



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

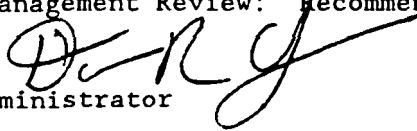
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OSWER Directive No. 9200.2-03

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Interim Guidance on Addressing Immediate Threats at NPL Sites
(Superfund Management Review: Recommendation No. 22)

FROM: Don R. Clay 
Assistant Administrator

TO: Director, Waste Management Division
Regions I, IV, V, VII, VIII
Director, Emergency and Remedial Response Division
Region II
Director, Hazardous Waste Management Division
Regions III, VI
Director, Toxic and Hazardous Waste Management Division
Region IX
Director, Hazardous Waste Division
Region X
Director, Environmental Services Division
Regions I, VI, VII
Regional Counsel, Regions I-X

PURPOSE

The purpose of this memorandum is to transmit Agency guidance on addressing immediate threats at National Priorities List (NPL) sites.

BACKGROUND

As a result of the Superfund Management Review, the Administrator committed that by September 30, 1990, all NPL sites would be free from immediate threats. Subsequently, this commitment became a Presidential-level "Management-By-Objective." The Office of Solid Waste and Emergency Response (OSWER) formed a workgroup to develop guidance to assist the Regions in taking expedited approaches to site cleanups and in making NPL sites "safer." On December 15, 1989, EPA issued the guidance "Accelerated Response at National Priorities List Sites" (OSWER Directive #9200.2-02) to address expediting cleanup. The question of making NPL sites "safer" is being addressed by the following directive, which provides procedures to help the Regions identify, document, and eliminate to the extent possible, immediate threats at proposed and final NPL sites. This document on addressing immediate threats and the previous OSWER Directive #9200.2-02 on accelerated response should be used together as companion pieces.

IMPLEMENTATION

Specifically, the attached OSWER directive requires that you:

- o Establish Region-wide procedures to routinely review all NPL sites (the guidance outlines examples of procedures);
- o By September 30, 1990, review all final NPL sites for the presence of immediate threats, document the findings of the review, and take action at all NPL sites that have immediate threats (the guidance provides documentation statements);
- o Thereafter, review and document the status of every final NPL site at least once every two years, at minimum reviewing half of the final NPL sites one year, the other half the next. The documentation memorandum will be due on January 1 of each year starting with January 1, 1992;
- o Conduct an initial removal site evaluation at each newly proposed NPL site within three months of the date of proposal (the guidance explains some exceptions);
- o Take action at all proposed and final NPL sites that have immediate threats; and
- o Complete an environmental indicator form for all removal actions completed at NPL sites this fiscal year.

This directive is effective immediately and Regions should begin developing procedures and reviewing their sites. However, this is being issued as interim guidance to consider any comments you may have. For example, you may wish to suggest a due date different than January 1 (see third bullet above). Please send your comments to: Hans Crump, Acting Director, Emergency Response Division (OS-210), EPA, 401 M Street SW, Washington, D.C. 20460 by March 1, 1990.

If you have any questions Hans Crump may be reached at FTS 475-8720, or you may call Scott Maid at FTS 382-4671.

Attachment

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Addressing Immediate Threats
At National Priorities List Sites¹

1.0 INTRODUCTION

1.1 Background

Two major recommendations of the study commissioned by the Environmental Protection Agency (EPA) in June 1989, entitled "A Management Review of the Superfund Program" (Superfund Management Review), were to expedite response at National Priorities List (NPL) sites and to make these sites safer. On December 15, 1989, EPA issued the guidance "Accelerated Response at National Priorities List Sites" (OSWER Directive #9200.2-02) to address the first recommendation. The directive described removal, remedial, and enforcement procedures and contract mechanisms for use by the Regions to accelerate CERCLA response actions at NPL sites. The following directive addresses the recommendation to make NPL sites safer. Because it refers to some sections of the accelerated response guidance, it should be used as a companion piece to that guidance.

