



A Guide to Developing Action Memorandums

Office of Emergency and Remedial Response
Emergency Response Division, OS-210

Quick Reference Fact Sheet

EPA prepares Action Memorandums for all Fund-lead removal actions. Action Memos describe a site's history, current activities, health and environmental threats, and proposed actions and costs. Action Memos also demonstrate that site conditions meet the criteria for a removal action outlined in section 300.415 of the National Contingency Plan (NCP) and document approval of the proposed action by the proper Headquarters' or Regional authority. A confidential addendum to the Action Memo outlines EPA's enforcement strategy for the site. In addition to Fund-lead removal actions, EPA prepares modified Action Memos for enforcement-lead removals and special circumstances such as actions that require additional funds, a change in the scope of the response, or an exemption to the statutory limits under section 104(c) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

This fact sheet describes the essential components of Action Memos used to initiate a removal action, as well as the special cases identified above. Additional information on preparing Action Memos is contained in the "Action Memorandum Guidance" (OSWER Directive 9360.3-01, September, 1990). This guidance is the first in a series of documents under development to replace the "Superfund Removal Procedures" (OSWER Directive 9360.0-03B, February, 1988). Further information concerning this series is found at the end of this fact sheet.

INTRODUCTION

An Action Memo is the primary decision document substantiating the need for a removal action, identifying the proposed response, and explaining the rationale for the removal action. Action Memos are prepared by On-Scene Coordinators (OSCs) prior to the start of a response, or after the fact for removal actions initiated under the \$50,000 approval authority delegated to OSCs for use in emergency situations. If circumstances change, supplemental Action Memos may be required later in the response to support the need to continue a removal action beyond the statutory limits of 12 months in duration or \$2 million in expenditures, to increase the total project ceiling, to change the scope of the response, or combinations thereof. In addition, for removal actions expected at the outset to exceed the statutory limits on time and/or money, the OSC must prepare an Action Memo that justifies the need to undertake the proposed response and that also meets the statutory exemption criteria from these limits.

Section 113(k) of CERCLA requires the establishment of an administrative record for the selection of a CERCLA response action. The administrative record is the body of information used by the Agency to select a response action. As the primary decision document, the Action Memo must demonstrate consideration of the factors affecting the removal decision. Action Memos that do not adequately substantiate the need for a removal action or the selected cleanup method may undermine the Agency's case for a cost recovery action.

The outline beginning on the next page summarizes the required contents of a basic Action Memo used to initiate a removal action within the statutory limits. These Action Memos are approved by the appropriate EPA Regional Administrator, unless the OSC's \$50,000 authority has been invoked (in these cases, the OSC approves the Action Memo). Modifications to this

format are required to prepare Action Memos for other circumstances, and are discussed in the following sections.

Purpose

Begin with a statement of purpose that identifies:

- The type of action requested (e.g., approval of a removal request, ceiling increase, etc.);
- The site's name and location;
- The name of the lead respondent;
- Whether the response was initiated under the OSC's \$50,000 authority, or if any nationally significant or precedent-setting issues are involved.

Site Conditions and Background

Consolidate known factual information describing the site including:

- Removal site evaluation findings, physical location information, site and release characteristics, NPL status, and maps, pictures, or other graphics;
- Other actions to date, both government-lead and private party-sponsored;
- State and local authorities' roles, both past actions and potential for future response.

Threats to Public Health and Welfare

Explain how this incident meets the requirements for a removal action by detailing:

- The threats to public health and/or welfare as they relate to the criteria listed in section 300.415 of the NCP (e.g., contamination of drinking water supplies, threat of fire or explosion). Discuss only those threats that will be addressed by the removal action, beginning with the most serious.
- The results of health consultations, advisories, or other health risk advice from the Agency for Toxic Substances Disease Registry (ATSDR).

Endangerment Determination

Include the following statement, selecting the appropriate substance category:

"Actual or threatened releases of [hazardous substances/pollutants and contaminants] from this site, if not addressed by implementing the response ac-

tion selected in this Action Memorandum, may present an imminent and substantial endangerment to public health, or welfare, or the environment."

Proposed Actions and Estimated Costs

Describe the specific tasks involved in the proposed removal action, with separate sections detailing:

- Contribution to remedial performance;
- Alternative technologies;
- Results of the Engineering Evaluation/Cost Analysis (EE/CA) for non-time-critical actions;
- Applicable or relevant and appropriate requirements (ARARs);
- Project schedule;
- Total project ceiling (see Figure 1, page 3).

Expected Change in the Situation Should Action Be Delayed or Not Taken

Describe any expected changes in the situation should action be delayed or not taken, and provide a worst-case scenario.

Outstanding Policy Issues

Discuss remaining policy issues not identified elsewhere in the Action Memo.

Enforcement

Summarize the extent to which potentially responsible parties (PRPs) are known, and whether they can or will respond. Place all remaining information concerning the enforcement strategy in a separate addendum (see page 3).

Recommendation

Provide an approval statement indicating that NCP removal requirements have been substantiated and summarize the total project ceiling. Include the following statement:

"This decision document represents the selected removal action for the [site name], in [location], developed in accordance with CERCLA as amended, and not inconsistent with the NCP. This decision is based on the administrative record for the site."

