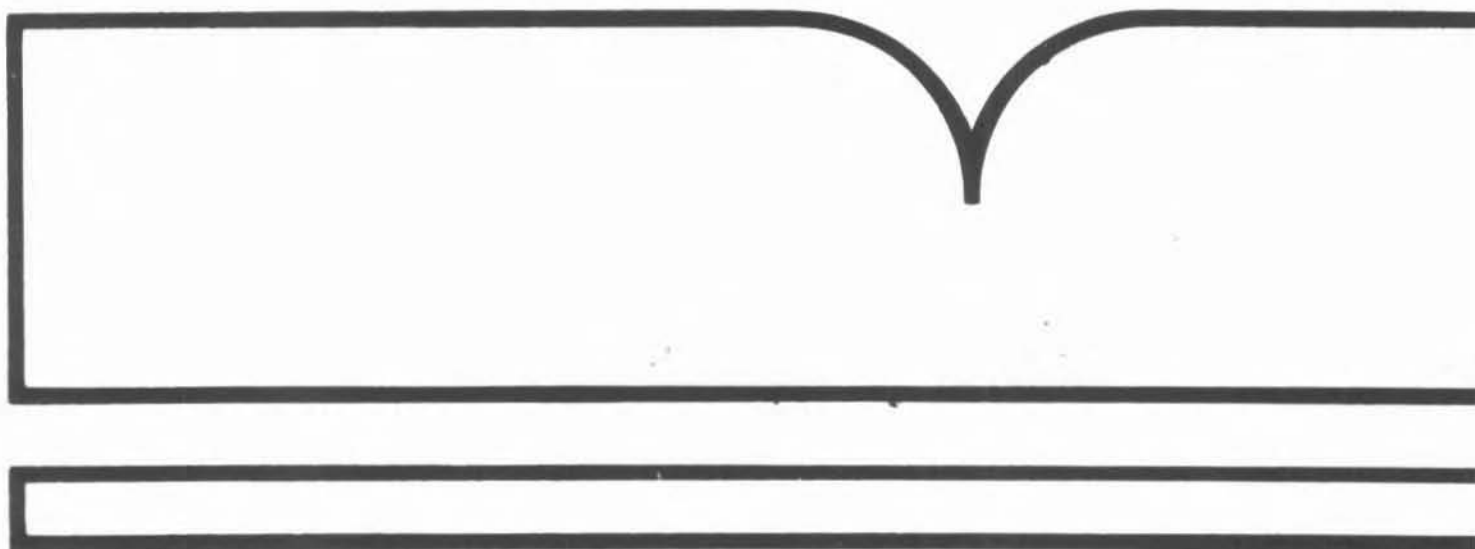


Role of Expedited Response Actions under SARA

(U.S.) Environmental Protection Agency, Washington, DC

21 Apr 87



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The Directive

This memorandum serves as a follow-up to OSWER Directive 9360.0-10 (July 8, 1986) entitled "Expedited Response Actions," and updates the basic tenets of expedited response actions (ERAs) and their role in the Superfund Remedial Program.

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

APR 21 1987

OFFICE OF  
SOLID WASTE AND EMERGENCY RESPONSE  
Directive 9360.0-15

MEMORANDUM

SUBJECT: The Role of Expedited Response Actions Under SARA

FROM: Henry L. Longest II, Director *HL*  
Office of Emergency and Remedial Response (WH-548)

TO: Addressees

This memorandum serves as a follow-up to a July 8, 1986 memorandum sent from me to David Wagoner, Director of the Waste Management Division in Region VII. That memorandum, OSWER Directive #9360.0-10 (attached), laid out the basic tenets of expedited response actions (ERAs) and their role in the Superfund Remedial Program. In light of the developments which have occurred in the interim, as well as in response to the numerous inquiries we have received on ERAs over the past few months, I believe an update to that memorandum is needed at this time.

ERAs were created in response to the February 1986 update to the National Contingency Plan (NCP), which melded three previously-existing activities, immediate removals, planned removals and initial remedial measures, into one general activity category of removals. ERAs, which fall under this general removal heading, are designed to address those situations at National Priorities List (NPL) sites which were previously performed as initial remedial measures (e.g., fences, drainage controls, alternative water supplies, etc.). The major distinction between ERAs and other removal actions, however, is the fact that ERAs are directed by Remedial Project Managers (RPMs) and are performed by remedial contractors who are either in the process of conducting a response activity, such as an RI/FS, at the site or are scheduled to initiate a response activity at the site.

