). It is important to detail whether the increase is necessary due

-17-

to the need to perform more work to mitigate the threat in the original scope of work, or if there is an additional threat to human health, welfare or the environment, not previously documented, requiring additional removal measures. If additional threats are disclosed, a new finding should be made that they meet the NCP criteria.

a. Regional Approval

The Regional Administrator's authorities include the ability to approve ceiling increases up to \$1,000,000 as follows: as with the RA's \$1,000,000 approval authority, this authority applies to cleanup contractor costs, letter contracts with States, site-specific interagency agreements, EPA Regional Laboratories, HQ and Regional intramural costs, and costs associated with TAT, NCLP and the ERT/EERU. The Region must transmit to ERD, within 5 days of the RA's approval of the ceiling increase, a copy of the signed action memorandum. This must provide the information specified above and should be in accordance with the format specified in Appendix 4. The submission should be made by Telefax (#202-755-2155) or by overnight mail. The Region should also notify the Removal Operations Team by phone as soon as possible of the ceiling increase approval (#8-382-2188) or TWX (#710-822-9269).

Delegation 14-2, (see Appendix 3) requires the approval of the AA, OSWER, for removals initially or ultimately costing more than \$1,000,000. Therefore, removals begun under the RA's authority should exceed \$1,000,000 only due to unforeseen circumstances. In these situations, HQ approval is required. The unforeseen circumstances should be fully explained in the ceiling increase request to HQ.

b. Headquarters Approval

Ceiling increases to cover costs for projects that exceed the RA's \$1,000,000 authority (see Section C.3.a.) are approved by the AA, OSWER. Ceiling increase requests that require HQ approval must be submitted under the signature of the RA, include the information specified above, and be in accordance with the format specified in Appendix 4. If a \$1 million exemption has not previously been approved by the AA, OSWER, the ceiling increase can be requested in the \$1 million exemption request in accordance with the format specified in Appendix 9 (see Section E). The request should be sent through the Director, OERR, to the attention of the Director, ERD, so that it is received by the appropriate Project Officer in ERD as soon as possible. This is especially critical when, because of unforeseen circumstances, little time is available to process the request. Whenever possible, requests should be submitted at least one week before the project ceiling will be reached to ensure enough time for processing and, ultimately, to ensure that the project will be continued uninterrupted. It is recommended that when a request is urgent, it should be Telefaxed (#202-755-2155) or sent by overnight mail.

5. Evaluation and Determination of Appropriate Response

Section 300.66 of the NCP provides for more extensive investigation of an incident to determine appropriate action (1) upon completion of an immediate removal action or (2) when a preliminary assessment made under §300.64 of the NCP indicates that a Fund-financed response other than an immediate removal may be necessary. When either of these two situations exists, the Region should conduct, as soon as practicable, further evaluation of the incident to determine whether planned removal or remedial action is needed.

In addition to inspections to assess the nature and extent of the release, the evaluation may include investigations, monitoring, surveys, testing and other information gathering as appropriate. The evaluation should be coordinated with the State. The decision rationale presented in Section C.2 of this document for determining the need for immediate removal may be useful in evaluating the need for planned removal, as well.

The evaluation may result in a determination by the Region that planned removal is appropriate, in which case the procedures outlined below in Section C.6. should be followed. Alternatively, new information may come to light that necessitates further immediate removal. If so, a request to initiate (or continue) an immediate removal should be made as described in Section C.3 of this guidance.

6. Initiation of Planned Removal

As mentioned in Section C.3 of this document, the Deputy Administrator, through Delegation 14-1-A, delegated authority for all removal actions costing under \$1,000,000 to the RAs, thereby allowing RAs to approve planned removal actions. This delegation also allows redelegation to the Division Director level, authority to approve actions costing up to \$1,000,000, provided, they do not exceed 6 months in duration. Further, by this delegation, the RA may grant exemptions from the 6 month limit in accordance with the procedures in Section E of this document. The information presented in Section C.3.a.(1) and (2) of this document on costs included in, and excluded from, the \$1,000,000 limit apply to planned removals as well as immediate removals. Approval of planned removals costing more than \$1,000,000 will be made by the AA, OSWER, in accordance with Delegation 14-2.

a. Regional Approval

For RA-approved planned removals, the following approval sequence is to be used during normal weekday hours (planned removal approval requests may not occur during off-duty hours):

(1) Because planned removals involve considerable processing, the decision to approve a planned removal should be thoroughly coordinated within the Region. It is particularly important to coordinate all requests through Regional enforcement personnel to avoid unnecessary processing where private party response could be obtained.

(2) The Region should obtain a written assurance from the Governor or his/her designee of the State's willingness to participate in a specific planned removal action and intent to provide the minimum cost-share contribution. The letter from the Governor or designee (letter of intent) should be sent to the Regional Administrator and must include the following:

- (a) A description of the nature and extent of the release;
- (b) A description of actions taken or underway at the site;
- (c) A description of the proposed planned removal; and
- (d) Assurances that the State will pay at least 10 percent of the costs of the action (for a site privately owned at the time of disposal), or at least 50 percent (for a site owned by the State or a subdivision thereof, at the time of disposal) and 100% of all operation and maintenance upon termination of the planned removal. These assurances are regulatory ones under the NCP §300.67(b)(4), and are not pursuant to CERCLA section 104(c)(3).

(3) The Region should prepare a planned removal action memorandum (as described in Appendix 5) and include a copy of the letter of intent from the State's Governor or his/her designee. The request should be originated by the OSC and forwarded to the RA (or the Division Director if the RA has redelegated that authority). A copy of the action memo should be sent to ERD in HQ within 5 days of the approval.

(4) Enforcement will be consulted to assure that 1) notice letters, if appropriate, have been sent to all known responsible parties and 2) that no known responsible parties will take over the cleanup. See Section K.2 of this document for more information on this subject.

b. Headquarters Approval

Headquarters approval will be accomplished using the same procedures listed above except that action memos are originated in the Region, signed by the RA, and submitted to the AA, OSWER, along with a copy of the letter of intent from the State Governor. The request should be sent through the Director, OERR, to the attention of the Director, ERD, so that it is received by the appropriate ERD project officer. ERD will coordinate the request with OERR and other HQ offices, then forward it with a recommendation for approval or denial to the Director, OERR, who will forward it to the AA, OSWER for final decision. ERD will notify the Region of that decision.

At this point, the remainder of the procedure for processing a planned removal depends on whether the State or EPA will lead in the action. The two procedures are discussed in Sections C.7 and C.8 below. These procedures reflect Delegation 14-1-B, dated April 16, 1984, by which RAs have been delegated the authority to enter into cooperative agreements and Superfund State contracts (SSC) for removal actions.

Ceiling increases and major changes to the scope of work for planned removal actions will be prepared in accordance with Sections C.4.b and C.10 respectively. Whenever such requests are approved, the SSC or cooperative agreement with the State must be amended appropriately.

7. Planned Removals - EPA Lead

Concurrent with the procedure for procuring a cleanup contractor (described in Section D), the Region should work with the State to prepare a Superfund State Contract (SSC). The SSC must be coordinated with Regional Counsel to produce a final document to be signed by the RA, and forwarded to the State for signature. This document is not a procurement contract; rather, it outlines EPA's and the State's responsibilities as well as payment schedules for the State's cost share and related information. A sample format for the SSC is in Appendix 7. On-site action will not commence until the SSC is fully executed. Contact the Guidance Development Team, ERD, at 8-382-2200, for further information on preparing and negotiating this document.

8. Planned Removals - State Lead

If a State leads the removal, the State, not EPA, is responsible for procurement of a cleanup contractor. Further, instead of an SSC, the State and EPA must negotiate a cooperative agreement. Since these agreements have been so infrequent in the removal program, Regional personnel are advised to consult with the ERD Guidance Development Team (8-382-2200) for current information on processing planned removal cooperative agreements prior to submitting a State-lead planned removal action.

9. Cost Share Calculations for EPA Lead Actions

a. As discussed above, States are required to contribute a cost share for planned removals. This cost share can be composed of cash, verified State credits, and/or services, pursuant to the provisions of their SSC. Such services must be authorized in advance by the OSC as being a necessary part of the cleanup action. Costs incurred by the State prior to the initiation or after the completion of the planned removal cannot be included in their cost share.

b. As soon as possible after completion of the removal action, the Region and the State should each compute their respective site specific allowable costs. Allowable costs are defined respectively in Section G of this guidance and Chapter 1 of the Federal Procurement Regulations §1-15.703.1. EPA's cleanup contractor costs will be based on the final invoices received by The Financial Management Division (FMD).

c. The State should submit its cost information in the form of a letter to the OSC. The letter should include the following information:

- 1) Identification of the total amount being claimed.
- 2) Listing of the units of government which incurred the costs (i.e., State, county, local).

-21-

3) The costs for each governmental unit in detail by cost element (i.e., labor, travel, equipment, etc.).

4) Brief description of specific functions performed by each governmental unit as it pertains to the site (i.e., as specified in the SSC).

To be allowable, services provided must have been authorized by the OSC.

5) A certification that the costs claimed have not been reimbursed under any other Federal program or grant, nor by non-Federal sources such as potentially responsible parties. This certification must be signed by the State's fiscal manager or the State Agency's financial director.

6) The complete name, address and telephone number of the State official who should receive a billing, if one is necessary.

7) Other pertinent information, as appropriate.

d. The State's costs will be reviewed by the Region to make a determination of allowability under CERCLA. This review will consider the following specifications: that the costs claimed were necessary and reasonable for the specific action, and not a general expense required to carry out the overall responsibilities of the State Government; that the costs were EPA authorized; that the costs were not prohibited by State/local law; and that they are not accountable to or included as costs of any other Federally financed program.

e. EPA and the State will discuss and resolve any questions about costs. The cost of the allowable State services will then be added to EPA costs to determine the Total Project Cost (TPC); the State's cost share is ten or fifty percent of this figure. The value of the State services will be subtracted from the ten percent cost share.

The following examples, which assume a ten percent cost share, may help clarify this procedure:

	<u>Site 1</u>	<u>Site 2</u>
EPA Services	\$450,000	\$470,000
Allowable State Services	50,000	30,000
Total Project Cost	\$500,000	\$500,000
	x 10%	x 10%
Required State Cost-Share	50,000	50,000
Allowable State Services	-50,000	-30,000
	0 = No cash contribution needed from State.	20,000 = State would owe this as a cash contribution (could also be satisfied with verified State credits)

-22-

Site 3

EPA Services	\$440,000
Allowable State Services	60,000
Total Project Cost	\$500,000
	x 10%
Required State Cost-Share	50,000
Allowable State Services	-60,000

-10,000 = State contributed services above
and beyond their required cost
share - not reimbursable

f. EPA will notify the State of these computations. If the State's allowable costs for services and verified State credits total less than ten percent (or fifty percent if appropriate) of the TPC, a bill will be sent to the State for a cash contribution.

g. If the State's allowable costs for services and verified State credits are more than, or equal to, ten percent (or fifty percent if appropriate) of the TPC, a letter acknowledging that the cost share has been met will be sent to the State and the verified State credit, if any, will be reduced by the amount used to satisfy the cost share. There will be no reimbursement to the State or increase to the verified State credits for State costs which exceed the cost share requirement.

h. All costs may be subject to audit by EPA's Office of the Inspector General. There is no statute of limitations as to when this audit may be done. If a discrepancy is found, arrangements will be made to reconcile it.

NOTE: A matrix summarizing all of the approvals contained in Section C has been included as Appendix 6.

10. Changes to Project Scope of Work - Immediate and Planned Removals

If major changes/alterations in the project scope of work are necessary at an approved removal action, but project costs remain unaffected, the approval/concurrence of the authorized official who signed the original action memo is required. This will provide documentation to the record of the change in project scope and redirection of funds for the new tasks to be performed.

Changes to a project scope of work which increase the total project ceiling will be approved/documented in a ceiling increase request. See Section C.4 of this document.

D. REMOVAL CONTRACTING PROCEDURES ON EPA LEAD PROJECTS

The principal mechanism for procuring response services for both immediate and planned removals is now the Emergency Response Cleanup Services Contracts (ERCS). ERCS can also be used for initial remedial measures. ERCS includes four zone contractors, providing the following coverage for EPA Regions:

- o Zone 1 - Regions 1-3
- o Zone 2 - Region 4
- o Zone 3 - Region 5
- o Zone 4 - Region 6-10

These zone contractors are able to provide a full range of response services including: containment and countermeasures; cleanup, mitigation and disposal; restoration and analytical services. There may be 20-30 Regional contractors supplementing these zone contractors, who can provide similar services but have smaller resource capacities and cover more localized geographical areas. However, this supplemental contractor concept is still under development. Additional information detailing the capabilities of the zone and Regional contractors is in the Emergency Response Cleanup Services Contracts (ERCS) Users' Manual, October 1983.

ERCS substantially replaces the former procurement procedures for both immediate removals (i.e., Interim Emergency Procurement Procedures) and planned removals (i.e., limited competition or non-competitive negotiated procurement). In some circumstances, however, OSCs will continue to use these procedures. An ERCS contractor may be unable to respond to an immediate removal in a timely manner, there may be a conflict of interest, or a highly specialized contractor is required. In these cases, the OSC may upon consultation with Procurement and Contracts Management Division (PCMD) continue to utilize the revised Interim Emergency Procurement Procedures described in Section D.2 of this document.

OSCs should note that ERCS services are intended for cleanup and that, ERCS may not be used for preliminary assessments, extent of contamination surveys and broad planning activities. These restrictions on the use of ERCS are necessary to avoid a potential conflict of interest or even appearance of a conflict of interest. It is recommended that the Environmental Response Team (ERT) be contacted to obtain these services.

1. Procedures for Using ERCS

Once HQ or the Region has approved a removal action (and, in the case of a planned removal, the SSC is signed), the Region can access the services of the appropriate ERCS contractor through issuance of a Delivery Order (DO). The process for issuing a DO is as follows:

-24-

a. A Delivery Order (DO) contains 5 elements: standard specifications (e.g., accounting data, response time requirements); a statement of work (SOW); a ceiling amount; site-specific health and safety and institutional requirements; terms and conditions. The level of detail in the DO will vary according to the urgency of the removal action.

For example, for situations in which the OSC has limited time in which to assess the nature of the release, the SOW in the DO may contain general descriptions of the tasks required. By contrast, for less urgent removals, the SOW should include detailed descriptions of services, task schedule and deliverables.

b. Delivery Orders will be issued by Federal Ordering Officers (EPA OSCs, Regional Site Project Officers, and other designated officials). On approved projects, Ordering Officers may obligate the government only up to \$250,000. Obligations above that amount require HQ Contracting Officer execution as described in the ERCS Users' Manual. In most instances, the Ordering Officer and the OSC directing the removal will be the same individual. Where this is not the case, the Ordering Officer and the OSC should coordinate the preparation of the SOW of the DO.

c. Upon completing and signing the DO, the Federal Ordering Officer will issue it to the contractors' Program Manager or designee. The contractor must send both the Ordering Officer and the PCMD Contracting Officer an acknowledgement of the receipt of the DO within one week or half of the time specified for the period of performance, whichever is less.

d. Responsibility for supervising and monitoring the contractors' activities rests with the OSC, regardless of who serves as the Ordering Officer. During the response, modification to the SOW, completion date or DO ceiling may be needed. The OSC or Ordering Officer is responsible for requesting execution of a written modification from the PCMD Contracting Officer. Most requests can be handled by telephone. The Contracting Officer prepares, signs and issues Standard Form 30, "Amendment of Solicitation/Modification of Contract" to the ERCS contractor.

e. For procedures on preparing procurement requests for Delivery Orders, refer to Section H (Financial Management Procedures) of this guidance.

2. Contracts Issued Outside Emergency Response Cleanup Services System

OSCs still have the ability to contract outside the ERCS system when conducting removals where utilization of an ERCS contractor is inappropriate. Use of an ERCS contractor is inappropriate if 1) the situation presents a conflict of interest; 2) the contractor cannot respond soon enough or; 3) a unique situation warrants another contractor. In these cases, the OSC will work in close coordination with the HQ PCMD Contracting Officer in arranging the procurement. These procedures will differ from those in the January 1982 Interim Emergency Procurement Procedures for the Hazardous Substance Response Program - Revision No. 1, only in that the Notice to Proceed will have an upper limit of \$10,000, although this amount can be increased by the

-25-

HQ Contracting Officer. Additionally, the Order for Services will have an upper limit of \$2500. The Letter Contract with State and local governments will continue to be available to procure services for up to \$50,000 from States or localities. Amendments for amounts above \$50,000 must be processed by PCMD.

3. Oversight of Contractors

Appropriate oversight must be maintained over contractors performing removal services for the Agency. OSCs should use their professional judgment in determining how long they must be onsite to supervise contractor activities and when compelling circumstances, such as another ongoing removal action at another site, require them to leave a site under the supervision of an assistant. In general, the supervision by an assistant would be appropriate in situations during which no change in work orders was anticipated while the OSC was offsite. On-scene activities may be overseen for the OSC by the OSC representative (who may be, for example, another EPA employee or Coast Guard employee), or a State employee or a TAT member. However, State personnel or TAT members may only carry out the orders of the OSC and give no direction themselves. EPA Cost Control Documents may only be signed by a Federal employee, that is the OSC, or the OSC representative.

E. SPECIAL EXEMPTIONS TO LIMITS ON REMOVAL ACTIONS

Removal actions are limited by section 104(c)(1) of CERCLA and 300.65(d) and 300.67(e) of the NCP to six months in duration or \$1 million in cost. Pursuant to Delegations 14-1-A (Selection and Performance of Removal Actions Costing up to \$1 million) and 14-2 (Removal Actions Initially Costing over \$1 million and Continued Removal Actions after Obligations of \$1 million) the Regional Administrator (RA) may approve exemptions to the six-month limit and the Assistant Administrator, OSWER, may approve all exemptions to the \$1 million limit. Such approval will be based on findings that (a) continued response actions are immediately required to prevent, limit, or mitigate the emergency; (b) there is an immediate risk to public health or welfare or the environment; and (c) such assistance will not otherwise be provided on a timely basis.

The following procedures assure that there is sufficient time for a decision to be made on exceeding the six month or \$1 million limit before the limit is reached, and that reasonable efforts are made to avoid exceeding these limits. Statutory exemptions procedures apply primarily to immediate removals but may be granted for planned removals where conditions can be shown to meet the statutory criteria of section 104(c)(1). The finding that there is a need for an exemption to either the 6 month or \$1 million limit may be made when approval of an immediate removal is first granted. However, it should be based on a projection of the conditions that are expected to continue to exist at the site after the six months work is completed, or \$1 million has been expended. This early determination can facilitate later continuation of removal actions that require exceeding the 6 month or \$1 million limits.

1. Six Month Limit

Exemptions to the six-month limit may be granted by the RA for a definite amount of time (i.e., 30 days) or for an indefinite period of time (i.e., until remedial action can begin). The six month time period will commence on the day on-site removal action actually begins, excluding any time spent doing 104(b) investigations, monitoring surveys, or other information collection prior to the approval of a removal action and excluding any time spent procuring a cleanup contractor or conducting any other off-site planning activities after approval of the removal action. It does not begin on the date that the action memorandum was signed approving the action, unless on-site work begins that day.

