



DIRECTIVE NUMBER: 9200.3-05

TITLE: Flexibility in FY488 Superfund Regional
Extramural Operating Plan

APPROVAL DATE: 6/7/88

EFFECTIVE DATE:

ORIGINATING OFFICE:

☐ **FINAL**

☐ **DRAFT**

STATUS:

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

REFERENCE (other documents):

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United States Environmental Protection Agency
Washington, DC 20460

OSWER Directive Initiation Request

1. Directive Number
9200.3-05

2. Originator Information

Name of Contact Person Tom Sheckells	Mail Code OS240	Office OPM	Telephone Code
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3. Title

FLEXIBILITY IN THE FY-88 Superfund Regional Extramural Operating Plan

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

Discusses current planning & fund control processes, clarifies funding flexibility presently available to Regions for FY-88 Extramural operating plan and establishes additional funding flexibility principles for remainder of FY-88.

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 AA/DAA

☐

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

6/7/88

10. Name and Title of Approving Official

J. Winston Porter

Date

6/7/88

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

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

JUN 7 1988

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE
OSWER DIRECTIVE 9200.3-05

MEMORANDUM

SUBJECT: Flexibility in the FY 1988 Superfund
Regional Extramural Operating Plan

FROM: J. Winston Porter
Assistant Administrator

TO: Regional Administrators
Regions I-X

Purpose

The purpose of this memorandum is to discuss our current planning and fund control processes, to clarify the funding flexibility presently available to the Regions in carrying out the FY 1988 Superfund extramural operating plan, and to establish additional funding flexibility principles for the remainder of FY 1988. At the San Antonio Waste Management Division Directors meeting, there was significant discussion concerning the ability of the Regions to move funds to address Regional priorities. This memorandum outlines the substantial flexibility already available to the Regions under current guidelines and outlines new policies related to funding flexibility in the current Fiscal Year. In addition, I have convened a Headquarters/Regional workgroup to explore further options for FY 1989.

Background

At the San Antonio meeting, the Regions raised the following issues:

- ~~using~~ removal authorities and contracts to implement projects on the remedial SCAP;
- allowing for fund shifts from remedial to removal activities leading to site deletion from the NPL, for conducting cleanup of operable units or early actions at NPL sites, or for addressing a greater number of high priority removals;

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- using remedial design and construction funds freed up through settlements or other means for Regional priorities;
- allowing shifting of site classification from enforcement to fund lead if negotiations fail.

As we examine the manner in which funds management affects our ability to meet important Regional and national priorities, the following management approaches are important:

- o The relationship between budgeting, planning, and implementation is vital. We must all appreciate that the SCAP negotiations occurring during the Summer preceding the fiscal year result not only in SPMS commitments but dollar commitments as well. While priorities may change, the ground rule remains that a Region must live within its negotiated annual budget.
- o The FY 1989 budget is based on the assumption that \$100 million in carryover funds will be available from FY 1988.

In January 1987, the four-account Advice of Allowance was created for transmitting Superfund response funds to the Regions (see Comptroller Policy Announcement No. 87-07). A basis for this approach was to reconcile spending plans with original budget formulation. It is this structure that we are operating under in FY 1988 and that we and the Comptroller will reexamine as we enter FY 1989. Although the structure establishes rigorous procedures for funds control, it offers more flexibility in shifting funds than may sometimes be apparent.

Advice of Allowance Structure

The present Superfund Response Advice of Allowance structure includes the following accounts:

- o The site allowance for removal actions - This allowance provides funding for removal actions and is not issued site specifically.
- o The site allowance for remedial designs (RD) - This allowance is issued site specifically.

- o The site allowance for remedial actions (RA) - This allowance is also issued site specifically.
- o The regular Superfund allowance or "other remedial" account - This allowance contains all the remaining Superfund Response dollars for the Regions including activities such as RI/FS projects, site inspections, preliminary assessments, community relations, management assistance, expedited response actions, technical assistance grants, and special regional studies. This allowance is not issued site specifically.

