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Early Action and Long-Term Action Under SACM — Interim Guidance

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The purpose of the Superfund Accelerated Cleanup Model (SACM) is to make Superfund cleanups more timely and efficient. This will be accomplished through more focus on the front end of the process and better integration of all Superfund program components. The approach involves:

- A continuous process for assessing site-specific conditions and the need for action;
- Cross-program coordination of response planning;
- Prompt risk reduction through early action (removal or remedial);
- Appropriate cleanup of long-term environmental problems;
- Early public notification and participation; and
- Early initiation of enforcement activities.

SACM is a process change that should be considered for all Superfund activities. Implementation of this policy will be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Overall Superfund priorities remain the same: deal with the worst problems first; aggressively pursue enforcement; and involve the public and relevant State agencies at all appropriate stages of the work.

Response Goals

The primary goals of an early action are to achieve prompt risk reduction and increase the efficiency of the overall site response. The main goal of a long-term action is to attain an effective, final site cleanup.

Prompt and Effective Risk Reduction

The only response authorities under CERCLA are removal and remedial. Any Superfund clean-up action that is taken must meet the requirements of one authority or the other. SACM encourages Regions to think creatively about the way these authorities may be used under the NCP to achieve prompt risk reduction (early action) or to conduct more complex, time-consuming remediations (long-term action). Take, for example, a site where substantial soil contamination threatens a drinking water aquifer. Traditionally, no response action might have been taken until the study of and planning for all the site work was complete. Under SACM, the Region should consider taking an early action to eliminate the soil problem through a non-time-critical removal or an early remedial response, as appropriate. Of course, if the soil poses a significant threat (e.g., human direct contact), an emergency or time-critical removal may be warranted. SACM is anticipated to result in an increase of early risk reduction activities at both National Priorities List (NPL) and "NPL-caliber" sites.

A Regional Decision Team (RDT) is responsible for determining/recommending the approach that will be taken at a site. The RDT should not be involved in response decisions for most emergency and some of the more time-critical removals, as these actions will be taken within the normal removal implementation process. However, the RDT should stay apprised of any emergency responses to factor information into future response plans. A primary consideration will always be what enforcement options are available. An emphasis on early actions will not jeopardize the program's commitment to enforcement first. The overall plan must also ensure good State coordination and suitable community involvement.

All response actions must meet the statutory and regulatory requirements established in CERCLA and the NCP. In situations where a time-critical response is warranted, established removal mechanisms will continue to be used. In less urgent situations, non-time-critical removal actions or early remedial actions may be used to accomplish early risk reduction. Long-term actions using remedial authority are most appropriate

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for sites requiring complex source control or surface or groundwater remediation.

Early Actions

Early actions are responses performed under removal or remedial authority to eliminate or reduce human health or environmental threats from the release, or threat of release, of hazardous substances, pollutants, or contaminants. These risk reduction activities can be conducted as emergency or time-critical removals, where quick response is necessary, or as non-time-critical removals or early remedial actions, in less urgent situations. These actions generally will take less than five years and will not always achieve complete site cleanup. The early action must meet all of the statutory and regulatory requirements of whichever authority is used (e.g., time and dollar limitations for removal actions and State assurances for remedial actions) and should generally not be started before the possibilities for enforcement are pursued, depending on the urgency of the situation. In some cases, more than one early action may be conducted during the course of work mitigating the threat at a site.

Time-critical actions will be taken when a removal site evaluation indicates that a response is appropriate and must be initiated within six months. Even when there is little time to get the response organized, Regions are always expected to consider enforcement options and to work with State and local officials in conducting the response. When a removal site evaluation indicates the need for an early response and a planning period of at least six months exists prior to the on-site initiation of the removal activities, a non-time-critical removal action is an option. A major change as a result of SACM will be that the number of non-time-critical removal actions (i.e., those where there is at least six months to plan) will likely increase because of the greater emphasis being given to early risk reduction. In order to ensure consistent use of non-time-critical authorities, Regions must consult with Headquarters on potentially responsible party (PRP)-lead and Fund-lead non-time-critical removals costing over $5 million.

