



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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SUBJECT: Guidance on Implementation of the Superfund Accelerated Cleanup Model (SACM) under CERCLA and the NCP

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PURPOSE

To provide a more precise description of the Superfund Accelerated Cleanup Model (SACM), in order to ensure its consistent application in compliance with CERCLA and the National Contingency Plan (NCP).¹

¹ This Directive does not address the unique issues associated with the implementation of the SACM model at federal facility sites. Supplemental guidance on those issues is under development.

BACKGROUND

In broad terms, the SACM model seeks to accomplish four objectives: establish a continuous process for the assessment of site-specific conditions and the need for action; create cross-program Regional Decision/Management Teams responsible for initiating appropriate actions as information is developed about a site; achieve prompt risk reduction through early actions (removal or remedial); and ensure the appropriate cleanup of long-term environmental problems. The overall goal of SACM is to accelerate cleanups and increase efficiency in the Superfund process within the framework of CERCLA and the NCP, while ensuring that cleanups continue to be protective and to allow for appropriate public involvement.

Since the announcement of SACM, there has been considerable interest and enthusiasm about the model. Active discussions continue among Headquarters offices and the Regions, and views have been solicited from the Corps of Engineers, the Department of Justice, and States in an effort to further develop the guiding principles of SACM. Now that the model has been outlined conceptually, it is important to discuss the details of the approach in order to ensure that all participants are working from a consistent starting point, and that the model is carried out in compliance with CERCLA and consistent with the NCP.

DISCUSSION

Relationship to CERCLA and the NCP. SACM is intended to help the Agency accomplish the goals of expedited cleanup and increased efficiency in the Superfund process within the framework of the current statute and NCP. The Agency believes that there is adequate flexibility under the current law and regulations to accomplish these goals; however, SACM does not provide independent authority to carry out actions that are not authorized by the CERCLA and the NCP regulations.

For instance, the use of the terms "early actions" and "long-term actions" in SACM should not be read to mean that actions may be implemented under the SACM model that are other than removal or remedial actions. Any action taken under CERCLA must fall into the category of a removal action or a remedial action, and then must conform to applicable NCP requirements. The categorization in SACM of early removal actions and early remedial actions as "early actions" is meant to better communicate the timing and nature of actions designed to achieve rapid reduction of risk, although not necessarily cleanup of all contamination. (Given the large number of sites with contaminant problems that may require long-term solutions, e.g., sites requiring groundwater restoration, it is anticipated that many sites will have both early and long-term action components.)

At the same time, however, the NCP affords the Agency considerable discretion in many instances. For example, the numerous data collection efforts contemplated by the NCP could be performed as part of one large site assessment (as discussed later in this Directive). CERCLA and the NCP also provide the Agency with the flexibility to proceed with many types of cleanup actions using either removal or remedial action authorities. See CERCLA sections 101(23) and 101(24); and 40 CFR 300.415(d) (a partial list of actions that may be carried out using removal action authority).

In addition, some SACM pilots may involve specific deviations from current Agency policies in order to test a new approach to site evaluation or response (where this is the case, such deviations should be properly justified and documented). Experience from the SACM pilot projects may also prompt changes in national policies. (Further, SACM pilot projects may identify regulatory or statutory requirements that would prevent the Agency from pursuing a given approach; such information may be referred to Headquarters for consideration as part of regulatory reform, or for study by CERCLA reauthorization workgroups.)

Site Assessment. One of the major initiatives of SACM is to break down institutional barriers within the Agency, and to establish an operational scheme under which data are collected and used to serve multiple purposes. For instance, samples taken as part of an evaluation for possible removal action may often be used to support, or begin, an evaluation of the need for remedial action, site scoring using the Hazard Ranking System (HRS), or in some cases, the remedial investigation (RI). Although the NCP regulations contemplate that the Agency will perform (as warranted) a removal preliminary assessment (PA), a removal site inspection (SI), a remedial PA and SI, and ultimately an RI, some or all of these various studies can be consolidated in appropriate cases under the SACM model, such that one site assessment can be performed and one site assessment report written. However, the report should include any findings required by the NCP for moving from one phase of site assessment to another (e.g., from a remedial PA to a remedial SI; see 40 CFR 300.420(b)(4)(iii)).²

By using data for multiple purposes, economies can be achieved in terms of the amount of sampling needed, expertise and learning can be shared among agency officials responsible for the various tasks undertaken at a site, and the time between data collection and action (if deemed necessary) can be shortened.