The time limit for an individual removal action shall expire six months, in calendar days, from the date the removal work onsite began (whether that work is an immediate or a planned removal or both). For example, the six-month time period for an immediate removal begun on June 14, 1983, would expire on December 14, 1983. A removal will be considered completed for the purposes of the time limit when on-site removal actions are completed and, where applicable, a contract has been signed for the proper disposal of any hazardous materials removed from the site. Time taken for the offsite temporary storage of materials before the ultimate disposal is not included in the statutory time limit.

2. \$1 Million Limit

Exemptions to the \$1 million limit may be granted by the AA, OSWER. The \$1 million exemption request will also recommend a new ceiling for project completion for approval by the AA, OSWER. The \$1 million limit applies to all obligations from the Fund associated with the approved removal action as categorized in Section G.1 of this guidance.

Section 104(b) activities conducted by EPA or any other Federal agency prior to approval of a removal action are not counted toward the \$1 million limit. Further, a State's cost share for a planned removal or any State costs incurred for services at an immediate or planned removal (because they are not reimbursed by the Fund) do not count against the limit. Also see Section G of this guidance on allowable costs.

Finally, if more than one immediate and/or planned removal has been undertaken at the same site, the sum of the total project costs of all the removals counts against the \$1 million limit.

3. Request to Exceed the Statutory Limits

The OSC should review the status of removal activities and site conditions to determine if there will be a need to exceed the six month or \$1 million limit in each of the following cases:

- a. When a total of \$800,000 has been obligated for commercial cleanup contracts at a release/site;
- b. When four months have elapsed since removal began;
- c. When an estimate has been received from a contractor that exceeds either six months/\$1 million; or
- d. If at any earlier time during the removal action, the OSC believes that the six month/\$1 million limits will be exceeded.

Once the OSC has knowledge that the \$1 million limit must be exceeded for project completion he/she must prepare an action memorandum for a \$1 million exemption request from the RA to the AA, OSWER. The OSC should notify ERD through a POLREP (see Section I of this document) as soon as it appears that a \$1 million exemption request is necessary. Such requests require HQ coordination with several offices and advance information will help expedite the process.

Typically, the RA recommends a new project ceiling exceeding \$1 million as part of this action memorandum. An example of this type of situation would be a removal action which currently has a project ceiling of \$800,000 originally approved by the RA (see Appendix 9). The OSC discovers that an additional \$460,000 will be necessary for project completion. The OSC would prepare the \$1 million exemption request to document meeting the statutory

criteria of section 104(c) of CERCLA. The AA, OSWER would approve the \$1 million exemption request and establish a new ceiling (\$1.26 million based on the above example) by concurring with the RA's recommendation in the exemption request.

For responses to classic releases, where the OSC and RA can not readily predict the cost of completing the action, it may be more appropriate for the RA to approve ceiling increases in increments until he has established the project ceiling at \$1 million. In these cases it is suggested that the RA request a \$1 million exemption of the AA, OSWER by the time he has obligated \$900,000 in extramural expenses. This allows a \$100,000 buffer for other project costs such as intramural obligations that could place the total project cost at or above \$1 million. Again, a new project ceiling would be established as part of the \$1 million exemption request to the AA, OSWER.

The OSC must submit the exemption request (in the form of an action memo from the RA to the AA, OSWER) to allow removal activities to continue past the \$1 million limit. The request should also be sent to the attention of the Director, Office of Emergency and Remedial Response, with a copy to the Director, Emergency Response Division, so that it is received by the appropriate Project Officer in ERD as soon as possible. This is especially critical when, because of unforeseen circumstances, little time is available to process the request. It is recommended that the request be telefaxed (#202-755-2155) or sent by overnight mail to ERD when the request is urgent.

Similarly, the OSC must submit a request (in the form of an action memo) for exemption from the 6 month limit to the Regional Administrator with a copy to the Director, OERR.

4. Exemption Request Information

The Region's request to the AA, OSWER for a \$1 million exemption, or to the RA for a six-month exemption (see samples in Appendices 8 and 9) should contain the following information in an action memorandum:

a. An evaluation of the nature of the immediate threat that will continue to exist if work is halted when limits are reached, including hazardous substances involved and estimates of the amounts; human populations and environmental resources threatened and the nature of that threat, (e.g., the substances will contaminate the drinking water supply, destroy livestock or crops, explode and endanger a residential area); and the amount of threat involved (i.e., in the best judgment of the OSC, the likelihood that such damage will occur if immediate removal is not continued). This information must cite the CERCLA 104(c)(1) criteria for extending the limits and demonstrate how they are met by current conditions.

b. The status of current activities and reasons for non-completion within the statutory limits;

c. A description of recommended additional removal actions and an estimate of their costs and effectiveness in mitigating the threat;

d. The expected timetable for completion of removal work at the site and a brief description of projected remedial work;

e. Other parties who are willing or who could be made to respond, efforts to get them to respond and the results of those efforts, including the status of any enforcement activities.

Decisions on \$1 million exemption requests will be made by the AA, OSWER, and communicated back to the OSC verbally and in writing. Exemptions will be periodically reviewed to assure adherence to time schedules and cost estimates.

5. Additional Increments

An additional exemption to exceed the six-month limit may be requested and granted when a previously granted time exemption has expired but the statutory criteria are still met. Additional time requests should be processed according to the same procedures outlined above. The \$1 million exemption need only be requested once. Once the \$1 million exemption has been approved by the AA, OSWER, any additional increases to the project ceiling must also be established by him.

F. STUDIES AND INVESTIGATIONS, RELATED TO RESPONSE ACTIONS
UNDER SECTION 104(b)

Section 104(b) of CERCLA provides for planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations that may be necessary to plan and direct response actions. Section 104(c)(1) exempts these costs and the time spent implementing the activities from the six month/\$1 million limitations.

Studies or investigations under 104(b) may be appropriately conducted as part of the preliminary assessment of an observed or suspected hazardous substance release where an OSC requires more information to determine the need for, extent of, or best method to conduct immediate or planned removal. Where such studies are necessary, the OSC shall use, to the extent possible, the inhouse capability of the ERT, the TAT, the Field Investigation Team (FIT) and NCLP. Where appropriate, the services of other Federal agencies may be requested by the OSC (for example, limited health assessments performed by Department of Health and Human Services). See Section O of this document for the procedures to obtain assistance from other Federal agencies.

The ERT maintains a 24-hour response capability consisting of support personnel specializing in all aspects of environmental emergencies. When an OSC determines that ERT assistance is necessary he should contact the Director, Hazardous Response Support Division (475-8600) during duty hours or, during non-duty hours, the ERT leader at the 24-hour response number (201-321-6660 or FTS 340-6660). The authority to activate the ERT rests with the Director of Hazardous Response Support Division or his designee. Upon activation, appropriate ERT personnel and resources are dispatched to operate under the direct operational control of the OSC.

The NCLP provides a national system of contract laboratories to augment EPA in-house laboratory analytical support for response actions. The OSC can access the NCLP through the Regional Sample Control Center official designated by each Regional Office.

G. ALLOWABLE COSTS FOR REMOVAL ACTIONS

When providing response to a release or a threat of a release of a hazardous substance, the OSC is authorized to incur costs provided they qualify as appropriate uses of the Fund. These costs must be 1) directly allocable to a particular response, 2) reasonable, and 3) necessary to accomplish the response.

1. Allowable Costs for Fund-Financed Removals

Allowable costs which can be incurred against the Fund include the following:

a. EPA extramural costs incurred for all services in the conduct and support of removal actions. These include:

- (1) Contractor and consulting costs;
- (2) Leasing or rental of equipment;
- (3) Incremental operating costs for EPA owned equipment;
- (4) Supplies, materials and equipment (including transportation costs) procured for the specific removal activity and fully expended during the removal;
- (5) Response-related national contract services such as TAT, NCLP, and ERT's EERU;
- (6) Payments to landowners who are not potential responsible parties (PRPs) for easements and rights-of-way.*

b. Response-related damages (i.e., those resulting from the response measures themselves) to land owners who are not PRPs including terrain damaged by heavy equipment passage or the establishment of access roads or a command post.*

c. EPA Regional (including Regional laboratories) and Headquarters intramural costs (salaries, benefits, travel, overtime, overhead,* etc.) associated with EPA Federal removal actions.

d. Site-specific extramural and intramural costs incurred by other Federal agencies in removal actions (i.e., site specific IAGs with FEMA, USCG, etc.).

e. State and local costs under a Cooperative Agreement.

* Policy under development. Please consult with the ERD Guidance Development Team if these situations arise.

f. State services provided through a procurement contract (Order for Services or Letter Contract with State and local Governments).

These last two cost categories (1.e and 1.f) must also be allowable in accordance with OMB Circular A-87 establishing cost principles for State and local government.

2. Allowable Costs for Response Oversight

Costs incurred by OSCs, both intramural and extramural, associated with oversight of non-Federal removal actions are allowable.

3. Non-Allowable Costs

Removal costs not allowed include:

a. State and local costs for which prior authorization was not specifically given by the OSC or addressed in a cooperative agreement or Superfund State Contract or procurement contract (i.e., municipal services such as use of police or fire departments and State personnel that are on-scene performing tasks not specifically requested by the OSC).

b. Costs to restore release-related damages to property (as opposed to response-related damages). Release-related damages are those that occur as a direct result of the release of a hazardous substance (i.e., poisoning of fish or livestock). These are not allowable as removal costs.

Payment of restoring, rehabilitating or acquiring the equivalent of costs to natural resources damaged by the release may be made upon the trustee's request for preauthorization under the claims regulations, which are under development.

c. Costs for removal of petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance, natural gas, natural gas liquids, liquified natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

d. Costs incurred by a contractor to provide response measures, for which that contractor is later found to be liable.

More complete guidance on allowable costs is currently being developed by OERR.

H. FINANCIAL MANAGEMENT PROCEDURES

1. Accounting Data

The Region must enter four accounting and control numbers on all ERCS Delivery Orders and other contracting and financial documents such as Orders for Service and Notices to Proceed. Each Region should determine whether accounting information will be entered by the OSC/Ordering Officer or by the Region's Management Division. A more detailed description of financial management procedures for the removal program will be provided as Appendix 12, when available. The necessary accounting data elements are defined below.

a. Appropriation Number - The Department of the Treasury has assigned the permanent symbol 68/20X8145 to EPA to identify the Fund. This symbol must be entered on all financial documents and does not change.

b. Account Number - The 10-digit EPA account number identifies the year in which money was authorized; the program element and organizational level to which a spending action will be charged; and the site and activity for which funding is approved.

c. Document Control Numbers - The DCN is a unique 6-digit number that identifies each individual financial commitment at a specific release incident. Thus, a different DCN is used for each Delivery Order or modification to increase the Delivery Order at a site.

d. Object Class Code - The Object Class Code is a 4-digit number which identifies the types of materials or services obtained. Generally, the first two digits indicate a major type of expense and the second two digits identify a sub-object class that provides more detail about the expenditure. For ERCS, Notice to Proceed, and Order for Services the code is 2535.

2. ERCS Financial Management Procedures

The Emergency Response Cleanup Services (ERCS) contracts are activated for a specific removal project through the issuance of a Delivery Order (DO), supported by a Procurement Request (PR). Although a PR is generally prepared in advance of a DO, the nature of the removal program is such that the documents are often processed simultaneously or out of order. When utilizing ERCS, the OSC or other designated Federal official known as the Ordering Officer must follow the procedures outlined below.

a. Initiating a Delivery Order up to \$250,000

Upon approval of a removal action the OSC/Ordering Officer prepares and signs the DO to the ERCS contractor. Depending upon the procedures established in each Region, the accounting information requested in Block 6 will be entered by the OSC/Ordering Officer, Regional Financial Management Officer (FMO), or other designated Regional Management Division staff. If the OSC/Ordering Officer enters the accounting information, he/she should

obtain a DCN and an account number by calling the designated Management Division contact during normal duty hours, and should follow established Regional procedures for obtaining DCNs and account numbers during non-duty hours. If the appropriation number and object class category are not already preprinted on the DO, the Ordering Officer should enter these numbers. The original signed copy of the DO is submitted to PCMD-HQ, with the designated copy sent to the Research Triangle Park (RTP) Financial Management Division for entry of the obligation into the Financial Management System (FMS).

The PR is prepared and signatures obtained following established Regional procedures. The PR should be funded by the Management Division using the same accounting information that was verbally provided to the OSC/Ordering Officer. The commitment copy is sent to RTP for entry into FMS, the signed original is sent to PCMD-HQ.

b. Modifying a Delivery Order

When requesting a modification of an initiated removal, the Region should provide the Regional Management Division with:

- New estimate of total cost
- Amount already obligated
- DCN of the initial Delivery Order
- Account number, site name

The Management Division prepares a PR for the unobligated portion of the new estimated cost and submits it for approvals and signatures. Within one working day of return from the approval process, the Management Division should assign the appropriate account number and new DCN to the PR and forward the commitment copy of the PR to RTP for entry into FMS. The signed original copy of the PR is sent to PCMD-HQ where the Delivery Order Amendment is executed.

It should be noted that all modifications to Delivery Orders must be executed by PCMD-HQ, even though the total value of the DO may remain under \$250,000.

c. Initiating a Delivery Order Over \$250,000

Following the procedures described above, the OSC/Ordering Officer issues a DO for \$250,000 and sends it to PCMD-HQ. The PR is prepared for the total approved amount of the removal. PCMD-HQ will issue a modification to the Delivery Order for the additional amount over \$250,000. (If no Delivery Order is issued by the Regional OSC/Ordering Officer, the Region prepares the PR for the total approved amount, obtain approvals, and assigns accounting data. The commitment copy is sent to RTP for entry into FMS and the signed original copy of the PR is sent to PCMD-HQ where a Delivery Order for the total amount will be issued.)

-35-

d. Initiating a Delivery Order Over \$1 Million

All removal actions over \$1 million must be approved by the AA, OSWER. Once the AA approves the action memo, the Region may proceed as outlined above.

e. Completing a Delivery Order

ERCS contractors will submit separate payment vouchers for each DO. Vouchers may be submitted during the course of the cleanup but may not be submitted more frequently than monthly. The OSC must certify each voucher and expeditiously forward it to RTP-FMD for payment.

3. Non-ERCS Financial Management Procedures

When using alternatives to ERCS, i.e., Order for Services, Notice to Proceed (NTP) or Letter Contracts, OSCs should use the following procedures:

a. The OSC should complete and sign the obligating document (Order for Services, NTP, Letter Contract), except for the accounting information defined above in Section H.1.

b. Depending upon the procedures established in each Region, the accounting information will be entered by the OSC/Ordering Officer, Regional Financial Management Officer (FMO), or other designated Regional Management Division staff. If the OSC/Ordering Officer enters the accounting information, he/she should obtain a DCN and an account number by calling the designated Management Division contact during normal duty hours, and should follow established Regional procedures for obtaining DCNs and account numbers during non-duty hours. If the appropriation number and object class category are not already preprinted on the DO, the OSC/Ordering Officer should enter these numbers.

c. The original signed copy of the obligating document should be submitted to PCMD-HQ for definitization. A certified copy should be sent to RTP for entry of the obligation into FMS.

d. If it becomes necessary to increase the amount of the obligation, PCMD-HQ must issue a modification to the contract. The Region should follow the same procedures as for modifying a Delivery Order.

I. REPORTING REQUIREMENTS

1. POLREPS

POLREPS (Pollution Reports) provide factual operational data surrounding the incident and a current accounting of the total funds allocated in an incident. POLREPS should also detail measures to assure that the affected community is properly and fully informed of all response activities, in accordance with community relations requirements referenced in Section U. The Regions should bear in mind that POLREPS are a method of alerting HQ that critical events may be pending and that requests/actions are about to be initiated. However, all requests for HQ decisions must be formally submitted in accordance with Section C of this guidance. To properly assist HQ management, routine pollution reports are sent to ERD at (202) 755-2155 (Telefax, Dex 4100), 710-822-9269 (TWX)*, or 892786 (TELEX for USCG POLREPS) and should contain the following pertinent information:

a. Initial POLREPS

An initial POLREP should be sent for all immediate removals to inform HQ of the upcoming actions. This initial POLREP should describe the incident; indicate whether an immediate removal has been requested or approved by the RA; give the status of actions (including enforcement); describe the next step(s); and indicate when a signed action memo will be transmitted to HQ.

b. Progress POLREPS

Routine progress reports should be submitted to the ERD a minimum of once every week for sites, and daily where practicable for classic spills. Progress POLREPS should identify the following:

- (1) Situation -- Present status of ongoing response activities;
- (2) Actions Taken -- Activities undertaken since last POLREP;
- (3) Future Plans -- Planned actions by the OSC;
- (4) Project Costs -- Estimate of funds obligated thus far, (including a breakdown of cost categories as shown on page 13) the estimated weekly rate of the expenditures, and anticipated future funding needed.
- (5) Any other pertinent information such as status of efforts to obtain cleanup by responsible parties.

*ERD has made available to EPA response personnel the use of Western Union's Datagram Service, which allows POLREPS to be sent from any phone to any TWX equipment. Datagram access codes and instructions have been provided to all Regions.

c. Incremental Request POLREPS

Although all requests seeking approval to continue removal beyond the \$1 million limitation must be officially transmitted under RA signature in the form of an action memorandum to ERD for consideration by the Director, OERR, and the Assistant Administrator, OSWER, a phone call should be made to the ERD Project Officer, followed by a POLREP detailing such developments, to advise HQ before official transmittal of the request.

d. Final POLREPS

When a removal action has been completed, a final POLREP (e.g., POLREP #15 and FINAL) should be submitted which describes the final actions taken at the release, results achieved, detailed final costs, and dates of completion and demobilization.

e. Special POLREPS

POLREPS should be provided to ERD on inland and coastal incidents of interest even where no Fund-financed removal was taken by EPA. Also, POLREPS should be provided to ERD on all major unanticipated developments of interest at approved removal actions, (e.g., fires, explosions, and all accidents even if no damage or injury has been caused) not covered by other progress reports. In addition to reporting accidents to ERD via POLREP, a removal action accident report (see Appendix 10) should also be completed and submitted to ERD. This form was developed to provide more detailed documentation of circumstances surrounding accidents during the course of removal actions.

2. Final OSC Report

The NCP discusses the requirement for final OSC reports in §300.56 as part of Subpart E - Operational Response Phase for Oil Removal. Although final OSC reports are not addressed in Subpart F - Hazardous Substance Response, a final OSC report must be prepared for all CERCLA-funded removal actions.

The final OSC report format can be found in §300.56 of the NCP. Within 60 days after the conclusion of a removal action, a copy of the final report prepared by an OSC should be submitted to ERD. It is necessary that ERD have these final OSC reports on hand for information and to respond to inquiries from the public, Congress, Office of Inspector General, and the General Accounting Office.

J. STATE ROLE

EPA encourages State involvement in CERCLA response to the maximum extent consistent with their capabilities, willingness and needs. Each State's involvement will be tailored to the situation in that State. The division of responsibility between the State and EPA, and any associated Federal funds, will be negotiated and incorporated in a Superfund State Contract (SSC), EPA/State letter contract for procurement of services, or other agreement (consult ERD for more guidance before making such agreements) between the OSC and the State. Cooperative agreements have been only minimally utilized in the removal program to date.

