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**TITLE:** Use of Removal Approaches to Speed Up  
Remedial Action Projects

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<b>OSWER Directive Initiation Request</b>					
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Name of Contact Person Bruce Engelbert		Mail Code OS-210	Office ERD		Telephone Code
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9. Signature of Lead Office Directives Coordinator Betti C. Vanepps	Date 7/6/89
10. Name and Title of Approving Official Henry L. Longest II	Date 7/6/89

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

JUL 6 1989

OFFICE OF  
SOLID WASTE AND EMERGENCY RESPONSE

OSWER Directive No. 9355.0-25A

MEMORANDUM

SUBJECT: Use of Removal Approaches to Speed Up Remedial Action Projects

FROM: Jonathan Z. Cannon  
Acting Assistant Administrator

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

Purpose:

This memorandum defines the basic requirements to be met when a Region chooses to use removal authorities and contracting methods to speed up remedial projects.

Background:

Several Regions have expressed interest in the use of removal authorities and contracting methods to speed up remedial actions on National Priorities List (NPL) sites where surface cleanups may result in a total site cleanup or completion of a major portion of the site. Memoranda containing conditions for this approach were forwarded to Region IV on March 18, 1988, and July 11, 1988. (OSWER Directive No. 9355.0-25). Region IV has used this approach on eight sites. Three of these sites are now scheduled to be deleted from the NPL this fiscal year. Region III has also used this approach at two NPL sites.

Several issues arose in defining and implementing this approach, which required coordination of policies and procedures between both the remedial and removal programs. This coordination resulted in a unique set of requirements which each Region must meet when undertaking the use of removal authorities to achieve early action at NPL sites.

Objective:

This policy is aimed at speeding up response at some NPL sites. The purpose is not to establish an alternative to remedial contracting methods but to provide an additional response option until such time as rapid remedial contracting alternatives are fully developed. This document supersedes previous memoranda on this topic. This memorandum describes the criteria and other considerations for effective utilization of this approach. The requirements outlined in this memorandum do not apply to the usual 40 to 50 emergency and time-critical removal actions conducted by the removal program at NPL sites each year.

Implementation:

The following are the key requirements which must be met before removal authorities or removal contractors can be used to perform remedial actions at NPL sites.

- 1) All sites must have a signed Record of Decision (ROD). Should the proposed response activities entail a substantive change from the remedy specified in the ROD, the Region must either amend the ROD or publish an explanation of significant differences, whichever is appropriate, prior to commencing the cleanup.
- 2) Sufficient time and enforcement resources must be allocated to the extent feasible to conduct a potential responsible party (PRP) search and obtain information about PRP's through Section 104(e) actions. Follow-up PRP Search activities should be conducted where necessary. If PRP's are identified during this process, the Region should send a notice letter, and, consistent with CERCLA Section 122(a) and (e), issue special notice or advise the PRP that such procedures will not be utilized. If site exigencies require early response, the Region may choose to issue notice orally and follow up in writing. Assuming that there is sufficient time, the Region should conclude Section 106 negotiations with the PRP prior to initiation of any response action.
- 3) These cases draw upon removal authorities, but are considered remedial actions. Consequently, if the Region takes an enforcement action, it must utilize a consent decree or issue a Unilateral Administrative Order. If compliance is not achieved and time is critical (typical of many removals) the Region should take over the response and pursue cost recovery, seeking treble damages and/or other penalties.
- 4) All activities must be well documented for cost recovery.

