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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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SUPERFUND BRANCH

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HAZARDOUS WASTE POLICY BRANCH

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OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

OSWER Directive #9230.1-06

MEMORANDUM

SUBJECT: Technical Assistance Grants: Waivers of \$50,000 Cap and Grant Amendments (Superfund Management Review: Recommendation #44A.5)

FROM: Don R. Clay *DRC*
Assistant Administrator

TO: Regional Administrators
Regions I-X

Purpose: To transmit Technical Assistance Grant (TAG) program criteria for waivers of the \$50,000 cap.

Background:

The Administrator's "Management Review of the Superfund Program" (the "90-Day Study") noted that the Technical Assistance Grant (TAG) Interim Final Rule does not allow waivers of the \$50,000 limit for each recipient, although the Agency has authority in the law to grant such waivers. The 90-Day Study also noted that the Agency's initial unwillingness to exceed the cap was intended to allow us time to compile experience with the TAG program to provide a rational basis to exceed the \$50,000 limit. Nevertheless TAG recipients have begun expressing their need for more than \$50,000 to address complex cleanups, including some scheduled to last many years. The 90-Day Study concludes its discussion with a two-fold recommendation:

EPA should move quickly to establish criteria for waivers and should amend the regulations to permit them, consistent with the law. EPA should also establish guidelines for renewal of grants where necessary to facilitate public participation in all stages of remedial action.

While we intend to make provisions for waivers in the final rule, which will be published in late 1991, the current TAG Interim Final Rule does not allow recipients to exceed the cap, except in cases where we award grants for multiple sites. Currently a TAG recipient may receive more than \$50,000 per site only by obtaining an approved grant deviation under 40 CFR 30.1001(b). The regulation designates the Director, Grants Administration (GAD) as the Agency official who approves all deviation requests. In making these case-by-case decisions, GAD consults with the Office of General Counsel, the Hazardous Site Control Division (HSCD), and the appropriate Regional office.

Policy:

We believe it is prudent to continue to make initial awards of no more than \$50,000. To address sites of such complexity that an initial grant of \$50,000 would be seen as inadequate, we will consider a deviation request after the initial award. We will consider a maximum of two amendment requests per site totalling no more than \$50,000. The maximum funding available for any one recipient would then be \$100,000 per site.

Deviation Criteria:

To be eligible for a deviation from §35.4090(a), the site must have final listing on the National Priorities List. The recipient must justify additional funds based on site complexity, changes at the site after the initial grant, or an unusually large amount of data or documents available for review.

We will consider the recipient's past performance, including determining whether administrative requirements have been met satisfactorily. In addition, the Agency will use the following to review deviation requests involving the \$50,000 cap. Those applying for a deviation must meet three or more of these criteria:

- (1) an RI/FS costing in excess of \$2 million;
- (2) treatability studies or evaluation of new and innovative technologies are required at a site, as specified in the ROD;
- (3) reopening of the ROD;
- (4) the site health assessment results in an epidemiological study;
- (5) designation of one or more additional operable units after award of the TAG;

- (6) a post-TAG award legislative or regulatory change results in the generation of new site documentation or information;
- (7) a cleanup extending beyond eight years from initiation of the RI/FS through completion of construction;
- (8) significant public concern, where large groups of people at a site require many meetings, copies, etc.;
- (9) any other factor which, in the judgment of Regional officials, indicates that the site is unusually complex.

GAD and HSCD have worked together closely in developing these criteria to assist the Agency in making reasonable amendment decisions. We believe that these criteria appropriately address the fact that some sites require more than the \$50,000 currently available. We welcome your comments and we look forward to implementation of this policy.

If you have questions about this policy, please call Melissa Shapiro (382-2350) or Linda Ross (382-2449) of HSCD. You may call Richard Johnson (382-5296) or Vince Martin (382-5294) of GAD if you have questions about file deviation procedures.

cc: Directors, Waste Management Division
Regions I, IV, V, VII and VIII
Director, Emergency & Remedial Response Division
Region II
Directors, Hazardous Waste Management Division
Regions III and VI
Director, Toxic & Waste Management Division
Region IX
Director, Hazardous Waste Division
Region X
Assistant Regional Administrators for Policy & Management
Regions II, III, IV, VII, VIII and IX
Assistant Regional Administrator for Planning & Management
Regions I and V
Assistant Regional Administrator for Management
Region VI
Technical Assistance Grant Work Group