1. Immediate Removals

For the present time, all immediate removals will continue to be EPA-lead actions. States may make informal arrangements with OSCs to perform certain volunteered actions (without compensation) to support the removal action. Alternatively, State services can be procured by EPA from the State through a Letter Contract negotiated before the service is provided. Allowable costs incurred by the State may only be considered for reimbursement if such costs were specifically preauthorized by the OSC.

2. Planned Removals

Planned removal actions must be requested by the Governor of the affected State or his/her designee. The request is known as the State's letter of intent and must include (1) a description of the nature and extent of release; (2) a description of action taken or underway at the site; (3) a description of the proposed planned removal; and (4) assurances that the State will pay at least 10 percent of the costs of the action, or at least 50 percent or such greater amount as EPA may determine appropriate, taking into account the degree of responsibility of the State or political subdivision, of any sums expended in response to a release at a facility that was owned at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof, and all future maintenance costs. A State may choose to contribute services in order to meet all or part of their cost share.

To date, almost all Superfund planned removals have been EPA-lead actions. Planned removal SSCs have been executed for these situations to document respective EPA and State roles and to obtain the necessary State assurances. The Region works with the State to develop a draft SSC and coordinates with Regional Counsel to finalize the SSC. The RA signs two original SSCs and these are forwarded to the State for their signature(s). Once signed by the State, one SSC is kept by the State, the other is sent to the Regional office. The OSC should retain one original signed SSC and send a copy of the executed SSC to ERD for inclusion in the project file. No site action may commence until the SSC is fully executed.

-39-

While State lead on planned removals is not precluded, it has been so infrequently sought, that OSCs should contact ERD for further information if such an occasion arises. In all removal actions an understanding should be reached with the State at the beginning of the removal as to what State services will be reimbursable through a prenegotiated Letter Contract or allowable toward the State's cost share requirement through a SSC or cooperative agreement.

K. SECURING RESPONSIBLE PARTY RESPONSES

EPA will seek responsible party response before initiating Federally-financed removal actions, if feasible to do so. In addition, the Agency will pursue all opportunities to recover costs it has incurred.

Before seeking Superfund funding the OSC should, with assistance from Regional Counsel, make a reasonable effort to identify and compel legally responsible parties to undertake necessary response actions. The level of effort determined to be reasonable will depend upon the immediacy and seriousness of the release situation. Procedures to identify responsible parties to perform or fund the response are set out below.

1. Immediate Removal

In any immediate removal situation, efforts to identify responsible parties must include, at a minimum, oral inquiries of reasonably available on-site sources who may be knowledgeable of the situation. If a potentially responsible party is identified, the OSC must verbally request that the party respond, and inform him of the Federal interest and potential liability he may incur if it is determined that he is a responsible party and he fails to respond or responds improperly. The OSC shall notify appropriate Regional enforcement personnel as soon as possible and assist them in continuing to seek response by the private party. It is recognized that in certain emergency situations the OSC may have to first initiate Federal response and coordinate with Regional Enforcement personnel afterwards. A notice letter will be sent to the responsible party by the Regional program office to confirm the verbal request for response and notification of liability. Considering the limited time available in immediate removal situations, it is not necessary that a notice letter be sent prior to initiating the administrative order process; however, a notice letter should be sent as soon as possible to confirm the oral notice. The EPA manual entitled "CERCLA Notice Letters" (OWPE, May 1984) contains detailed guidance on preparing and issuing notice letters.

If responsible parties fail to act in response to oral notice, it may be appropriate to issue an administrative order under CERCLA section 106 that requires the responsible party to undertake response activities. While previous Agency policy was to proceed with Fund-financed response if the potentially responsible parties refused to act, the Agency will now issue administrative orders in appropriate circumstances before activating the Fund, so long as the delay in initiating a response does not pose an unreasonable risk of harm to the public health, welfare, or the environment. The OSC and Enforcement should agree on a deadline for the conclusion of responsible party negotiations for cleanup in a time-frame that is commensurate with the immediacy of threat posed by the release. If this deadline expires and the responsible party has not agreed to implement the cleanup, or the §106 order is not issued, the OSC may initiate Fund-financed cleanup. The Region should establish a procedure for resolving conflicts between offices and avoiding any delays in EPA response caused by responsible party negotiation. If the recipient of an administrative order agrees to

undertake the response measures contained in the order, the agreement may be in the form of a Consent Order. The OSC will monitor compliance with this Order and identify steps to bring parties in compliance if the terms of the Consent Order are breached. If the recipient does not agree to terms of the Order, the Fund will be used for site response, and the recipient will be sued for cost recovery, including punitive damages in appropriate cases. Guidance on the issuance of administrative orders for removals is included in the memorandum "Use and Issuance of Administrative Orders under §106(a) of CERCLA" (Courtney Price, Lee Thomas, September 8, 1983) and "Issuance of Administrative Orders for Immediate Removal Actions" (Lee Thomas, February 21, 1984). (See Appendix 11).

2. Planned Removal

Because the need to act is somewhat less urgent in a planned removal, a more thorough effort to determine the existence of a responsible party and to compel that responsible party to respond will generally be possible. Efforts to identify and obtain a response by responsible parties should be undertaken by Regional program offices, and the Office of Regional Counsel.

Efforts to obtain a responsible party response shall follow the same general procedures as those for remedial actions. Notice letters will be issued to potentially responsible parties and, depending on the response, an Agency team of Regional technical and legal personnel will quickly schedule negotiations aimed at securing private party cleanup within an established period of time.

In the typical scenario, Regional program offices will send notice letters to all known responsible parties prior to the initiation of the planned removal action. As soon as possible, thereafter, Regional program offices (after consultation with the Regional Counsel) will advise the OSC if a responsible party does not exist, cannot be identified, or is likely to be judgment-proof for all or a significant portion of the needed response. In these circumstances, the release is eligible for further consideration as a Fund-financed planned removal action.

If parties are found that are responsible for all or a substantial portion of the release, and those responsible parties are determined to be unable or unwilling to proceed with voluntary response actions, an administrative order may be issued to compel private-party response, if time permits, in lieu of Fund-financed response. If site conditions deteriorate presenting a corresponding increase in the threat to public health or the environment, the Fund can be used for a response while the administrative order process continues. The order will be revised to require the potential responsible parties to undertake site actions at the next convenient break point in activity. Procedures for issuing administrative orders are the same for both immediate and planned removals.

If a positive response to the notice letter is received, a team of Headquarters, Regional and possible DOJ technical and legal personnel will quickly schedule a finite period of settlement negotiations with the responsible parties. Fund-financed response is appropriate if no settlement is reached.

Further guidance on how to conduct a responsible party search can be obtained from Regional enforcement personnel, Regional Counsel, OECM-W, OWPE or the National Enforcement Investigation Center (NEIC).

3. OSC Oversight of Responsible Party Cleanups

When an OSC monitors a responsible party cleanup, he should employ the same cleanup standards as those EPA would use in a CERCLA-funded removal. Once the OSC approves the cleanup strategy of the responsible party, TAT may be used for monitoring the cleanup. However, the OSC should return on-site if there is any indication of responsible party delay, non-compliance, or change in cleanup strategy. The responsible party should be made aware that EPA will take over the response if it proves to be ineffective. It may be necessary for EPA to supplement responsible party response where such capabilities are limited. Such costs will be recoverable against the responsible party.

L. WORKER AND VISITOR HEALTH AND SITE SAFETY

The OSC should be aware of hazards to worker and visitor health and safety at Federally-funded removal actions. Further, the OSC should exercise great caution before proceeding into the affected area, especially before the nature of the release has been ascertained. The OSC, as the Federal official, must conform to applicable Agency as well as Occupational Safety and Health Administration (OSHA) requirements and other guidance. All States with OSHA-approved programs and private contractors at the scene of a release must conform to applicable provisions of OSHA, and should conform to their own requirements. OSHA can enforce OSHA requirements and may be able to enforce State and private contractor requirements. States without OSHA-approved programs must conform to their own requirements for their State employees. While the OSC has no "police powers" for enforcement of safety requirements, he has the responsibility to inform all site personnel and visitors of such requirements.

1. General Safety Procedures

EPA has developed Interim Standard Operating Safety Guides (revised September 1982), formerly the Interim Standard Operating Safety Procedures, which provide recommendations on the safe conduct of removal operations. It is important that each Regional Office develop standard safety procedures, consistent with these recommendations, for use during response actions and that the OSC apprise visitors and workers as to the proper safety equipment to be used on site in accordance with these procedures. In general, they should address the following requirements:

- a. Procedures should be in written form and should be prepared in advance of anticipated use rather than under the stress of an emergency.
- b. Procedures should be based on the best available knowledge, operational principles, and technical guidance.
- c. Procedures should be field tested, reviewed, and revised, when necessary, by competent safety professionals.
- d. Procedures should be understandable, practical, feasible, and applicable.
- e. All personnel involved in response operations should be briefed on operating procedures, and provided with a copy of the written procedures.
- f. Response personnel should receive thorough and periodic training in operating procedures.
- g. Response personnel should be participating in a medical monitoring program.

h. All EPA personnel working or visiting on-site must have completed Field Employee Training Requirements in accordance with EPA Order 1440.2.

i. All EPA personnel who use respirators must participate in a respiratory protection program in accordance with EPA Order 1440.3 (Respiratory Protection).

2. Site Specific Safety Plan

Because response activities associated with each specific incident are unique, standard procedures will often have to be adapted or modified to meet the incident-specific requirements. For this reason, a written safety plan must be prepared for each incident, distributed, and posted in the command post. This should be done, if possible, before removal operations begin on the site. If it is not done before on-site operations begin, it should be done as soon as possible thereafter. The plan must cover all phases of incident operations and identify key personnel. As a minimum requirement, the safety plan should address the following:

a. Establishment of the number of personnel permitted to enter the contamination zones.

b. Establishment of entry and escape routes.

c. Establishment of procedures to identify, locate, and alert off-site medical personnel.

d. Determination of physical, chemical, and biological properties of known contaminants.

e. Establishment of support area, decontamination area, and exclusion area.

f. Establishment of decontamination protocol.

g. Establishment of levels of protection.

h. Establishment of personnel area air monitoring protocol.

i. Establishment of general safety rules and equipment.

j. Scheduling of daily safety meetings.

k. Posting of key agency and emergency contacts.

M. DOCUMENTATION FOR COST RECOVERY

1. Purpose of Cost Recovery Documentation

Due to the possibility of cost recovery efforts in any case in which CERCLA funds are expended, the observation, documentation and preservation of critical facts and response costs are important to assure that:

a. Potential evidence concerning the release site and responsible parties is noted and documented before response activity or the passage of time obscures or eliminates it;

b. Physical evidence essential for a trial is collected and preserved appropriately; and

c. Sufficient evidence of total costs paid has been maintained and is available to support recovery by the government.

2. Essential Evidence for Cost Recovery

The essential elements of a cost recovery action and the nature of evidence required to sustain them are:

a. Evidence of release or substantial threat of release of a hazardous substance.

b. Evidence of responsibility of defendant(s) for presence of the hazardous substance.

c. Information that removal action taken by EPA or the State is not inconsistent with the National Contingency Plan.

d. Proof of costs of removal action by EPA or the State.

Further Guidance on this subject has been issued by the Office of Enforcement Counsel and the Office of Solid Waste and Emergency Response. See "Guidance on Pursuing Cost Recovery Actions under CERCLA," August, 1983. Also, Section R of this document deals with cost control information for documenting all intramural and extramural project costs necessary for cost recovery.

3. Sample Language for State Cost Recovery Documentation

Cooperative Agreements and Superfund State Contracts should include language that provides for cooperation and coordination between EPA and the State in documenting removal costs. Language in the cooperative agreement or contract should reflect the evidentiary needs described above. For further information on this issue, see Office of Legal Enforcement Policy memo on Coordination of EPA State CERCLA Cost Recovery Negotiations Litigation (August 1983). An interagency cost recovery work group will provide more detailed cost recovery guidance and language for Cooperative Agreements.

In addition, language should be added to reflect specific needs for quality control, quality assurance, chain of custody, and information audits:

N. RESPONSE AT FEDERAL FACILITIES

Trust Fund monies may be used to conduct removals at Federal facilities, except for DOD facilities (per the DOD/EPA MOU of August 12, 1983) as explained below. EPA policy regarding Federal facilities is for the responsible agency to conduct and finance the removal. This does not release the responsible agency from the notification requirements of Section 103 of CERCLA. If the agency cannot respond in a timely fashion, EPA may conduct the removal using Trust Fund monies and seek reimbursement from the responsible Federal agency. Administrative procedures for EPA removals at Federal facilities are under development by OERR.

Under section 300.33 of the NCP, EPA does not have authority to respond to releases on Department of Defense facilities. However, EPA can respond to that part of a release that leaves DOD facility property. An MOU between DOD and EPA sets forth the policies and procedures governing the agencies' relationship at DOD facilities. According to the agreement, DOD is responsible for undertaking and financing removal actions, but, in limited circumstances, EPA can respond or provide technical assistance to support DOD's responses at the request of DOD. Where EPA expends funds, DOD must reimburse the Fund for its share of the costs.

Within this general framework, the respective responsibilities of DOD and EPA vary somewhat depending upon whether the source is a current or former DOD facility and whether DOD is solely or jointly responsible for the release. At active facilities, DOD will assume responsibility for conducting and financing the response action, unless the facility is one of several sources of the contamination in which case EPA and DOD will jointly determine the most appropriate response and financing methods. DOD must obtain consent from EPA in order to conduct response actions at former DOD facilities. When a former DOD facility is one of two or more sources of the release, EPA will take the lead in both financing and cleanup activities at the former facility. In these cases, DOD will reimburse EPA by means of an interagency agreement, the details of which are now being finalized.

The DOD/EPA MOU of August 12, 1983, in the Removal Program Policy Notebook provides more detailed information on these policies and procedures.

O. THE ROLE OF OTHER FEDERAL AGENCIES AT NON-FEDERAL FACILITIES

1. U.S. Coast Guard

Only EPA or the U.S. Coast Guard (USCG) may provide the lead in responses at non-Federal facilities. On October 9, 1981, the USCG redelegated to EPA certain authorities previously delegated to USCG under Executive Order 12316. These redelegated authorities give EPA the lead responsibility for removal actions for a release or threat of release of hazardous substances at active or inactive hazardous waste management facilities located in the coastal zone, Great Lakes waters, and ports and harbors.

The USCG retained the response authorities in the coastal zone, Great Lakes waters, and ports and harbors, as follows: responses to releases or threats of releases from vessels; immediate removal actions concerning releases or threats of releases at facilities other than active or inactive hazardous waste management facilities; and immediate removal actions concerning releases or threats of releases at active or inactive hazardous waste management facilities when a Coast Guard OSC determines that such action must be taken, pending the arrival on-scene of an EPA OSC. Unless otherwise agreed upon by EPA and the Coast Guard, the USCG will not exercise this authority unless the EPA OSC is scheduled to arrive on-scene within 48 hours of notification of the release or threat of release.

2. The Federal Emergency Management Agency

Section 101(23) of CERCLA defines removal to include evacuation and temporary relocation. Such activities are undertaken when the public health and welfare is threatened by: 1) the release of a hazardous substance or contaminant; 2) actual or potential releases of a hazardous substance as a result of response efforts, e.g., threat of inhalation of contaminated dust created during response efforts.

Under CERCLA and the Disaster Relief Act of 1974, the Federal Emergency Management Agency (FEMA) is authorized to participate in temporary relocation activities associated with immediate removals. FEMA's participation may consist of technical assistance to EPA and/or a State as well as actual implementation of a temporary relocation. EPA and FEMA currently are developing an MOU which will summarize policy and procedure governing the responsibility of each agency.

Technical assistance may include: contributing to the identification of relocation options, identifying the necessary elements of a relocation action and, estimating relocation costs. FEMA also may assist in determining the need for a temporary relocation, although the final decision rests with EPA.

Either FEMA or a State may lead the relocation. When FEMA assumes the lead, it is responsible for the following: providing all affected residents with adequate housing; ensuring provision of appropriate welfare services; and ensuring that maintenance requirements and costs are covered. Section 0.5.c outlines procedures OSCs should follow in contacting and coordinating with FEMA.

3. Health and Human Services

As authorized by section 104(i) of CERCLA, the Department of Health and Human Services (HHS) will establish registries; conduct appropriate health surveys and studies; develop and provide testing for exposed individuals in cases of public health emergencies; develop and maintain information on health effects of toxic substances; and maintain a list of areas restricted or closed because of toxic substance contamination.

HHS activities in support of specific removals are conducted by the Centers for Disease Control (CDC) and the National Institute of Occupational Safety and Health (NIOSH). At the request of the OSC, CDC's activities may include on-site data collection and review of site information to evaluate the potential for human exposure to toxic substances and to determine if any threat to human health exists. Following this analysis, CDC may issue a Public Health Advisory that OSCs can use in selecting appropriate removal activities. This health advisory is a tool that OSCs can use to determine the need for response, however, it is not a prerequisite to a removal action. EPA OSCs are advised to always obtain such advisories on dioxin, lead, and asbestos sites or other chronic threats which could lead to acute effects. In addition, during removal operations CDC can monitor the health of residents who have been exposed to the hazardous materials or who live in close proximity to the release. At the request of the OSC, NIOSH may provide technical assistance to OSHA and EPA's Occupational Health and Safety staff in testing worker protection equipment and gathering information for guidance manuals.

4. Other Federal Agencies

In addition, EPA may use the specialized expertise of other agencies to assist in providing response actions. These agencies and their areas of expertise are listed below.

a. The Department of Agriculture

The United States Department of Agriculture (USDA) manages agricultural, forest, and wilderness areas; provides scientific support and expertise in examining the effects of pollutants on soil, plants, and animals; provides assistance in animal disease outbreaks; procures emergency food supplies; and conducts damage assessment estimates for natural resource claims.

b. The Department of Commerce

Through the National Oceanic and Atmospheric Administration (NOAA), the Department of Commerce (DOC) will provide scientific support during response actions on hazardous spills in coastal and marine areas. NOAA also is responsible for the federal trusteeship for natural resources in coastal and marine waters and certain upland areas. Scientific support provided during response actions can involve expertise in areas unique to maritime incidents, including meteorology, hydrology, and oceanography.

c. The Department of Defense

The Department of Defense (DOD) provides assistance in disposing of explosive ordnance, engineering support and salvage. Included within the Department of Defense is the U.S. Army Corps of Engineers, which has expertise in flood control, water supply, maintenance of navigation, and the environmental effects of discharging dredged material into navigable waters and the oceans.

d. The Department of Energy

The Department of Energy (DOE) is capable of evaluating radiologically contaminated sites in order to determine if some response measures are warranted to protect public health and safety. In addition, DOE can participate in response actions through the conduct of engineering studies, the removal and disposal of radioactive releases, and certification of final site decontamination. See Section X of this guidance for further information.

e. The Department of the Interior

Expertise the Department of the Interior (DOI) offers includes damage assessment capability and expertise in managing natural resources and public lands under its jurisdiction, including those underlying the Outer Continental Shelf. It also provides expertise on the geological and hydrological movement of hazardous substances through land surfaces, subsurface strata, ground and surface water, and endangered species.

f. The Department of Justice

The role of the Department of Justice (DOJ) is to represent the United States in litigation arising under the CWA and CERCLA, and assist in training officials of the United States and States in matters relating to civil and criminal enforcement of law.

g. The Nuclear Regulatory Commission

The Nuclear Regulatory Commission (NRC) will assist in responses to incidents involving NRC licensees in accordance with existing plans developed by NRC and the Federal Emergency Management Agency. In particular: NRC licensees will continue to notify NRC of incidents in accordance with published rules and regulations, NRC will continue to notify and update FEMA about the status of each incident, and FEMA and the NRC will provide all necessary information to the NRT. See Section X of this guidance for further information.

h. The Department of Labor

The Department of Labor's (DOL) role is to provide advice on labor and employment related issues, as well as advice, guidance, and assistance regarding health and safety hazards to persons involved in oil and hazardous substance emergency actions. Regional OSHA compliance personnel will enforce existing health and safety standards at the site. Advice or assistance provided by the Department of Health and Human Service's National Institute of Occupational Safety and Health in these areas will not preempt the application of standards developed by the Department of Labor's Occupational Health and Safety Administration under section 4(b)(1) of the Occupational Safety and Health Act.

i. The Department of State

The Department of State (DOS) develops joint international contingency plans and coordinates international response when an oil discharge or hazardous substance release crosses international boundaries or involves foreign flag vessels or facilities.

j. The Department of Transportation

The Department of Transportation (DOT) provides expertise on all modes of transporting oil and hazardous substances. DOT, through the United States Coast Guard (USCG), offers expertise in port safety and security; maritime law enforcement; ship navigation and construction; and the manning, operation, and safety of vessels and marine facilities. The USCG also maintains continuously manned facilities which can be used for command, control, and surveillance during oil and hazardous substance response operations. For those areas where it provides the OSC, the USCG chairs the Regional Response Team, which develops, implements, and revises regional and local contingency plans as necessary.

