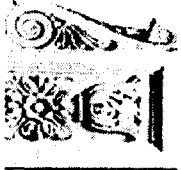


OSWER 9320.2-01

**Interim procedures for deleting sites from
the National Priorities List**



Liz Doyle/R10/USEPA/US
08/17/2006 09:14 AM

To
cc
bcc
Subject Fw: [epalibnet] help locating guidance doc.

This is one of the guidance documents supporting the first update to the NPL, a final rule amendment published in the 9/21/84 Federal Register . The FR notice specifically says that this document is in the docket established for this final rule (NPL-U1), so I went there and found it in a folder with other HRS guidance documents (NPL-U1-5). Its specific document no. in that particular docket is NPL-U1-5-5. It should also be in your Region 10 NPL Public Docket, but since it's only 11 pages long, I'll fax it to you. By the way, its an OSWER guidance document, and I found a number for it on an old Superfund document inventory list as OSWER 9320.2-01.

If you need anything else NPL-related, feel free to contact me directly.

Dawn

Dawn Shellenberger
(Contractor, ASRC Management Services)
Hazardous Waste Reference Librarian
U.S. EPA Region III Regional Center for Environmental Information
1650 Arch Street, 2nd Floor (3PM52)
Philadelphia, PA 19103-2029
shellenberger.dawn@epa.gov
215-814-5364 (phone)
215-814-5253 (fax)



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

MAR 27 1984

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

(OSWER 9320.2-01)

MEMORANDUM

SUBJECT: Interim Procedures for Deleting Sites from the National
Priorities List

FROM: 
Lee M. Thomas
Assistant Administrator

TO: Regional Administrators
Regions I-X

INTRODUCTION

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) requires that the National Priorities List (NPL) be revised at least annually. Along with the addition of new sites to the NPL, EPA has contemplated that revisions would include deletions from the active NPL list to indicate sites that have been cleaned up or that have been determined not to present a health, welfare, or environmental hazard. This memorandum sets forth deletion criteria and interim procedures for making such deletion revisions to the NPL.

The interim approach to deletions, which will be conducted for the next update of the NPL (expected in August 1984), is to establish a "deletion category" on the NPL. Although part of the NPL, this category will be explicitly denoted as containing sites that have satisfied one of the deletion criteria and hence been deleted from the active NPL. This mechanism for deletion is being used in light of the fact that the National Contingency Plan (NCP) currently restricts expenditure of Fund monies to sites on the NPL. The deletion category mechanism, because it denotes deletions without actually removing the site completely from the NPL, will allow EPA to return to a site and expend Fund monies as warranted for operation and maintenance costs, continued monitoring, or correction of any failures of the remedy even though the site has been "deleted."

The first group of deletions, since they will be proposed in the next update of the NPL, will be made pursuant to the same Federal Register notice and comment procedures that we use for placing sites on the NPL. The update notice in the Federal

-2-

Register will present a list of sites proposed for deletion, and request public comment for a period of sixty days. After the comment period, EPA will evaluate the comments, arrive at final decisions on the proposed deletions, and publish a list of the deleted sites in the Federal Register.

We are considering alternatives to the various procedures presented here, and may implement changes in this guidance if experience with the first group of deletions supports any alternatives. For example, it may be that the Federal Register notice and comment procedures conducted for addition of sites is more complex than is necessary for the deletion of sites. Consequently, we are considering the possibility of more streamlined administrative procedures for deletion decisions that arise after this first group, including possible delegation to the Regions. Also under consideration is the possibility of amending the NCP to provide that Fund monies may be spent on NPL sites even after they have been deleted, in order to allow deleted sites to be removed from the list entirely. In addition, documentation requirements may be expanded or adjusted to relate precisely to the types of deletion situations that arise. EPA probably will present these or other alternatives in the first deletion proposal scheduled for August 1984.

Although deletion recommendations may be forwarded to Headquarters at any time, deletion recommendations for the August 1984, update must be received by Headquarters by June 1, 1984. This means that the advance notice to the public (see below) must commence by mid-April. Please note that instructions for adding new sites for the August 1984, update will be issued in the near future. Regions are encouraged to coordinate closely with Headquarters program staff prior to submitting deletion recommendations to ensure that documentation is adequate but not duplicative, and to facilitate Headquarters concurrence. As the number of sites that are potentially eligible for deletion increases, it is important that we develop a process that establishes a strong technical basis and adequate documentation for such decisions.

The decision to delete a site will be based on whether the site meets one of three general deletion criteria reflecting either cleanup of the site or the fact that the site does not present a significant risk. In order to determine whether one of the criteria have been met, EPA will determine if the designed remedy has been implemented and is performing properly, including whether monitoring results, if any, confirm the adequacy of the remedy. Alternatively, if the site has been determined not to present a health risk even though cleanup has not been prescribed or performed, the deletion decision will be based on the study by which that determination was reached.

