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TITLE: REMOVAL PROGRAM PRIORITIES

APPROVAL DATE: 3/31/88

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STATUS:

- [] A- Pending OMB approval
- [] B- Pending AA-OSWER approval
- [] C- For review &/or comment
- [] D- In development or circulating

REFERENCE (other documents): headquarters

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OSWER Directive Initiation Request

1. Directive Number

9360.0-18

2. Originator Information

Name of Contact Person

Tim Fields

Mail Code

OS210

Office

ERD

Telephone Code

3. Title

REMOVAL PROGRAM PRIORITIES

4. Summary of Directive (include brief statement of purpose)

Confirms general policy regarding removal program priorities.

5. Keywords Superfund, CERCLA, SARA

6a. Does This Directive Supersede Previous Directive(s)?

No

Yes

What directive (number, title)

b. Does It Supplement Previous Directive(s)?

No

Yes

What directive (number, title)

7. Draft Level

A - Signed by AADAA

B - Signed by Office Director

C - For Review & Comment

D - In Development

8. Document to be distributed to States by Headquarters?

Yes

No

This Request Meets OSWER Directives System Format Standards.

9. Signature of Lead Office Directives Coordinator

Richard Hyde

Date

3/31/88

10. Name and Title of Approving Official

J. Winston Porter

Date

3/31/88

EPA Form 1315-17 (Rev. 5-87) Previous editions are obsolete.

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

MAR 31 1988

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE
OSWER Directive No. 9360.0-18

MEMORANDUM

SUBJECT: Removal Program Priorities

FROM: *J. Winston Porter*
J. Winston Porter
Assistant Administrator

TO: Regional Administrators, Regions I-X

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

PURPOSE

The purpose of this memorandum is to confirm general policy regarding removal program priorities.

BACKGROUND

The enactment of the Superfund Amendments and Reauthorization Act of 1986 (SARA) and other recent developments have expanded the potential scope of the removal program. Removal resource levels, however, require us to set priorities for the removal program, which address health and environmental threats to the maximum extent possible within the confines of our resource limitations. Funding levels and SCAP targets for FY 88 were contained in a memorandum of August 31, 1987, entitled Final 1987 SCAP, from Henry L. Longest and Gene Lucero to the Regions.

The national extramural cleanup budget for removals in FY 88 is about \$90 million: this will fund approximately 190 removal actions. All of the \$90 million is being distributed to the Regions; Headquarters is not keeping any contingency reserve. The rate of removal obligations in the first and second quarters of FY 88 suggests that there may not be enough removal funds to last through the entire year if the current pace of program activity is continued. Each Region is responsible for planning and conducting a removal program consistent with its annual resource allocation.

REMOVAL PRIORITY POLICY

Removal resources must be used to address the most serious public health and environmental threats. In all cases, Regions should aggressively pursue cleanup by the responsible party (RP), if time permits, before initiating any Fund-lead removals. Top priority for removal resources should be given to time-critical actions as follows:

- ° Classic emergencies involving incidents (e.g., threats of fire or explosion) where response is generally necessary within a matter of hours.
- ° Time-critical removals at sites on the National Priorities List (NPL). Regions should always give due consideration to the fact that removals at NPL sites may result in a loss of the 10 percent State cost-share; and
- ° Time-critical removals at non-NPL sites posing major health and environmental threats, which cannot be addressed by other authorities.

These three categories of time-critical removals should be the primary focus for the \$90 million allocated to the removal program for cleanup contractor support.

As resources permit, there are other non-time-critical removals at NPL sites which we may be able to conduct. These removals will usually be at sites already funded in the remedial SCAP to:

- ° Completely cleanup NPL sites, resulting in deletion; or
- ° Conduct interim actions at NPL sites.

Generally, we intend to use remedial funds to pay for non-time-critical actions at NPL sites. The principal source of these remedial funds will be proceeds from RP settlements and funds allocated for remedial projects in the SCAP. My staff is examining ways to create additional funding flexibility in the Superfund SCAP and budget processes to facilitate this new direction.

Regions should strive to maintain consistency with remedial actions, but actions taken should remain within the scope of a removal. Stabilization at NPL sites is usually the most appropriate removal action, unless complete cleanup can be done within the Region's resource allocation.

States should be strongly encouraged to conduct non-time-critical removals at sites which will not score high enough to be on the NPL. Preference should be given to response alternatives which contain and control the source of contamination and prevent off-site migration. Removal personnel should also continue to provide full cooperation with the enforcement program in pursuing potential RP cleanup at these sites.

OTHER RESPONSE MECHANISMS

Regions should actively pursue response by States and potential responsible parties (PRPs). Enforcement authorities should be vigorously applied to encourage PRP response. This means conducting a complete PRP search, issuing general notices or special notice letters (if time permits), negotiating with PRPs, and using administrative orders on consent to formalize settlements. Unilateral administrative orders should be considered in every case where voluntary settlement is not achieved.

Regions should also pursue response under other authorities, and give priority to those incidents posing threats which can only be addressed by Federal removal authority. For example, installation of new water supply systems should generally be a State or local responsibility. The new drinking water action levels are only one of many site-specific factors to be considered in deciding whether Federally-funded removal action is appropriate. More specific guidance in this area is under development. In the interim, Regions should contact the appropriate Regional coordinator in the Emergency Response Division whenever there are questions about removal priorities.