5. Administrative Procedures

This section describes current administrative procedures for arranging for and compensating technical assistance from and response activities of other Federal agencies at non-Federal facilities. For most of the agencies, OSCs will use the procedures described in Section 0.5.a.; for the USCG and FEMA, however, the procedures discussed in Sections 0.5.b. and 0.5.c. respectively, apply.

a. General Procedures

The OSC is responsible for identifying whether technical assistance from another Federal agency is needed. OSCs may contact the Removal Operations Team (382-2188) of ERD for assistance in making initial contact with and arranging for the involvement of the pertinent Federal agency. -

In general, there are two mechanisms for funding the response and response-related activities of another Federal agency: that agency's Superfund budget or an interagency agreement (IAG). The nature of the other agency's involvement will determine the compensation mechanism. For example, if the service provided is defined as an "ongoing" activity, for which the other agency has received a Superfund budget, no further transfer of funds will occur. However, if the service involves site specific response actions, the other agency typically will receive reimbursement through an IAG (except as noted in Sections 0.5.b. and 0.5.c.). IAG procedures are described in Section 0.5.d. below, and OSCs should contact the ERD Guidance Development Team for assistance in determining whether the other agency's involvement is an ongoing activity or site-specific response activity requiring an IAG.

b. U.S. Coast Guard (USCG)

A Memorandum of Understanding (MOU) between EPA and USCG, signed on January 4, 1982, allows the USCG to use the CERCLA Trust Fund for vendor (extramural) costs incurred in Superfund response actions. Site specific IAGs are used to reimburse USCG for out of pocket (personnel and equipment) costs.

Coast Guard OSCs may obligate up to \$250,000 for a single response to a hazardous substance release, without first obtaining EPA HQ permission. They must, however, obtain special reserved account numbers from EPA during normal working hours or by contacting the NRC during non-duty hours. The Coast Guard will then use its own contracting mechanism and send a copy of the contract or other obligating document as well as certified invoices to EPA Financial Management (Financial Management Officer, Accounting Operations Office (MD-32) EPA, Research Triangle Park, Durham, N.C., 27711) for payment.

If the cost of the response exceeds \$250,000, then CG obtains funding from the EPA Assistant Administrator, OSWER, via a request to ERD. Likewise, if the response cost will exceed \$1,000,000, the statutory finding of CERCLA 104(c) is presented to the AA, OSWER, who will provide funding for the response. The request should contain the same information required of EPA OSCs and described in Appendix 2. The Coast Guard must submit POLREPS to ERD as detailed in Section I.

EPA Regions should assure that their Coast Guard counterparts understand and follow the guidance summarized above. For more detailed information please refer to the USCG/EPA MOU of January 4, 1982.

c. FEMA

FEMA participates in removal actions that necessitate evacuation or temporary relocation. At the present time, EPA and FEMA are negotiating an MOU that will establish the general policies and procedures for FEMA participation. In the interim, OSCs should use the following procedures.

The OSC has responsibility for deciding to undertake evacuation and/or temporary relocation as part of a removal action. In carrying out this responsibility the OSC must coordinate with FEMA and the pertinent State and local health authorities as follows:

- o The OSC may consider evacuation or temporary relocation on his own or at the request of State and local officials.
- o In either case, subsection 300.33(b)(6) of the NCP requires the OSC to advise FEMA immediately of any potential major disaster situations as well as situations that may require evacuation or temporary housing. OSCs should contact their FEMA Regional counterparts.
- o In order to determine the need for and scope of the evacuation or temporary relocation, the OSC may request that FEMA provide technical assistance by identifying, evaluating and estimating the costs of alternative temporary relocations. FEMA should report its findings to the OSC as expeditiously as possible.
- o The OSC also may rely on State and local information and may request a Health Advisory from CDC to support the decision to undertake an evacuation or temporary relocation.

As with other agencies, funding is either via a Superfund budget for ongoing activities or an IAG for site-specific activities. Until MOU negotiations are completed, the OSC should seek assistance from ERD's Removal Operations Team in obtaining an IAG. IAG procedures are described in Section 0.5.d. below.

d. IAG Procedures

Regions will approve, negotiate and award IAGs for site-specific response actions. This includes:

- o FEMA IAGs for temporary relocation.
- o Coast Guard IAGs for assisting in EPA removals (Coast Guard intramural costs).

For these IAGs, Region personnel should use the following procedures:

- o Regional Administrator or designee approves the action if it is \$1 million or less; requests AA, OSWER approval of the action if it will cost over \$1 million.
- o Regional Program Division prepares the IAG funding package, consisting of a Commitment Notice, Transmittal memo and EPA Form 1610-1.
- o Regional legal and administrative staff review funding package.
- o Regional Management Division adds accounting data and commits funds in their Document Control Register. A copy of the commitment notice must be sent to FMD Cincinnati for commitment in the FMS.
- o Regional Grants Office negotiates and signs IAG: sends signed IAG to other agency for execution.
- o Regional Grants office distributes executed IAG to: Regional Management Division finance staff and Program Division, FMD Cincinnati, HQ FMD-Financial Reports and Analysis Branch, HQ Budget Division, and OERR Funds Control Center.

IAG terms should require that monthly reports on technical program and costs be sent to the Regional Program Division. For Coast Guard IAGs, the Region will authorize reimbursement based on vouchers; FEMA receives a transfer allocation, processed by the Comptroller, at the onset of the evacuation/temporary relocation.

All other IAGs will be processed and funded at Headquarters. The Region should contact ERD's Removal Operations Team for assistance if other types of IAGs are needed.

P. COORDINATION WITH THE REGIONAL RESPONSE TEAM (RRT) AND NATIONAL RESPONSE TEAM (NRT)

1. Regional Response Team

The OSC should, upon the initiation of any Superfund removal action, or planning for such action, inform the RRT of the operation. The RRT should be activated by the Chairman as an emergency response team when a hazardous substance release:

- a. Exceeds the response capability available to the OSC in the place where it occurs;
- b. Requires the expertise of one or more other Federal agencies to facilitate the removal.
- c. Transects regional boundaries;
- d. May pose a substantial threat to the public health, welfare or to the environment, or to regionally significant amounts of property, or
- e. Any time the OSC determines that Federal/State/local coordination is essential to the removal.

Regional contingency plans shall specify detailed criteria for activation of RRTs. Each participating agency, State or locality should designate one member and at least one alternate to the RRT. It is imperative that the RRT be used to provide proper coordination between involved agencies. Any member of the RRT may request activation. Depending upon the circumstances of the incident, the OSC or the RRT chairman may consider activation of the RRT involving a limited number of representatives or by simple telephone contact instead of actually convening the membership on site. When the RRT is activated, affected States may participate in all RRT deliberations. State government representatives in the RRT have the same status as any Federal member of the RRT. Deactivation of the RRT shall occur upon agreement between the EPA and USCG team members.

2. National Response Team

Activation of the NRT as an emergency response team should occur when a hazardous substance release:

- a. Exceeds the response capability of the Region in which it occurs;
- b. Transects regional boundaries; or
- c. Involves significant population hazards or national policy issues, substantial amounts of property, or substantial threats to natural resources.

Any NRT member may request activation. More detailed information concerning the RRTs and the NRT can be found in §300.32 (Planning and Coordination) and §300.34 (Special Forces and Teams) of the NCP.

Q. PROVISION OF ALTERNATE WATER SUPPLY

Because of the pervasiveness of groundwater contamination, previous OSWER policy was to limit removal action involving provision of alternate drinking water supplies to those situations posing the most acute threats to human health and welfare. A principal mechanism for doing so was the 1-Day Health Advisories for drinking water contaminants issued by EPA's Office of Drinking Water.

A memorandum from OERR, dated May 8, 1983, informed Regional personnel of a change in policy whereby OSCs should use the 10-Day Health Advisory in lieu of the 1-day Health Advisory. Since this change has the potential to greatly increase drinking water incidents that qualify for removals, OSCs are cautioned to consider other factors, including those in the decision rationale outlined in Section C.2 and presented in detail in Appendix 1. This framework contains a series of questions designed to guide the OSC's collection, analysis, and presentation of data supporting the request to provide an alternate drinking water supply. Additionally, the framework guides the evaluation of the request.

When preparing a removal request addressing drinking water contamination, OSCs should be able to demonstrate the threat posed by the drinking water contamination. In particular, OSCs need to be aware of the complexities of assembling and interpreting data to support the request. Removal actions involving provision of alternate drinking water should be closely coordinated with the Regional Office of Drinking Water.

Typically, the initial data on contamination may have come from routine or spot testing of only a few wells in a community. Consequently, OSCs should pay particular attention to whether these data provide a sufficient basis for reliably estimating the present and projected threat and for selecting an appropriate response.

In addition, OSCs often will not be able to rely on pre-established numerical indicators to determine whether current or projected contaminant levels present an acute danger or threat. For example, the National Interim Primary Drinking Water Standards and drinking water health advisories issued by EPA establish numerical indicators for relatively few of the substances OSCs are likely to encounter. Moreover, even where such indicators exist, they are based on "model" assumptions about population and exposure characteristics that may not be valid for the potential removal situation.

Finally, the difficulty in measuring the rate of and direction in which a contaminated groundwater plume is migrating may limit the OSC's ability to accurately project the potential risk of taking no action. The removal decision framework attempts to compensate for these problems by considering population characteristics and other qualitative factors in addition to numerical indicators or contaminant levels.

R. COST CONTROL FOR SUPERFUND REMOVAL ACTIONS

During removal actions, all Regions must implement an effective cost control management system. This management system must ensure the efficient use of public monies, must enable all removal costs to be tracked against program and statutory dollar ceilings, and must provide the necessary information to provide the basis for cost recovery. The system recommended for use by OSCs for tracking extramural contractor costs is presented in the "Cost Control Manual for Superfund Removals." This system, which is currently being updated and expanded to accommodate ERCS, can also be used to track all costs that are recoverable, such as EPA intramural costs, mission contract costs (TAT, NCLP, ERT/EERU) and State costs.

This system presents an on-scene management system to control, document and verify costs incurred by cleanup contractors during immediate and planned removals. The management system is based on three components: planning, contractor selection, and project tracking. Information contained in the manual has been presented to all EPA Regions through OSC training sessions. Video-taped versions of this training are also available from each Region's Superfund Coordinator.

There are three purposes for which removal costs must be tracked and documented: 1) to assure that the \$1 million statutory limitation and the approved project ceiling are not exceeded, 2) to ensure efficient use of cleanup resources, and 3) to maintain cost records for cost recovery.

For purposes of documenting costs incurred against the \$1 million limitation, OSCs must track the costs of the following:

- o Commercial cleanup contracts
- o NCLP services
- o TAT services
- o ERT/EERU
- o Regional laboratory services
- o Other Federal agency costs (i.e., Coast Guard, FEMA)
- o Letter contracts for procurements with States and localities
- o Direct intramural obligations (both Headquarters and Regions)*
- o Site access or acquisition (policy under development)

For purposes of tracking against a total project cost, all of the above items must be tracked plus costs associated with State services under a Superfund State Contract.

For purposes of documenting costs for cost recovery actions, OSCs shall document all costs associated with the above mechanisms, including costs of 104(b) investigative studies to compute the total cost recovery figure.

* The Revised Cost Control Manual, when issued, will also present a method to determine indirect costs.

-57-

However, when any of the above mechanisms are used for 104(b) investigatory actions before the official initiation of the removal, those costs shall not be counted against the approved project ceiling or \$1 million limitation.

Although at this time, TAT and EERU costs are being accurately tracked, costs for NCLP services are not readily available to OSCs. The Agency is developing a means to enable site-specific accounting of NCLP costs.

AUG 20 1984

-58-

S. TAT SPECIAL PROJECTS

TAT Special Projects are to be used to provide OSCs with specialized technical support services for unanticipated tasks that require immediate performance. Examples include specialized laboratory analysis, hazard assessments, specialists, and other support services which are eligible under the special projects scope of work. Because of their relatively high cost to the Agency, TAT Special Projects are to be used only when conventional technical support mechanisms such as Regional analytical laboratories, the NCLP, the ERT, and cleanup contractors are unavailable or infeasible. For example, sample analysis should usually be accomplished through Regional laboratories or the NCLP. Command posts should usually be provided by cleanup contractors. When other support mechanisms are not feasible due to the urgency of the situation, TAT Special Projects can and should be used.

TAT Special Projects can be either investigative prior to a removal action approval, or in support of an OSC during an approved removal action. All TAT Special Projects costs are eligible for cost recovery. Investigative special projects expenditures (conducted under section 104(b) of CERCLA) to identify the existence, extent, and threat of a release do not count toward a subsequently established ceiling or statutory \$1 million ceiling. All other TAT Special Projects initiated during an approved removal action do count toward the site's approved extramural ceiling and the statutory \$1 million limit, therefore, all associated costs must be tracked against these ceilings.

Special Projects requests should be issued by the Deputy Project Officer (DPO) to the respective Regional TAT Leader. On Special Project requests that exceed an estimated cumulative cost of \$10,000 per incident, approval of the HQ TAT Project Officer is required before the TAT Special Project can be activated. The HQ TAT Project Officer will not grant approval until clearance has been received from the Director, ERD. Therefore, to facilitate HQ clearance, it is advisable to discuss TAT Special Project needs with your ERD contact before issuing a request in excess of \$10,000. In addition, a written scope of work must be submitted to the HQ TAT Project Officer for all investigative Special Projects in excess of \$10,000.

T. OPERATION AND MAINTENANCE COSTS

CERCLA section 104(c) places a six month limit on removal actions and provides stringent criteria for extending the limitation. Unless these criteria are met, the State or local government must assume responsibility for O&M costs no later than six months after the removal begins.

If the OSC knows that O&M will be necessary after the removal action is completed, the OSC should obtain an agreement from the State or local authority to assume responsibility for O&M costs prior to initiating the removal. If such an agreement cannot be obtained, the OSC should avoid recommending any removal option that involves continuing O&M where other options exist which may be implemented at once.

Some situations may require O&M as part of all removal options. If no State or local government agrees to assume responsibility for O&M costs, the OSC will be required to justify to the RA any continuation of funding from Superfund beyond the six month limit. Such a justification must meet the statutory criteria for a six-month exemption, otherwise, funding for the removal will be terminated.

For immediate removals, the performance of O&M activities by the State or local authority after Federal responsibility has terminated may be arranged through a written arrangement, i.e., Memorandum of Understanding (MOU) or letter agreement with the State. Specific guidance on such a mechanism will be developed by ERD in the near future.

For planned removals, the performance of O&M activities by the State after Federal responsibility has terminated must be stipulated in either an SSC or a Cooperative Agreement respectively, depending on whether EPA or the State has the lead in the removal action. Under no circumstances can O & M exceed six months for planned removals unless the situation deteriorates to warrant immediate action.

U. COMMUNITY RELATIONS PLANS DURING REMOVAL ACTIONS

In each Region, the Superfund Community Relations Coordinator and the responsible program office will coordinate fully in implementing community relations activities for Superfund removal actions. For removal actions, community relations profiles or plans (CRPs) are prepared by the Region in consultation with removal program technical staff, and in accordance with EPA's Community Relations Policy (May 1983) and Handbook (September 1983). Regions are encouraged to consider use of the RRT to assist in community relations activities. Copies of the Community Relations Profile or Plan should be sent to the Region/Headquarters office which approves funding for the action.

1. Immediate Removal Actions

Planning for community relations during immediate removals entails:

- o Obtaining background information on the community affected by the release of hazardous substances and the possible effects of the release;
- o Developing a community relations program that meets the special needs of the community; and
- o Establishing a working relationship between the Superfund technical staff and Community Relations Coordinator.

Some releases of hazardous substances require a short term immediate removal action lasting no longer than a few days. These kinds of actions may not involve substantial community relations planning because of the nature of the emergency. In other cases, however, the immediate removal may require longer term action and may generate considerable public interest and need for information. For actions that may last longer than 5 days, a community relations profile -- a short form community relations plan (CRP) -- must be prepared. If an action is anticipated to last longer than 45 days, a CRP must be prepared.

The community relations profile explains how program and Superfund community relations staff intend to plan for and implement community relations activities at the site. It should contain a brief outline of the nature of community concern, the key site issues, the objectives of community relations activities, and the communications activities considered for the site.

The immediate removal CRP should be prepared as soon as it is known that the response action may last longer than 45 days. The plan should succinctly state the site background, the nature of the community concern, the key site issues, the objectives of the community relations activities, and specific activities to be undertaken at the site. The CRP should be submitted to OERR/CRP Section as soon as possible after the approval of the immediate removal request.

The specific types of community relations activities during immediate removals are likely to include meeting with citizens in the community, responding to inquiries from the media, and providing local officials with site status information. By providing information as directly and quickly as possible, the OSC will ensure that the community receives the information it needs about the effects of the release on the community's health and safety and the government's response action.

2. Planned Removal Actions

The program staff with the assistance of the community relations staff must design a community relations program and prepare a CRP for each planned removal. Prior to preparing a CRP, program and community relations staff must meet with local officials and interested citizens to obtain information about the site and to identify public concerns.

In addition, program and community relations staff can use these initial discussions to explain the limited nature of a planned removal. Following the activities contained in the CRP can help ensure that adequate attention is given to the community's need for information and for input into technical decisions at the site.

When the planned removal is concluded, a final report or "Responsiveness Summary" must be prepared. This in-house report must describe the community relations activities conducted, the major issues that arose at the site and an explanation of how citizen concerns were considered during the response. The purpose of the report is to document EPA and State actions, to assist in community relations planning in the event that long term remedial response occurs at the site, and to help plan for subsequent community relations programs at other sites. The summary may be used to help document for the public record how EPA responded to key community concerns and issues.