The NCP establishes some special requirements for non-time-critical removals, including the need to prepare an Engineering Evaluation/Cost Analysis (EE/CA). (See NCP Section 300.415(m)(4) for additional requirements for non-time-critical removals.) An EE/CA is a study to identify and assess response alternatives. It is similar to, but less comprehensive than, what is done during the Remedial Investigation/Feasibility Study (RI/FS) phases of a remedial action. The EE/CA must go through a public notification and comment period to ensure all interested parties have an opportunity to have input to the proposed response. EPA is developing guidance on how to conduct a non-time-critical removal action.

Sometimes it may be more appropriate to undertake early actions with remedial authority. This may be likely for National Priorities List (NPL) sites already far down the remedial pipeline, enforcement lead sites where a consent decree may be appropriate, sites outside the scope (technical or financial) or authority of a removal action, or sites where State cost share, operation and maintenance or other assurances may be important considerations. These expedited remedial actions still require a Record of Decision (ROD). The work can be done through a variety of contracts discussed below under Response Selection Factors.

The RDT should ensure that an early action will be consistent with any long-term action that may eventually be required. This means that, especially for non-time-critical removals and early remedial actions, opportunities for treatment and permanence of remedy must be fully evaluated. Furthermore, potential differences that may exist between early action and long-term action data quality objectives and risk assessment goals must be reconciled at the outset. This can only happen if there is an emphasis placed on good program coordination, particularly among the participating Site Assessment Manager (SAM), On-Scene Coordinator (OSC), Remedial Project Manager (RPM), risk assessor, and enforcement/legal staff.

Long-Term Actions

Long-term response actions will usually be taken when there are conditions requiring extensive site characterization, where there are high costs, or where it will take more than approximately five years to complete the work. The majority of current NPL sites have some long-term response component. Most groundwater remediation efforts, many surface water remediation efforts, and most large-scale soil remediation efforts would be expected to take in excess of five years to complete or have complexities that preclude early action approaches, alone, from being used. In addition, remedies that require extensive operation and maintenance activities may fall into the long-term response category.

Identification of a remedial action as a long-term response does not mean that all of the work can or will be deferred. In many cases, even where there is no immediate threat, a quick start to the long-term response will be necessary to prevent site conditions from deteriorating (e.g., containment of a groundwater plume). In such circumstances, an early action is appropriate if the site meets the NCP requirements for a removal action or if an early remedial action can be initiated.

Response Selection Factors

Under SACM, the RDT has considerable flexibility for selecting/recommending the most appropriate approach for a site. Many factors will enter into its deliberations. The following is provided as a general overview of the differences between early and long-term actions.

Response Duration — A Region should be able to plan for, implement, and complete an early action in less than five years. Projects which will take more than five years should generally be done as long-term responses using remedial authority. If an action can be done quickly, but there are extensive operation and maintenance requirements to ensure the reliability of the response (regardless of the cost of the O&M), then early or long-term action under remedial authority should be considered. It is removal program policy that protracted and costly long-term post-removal site control is more appropri-

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ately conducted by the affected State, local unit of government, or Potentially Responsible Party (PRP). In some cases, it may be done by the Superfund remedial program through a ROD. (For additional information on this removal policy see OSWER Directive 9360.2-02, *Policy on Management of Post-Removal Site Control*, December 3, 1990).

Cost — Since either removal or remedial authority may be used, there is no maximum dollar cap on the cost of an early action. Regions must always follow the existing rules for justifying and obtaining exemptions for removal actions estimated to cost over $2 million or exceed one year in duration. Also, Regions must consult with Headquarters prior to taking an early action which will require funding beyond what the Region has in its allowance. Regions are also strongly urged to discuss with Headquarters any situations which present particularly difficult issues or may be controversial with a State or other interested parties.