² Note that during the initial phases of the site assessment process, it may be appropriate to issue a finding of "Site Evaluation Accomplished" (SEA), indicating that no further action is planned for the site.

Specifically, if and when sufficient supporting information is gathered during the combined site assessment, work could begin on an early action, an HRS scoring package, or ultimately a long-term action. This consolidation could save years in the site evaluation phase of the Superfund process.

Effect on the NPL. The attempt to evaluate sites more quickly, and to initiate response action earlier, may have some impact on a site's scoring and possible listing on the National Priorities List (NPL).³ However, as discussed below, that impact is subject to several significant limitations.

Under the current HRS, the physical removal of hazardous substances from a site may reduce the site's HRS score, but only if the action occurs prior to the remedial SI phase of the site assessment.⁴ Where early response actions occur after initiation of the remedial SI portion of the site assessment, the risk reduction achieved by the early action would not be considered in the HRS scoring process. (However, the site might be a candidate for a "no further action" decision and then deletion, shortly after being listed on the NPL.)

Moreover, because a range of waste quantity values generally qualifies for the same waste quantity sub-score under the HRS, a physical removal must be significant enough to lower the waste quantity below that range of quantities in order to affect the final waste quantity and HRS scores. (The timely removal of all hazardous substances would always result in an HRS score of zero.)⁵

³ Only sites listed on the NPL are eligible for Fund-financed remedial actions. 40 CFR 300.425(b)(1). However, removal actions, and response actions carried out by private parties pursuant to EPA enforcement authorities, may be conducted at NPL or non-NPL sites. 40 CFR 300.425(b)(1) and (b)(4).

⁴ See 55 Fed.Reg. at 51568. The remedial SI point was chosen as the dividing line because it is the point at which most of the scoring data is available, and because of the need to provide finality in the listing process (a contrary policy would create a burdensome need to continually recalculate HRS scores).

⁵ Note that actions that do not affect the quantity of waste at a site, such as providing alternative drinking water supplies or enhancing containment of a waste pile, would not affect the HRS score. See preamble to final HRS, 55 Fed.Reg. 51532, 51567-69 (Dec. 14, 1990), and HRS Section 2.4.2.2 (40 CFR Part 300, App. A, sec. 2.4.2.2), for a more detailed discussion of the effect removal actions may have on the HRS score.

It should also be noted that most sites requiring action under CERCLA have been found to present long-term problems (such as the need for groundwater restoration) in addition to more acute, short-term problems. Thus, at many sites, risk reduction activities may address only a portion of the contamination problem, and thus the HRS scoring process would often continue even after the early actions.

As part of the SACM initiative, the Agency intends to compile a list of long-term actions. However, that list is not meant to replace the NPL; rather, it will simply be an informational list of sites at which long-term actions are being carried out using the concepts reflected in SACM, and will likely represent a sub-set of all NPL sites.

Effect on Current Response Action Procedures. It is also important to recognize how the SACM model fits within the existing site response process. Although SACM encourages the taking of early action where risk reduction may be accomplished promptly, it is not expected that procedures would change for all categories of CERCLA response actions (although implementation of the Model may result in expedited administrative practices at all sites).

For example, EPA will continue to use removal action authorities to respond to emergency and time-critical situations, and SACM does not intend to change the manner in which these time-sensitive actions are carried out. However, the determination as to whether a situation is "time-critical" (where action must be initiated in less than six months) as compared to "non-time-critical" (where more than six months planning time is available) will have an important impact on the level of analysis, timing of administrative record development, and extent of public participation that is required under the NCP regulations.⁶ Thus, especially in close cases, the finding that action is "time-critical" should be discussed with the Office of Regional Counsel representative to the Decision Team, and should be explained in the Action Memorandum.

At the other end of the spectrum, the Agency will continue to use remedial action authorities to respond to most contamination problems that are expected to require more than five years to complete ("long-term actions"), such as groundwater restoration projects, large wetland/estuary sites, and extensive

⁶ See 40 CFR 300.415(b)(4) and (m)(4), 300.820(a); 55 Fed.Reg. at 8695-98 and 8805-06 (March 8, 1990).

mining sites.⁷ It is also expected that remedial action authorities would generally be necessary to carry out the permanent relocation of individuals, and actions requiring significant, long-term operation and maintenance activities.