- 5) A signed State Superfund Contract must be obtained from the State, prior to the start of the action, providing the Section 104(c) assurances for cost sharing, operation and maintenance, off-site disposal and, when applicable, 20-year waste capacity.
- 6) The proposed response action at the site must meet the National Contingency Plan (NCP) criteria for removal actions in section 300.65.
- 7) All proposed response activities must be described in a signed removal action memorandum. If the response should exceed the statutory limits of 12 months or \$2 million, it will be necessary for the Region to prepare an exemption request. In the case where site costs are expected to exceed the \$2 million limit, Headquarters approval must be obtained prior to commencing the removal action. These exemption requests must be prepared as early as possible in the process. Only Regional approval is required for exemption requests where activities are expected to exceed the 12-month limit.
- 8) All funding, activity codes, account numbers, SCAP and CERCLIS data will use remedial codes. This will ensure that these activities are reported on and tracked as remedial actions. Funds will come from the remedial portion of the Region's Advice of Allowance (AOA). All projected starts should be entered into CERCLIS with their projected obligations data for the appropriate quarter of the fiscal year.
- 9) Community relations requirements must be met and an administrative record must be established for each site. The public comment period must be observed in accordance with NCP requirements for both the remedial and removal programs.
- 10) Generally at the completion of this cleanup work, the site should be ready for deletion. OSWER Directive 9320.2-3A procedures must be followed to delete the site from the NPL. When a major portion (significant operable unit) of work is undertaken using these procedures and the site does not qualify for deletion, unusual circumstances (e.g., emergency) must preclude the use of remedial contracting mechanisms.

#### Future Plans

The remedial program has two initiatives underway to provide the contractual mechanisms and construction management systems needed to expedite projects within the remedial process and authorities. One is the Corps of Engineers new rapid response contracts used to expedite smaller pieces of some large site cleanups they manage. The second is the subcontracting provision of the Alternative Remedial Contracts Strategy (ARCS). ARCS will more typically be used for smaller construction projects such as those anticipated for coverage under this policy. With the inclusion of experienced engineering and construction management contractors in the ARCS program, opportunities open up for the use of more expeditious construction subcontracts for some sites with plans for early initiation of construction based on limited design.

Alternatively, other subcontracting vehicles such as basic ordering agreements and other methods of bidder prequalification might be used to reduce procurement lead time. More guidance on the use of these mechanisms will be issued. It is expected that as the Regions gain experience with the ARCS program and these subcontracting mechanisms, the use of removal authorities and program mechanisms to speed up remedial projects will be phased out.

#### Other Considerations:

If removal authorities are going to be used, careful consideration must be given to the type of contract that is selected for the work. Obtaining the best price and maximizing competition are always major goals, as in using competitive contracting mechanisms to the maximum extent practicable. The Emergency Response Cleanup Services (ERCS) contracts may be the most appropriate vehicle where rapid response is necessary under emergency and time-critical circumstances. However, a Region should always consider using the Prequalified Offerors Procurement Strategy (PQOPS) or other site-specific contracting mechanisms. This is especially true if the project is a non-emergency situation where the consistency waiver to the \$2 million limit is used.

When use of alternative technologies is specified in the ROD, PQOPS should be considered. The use of this arrangement is most appropriate when a 3 to 5 month lead time is available. This procurement strategy is about to be implemented for mobile incineration. PQOPS for other technologies will follow. When the lead time is approximately 4 months and PQOPS is unavailable, use of site-specific subcontracts under the ERCS contracts may be feasible. This approach may be used only where the prime contractor has not proposed rates for the site's particular cleanup activity. In addition, many Regions have Regional ERCS contracts with 24 to 72 hour response times which may be more cost-effective than the Zone ERCS contracts. In all cases, the Region should keep in mind that achieving the maximum competition is a primary goal of both the removal and remedial programs, taking into account the need for rapid response and the magnitude of the risks posed.

A final factor to consider is removal contracts capacity. Generally, this policy should not be used to do expensive remedial work. It is intended to help expedite deletion from the NPL of projects of modest scope. This approach cannot be used where the adequacy of removal contracts capacity is jeopardized. Being able to always promptly and fully respond to the normal removal workload is a higher priority than doing the remedial work that is the subject of this policy.

In summary, use of removal authorities or removal (e.g., ERCS) contracts to take early action at NPL sites is an alternative in certain limited situations. The site must meet the criteria for a removal action as well as fulfill all the regular remedial requirements. This strategy will enable the Regions to complete cleanup at certain NPL sites in a more expeditious and efficient way and to start the necessary deletion process.

cc: Superfund Branch Chiefs, Regions I-X  
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