One possible scenario which might lend itself to the implementation of an ERA is the case of a remedial contractor who, while performing a remedial investigation of a proposed or final NPL site, discovers buried drums. Upon discovery of the drums, a determination must first be made that a threat exists sufficient to meet the removal criteria as spelled out in the NCP. A further determination must be made that the existing threat is not so

significant as to warrant the performance of a classic emergency or time-critical removal action. Once these determinations have been made, it is then left to the discretion of Regional management to have the excavation and disposal of the drums performed as an ERA by the remedial contractor or as a non-time-critical removal by a removal contractor. The implementation of an ERA would negate the need to bring in a removal contractor specifically for this task. This would result in a savings of time and money by ensuring consistency and thus avoiding the need to expend resources for the education of the removal contractor on site conditions, etc. As is the case with all removal actions, any activity implemented as an ERA must, to the maximum extent practicable, contribute to the efficient performance of any long-term remedial action performed at the site.

Once the decision has been made to perform an ERA at a site, the remedial A/E firm next conducts an engineering evaluation/cost analysis (EE/CA). Draft guidance on how to perform an EE/CA for all types of removal actions, including ERAs, will be released in draft form in the near future. With regard to the analysis of alternatives for an ERA, the EE/CA is closely akin to a focused feasibility study. As such, the EE/CA should consider all Federal and State applicable or relevant and appropriate requirements and should stress the use of permanent solutions and alternative treatment technologies to the maximum extent practicable. In addition, all alternatives involving off-site disposal should be consistent with SARA and the Off-site Disposal Policy. Furthermore, any EE/CA performed for non-time-critical removal actions, such as ERAs, will be subject to an environmental review and a three - week public comment period. After preparation of a responsiveness summary, the recommended alternative for the ERA is officially approved by the Regional Administrator through the signing of an Action Memorandum.

Given that ERAs are removal actions, they are subject to all removal program requirements, including the one-year, \$2 million statutory limitations. (It should be noted by remedial staff not familiar with these limitations that the \$2 million cap includes the cost of EPA project management during the implementation phase. This results in the need for precise recordkeeping on the part of the RPM.) A Region may apply to Headquarters for an exemption from these limitations. However, it is recommended that, if the Region anticipates that the action to be taken will be long-term and complex in nature, the Region should consider performing the action as a remedial operable unit. RPMs should work closely with their counterparts in the removal program throughout the implementation of an EE/CA and ERA in order to ensure that all removal authority requirements have been met. Regional personnel should also refer to the Superfund Removal Procedures for further information on specific removal requirements.

As with all non-time-critical response actions, the RPM should provide adequate opportunity for potentially responsible parties (PRPs) to conduct the ERA. The Agency policy on the Issuance of Administrative Orders for Removal Actions (February 21, 1984) is still in effect and should be consulted when assessing the selection of an ERA. RPMs should coordinate notification of PRPs with Regional enforcement personnel. The Region should conduct a PRP search if one has not already been conducted and issue notice letters. At sites designated as enforcement-lead, the Region should consider the issuance of unilateral Administrative Orders and, if necessary, the referral of a judicial action. If a settlement is reached and the PRPs agree to perform the work originally intended to be conducted as an ERA, the activities performed by the PRPs would be considered a non-time-critical removal and not specifically an ERA since, by definition, ERAs are performed by remedial contractors.

Funding for ERAs is included within the remedial SCAP budget. However, current policy calls for these funds to be drawn down on the removal accounting code. This has caused some difficulty and confusion in a number of Regions. In response, we have established a separate accounting code for ERAs. This code, letter W, is the same code previously used for the now-obsolete initial remedial measures. (Note: This memorandum serves as an advance notification of the establishment of this code. You will be receiving in the near future a formal notification which will contain other information on the use of this code.)

If you have any further questions with regard to the appropriate use of ERAs, please contact Bob Quinn of my staff at 382-2350.