Enforcement — The "Enforcement First" policy will continue to be aggressively pursued under SACM. Regions must take appropriate enforcement steps consistent with removal and remedial policy and guidance. This includes, but is not limited to, conducting PRP searches, issuing notice letters, and negotiating with PRPs to conduct an action through the use of administrative orders (unilateral or consent) or consent decrees. The lead time available for non-time-critical removal actions should allow for comprehensive PRP searches and subsequent negotiations. For each site, an administrative record file must be established and made available to the public according to the schedule in the NCP.

Protection of Human Health and Environment — It is critical that removal actions conducted at non-NPL sites take into consideration the potential for future NPL listing to ensure consistent goals are achieved, where practicable. In cases where a non-time-critical removal action will be the only or last action taken to clean up an NPL or NPL-caliber site, the alternatives should be evaluated on their ability to achieve clean-up levels consistent with the remedial program and be protective of public health and the environment.

ARARs Compliance — Under the NCP, applicable or relevant and appropriate requirements (ARARs) must be met during removal actions to the extent practicable considering the exigencies of the situation. ARARs should be identified and factored into the non-time-critical removal process. Careful consideration of ARARs is a key to ensuring that early actions are consistent with possible long-term actions. (For additional information on ARARs compliance during removal actions, see the NCP section 300.415 (i) and *Superfund Removal Procedures. Guidance on the Consideration of ARARs During Removal Actions*, EPA/540/P-91/011, September 1991).

State Involvement — An early action must include appropriate State involvement. This means there needs to be continuing meaningful communication between a Region and each State in order to ensure the highest priority sites are being handled and there is no unnecessary duplication of effort. State ARARs must be met or waived for remedial actions and met to the extent practicable for removal actions. For non-time-critical removal actions costing over $2 million, Regions should request State participation in the response action (e.g., funding, in-kind services). Although a State cost share is not required under CERCLA section 104 (c) (3) for a removal action, the absence of a State's financial participation may limit the capacity of EPA to fully fund certain large dollar value non-time-critical removal actions. When a State does not participate in the conduct and financial support of a Fund-lead non-time-critical removal action, the RDT must evaluate whether the urgency is great enough to justify the loss of the State contribution. (Until such time as the authority for approving $2 million waivers at non-NPL sites is delegated to the Regions, Headquarters will have to be involved in this decision on a site-by-site basis.) Until a final policy is developed, Headquarters will generally support projects costing less than $5 million, as long as there is a good justification, even if a State is unable to participate. Headquarters also will consider projects costing over $5 million, but there will have to be a compelling case for undertaking the work in the absence of a State contribution. Response actions taken under remedial authority must comply with established procedures for State involvement, including securing State assurances for Fund-financed remedial actions. States may apply for a cooperative agreement to conduct non-time-critical removal actions (See 40 CFR Part 35 Subpart O, Cooperative Agreements and Superfund State Contracts for Superfund Response Actions).

Public Involvement — Early and frequent involvement of the public is pivotal to the success of expediting cleanups under SACM. All applicable community relations requirements in the NCP must be met at both removal and remedial actions. Site managers should make sure the public has an opportunity for meaningful input and that concerns are considered. As community interest and awareness increase, it may be appropriate to conduct additional community relations activities beyond those required in the NCP. For example, field personnel (OSCs, RPMs, SAMs, Community Relations Specialists) could make themselves available to the public, or meetings could be held in the community, during times outside those that are typical (e.g., prior to the initiation of or at the conclusion of on-site work).

Risk Management — Since removal and remedial action levels and clean-up levels may differ, when making risk management decisions for early actions it is important that potential long-term response actions be considered. For emergency and time-critical removal actions, Regional response personnel may utilize their Agency for Toxic Substances and Disease Registry (ATSDR) representative to obtain public health advice on potential action and clean-up levels in the form of a Public Health Advisory or a Health Consultation. In planning for non-time-critical removal actions, the Regional risk assessor should be consulted for similar advice. It is important that the RDT take into consideration the potential for NPL listing and subsequent remedial actions in order to achieve consistent risk goals, where

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practical. For example, when performing a source removal to mitigate a direct contact threat at a site that also has a groundwater threat, it may be prudent to consider removal of additional soil contaminants consistent with projected groundwater clean-up goals. This could eliminate the need for additional source control actions during future response actions. Furthermore, it could reduce the ongoing release of contaminants to ground water, thereby reducing the time required to pump and treat ground water.

