



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

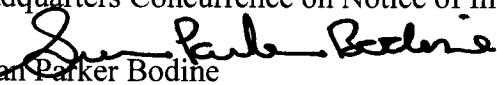
WASHINGTON, D.C. 20460

SEP 12 2008

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: CERCLA Delegation of Authority 14-17, National Priorities List Determinations, Headquarters Concurrence on Notice of Intent to Delete

FROM: 
Susan Parker Bodine
Assistant Administrator

TO: Regional Administrators
Regions I-X

Purpose

The CERCLA Delegation of Authority 14-17, National Priorities List (NPL) Determinations, pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), delegates National Priorities List site deletion to a Regional Administrator. A delegation revision, signed on August 1, 2008, requires formal Office of Solid Waste and Emergency Response (OSWER) concurrence for all National Priorities List site deletion and partial deletions before a Regional Administrator signs the notice of intent to delete. This memorandum provides background on NPL deletions and implementation procedures for draft document review, formal Headquarters concurrence, and document publication. Concurrence checklists for both deletions and partial deletions, as well as a sample of the Headquarters concurrence memorandum, are attached to this memo.

Background

Consistent with §300.425(e)(1) of the National Contingency Plan, releases may be deleted from or recategorized on the NPL where no further response is appropriate. In consultation with the state, EPA shall consider whether any of the following criteria have been met: "(i) responsible parties or other persons have implemented all appropriate response actions required; (ii) all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or (iii) the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate."

The *Closeout Procedures for National Priorities List Sites* (OSWER 9320.2-09A-P) states that the Region initiates the deletion process by obtaining concurrence from the State,

compiling a deletion docket, and preparing a Notice of Intent to Delete (NOID). The attached flowchart provides the step-by-step deletion/partial deletion process.

State Concurrence

Early in the deletion process, the Region should consult with the State and request concurrence on the EPA's intent to delete the site. A site or portion of a site cannot be deleted from the NPL without state concurrence. Although a formal concurrence memo from the State is required for publication, it is suggested that the Region obtain verbal or informal concurrence on the intent to delete before the deletion docket is prepared and the NOID is drafted. A formal concurrence letter must be obtained before Headquarters concurs on the deletion.

Deletion Docket

The Region prepares a deletion docket containing all pertinent information supporting the deletion recommendation. The deletion docket is a stand-alone docket and is not a continuation of the Administrative Record. Therefore, the Administrative Record can be referenced and the documents do not have to be duplicated in the docket. The Region is responsible for ensuring that the deletion docket is available in the local and regional repository as well as available electronically in the Federal Docket Management System before the deletion notices are published.

Notice of Intent to Delete

The NOID informs the public of EPA's intention to delete a site or portion of a site from the NPL and solicits public comment. The NOID contains general information about the site, EPA regional staff and contacts, and the location of the deletion docket. Upon publication, the notice provides for a 30-day public comment period. Templates for all deletion notices (both direct and traditional deletions) are available at the following website:
http://www.epa.gov/superfund/cleanup/postconstruction/del_templates.htm .

Implementation

Role of Regional Deletion Coordinators

The Office of Superfund Remediation and Technology Innovation's (OSRTI) November 22, 2006 memorandum requested that each Region designate a deletion coordinator. The deletion coordinator should be the deletion expert within the Region and act as a liaison between the regional program office and Headquarters. They should assist regional management/project managers to ensure the procedures outlined in this memo and attachments are followed and should continue to provide support for uploading deletion docket documents into the Federal Docket Management System before publication of the deletion notice.

Draft Document Review

Once the draft NOID is prepared in the Region, the regional deletions coordinator sends the draft to the State and the appropriate Headquarters regional coordinator for review and comment. Once Headquarters receives the draft, the document will generally be reviewed and comments provided within two weeks. Upon receipt of the comments, the regional deletions coordinator and the remedial project manager will review and address all comments. If the Region and Headquarters disagree on a comment, a follow-up discussion via a conference call will be held to resolve any outstanding issues. Once all issues are resolved and the changes incorporated, the draft NOID is sent to the Headquarters deletions coordinator for review and concurrence.