1.2 Purpose

This document provides detailed procedures and guidance for evaluating and addressing immediate threats at NPL sites this year and in the following years. It provides that proposed new additions to the NPL undergo a removal site evaluation to identify the presence of immediate threats. It also provides that final NPL sites be reviewed at least once every two years to ensure, to the extent possible, that all NPL sites are free from immediate threats. This guidance is intended for Regional site managers, including On-Scene Coordinators, Site Assessment Managers, Remedial Project Managers, enforcement staff, and other Regional and Headquarters Superfund personnel and managers.²

¹ The policies and procedures established in this document are intended solely for the guidance of EPA personnel. They are not intended, and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the United States. EPA reserves the right to act at variance with these policies and procedures and to change them at any time without public notice.

² Federal agencies with facilities listed on the NPL are encouraged to follow this guidance. Federal agencies with facilities on the NPL have primary responsibility for evaluating and documenting threats at their sites. (EPA may respond to emergencies at some Federal facilities; for more information see E.O. 12580.)

1.3 Scope Of Guidance

Specifically, the guidance will discuss the following topics:

- (1) Identifying and addressing immediate threats at NPL sites (Section 2.0); and
- (2) Procedures for reviewing and documenting that NPL sites do not pose immediate threats (Section 3.0).

2.0 IDENTIFYING AND ADDRESSING IMMEDIATE THREATS AT NPL SITES

The Agency's goal is to protect public health and the environment as much as possible from the risks posed by NPL sites, both short-term and long-term. Public health and the environment can be protected from short-term risks at NPL sites by stabilizing or mitigating immediate threats. Immediate threats to human health and the environment that result from deterioration of NPL site conditions before the completion of remedial action must be addressed as soon as possible.

The sections below discuss how the Agency will work to identify and address immediate threats. Section 2.1 explains what we mean by immediate threat and gives examples of problems that the Regions should be looking for. Sections 2.2 and 2.3 explain the evaluation and review process. Section 2.4 briefly discusses the mechanisms available for addressing immediate threats identified at NPL sites.

2.1 Considerations During The Review And Evaluation Process

The goal of the review and evaluation process discussed below (in sections 2.2 and 2.3) is to identify, document, and eliminate to the extent possible immediate threats that may be posed by NPL sites.³ For example, the review and evaluation process should attempt to identify threats of fire or explosion, direct contact threats, significant threats of near-term migration, and other relatively predictable threats. Direct contact threats might include (but are not limited to) situations such as uncontrolled waste piles, overflowing lagoons,

³ Documentation that there are no immediate threats at an NPL site is not related to evidence of possible imminent and substantial endangerment. An endangerment is a threatened or potential harm. An endangerment is imminent if the conditions that give rise to it are present, even though the harm might not be realized for years. An endangerment is substantial if there is reasonable cause to believe that someone or something may be exposed to a risk of harm from a release or threatened release. The mere threat of harm or potential harm to public health, public welfare, or the environment is sufficient. The endangerment need not be immediate to be imminent.

contaminated drinking water, and uncontrolled access to sites where conditions on the surface pose health threats. Significant threats of near-term migration might include extensive contamination on the soil surface that would be spread by a heavy rain or snow. Generally, these situations should be addressed as quickly as possible to alleviate the threat. In addition, NPL sites should not have, on the surface, tanks and drums containing hazardous substances. In most cases, such waste on NPL sites should be addressed by a removal or remedial action (see section 2.4 below on mechanisms for addressing immediate threats). The reviewer should also consider whether conditions might have worsened at the site subsequent to the initial site evaluation as a result of weather, physical plant deterioration, vandalism, or other causes that would indicate the need for additional evaluations or a response action.

It is important that all Superfund site managers (including remedial project managers and site assessment managers), staff, and site contractors (such as the Field Investigation Team) be knowledgeable about the capabilities of the removal program, including the factors in §300.65 of the NCP (section 300.415 of the proposed NCP).⁴ The removal criteria in the NCP should be considered whenever a site is investigated at the Preliminary Assessment and/or Site Inspection (PA/SI) stage and when NPL sites are reviewed or evaluated for immediate threats. In addition, information collected as part of the PA/SI and removal site evaluations at NPL sites should be used, as appropriate, to develop long-term plans for remedial action for the sites.

