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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

JAN 23 2004

Reply To
Attn Of: ECL-115

Tim Nord
WA State Dept. of Ecology
Toxics Cleanup Program - Headquarters
P.O. Box 47600 (Mail stop 7600)
Olympia, Washington 98504-7600

Re: State Input Pursuant to 42 U.S.C. SS 9601(41)(C)(i)(II) into Region 10's Preliminary Determination of those Sites Excluded from Definition of "Eligible Response Site" due to Preliminary Hazard Ranking System (HRS) Score

Dear Mr. Nord:

As you may be aware, the Small Business Liability Relief and Brownfields Revitalization Act (BF) amendments to CERCLA require the U. S. Environmental Protection Agency (EPA) to consult with the States when making certain determinations regarding which sites currently listed in the CERCLIS database will *not* be considered "eligible response sites" (*ERS*) under CERCLA § 101(41)(C)(i). If a site is a ERS, (1) EPA would conditionally defer such a site from final listing on the NPL; and (2) such a site is entitled to protection against an enforcement action by EPA under the Superfund program. Enclosed is the relevant EPA guidance (OSWER Directive 9320.0-107), which describes the process for making these determinations.

The purpose of this letter is to transmit the list of CERCLIS sites that Region 10 believes are <u>not</u> a ERS. These sites have achieved a preliminary HRS score > 28.50 (*i.e.* above the current threshold score for NPL listing) and under Agency guidance, are *not* ERS. The sites on this list include active sites with Reassessments, Combined PA/SI, SI, and/or ESI assessments completed (and logged into CERCLIS) and that are not 'No Further Action' sites. The preliminary HRS scores for these sites (>28.50) were generated using the 'PREScore' software (or other currently EPA approved scoring software). For the most part, these assessments have been completed by EPA and its authorized contractors. I wish to point out that certain sites are statutorily *ineligible by definition* under the BF amendments (e.g., NPL sites, removal sites, Federal Facilities) and therefore, the enclosed list does not include these sites. Please refer to OSWER Directive 9230.0-107 or the BF amendment for further details.

We request that you review the enclosed list and reply in writing by February 18, 2004, with your concurrence that each of these sites should be considered *excluded* as ERS. Please include a copy of the list of sites with your response, since this will become a part of our record for these determinations. If there is any site or sites on Region 10's list that you and your staff believe should not be considered "excluded" as an ERS, please identify the site(s) by name in your written reply to this letter, and include a brief rationale for your determination.

USEPA SF
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We will review your response and discuss any sites in question with you prior to making the final determination regarding the ERS exclusions. To facilitate the review process, please fax a copy of your response by February 18, 2004, to my attention at (206) 553-0124. Our goal is to have a regional "excluded as ERS" list by early February and to post that on the web by late winter. We will inform you when this information is available on the Internet, so that you can access this information when you need to, and can direct the public to the web site if there are any questions on specific sites.

Your response will satisfy the statutory requirement to consult with the States on the preliminary HRS scores of these sites. See CERCLA § 101(41)(C)(i)(II). Beginning in calendar year 2004, all new site-specific decisions made by EPA will be made using a modified transmittal memo from the EPA Site Assessment Manager to Ecology staff. Enclosed is a sample of our suggested language for future site-specific transmittal memos.

We appreciate your cooperation and assistance to implement the revised statute. If you have any questions on this process and/or the suggested language for future transmittal memos, please contact me at (206) 553-1078, or Monica Tonel of my staff at (206) 553-0323.

Sincerely,

Sylvia Kawabata, Manager
Site Assessment and Cleanup Unit 2

Enclosures

cc: Michael Spencer, Ecology

DATE: 01/20/2004

U.S. EPA SUPERFUND PROGRAM
Sites to be excluded from Eligible Response Sites
Region 10, Washington state