**Attachment**

**Addressees:**

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

cc: Superfund Branch Chiefs, Regions I-X  
Gene Lucero  
Russ Wyer  
Tim Fields





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

JUL 8 1986

OFFICE OF  
SOLID WASTE AND EMERGENCY RESPONSE  
9360.0-10

MEMORANDUM

SUBJECT: Expedited Response Actions

FROM: Henry L. Longest II, Director  
Office of Emergency and Remedial Response

TO: David A. Wagoner, Director  
Waste Management Division, Region VII

I am writing in response to your memorandum dated May 29, 1986, regarding Region VII's approach to Expedited Response Actions (ERAs). In your memorandum, you discuss the procedures you use to categorize sites to screen for the potential implementation of ERA's and the various options for implementing ERAs and first operable unit remedial actions. The major factors to consider when deciding if an ERA can be implemented for an operable unit project is whether the recommended action meets the criteria in the National Contingency Plan (NCP) for removal actions, and that the action can be implemented within the statutory limits of \$1 million in total cost and six months in duration. These ceilings may increase to \$2 million and one year with the reauthorization of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

The inability of a State to provide its 10 percent cost share should not be a factor in making the distinction between a removal and remedial action. In addition, if the site is on the proposed National Priorities List (NPL) at the time a decision is needed on whether to implement a remedial action, we can work closely with you to expedite the listing of that site on the final NPL. This has been done for selected sites in special situations.

In order to clarify the distinction between an ERA and a remedial action, the following paragraphs summarize the procedures that are being developed. Also, a flow diagram of the process is attached for your information. The following discussion is limited to final or proposed NPL sites.

Planning activities for ERAs are initiated during the early stages of a remedial investigation/feasibility study (RI/FS), usually during the initial scoping of remedial activities as the RI/FS work plan is being developed. Once a decision has been made to pursue an ERA, the remedial contractor would initiate an initial screening of alternatives to see if the action would meet the cost and duration limitations. The next step would be the preparation of an Engineering Evaluation/Cost Analysis (EE/CA) to further develop the most likely alternatives. Another check is made to ensure the proposed ERA will meet the NCP criteria and the cost and duration ceilings. Once this has been concluded, the Region would approve the ERA and select the appropriate remedy by signing an action memorandum. Implementation would then be carried out by the remedial contractor using removal authorities.

If the proposed actions, or portions thereof, cannot meet the cost and duration ceilings for removal actions, then the projects should be pursued under remedial authority. If an EE/CA has been prepared, it should be possible to expand the analysis into a focused feasibility study to recommend a first operable unit remedial action. Prior to implementation of the remedial action, the site must be on the final NPL and the State must commit to the statutory assurances including their 10 percent cost share.