The area where the greatest flexibility is available -- and where the SACM model is expected to have the greatest impact -- is for actions that fall between the clear cases of removal and remedial actions: sites for which a planning period of at least six months exists (non-time-critical situations), and at which rapid risk reduction is possible.

In non-time-critical situations, both non-time-critical removal authority, and early action remedial authority, could potentially be used to reduce risk. In making a decision as to which type of authority to use, the Regional Decision Team, including a representative from the Office of Regional Counsel, should consider a number of issues regarding each type of authority.

Non-time-critical Removal Actions. Under the SACM model, it is expected that the Agency would make greater use of its authority to conduct non-time-critical removal actions. The use of such actions promises to accelerate the cleanup process. For example, for Fund-financed actions, non-time-critical removal actions can proceed prior to listing on the NPL; and in the enforcement context, they may be accomplished through administrative orders on consent (AOC's) rather than more time-consuming judicial consent decrees used for remedial actions; see CERCLA section 122(d)(1)(A).

In deciding on the appropriateness of using non-time-critical removal action authority at a site, the cost and duration of the action should be evaluated. If a Fund-financed removal action is expected to exceed statutory limits of \$2 million or one year, then an exemption must be justified based either on the emergency nature of the situation, or a finding that continued removal action is "consistent with the remedial action to be taken" (CERCLA section 104(c)(1)). In non-time-critical situations where a removal action is expected to exceed the time or dollar limitation, we generally expect to rely on the consistency exemption. Sites at which remedial action is likely to be taken (e.g., proposed or final NPL sites) will generally be strong candidates for the consistency exemption; it may also be appropriate to use this exemption at some non-NPL sites, but it must be justified on a site-by-site basis. See 55 Fed.Reg. 8666, 8694 (March 8, 1990).

⁷ Again, to the extent that the Agency plans to take a remedial action using Fund monies, the site must first qualify for listing on the NPL.

Consideration of whether to take a non-time-critical removal action at a site should also include an evaluation of State cost share issues. Although a State cost share is not required under CERCLA section 104(c)(3) for a removal action,⁹ the absence of a State's financial participation may limit the capacity of EPA to fully fund certain large dollar value non-time-critical removal actions. The advisability of seeking voluntary participation from the States in the funding of a non-time-critical removal action in order to expedite the cleanup of a site (rather than waiting to perform a remedial action), must be reserved for site-by-site discussions.

Similarly, where a proposed Fund-financed removal action would require the performance of post-removal action measures to maintain the effectiveness of the action, a State's willingness to perform post-removal site control should be evaluated.⁹ A decision by a State not to provide for such post-removal controls may limit EPA's capacity to proceed with Fund-financed removal actions that require measures to maintain the completed action's effectiveness. (At enforcement sites, the potentially responsible parties (PRPs) may be required to perform necessary post-removal site control activities.)

The decision to use a non-time-critical removal authority should also follow a review of the applicable requirements. A non-time-critical removal action must include an analysis of alternatives in an engineering evaluation/cost analysis (EE/CA), and the public must be afforded not less than 30 calendar days to comment on the proposed removal alternative before it is selected, as required in the NCP (40 CFR 300.415(b)(4) and (m)(4)).¹⁰

It is also expected that for non-time-critical removal actions, it will generally be practicable to attain ARARs. The NCP requires removal actions to attain ARARs "to the extent

⁹ Note that before a Fund-financed remedial action can be taken at a facility that was operated by the State, a cost share of at least 50 percent is required for all "response costs," including removal action costs. See CERCLA section 104(c)(3)(C)(ii).

⁹ "Post-removal site control" is discussed in the NCP at 40 CFR 300.415(k).

¹⁰ Note that this public comment period will be extended by a minimum of 15 additional days upon timely request. 40 CFR 300.415(m)(4)(iii).

practicable," considering the scope and urgency of the situation." Given the extended planning time available for non-time-critical removal actions, we believe that it will generally be "practicable," in terms of the urgency factor, for non-time-critical removal actions to comply with ARARs. Whether or not the attainment of an ARAR is beyond the scope of a non-time-critical removal action, is a site-specific determination that will depend, in part, on the nature of the removal action, and on the nature of other actions to be taken at the site.¹² For example, a removal action is more likely to be limited in scope where it is to be followed by additional site response actions designed to further address the same problem. (The impracticability of attaining an ARAR based on the scope of a non-time-critical removal action should be discussed with the Office of Regional Counsel's representative to the Decision Team.)