~~ENFORCEMENT SENSITIVE INFORMATION~~
~~**FOR INTERNAL USE ONLY**~~ MT 6/7/04

Site Name EPA ID Number	Address/ Location Description	City or Nearest Town	County	Status in EPA CERCLIS database	Site Lead
Alder Mill WAD980722847	T33N R22E S17,18	Twisp	Okanogan	Referred to Removal	EPA
Alder Mine WASFN1002142	3 mi SE Twisp on Alder Crk	Twisp	Okanogan	Being Addressed as Part of Alder Mill site	EPA
Aluminum Recycling Corp WAD043005651	E 3412 Wellesley	Spokane	Spokane	Other Cleanup Activity: State-Lead Cleanup	State
Anderson-Calhoun Mine/Mill WAN001002309	1 mi N of Leadpoint	Leadpoint	Stevens	Assessment Complete-Decision Needed	EPA
Bergs Marine Construction & Repair Inc WAD009243171	1303 C Street	Hoquiam	Grays Harbor	Other Cleanup Activity: State-Lead Cleanup	State
Blue Bucket Mine WAN001002319		Metaline	Pend Oreille	Assessment Complete-Decision Needed	EPA
Bonanza Mill WASFN1002221		Colville	Stevens	Assessment Complete-Decision Needed	EPA
Boulevard Park WAD980835565	N End of Bayview Dr	Bellingham	Whatcom	Other Cleanup Activity: State-Lead Cleanup	State
Champion International Seattle WAD046499778	4025 13th Ave West	Seattle	King	Other Cleanup Activity: State-Lead Cleanup	State
Cleveland Mine and Mill WAN001002247		Hunters	Stevens		EPA
Coal Creek aka Ross Electric WAD980726061	346 Coal Creek Rd	Chehalis	Lewis	5 Year Review Completed	
Custom Plywood Mill WASFN1002212	35th & V Streets	Anacortes	Skagit	Other Cleanup Activity: State-Lead Cleanup	State
Dawn Mining Company Mill Ponds WAD00756882	Hwy 231 City Center	Ford	Stevens	Other Cleanup Activity: State-Lead Cleanup	State
Equinox Resources aka Van Stone Mine/Mill WAD980834808		Colville	Stevens	Assessment Complete-Decision Needed	EPA
Everett Cy of Landfill WAD980639405	2902 36th St SE	Everett	Snohomish	Other Cleanup Activity: State-Lead Cleanup	State

U.S. EPA SUPERFUND PROGRAM
Sites to be excluded from Eligible Response Sites
Region 10, Washington state

ENFORCEMENT SENSITIVE INFORMATION
FOR INTERNAL USE ONLY

Site Name EPA ID Number	Address/ Location Description	City or Nearest Town	County	Status in EPA CERCLIS database	Site Lead
Former Puget Sound Naval Ammunition Depot WAN001002260	6002 Kitsap Way	Bremerton	Kitsap	Other Cleanup Activity: State-Lead Cleanup	State
Goose Lake WAD980723159	NW of Shelton Off Hwy 101	Shelton	Mason	Other Cleanup Activity: State-Lead Cleanup	State
Gorst Creek-Bremerton Auto Wrecking Landfill WAN001002414	4275 State Route 3 SW	Port Orchard	Kitsap	Integrated Removal Assessment ESI Ongoing	EPA
Grandview Mine WASFN1002165		Metaline Falls	Pend Oreille	Assessment Complete-Decision Needed	EPA
Hecla Knob Hill Mine WAD980988075		Republic	Ferry	Site Reassessment Ongoing	EPA
J H Baxter & Co WAD009265521	5015 Lk Washington Blvd N	Renton	King	Other Cleanup Activity: State-Lead Cleanup	State
Josephine Mine WAN001002322		Metalline Falls	Pend Oreille	Assessment Complete-Decision Needed	EPA
L-Bar Products Inc WAD097824577		Chewelah	Stevens	Site Reassessment Ongoing	EPA
Last Chance Mine WASFN1002162	6 mi SE of Northport	Northport	Stevens	Referred to Removal-Further Assessment Needed	EPA
Le Roi Co Smelter WAD988507323	Hwy 25 N of Cy	Northport	Stevens	Referred to Removal-Further Assessment Needed	EPA
Leichner Brothers Landfill WAD002788891	9411 NE 94th Ave	Vancouver	Clark	Other Cleanup Activity: State-Lead Cleanup	State
Little Hoquiam Boat Queen Ave WAD980977797	825 Queen Ave	Hoquiam	Grays Harbor	Other Cleanup Activity: State-Lead Cleanup	State
MJB Properties WASFN1002213	17th-30th Streets & T Ave	Anacortes	Skagit	Other Cleanup Activity: State-Lead Cleanup	State
Mountain Lion Mine/Mill WAN001002315		Republic	Ferry	SI Ongoing	EPA
Norseland Mobile Estates WA0000993139	8651 State Hwy 3 SW	Port Orchard	Kitsap	SI Start Needed	EPA

U.S. EPA SUPERFUND PROGRAM
Sites to be excluded from Eligible Response Sites
Region 10, Washington state