Contracting Mechanism — Available contracting vehicles and capacities will affect the strategy for conducting both early and long-term actions. Contract mechanisms potentially available are site-specific contracts (including the Pre-Qualified Offerors Procurement Strategy (PQOPS) contracts for incineration and solidification), the Emergency and Rapid Response Services (ERRS) contracts, the Alternative Remedial Contract Strategy (ARCS) contracts, the Technical Enforcement Services (TES) contracts, or accelerated contracting mechanisms accessible from the U.S. Army Corps of Engineers or the U.S. Bureau of Reclamation. The time and resources necessary to procure and administer these contracts, and the individual contract capacities, where applicable, are factors that must be considered when evaluating response options. A separate guidance short sheet is currently being developed on how to access the various contracts listed above.

Data Quality Objectives — When performing site assessment activities, appropriate data quality objectives should be used for decisions in support of removal and/or remedial actions. Historically, sampling investigations performed in support of removal actions and remedial actions have had dissimilar Quality Assurance/Quality Control (QA/QC) requirements and have focused on different media (i.e., wastes, ground water, soil, etc.). As an element of SACM implementation, the RDT should ensure that sampling activities are coordinated between removal and remedial actions. Site assessors may be able to take advantage of lower costs and quicker turn-around times if an adequate number of samples are also collected that will meet other anticipated data uses. Sample collection and analysis activities performed during removal actions should be coordinated such that the data generated will also support NPL listing and remedial actions, as appropriate.

Selecting a Response

A primary function of the RDT is to weigh what is known about a site and recommend/select those actions which address the threats in a timely and efficient manner. When time allows, the RDT with support of the designated site manager should consider all of the response options available. State and community concerns, and the need for future action before a response is initiated. The table below gives a conceptual outline of activities generally considered to be either early actions and/or long-term actions, however, it is not an exhaustive, definitive categorization.

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Early Action	Either	Long-Term Action
Access Restrictions Source Removals/ Containment Surface Structures and Debris	Source Remediation Capping/Containment Permanent/Temporary Relocation NAPL Source Extraction Ground Water Plume Containment/Cleanup Alternate Water Supply Property Acquisition	Extensive Source Remediation Restoration: Groundwater Surface Water

Early Action and Long-Term Action Under SACM — Interim Guidance

This paper is one of five fact sheets published by EPA under publication number 9203.1-051 (Volume 1, Numbers 1-5) to describe the Superfund Accelerated Cleanup Model (SACM) and should be reviewed in conjunction with the other SACM fact sheets. Comments on this document should be directed to Mark Mjoness of the Emergency Response Division (703) 603-8770.

There are two other important sources of information: "SACM concept paper" (8/5/92) and *Guidance on Implementation of the Superfund Accelerated Cleanup Model Under CERCLA and the NCP* [OSWER Directive No. 9203.1-03 (7/7/92)]. General SACM information can be obtained by calling the Superfund Document Center (202) 260-9760.

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Enforcement Under SACM — Interim Guidance

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The purpose of the Superfund Accelerated Cleanup Model (SACM) is to make Superfund cleanups more timely and efficient. This will be accomplished through more focus on the front end of the process and better integration of all Superfund program components. The approach involves:

- A continuous process for assessing site-specific conditions and the need for action;
- Cross-program coordination of response planning;
- Prompt risk reduction through early action (removal or remedial);
- Appropriate cleanup of long-term environmental problems;
- Early public notification and participation; and
- Early initiation of enforcement activities.