AUG 20 1981

V. REQUIREMENTS OF OTHER ENVIRONMENTAL LAWS AT REMOVAL ACTIONS

1. RCRA Requirements

Ordinarily, treatment and storage of hazardous wastes must occur in facilities that have either interim status under §3005(e) of RCRA or a treatment or storage permit from either EPA or a State authorized to implement the RCRA hazardous waste program. However, OSCs managing immediate removal activities are not required to obtain RCRA permits for onsite treatment and storage. Through promulgation of the Discharge Response Exemption in the Federal Register (Vol. 48, No. 13) on January 19, 1983, such requirements are waived for individuals providing immediate response to releases or imminent and substantial threats of releases of hazardous wastes. OSCs providing planned removal responses will comply with RCRA requirements to the extent possible considering the circumstances of the removal action.

Ultimate offsite disposal of all hazardous waste resulting from any removal action must be accomplished at a facility with a RCRA permit or interim status. (Present policy being updated.)

2. Other Environmental Laws

Fund-financed and enforced removal actions (both immediate and planned) must conform to the technical requirements of other environmental programs to the greatest extent practicable based upon the nature of the action. In evaluating removal alternatives which do not adhere to all the requirements, EPA should consider such factors as the immediacy of the hazard posed by the situation, the duration of the response action, the type of action and the availability of alternative responses which do meet all requirements.

W. RESPONSES ON NATIVE AMERICAN LANDS

On Native American Lands, OSCs should use the procedures outlined in Section C of this document to initiate removals for any releases that meet the NCP criteria. For immediate removals on these lands, cost-sharing is not required, since the cost sharing requirements for immediate removals only pertain to States or political subdivisions, and Native American Lands are considered to be neither.

At the present time, releases meeting the NCP criteria for planned removals are subject to the cost sharing requirements of the NCP. In other words, the State in which the Native American Lands are located and the Native Americans must first reach agreement on providing appropriate cost-sharing assurances, before a planned removal can be performed.

X. RADIOACTIVE WASTES

When an OSC becomes aware of the release of a radioactive substance, his/her first steps should be to determine whether 1.) EPA has authority to respond and 2.) the release meets the removal criteria set forth in the NCP. Under CERCLA, EPA can respond to releases of radioactive wastes except those excluded by CERCLA Section 101(22)(C), i.e.,:

- o Release of source, byproduct or special nuclear materials that are subject to the financial protection requirements of Section 170 of the Atomic Energy Act (AEA).
- o Release of source, byproduct or special nuclear materials from certain processing sites designated under Section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act.

To ascertain the existence of an emergency situation, OSCs will need to consult with the Office of Radiation Programs (ORP) in EPA and through the RRT, with Nuclear Regulatory Commission (NRC) and DOE Regional staff. Through these consultations, OSCs can obtain guidance on how to conduct testing and monitoring and on whether the test results indicate an emergency situation exists. OSCs should be aware, however, that the definition of "emergency" under the Atomic Energy Act differs from that under the NCP. The OSC must use the NCP definition and should seek assistance from the Response Operations Team in applying the NCP criteria.

In undertaking response actions, OSCs should determine whether the release is from a facility with a previous or current NRC license. For releases from those facilities, EPA's policy is that the NRC should take responsibility. However, OSCs may seek approval for a fund-financial removal if they determine the NRC cannot act expeditiously or if the release is not from a previous or current NRC license. OSCs should utilize the RRT to obtain technical advice on conducting the removal activities and may enter into an IAG with DOE or NRC.

Y. CLAIMS AGAINST THE FUND

CERCLA authorizes the President to use the Fund for the payment of two types of claims: (1) for necessary response costs incurred by a party other than the government in carrying out the National Contingency Plan (NCP) and (2) for the restoration, rehabilitation or replacement costs of natural resources that have been injured, destroyed or lost. Executive Order 12316, signed on August 14, 1981, delegates to the Administrator of EPA the functions vested in the President by Section 112 of the Act for all claims presented pursuant to Section 111.

1. Response Claims

Most CERCLA cleanup actions should be undertaken by the responsible party, by a State under a duly authorized Superfund cooperative agreement, or by EPA's contractors. In addition, under §300.25 (d) of the NCP, any person other than the Federal Government or a State or person operating under contract or cooperative agreement with the United States must notify the Administrator or his designee of the intent to seek reimbursement for a response action and must receive prior approval (preauthorization) before undertaking the action. Under current policy, all such requests for preauthorization and any cleanup claims will be handled by and should be referred to OERR in Headquarters.

2. Natural Resource Damage Claims

Section III(i) of CERCLA provides that, except for emergency situations, funds may not be used for natural resource restoration, replacement or acquisition of equivalent resources unless a plan has been developed. This plan must describe the purposes for which the funds are to be used. It must be developed and adopted by affected Federal agencies and States if the damage is to natural resources within the States' borders and belonging to or managed by such States. Section III(i) therefore requires that the trustee obtain the prior approval (preauthorization) of EPA Headquarters before undertaking either an assessment or restoration action.

The Agency will write regulations prescribing the claims procedures. However, the Department of Interior, acting through Federal officials designated by the NCP, has responsibility for promulgating regulations for the assessment of damages for injury to, destruction of, or loss of natural resources pursuant to section 301(c) of CERCLA. Until the specific procedures are developed for this process, all inquiries should be forwarded to and will be handled by OPFM in Headquarters.

APPENDICES

1. Decision Rationale
2. Draft Immediate Removal Action Memorandum
(Formerly the 10-Point Document)
3. Removal Delegations of April 16, 1984
4. Ceiling Increase Action Memorandum (Sample)
5. Draft Planned Removal Action Memorandum Outline
6. Summary of Approval Authorities for Immediate and Planned Removals
7. Superfund State Contract (Sample)
8. Exemption to Six Month Limit Action Memorandum (Sample)
9. Exemption to \$1 Million Limit Action Memorandum (Sample)
10. Removal Action Accident Report
11. OSWER Guidance on Issuance of Administrative Orders
for Immediate Removal Actions

DECISION RATIONALE

A. INITIAL EMERGENCY SCREEN (Decision Point 1)

- o What release characteristics suggest a time-critical emergency?
 - Has a sudden release occurred? Is a sudden release imminent?
 - Has a previous release posing a significant threat to human health or the environment just been discovered?
- o What substances are known to have been released or are likely to be released imminently? What are the estimated quantities of each?
- o How is the release or threatened release endangering human health or the environment?
 - Is the release known to have contaminated or does it pose an imminent threat to a critical food supply?
 - Has there been or will there imminently be an explosion, a fire, or other release that threatens structures or the ambient air of inhabited areas?
- o What is the probable type of impact the release or threatened release will have on human health or the environment?
 - What are the known types of health effects from human exposure (through inhalation, ingestion, or skin contact) to the substances released, given the quantities released?
 - Have there been any incidents of death, illness, or injury from the release?
- o Why is the request being made at this time? What would be the result of waiting for more detailed analysis and investigations?
 - For threatened releases, what are the indications (e.g., atmospheric/meteorological, hydrological) that a release is imminent?
 - For releases, what are the likely additional health effects of not taking action immediately? How many more incidents of death, illness, or injury may be expected within 24 hours.
 - If response to a release is delayed, how will the situation deteriorate (e.g., contamination is spreading rapidly, fire may get out of control)?
 - Will delay limit future response options?

- o What data are available to support the request? Is the data comprehensive? Reliable?

B. REVIEW OF HEALTH THREAT (Decision Point 2)

- o What is the actual threat to health and environment? Is there a threat of:
 - Direct contact
 - Fire or explosion
 - Food chain bioaccumulation
 - Air, water or food contamination?
- o What evidence demonstrates that there is a threat to public health or contamination of environmental media?
 - What kinds of initial data are available (results of sampling/analysis, hydrological or atmospheric data, other data)?
 - Where did this information come from and how reliable is it?
- o What are the substances involved and what are their known or possible health effects?
 - What substances have been found and at what levels?
 - How consistent/reliable are the data? Provide details on sampling methods and results of analyses.
 - Do the contamination levels exceed Federal or State criteria, standards, or guidelines of reportable quantities?
 - What are the possible short-term and long-term health and ecosystem effects (if known) of environmental media contaminated by these substances at the levels demonstrated by sampling and analysis?
- o Is the contamination problem increasing in scope or severity?
 - Are contaminants moving: In what direction? At what rate?
 - Will the spread of contamination impact other geographical, hydrologic, or atmospheric areas?
 - How could the migration or the extent of contamination change? (Could water consumption patterns or weather intensify the problem.)

- Are there mitigative actions which might actually exacerbate the problem?
- o What is the time frame for response (immediate/planned removal or remedial action)? Specify why this time frame is chosen, with regard to statutory limitations on the specified response.
 - How will the severity of the threat change over time?
 - How will the options for response actions change over time?
 - What is the health impact of delaying response or not acting at all?
- o How many people face an immediate threat? How many additional people might be affected if response is delayed?

C. DETERMINATION OF POTENTIAL FOR FEDERAL ACTION (Decision Point 3)

- o What is the source of the release? Is it known? Is it a small, self-contained source (i.e. truck) or a massive chronic contamination?
- o Is there good reason to believe that adverse health effects are resulting from the contamination or that dwellings and other buildings are becoming uninhabitable?
- o What efforts have been taken to find and obtain response by a responsible party?
 - Who is the responsible party, if known? Can the party's financial viability be ascertained?
 - What enforcement actions have been taken or are planned? (For example, have there been any previous State or municipal actions, notice letters, demand letters, CERCLA 106 or RCRA 7003 actions?)
 - Is the responsible party likely to act within a timeframe that adequately protects public health? (e.g. have deadlines been set for negotiation?)
- o What can the State or locality provide?
- o What is the status of State or local funding? How much can or will the State or locality pay?
- o With just initial information, what is the estimated cost and duration of the removal action?
 - Will the cost likely be under \$5,000 or over \$1 million? Will it last longer than 6 months?
 - What are the components of the initial estimate?

D. REVIEW AND SELECTION OF RESPONSE ACTIONS (Decision Point 4)

- o What types of actions are available and necessary?
 - Sample analysis and documentation
 - Alternative water supply provisions
 - Fences or other barriers
 - Controlling source of release
 - Moving hazardous substances off-site
 - Erecting physical barriers to restrict contaminant flow
 - Controlling water discharge from upstream impoundments
 - Using chemical means of control
 - Executing damage control or salvage efforts
- o Is evacuation necessary (justified by threat)?
- o Is the removal action chosen directly related to the threat?
(e.g. are fences needed when well contamination is at issue?)
- o What are the costs associated with each alternative, including construction, operation and maintenance, or other costs?
- o What is the technical feasibility and probable effectiveness of each alternative?
- o How long would each alternative take to start up? To finish?
- o Are there opportunities for State and/or local involvement in some alternatives?
- o Are there public acceptance criteria associated with any alternatives?
- o Are legal implications raised by certain alternatives?

-5-

- o What are the pros and cons of each alternative? Specify pros and cons which address:
 - Intermedia relationships
 - Temporary vs. long-term solutions
 - Long-term "stewardship" needs
 - Potential for problem exacerbation instead of intended mitigation.
- o Considering cost, feasibility, time to implement and effectiveness, what is the most appropriate response action? Briefly explain why this option was chosen and why other alternatives were ruled out.
- o How does the chosen option specifically address the threat?

IMMEDIATE REMOVAL ACTION MEMORANDUM OUTLINE

This memorandum format is to be used for documentation of threat pursuant to section 300.65 of the NCP and is a record of decision for both HQ and RA approved immediate removal actions.

I. HEADING

SUBJECT: Immediate Removal Request for the ABC Site, XYZ State --
ACTION MEMORANDUM

Typical Memorandum Heading:

FROM: On-Scene Coordinator

TO: Regional Administrator

THRU: Regional Division Director as appropriate

NOTE: If the cost of the immediate removal is expected to exceed \$1 million the Action Memorandum is addressed to the AA/OSWER, from the Regional Administrator, through the Director/OERR and to the attention of Director/ERD.

II. PURPOSE

Basic Statement of Request: A short, narrative statement of the immediate removal request.

III. BACKGROUND

A. Incident or Site Setting/Description

(Pictures, diagrams, maps, and/or sketches are encouraged.)

1. Physical location - state the County (or Parish), Township (or incorporated unit) and State. Give distances from nearest populated areas and points of reference as appropriate.
2. General character of site - describe the site's key problem areas, e.g. drums, bulked liquids, lagoons, contaminated soils, etc. or; general nature of the incident - in the case of a classic release describe how the incident occurred.
3. Waste management - describe any existing structures, measures, or conditions that would either mitigate or accelerate the release of any materials on site. For instance, an unstable dike, a temporary containment system, adverse weather conditions, site security, fencing, and similar measures.

4. Surrounding Areas - describe the areas adjacent to the incident or site in terms of nearby populations and ecosystems, and any areas protected by statute such as parks, historic sites, sensitive ecosystems, etc.
- B. Quantity and Types of Substances Present: Describe the hazardous substances in terms of categories or classes of chemicals. Those categories listed in the NREIC Consent Decree (also known as classes of priority pollutants) may be used as a convenient reference. Any substances of critical concern (e.g. PCBs, dioxins) should be stated. If estimates of quantities of the classes of materials are available, they should be given.
- C. One sentence should state whether the site is on the NPL. If the site is on the NPL, when later remedial action is expected.

IV. THREAT

- A. Threat of Exposure to Public or the Environment: The nature of the threat at the site should be described in detail, relating the threats to factors described in the National Contingency Plan section 300.65(a). Any indications that all or any of the areas described in III (A)(4) above, may be exposed to hazardous substances should be described. Compare amounts of hazardous substances shown to background or health standards as appropriate. (NOTE: If the removal action will exceed the six-month/\$1 million statutory limits, the factors in section 300.65(d) of the NCP must be addressed).
- B. Evidence of Extent of Release: Any contaminated surface water or drinking water wells, either private or municipal, should be noted as well as any obvious evidence of ecosystem damage. If off-site monitoring has been performed (either air or water) the link should be made between substances identified and those on the site. Concentrations of off-site pollutants should be presented in the same manner as those on-site.
- C. Previous Actions to Abate Threat: Any Federal, State, local, or privately sponsored activities that have been performed should be briefly described and the dates, costs, and effectiveness of such actions should be given.
- D. Current Actions to Abate Threat: Any Federal, State, local, or privately sponsored activities that are currently underway should be briefly described. The estimated costs and completion dates of these activities should also be given. If the 6 month time clock has started, note when the 6 months ends.

- V. ENFORCEMENT (This information should be referenced here as "see attachment" and placed on a separate page entitled Enforcement Sensitive)
- A. Active/Inactive: Summarize the enforcement strategy for notifying, negotiating, and litigating against responsible parties. The statement should tell whether the State or Federal enforcement attorneys are actively pursuing informal negotiations, are actively pursuing litigation, or have decided to postpone or not pursue litigation.
 - B. Status of Notice Letters/Negotiations: A statement should be made giving the date(s) that notice letter(s) were sent and a summary of responses of the recipients. If negotiations are underway, describe the activities under discussion. A projection should be made on whether to expect responsible party action, or feasibility of issuing an Administrative Order.

VI. PROPOSED PROJECT AND COSTS

- A. Objectives of the Project: A short statement should be made describing the specific tasks involved and the results sought by the removal action as they pertain to the threats(s) discussed in IV.
- B. The estimated total project ceiling and an itemized breakout of the following cost categories which comprise that ceiling: extramural costs allowed under the RA's \$1,000,000 authority (consisting of cleanup contractor costs, letter contracts with States, and site specific IAGs), TAT costs, intramural costs, National Contract Lab Program analytical costs and ERT/EERU costs. For example, the RA may set a total project ceiling in the following manner:

Cleanup Contractors	\$750,000
Letter contracts for procurement w/State	5,000
Interagency agreement	7,000
TAT costs	10,000
NCLP analytical services	20,000
ERT Study	20,000
Intramural (HQ and Region)	45,000
TOTAL PROJECT CEILING	<u>\$857,000</u>

If any CERCLA funds have already been allocated for this site, give the amount and tasks involved. Indicate obligations to date if appropriate.

- C. Project Schedule: The estimated period of performance should be given.
- D. If applicable, describe how actions will be consistent with remedial plan.

AUG 20 196

-4-

VII. REGIONAL RECOMMENDATION

Use a paragraph such as; "Because conditions at the XYZ Site meet the NCP section 300.65 criteria for an immediate removal, I recommend your approval of the immediate removal request. The estimated total project costs are \$X, of which \$Y are for extramural cleanup contractor costs. You may indicate your approval or disapproval by signing below." If the immediate removal will exceed the six month/\$1 million statutory limit(s), cite specific criteria of NCP section 300.65(d).

Approve: _____ Date: _____

Disapprove: _____ Date: _____

AUG 20 1984

REMOVAL DELEGATIONS

Appendix three contains the current Removal Delegations dated April 16, 1984. These delegations are:

- 1) Delegation 14-1-A entitled Selection and Performance of Removal Actions Costing Up to \$1,000,000.
- 2) Delegation 14-1-B entitled Superfund State Contracts and Cooperative Agreements for Removal Actions.
- 3) Delegation 14-2 entitled Removal Actions Initially Costing Over \$1,000,000 and Continued Removal Actions after Obligations of \$1,000,000.

THE COMPREHENSIVE ENVIRONMENTAL RESPONSE,
COMPENSATION AND LIABILITY ACT (CERCLA)

14-1-A. Selection and Performance of Removal Actions
Costing Up to \$1,000,000.

1. AUTHORITY. Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), to determine the necessity of and to select and perform removal actions costing up to \$1,000,000:

- a. Where the action is expected to last up to six months;
- b. Where the action is expected to last more than six months; and
- c. Where the action was expected to last up to six months, but requires continuation.

2. TO WHOM DELEGATED. Regional Administrators.

3. LIMITATIONS.

a. Removal actions will not continue after \$1,000,000 has been obligated, unless authorized to continue under Delegation 14-2, "Removal Actions Costing Over \$1,000,000 and Continued Removal Actions after Obligations of \$1,000,000."

b. This authority shall be exercised subject to directives issued by the Assistant Administrator for Solid Waste and Emergency Response.

4. REDELEGATION AUTHORITY. The authority in 1.a may be redelegated to the Division Director level. The authority in 1.a and 1.b may be redelegated to On-Scene Coordinators (On-Scene Coordinators are limited to the approval of removal actions costing up to \$50,000 in total). The authority in 1.a and 1.b may not be further redelegated. The authority in 1.c may not be redelegated.

5. ADDITIONAL REFERENCES.

- a. Section 104(a) of CERCLA.
- b. Section 104(c)(1) of CERCLA.
- c. National Contingency Plan (40 CFR 300.65 and 300.67).
- d. Superfund Removal directives.
- e. The \$1,000,000 limit includes all extramural costs and Headquarters and Regional intramural costs, except for all enforcement costs.

THE COMPREHENSIVE ENVIRONMENTAL RESPONSE,
COMPENSATION AND LIABILITY ACT (CERCLA)

14-1-8. Superfund State Contracts and Cooperative Agreements
for Removal Actions

1. AUTHORITY. Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), based on a determination that a State or political subdivision is capable of carrying out response actions, to enter into a contract or cooperative agreement, as appropriate, with such State or political subdivision to provide for the performance of removal actions and to obtain the necessary assurances for such removal actions.