ENFORCEMENT SENSITIVE INFORMATION
FOR INTERNAL USE ONLY

Site Name EPA ID Number	Address/ Location Description	City or Nearest Town	County	Status in EPA CERCLIS database	Site Lead
Olympic View Sanitary Landfill WAD042804971	10015 SW Barney White Rd	Port Orchard	Kitsap	Other Cleanup Activity: State-Lead Cleanup	State
Oriole Mine WAN001002330		Metaline Falls	Pend Oreille	Combined PA/SI Ongoing	EPA
P M Northwest Dump WAD980639090		Anacortes	Skagit		EPA
Pacific Wood Treating WAD009422411	111 West Division	Ridgefield	Clark	Other Cleanup Activity: State-Lead Cleanup	State
Pend Oreille Mine & Mill WASFN1002160		Metaline Falls	Pend Oreille	Assessment Complete-Decision Needed	EPA
Port of Anacortes: Dakota Creek Industries WASFN1002214	115 Q Avenue	Anacortes	Skagit	Other Cleanup Activity: State-Lead Cleanup	State
Quendall Terminal WAD980639215	4503 Lk Washington Blvd N	Renton	King	Assessment Complete-Decision Needed	State
Rayonier Inc Mt Pleasant Landfill WA0001911403	Mount Pleasant Road	Port Angeles	Clallam	Other Cleanup Activity: State-Lead Cleanup	State
Rayonier Mill WAD000490169	700 N Ennis St	Port Angeles	Clallam	Former State Deferral	State
Republic Mine/Mill WAN001002316		Republic	Ferry	SI Ongoing	EPA
SISCO Landfill WAD980833727	7500 Wade Rd	Arlington	Snohomish	Other Cleanup Activity: State-Lead Cleanup	State
South Penn Mine WAN001002346		Republic	Ferry	SI Ongoing	EPA
SPS Railway WAD981771512	1515 North 39th St	Vancouver	Clark	Other Cleanup Activity: State-Lead Cleanup	State
Thermal Reduction Ldfl WAD078207362	1524 Slater Rd	Ferndale	Whatcom	Other Cleanup Activity: State-Lead Cleanup	State
United Marine Shipyards WAD009264284	1441 N Northlake Way	Seattle	King	Other Cleanup Activity: State-Lead Cleanup	State
Upper Columbia River WASFN1002171			Stevens	ESI Completed	EPA

Site Name EPA ID Number	Address/ Location Description	City or Nearest Town	County	Status in EPA CERCLIS database	Site Lead
Washington Natural Gas-Seattle Plant WAD980639280	N 34th & Burke Ave N	Seattle	King	Formal State Deferral	State
Washington State Fire Training Ctr WAD988508487	50810 SE Grouse Ridge Rd	North Bend	King	Other Cleanup Activity: State-Lead Cleanup	State
Weyerhauser Co WAD009041450	3535 Industrial Way	Longview	Cowlitz	Other Cleanup Activity: State-Lead Cleanup	State
Whatcom Co - Acme Ldfl WAD980514426	Mosquito Lake Rd	Acme	Whatcom	Other Cleanup Activity: State-Lead Cleanup	State

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

March 6, 2003

OSWER Directive 9230.0-107

MEMORANDUM

SUBJECT: Regional Determinations Regarding Which Sites are Not "Eligible Response Sites" under CERCLA Section 101(41)(C)(i), as Added By the Small Business Liability Relief and Brownfields Revitalization Act

FROM: Susan E. Bromm, Director
Office of Site Remediation Enforcement

Mike Cook, Director
Office of Emergency and Remedial Response

Linda Garczynski, Director
Office of Brownfields Cleanup and Redevelopment

TO: Director, Office of Site Remediation and Restoration, Region I
Director, Emergency and Remedial Response Division, Region II
Director, Hazardous Site Cleanup Division, Region III
Director, Waste Management Division, Region IV
Directors, Superfund Division, Regions V, VI, VII and IX
Assistant Regional Administrator, Office of Ecosystems Protection and Remediation, Region VIII
Director, Office of Environmental Cleanup, Region X
Director, Office of Environmental Stewardship, Region I
Director, Environmental Accountability Division, Region IV
Regional Counsel, Regions II, III, V, VI, VII, IX, and X
Assistant Regional Administrator, Office of Enforcement, Compliance, and Environmental Justice, Region VIII

I. Introduction

The *Small Business Liability Relief and Brownfields Revitalization Act*, Public Law No. 107-118, amends the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675. The amendments to CERCLA include a new definition of "eligible response site" in section 101(41). This memorandum provides guidance to the Regions

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on implementing authorities to determine whether a site should be excluded from being an "eligible response site" under section 101(41)(C)(i).

This memorandum is divided into four parts. Part II provides background on the definition of an eligible response site, the determinations the Regions will make in respect to this definition, and the implications of those determinations. Part III of this memorandum provides guidance to the Regions for making these determinations in conjunction with future site assessment decisions (see also the flowchart provided in Attachment A). Part IV of this memorandum provides guidance to the Regions on making a single determination for sites with past site assessment decisions.