-3-

The deletion criteria and interim procedures for deletion described herein are not intended to establish specific monitoring requirements or performance criteria. These site-specific parameters are incorporated into the design of individual remedial actions at each site in the form of post-closure monitoring, operation and maintenance plans, and remedy performance validations.

DELETION CRITERIA

Regions can recommend deletion of a site from the current NPL at any time after consultation with the State or after a State has specifically requested the deletion. A site can be deleted when one or more of the following deletion criteria has been met:

- 1) EPA, in consultation with the State, has determined that responsible parties have completed all appropriate response actions.
- 2) EPA, in consultation with the State, has determined that all appropriate Fund-financed response actions have been completed and that no further cleanup by responsible parties is appropriate.
- 3) Based on a remedial investigation, EPA has determined that the facility poses no significant threat to public health, welfare, or the environment and, therefore, construction of remedial measures is not appropriate.

These criteria, which have been adjusted slightly since they were first formulated by the Agency, are the only deletion criteria EPA has developed to date. As explained in the preamble to the NPL, however, these criteria constitute guidance, not regulations. They could be revised or supplemented if experience indicates that other factors should be taken into account. At this time, however, it appears that these three criteria are adequate.

INTERIM PROCEDURES

Advanced Notification

EPA Regional Offices should initiate the recommendation to delete a site from the NPL after it has been determined that the site meets one or more of the deletion criteria.

Subsequent to discussions with Headquarters program staff, but before the deletion recommendation is transmitted to Headquarters, the Regional Office of Public Affairs/Superfund Community Relations Coordinator will prepare a notification state-

-4-

ment to announce the Agency's intent to propose a site deletion. The notification statement should be provided to the local community, State and local officials, appropriate Federal agencies such as the Center for Disease Control and the U.S. Coast Guard, and enforcement personnel from the Office of Regional Counsel so that they are aware of EPA's intent to delete the site and are given an opportunity to comment on the proposed action. The Regional Counsel should inform the State Attorney General and other concerned agencies (e.g., State or Federal courts, U.S. Department of Justice, as appropriate) of the deletion proposal. A copy of the notification statement should be sent to the Headquarters' Hazardous Site Control Division (WH-548E).

The notification statement will be distributed to interested local residents, local and State officials, and other Federal agencies two weeks prior to the beginning of a three week comment period. The Regions will use the responsiveness summary format provided by Headquarters to summarize comments. A responsiveness summary of the comments will be a required component of the deletion recommendation and will be sent to individual commentors and other interested parties. Based on the comments received in response to the notification statement, Regions may elect to delay forwarding the deletion recommendation until the issue(s) raised can be resolved.

The notification statement will provide the dates of the comment period, the location in the community of relevant documents for review and the name and address of a Regional contact where comments may be sent. Public meetings may also be held by the Region during this period. The notification statement should indicate that a second opportunity to comment will be provided during the 60-day public comment period following proposal in the Federal Register, if the site is formally proposed for deletion. Notice of this 60-day public comment period will be mailed to the local press, State and local officials, appropriate Federal agencies, and interested community residents.

The notification statement should also include a description of the Agency's close out plan for the site. The close-out plan should delineate the operation and maintenance procedures that will be implemented and the monitoring program. In addition, the notification statement should indicate that even though a site is deleted, EPA will retain the authority to spend money on deleted sites that require additional work.

Management Process (See Attachment)

Subsequent to the receipt of public comments in response to the advanced notification statement and the preparation of the response summary, the Regional Administrator should transmit the deletion recommendation to the Assistant Administrator for Solid

-5-

Waste and Emergency Response (AA, OSWER) for formal concurrence. Headquarters review and concurrence procedures will be directed by the Hazardous Site Control Division (HSCD), Office of Emergency and Remedial Response (OERR). For sites which involve complex technical aspects, Headquarters may request assistance from the Regions in the form of a technical briefing.

Subsequent to concurrence on the Regional deletion recommendation, the AA, OSWER, will recommend to the Administrator through the formal Red Border Review process that the site be proposed for the deletion category of the NPL. After considering the comments received during the 60-day public comment period following proposal in the Federal Register, the AA, OSWER will recommend to the Administrator the publication of the decision to place the site in the deletion category.

Contents of Deletion Recommendation

The information contained in the Region's deletion recommendation will be used by Headquarters to perform a concurrence evaluation and establish an adequate and documented basis for a deletion decision. Adequate documentation will be essential given the variety of public and private parties potentially interested in deletion decisions. The documentation requirements are essentially identical to those established for rulemaking on NPL site additions. The majority of the required information can be provided by submitting existing documents.