2. TO WHOM DELEGATED. Regional Administrators.

3. LIMITATIONS.

a. This authority shall be exercised subject to directives issued by the Assistant Administrator for Solid Waste and Emergency Response.

b. The authority to enter into a contract with States, for the purpose of this delegation, does not extend to procurement contracts.

4. REDELEGATION AUTHORITY. This authority may be redelegated.

5. ADDITIONAL REFERENCES.

a. Section 104(d)(1) of CERCLA requires a determination of a State's capabilities and authorizes contracts or cooperative agreements.

b. Section 300.67 (b)(4) of the National Contingency Plan requires that the States make certain assurances for "Planned Removals."

c. Superfund Removal directives.

d. Procurement contracts are limited by the Chapter 1 delegation entitled "Appointment of Designated Agency Procurement Executive."

DELEGATIONS

1200
APR 16 1984THE COMPREHENSIVE ENVIRONMENTAL RESPONSE,
COMPENSATION AND LIABILITY ACT (CERCLA)14-2. Removal Actions Initially Costing Over \$1,000,000 and
Continued Removal Actions after Obligations of \$1,000,000

1. AUTHORITY. Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), to determine the necessity of and to select and perform removal actions costing over \$1,000,000 and to authorize removal actions to continue after \$1,000,000 has been obligated.
2. TO WHOM DELEGATED. Assistant Administrator for Solid Waste and Emergency Response.
3. REDELEGATION AUTHORITY. This authority may be redelegated.
4. ADDITIONAL REFERENCES.
 - a. Section 104(c)(1) of CERCLA.
 - b. National Contingency Plan (40 CFR 300.65 and 300.67).
 - c. Superfund Removal directives.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 20 1983

S A M P L E

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

DATE

MEMORANDUM

SUBJECT: Ceiling Increase Request for Immediate Removal Actions
at the ABC Site, Location, State — ACTION MEMORANDUM

FROM: OSC

TO: Regional Administrator

NOTE: If the ceiling increase will bring the total project ceiling above \$1 million the ceiling increase request is addressed to the AA/OSWER, from the Regional Administrator through the Director, OERR, to the attention of the Director/ERD.

Issue

Region ___ has requested a ceiling increase of \$125,000 to complete immediate removal actions at the ABC Site, Location, State.

Background

The ABC site lies on the shore of Big Harbor, adjacent to small industrial and recreational facilities. One of three large aboveground storage tanks contains approximately 300,000 gallons of waste oil, heavy metals, and chemical liquids and sludges. Small leaks have already occurred at the seams of the tank due to its poor structural integrity. Based on the threats posed to the nearby public and the environment by the low flash point materials (85°F) in the tank an immediate removal was submitted to the Assistant Administrator, Office of Solid Waste and Emergency Response (AA, OSWER).

On November 17, 1983, the AA, OSWER approved an extramural project ceiling of \$330,000 for removal actions at this site (see attached memorandum). Approved actions included site security during cleanup, removal of the contents of the central tank, transportation and disposal of the tank contents, and tank decontamination.

Actions Taken

Pumping and disposal of the tank contents were initiated on November 23 after a responsible party completed the removal of the contents of another tank. The top layer of liquid, the oil phase, was pumped off first, then the middle layer, the aqueous phase, was pumped off. Due to restrictions imposed by the incineration facility, 5000 gallons, rather than 15,000 gallons, were disposed of each day. To date, 46,000 gallons of the oil phase and 164,000 gallons of the aqueous phase have been pumped off and disposed of.

Extremely cold weather has solidified more of the tank liquids, generating additional sludges and creating some extremely viscous, unpumpable material. The volume of sludges requiring disposal has increased from 24,000 gallons to more than 65,000 gallons.

Although initial analyses conducted by a private lab showed no PCBs, recent testing by an EPA regional lab indicates the sludge phase contains approximately 50 ppm. This has increased the estimated disposal cost significantly.

Present Status

To remove extremely viscous sludges, the sludge must be liquified by adding a solvent at a 1:10 ratio (solvent: sludge) and mixed. This will allow the material to be pumped and will increase the sludge heat capacity for disposal by incineration.

Of the \$330,000 project ceiling approved for this point, \$245,000 has been expended during the removal and disposal of the oil and aqueous phases. Due to the unexpected presence of PCBs, a large volume of sludges, and unforeseen restrictions placed on liquid disposal, an additional \$85,000 in cleanup contractor funding will be required to complete the removal and disposal of the tank contents.

Summary of Costs

	<u>Current Ceilings</u>	<u>Proposed Ceiling</u>
Cleanup		
Contractors	\$330,000	\$415,000
Intramural		10,000
TAT		30,000
TOTAL Project Ceiling	<u>\$330,000</u>	<u>\$455,000</u>

Remedial

The site is ranked in Group II of the National Priorities List. Funding for the remedial investigation and feasibility study was approved through an action memorandum signed July 25, 1983. The work assignment for that project has been issued; however, field activities will not be initiated until the removal action is completed, in order to avoid endangering field workers.

Enforcement

See attachment.

Regional Recommendation

To eliminate the continuing threat posed to the nearby public and the environment consistent with the immediate removal criteria contained in section 300.65 of the National Contingency Plan, I recommend you approve this \$125,000 ceiling increase request, of which \$85,000 will be utilized by the private cleanup contractor for removal and disposal of the remaining tank contents. The remaining \$40,000 will be used for mission support and intramural expenses. Your approval would raise the total project ceiling from \$330,000 to \$455,000. You may indicate your approval or disapproval by signing below.

(NOTE: If ceiling increase will exceed \$1 million statutory ceiling, cite NCP section 300.65(d) criteria and briefly address in this document the basis for saying they are met.)

Approve: _____ Date: _____

Disapprove: _____ Date: _____

Attachment

AUG 20 1984

ENFORCEMENT

Enforcement-related information (e.g. names of responsible parties, status of §106 orders, etc.) is "sensitive." As such, it should be separated from the formal record of decision and attached on a separate sheet of paper with the heading "Enforcement Sensitive."

PLANNED REMOVAL ACTION MEMORANDUM OUTLINE

I. HEADING

SUBJECT: Authorization to Proceed with Planned Removal Action
at the ABC Site, XYZ State -- ACTION MEMORANDUM

Typical Memorandum Heading:

FROM: On-Scene Coordinator

TO: Regional Administrator

THRU: Regional Division Director
as appropriate

NOTE: If the cost of the planned removal is expected to exceed \$1 million the Action Memorandum is addressed to the AA/OSWER, from the Regional Administrator, through the Director/OERR and to the attention of Director/ERD.

II. PURPOSE

- A. Basic Statement of Request: A short, narrative statement of the planned removal request. This should include a statement regarding the intent of the State to enter into a Cooperative Agreement or to request a State Superfund Contract. Note that the Governor's Letter of Intent is attached. If more than one State is involved, a letter from the Governor of each State is required.

III. BACKGROUND

A. Site Setting/Description:

(Pictures, diagrams, maps, and/or sketches are encouraged.)

1. History of the site - how it came to be.
2. Physical location - state the County (or Parish), Township (or incorporated unit) and State. Give distances from nearest populated areas and points of reference as appropriate.
3. General character of site - describe the site's key problem areas, e.g. drums, bulked liquids, lagoons, contaminated soils, etc.
4. Waste management - describe any existing structures, measures, or conditions that would either mitigate or accelerate the release of any materials on site. For instance, an unstable dike, a temporary containment system, adverse weather conditions, site security, fencing, and similar measures.

5. Surrounding Areas - describe the areas adjacent to the site in terms of nearby populations and ecosystems, and any areas protected by statute such as parks, historic sites, sensitive ecosystems, etc.
- B. Quantity and Types of Substances Present: Describe the hazardous substances in terms of categories or classes of chemicals. Those categories listed in the NRDC Consent Decree (also known as classes of priority pollutants) may be used as a convenient reference. Any substances of critical concern (e.g. PCBs, dioxins) should be stated. If estimates of quantities of the classes of materials are available, they should be given.

IV. THREAT

Identify the most dangerous threats first. Describe projected effects of each threat. Be clear and factual in identifying the threat.

- A. Threat to Public Health or Welfare or the Environment: The nature of the threat at the site should be described in detail. Any indications that all or any of the areas described in (A)(4) & (5) above, may be exposed to hazardous substances should be described. Factors described in NCP section 300.67(c) should be listed. Compare amounts of hazardous substances shown to background or health standards as appropriate.

(Note: If the planned removal will exceed the six month/\$1 million statutory limits, the document must state how the threat meets criteria of NCP section 300.67(e).)

- B. Evidence of Extent of Release: Any contaminated surface water or drinking water wells, either private or municipal, should be noted as well as any obvious evidence of ecosystem damage. If off-site monitoring has been performed (either air or water) the link should be made between substances identified and those on the site. Concentrations of off-site pollutants should be presented in the same manner as those on-site.
- C. Previous Actions to Abate Threat: Any Federal, State, local, or privately sponsored activities that have been performed should be briefly described and the dates, costs, and effectiveness of such actions should be given.
- D. Current Actions to Abate Threat: Any Federal, State, local, or privately sponsored activities that are currently underway should be briefly described. The estimated costs and completion dates of these activities should also be given. If the 6 month time clock has started, note when the 6 months ends.

V. ENFORCEMENT (This information should be referenced here as "see attachment" and placed on a separate page entitled Enforcement Sensitive)

- A. Active/Inactive: Summarize the enforcement strategy for notifying, negotiating, and litigating against responsible parties. The statement should tell whether the State or Federal enforcement attorneys are actively pursuing informal negotiations, are actively pursuing litigation, or have decided to postpone or not pursue litigation.
- B. Enforcement Authority: If litigation is proceeding or is contemplated, state under what statutory authority it will be, or is being taken (i.e. RCRA §7003, CERCLA, etc.).
- C. Potential Responsible Parties: A general statement should be made describing the number and type of potential responsible parties (i.e. generators, transporters and owners or operators). If a site has one or two primary responsible parties they may be named. If a search has been completed, the results should be summarized.
- D. Probable Ability to Recover Costs: The solvency of the major responsible parties should be estimated. An evaluation of the ability to obtain the necessary actions in a timely fashion through litigation may also be included if it explains why actions are being requested of the EPA when responsible parties are financially able to undertake these actions.
- E. Previous Enforcement Actions: Any previous State or Federal enforcement actions should be described as to the date, the request and the outcome.
- F. Status of Notice Letters/Negotiations: A statement should be made giving the date(s) that notice letter(s) were sent and a summary of responses of the recipients. If negotiations are underway, describe the activities under discussion.
- G. Recommendation: The enforcement strategy that is recommended by the Regional enforcement attorney should be given. This would be either to pursue Federally-funded action or continue litigation or negotiations. Concurrence to proceed with planned removal is given by OWPE. If this is conditional, then conditions should be noted.

VI. STATE ACTIONS

- A. State expertise: The Region should state whether they believe that the State has the required expertise to perform the removal action proposed, in State-lead actions.

VII. IMPORTANT POLICY ISSUES (Only as necessary and applicable)

- A. If the State's understanding or acceptance of the cost sharing requirement is in question, explain the problem(s) and any measures necessary or underway to resolve it (them).
- B. Contiguous/non-contiguous sites: If multiple locations are recommended by the Region for consideration as one site for the purposes of performing a planned removal pursuant to CERCLA section 104(d)(4), justification for such consideration should be given.
- C. Other: Policy issues such as the division of responsibilities between Federal and/or State agencies, unresolved questions regarding agreement with the State or local agencies over recommended removal actions or cost-sharing, and similar issues should be briefly described. The description should include the efforts being made to resolve the issue and/or decisions that must be made before a resolution is reached.

VIII. PROPOSED PROJECT AND COST

- A. Objectives of the Project: A short statement describing the specific tasks involved and the results sought by the removal action should be made. Relate to the threat, particularly if a NCP section 300.67(e) extension.
- B. Costs: The estimated costs for the planned removal action (both extramural and intramural) should be given. Costs are to be broken down by major task. If any CERCLA funds have already been allocated for this site, give the amount and tasks involved. Indicate ceiling and obligations to date.
- C. Project Schedule: The estimated period of performance should be given. If an immediate removal has already started the six-month time period, the date that the limit expires should be noted.

IX. REGIONAL RECOMMENDATION

Use a statement like "Because conditions at the XYZ site meet the NCP section 300.67 criteria for a planned removal, I recommend your approval of the proposed planned removal action. The estimated total project costs are \$X, of which \$Y are for extramural cleanup contractor costs." If the planned removal will exceed the six month/\$1 million statutory limit(s), cite specific criteria of NCP section 300.67(e).

Approved: _____ Date: _____

Disapproved: _____ Date: _____

SUMMARY OF APPROVAL AUTHORITIES FOR IMMEDIATE AND PLANNED REMOVALS
(CERCLA Delegations of April 16, 1984)

<u>REQUEST</u>	<u>APPROVAL AUTHORITY</u>
o Initial Immediate Removal (IR), up to \$1 million, for actions not anticipated to exceed \$1 million to complete	RA
o Initial IR, under \$1 million, for actions anticipated to later exceed \$1 million to complete (including non-duty hours)	AA
o Initial IR, known from outset of project to cost over \$1 million (including non-duty hours)	AA
o Initial Planned Removal (PR), up to \$1 million, for actions not anticipated to exceed \$1 million to complete	RA
o Initial PR, under \$1 million, for actions anticipated to exceed \$1 million to complete	AA
o Initial PR, known from the outset to cost over \$1 million	AA
o IR/PR ceiling increase, within \$1 million ceiling, for an AA- or RA-approved action	RA
o IR ceiling increase, to raise ceiling over \$1 million, for an RA-approved action	AA
o IR or PR six month exemption	RA
o IR or PR \$1 million exemption	AA
o IR/PR ceiling increase, any amount, once ceiling has exceeded \$1 million	AA
o IR/PR change in scope of work not involving ceiling increase	Previous approving official
o PR Superfund State Contract and any amendments	RA
o PR State Cooperative Agreement and any amendments	RA
o Interagency Agreements and any amendments	RA

Superfund State Contract
for Planned Removal Activities at
the XXY Waste Site
City, State

AUG 20 1982

Between the State of (State name)
Department of (Appropriate State Office)
and the U.S. Environmental Protection Agency (EPA)

(Draft - This is still subject to further revisions)

A. Authority

This Contract is entered into pursuant to sections 104(a)(1), (c)(1), and (d)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et seq. (CERCLA).

B. Purpose

This is an agreement between the U.S. Environmental Protection Agency (EPA) and the (State Office) to provide for cleanup actions and other required corrective measures at (the site). Such actions meet the requirements of the National Contingency Plan, 47 FR 31180 (July 16, 1982) for a planned removal action.

C. Parties and Responsibilities

1. EPA has designated (name, address) to serve as On-Scene Coordinator (OSC) for this Contract (OSC phone no.).
2. (State office) has designated (name, address) as the State Project Coordinator for this contract (phone no.). (State representatives should be designated per individual State requirements).
3. The OSC will have responsibility and authority for all actions on the site or pertaining to site actions. The OSC will coordinate with the State Project Coordinator on decisions affecting work at the site. The OSC will have full control over all on-site personnel, but will not directly supervise the actions of, nor assume any liability for injury to, or damage or harm caused by any State personnel who might be on the site.
4. The State Project Coordinator will be on-scene to supervise State personnel whenever they are working on the site during the cleanup action.
5. The OSC and the State Project Coordinator may make joint decisions that do not increase the scope or cost of the project. The OSC will contact the State Project Coordinator upon any increased risk to the safety or health or personnel and/or upon accident at the site.

D. EPA Responsibilities

1. EPA shall furnish the necessary personnel, materials, services, and facilities, and otherwise do all things necessary for or incidental to the performance of its tasks as indicated in this Contract, and shall pay 90 percent of the total project costs.
2. EPA shall provide the OSC, who will be responsible for directing and managing the overall cleanup.
3. EPA will pay the site management costs which are part of the total project cost and include, but are not limited to: OSC, support staff, and Technical Assistance Team salaries, overtime, and travel; per diem cost, and other Federal Agency costs incurred at the OSC's direction; contract labs and Environmental Response Team (ERT) expenses directly related to this site.
4. EPA will notify the (State Office) of the effective date of the Delivery Order of the procurement contract for site cleanup and the amount of the award.
5. EPA will coordinate site activities related to the cleanup with other Federal agencies as appropriate.
6. EPA will provide information related to site cleanup activities to interested parties, including local, State, and Federal agencies on the Regional and National Response Teams.
7. EPA shall provide staff and/or contractor personnel to perform technical, logistical, record keeping, public relations duties, etc., including but not limited to the following: (NOTE - this list will vary according to site requirements and State capabilities).
 - a. Air monitoring, as necessary.
 - b. Level C protective clothing and equipment for cleanup personnel (with provision for Level B in reserve).
 - c. Equipment and personnel decontamination procedures and facilities.
 - d. Limited disposable protective clothing and respiratory protection for use by occasional approved site visitors.
 - e. Utilities as needed for OSC trailer and cleanup operations.
 - f. Adequate site security.
 - g. Perform a survey of the site and take shallow borings (1 to 2 feet) for the purpose of identifying the contaminated soils to be removed. Final depth to be determined by the OSC.

- h. Remove contaminated soil (specify amount) and dispose of this soil in a hazardous waste disposal facility (hereafter referred to as "disposal facility"), in compliance with disposal requirements as set forth in (specify disposal regulation).
 - i. Test the bulk loaded materials for purposes of labeling and compliance with DOT and OSHA requirements (test for Priority Pollutants).
 - j. Transport the bulk waste materials off site and dispose of the waste materials at an approved hazardous waste disposal facility that is in compliance with Subtitle C of RCRA and in a manner that the OSC deems appropriate.
 - k. Crush, transport, and dispose of empty drums at an approved hazardous waste disposal facility that is in compliance with Subtitle C of RCRA.
 - l. Transport and dispose of drums containing wastes at a hazardous waste disposal facility that is in compliance with Subtitle C of RCRA.
 - m. Sample and analyze surface and groundwater and sediments in and off the site for the purpose of determining any contamination which may be present and the concentrations of the contaminants.
 - n. Transport and dispose of sediment at an approved hazardous waste disposal facility that is in compliance with Subtitle C of RCRA.
 - o. Treatment of pond water and regrading of excavated soil areas.
8. (Address operation and maintenance responsibilities. Sample wording follows.) Cleanup actions shall be designed such that no operation and maintenance will be necessary at the site. (Should O&M be necessary after completion of the removal action, the EPA/State responsibilities should be broken out into an O&M section of the contract).

E. State Responsibilities

- 1. The State shall pay 10% of the total project cost for this site. Payment terms are set forth in paragraph I.1.
- 2. The State may meet its cost share requirement in whole or in part by providing services or equipment if approved by the OSC, including but not limited to the tasks outlined below. The State will document on a daily basis all State services and equipment provided for site work. Documentation will be made on EPA form 1900-55, or an equivalent form and signed on a daily basis by the State Project Coordinator or his designee and the OSC.