This policy and any internal procedures adopted for its implementation are intended exclusively as guidance for employees of the U.S. Government. This policy is not a rule and does not create any legal obligations. Whether and how the United States applies the policy to any particular site will depend on the facts at that site.

II. Background

The term eligible response site is defined in CERCLA section 101(41). Generally, section 101(41)(A) defines an eligible response site as a site that meets the definition of a "brownfield site" in section 101(39).[1] Section 101(41)(B) includes certain sites otherwise excluded from the definition and authorizes EPA to include certain additional sites as eligible response sites based on site-specific statutory criteria. Section 101(41)(C), *the focus of this guidance*, authorizes EPA to exclude certain sites from the definition of an eligible response site.

Under section 101(41)(C)(i), eligible response sites do not include sites at which EPA "conducts or has conducted a preliminary assessment (PA) or site inspection (SI) and, after consultation with the State, determines or has determined that the site obtains a preliminary score sufficient for possible listing on the National Priorities List or otherwise qualifies for listing on the National Priorities List." Section 101(41)(C)(i) also provides that a site excluded under this provision may become an eligible response site again if EPA determines no "further federal action will be taken."[2]

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[1] The definition of a "brownfield site" contains a number of exclusions that should be reviewed to determine if a site in question meets the base definition of an eligible response site. *See* CERCLA, 42 U.S.C. § 9601(39)(A).

[2] EPA expects that the President will delegate the authority to make determinations under section 101(41)(C) to the Administrator of U.S. EPA through forthcoming changes to Executive Order 12580. We anticipate that the Administrator will redelegate, through EPA Delegation 14-17, the authorities in section 101(41)(C)(i) to the Regional Administrators with the authority to

The definition of eligible response site affects sections 105(h) and 128(b). Section 105(h) outlines circumstances when EPA should conditionally defer an eligible response site from final listing on the National Priorities List (NPL).[3] Generally, section 128(b) limits EPA's authority at eligible response sites to take enforcement or cost recovery actions against persons who are conducting or have conducted a response action in compliance with a State program that governs response actions for protection of public health and the environment. If the Region excludes a site from being an eligible response site, that site will not be subject to the deferral provisions in section 105(h) and the limitations on EPA's enforcement and cost recovery authorities under section 128(b) will not apply at that site.[4]

III. Making Determinations under Section 101(41)(C)(i)

Section 101(41)(C)(i) provides authority to make two determinations affecting a site's eligible response site status. First, a determination after a PA or an SI that a site obtains a preliminary score sufficient for possible listing or otherwise qualifies for listing operates to exclude a site from the definition of eligible response site. Second, the Region may make a determination that "no further federal action will be taken" at a site previously excluded; thus, making that site an eligible response site.

EPA will make these determinations only for sites that are entered in CERCLIS,[5] meaning the site warrants EPA assessment.[6] This part sets forth EPA's general policy regarding when and

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further delegate to the Branch Chief level. This guidance assumes this delegation structure will be made final and we will notify the Regions if this guidance is inconsistent with the final version of Delegation 14-17.

[3] The NPL is "the list compiled by EPA pursuant to CERCLA section 105, of uncontrolled hazardous substance releases in the United States that are priorities for long-term remedial evaluation and response." 40 C.F.R. § 300.5 (2001).

[4] Determinations under section 101(41)(C)(i) to exclude a site from the definition of an eligible response site have no affect on EPA's authority to provide grant or loan funding under sections 104(k) (brownfields funding) and 128(a) (state and tribal response program funding).

[5] "CERCLIS is the abbreviation of the CERCLA Information System, EPA's comprehensive data base and data management system that inventories and tracks releases addressed or needing to be addressed by the Superfund program." 40 C.F.R. § 300.5.

[6] Generally, sites assessed using brownfields grant funds or under Targeted Brownfields Assessment program will not enter the CERCLIS universe.

how in the current assessment process the Regions generally should make these determinations.[7] Additionally, this part addresses the EPA/State consultation requirement under section 101(41)(C)(i).

A. Determinations to Exclude a Site

1. The Decision Point

Typically, Regions should exclude a site from the definition of an eligible response site only after an SI has been conducted,[8] and the site has achieved a preliminary score sufficient for possible listing on the NPL.[9] The nature and quality of the information available after an SI should allow Regions to make these determinations with a high level of confidence. However, since the information available at the time of a PA or SI will vary from site to site, Regions may be able to determine that a site has a preliminary score sufficient for possible listing at an earlier stage in the assessment process. Regions should make the determination of whether a site's preliminary score is sufficient for possible listing at the point in the site assessment process when the information regarding site conditions allows the decision to be made with a high level of confidence. By focusing on the nature and quality of the information as the basis for this decision, EPA hopes to minimize situations where a Region excludes a site but after further assessment determines that the site conditions do not actually warrant a preliminary score sufficient for possible listing. Therefore, in order to make the determination after a PA and before the SI, a Region generally should have enough information to conclude with a high level of confidence that the site has achieved a preliminary score above the current NPL threshold of 28.5. For example, a pre-SI determination generally should be appropriate when monitoring data demonstrate that there is human exposure (*e.g.*, drinking water contaminated by a release at the site, contaminated soils on residential properties, etc.).