Formal Headquarters Concurrence

Upon completion of the initial Headquarters review, the Headquarters deletion coordinator reviews the draft NOID to ensure that it complies with deletion templates and all comments have been addressed. To ensure consistent review and concurrence, Headquarters will complete the attached concurrence checklist for the notice of intent. The checklist ensures that the NOID meets the NCP and deletion guidance requirements, the deletion docket is complete and available in local repositories, the State concurs with the deletion measure, and all relevant site milestones have been met. Upon completion of the checklist, Headquarters concurs with the deletion via a concurrence memo from the Director of OSRTI to the Regional Administrator.

Document Publication

After Headquarters concurs with the deletion, the NOID is signed by the Regional Administrator and the publication package is prepared. The deletion package is sent to the Headquarters Federal Register office for publication. In addition to the NOID, the Region must prepare and distribute a local notice regarding the NOID. Consistent with §300.425(e)(4) of the National Contingency Plan, a notice should be published in a local newspaper of general circulation and inform the public of the Agency's intent to delete or partially delete a site from the NPL and the 30-day public comment period.

For further information

The Headquarters contact for deletions is Kate Garufi. You may contact her at 703-603-8827 with any questions.

Attachments

- Attachment 1 – CERCLA Delegation of Authority 14-17, National Priorities List Determinations
- Attachment 2 – Headquarters Full Deletion Concurrence Checklist
- Attachment 3 – Headquarters Partial Deletion Concurrence Checklist
- Attachment 4 – Example Headquarters Concurrence Memorandum
- Attachment 5 – Site Deletion and Partial Deletion Document Review Process

cc: Barry Breen, OSWER
Scott Sherman, OSWER
Ellen Manges, OSWER
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OSRTI Managers
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Renee Wynn, OPM
Joanne Marinelli, Superfund Lead Region Coordinator, US EPA Region 3
NARPM Co-Chairs
Federal Facilities Leadership Council

THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (CERCLA)

14-17. National Priorities List Determinations

1. AUTHORITY

To exercise the Agency's authority pursuant to Section 105 and 101(41)(C)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, and to perform other activities necessary for the effective program administration:

- a. To add sites to the National Priorities List (NPL);
- b. To delete sites from the NPL;
- c. To make determinations under Section 105(h); and
- d. To make determinations for sites not on the NPL under section 101(41)(C)(i).

2. TO WHOM DELEGATED

- a. The Assistant Administrator for Solid Waste and Emergency Response (AA/OSWER) is delegated the authority in paragraph 1.a. above.
- b. Regional Administrators are delegated the authorities in paragraph 1.b., 1.c., and 1.d. above.

3. LIMITATIONS

- a. In exercising 1.b, the AA/OSWER must concur before the Regional Administrator signs the notice of intent to delete.
- b. If a Regional Administrator redelegates the authority in paragraph 1.d., the delegatee must consult with the Regional Branch Chief responsible for CERCLA legal enforcement issues, or his/her equivalent, before exercising the authority in paragraph 1.d. This limitation may be waived by the Regional Branch Chief.

4. REDELEGATION AUTHORITY

- a. The AA/OSWER may redelegate the authority in paragraph 1.a. above to the Deputy Assistant Administrator for Solid Waste and Emergency Response, and no further.
- b. Regional Administrators may not redelegate the authority in paragraph 1.b. above.
- c. The AA/OSWER may redelegate concurrence authority in 3.a to the Deputy Assistant Administrator for Solid Waste and Emergency Response who may redelegate to the Office Director for the Office of Superfund Remediation and Technology Innovation, and no further.
- d. Regional Administrators may redelegate authorities in paragraph 1.c. to the Division Director level, or equivalent, and no further.
- e. Regional Administrators may redelegate authorities in paragraph 1.d. to the Branch Chief level, or equivalent, and no further. In those Regions where the Branch Chief is not the first line supervisor, this authority may be further delegated to the Section Chief, or equivalent, and no further.