Finally, in order to assure the public that the non-time-critical removal actions taken pursuant to the SACM initiative will be of high quality, Agency policy will be to implement a preference for treatment in these actions, and to conduct a baseline risk assessment, where appropriate, before selecting a non-time-critical removal response.

Early Remedial Actions. SACM also encourages the increased use of remedial action authorities to achieve early risk reductions at sites. An early remedial action may be either a final or interim remedial action. An early "final" remedial action involves the final cleanup of an operable unit or portion of a site early in the remediation process for the entire site. For instance, at a large site with several contaminant sources, an early final remedial action might be taken to eliminate or control one of those sources, thereby achieving significant risk reductions.

An "interim" remedial action is generally intended to address a threat in the short term, while a permanent remedial solution is being developed. An example would be the installation of a groundwater pumping system to contain a contaminant plume while the feasibility of aquifer treatment is being studied, or construction of a temporary landfill cap to prevent direct contact with wastes during the remedial

¹¹ 40 CFR 300.415(i). The waivers described in 40 CFR 300.430(f)(1)(ii)(C) may also be considered during removal actions.

¹² See NCP preamble discussion, at 55 Fed.Reg. 8695-96 (March 8, 1990).

investigation/feasibility study (RI/FS) process.¹³ An early interim remedial action can be taken during scoping or at other points during the RI/FS process (however, remedial construction activities cannot be provided using the Fund until the site has been finally included on the NPL¹⁴). Less documentation is required for the Record of Decision (ROD) for an interim remedial action than for a ROD covering a final remedial action; however, adequate documentation must be provided to justify the action. (See "Guide to Developing Superfund No Action, Interim Action, and Contingency Remedy RODs," OSWER Public. No. 9355.3-02FS-3 (April 1991), at p. 4.)

Even if early risk reduction could be accomplished through a non-time-critical removal action, it may nonetheless be preferable to pursue an early remedial action in a number of situations. For instance, EPA may decide to use its remedial action authorities -- and therefore to follow the more extensive State and public participation procedures required for such actions -- at certain sites where there is high public or State interest, even if there is some associated delay. It may also be appropriate to use remedial action authorities to accomplish early actions where a site is already listed on the NPL and the remedial process is well underway.

Enforcement First and PRP Searches. The SACK goal of accelerating cleanups is not intended to displace other important goals, such as the Agency's general policy of pursuing enforcement efforts first. However, in order to effectuate both goals, it will be necessary to carry out certain enforcement actions in an expedited manner.

For instance, PRP searches must be conducted during the initial phases of the site assessment process in order to allow the Agency to pursue an effective enforcement strategy for early actions. The early identification of and notice to PRPs will also serve to strengthen EPA's cost recovery cases in situations where the action is financed by the Fund in the first instance. (Of course, a full PRP search may be impracticable in emergency and certain time-critical situations where, for instance, the PRPs are numerous or difficult to determine.)

In addition, the decision to proceed with an early action using removal action authorities may trigger shorter statutory deadlines for the filing of judicial cost recovery actions in

¹³ Of course, such actions could also be accomplished, in appropriate cases, under removal action authorities.

¹⁴ Note that Fund monies may be used to pay for the RI/FS and remedial design activities even prior to listing on the NPL. 40 CFR 300.425(b)(1).

some cases.¹⁵ Thus, if the use of removal authorities is increased under the SACM model, it may be necessary to prepare cost recovery cases earlier in the process.

CONCLUSION

It is important to ensure that response actions conducted as part of the SACM model are consistent with CERCLA and the NCP. This will strengthen the Agency's ability to recover its costs, to defend the selected response actions on a site-specific basis, and to retain full support for the SACM initiative from Congress and the public.

Questions concerning the issues discussed in this Directive should be addressed to Sherry Hawkins of the Office of Emergency and Remedial Response (OERR) (202-260-2180), Sally Mansbach of the CERCLA Enforcement Division (OWPE/CED) (703-308-8404), or Larry Starfield of the Office of General Counsel (OGC) (202-260-1598).

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¹⁵ See CERCLA section 113(g)(2)(A) and (B).