The reviews and evaluations of NPL sites can generally be based on easily obtainable information for each site, as judged by the Region. In past discussions, Regions have asked to what extent they will be expected to sample ground water as part of the review process. If sampling wells exist, it may be appropriate to sample the water. However, drilling new sampling wells is generally not appropriate (i.e., usually it should be done as part of the Remedial Investigation/Feasibility Study (RI/FS) process, not during an NPL site review or removal site evaluation).

2.2 Evaluating Newly Proposed NPL Sites

Because conditions at sites newly proposed for inclusion on the NPL may pose immediate threats to human health or the environment, it is important that a removal site evaluation be routinely conducted within a short period after a site has been proposed (if the site has not been evaluated recently before proposal). A removal site evaluation helps ascertain the current condition of

⁴ For ease of use, references to both the old (1985) NCP and the proposed (1988) NCP sections are provided in the text. It is important to note, however, that the 1985 NCP remains in full effect until a revised NCP is promulgated. The revised NCP, which was proposed on December 21, 1988 (53 FR 51394), is expected to be finalized in 1990. The revised section numbers will become effective on the effective date of the regulation.

the site and whether there are any immediate threats such as fire, explosion, or direct contact (see section 2.1 above) that should be addressed.

Therefore, effective immediately, all Regions must complete a removal site evaluation at each newly proposed NPL site within three months of the date the site is officially proposed for inclusion on the NPL (unless it is not appropriate; see next paragraph). The components of a removal site evaluation are described in section 300.410 of the proposed NCP. This evaluation should include review of any available PA/SI information and, except in extenuating circumstances, a site visit. When the evaluation is completed, the information should be entered into CERCLIS (see section 3.3 below) and a memorandum containing the statements in section 3.3 below should be sent from the appropriate Regional Division Director to the Regional Administrator, with a copy to the Director of the Emergency Response Division, Headquarters (ERD). Regions may choose to issue just one memorandum for all of the sites in the Region listed in a proposed update or may issue a separate memorandum for each site.

In some situations, Regional staff may believe that a removal site evaluation is not appropriate or cannot be completed within three months of the date of proposal. For example, if the Region has recently (e.g., in the twelve month period before proposal) conducted a removal site evaluation or a removal action and believes another site evaluation is not needed, it may not be appropriate to conduct another one. As another example, if a particular proposed NPL update includes a large number of sites in one Region, the Region may need more than three months to complete all the evaluations. In such situations, the Region should contact the Regional Coordinator in ERD. Then the appropriate Regional Division Director should send a memorandum to the Regional Administrator with a copy to the Director of ERD. The memo should briefly explain the reason that a removal site evaluation is not being conducted or is being delayed. For those that are delayed, the memo should explain when they will be completed.

2.3 Reviewing The Status Of Final NPL Sites

Because NPL sites can deteriorate while awaiting final remedial action, it is important to review all NPL sites periodically to ensure that there are no immediate threats. Such a periodic review also assists Regions in ensuring that the worst sites are addressed first.

Therefore, in keeping with commitments made to implement the Superfund Management Review, all Regions must, by September 30, 1990, document that there are presently no immediate threats, or that they are taking action, at all sites on the final NPL (see section 3.3 for information on documentation).

