



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

MAY 12 1998

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

OSWER 9360.1-05

SUBJECT: Concurrence Policy for
Mercury Removals

FROM: Stephen D. Duftig, Director /s - by Larry Reed for/
Office of Environmental and Emergency Response

To: Superfund National Managers, Regions 1-10

Purpose

The purpose of this memorandum is to modify the Headquarters concurrence requirements for removal actions addressing certain residential mercury contamination. It is anticipated that most future mercury-related removals will continue to consist of individualized, small scale actions (such as those related to mercury theft and transport to the home from school buildings). Today's policy should be used in these instances.

Larger-scale or unique mercury removal actions or mercury removal actions with the potential to substantially impact Regional or national budgets for removal should continue to follow the previous, formal concurrence processes. This modification will improve administrative efficiency and decrease cleanup time while continuing to follow statutory limits identified under CERCLA § 104(a)(1) (response authority based on hazardous substance release or threat of release into the environment) and CERCLA § 104(a)(3)(B) (limitations on response actions involving products which are part of the structure of and result in exposure within buildings). This modification does not apply to sites which may include mercury contamination that is part of the building structure (see OSWER Directive 9360.3-12 "Response Actions at Sites with Contamination Inside Buildings, August 1993).

Background

During the past year, several emergency removal actions for residential mercury contamination have received headquarters concurrence, consistent with OSWER Directive 9360.3-12, "Response Actions at Sites with Contamination Inside Buildings", August 12, 1993. This directive states that "written concurrence must be received from Headquarters prior to formal approval of the Action Memorandum by the Regional Administrator" (citing OSWER Directive 9360.0-19, "Guidance on Non-NPL Removal Actions Involving Nationally Significant

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or Precedent-Setting Issues”, March 1989). In general, mercury removal actions were considered nationally significant due to “within building” exposures and the need to determine whether such actions were within the Agency's response authority. The regularity of headquarters concurrence on mercury removals suggests that this review process is no longer necessary.

During and immediately following issuance of OSWER Directive 9360.3-12, the Agency did not have extensive experience with residential mercury contamination and the threats it posed. At that time, implementing removal actions for residential mercury was unique and precedent-setting (e.g., documenting a release/threat of release to the environment, methods of decontamination, disposing of contaminated personal property). However, due to numerous successful mercury removals across the Regions, we no longer consider such actions nationally significant or precedent-setting.

Implementation

The formal headquarters concurrence requirement should be replaced by Regional notification to Headquarters Regional Coordinator personnel. The notification process will allow the Regional Coordinator to assist the Region with any questions they may have and facilitate discussions among the Regions to ensure such actions are carried out consistently across the country.

The purpose of achieving national consistency in the implementation of the Superfund removal program should not be diminished by the withdrawal of this formal concurrence requirement. Mercury cleanups should continue to be approved only when a release or threatened release to the outdoor environment is documented.

Comments and questions should be directed to Jeffrey Phillips in the Region 5/7 Accelerated Emergency Response Center, Office of Emergency and Remedial Response, (703)603-9917, or other members of the Emergency Response and Removal Team.

Attachment
(Emergency Response and Removal Team Contacts)

cc: Regional Removal Managers

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