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[7] References to the determinations by the "Regions" in this guidance refer to determinations made by the person in any particular Region who has the delegated authority to make determinations under CERCLA section 101(41)(C)(i).

[8] This would include a combined PA/SI or an integrated assessment. Additionally, section 101(41)(C)(i) applies to PAs or SIs conducted by States through agreement with EPA.

[9] Score refers to a numeric calculation made under the Hazard Ranking System (HRS) that will reflect the potential risk associated with a site. 40 C.F.R. pt. 300, Appendix A (2001). Various tools have been developed that will provide an early indicator of whether a site "scores" sufficient for possible NPL listing. Under the current assessment process, "a preliminary score sufficient for possible listing" would be a preliminary score of 28.5 or greater.

Section 101(41)(C)(i) also provides that the term eligible response site does not include sites for which EPA determines that the site "otherwise qualifies for possible listing on the NPL." There are two methods, in addition to qualifying based on an HRS score, by which a site may be added to the NPL. First, a site may be added to the NPL if a State designates it as the State's highest priority. 42 U.S.C. § 9605(a)(8)(B), 40 C.F.R. § 300.425(c)(2). Second, a site may be added to the NPL if the Agency for Toxic Substances and Disease Registry issues a health advisory recommending disassociation of individuals from the release; EPA determines that the release poses a significant threat to public health; and, EPA decides it will be more cost-effective to use its remedial rather than its removal authority. 40 C.F.R. § 300.425(c)(3). Under these circumstances a Region should make a determination to exclude the site from the eligible response site definition.

Regions should review their decision-making procedures for preliminary assessment and site inspection reports. This review should evaluate whether changes are appropriate to ensure timely decision making on sites relative to section 101(41)(C)(i). Regions should also ensure that adequate procedures exist for creating a record for section 101(41)(C)(i) determinations. Delegation 14-17 delegates the authority to make these determinations to the Regional Administrator with authorization to redelegate this authority to the Branch Chief level. The Region should have a clearly identified document that displays this determination that is signed by the regional official delegated the authority to make these determinations. The Regions should modify the appropriate decision documents as needed to include this determination. If a determination to exclude a site from the definition is based on State priority or an ATSDR health advisory (i.e., the site otherwise qualifies for listing) this information should be clearly identified in the determination.

2. Policy for Consultation with States and Indian Tribes

When the Region believes a site has obtained a preliminary score sufficient for possible listing, or otherwise qualifies for the NPL, the statute requires that the Region consult with the State prior to making the determination to exclude the site from the eligible response site definition. The Region should also consult with a Tribe in accordance with this policy when a site is on or near Indian tribal land. Regions should agree with States and Tribes upon a process for notification and consultation for sites that EPA proposes to exclude pursuant to section 101(41)(C)(i), including appropriate time frames for response. In some Regions, States or Tribes perform some or all of EPA's PAs and SIs under a cooperative agreement; thus, the consultation requirement should be easy to satisfy through existing information exchanges. Where EPA conducts the PA or SI, the PA or SI reports supporting a determination should be forwarded to the relevant State and Tribe for review. To avoid any misunderstandings, the Regions, States, and Tribes should document these communications in writing. This might be accomplished through a form letter to accompany each report or by keeping internal records of any communications.

The Regions should ensure that States, Tribes, and the public can easily determine the status of a particular site. Regions can accomplish this goal in several ways. The Regions could compile and update quarterly a publicly available list (preferably online) of sites in each State, indicating those sites that the Region has determined are not eligible response sites, and any sites for which the Region has determined there will be no further federal action. This information might also be conveyed through regional online site descriptions or other online databases and non-electronic sources to make the information available to those without internet access. EPA intends to modify codes in CERCLIS to capture these determinations. The Regions should also consider how they intend to handle site-specific inquiries regarding the status of a site.