After this initial review and documentation, subsequent documentation memoranda will be due on January 1 of each year starting with January 1, 1992. Regions must review and document the status of every final NPL site at least once every two years, reviewing half the final NPL sites each year (using the procedures developed under section 3.1 and the statements in 3.3). This means

that after the initial review of all of the final NPL sites in 1990, Regions will review and document the status of half the final NPL sites again by January 1, 1992, the other half by January 1, 1993, and so on. This requirement recognizes that while sites must be reviewed routinely to achieve Agency goals, the reviews should not be so frequent that they create an excessive resource burden for the Regions. In addition, reviewing half of the sites one year and the other half the next should assist Regions in planning their workload and budget cycle. In keeping with the principle of addressing "worst sites first," Regions should consider the results of the 1990 review in deciding which half of the final NPL sites to review in 1991 (in order to document the results in 1992). If a proposed site makes the final NPL, generally it should be reviewed two years after the removal site evaluation (see section 2.2 above) or after it becomes final, whichever is later (unless a problem is suspected or an earlier review is deemed appropriate).

All documentation memoranda must be signed by a Regional Division Director and sent to the Regional Administrator with a copy to the Director of ERD. Section 3.0 describes procedures for accomplishing the review/documentation process.

Note: The purpose of the review and documentation is not to mandate that sites be visited but instead to ensure that site circumstances are considered at least every two years. Thus, specific site circumstances should dictate how each site will be reviewed for immediate threats. For example, some sites may be free from surface contamination, known to be very stable, or have extensive existing data. In these cases, there may be no concern in documenting the site as free from immediate threats without a recent site visit because weather, vandalism, etc., could not cause further harm. Regions may need to visit or use other methods to review other sites more frequently.

2.4 Mechanisms For Addressing Immediate Threats

Once the immediate threats have been identified, they should be addressed in a timely manner. The December 15, 1989, directive on accelerated response at NPL sites (OSWER Directive #9200.2-02) describes the removal and remedial mechanisms available for addressing NPL sites. Any of the mechanisms described there may be used for addressing immediate threats as well as for accelerating response. The type of threat found, the amount of time available before the threat must be addressed, and the resources available (e.g., personnel and contractor) will dictate whether remedial or removal authority should be used to address immediate threats. Generally, the removal program will be used to respond to immediate threats that must be addressed quickly (see the accelerated response directive for more information on the removal and remedial programs; e.g., the guidance explains the requirement for issuing an action memo for removal actions, etc.). The remedial program may be used to respond to some threats identified during the review process, especially when found during an on-going RI/FS and there is sufficient time to complete a Record of Decision and conduct an accelerated remedial action. As discussed in the directive on accelerated response, site managers must take advantage of enforcement authorities whenever possible.

3.0 PROCEDURES FOR REVIEWING AND DOCUMENTING THAT NPL SITES DO NOT POSE IMMEDIATE THREATS

The following sections describe the types of procedures that Regions may use to review their NPL sites and document the findings. Section 3.1 describes optional procedures that the Regions may consider to review final NPL sites for immediate threats (the procedures do not apply to proposed NPL sites because Regions generally will conduct a formal removal site evaluation on proposed sites). Section 3.2 discusses options for structuring the review. Section 3.3 presents statements which all Regions must use to document that final NPL sites do not present an immediate threat or that action is being taken. Section 3.4 gives information on environmental indicators.

3.1 Review Procedures For Final NPL Sites

The Regions must develop internal procedures specifying how they will accomplish the review/documentation process. The procedures must explain which offices will be responsible for the initial review, how sites will be handled if further evaluation is needed, and who will sign the documentation memorandum (in some Regions, more than one Division Director may be involved). The Regions should establish their procedures for review of NPL sites as soon as possible, in order to allow sufficient time to complete the necessary work involved in meeting the September 30, 1990, deadline.

The Regions have wide latitude in the formulation of a review/documentation process. For example, some Regions may choose to have site managers (i.e., staff responsible for NPL sites on a day-to-day basis) conduct the initial review, referring questionable sites for further evaluation by the removal program, or the Regions may choose to have the removal program perform the entire evaluation. Alternatively, a Region may choose to establish a task force of staff from all Superfund programs to coordinate Regional reviews of NPL sites.

