



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

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OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

SUBJECT: Checklist of Information to Include for Consultation on Time-Critical Removal Actions by the Office of Site Remediation Enforcement

FROM: Kenneth W. Patterson, Director  
Regional Support Division, OSRE

A handwritten signature in blue ink, appearing to read "Kenneth W. Patterson", written over the printed name and title.

TO: Superfund Removal Managers, Regions 1-10  
Regional Counsels, Regions 1-10  
Superfund Regional Counsel Branch Chiefs, Regions 1-10

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This memorandum, and attached checklist, are designed to expedite the Office of Site Remediation Enforcement's (OSRE) consultation on high-dollar, Fund-lead, time-critical removal actions. Pursuant to the February 26, 2013 memorandum, "Timing and Procedures for Review of Certain Time-Critical Removal Actions by EPA Headquarters Offices," a Region should consult with OSRE when:

- (1) initiating a removal of, or increasing the removal ceiling to, more than \$2 million of Fund monies;<sup>1</sup>
- (2) subsequently increasing the removal action ceiling by \$2 million or more (but still below an overall Fund total of \$6 million); and/or
- (3) subsequently increasing the removal action ceiling to \$6 million or more of Fund monies.

During a consultation, OSRE typically reviews the action memo and enforcement addendum to understand the status of the enforcement case.<sup>2</sup> While the action memo is a public document, the enforcement addendum is considered enforcement confidential<sup>3</sup> and should contain detailed information on the Region's strategy for enforcement first and/or cost recovery. In OSRE's experience the specificity of information included in enforcement addenda varies. Therefore, OSRE has developed the attached checklist to assist the Regions in making sure that a package submitted for consultation includes information of particular interest to OSRE. For example, OSRE is fundamentally interested in the status of the Region's search for potentially responsible parties (PRPs), the consideration of possible enforcement actions, and the anticipated cost of the cleanup.

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<sup>1</sup> For purposes of consultation, only direct extramural costs are considered.

<sup>2</sup> General guidelines for drafting an enforcement addendum and enforcement information for the action memo are set forth in the "Superfund Removal Guidance for Preparing Action Memoranda," Office of Emergency Management (OEM) (Sept. 1, 2009), at pp. 25 - 27.

<sup>3</sup> The enforcement addendum should not be distributed outside the Agency, nor should it be placed in the public section of the Administrative Record.

This checklist is not meant to suggest a particular format for documents; rather, it focuses on the relevant information OSRE needs to adequately review an enforcement addendum. When requesting consultation, it is essential for a Region to submit all relevant documents. For example, during a consultation OSRE reviews both the action memo(s) and enforcement addendum. As part of a ceiling increase request, the Region needs to include both the most recent action memo (with current cost information) as well as the original action memo (with full site history).

This memorandum does not impose legally binding requirements on EPA, states, or the regulated community and may not apply to a particular situation based upon specific circumstances. Any decision regarding a particular site will be made based on the statute and regulations, and EPA retains discretion to adopt different approaches on a case-by-case basis.

Attachment

cc:

Josh Woodyard, OEM

Brian Schlieger, OEM

Lee Tyner, OGC

Superfund Removal Attorney Workgroup

OEM Regional Coordinators

**Checklist of Information to Include  
For Consultation on Certain Time-Critical Removal Actions  
by the Office of Site Remediation Enforcement**

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**Note:** During a consultation, the Office of Site Remediation Enforcement (OSRE) reviews both the action memo(s) and enforcement addendum. The information listed below should appear in one of the submitted documents.

**A. Background / Site History**

- A brief history of the site, including current and past owners and operators at the time of disposal of hazardous substances.
- The status of the cleanup work that has been completed to date; the party that completed such work (e.g., EPA or PRP); and the (actual or estimated) costs of such cleanup.
- A summary of the work that remains at the site and the estimated costs of such cleanup.
- Previous requests for removal funds for the site and expected future funding requests for the site.

**B. Enforcement History**

- Any previous Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) settlements at the site and, if different from model provisions, the nature of any covenants provided by the government for such settlements.
- For previous settlements: Whether a special account exists for the site; its current balance; and any restrictions on the use of the monies.
- A description of any unique, or potentially contentious, issues at the site (e.g., criminal proceedings; issues with the state/municipality; issues with access; substantive involvement by any Headquarters office).
- Any substantive involvement, past or current, with OSRE staff regarding the removal actions at the site.

**C. Potentially Responsible Parties (PRPs)**

- If no PRPs have been identified, the status of the Region's PRP search.
- For each PRP identified to date:
  - Liability: The PRP's relationship to site (e.g., owner/operator, transporter, arranger).
  - A brief summary of the evidence regarding the PRP's liability, defenses to liability and/or equity concerns.

- Viability: A brief summary of the financial status of the PRP and the Region's analysis of the PRP's financial capability to perform or pay for all, or a portion of, the removal.
- Whether ability to pay or CERCLA §104(e) information requests have been sent and responses received. Indicate specifically whether the Region requested information on the PRP's relevant insurance coverage.

#### **D. Enforcement Strategy**

- Rationale for decision to proceed Fund lead.
- If known, the Region's plans for cost recovery, including but not limited to, the possibility of:
  - Liens: Whether the Region intends to put a CERCLA §107(l) lien on the property. If not, explain why. If so, indicate whether there are existing liens on the property; the estimated value if known; and how the Region plans to use the lien to leverage PRP participation and/or to recover Fund monies.
  - In-Kind Services: Discuss state and local coordination with EPA and any attempts to reduce EPA's overall removal costs.
  - RCRA Financial Assurance (FA): If the site is a current or former Resource Conservation and Recovery Act (RCRA) facility, indicate whether the FA is still in effect, the beneficiary, and any issues with regard to EPA (or other appropriate entity) drawing on the FA to conduct site work.
- Statute of Limitation concerns.

#### **E. Regional Contacts**

- Name and contact information for the appropriate person to answer questions during the consultation. Depending on the Region, this may include the Regional attorney, on-scene coordinator, civil investigator, enforcement project manager, or other enforcement staff assigned to the site.
- If different than above, the name of and contact information for the Regional attorney assigned to the site.