3. The State shall provide a State Project Coordinator, who is responsible for coordinating all State actions on-scene, as provided in Paragraphs C.4 and C.5, including coordination with all appropriate local agencies as necessary.
4. When requested by the OSC, the State shall assure that any treatment or disposal facility proposed to receive wastes removed from the site are in compliance with Subtitle C of RCRA and are approved for disposal of such wastes.
5. Provision of (State) personnel, as requested by the OSC, to assist the OSC in administrative or technical tasks such as, but not limited to, the following:

Monitoring cleanup activities, preparing pollution reports (POLREPS), maintaining daily EPA and contractor worksheets, maintaining telephone/visitor logs, relaying messages, maintaining supply inventories, implementing safety plans and assisting OSC with NIOSH review, developing a photographic and written log of cleanup activities, and monitoring contractor's sampling and chain of custody procedures.
6. At the request of the OSC, the State may also provide the following: (tailor this list to the site and State capabilities)
 1. Sampling personnel and 24-hour analytical services.
 2. Other services that may be identified during planning or implementation of the removal.
 3. Air monitoring as required.
 4. Construct additional monitoring wells and borings as deemed necessary.
7. The State shall provide disposable protective clothing for State personnel working on the site.
8. The State shall provide police services for access and/or traffic control and/or security as required by the OSC.
9. The State shall provide community relations personnel, as required by the Community Relations Plan.
10. In addition to the site costs documented in E.2. above, the State shall compile and maintain documentation of all other site specific costs which they wish to count toward their cost share. Indirect costs are allowable if the State has a federally approved indirect cost rate.
11. For costs of the tasks listed above to be allowable as State match, they must be incurred in accordance with 40 CFR 30.

12. The State Project Coordinator or his designee shall monitor the costs incurred by the State. Under no circumstances shall EPA reimburse the State for any contributions to the project in excess of their required cost share.

F. Sharing of Information

1. At EPA's request, the State shall in accordance with State law, make available any information in its possession concerning the site. If said information was submitted to the State under a claim of confidentiality, the information will be treated in accordance with 40 CFR Part 2. EPA will not disclose information submitted by the State under a claim of confidentiality unless required to do so by Federal law and having given the State ten (10) days advance notice of EPA's intent to release the information. Absent a claim of confidentiality, EPA may make such information available to the public.
2. EPA shall make available any information and reports developed as part of its responsibilities under this Contract. Consistent with State law, the State agrees not to release any information to the public which EPA has marked confidential and/or which may potentially affect present or planned enforcement actions unless approved by both EPA's Region # Office of Regional Counsel and the State Project Coordinator.
3. Any information which may potentially affect present or planned enforcement action shall not be released to the public unless approved by both EPA and the State Project Coordinator.

G. Emergency Response Action

Any immediate removal activities as defined by the National Contingency Plan, 47 FR. 31180 (July 16, 1982), shall not be restricted by the terms of this Contract. The OSC may suspend the response activities covered by this Contract during immediate removal actions, if such become necessary.

H. Duration

This Contract shall become effective upon execution by both parties, and shall remain in effect until the project as specified in this Contract is complete and final payment of costs has been made in accordance with paragraph I. Section 104(c) of CERCLA requires that removal actions terminate within six months after initial Federal response action is initiated or after \$1 million of Superfund monies has been obligated for site removal activities. Exemptions to these limitations may be approved by EPA.

I. Financial Responsibilities of the Parties and Payments

1. The current estimate for the total cost of removal under this Contract is (\$_____). If the removal cost exceeds (\$_____), this Contract will be amended, as provided in Paragraph L. The State's contribution to the cost shall not exceed 10 percent of the total removal cost. The State's 10 percent share shall include the value of services provided by the State as specified in Paragraph E. Allowable services are those that are preauthorized by the OSC and occur during the time that this Contract is executed.
2. The State Project Coordinator shall provide to the OSC a tabulation of the daily costs identified in paragraph E., above, and any other allowable costs within 30 days of the site closeout date. EPA shall add this figure to EPA costs to compute the total project cost, and calculate 10% of the total to represent the State's cost share. EPA shall provide to the State a statement of project costs, the amount of the State's cost share, and a request for payment if it is determined that State allowable costs fall short of the amount owed for their cost share. The amount, if any, owed by the State shall be determined by subtracting the allowable value of State services, described in Paragraph E above, from 10 percent of the final total project cost.
3. All payments shall be made payable to EPA and sent to:

U.S. Environmental Protection Agency
Accounting Operations
P.O. Box 2971
Washington, D.C. 20013

Attention: Collection Officer for Superfund
Susan Pai (PM-226)
Room 3419M

J. Personnel Safety

EPA agrees to approve and oversee the implementation of the site safety plan which will be developed pursuant to EPA's Interim Standard Operating Safety Guides (September 1982). The State is responsible for the safety of its personnel, including provision of protective clothing and equipment. EPA will not assume any liability for any injuries to, or damages or harm caused by State personnel on the site.

K. Community Relations Plan

EPA and the State will jointly develop and implement the Community Relations Plan.

National Contingency Plan Requirements for Immediate Removals

Under §300.65 of the NCP:

Immediate Removal action is appropriate when the lead agency determines that:

the initiation of the removal action will prevent or mitigate immediate and significant risk of harm to human life or health or to the environment from such situations as:

1. Human, animal, or food chain exposure to acutely toxic substances
2. Contamination of drinking water supply
3. Fire and/or explosion
4. Similarly acute situations

Immediate removal action may include but are not limited to:

1. Collecting and analyzing samples to determine the source and dispersion of the hazardous substance
2. Providing alternative water supplies
3. Installing security fencing or other measures to limit access
4. Controlling the source of the release
5. Measuring and sampling
6. Moving hazardous substances off-site for storage, destruction, treatment or disposal
7. Placing physical barriers to deter the spread of the release
8. Controlling the water discharge from an upstream impoundment
9. Recommending to the appropriate authorities the evacuation of threatened individuals
10. Using chemicals and other materials in accordance with Supart H to restrain the spread of the substance and mitigate its effects
11. Executing damage control or salvage operations

AUG 20 1984

APPENDIX

Authority/Requirements/Enforcement of Administrative Orders for Removal Actions under CERCLA

Under §106(a) of CERCLA:

If, EPA, acting on behalf of the President:

determines that there may be an imminent and substantial
endangerment to the public health or welfare or the
environment because of

an actual or threatened release of a hazardous substance
from a facility

may, after notice to the affected state,

issue such orders as may be necessary to protect
public health and welfare and the environment.

Under §106(b) of CERCLA:

EPA may take action in the appropriate U.S. district
court, against any person who willfully violates or
fails or refuses to comply with any Order issued under
§106(a), to enforce such order and

may fine such person not more than \$5,000 for each day
such violations occur or such failure to comply continues.

Under §107(c)(3) of CERCLA:

Any person who is liable for a release or threat of release
of a hazardous substance that:

fails without sufficient cause to properly provide
removal action upon order of the President pursuant to
§106

may be liable to the United States for punitive damages in
an amount at least equal to and not more than three times,
the amount of any costs incurred by the Fund as a result
of such failure to take proper action.

Civil action may be commenced against any such person to
recover the punitive damages. These punitive damages shall
be in addition to any costs recovered from such person
pursuant to §112(c).

Any monies received in punitive damages shall be deposited
in the Fund.

AUG 20 1984

-10-

sampling or testing, and adequate records of site activity must be kept. Employees of any contractor used for site activity must cooperate with and be made available to the U.S. in preparation and trial of any subsequent enforcement action. Enforcement, program and legal offices should work together throughout the case development.

VI. FOLLOW-UP

This guidance represents a substantial departure from prior practice, and I expect that it will take some time to implement. For these reasons, I will be reviewing all immediate removals referred to Headquarters for compliance with this guidance. In addition, for immediate removals under \$250,000, I will ask the Directors, OWPE and OERR to review the compliance with this guidance quarterly, and to advise me accordingly.

Appendix

cc: Gene Lucero, OWPE
William Hedeman, OERR
Kirk Sniff, OECM
Dan Berry, OGC

the timing of the obligation will vary according to the estimated time needed to mobilize equipment and personnel, the OSC should work closely with the technical enforcement and Regional Counsel staff during the drafting of the Order to assure that the time period established for issuing the Order is synchronized with the time requirements for site response.

If the conference does not result in private party response--or if changing conditions at the site require accelerated response--the Fund-financed immediate removal will take place. If Fund-financed activity does begin, the Order may be written to require the potential responsible parties to undertake site activity at the next convenient break point in activity. If the parties still fail to undertake the site response activity, enforcement efforts will emphasize cost recovery with the additional imposition of fines/penalties as appropriate.

V. COST RECOVERY

The Agency will normally not initiate a civil action in the event of non-compliance with an Order but instead will seek to recover costs and damages after a Fund-financed response. Therefore, while enforcement personnel are carrying out the Administrative Order process, they should also be aware of the requirements for a successful cost recovery action. They must be able to document the following factors (some of which are the same ones necessary for the issuance of the Administrative Order itself).

1. The need for the immediate removal (evidence of an imminent and substantial endangerment or threat of endangerment to public health, welfare or the environment)
2. Liability of the responsible parties (evidence to support the contention that the parties meet the liability standard of \$107)
3. Proof that the Fund-financed response activity was "not inconsistent" with the requirements of the NCP.
4. Documentation of all eligible costs for site-specific Fund expenditures.

Enforcement personnel must assure sufficient documentation of these factors from the period in which the 10-point document is developed and Funds are obligated through the actual clean up of the site. These cost recovery requirements must be met regardless of whether there will be a simple cost recovery action (if no Administrative Order is issued) or an action for response costs plus damages (if the Order is not complied with). The Agency must assure that evidence is preserved for any subsequent enforcement action. Proper chain of custody procedures must be used for any

-8-

If the recipient agrees to undertake the stipulated response measures, the agreement may be in the form of a Consent Order. The OSC will monitor compliance with the Order and recommend additional enforcement action if the terms of the Consent Order are breached. If the recipient does not agree to undertake the measures contained in the Order, the Agency will generally not refer a case to the Department of Justice to force compliance because of the time constraints presented by the emergency. Rather, the Fund will be used for site response and the recipient(s) will be sued for cost recovery--including punitive damages in appropriate cases.

IV. USE OF THE FUND WHILE THE ADMINISTRATIVE ORDER IS BEING ISSUED

Normally, once an Order has been deemed appropriate for an immediate removal situation, the CERCLA Fund shall not be used to undertake a federally-funded immediate removal during the time period in which the Agency develops the Order, issues it to the responsible party, and conducts the conference.

However, if site conditions deteriorate-- presenting a corresponding increase in the threat that the site presents-- the Fund can be used for response while the Administrative Order process continues. In such instances, the Regional Administrator can approve the use of Funds below \$250K and request the Assistant Administrator, OSWER, to release funds if the response work will be greater than \$250K.⁴ The Administrative Order process should continue since the parties may undertake site response at the next convenient break in activity.

Thus, if there are deteriorating conditions at the site, the OSC should continue all steps necessary for undertaking a Fund-financed response while the Order is being developed. The 10-point document should be prepared and receive the concurrence of all officials up through the Regional Administrator or the Director, OERR.

However, no actual obligation of Funds for site response will normally occur until after the Order has been issued and the conference has been held. Since the Order will only be issued in situations where an immediate response can be delayed, there will normally be time to see the Administrative Order process through to conclusion. The conference must be held within the time period specified in the Order (which will correspond to the time the Agency has before the response activity needs to begin). Since

⁴If deteriorating conditions require the Fund to respond while the Order is still being issued, OSWER assumes that the Fund will take all response actions necessary at the site (e.g., remove all barrels, not merely those that may be about to leak).

-7-

Under a separate delegations memorandum to the Regions, the concurrence requirement will be waived for all Administrative Orders for immediate removals with obligations of \$1,000,000 or less. Within two weeks of issuance of the Order, the Regions are to send a copy of the final Order to OWPE.

As a matter of policy, in order to increase the likelihood of compliance, the Agency encourages the convening of a conference with the recipients of an Administrative Order. Since Administrative Orders will generally be issued for immediate removal situations which do not require response in less than one week, the Agency will normally attempt to hold a meeting with the recipient, if requested by the recipient. The conference should be convened on an expedited basis (e.g., within 72 hours after the Order is issued) if the recipient orally requests the conference. However, the Agency retains the right to "waive" a conference if immediate response is warranted because of deteriorating conditions at the site. The Regional Administrator shall have the authority to decide whether to eliminate the conference prior to or following the issuance of the Administrative Order. If the Regional Administrator waives the opportunity for a personal conference, a regional representative, must at least give the parties an opportunity to be heard by telephone before the effective date of the Order. In general, conferences concerning removal actions should be used to clarify the requirements of the Order rather than as an opportunity to negotiate the requirements.

The Agency must create a good administrative record of its meetings with the recipient of an Order for either enforcement of the Order or cost recovery after a Fund-financed cleanup. The Agency participants should prepare a written summary of the conference containing:

1. The date and participants.
2. A summary of the significant issues raised and arguments/data used by the recipient to contest the Order.
3. The result of the conference (e.g. agreements reached with the recipient, indication from the recipient of an unwillingness to comply with the Order)

The presiding official, (designated by the Regional Administrator) must also prepare a statement which addresses any significant arguments raised by the recipient and recommends whether any modifications to the Order are warranted. (See the September 8, 1983 Administrative Order Guidance for a complete discussion of the procedures and "ground rules" for conducting the conference and the time frames for holding them.)

AUG 20 1984

-6-

Since Administrative Orders will normally be issued in situations in which site response is not required for at least one week, OSWER policy is to provide recipients when possible an opportunity to meet with Agency personnel to discuss the terms of the Order and the means for compliance. Therefore, the Order should include the following provisions:³

1. A statement of the imminent and substantial danger pursuant to §106 of CERCLA and the risk of harm under §300.65 of the NCP.
2. A statement of the authority of the issuing official (normally the Regional Administrator) to issue the Order and why the recipient is liable under §107.
3. The steps the recipient must take to comply with the order, (following the provisions of the ten-point document in order to be as specific as possible).
4. A mandatory timetable for performing and completing the response. (The timetable should include at least one short term interim deadline so the Agency will have the ability if necessary, to demonstrate non-compliance before the project completion date.)
5. A provision informing the recipient that his duty to obey the terms of the order takes effect 72 hours after he receives the order.
6. A provision informing the recipient that he may orally contact the Agency to request a conference on the Order. The recipient must follow up his oral request in writing.
7. A provision specifying a date certain by which responses (either oral or written) to the Order must be received.
8. A provision which states that EPA reserves the right to undertake the action if emergency circumstances dictate such action and that such action in no way relieves the parties of responsibility for the costs of such actions.
9. A provision which requires: proper chain of custody procedures to be followed for any testing and sampling, adequate recordkeeping of activities (so records may be used as evidence in any future enforcement case), cooperation from employees of any contractor who engages in site activity, and availability of such employees to the U.S. in preparation and trial of a subsequent enforcement case.

³Refer to the general Administrative Order Guidance for examples of model orders and conference procedures.

-5-

The procedures for developing and issuing orders follow:

The decision by the OSC or his superior to request funds for an immediate removal also triggers the process for deciding whether to issue an Administrative Order.

The OSC will inform the technical enforcement branch (or other appropriate enforcement personnel if no separate branch exists) and the Regional Counsel that a request for a Fund-financed immediate removal is being developed. Appropriate personnel in OERR and OWPE should also be informed of this action. While the OSC and his staff prepare the 10-point document,² technical enforcement personnel and the Regional Counsel should begin to identify responsible parties and assess their financial ability to conduct site cleanup.

The OSC or the Regional Counsel will attempt to orally contact (with written follow-up) potentially responsible parties in order to secure private-party response in lieu of the Fund. While previous Agency policy was to proceed with Fund-financed response if the responsible parties refused to act, the Agency will now issue administrative orders in appropriate circumstances before initiating Fund action, so long as the site does not pose an unreasonable risk of harm to the public health, welfare or the environment.

Regardless of whether a responsible party agrees or not to undertake the removal, development of the 10-point document should proceed as usual. However, the OSC and technical enforcement staff (in consultation with the Regional Counsel) shall apply the criteria outlined in Part A (above) to recommend to the Regional Administrator whether to issue an Administrative Order. The decision to issue the order rests with the Regional Administrator, subject to the current delegations.

If the Regional Administrator decides to issue an Administrative Order, the Order will be drafted by technical enforcement personnel with the advice of the Regional Counsel. The technical information contained in the 10-point document will normally provide the basis for the Order's "Findings of Fact" while the Agency's intended response actions will serve as the remedy the recipient is required to implement.

²Requests for less than \$250,000 can be approved by the Regional Administrator while requests for more than \$250,000 require the approval of OERR. (It is anticipated that within the month, the Regional Administrators will be delegated the authority to obligate up to \$1 million for removal actions.) The ten point document itself must justify its cost estimates and be consistent with the NCP. With the issuance of the Revised Superfund Removal Guidance, the 10 point document will become an Action Memorandum.

-4-

3. Notification of a release by a federal or state permit holder when required by the permit.
4. Inventory efforts or random/incidental observation by government agencies or the public.

If the facts reach the legal thresholds of CERCLA §106, several policy criteria for deciding whether to issue an Order for an immediate removal should be considered. The first of these is the amount of time available before site response must begin. This determination will usually be made by the OSC. An Order may be appropriate if there is a minimum of one week available for issuing the Order and meeting with the recipients (see further below) between the time of the decision to seek funds for the immediate removal and the initiation of on-site response. (Of course if an order can be issued in less than a week the Regions are not bound by the "one week minimum". However, the Regions should always attempt to have 48 - 72 hours available for the recipients to request and conduct a conference.)

A second policy criterion is the number of potential recipients of the Order and their financial viability. There should be a "manageable" number of responsible parties and they should be collectively capable of undertaking site response. The Regions will use their best judgement to decide what constitutes a "manageable" number of responsible parties and assess the capability of the parties to undertake the response for any individual immediate removal situation. (For a more lengthy discussion of criteria to consider when issuing an Administrative Order, please refer to the Administrative Order guidance.) When there is a large number of potentially responsible parties, Orders need not be issued to all of the parties. In this type of situation the Region should issue the Orders only to those parties most likely to comply. The Region, however, is not precluded from issuing Orders to all the parties if it so desires.

These criteria are to be used as general guidelines for determining whether an Administrative Order should be issued for an immediate removal. The varying factual circumstances presented in any potential removal action mandate that each Region conduct this necessary factual analysis to decide the appropriateness of an Order.

III. PROCESS FOR ISSUING ADMINISTRATIVE ORDERS

The timely development and issuance of Administrative Orders for immediate removals will require effective coordination among the OSC, technical enforcement personnel and the legal counsel in both the Regions and Headquarters. OSWER will not dictate how the Regions must organize or adjust personnel in order to accomplish this task, but it will expect the Regions to have a system in place which is capable of implementing an administrative order program for immediate removals.

-3-

is OSWER policy to meet, if at all possible, with responsible parties after the Order is issued if a meeting is requested. The results of an OWPE analysis of 49 completed immediate removals indicate that the elapsed time between the request for funds and the start of site response ranged from eight days to more than three weeks for 24 of the sites. This clearly indicates that there is time to issue Administrative Orders in appropriate situations, and the process described in this memorandum can be implemented in as little time as a week, if necessary. Second, removals require discrete units of work (e.g., barrel or contaminated soil removal) which makes responsible party compliance and Agency compliance monitoring easier. Third, the costs of immediate removals are generally moderate; this increases the probability of private party compliance.