The Regions may choose to adopt any of the abovementioned options, or use any combination of approaches as appropriate, or may instead develop different procedures to accomplish the review. Flexibility is necessary in order to accommodate Regions with a small number of final NPL sites that may want to organize the review process differently from Regions with a large number of final NPL sites. In all cases, however, the final documentation consists of the statements and CERCLIS report discussed in section 3.3.

3.2 Structuring The Review Of Final NPL Sites

Regardless of the approach chosen and depending on the number of final NPL sites, the Regions may wish to conduct their reviews throughout the year. For example, if a Region has 200 final NPL sites (not counting Federal facilities; see footnote 2) the Region may wish to structure the review process so that 25 sites are reviewed each quarter (because the status of half of the sites will be reviewed and documented each year). In this case, the Region may wish to issue a

documentation memo on a quarterly basis for each group of sites or may choose to wait and document all of the site reviews once a year, noting that the actual reviews were done on a quarterly basis and will continue on this basis in the coming year. Regional plans should also take into account the fact that additional sites will be finalized and/or proposed for the NPL during the two-year review period. Regions will have to conduct removal site evaluations at these sites within three months of proposal (see section 2.2). In any case, the review (and findings if additional evaluation/action is needed) should be entered into CERCLIS when the review is completed.

3.3 Documenting The Results Of The Reviews And Evaluations (Final and Proposed NPL Sites)

Regions must use the following statements, as appropriate, to document that they have reviewed all final NPL sites (except Federal facilities; see footnote 2). The statements should also be used to document findings of the removal site evaluations conducted at newly proposed sites (see section 2.2).

Within the next several months Headquarters will add a new event type to CERCLIS and write new reports to assist the Regions in tracking their reviews and documenting the results. Headquarters will send guidance on the new event and reports to Regional offices in the near future. The CERCLIS reports will be the attachments indicated in the statements below.

Documentation for sites where a response (remedial or removal) is ongoing or planned (for planned actions, statement generally should be used only where response action is planned to be taken within twelve months of the date of the memorandum):

"The following sites have response action ongoing or are scheduled for response action to alleviate immediate threats at these sites. The attachment [CERCLIS report] shows the quarter and year when the work is scheduled to begin (for planned actions) or when work started (for ongoing actions)."

Documentation that sites do not have immediate threats:

"I have reviewed the available information on the sites listed in attachment ____ [CERCLIS report] and, based on this information, there are presently no immediate threats at these sites. The Agency, at its discretion, may take further action at these sites under CERCLA section 104, 106, or 122."

For final NPL sites, each Region is required to issue only one documentation memorandum per year (but may issue more than one as described in section 3.2 above). The memo must contain the statements and attachments described above and cover all of the final NPL sites in the Region that are being reviewed/documented that year. For proposed NPL sites, a Region may issue one memo for each site or

may group the sites. A Regional Division Director must sign the memorandum containing the appropriate statements and send it to the Regional Administrator with a copy to the Director, Emergency Response Division. As mentioned earlier, the first documentation memo (with the attachments) is due September 30, 1990, for all final NPL sites (except Federal facilities). Subsequent memos are due for half of the final NPL sites every year, starting on January 1, 1992. Memoranda for proposed NPL sites are due 3 months after proposal.

3.4 Environmental Indicators

Regions must complete an environmental indicator form for all removal actions completed at proposed or final NPL sites this fiscal year, i.e., FY 90. This will support the documentation and public explanation of what has been done to fulfill the Administrator's commitment on this Presidential objective. The environmental indicator forms and instructions will be sent to the Oil and Hazardous Material Coordinator in each Region in the near future.

4.0 BIBLIOGRAPHY

Guidance

"A Management Review of the Superfund Program," Report from U.S. EPA, Washington, DC (6/89)

OSWER Directive No. 9200.2-02, "Accelerated Response at National Priorities List Sites" (12/15/89)

Statutes and Regulations

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended, 42 U.S.C. 9601-9657

The National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300 (11/20/85)

The National Oil and Hazardous Substances Pollution Contingency Plan, Proposed Rule, 40 CFR Part 300, 53 Federal Register 51394-51520 (12/21/88)