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 DIRECTIVE DIRECTIVE I

GUIDANCE ON IMPLEMENTATION OF THE
"CONTRIBUTE TO REMEDIAL PERFORMANCE" PROVISION

1. INTRODUCTION

Section 104(b) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) amends section 104(a) of CERCLA to include the statement that any removal action undertaken by the President, or by any other person referred to in section 122* of the new law, should, to the extent practicable, contribute to the efficient performance of any long-term remedial action with respect to the release or threatened release concerned. This guidance document explains how to implement this provision, and includes guidelines on the applicability of the requirements, the definition of "contribute to efficient performance," exceptions, documentation and coordination. This document should be used in conjunction with the general removal procedures described in the Superfund Removal Procedures -- Revision Number Two, August 20, 1984, or, as may be amended.

2. APPLICABILITY

This provision will be applicable to removal actions at all sites -- final National Priorities List (NPL), proposed NPL, and non-NPL. The term "long-term remedial action" as used in this provision will therefore refer to a remedial action to be taken by the EPA, State, or a private party.

3. DEFINITION OF "CONTRIBUTE TO EFFICIENT PERFORMANCE"

3.1 Purpose

This provision promotes the performance of removal actions that address threats more efficiently by considering the overall site cleanup before the start of the action. To the maximum extent practicable, removal actions should be designed to avoid wasteful, repetitive, short-term actions that do not contribute to the efficient, cost-effective performance of long-term remedial actions to be taken by the EPA, State, or other party. The major objective of this requirement is to provide maximum protection of public health and the environment at minimal cost by avoidance of removal restarts. The focus of this provision is on avoidance of restarts that are due to recurring threats that were not adequately abated in the original removal action, and threats from deteriorating site conditions that should have been foreseen.

There are other circumstances, however, where removal restarts may be necessary to meet program goals. For example, a removal action may be a phased response. The first removal action might involve site stabilization and waste

*Section 122 refers to potentially responsible parties (PRPs) who have entered into settlements with EPA.

characterization. The site may then be demobilized and closed out to allow removal personnel to prepare an analysis of waste treatment/disposal options. Once an option is selected, a removal restart would be implemented to complete the waste disposition phase. In this case, the removal restart would actually contribute to achieving a more efficient cleanup. Removal restarts may also occur in an attempt to meet other program goals, such as pursuing responsible party (RP) cleanups or State assumption of removal action operation and maintenance requirements. An RP may take over a removal action from EPA, but EPA may have to initiate a restart if the RP is not performing an adequate cleanup. The "contribute to efficient performance" provision was not intended to conflict with these other program goals. As stated above, the provision was intended to reduce removal restarts due to inadequate planning at the start of the action.

3.2 Implementation

To meet the goal of avoiding removal restarts, response personnel must adequately assess the threats posed by the hazardous substances on a site and consider how the removal action would most effectively contribute to the long-term remedy. The following questions should be considered:

1. What is the long-term cleanup plan for the site?

This provision requires removal actions to contribute to the performance of the "long-term remedial action." At an NPL site, if the Record of Decision has already been signed, then comparing the removal action to the remedial cleanup plan is a straightforward task. However, for proposed NPL sites and for many final NPL sites, the remedial action may not have been selected when the removal action is implemented. In these cases, response personnel will be limited to identifying a range of feasible remedial alternatives. Response personnel need only review existing site information and use their best professional judgment. Removal and remedial personnel in the Region must coordinate with each other in this effort. It is the responsibility of the Region to establish appropriate coordination mechanisms.

At non-NPL sites, response personnel should, where practicable, consult with the party performing the long-term response action at the site (e.g., State, RP) to determine the proposed approach for the long-term cleanup. It is recognized that it may be more difficult to ascertain the remedial action at non-NPL sites. Response personnel should use their best efforts to coordinate with the party performing the long-term remedy. At many non-NPL sites, there may be no plans for another party to conduct a remedial action.

2. Which threats will require attention prior to the start of the long-term action?

The February, 1986 National Contingency Plan (NCP) broadened removal authority by allowing removal actions to be taken in response to "threats" rather than just "immediate and significant" threats.

This expanded authority will allow a removal action to address any near-term threats that may arise prior to the start of the long-term action, provided the threats meet the removal criteria established in section 300.65 of the current NCP. Potential threats should be identified when the first removal action at a site is implemented to avoid the need for future removal restarts. Therefore, in addition to identifying immediate threats, response personnel should also identify potential near-term threats from contaminant migration, deteriorating site conditions, etc. This assessment is particularly important if a decision is made to leave surface hazardous substances on site after the removal action is completed.

Response personnel must identify threats that may arise prior to the start of long-term actions, but the length of time before long-term actions will begin will vary from site to site. For example, for NPL sites where a ROD has been signed, the time frame that response personnel must consider will be shorter than for NPL sites where the Remedial Investigation/Feasibility Study (RI/FS) has just been initiated. Of course, at some NPL sites, the remedial program may plan to conduct an operable unit during the RI/FS if time permits. In this case, the time period to consider would again be shorter. Response personnel should consult with the party performing long-term action at the site to determine when such action will begin, and use their best professional judgment.

At non-NPL sites where there are no plans for another party to undertake a long-term cleanup, all threats and potential threats that meet the removal criteria in the current NCP should be identified.