5. ADDITIONAL REFERENCES

- a. CERCLA, Sections 101(41)(C), 118, and 125(b).
- b. 40 CFR Part 300, "National Oil and Hazardous Substances Pollution Contingency Plan" (NCP).
- c. EPA Delegation 1-21, Federal Register.
- d. Executive Order 12580, as amended, January 23, 1987.
- e. Executive Order 13308, June 20, 2003.

Attachment 2 – Headquarters Full Deletion Concurrence Checklist

Headquarters Full Deletion Concurrence Checklist

Site Milestones

- Is the site being deleted based on Resource Conservation Recovery Act (RCRA) deferral? If yes, skip to Deletion Criteria.
- Is the site construction complete?
- Does the site require five-year reviews (FYR)? If a FYR has been completed, what was the last completion date? What is the sitewide protectiveness determination for this site?
- Are the environmental indicators Human Exposure Under Control and Ground water Migration Under Control?
- Is the site Sitewide Ready for Anticipated Use?
- Are Institutional Controls (ICs) required at the site? Are ICs in a decision document?
- Did the Region complete a Final Close Out Report (FCOR)? Was the FCOR complete and consistent with guidance? Is the FCOR date in CERCLIS?

Deletion Criteria

- Does the Region have the state concurrence letter?
- Is the state concurrence, FCOR in the deletion docket? Is the docket available in the site repositories?
- Has a Federal Docket Management System docket phase been opened for the deletion? Are the deletion docket documents uploaded or referenced in this docket?
- Were all the Headquarters Regional Coordinator significant comments addressed and/or resolved?
- If a direct deletion, were both documents sent to Headquarters for review?
- Does the document use the most current deletion templates?

Basis for Site Deletion Section

Verify the following information is included in the Basis for Site Deletion section (as appropriate):

- Site Background and History

Attachment 2 – Headquarters Full Deletion Concurrence Checklist

- Provide nearest city, county, state;
 - Describe the physical locations and boundaries of the site;
 - Describe former use;
 - Describe site conditions resulting in listing;
 - Provide FR citation of proposed and final NPL listing;
 - Describe removals conducted (if applicable); and
 - Describe ongoing or potential redevelopment (if applicable).
- Remedial Investigation and Feasibility Study (RI/FS)
- Describe scope of Remedial Investigation; and
 - Describe findings from Feasibility Study.
- Record of Decision Findings
- Describe the major components of the selected remedy;
 - Describe Remedial Action Objectives; and
 - Describe any ESDs or ROD Amendments.
- Response Actions
- Summarize remedial design/remedial action activities.
- Cleanup Standards
- Describe information or data obtained to demonstrate that cleanup levels have been achieved.
- Operation and Maintenance - if applicable
- Describe ongoing or completed O&M;
 - Describe any continuing site monitoring; and
 - Describe institutional controls implemented, including where filed and how verified.
- Five-Year Review - if applicable
- Describe results of any previous Five-Year Review; and
 - Indicate the schedule for next Five-Year Review.
- Community Involvement
- Describe major community involvement activities; and
 - Describe community involvement activities associated with deletion.
- Determination that the Site Meets the Criteria for Deletion
- Explain why the site meets the substantive NPL deletions criteria; and
 - Describe how Region has followed the procedures required by 40 CFR 300.425(e).

Attachment 3 – Headquarters Partial Deletion Concurrence Checklist

Headquarters Partial Deletion Concurrence Checklist

Site Milestones

- Do the media being proposed for deletion require five-year reviews (FYR)? If a FYR has been completed for the media proposed for deletion, what was the last completion date? What is the protectiveness determination for the media?
- Are Institutional Controls (ICs) required at the media? Are ICs in a decision document?
- Did the Region complete a Remedial Action (RA) report or a no action Record of Decision (ROD) for the media?

Deletion Criteria

- Does the Region have the state concurrence letter?
- Is the state concurrence in the deletion docket? Is the RA report or no action ROD in the docket? Is the docket available in the site repositories?
- Has a Federal Docket Management System docket phase been opened for the deletion? Are the deletion docket documents uploaded or referenced in this docket?
- Were all the Headquarters Regional Coordinator significant comments addressed and/or resolved?
- If a direct deletion, were both documents sent to Headquarters for review?
- Does the document use the most current deletion templates?