B. Determinations that No Further Federal Action will Be Taken

Section 101(41)(C)(i) authorizes EPA to designate a site previously excluded because it had obtained a preliminary score sufficient for possible listing or otherwise qualified for listing, an eligible response site by making a determination that "no further federal action will be taken" (NFFA determination). Depending on site-specific circumstances, the Regions generally should make this determination at one of two points in the current assessment process. First, if a Region determines that No Further Remedial Action is Planned (NFRAP) and the regional removal and legal enforcement programs do not anticipate removal and/or cost recovery actions with respect to the site, then it may be appropriate to make a NFFA determination in conjunction with the NFRAP decision. Second, where the Region makes a NFRAP determination and refers a site for removal assessment a NFFA determination generally should be made when the site is Archived from CERCLIS.[10] Also, if consultations with the removal and legal enforcement programs prior to a NFRAP determination reveal current or potential removal, enforcement, or cost recovery actions, then a NFFA determination generally should be made when the site is Archived from CERCLIS and not in conjunction with a NFRAP determination.

Sites at which the Region has conducted a PA or SI and determined that the site has achieved a preliminary score sufficient for possible listing but have been referred or deferred to another program for cleanup generally should not receive a NFFA determination until the Region is confident that these sites will not require action under CERCLA. This would include sites Archived and deferred to RCRA or the Nuclear Regulatory Commission (NRC). Also, the Region generally should not make a NFFA determination for active CERCLIS sites being addressed under a State program until the response action is complete and the Region believes that no further federal action under CERCLA will be taken at that site.

To implement this provision of section 101(41)(C)(i), Regions should add a NFFA determination to determinations documenting either NFRAP or Archive decisions, as outlined above, and ensure that consultation with the legal enforcement and removal programs takes place

[10] See the definition of "CERCLIS" for a description of "Archive". 40 C.F.R. § 300.5.

prior to NFFA determinations. Delegation 14-17 delegates the authority to make NFFA determinations to the Regional Administrator with authorization to redelegate the authority to the Branch Chief level. When a Region decides to NFRAP or Archive a site and a NFFA determination is appropriate the regional official delegated this authority must sign a document indicating that "no further federal action will be taken." Delegation 14-17 also requires consultation with the Regions legal enforcement office prior to making a NFFA determination. Consultation should also take place with the removal program.[11] The Regions generally should not make a NFFA determination at a site with ongoing or potential enforcement, cost recovery, or removal actions.

IV. Implementation of Section 101(41)(C)(i) at Sites Where EPA has Previously Conducted a Preliminary Assessment or Site Inspection

This section provides guidance on steps the Regions should take to make a determination to exclude sites from the eligible response site definition where the Region *has already conducted* an SI and for which a current site assessment decision indicates that the site has a preliminary score of 28.5 or greater, or otherwise qualifies for listing on the NPL. In the current CERCLIS universe, hundreds of sites have advanced beyond this assessment decision point and may warrant exclusion from the eligible response site definition but the delegated official under section 101(41)(C) has yet to make a formal determination. This part provides guidelines that the Regions generally should follow to have the delegated official make a single determination for a group of sites listed in CERCLIS sites that warrant exclusion from the eligible response site definition. While the process for excluding these existing sites is different, the basis for excluding these sites is the same as set forth in part II of this guidance for site-specific determinations – these sites have either achieved a preliminary score sufficient for possible listing on the NPL, or otherwise qualify for listing.

Whether a site is excluded through this initial determination or on a site-specific basis as outlined in part II is based on the timing of when the list of existing CERCLIS sites to be excluded from the definition is generated and shared with the states for consultation. Once the Regions have generated a list of existing CERCLIS sites warranting exclusion, as explained below, this list should be shared with the States to satisfy the consultation requirement. At the time the Region shares this list with the States, the Region should ensure that the process to exclude sites on a site-specific basis, as outlined in part II of this guidance, is in place to handle determinations for ongoing and future assessment decisions.

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[11] While the statute does not require consultation with the State prior to a NFFA determination, a Region may want to communicate with the State, or Tribe, prior to making a NFFA determination for sites that have obtained a preliminary score sufficient for possible listing on the NPL.

To help provide certainty regarding the status of these sites, the Regions should capture as many of these current CERCLIS sites within a single determination as soon as practicable. This initial determination should be tailored to exclude from the definition of eligible response sites only those sites that would not warrant a NFFA determination under the guidelines listed in part II. The goal is to make a determination to exclude sites that would have been excluded if the statute was in place at the time the original assessment decisions were made. The Regions should generally use the following two step process to accomplish this goal:

1) Generate a preliminary list using the CERCLIS database of:

- All ***active*** CERCLIS sites at which an SI has been conducted that have an assessment decision indicating that the site has a preliminary score of 28.5 or greater, *except* for sites where the decision made at the last completed assessment was that "no further remedial action is planned" (NFRAP)(some NFRAP sites may be captured under the guidelines set forth in the second bullet under (2)).