SACM is a process change that should be considered for all Superfund activities. Implementation of this policy will be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Overall Superfund priorities remain the same: deal with the worst problems first; aggressively pursue enforcement; and involve the public and relevant State agencies at all appropriate stages of the work.

Overview

All actions taken under SACM must be consistent with CERCLA and the NCP, and each response selection must be adequately documented by an administrative record. EPA's enforcement first policy will continue under SACM. Potentially Responsible Parties (PRPs) are performing approximately 70 percent of the new work at NPL sites, and EPA remains committed to maximizing PRP involvement when applying the principles of SACM. Successful enforcement under SACM will require careful consideration of the nature and timing of PRP participation in particular.

Major enforcement areas affected by SACM include:

- The timing and methodology of PRP searches;
- The timing and content of negotiations with PRPs;
- Notice letters;
- Consultations for early actions;
- State involvement in enforcement;
- De minimis settlements;
- The availability and adequacy of administrative records; and
- Cost recovery and cost documentation.

This document highlights the need to maintain an enforcement first stance and discusses appropriate approaches for addressing the issues listed above.

Enforcement First

SACM does not change the Superfund program's emphasis on enforcement first. Coordination of site activities, including decisions and recommendations made by the Regional Decision Team (RDT), should anticipate the activities required for enforcement and ensure that they are carried out in a timely manner so that the response lead can be passed to PRPs as early as possible without delaying work at the site. EPA expects much of the early site assessment activities to be Fund-lead. However, response lead changes can occur at any of the following points in the process:

1. During the site assessment activities;

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2. Prior to development of an Engineering Evaluation/Cost Analysis (EE/CA);

3. Prior to a removal action;

4. Prior to a Remedial Investigation/Feasibility Study (RI/FS);

5. Prior to a Remedial Design/Remedial Action (RD/RA); and

6. Prior to an RA contract solicitation, when funding the RA would have significant implications for the Fund and when no significant delay will occur.

EPA may take back the response lead from a PRP when the Agency deems a lead change would be appropriate to maintain response integrity or to protect human health and the environment.

The Region should identify the earliest point that the PRP search should begin and when negotiations should occur at each site.

PRP Searches: Timing and Methodology

Conducting adequate PRP searches can be crucial when preparing for negotiations and other enforcement activities. EPA does not anticipate that SACM will lead to changes in PRP searches for sites that require only emergency or time-critical removal actions. However, SACM's integrated site assessment process may lead to changes in PRP search methodology for non-time-critical removals and remedial actions for several reasons. First, because an RI may begin with or during a Site Investigation (SI), giving PRPs an opportunity to participate in the RI/FS will require that PRPs be identified earlier in the process than they are traditionally identified. Second, because the integrated site assessment is envisioned to require less time to complete than under the current process, there may be less time to develop liability information before a non-time-critical removal or remedial design begins. In addition, the greater emphasis on early risk reduction is expected to increase the use of non-time-critical removals to address some threats that previously were addressed with remedial actions. This will mean that there may be less time available before initiation of the response than in the past. For all of these reasons, there will be less time to conduct the PRP search and an increased emphasis on Regions' PRP search programs.

As a general rule, PRP search activities should begin as soon as possible after the Region decides that a response action is likely to be required at the site. PRP searches for some sites, such as multi-generator landfills, may require substantial effort. Early initiation of PRP search activities may be valuable at these sites to ensure adequate time for carrying out enforcement activities such as issuing general notice letters. Many other sites, however, may require no action beyond the initial site assessment activities. Expedited searches at these sites probably would be unnecessary and not cost-effective in most instances.

