



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

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MAY 1 2007

OSWER Directive 9200.0-57

MEMORANDUM

SUBJECT: Conducting Remedial Actions at Sites Deleted from the National Priorities List

FROM: Susan Parker Bodine, Assistant Administrator
Susan Parker Bodine

TO: Superfund National Policy Managers, Regions 1-10

PURPOSE

This memorandum describes the approach of the Environmental Protection Agency (EPA) to conduct remedial actions at sites that have been deleted from the National Priorities List (NPL).

This document provides policy for use by EPA personnel. It is not a regulation and does not create any legal obligations on any person or entity. Furthermore, this policy does not change existing guidance or the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA may apply this policy to the extent appropriate in light of site-specific facts and may change this policy at any time.

BACKGROUND

Pursuant to the NCP, EPA may delete a site from the NPL when EPA determines that no further response is appropriate. 40 CFR §300.425(e). Before deleting a site, EPA will provide notice and an opportunity for comment, as well as obtain the concurrence of the state in which the release was located. 40 CFR §300.425(e)(2),(4). On rare occasion, further response action at a site may be warranted to address a release or substantial threat of release into the environment after the site has been deleted.

POLICY

This document sets forth EPA's general policy regarding remedial actions at sites that have been deleted from the NPL. Because these sites already have gone through the listing

process once, re-listing generally will not be necessary or appropriate before EPA can initiate, or require, remedial action.

While a site must have been listed on the NPL at some point to be considered eligible for Fund-financed remedial action¹, Agency regulations make clear that remedial actions taken in response to releases at sites deleted from the NPL are eligible for Fund-financing. 40 CFR 300.425(e)(3).²

Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), EPA has the option of re-listing a site in such circumstances. EPA, if it so elects, may restore the deleted site to the NPL without rescoreing the site under the Hazard Ranking System. CERCLA 105(e); 40 CFR 300.425(e)(3).

Where EPA determines that additional remedial action is warranted at a deleted site, EPA generally will not re-list the site on the NPL. In such circumstances, it is better to address the release or threat of release directly. To do so, EPA may conduct additional remedial actions at the deleted site itself using Fund monies or, alternatively, may take action against responsible parties with which it has not settled or exercise reopeners available in any settlement agreements with such parties.

To the extent circumstances indicate that re-listing is appropriate, the Agency may elect to initiate restoration to the NPL. The decision to list any site on the NPL or restore any site to the NPL remains at the discretion of the Assistant Administrator for the Office of Solid Waste and Emergency Response. (See EPA Delegation Manual, Chapter 14 CERCLA, item #14-17 NPL).

For questions regarding this policy, please contact Elizabeth Southerland, Director of the Assessment and Remediation Division in OSWER's Office of Superfund Remediation and Technology Innovation at 703-603-8855.

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¹ Section 300.425(b)(1) provides that "[o]nly those releases included on the NPL shall be considered eligible for Fund-financed remedial action."

² Section 300.425(e)(3) of the NCP provides, in pertinent part, "[a]ll releases deleted from the NPL are eligible for further Fund-financed remedial actions should future conditions warrant such action."