In the event of non-compliance with an Administrative Order, the Agency is prepared to quickly initiate a Fund-financed response and seek fines/treble damages from the responsible parties. Since the treble damages will be based on the Fund dollars expended, these situations are particularly amenable to establishing treble damage claims, which the Agency will seek to recover in its §107 cost recovery actions. (The average obligation for 110 prior immediate removals undertaken by the Agency was approximately \$275,000). Issuance of Administrative Orders for these situations also may improve the equitable position of the Agency in subsequent cost recovery cases.

II. CRITERIA FOR ISSUING ADMINISTRATIVE ORDERS

First, of course, the Agency must meet the legal threshold that an imminent and substantial endangerment to public health or the environment may exist.¹ Information which can be used and evaluated by the OSC or his supervisor to make this determination include:

1. Notification in accordance with CERCLA §103 (a), (b) or (c)
2. Investigations by government authorities conducted pursuant to CERCLA §104 (e) or other statutory authority.

¹The Agency must be able to properly document and justify both its assertion that an immediate and significant risk of harm to human life or health or to the environment exists and its choice of the ultimate response action at a site in order to be able to oppose a challenge to the Order and to successfully litigate any subsequent cost recovery action. Adequate documentation consists of photographs, samples, monitoring or other documented site analysis. The Agency should follow chain of custody procedures to maintain the integrity of samples taken at the site. Please refer to the Cost Recovery Guidance, issued August 26, 1983 for more detailed guidance. The Revised Superfund Removal Guidance to be issued in late February 1984 will also provide additional guidance on immediate removal assessments.

-2-

Hazardous Material Divisions). Personnel responsible for immediate and planned removals have usually been assigned to the Environmental Services Division which, as a general rule, has not been assigned enforcement personnel.

Obviously, the ability of a Region to implement this new policy requires both close coordination among the immediate response staff and their colleagues in the technical enforcement and regional counsel offices and an organizational structure capable of developing and issuing quality orders. Regions that do not currently dedicate technical enforcement staff to their immediate removal program should assure that appropriate personnel are in place in the technical enforcement office to implement this policy and to handle the workload.

I. BACKGROUND

CERCLA identifies two types of response actions for which the Fund can be used: removal actions and remedial actions. The National Contingency Plan (NCP) further refines the former category into "immediate" and "planned" removals and describes the process and procedures for proceeding with these forms of response. (See Federal Register 31180; July 16, 1982). Please refer to the attache appendix for an outline of the relevant CERCLA and NCP provisions regarding removal activity, Administrative Orders and enforcement.

Because of the large number of sites which pose a health hazard the Office of Emergency and Remedial Response (OERR) defines the category of immediate removals according to the immediacy and severity of the hazard to the public health or environment. These categories establish a guide for the purpose of assessing the length of time within which the Agency must respond to the event. Agency response to situations which require immediate response (e.g., threats of fire, explosion or spills) normally takes place in a matter of hours or one or two days at the most; Agency response to other situations (e.g., rusting barrels that have not yet begun to leak, holding ponds that may overflow with the advent of the rainy season) normally takes place during a period which may range from a week to a month.

This guidance is most applicable to the latter situation; i.e., the Regions should consider issuing Administrative Orders in situations when there is at least one week between the time the On-Scene Coordinator (OSC) determines that an immediate removal is warranted and the time that actual on-site response must begin.

Administrative Orders are a useful enforcement tool in these types of immediate removals situations, for the following reasons. First, they encourage private party response, particularly since it



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 20 1984

FEB 21 1984

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Issuance of Administrative Orders for Immediate Removal
Actions

FROM: 
Lee M. Thomas
Assistant Administrator

TO: Regional Administrators, Regions I-X
Air & Waste Management Division Directors
Regions III, IV, VI, VII, VIII, X
Waste Management Division Directors, Regions I, V
Director, Office of Emergency and Remedial Response, Region
Toxics and Waste Management Division Director, Region IX
Environmental Services Division Directors, Regions I - X
Regional Counsel, Regions I - X

This memorandum sets forth guidance on issuing Administrative Orders for immediate removal actions under CERCLA. This guidance should be used in conjunction with the recently issued Guidance Memorandum on Use and Issuance of Administrative Orders under Section 106(a) of CERCLA dated September 8, 1983.

Since becoming the Assistant Administrator, OSWER, I have sought to implement a "balanced" CERCLA program which uses both the administrative and civil judicial enforcement provisions of the Act--as well as the Fund--to secure clean up of hazardous waste sites. One of my primary enforcement goals is to increase the use of Administrative Orders for immediate removals. Orders are particularly useful in immediate removal situations, since they can be issued quickly, can require discrete segments of work (e.g., surface cleanup) and carry the threat of additional damages and penalties in the event of non-compliance.

We estimate that Administrative Orders may be appropriate for a significant percentage of immediate removal situations. Increased resources will be provided to the Regions, and I expect the Regions to devote resources to accomplishing this goal of increased Administrative Orders for removals.

In addition, the Regions must develop a satisfactory organizational structure if the Administrative Order program is to succeed. The organization of enforcement personnel varies among the Regions. The majority of the Regions keep their "remedial" and "removal" personnel in different divisions. Since CERCLA enforcement has (until now) concentrated heavily on remedial sites, most regional technical enforcement personnel have been assigned to the remedial response units (generally, the Air and

AUG 20 1984

REMOVAL ACTION ACCIDENT REPORT

1. Date and Time of Incident: _____	Date of Report: _____
2. Site Name and Location: _____	Prepared By: _____
3. OSC: _____	Preparer's Phone #: _____
4. Description of Incident: _____ _____ _____ _____ _____	
5. Factors Leading Up to Incident: _____ _____ _____	
6. Site Work Related to Incident (OSC Orders, TAT/Strike Team Oversight, Foreman's Orders): _____ _____ _____	
7. Weather Conditions During Incident (Temperature, Humidity, Wind Direction and Speed, Precipitation): _____ _____ _____	
8a. Injuries (Person, Role of Person On-Site, Description of Injury): _____ _____ _____	
8b. Exposure (Person Exposed, Substances Involved, Type of Exposure - Inhalation, Ingestion, Dermal): _____ _____ _____	
8c. Medical Treatment (Paramedic, Physician, Hospital, Length of Stay, Estimated Cost): _____ _____ _____	
9. Property Damage (Owner, Location, Description of Damages, Estimated Cost): _____ _____ _____	
10a. Other Persons On-Site: _____ _____ _____ _____	10b. Other Person's Roles/Activities On-Site on Day of Incident: _____ _____ _____ _____

AUG 20 1984

-4-

RECOMMENDATIONS

Because conditions of the site meet the CERCLA 104(c) criteria, I recommend that you approve an exemption from the \$1,000,000 limit to allow continued removal activities at the Now Chemical Site in Town, State. In addition, I recommend an increase in the ceiling to \$1,260,000.

Approve: _____ Date: _____

Disapprove: _____ Date: _____

-3-

the Little River. Surface runoff will also percolate through the soil to the ground water table which is four (4) feet below the ground surface at the site. This ground water table is hydrologically connected to the Little aquifer. The Safe Drinking Water Act has listed 0.1 ppm of 2,4-D as the maximum standard. Existing ground water standards for New York State list the following maximum concentrations:

2,4-D	4.4 ppm
Atrazine	7.5 ppm
Banvel	0.44 ppm

This aquifer is used extensively for agriculture, livestock water, and public water supplies in southeast State.

The following acute and chronic toxicological data applies to materials in contaminated soil:

Acute:	Phorate	LD50	2-4 mg/kg
	Lorsban	LD50	145 mg/kg
	2,4-D	LD50	500 mg/kg
	Lasso	LD50	1800 mg/kg
	Banvel	LD50	1707 mg/kg
	Atrazine	LD50	1780 mg/kg

Chronic: 2,4-D - tumorigen, mutagen, teratogen and suspected carcinogen
 Lorsban - suspected teratogen
 Banvel - suspected teratogen and mutagen

The concentrations of some of these substances (Phorate, Lorsban, 2,4-D and Lasso) in the contaminated soil at the site exceed these acute toxicity levels. Other pesticides contaminating the soil contribute to the overall hazardous conditions.

3) Assistance will not otherwise be provided on a timely basis. Enforcement action against owner/operator has not been taken at this time due to the time constraints of the emergency situation. The owner/operator has stated that he does not have sufficient funds for this removal action. There are no funds available from State or local governments. This site is not ranked on the National Priorities List. It is anticipated that on-site removal activities will be completed in July 1984.

REQUEST FOR CEILING INCREASE

The cost to complete this project is estimated to be \$460,000. I hereby request an increase in the ceiling to \$1,260,000.

-2-

1. Perform sampling and analysis of soil, water and debris to determine extent of contamination.
2. Demolish the burned structure; rinse and transport the structural debris to disposal site.
3. Rinse, remove and transport other site debris to disposal site.
4. Removal and transport of all recyclable materials.
5. Remove contaminated soil (approximately 3500 cubic yards) and contaminated water (approximately 44,000 gallons) and transport to disposal site.
6. Adherence to all established health and safety procedures.

At this time, approximately 1400 cu. yds. of stockpiled contaminated soil and 5,500 gallons of runoff water are on site requiring disposal. The disposal is expected to take up to four weeks to complete at a total cost of \$460,000. This additional cost will raise the total cost for the immediate removal action to \$1,260,000 which exceeds the statutory limit of \$1,000,000.

The levels of contamination in the soil are shown in the following list:

Chemical	ppm	Chemical	ppm
Lasso	76000	Banvel	500
2,4-D	630	Treflan	3000
Phorate	2525	Dyphonate	4
Lorsban	277	Atrazine	1110

The manner in which the Now Chemical site meets the prescribed criteria for \$1,000,000 exemption are as follows:

1) Continued response actions are immediately required to mitigate an emergency. Approximately 1400 cu.yds. of soil contaminated with hazardous substances is presently stockpiled on site surrounded by a temporary two feet high clay dike. Removal and disposal of this soil is required to prevent contamination of surface and ground waters which are used for public and private water supplies. The immediate removal action is not complete until the conditions which led to the initiation of action are eliminated or abated (300.65(c) of the NCP).

2) There is an immediate risk to public health and the environment. The site constitutes a health hazard because of the presence of hazardous substances and the ease of access to the site by the general public. An access road to businesses, stables and residences near the site is adjacent to the site. The stockpile of contaminated soil (120' x 30' x 12') is located next to the access road. Surface runoff from the soil resulting from a heavy rainstorm would enter Two Mile Creek which is a tributary of



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 20 1984

S A M P L E

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Continuation of Removal Activities:
Now Chemical Site — ACTION MEMORANDUM

FROM: Regional Administrator
Region XI

TO: Lee M. Thomas
Assistant Administrator for Solid Waste and Emergency Response

THRU: William N. Hedeman, Jr., Director
Office of Emergency and Remedial Response

ATTN: John J. Stanton, Director
Emergency Response Division (WH-548-B)

ISSUE

Continued immediate response actions are estimated to exceed the \$1,000,000 statutory limit and further cleanup cannot be undertaken unless an exemption to Section 104(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) is granted and an increase in the ceiling is approved. It is estimated that an additional \$460,000 will be required to complete the removal action.

STATUTORY CRITERIA

Section 104(c) of CERCLA limits Federal emergency response to \$1,000,000 unless three criteria are met: (1) continued response actions are immediately required to mitigate an emergency; (2) there is an immediate risk to public health and the environment and (3) such assistance will not otherwise be provided on a timely basis.

DISCUSSION

The Environmental Protection Agency (EPA) initiated emergency action on April 9, 1984, to remove hazardous substances resulting from a fire at Now Chemical Co. in Town, State, which was approved in an immediate removal action memorandum dated April 9, 1984. Approximately \$780,000.00 has been expended from an authorized ceiling of \$800,000.00 to cover the following:

Appendix 9

THE UNIVERSITY OF CHICAGO
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AUG 20 1984

-3-

distributed by wind or traffic, particles can remain airborne for prolonged periods and easily inhaled. Exposure to airborne asbestos particles, even for short periods of time and at low levels, has been shown to pose a significant health risk due to the possible contraction of mesothelioma. In addition, continued short-term exposure has been shown to result in a significant increase in health risk posed by longer-term, chronic diseases (lung cancer, asbestosis, and gastrointestinal tract tumors).

3. Assistance will not otherwise be provided on a timely basis. Enforcement action against owners, operators and the generator has been unsuccessful. The company has declared bankruptcy. Regional Counsel indicated it is doubtful that enforcement action will result in revenues for this removal action. These sites are not ranked on the National Priorities List. The State of State does not have the funds to accomplish this work. It is anticipated that on-site removal activities will be completed in July, 1984.

Recommendation

Because conditions at the site meet the CERCLA 104(c) criteria, I recommend that you approve an exemption from the six month limit to allow continued removal activities at the Town and City, State asbestos sites. Approval for this action is granted only under the condition that future maintenance costs consisting of erosion control and reseedling, are assumed by the State of State or local government.

Approve: _____ Date: _____

Disapprove: _____ Date: _____

NOTE: Headquarters General Counsel has made the following recommendation for enhancing the Agency's ability to support statutory exemptions. Exemption requests should highlight how continued exposure at the predicted levels, over the immediate term, will cause or contribute to potential injury to human health and welfare, whether or not the injury will be immediately apparent.

1. A site, located 100-yards to the North of Route 4 in Town;
2. B site, a vacant lot immediately west of the A site;
3. C site, located west of the B site along Route 4;
4. D site, located 1-1/2 miles northeast of the A site;
5. E site, located in residential City at the end of Brown St.;
6. F site, located in a populated area of Town at X and Y Roads; and
7. G site, located in a residential area in Town on Z Road.

It is apparent that seeding of some portions of these sites did not take root sufficiently before the onset of winter weather. Additionally, some erosion has occurred during the winter re-exposing portions of the asbestos. Proposed immediate removal actions now include repairing eroded areas and reseeding to ensure stability of the soil covers. These actions are expected to take 20-days to complete at a total cost of \$50,000 which is available from the unobligated balance of the original removal action.

The manner in which these Hudson and Nashua asbestos sites meet the prescribed criteria for a six-month time extension are as follows:

1. Continued response actions are immediately required to mitigate an emergency. The Centers for Disease Control (CDC) advisory, issued on June 13, 1983, stated that these sites require attention to prevent inhalation exposure to the public. The memorandum to the record supporting the health advisory specifically states that access to each of the sites by the public should be prevented immediately. This decision is justified by the fact that removal of these exposures to a known carcinogen will result in a substantially decreased risk of disease. The alternative of no action would require costly long-term monitoring of environmental exposures, assurance that certain human activities would not occur on these properties, and the acceptance of elevated risks for asbestos-associated diseases. It is essential to ensure compliance with the advisory and to repair those portions requiring replacement and reseeding, thereby eliminating the potential spread of asbestos. The approved immediate removal action is not complete until these conditions which initially led to the initiation of action are eliminated or abated (300.65 (c) of the NCP).

2. There is an immediate risk to public health and the environment. A CDC health advisory, dated June 13, 1983, stated that each site constituted a health hazard because of the presence of friable asbestos and the ease of access to each site by the general public. Supporting documentation states that access to each site should be prevented immediately. Hundreds of people reside near these sites, their children play in these areas, and thousands more travel along Route 4 which is bordered by four of these sites. The asbestos is found in large quantities on the surface of the eroded areas, and includes dust and friable materials easily converted to dust. When dry and



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 20 1984

S A M P L E

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Six-Month Time Exemption to Allow the Continuation of
Removal Activities at the White Asbestos Sites, Town, City,
State -- ACTION MEMORANDUM

FROM: OSC

TO: Regional Administrator

Issue

Continued response actions of a duration greater than six months cannot be undertaken unless an exemption to Section 104(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) is granted. The initial response action of the White asbestos sites in Town, and City, State, took place in June 1983. The six-month time limit expired in December 1983.

Statutory Criteria

Section 104(c) of CERCLA limits Federal emergency response to six months in duration unless three criteria are met: (1) continued response actions are immediately required to mitigate an emergency; (2) there is an immediate risk to public health and the environment; and (3) such assistance will not otherwise be provided on a timely basis.

Discussion

The Environmental Protection Agency (EPA) initiated emergency action on June 28, 1983, to stabilize six asbestos sites which were approved in an immediate removal action memorandum dated June 20, 1983. An additional site was subsequently added to the list after an investigation was conducted. On October 13, 1983, a \$1 million exemption request was approved in order to continue response actions at the site. Approximately \$900,000 was expended from the authorized \$1,120,000, to cover the following:

- Appendix 8

AUG 20 1984

-8-

4. Judicial Action

EPA and the State agree that judicial action taken under CERCLA by either party against a potentially responsible party for recovery of any sums expended in response actions at the site under this Contract shall be filed in the United States District Court for the judicial district in which the site is located, or in such other judicial district of the United States District Courts as may be authorized by section 113 of CERCLA, and agreed to in writing by EPA and the State.

M. Third Parties

This Contract is intended to benefit only the State and EPA. It extends no benefit or right to any third party not a signatory to this Contract.

N. Amendments

Any change in this Contract must be agreed to, in writing, by both parties.

O. Failure to Comply with Terms of Contract

1. If the State fails to comply with the terms of this Contract, EPA shall give the State sixty (60) days written notice before proceeding under the provisions of section 104(d)(2) of CERCLA.
2. If EPA breaches the terms of this Contract, no action for damages or any form of remedy shall be commenced until the State shall have given EPA sixty (60) days written notice of intent to file suit.

In witness whereof, the parties hereto have executed this Contract in three (3) copies, each of which shall be deemed original.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Regional Administrator

Date

STATE OFFICE (IN CAPS)

AUTHORIZED STATE SIGNATURE AND TITLE

Date

NOTE: If the planned removal action was approved by the AA/OSWER (costs greater than \$1 million) the AA will also sign the SSC.

L. Enforcement and Cost Recovery1. Disclaimer of Agency Relationship

The execution of the Contract does not create an agency relationship between EPA and the State. Any standards, procedures, or protocols presented in this Contract to be followed by EPA or its contractors during the performance of its obligations under this Contract are for assurance of the quality of the final product of the actions contemplated by the Contract, and do not constitute a right to control the actions of the EPA. EPA (including its employees and contractors) is not authorized to represent or act on behalf of the State in any matter relating to the subject matter of this Contract and the State is not authorized to represent or act on behalf of the EPA in any matter relating to the subject matter of this Contract.

2. Notice of Intent to Settle or Initiate Proceedings

EPA and the State agree that, with respect to the claims which each may be entitled to assert against any third person (herein referred to as the "responsible party," whether one or more) for reimbursement of any services, materials, monies or other thing of value expended by EPA or the State for response activity at the site, neither EPA nor the State will enter into a settlement with or initiate a judicial or administrative proceeding against a responsible party for the recovery of such sums except after having given notice in writing to the other party to this Contract not less than thirty (30) days in advance of the date of the proposed settlement or commencement of the proposed judicial or administrative proceedings. Neither party to this Contract shall attempt to negotiate for nor collect reimbursement of any response costs on behalf of the other party, and authority to do so is hereby expressly negated and denied.

3. Cooperation and Coordination of Cost Recovery Efforts

EPA and the State agree to cooperate and coordinate in efforts to recover their respective costs of response actions taken at the site described herein, including the negotiation of settlement and the filing and management of any judicial actions against potentially responsible parties. This shall include coordination in the use of evidence and witnesses available to each in the preparation and presentation of any cost recovery action, excepting any documents or information which may be confidential under the provision of any applicable State and Federal law or regulation.