Once Regions have decided to begin PRP search activities, they are encouraged to adopt a **phased PRP search** approach that focuses first on establishing liability for PRPs about whom information is most readily available from site assessment activities and other available sources and then expands to address the remaining PRPs. If a core group of PRPs is identified before a discrete phase of a combined site assessment, negotiations may begin for the conduct of data collection associated with the site assessment activities (i.e., SI, RI, FS, etc.), even if the Region believes that additional PRPs may be found later. (Keep in mind that under the current policy, EPA has the lead responsibility for the site assessment activities - Preliminary Assessment (PA), SI, and Expanded Site Investigation (ESI). This should continue under SACM. PRPs may collect data, but final responsibility for interpreting that data in reports and making site decisions remains with EPA.) Similarly, negotiations for conducting a response action (i.e., RD/RA, removal, etc.) may be initiated with known PRPs even if all PRPs have not been identified. Once a potential liability has been established for the core group, the PRP search can be extended to the remaining PRPs whose liability is more difficult or more time consuming to establish. Regions should share information with known PRPs as soon as possible to facilitate PRP organization.

In conducting PRP searches, Regions should coordinate and share information with other parts of the program and with States. Where the Regional office uncovers information on PRPs as part of an emergency or time-critical action, the RDT should make full use of the information from these activities to support later enforcement actions at the site. Similarly, site assessment should include PRP search activities such as the documentation of evidence that identifies owners, operators, and witnesses; the collection of drum label information; the identification of the location and condition of generator records; and other activities that may help establish liability or waste contribution. Site assessment activities might include a more detailed targeted waste analysis to tie wastes to specific PRPs. Where available, Regions should make use of States' authority to search for and notice PRPs. Regions should

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consider writing a generic PRP search work assignment that can be used for a number of searches, each of which is initiated with a separate technical direction memorandum. Coordination of the PRP search and other site activities will require close communication between the PRP search team and the RDT.

Negotiations: Timing and Content

Generally, it is anticipated that by using the phased PRP search approach and some of the additional techniques listed above, there will be sufficient time before initiation of non-time-critical removals and early remedial actions to allow those actions to be PRP-lead. For example, if the RDT decides, based on the early results of a PRP search, to initiate a Fund-lead EE/CA to support a non-time-critical removal action, the Region can continue PRP search activities during the EE/CA. Upon completion of the EE/CA, the RDT can decide, based on the supplemented PRP search, whether to seek PRP participation in the non-time-critical removal action. There may be even more time for the PRP search if it begins during an emergency or time-critical removal action, or during the SI.

With the exception of non-time critical removals, it may be appropriate in some cases to conduct additional PRP search activities before initiating a response action at a site if the Region believes that a more thorough PRP search will increase the likelihood of settlement (for example, by identifying more PRPs). Any delays in work should be brief. Establishing liability against additional PRPs may have other benefits such as similar treatment of all PRPs, reduced risk of contentious cost recovery actions, and conservation of the Fund.

The Region should identify logical points during the site assessment process when negotiations with PRPs should be considered. Some of the major criteria for this decision include:

1. PRPs:
   a. the availability of viable parties for which Regions have liability evidence;
   b. the degree to which the identified PRPs appear willing to settle; and
   c. the ability of PRPs to conduct response activities.

2. Site conditions and work to be performed:
   a. the risk posed by the site and the need to move forward with the response quickly;
   b. the probable sequence and nature of cleanup activities scheduled for the site; and
   c. the action to be negotiated.

3. Cost:
   a. if the activity to be negotiated is a removal costing more than $2 million, enforcement will minimize the need for waivers under CERCLA Section 104(c); and
   b. State matching funds for remedial actions at NPL sites are not required if PRPs conduct remedial actions under, for example, a consent decree or unilateral administrative order.

The following examples show some stages in the process where negotiations may be appropriate, and the possible scope of the negotiations:

1. The initial assessment indicates that there is a hazardous substance release at the site and there is a high probability that the site may be listed on the NPL. In addition, some removal action is needed. In this case, the Region could negotiate with PRPs to perform the site assessment data collection activities —including any necessary sampling— and the EE/CA or RI/FS. The Region could also include performance of the EPA-selected removal action in the negotiations. Keep in mind that although PRPs may conduct sampling and data collection, EPA retains responsibility for decision making.