3. How far should the removal action go to assure that the threats are adequately abated?

The expanded authority in the 1986 NCP will allow more complete removal actions to be taken. Removal actions no longer have to stop when emergency situations are mitigated, but can continue, or be initiated, where needed to ensure that near-term threats are adequately abated. Measures that provide only temporary protection, insufficient to last until long-term actions begin, should be avoided to the extent possible. However, as noted above, consideration must also be given to the availability of other response mechanisms (e.g., State action, remedial operable unit) to initiate long-term action in a timely manner.

Whether or not the removal action should address all surface hazardous substances must be decided on a site-by-site basis. A removal action would be appropriate whenever surface hazardous substances may present a threat (as established in section 300.65 of the current NCP) before the start of long-term action. How the removal action should address the surface hazardous substances will also depend on site-specific conditions and the long-term cleanup plan. With the increased emphasis on using alternative technologies and new restrictions on land disposal, remedial actions may often include on-site treatment if surface contamination is extensive. In this case, the removal action may consist of consolidating and stabilizing the

substances on site to await treatment. It is important to design the removal action to ensure that the materials are adequately stabilized. At other sites, surface hazardous substances may constitute only a small part of the problem; may not be safely stabilized for a long period of time; or may be more efficiently addressed as one unit by immediate treatment or disposal. In these situations, it may be more appropriate for a removal action to include final disposition of all surface hazardous substances. The conditions at the site and the long-term cleanup plan will determine the appropriate scope of the removal response.

At non-NPL sites where there are no plans for another party to perform long-term remedial action, the threats that meet the removal criteria in the current NCP should be completely cleaned up, if possible. The avoidance of removal restarts due to recurring threats is the ultimate goal. If mitigation of the threats that meet the NCP removal criteria results in complete site cleanup (i.e., no further Federal response required), the "contribute to efficient performance" provision is fully satisfied.

In considering all of the factors described above, the major determinant of how far the removal action should go to assure threats are adequately abated will be the statutory limits on removal actions. Removal actions should contribute to the efficient performance of remedial actions to the maximum extent practicable given the \$2 million/12 month limits on removal actions. (An exemption to the limits may be granted where the site qualifies under the "emergency" or "consistency" waivers.)

With regard to cleanup standards, this provision does not compel the removal program to lower its cleanup standards. Rather, the purpose of this provision is to improve the design of removal actions such that after cleanup standards are established for a removal site, the chosen removal action will address those substances targeted for cleanup in a manner that avoids the need for removal restarts. For example, the removal program has historically used 50 ppm as a benchmark in determining the appropriate extent of cleanup of PCB-contaminated soil. The "contribute to efficient performance" provision would not affect this number, but would direct that the method chosen to address soil contaminated above 50 ppm should be designed to avoid the need for removal restarts to the extent practicable.

4. Is the proposed removal action consistent with the long-term remedy?

The removal action that is chosen should be consistent with long-term actions at those sites where further cleanup will be taken. "Consistent" is defined in its broadest sense and may be characterized as a range of possible approaches. At one end of the spectrum, removal actions may be found consistent if they do not hinder or interfere with the remedial action to be taken. At the other end of the spectrum, removal actions may be found consistent because they contribute in a positive way

to the long-term cleanup plan. For example, a removal action to provide carbon filters to homes with contaminated drinking water as an interim measure would not interfere with a long-term remedial plan to clean up the contaminated aquifer. A removal action to solidify sludge could, however, hinder a long-term plan to incinerate the waste and should, therefore, be avoided if other approaches are feasible. A removal action to remove surface drums from a landfill could contribute in a positive way to a remedial plan to clean up the site.

Removal actions may be found consistent if they fall anywhere within this range; the most appropriate approach will depend on site-specific factors. It is recognized that in some cases, the removal action may create additional work for the remedial action and yet still be the most appropriate approach for the site. For example, a common removal action is capping contaminated soil to prevent migration and human contact in the time period before remedial actions begin. Although the cap would have to be removed to implement a long-term plan to excavate and treat the soil, it may still be the most effective method to mitigate the threat in the short-term. Protection of public health and the environment, as well as technical feasibility, must always be considered. If such an action is selected, the rationale for selection should be explained in the Action Memorandum. (See Section 5.)

The answers to these four questions will help determine what type of removal action is needed and how it can be designed to contribute to the efficient performance of long-term remedial actions. These questions are provided as general guidelines to indicate the various factors that should be considered in implementing this provision of SARA. A written analysis of the answers to each of these questions is not required. The conclusions should be documented in the Action Memorandum. (See Section 5.)

4. EXCEPTION

The only situation where it may not be feasible to consider how the proposed removal action relates to the long-term remedy is in an emergency. In such cases, response personnel may need to take whatever immediate measures are required to protect the public health, welfare, and the environment.

5. DOCUMENTATION AND COORDINATION

The Action Memorandum should specifically cite the "contribute to efficient performance" requirement and briefly discuss how the proposed removal action relates to long-term remedial actions, to the extent practicable. (See the Superfund Removal Procedures for information on the preparation of Action Memoranda.) If the proposed removal action completes the cleanup and no further action is required, this should be so noted. If only minimal information is available about long-term actions, this should also be explained. If an emergency existed that precluded an analysis of how the removal related to long-term actions, this should be noted. Finally, if compliance with this provision would conflict with other program goals (e.g., pursuit of RP cleanup), this should be explained.

Compliance with this requirement does not require special approval; the Action Memorandum should be approved by the established concurrence chain in the Region or in Headquarters, if appropriate. In making the determination, however, it will be the responsibility of the OSC to coordinate with the party that will undertake the long-term remedy (for those sites where additional cleanup measures will be taken).