The deletion recommendation will consist of a brief overview memorandum and supporting documents that will be placed in the Agency's docket. Presently, the Agency's final decision for deletion from the NPL will be conducted in Headquarters. Therefore, a docket supporting the deletion decision will be maintained both in Headquarters and the Regions.

The overview memorandum should discuss several key points to support site deletion, including the following:

- Narrative summary briefly describing the site and the implemented remedy, including a site chronology describing the sequence of remedial response steps and associated expenditures.
- Description of how the site qualifies for one or more of the deletion criteria. The description should include a brief summary of monitoring results and validation of remedy implementation and performance contained in the task or progress reports, or final technical reports accompanying the overview memorandum or referenced as being in Headquarters.

-6--

- Certification that the State and Enforcement personnel of the Office of Regional Counsel have been consulted concerning the intent to delete the site.
- Certification that the Region has provided the local community with an advance public notification and three week comment period on the Agency's intent to propose the site for deletion and the Agency's plans for closing out the site.
- Bibliographic references to any additional pertinent information in the Regional file that is not included in deletion recommendation documents submitted to Headquarters (these documents are described below).

In addition to the brief overview memorandum, the deletion recommendation must include various supporting documents to be placed in the Agency's docket for the deletion decision. Most of the documents described below will already be in Headquarters and, therefore, such documents need only be referenced. Those which are not already in Headquarters must be submitted with the overview memorandum.

The necessary documents will vary depending upon the deletion criterion and the type of project (Federal, State, or responsible party). Therefore, the minimum requirements for various criteria are provided below:

Deletion Criterion #1. In order to qualify for this criterion, a site must have been cleaned up by a responsible party.

- Federal Enforcement Lead. For more recent Federal enforcement lead projects, documentation should include the enforcement feasibility study defining the remedy, the Enforcement Record of Decision (EROD), and the task or progress reports indicating that the remedy has been implemented and is performing properly. If more than one EROD was developed, the equivalent documents will be required for each EROD. In addition, any special provisions of the EROD(s) requiring further action must be addressed.

For older Federal enforcement lead projects (no EROD), documentation should include a copy of the responsible party cleanup protocol, along with any EPA or State comments concerning the protocol, and task or progress reports sufficient to show that the protocol was followed. Documentation should also include a copy of an EPA study or an EPA review of a responsible party study or documents used by the Regions to make the determination that the remedy has been implemented and is performing properly and that no further cleanup is appropriate. The EPA review or study could be funded via REM/FIT or TES.

-7-

- State Enforcement Lead. Documentation should include the State feasibility study (if one has been prepared), a copy of the responsible party cleanup protocol, along with any EPA or State comments concerning the protocol, and task or progress reports sufficient to show that the protocol was followed and the remedy has been implemented and is performing properly and that no further cleanup is appropriate. If the State has not prepared a feasibility study that meets EPA standards, documentation should include a copy of an EPA or State study, or an EPA or State review of a responsible party study or documents used by the Regions to determine that the remedy has been implemented and is performing properly and that no further cleanup is appropriate. The EPA review or study could be funded via REM/FIT or TES.
- Federal Facilities. Documentation should include a copy of the appropriate Federal Agency's feasibility study (if one has been prepared), a copy of the Agency's cleanup protocol, along with any EPA or State comments concerning the protocol, and task or progress reports sufficient to show that the protocol was followed and the remedy has been implemented and is performing properly and that no further cleanup is appropriate. If the Federal agency has not prepared a feasibility study that meets EPA standards, documentation should include a copy of an EPA or State study, or an EPA or State review of a Federal agency's study or documents used by the Regions to make a determination that the remedy has been implemented and is performing properly and that no further cleanup is appropriate. The EPA review or study could be funded via REM/FIT.

Deletion Criterion #2. In order to qualify for this criterion, a site cleanup must have been conducted by the State under a negotiated Cooperative Agreement or by EPA under a Superfund State Contract.

- Cooperative Agreement. The final technical report from the State, approved by EPA, must be included. This report must describe the State's operation & maintenance (O&M) responsibilities. In addition, the documentation should include the feasibility study, the Record of Decision (ROD), and the task or progress reports indicating that the remedy has been implemented and is performing properly. If more than one ROD was developed, the equivalent documents will be required for each ROD. In addition, any special provisions of the ROD(s) requiring further action must be addressed.