2. The initial assessment indicates that a non-time-critical removal action should be taken. The Region could negotiate an order with the PRPs for the EE/CA, and in some cases could include the eventual non-time critical removal action in the order.

3. The initial assessment shows that additional site evaluation is needed to determine if the site will require any action (early action or long-term action). In most cases EPA should continue performing the site assessment activities while continuing the PRP search. Negotiations should occur after a determination is made that a time-critical removal, an EE/CA, or an RI/FS is needed.

Under all of these scenarios EPA retains the responsibility to perform the risk assessment for removal and remedial actions, to prepare Hazard Ranking System scoring packages, and to make all response selection decisions.

Notice Letters

CERCLA and current EPA guidance encourage the use of special notice letters (or issuance of waivers) for RI/FSs and RD/RAs. When Regions anticipate conducting a com-

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bined SI/RI/FS, they should use special notice letters if they believe that such letters could facilitate a settlement.

Regions also should use special notice letters for non-time-critical removals when they believe that such letters could facilitate a settlement.

A special notice letter initiates a moratorium on response activity and enforcement. Such moratoria generally last 90-120 days (if EPA receives a good faith offer from the PRPs within the first 60 days of the moratorium). Therefore, when Regions expect that they will be issuing special notice letters, the letters should be sent out far enough in advance of the planned activities so that work is not significantly delayed. Certain investigatory and planning activities set forth in Section 104(b) of CERCLA should occur during the negotiation moratoria.

Consultations for Early Actions

In implementing SACM, careful site and case selection is important. When identifying appropriate sites for non-time-critical removal actions, Regions may wish to consult with Headquarters.

Regions must follow the existing rules for justifying and obtaining exemptions for removal actions estimated to cost over $2 million or exceed one year in duration. Also, Regions must consult with Headquarters prior to taking an early action which will require funding beyond what the Region has in its allowance.

When a State does not participate in the conduct and financial support of a Fund-lead non-time-critical removal action, the RDT must evaluate whether the urgency and need are great enough to justify the loss of the State contribution. (Until such time as the authority for approving $2 million waivers at non-NPL sites is delegated to the Regions, Headquarters will have to be involved in this decision on a site-by-site basis.) Until a final policy is developed, Headquarters will generally support projects costing less than $5 million, as long as there is a good justification, even if a State is unable to participate. Headquarters also will consider projects costing over $5 million, but there will have to be a compelling case for undertaking the work in the absence of a State contribution.

In order to ensure consistent use of non-time-critical authority, Regions must consult with Headquarters on PRP- or Fund-lead non-time-critical removals costing over $5 million.

If an early action under SACM presents particularly difficult issues or may be controversial with States, PRPs, communities or other interested parties, the Regions are strongly encouraged to consult with the appropriate Regional coordinator at Headquarters. Regional staff responsible for public involvement may be consulted to assist in gauging the level of public interest.

State Involvement in Enforcement

State capabilities and authorities differ. Each Region should work with each of its States to develop a general strategy for enforcement and the manner in which the State will be involved. Actions planned under State enforcement-lead must be under documents enforceable under State law and overseen by the States. Sites may be designated as State-lead if the Region agrees and the State has the capability and authority under State law to undertake the action. States should be kept informed of negotiations concerning site assessment activities and early actions to the same extent that they are notified and kept informed currently under CERCLA Section 121(f) and the NCP.

Late-identified PRPs

When the decision is made to take either a Fund-lead or PRP-lead action, and the Region expects that additional PRPs will be identified subsequent to initiation of the action, the Region should take steps to provide some type of constructive notice to PRPs who may be found at a later date (that is, "late identified" PRPs). For example, Regions could send letters providing information about a site to prospective PRPs. Regions might also place an announcement of site activity or of availability of the administrative record file in a major local newspaper and the *Federal Register*. (A *Federal Register* notice generally would be more effective than newspapers for reaching PRPs located outside the area of the site and the newspaper circulation area.)