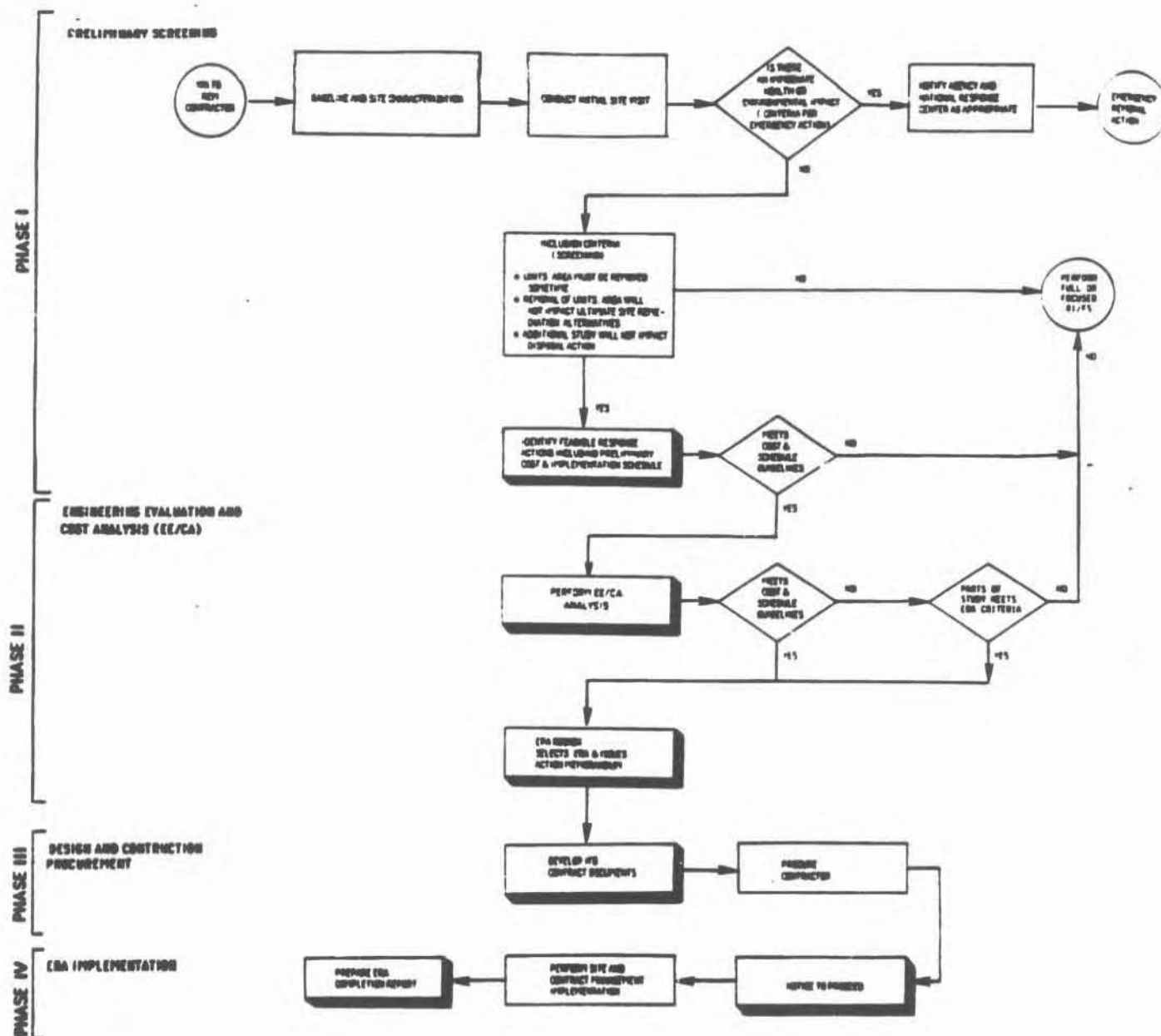
At this time, I am unable to provide you with the funds to conduct the ERAs. Until CERCLA is reauthorized, our ability to fund projects is severely limited. These projects will be included in our fourth quarter Superfund Comprehensive Accomplishments Plan and will be funded once funds become available.

Draft guidance on ERAs is being prepared which will be distributed to the Regions for comment in the near future. I will look forward to your comments on the proposed guidance. If I may be of any further assistance to you, please let me know.

Attachment



**FIGURE 1-1  
GUIDANCE FLOW DIAGRAM FOR EXPEDITED  
RESPONSE ACTIONS (ERA)**



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REM II



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
726 MINNESOTA AVENUE  
KANSAS CITY, KANSAS 66101

MAY 29 1985

MEMORANDUM

SUBJECT: Proposed Expedited Response Actions at NPL Sites in Region VII

FROM: David A. Wagoner *David*  
Director, Waste Management Division

TO: Henry L. Longest, II  
Director, Office of Emergency and Remedial Response (WH-548)

Through study of your March 17, 1986, memo and a series of recent telephone conversations with staff people from OERR and OWPE, we have explored the mechanisms for conducting expedited response actions (ERAs) and operable unit remedial actions (OUs). In this memo we summarize our understanding of these mechanisms and propose ERAs at three sites in our Region. We have discussed this initiative with our Regional Administrator, Morris Kay, and have received his support.

At National Priorities List (NPL) sites where prompt action is warranted and obvious, the agency can pursue either an OU or an ERA. (Please see attached flowsheet.) To qualify for an OU the site must be on (not just proposed for) the NPL and must have a 10% state match for construction costs available. If these conditions are met, an Engineering Evaluation Cost Analysis (EECA) prepared for the site may be converted to an OU Focused Feasibility Study (OUFFS). Then, the Regional Administrator (RA) may obtain delegation for the action, take public comment and sign a Record of Decision to implement the OU. The RA may obligate Superfund Comprehensive Accomplishment Plan (SCAP) funds via a Procurement Request (PR) to a REM (remedial) contractor who will prepare detailed plans and specifications, bid and oversee the construction work, and conduct follow up monitoring. He may, as an alternative, task the Corps of Engineers to perform these functions.