-8-

- Superfund State Contract. Documentation should include the feasibility study, the ROD, and the task or progress reports indicating that the remedy has been implemented and is performing properly. If more than one ROD was developed, the equivalent documents will be required for each ROD. In addition, any special provisions of the ROD(s) requiring further action must be addressed.

Deletion Criterion #3. In order to qualify for this criterion, EPA must have selected the "No Action" alternative based on a determination that a site's present condition poses no significant threat to public health, welfare or the environment.

- "No Action" Alternative Was Selected. Documentation should include the remedial investigation (or the equivalent EPA-approved investigation) which demonstrates that the release will pose no significant threat to public health, welfare or the environment. In cases where a remedial investigation/feasibility study was prepared, the Region should enclose the ROD or EROD recording approval of the "no action" alternative.

Deletion Criteria #1, #2, and #3. In addition to the criterion specific requirements described above, the documentation supporting the deletion decision must cover the following (Note: the first three items below may be omitted if the required information is provided in the ROD or EROD):

- Post-Closure Monitoring. Documentation should include a description of the EPA or State monitoring plan and how the results confirm the reliability and performance of the remedy. For Criterion #3, the monitoring plan should identify how monitoring will detect any release prior to significant impact. In instances where no monitoring will be required under Criterion #3, an explanation as to how that determination was made will suffice. For projects using standard remedies, preliminary results demonstrating effects of the remedy may be available within 1 to 2 months. However, more complex treatment systems may require 6 or more months to confirm the reliability and performance of the remedy. If post-closure monitoring is judged to be unnecessary, a justification must be included.
- Operation & Maintenance (O&M) Plan. Documentation should include a statement that State or responsible party O&M assurances have been met, a description of the O&M, a schedule for its implementation, and identification of the source of future funding.

-9-

- Regional Counsel consultation. Documentation should include a summary of their position or relevant correspondence on the proposed deletion.
- Responsiveness Summary. Documentation should include a summary of the response from the local community, State and local officials, and other Federal agencies to EPA's proposal to delete the site from the NPL and the site close-out plan. The assessment should be in the responsiveness summary format provided by Headquarters and be based on the response to the advance notification statement of EPA's intention to propose the site for deletion. If the community, individuals, or Agency response indicates a strong disagreement with the deletion, justification for proceeding with the deletion proposal should be provided.

If there are any specific questions concerning these procedures, please contact Scott Parrish (FTS-382-5632).

cc: Superfund Coordinators, Regions I-X
Director, Ofc. of Emergency & Remedial Resp., Reg. II
Director, Hazardous Waste Mgmt. Div., Region III
Director, Air & Waste Mgmt. Div.,
Regions IV, VI, VII & VIII
Director, Waste Mgmt. Div., Regions I & V
Director, Toxics & Waste Mgmt. Div., Region IX
Director, Air & Waste Division, Region X

ATTACHMENT
Interim Procedures for Deleting
Sites from the NPL

Regional Responsibilities

- Determine if site meets one or more deletion criteria.
- Notify local community, State and local officials, and appropriate Federal agencies of intent to delete. In order to meet the June 1 deadline (below), notification statements should be issued by April 15.
 - Notification statement should include:
 - dates of 3 week comment period
 - location of relevant documents
 - address of Regional contact for comments
 - statement that formal 60-day public comment period will follow proposal in Federal Register if decision is made to propose the site for deletion
 - site close out plan (O&M and long-term monitoring program)
- Mail copy of notification statement to HSCD.
- Using the responsiveness summary format provided by Headquarters, Regions will respond to individual commentors and other interested parties.
- Notify Enforcement personnel from Office of Regional Counsel.
- Transmit deletion recommendation from Regional Administrator to AA, OSWER. In order to have a deletion recommendation proposed in the August 1984 update, complete documentation must be received by June 1.
- HSCD may request Regional briefing on technically complex sites.
- Maintain public docket for deletion decision.

Headquarters Responsibilities

- HSCD conducts review and concurrence process.
- Review and concurrence from the following offices:
 - Office of Waste Program Enforcement (OWPE)
 - Office of Enforcement and Compliance Monitoring (OECM)
 - Office of General Counsel-Solid Waste and Emergency Response (OCG-SWER)

-2-

- Following review and concurrence, HSCD prepares Federal Register notice recommending deletion to AA, OSWER through OERR.
- AA, OSWER concurs and forwards Federal Register notice to Administrator via Red Border review process.
- Deletion recommendations proposed in Federal Register.
- Public comments received during 60-day comment period.
- HSCD conducts response to comments and prepares final deletion decision for AA, OSWER through OERR.
- AA, OSWER concurs and forwards deletion decision to Administrator via Red Border review process.
- Deletion decision printed in Federal Register.
- Maintain public docket for deletion decision.