The regular Superfund allowance also includes resources for the technical enforcement program, as well as all of the non-OSWER Superfund accounts. Currently, the only technical enforcement extramural funding included in Regional allowances are funds not designated for the Technical Enforcement Support (TES) contract. Although we anticipate that further decentralization of technical enforcement activities (including TES) and funding will occur in the future, the current level of funding included in Regional allowances is small. None of these funds can be used for other than technical enforcement activities without the Region requesting a program element transfer from the Comptroller via the change request process.

Present Flexibility

The operating year SCAP is updated on a quarterly basis. As a result of Regional proposals, negotiations are conducted at mid-quarter to determine the advice of allowance for the succeeding quarter. Regional adjustments may be made for both site specific and non-site specific allowances at that time.

Current flexibility is also afforded as follows:

- o Within the regular Superfund allowance, Regions may at their option redirect funds to meet their priorities. Further, for RI/FS projects assumed by RPs, the Region may redirect these funds. However, each Region is limited to their SPMS target for initiating new Fund-financed RI/FS projects. Also, routine substitutions of sites can include the substitution of an enforcement lead site where negotiations failed for a Fund lead site where negotiations look promising.

- o For the RD and RA site specific allowance, Headquarters routinely processes site substitutions and changes to RD/RA amounts as necessary. However, each Region may redirect RD/RA site work only as long as these changes do not exceed the RD/RA total. This is done through the routine change request process.
- o With OSWER clearance and upon Comptroller approval of a change request, a Region may shift monies between the removal allowance and the regular Superfund allowance. Likewise, funds may be shifted between the RD allowance and RA allowance.
- o With OSWER clearance, and upon Comptroller approval, and in cases where a Region's case budget has been depleted, regular Superfund response allowance funds may be redirected through the appropriate change request to enforcement activities. Transactions of one million dollars or more require Congressional approval.

New Flexibility

Several initiatives have been implemented, mostly centering around removal program priorities. In my March 31, 1988, memorandum on removal priorities, it was made clear that removal resources should be directed to classic emergency and time-critical actions. That memorandum goes on to state that funds could be provided for non-time-critical removals at NPL sites, actions to remediate completely NPL sites (where the result is deletion), or to conduct previously selected remedial actions at NPL sites when the site is already planned for in the remedial SCAP. The latter is essentially the Region IV approach where once a Record of Decision has been prepared, the remedial activity may proceed using removal contract capacity. However, the sites will continue to be funded from the site specific RD or RA accounts (see OERR Director memorandum to Region IV Waste Management Division Director dated March 18, 1988).

With this memorandum, I am establishing additional principles of flexibility for the remainder of FY 1988. Regions will be permitted to redirect to other Regional Superfund priorities most funds resulting from RP assumption of RD projects and real savings from design costs being lower than estimated costs. These re-directions relate to real savings, not funds realized through time slippages. Further, a RP assumption is not determined until there

is a signed consent decree. Generally, we agree that those funds should remain with the Region in which they originate. However, before a Region makes any commitment using these funds, it should propose the change through an appropriate amendment to the SCAP and a routine change request to Headquarters. Further the use of these funds should not create an outyear obligation which Headquarters would have to fund.

Headquarters will generally approve redirection of funds processed through existing site change request procedures, for activities which are consistent with the following priorities:

- o Classic emergencies
- o RP oversight, if the case budget does not contain funds
- o RD/RA projects
- o Removals (time and non-time critical) at NPL sites

A similar situation may occur for RP assumption of RA projects or where RA bid costs are substantially lower than estimated costs. We will consider redirecting funds to the Regions consistent with the RD criteria on a case-by-case basis. In all cases, consideration of the amount of funds to be redirected will depend in part on a review of competing national priorities including other RD/RA national needs or emergency needs in other Regions.

Conclusion

It is clear that the issue of funding flexibility is complex. As the funding flexibility workgroup proceeds, I wanted to reiterate some of the presently available approaches. The workgroup is looking at additional flexibility to be implemented in FY 1989, including administrative as well as programmatic changes. Any further questions on the workgroup activities should be directed to Tom Sheckells at FTS 382-2466.

cc: Jack McGraw
Henry Longest
Jonathan Cannon
Waste Management Division Directors, Regions I-X
Environment Services Division Directors, Regions I-X
Assistant Regional Administrators for Planning and
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