CONCLUSION

The importance of managing the removal program within the boundaries of its resources cannot be overemphasized. We have provided these national guidelines on removal priorities to assist Regions in this effort; however, Regions maintain the discretion to conduct other types of removals within program authorities, if site-specific conditions necessitate such action and if Regional resource levels permit. We recognize that the intrinsic nature of the removal program is such that even with the most careful planning, unanticipated events may occur.

I hope this memorandum is helpful as we all attempt to use our Superfund resources to address the most significant environmental priorities.

cc: Superfund Branch Chiefs, Regions I-X
Oil and Hazardous Materials Coordinators, Regions I-X
Jack McGraw
Henry Longest
Gene Lucero
Tim Fields
Paul Nadeau
Lloyd Guerci

REDELEGATION OF AUTHORITY TO
EXERCISE CONCURRENCE, TO CONSULT
OR TO RECEIVE NOTICE

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

R-14-35. List of Hazardous Substances and Toxicological Profiles

1. AUTHORITY. To consult with Assistant Administrator for Pesticides and Toxic Substances or delegatee when preparing or revising the list of hazardous substances and when developing guidelines for the development of toxicological profiles for such substances under Delegation 14-35.
2. DESIGNEE. The Director of the Office of Emergency and Remedial Response.
3. REDELEGATION AUTHORITY. This authority may be redelegated.
4. ADDITIONAL REFERENCES.
 - a. Sections 104(i)(2) and (3) of CERCLA.
 - b. Delegation 14-35, "List of Hazardous Substances and Toxicological Profiles."

*[Note that CERCLA section 104(j) is printed in the middle of Section 104(i). Sections 104(i)(2) and (3) can be found on pages 24-25 of Senate Print 99-217, "The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund) (P.L. 96-510), as amended by the Superfund Amendments and Reauthorization Act of 1986 (P.L. 99-499)," December 1986.]

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

R-14-36. Lead Contaminated Soil

1. AUTHORITY. To exercise concurrence in advance of Regional Administrators' award of grants or cooperative agreement to a State, local government, or other recipient to carry out a pilot program for removal, decontamination, or other action with respect to lead-contaminated soil.
2. DESIGNEE. The Director of the Office of Emergency and Remedial Response (OERR).
3. REDELEGATION AUTHORITY. This authority may be redelegated to the Division Director level.
4. ADDITIONAL REFERENCES.
 - a. Section 111(a) of CERCLA.
 - b. Delegation 14-36, "Lead Contaminated Soil."
 - c. 40 CFR 30 and 40 CFR 33, EPA grant regulations.

REDELEGATION OF AUTHORITY TO
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SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT (SARA)

R-14-38. EPA Role in Department of Defense Environmental
Restoration Program

1. AUTHORITY. To consult with the Assistant Administrator for Research and Development or delegatee when consultation is provided to the Secretary of Defense to carry out a program of research, development and demonstration with respect to hazardous wastes.
2. DESIGNEE. The Director of the Office of Program Management and Technology.
3. REDELEGATION AUTHORITY. This authority may be redelegated.
4. ADDITIONAL REFERENCES.
 - a. Section 211 of SARA.
 - b. Delegation 14-38, "EPA Role in Department of Defense Environmental Restoration Program."
 - c. Title 10, United States Code, Chapter 160, Sections 2701, 2702, 2704, and 2705 ("Armed Forces, Environmental Restoration").

REDELEGATION OF AUTHORITY TO
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TITLE III OF THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT
(TITLE III of SARA)
"Emergency Planning and Community Right to Know Act"

R-22-1. Civil Judicial Enforcement Actions

1. AUTHORITY. To receive notice from the Assistant Administrator for Enforcement and Compliance Monitoring (AA/OECM) or delegatee when the Attorney General is requested to appear and represent the Agency in any civil enforcement action or to intervene in any civil enforcement action pursuant to Title III of the Superfund Amendments and Reauthorization Act (SARA); to receive notice from the AA/OECM when the Attorney General is requested to decline to prosecute a previously referred civil enforcement action, and when the Attorney General is requested to initiate an appeal and represent the Agency in such an appeal.
2. DESIGNEE. The Director of the Office of Waste Programs Enforcement.
3. REDELEGATION AUTHORITY. This authority may be redelegated.
4. ADDITIONAL REFERENCES.
 - a. Title III of SARA, Section 325.
 - b. Delegation 22-1, "Civil Judicial Enforcement Action."

REDELEGATION OF AUTHORITY TO
EXERCISE CONCURRENCE, TO CONSULT
OR TO RECEIVE NOTICE

TITLE III OF THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT
(TITLE III of SARA)
"Emergency Planning and Community Right to Know Act"

R-22-3. Administrative Enforcement Actions

1. AUTHORITY. To consult with Regional Administrators in advance of their exercising administrative enforcement authority under SARA Title III, Sections 302, 303, 304, 311, 312, 322, and 323; and to waive such advance consultation by memorandum.
2. DESIGNEE. The Director of the Office of Waste Programs Enforcement.
3. REDELEGATION AUTHORITY. This authority may be redelegated.
4. ADDITIONAL REFERENCES.
 - a. Title III SARA, Section 325.
 - b. Delegation 22-3, "Administrative Enforcement Actions."