  This list should be easily generated from CERCLIS and will capture those sites past the SI stage with a preliminary score sufficient for possible listing on the NPL that are still in the assessment pipeline, or have been referred to a State program, or have a NFRAP determination but have been referred to the removal program, enforcement, or for cost recovery.

- ***All*** sites at which a SI has been conducted, that have an assessment decision indicating that the site has a preliminary score of 28.5 or greater, and have been deferred to RCRA or NRC.

  This list should also be easily generated from CERCLIS and will include all sites, including Archived sites, that have a preliminary score sufficient for possible listing and have been deferred to RCRA or NRC.

2) Add to the list by identifying those additional sites that fall within the part II guidelines:

- Identify active CERCLIS sites at which a PA has been conducted ***and*** there is a reasonably high degree of confidence that the site's preliminary score is above the current NPL threshold of 28.5 (*e.g.*, when monitoring data demonstrates that there is human exposure).

  Regional assessment managers should work to identify these sites.

- Identify active CERCLIS sites at which a PA or SI has been conducted, that have an assessment decision indicating that the site has a preliminary score of 28.5 or greater, and for which the Region has determined that "no further remedial action is planned" ***but*** may have current or future removal, enforcement, or cost recovery actions associated with the site.

  Regional assessment, removal, and legal enforcement staff should work to identify these sites.

- Identify all sites that would otherwise qualify for listing as described in part II.A.1 but have not yet been proposed for listing or listed on the NPL.

When the Region has identified those sites that should be excluded, the list of sites should be compiled in a memorandum for signature by the official within the Region who has been delegated the authority to make section 101(41)(C)(i) determinations. The memorandum should communicate the Region's decision to exclude certain sites pursuant to section 101(41)(C)(i) at which a PA or SI has been conducted and the Region has documented that the site obtained a preliminary score sufficient for possible listing on the NPL or the Region has determined otherwise qualifies for listing on the NPL.

This list may not be exclusive. Even if the Region follows the above process, it may later discover sites in the existing CERCLIS universe that should have been excluded from the definition based on section 101(41)(C)(i). Making the initial determination as outlined above does not preclude the Region from excluding existing CERCLIS sites in the future that the Region may not have excluded under this initial determination.

This initial determination should be made after coordination with State and Tribal counterparts and EPA Headquarters. Section 101(41)(C) requires consultation with the State prior to making a determination to exclude a site. The Regions should share and discuss with States and Tribes the list of sites to be excluded and document the results of this consultation for the record. Furthermore, because EPA will be making these determinations for the first time, and on a larger scale than future site-specific determinations, we request that Regions, for purposes of this initial determination, coordinate with our staff.[12]