At sites only proposed for the NPL and/or ineligible for state match the RA may convert the EECA to an action memorandum (AM), sign the AM and obligate SCAP funds to the REM or ERCS contractor via a PR. Then the REM contractor will implement an ERA by preparing a detailed design, bidding and overseeing the construction work and performing follow up monitoring. Or, the ERCS contractor will perform the response actions on a time and materials basis.

At designated high priority non-NPL dioxin sites the RA may task the REM contractor to prepare the EECA for an ERA but must use either the ERCS (removal) contractor or a site-specific dioxin contract to perform the actual construction work.

The limits on removals of \$1 million for construction work and 6 months of construction time (unless an exception is granted) are acknowledged as applicable to all ERAs but not to OUs. We also acknowledge that operation and maintenance (O&M) costs must be borne by the PRP, state, city, etc., or by the agency under an exception from the removal time and/or cost limits.

Our Region is presently evaluating all of our NPL (proposed and final) sites and major dioxin sites and categorizing them as follows.

1. Sites so large and/or complex that a traditional RI/FS and RD/RA is appropriate.
2. Sites at which the appropriate response action for final cleanup is fairly obvious, and implementation and such actions is expected to eventually result in delisting the site from the NPL.
3. Sites with the combined characteristics of 1 and 2 above at which an ERA or OU should be conducted for part of the site simultaneously with preparation of the RI/FS/RD/RA for the entire site.

We will not consider an ERA or OU to be a final solution for any site (or part thereof) until a ROD supported by a delisting RI/FS (or equivalent document) has been signed.

One result of our evaluation to date is the identification of three category 2 sites. They are Waverly and A.Y. McDonald (a final and a both proposed NPL site respectively), and Thompson Chemical (a non-NPL priority dioxin site). Our REM II subcontractor, Woodward/Clyde Consultants (WCC) is preparing EECA's for these sites and we are negotiating with the potentially responsible parties (PRPs).

We request that you continue to support our enforcement strategy for these sites by providing funds in the SCAP for ERAs in the following amounts:

Waverly	1000K
A.Y. McDonald	700K
Thompson Chemical	650K

If negotiations fail we intend to do the following things. For Thompson Chemical, we would fund the ERCS contractor or a site-specific dioxin contractor to perform the ERA with oversight by our Environmental Services Division. For Waverly and A.Y. McDonald, we would fund our REM contractor to design, bid and oversee the ERAs. The issuance of unilateral CERCLA 106 Administrative Orders (AOs) to the PRPs prior to commencing work would enable us to recover treble damages in our subsequent cost recovery action.

If negotiations succeed, we plan to fund our REM contractor for oversight of the PRP ERAs (under AOs or compliance agreements as appropriate) in the following amounts:

Waverly	150K
A.Y. McDonald	100K
Thompson Chemical	125K

Depending on the mix of successful and unsuccessful negotiations, varying amounts of money would be freed to fund Regional response (remedial and/or removal) actions at other sites.