FIGURE 1
Sample Removal Project Ceiling Estimate

Extramural Costs:

Regional Allowance Costs:

Total Cleanup Contractor Costs (This cost category includes OSC estimates for: ERCS, Regional ERCS, subcontractors, Letter Contracts, orders for services, Notices to Proceed, Alternative Technology Contracts, and IAGs with other Federal agencies. Also includes a 10-20% contingency.)	\$862,500
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Other Extramural Costs Not Funded From the Regional Allowance:

Total TAT, including multiplier costs	\$50,000
Total NCLP	\$100,000
Total ERT/REAC	<u>\$100,000</u>

Subtotal, Extramural Costs	\$1,112,500
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Extramural Costs Contingency (20% of Subtotal, Extramural Costs; round to nearest thousand)	<u>+ \$223,000</u>
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TOTAL, EXTRAMURAL COSTS	\$1,335,500
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Intramural Costs:

Intramural Direct Costs	\$9,900
Intramural Indirect Costs	<u>\$18,000</u>

TOTAL, INTRAMURAL COSTS	\$27,900
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TOTAL, REMOVAL PROJECT CEILING	\$1,363,400
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Enforcement Addendum

Provide information on the following topics:

- PRP search;
- Notification of PRPs of potential liability and of the required removal action;
- Decision whether to issue an order;
- Negotiation and order issuance strategy.

Attachments

Append all attachments referred to in the body of the Action Memo such as site maps and pictures, ATSDR documentation, previously approved Action Memos, and the project schedule.

**ACTION MEMOS FOR
ENFORCEMENT-LEAD ACTIONS**

Action Memos must also be prepared for removal actions to be conducted by PRPs. These Action Memos, however, do not need to include estimated costs or authorization for funding, and may be designated as "Action Memo/Enforcement."

**ACTION MEMOS FOR
SPECIAL CIRCUMSTANCES**

The content of a basic Action Memo is modified in two situations: when EPA determines at the beginning of a response that an exemption to the statutory limits on time and/or money will be needed, and to continue removal actions already in progress. The approval of the

Assistant Administrator for the Office of Solid Waste and Emergency Response (AA, OSWER) is required for all requests involving total expenditures over \$2 million. EPA Regional Administrators approve requests for action totalling less than \$2 million, as well as exemptions to the 12-month limit.

Combined Removal and Statutory Exemption Requests

These Action Memos must provide the same information described for the basic Action Memo, as well as information demonstrating how site conditions meet the CERCLA section 104(c) criteria for an exemption to the time and dollar limits on removal actions. This new section, entitled "Exemption From Statutory Limits," is placed immediately after the "Threats" section and uses the threat information to justify either an:

- Emergency exemption (there is an immediate risk to public health or welfare or the environment; continued response actions are immediately required to prevent, limit, or mitigate an emergency; and assistance will not otherwise be provided on a timely basis).

or a:

- Consistency exemption (continued response actions are otherwise appropriate and consistent with the remedial action to be taken).

Action Memos to Continue Response Actions

Action Memos are occasionally required to continue work approved by an original Action Memo, or to restart work at the same site if the statutory limit on time has been exceeded. The four basic types of requests are:

- To extend a removal action beyond 12 months;
- To increase the total project ceiling;
- To increase the total project ceiling beyond \$2 million;
- To change the scope of response for the removal action.

Action Memos to continue response actions must cover each of the categories required in the basic Action Memo outline, but may refer to the most recently approved Action Memo (which should be attached) in order to avoid duplication. If new or additional information is available, it should be included in the appropriate

section of the new Action Memo. For those Action Memos requesting an exemption to the 12-month or \$2 million limit, a section on "Exemption from Statutory Limits" as described above should be added.

SUPERFUND REMOVAL PROCEDURES SERIES

The "Action Memorandum Guidance" is the first volume of a ten-volume series of guidance documents collectively titled the "Superfund Removal Procedures". These stand-alone volumes update and replace the single-volume "Superfund Removal Procedures" manual (OSWER Directive 9360.0-3B), issued in February, 1988. Each volume in the series is dedicated to a particular aspect of the removal process and includes a volume-specific Table of Contents, Reference List, and Key Words Index. In addition to the nine procedural volumes listed in Figure 2, the series includes an Overview volume, containing a comprehensive Table of Contents, List of Exhibits, Key Words Index, List of Acronyms, and Glossary, for use as a quick reference. The complete series of documents will be available in 1991. For further information on any volumes in the series, contact the Superfund Removal Procedures series coordinator at (202) 382-4671.

FIGURE 2
Volumes in Superfund Removal Procedures Series

- Overview
- The Removal Response Decision: Site Discovery to Response Decision
- Action Memorandum Guidance
- Response Management: Removal Start-up to Close-out
- Removal Enforcement Guidance for On-Scene Coordinators
- Public Participation Guidance for On-Scene Coordinators: Community Relations and the Administrative Record
- Removal Response Reporting
- Special Requirements
- Guidance on the Consideration of ARARs During Removal Actions
- State Participation