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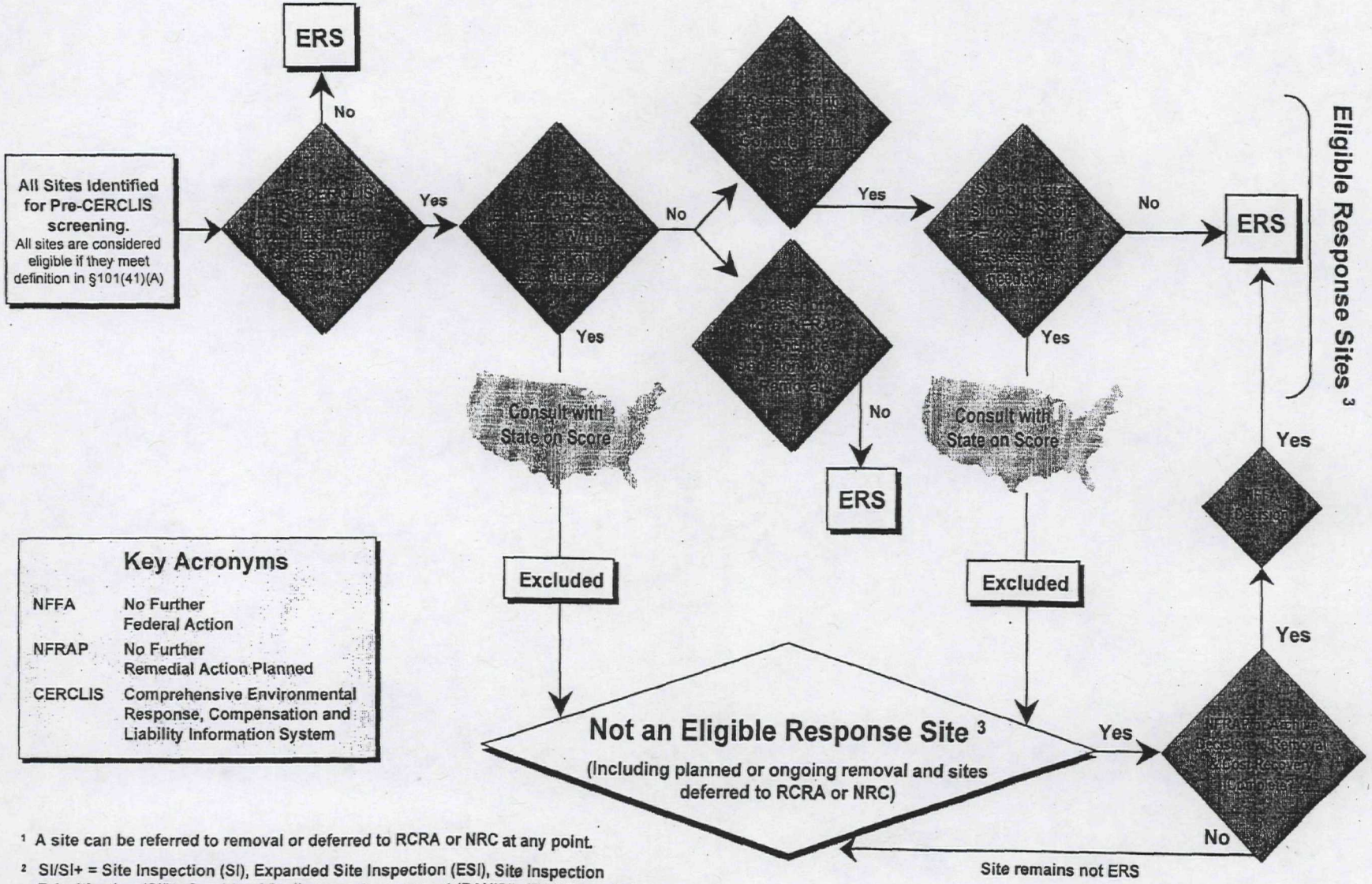
[12] For purposes of this initial determination and for questions related to implementation of this guidance please contact Sue Sladek, OSWER/OERR by phone at (703)603-8848 or by email to sladek.susan@epa.gov; and, K.C. Schefski, OECA/OSRE by phone at (202)564-8213 or by email to schefski.kenneth@epa.gov. If you have questions regarding federal brownfields funding at eligible response sites or sites excluded from the definition, please contact Patricia Overmeyer by phone at (202)566-2774 or by email to overmeyer.patricia@epa.gov.

cc: Brownfields Amendments Implementation Steering Committee
Eligible Response Site Workgroup
Regional Brownfields Coordinators (Regions I-X)
Regional Site Assessment Managers (Regions I-X)
Jewell Harper (OSRE)
Paul Connor (OSRE)
Sandra Connors (OSRE)
Betsy Southerland (OERR)
Joanna Gibson (OERR)
Steve Caldwell (OERR)
Charles Openchowski (OGC)
Nancy Riveland (Region IX)

Attachment A

Site Assessment Process to Determine Whether or not a site is an Eligible Response Site (ERS)[1]



Key Acronyms

NFFA	No Further Federal Action
NFRAP	No Further Remedial Action Planned
CERCLIS	Comprehensive Environmental Response, Compensation and Liability Information System

[1] A site can be referred to removal or deferred to RCRA or NRC at any point.

[2] SI/SI+ = Site Inspection (SI), Expanded Site Inspection (ESI), Site Inspection Prioritization (SIP), Combined Preliminary Assessment (PA)/(SI), (ESI)/Remedial Investigation (RI), Site Reassessment

[3] Any changes in site status may result in reevaluation.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, WA 98101

SAMPLE
Site-specific Disposition Letter from EPA to Region 10 states

Re: XYZ Plating Site, Tacoma, Washington
EPA Site ID# WAD99999999

Dear (state contact):

The U.S. Environmental Protection Agency (EPA), through its contractor, Ecology and Environment, Inc., has completed the preliminary assessment (PA) of the XYZ Plating site. A copy of the report is enclosed.

Based on this PA, EPA has determined that additional investigation is warranted. EPA will be contacting the property owner and/or representative to arrange for the follow-up investigation.

The preliminary hazard ranking score for the XYZ Plating site is greater than 28.50. This preliminary score was generated using the information gathered during this PA and therefore this site will be considered 'excluded' as an eligible response (ERS) site under the statute [CERCLA § 101(41)(C)(i)]. If you believe that this site should not be considered "excluded" as an eligible response site, please submit a written reply to this letter within ten (10) calendar days of your receipt of this letter, and include a brief rationale for your determination. We will review your response prior to making a final determination regarding the ERS exclusion.

If you have any questions, please feel free to contact me at (206) 553-XXXX.

Sincerely,

XXXXXXX,
Site Assessment Manager

Enclosure

Printed on Recycled Paper