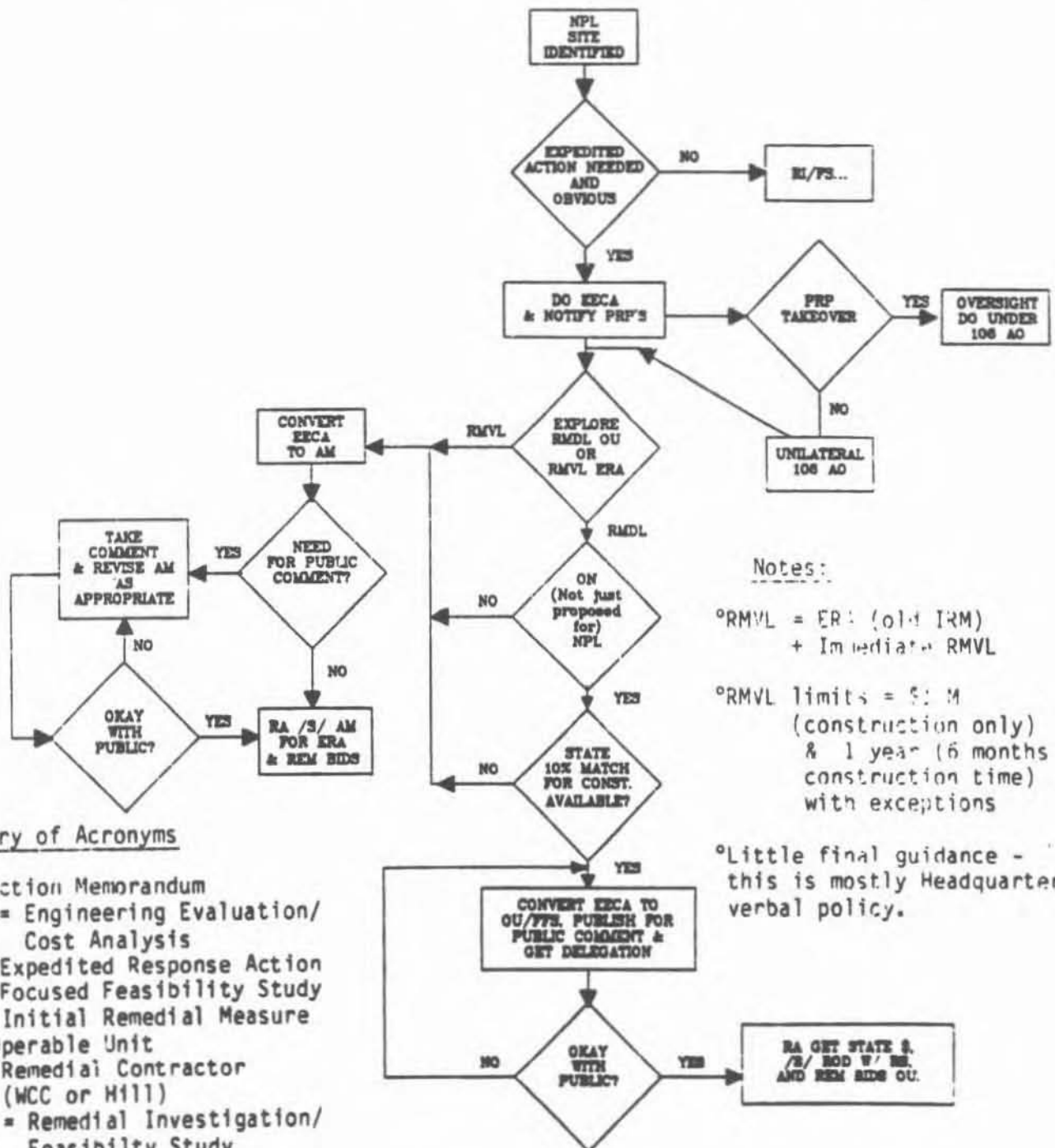
We are confident that these plans will result in prompt, appropriate cleanup actions and we appreciate the attention you are giving to this request.

I would like your thoughts on the process which we have outlined and am anxious to start on ERA's at one or more sites as soon as you provide funds. If you think a briefing would be useful, we would be glad to come in.

Attachment

cc: Tim Fields, (WH-548B)  
Russ Wyer, (WH-548E)

# FLOW SHEET FOR EXPEDITED ACTION AT NPL SITES UNDER THE REMEDIAL & REMOVAL PROGRAMS



## Notes:

°RMVL = ERA (old IRM) + Immediate RMVL

°RMVL limits = 5:1 M (construction only) & 1 year (6 months construction time) with exceptions

°Little final guidance - this is mostly Headquarters verbal policy.

## Glossary of Acronyms

- AM = Action Memorandum
- EECA = Engineering Evaluation/ Cost Analysis
- ERA = Expedited Response Action
- FFS = Focused Feasibility Study
- IRM = Initial Remedial Measure
- OU = Operable Unit
- RCM = Remedial Contractor (WCC or Hill)
- RI/FS = Remedial Investigation/ Feasibility Study
- RMDL = Remedial
- RMVL = Removal
- RS = Responsiveness Summary