De Minimis Settlements

SACM is expected to produce more site information earlier than in the past, allowing Regions to develop de minimis settlements earlier. In some cases, Regions will pursue PRP-lead early actions before developing the waste-in lists and volumetric rankings normally needed for de minimis settlements, making de minimis settlements at that time less likely. In such cases, de minimis settlements may still be developed prior to a subsequent early action decision (Action Memorandum, Record Of Decision) when the required information becomes available. Regions should follow EPA guidance on early de minimus settlements (including OSWER Directive Number 9834.7-1C) and strive to develop such settlements as early in the process as possible.

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The Department of Justice

SACM does not change the delegations under CERCLA. The Department of Justice (DOJ) should be consulted for enforcement strategy planning when judicial enforcement of an administrative order is likely, consent decrees are planned, and certain de minimis and cost recovery activities are contemplated (e.g., DOJ must concur on de minimis and cost recovery settlements where the total response costs for a site exceed $500,000).

Administrative Records

The administrative record, required under CERCLA, contains the documents that form the basis for the selection of a response action and serves as the basis for judicial review of EPA's response action. High quality administrative records are necessary to ensure the defensibility of response decisions made under the expedited procedures of SACM and are particularly important for SACM projects that may set precedents. Regions must establish an administrative record for each response action in accordance with CERCLA, the NCP, and OSWER administrative record guidance (OSWER Directive Number 9833.3A-1). All decisions concerning the selection of the appropriate response action should be documented in the administrative record file in accordance with EPA guidance. In particular, the administrative record should include documentation showing that the action taken is not inconsistent with the NCP.

CERCLA also requires that EPA provide the public (including PRPs) with an opportunity to participate in the development of the administrative record. According to the NCP Subpart I, the administrative record file for a non-time-critical removal must be available for public inspection when the EE/CA is made available for public comment. For time-critical removals, the administrative record file must be made available within 60 days after the start of on-site removal activity. The administrative record file for the selection of a remedial action must first be made available when the RI/FS begins. When the Region is conducting a combined SI/RI/FS, the administrative record file must be made available at the point when work characteristic of an RI/FS begins. In order for the record to be ready for public inspection when the RI/FS begins, Regions should begin compiling the administrative record file when the RDT decides a combined SI/RI/FS is needed.

Cost Recovery and Cost Documentation

SACM may increase the number of cost recovery actions subject to the removal statute of limitations (SOL) because more sites may be addressed with non-time-critical removals than in the past. The SOL for removals is three years from a removal completion, unless a remedial action is initiated within three years of the completed removal. Early remedial actions would fall under the remedial SOL which is six years after initiation of physical on-site construction of the remedial action.

Documentation of cost and work performed needs to be compiled whenever cost recovery actions are taken. EPA's past costs should be sought in all negotiations with PRPs for response work at SACM sites. The cost recovery rule is expected to assist in defining documentation requirements.

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NOTICE: The policies set out in this fact sheet are not final Agency action, but are intended solely as guidance. They are not intended, nor can they be relied upon, to create any rights enforceable by any party in litigation with the United States. EPA officials should follow the guidance provided in this fact sheet, or may act at variance with the guidance, based on an analysis of site-specific circumstances. The Agency also reserves the right to change this guidance at any time without public notice.

Enforcement Under the Superfund Accelerated Cleanup Model (SACM) - Interim Guidance

This paper is one of five fact sheets published by EPA under publication number 9203.1-051 (Volume 1, Numbers 1-5) to describe the Superfund Accelerated Cleanup Model (SACM) and should be reviewed in conjunction with the other SACM fact sheets. Comments on this document should be directed to Maria Bywater of the Office of Waste Programs Enforcement (703) 603-8929.

There are two other important sources of information: "SACM concept paper" (8/5/92) and *Guidance on Implementation of the Superfund Accelerated Cleanup Model Under CERCLA and the NCP* [OSWER Directive No. 9203.1-03 (7/7/92)]. General SACM information can be obtained by calling the Superfund Document Center (202) 260-9760.

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