Basis for Site Deletion Section

Verify the following information is included in the Basis for Site Deletion section (as appropriate):

- Site Background and History
 - Provide site CERCLIS ID
 - Provide nearest city, county, state;
 - Describe the physical locations and boundaries of the site;
 - Describe former use;
 - Describe site conditions resulting in listing;
 - Provide FR citation of proposed and final NPL listing;
 - Describe removals conducted (if applicable);
 - Describe ongoing or potential redevelopment (if applicable);
 - Describe and define all operable units at the site; and
 - Describe the OUs and associated media included in the partial deletion.

Attachment 3 – Headquarters Partial Deletion Concurrence Checklist

- Remedial Investigation and Feasibility Study (RI/FS)
For the OUs and media proposed for deletion:
 - Describe scope of Remedial Investigation; and
 - Describe findings of Feasibility Study.

- Selected Remedy
For the OUs and media proposed for deletion:
 - Describe the major components of the selected remedy;
 - Describe Remedial Action Objectives;
 - Describe any ESDs or ROD Amendments; and
 - Clearly differentiate between RODs that are part of the partial deletion and those that are not.

- Response Actions
For the OUs and media proposed for deletion:
 - Summarize remedial design/remedial action activities.

- Cleanup Goals
For the OUs and media proposed for deletion:
 - Describe information or data obtained to demonstrate that cleanup levels have been achieved.

- Operation and Maintenance - if applicable
For the OUs and media proposed for deletion:
 - Describe ongoing or completed O&M; and
 - Describe institutional controls implemented, including where filed and how verified.

- Five-Year Review - if applicable
 - Describe results of any previous Five-Year Reviews;
 - Discuss the areas proposed for deletion that are included in Five-Year Reviews; and
 - Indicate the schedule for the next Five-Year Review.

- Community Involvement
 - Describe major community involvement activities; and
 - Describe community involvement activities associated with the partial deletion.

- Determination that the Criteria for Deletion have been Met
 - Explain why the parcels being proposed for deletion meet the substantive criteria; and
 - Describe how Region has followed procedures required by 40 CFR 300.425(e).

Attachment 4 – Example Headquarters Concurrence Memorandum



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

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

OSWER – xxxxx-xx

MEMORANDUM

SUBJECT: Headquarters Concurrence on the [Insert Site Name] Superfund Site Notice of Intent to Delete

FROM: James E. Woolford, Director
Office of Superfund Remediation and Technology Innovation

TO: [Insert Name], Regional Administrator
EPA Region [Insert Region]

Background

The CERCLA Delegation of Authority 14-17, National Priorities List (NPL) Determinations, pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), requires formal OSWER concurrence before a Regional Administrator signs the notice of intent to delete. This memorandum completes the Headquarters concurrence requirement.

Consistent with section 300.425 of the National Contingency Plan, releases may be deleted from or recategorized on the NPL where no further response is appropriate. In consultation with the state, EPA shall consider whether any of the following criteria have been met: “(i) responsible parties or other persons have implemented all appropriate response actions required; (ii) all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or (iii) the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.”

OSRTI Review

OSRTI has reviewed the draft notice of intent to delete. Written comments were sent to the Region and addressed accordingly by the regional Superfund office. Upon completion of the review, OSRTI agrees that the proposed deletion action meets the relevant NCP deletion criteria summarized above. The attached checklist summarizes that the notice of intent to delete meets

Attachment 4 – Example Headquarters Concurrence Memorandum

the NCP and deletion guidance requirements. The deletion docket is available in the local, regional, and electronic repositories.

Action

Headquarters concurs on the proposed site deletion. Please sign and process the appropriate deletion documents. If you or your staff have questions please call me or your staff may call Kate Garufi at 703-603-8827.

Attachment

CCs: Assistant Administrator, OSWER
Deputy Assistant Administrator, OSWER
Assessment and Remediation Division Director
Superfund Regional Division Director
OSRE Director

Attachment 5 - Site Deletion and Partial Deletion Document Review Process

