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

NOV 14 1996

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MEMORANDUM

SUBJECT: Coordinating with the States on National Priorities List Decisions

FROM: Elliott P. Laws, Assistant Administrator
Office of Solid Waste and Emergency Response

TO: Regional Administrators,
Regions I-VII, IX, X

Acting Regional Administrator,
Region VIII

PURPOSE

The purpose of this memorandum is to provide information on the role of the State or Tribe (hereafter referred to as "State") in the National Priorities List (NPL) listing decision process.

BACKGROUND

The Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996, included a requirement that EPA must receive a written request from the Governor of the State in order for the Agency to propose to place a site on the NPL or to place a site on the NPL. However, the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, Public Law 104-204, does not contain such a requirement. The purpose of this memorandum is to outline a process to continue to include State input in NPL listing decisions. This process supersedes the process described in Stephen Luftig's memorandum entitled, "Updating the National Priorities List - Proposal 20 and Upcoming Final Rule," dated February 29, 1996.

IMPLEMENTATION

In an effort to maintain close coordination with the States in the NPL listing decision process, the Regions should determine the position of the State on sites that EPA is considering for NPL listing. The Regional Administrator should direct the written inquiry to the governor, with a copy to the State environmental commissioner. The inquiry should specify that a written response from the State is requested. When the site is located on the land of a Federally recognized Tribe, the Regional Administrator should direct the inquiry to the Tribe and request a written response from the Tribe.

The Region should make this inquiry as early in the site assessment process as practical, ideally before initiating a Hazard Ranking System (HRS) package for the site. The Regions should send copies of the correspondence with the State to the Director, Office of Emergency and Remedial Response (OERR), 401 M Street, S.W., Washington, D.C., 20460. If the State agency or governor has already sent a letter requesting that EPA propose a site and we are now placing that site on the final NPL, no additional correspondence is warranted.

OERR will have a process to resolve issues for sites where the State does not agree that EPA should continue to investigate the site for possible inclusion on the NPL, but where the Region has compelling reasons to proceed with the evaluation. OERR would consider, for example, cases involving sites that meet the listing criteria included in the NCP at 40 CFR 300.425(c)(3) ("the ATSDR public health advisory listing criteria"), sites where the State could be a major responsible party, or sites with community-identified conditions that warrant listing. Please raise any such cases to Dave Evans, Director of the State, Tribal and Site Identification Center (ST/SI) of OERR, and/or your ST/SI Regional Coordinator. See the attached list.

FUTURE SITE ASSESSMENT WORK AND NPL RULES

OERR intends to continue to support site assessment activities and to publish semi-annual proposed and final rules to update the NPL. Placing sites on the NPL is often the best assurance for a comprehensive site response. Moreover, the Agency's ability to place sites on the NPL provides strong leverage for State and PRP response activities. In addition, the site assessment program is extensively involved in brownfields assessment and restoration work as well as pilot projects for streamlining the site assessment process.

I urge you to continue to work with your States to assess sites and to prepare and submit HRS packages for those sites that are the highest priority for listing on the NPL. I also urge you to coordinate closely with the Natural Resources Trustees.

If you or your staff have any questions, you may contact Dave Evans, Director of the ST/SI Center, at (703) 603-8885.

Attachment

cc: Steve Herman, OECA
Lisa Friedman, OGC
Jim Woolford, OFFRO
OERR Center Directors
Site Assessment Contacts, Regions I-X
Superfund Regional Division Directors

November 7, 1996

State, Tribal, and Site Identification Center

Regional Coordinators

Region	Coodinator	Telephone Number
1	Randy Hippen	703/603-8829
2	Barbara Vandermer	703/603-9018
3	Marti Otto	703/603-8853
4	Tim Gill	703/603-8856
5	Bob Myers	703/603-8851
6	Marti Otto, acting	703/603-8853
7	Mary Ann Rich	703/603-8825
8	Terry Keidan	703/603-8852
9	Ken Fisher	703/603-8764
10	Terry Keidan	703/603-8852

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JUL 25 1997

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MEMORANDUM

SUBJECT: Coordinating with the States on National Priorities List Decisions -- Issue Resolution Process

FROM: Timothy Fields, Jr., Acting Assistant Administrator
Office of Solid Waste and Emergency Response

TO: Regional Administrators
Regions I - X

PURPOSE

The purpose of this memorandum is to describe the process that will be employed in cases where a Regional Office of the U.S. Environmental Protection Agency (EPA) recommends proposing or placing a site on the National Priorities List (NPL), but the State or Tribe (hereafter referred to as "State") opposes listing the site.

BACKGROUND

The Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, Fiscal Year 1996, included a requirement that EPA must receive a written request from the Governor of the State in order for the Agency to propose to place a site on the NPL, or to place a site on the NPL. However, the Department of Veterans Affairs and

Housing and Urban Development, and Independent Agencies Appropriations Act, Fiscal Year 1997, Public Law 104-204, did not contain such a requirement. On November 14, 1996, the Office of Solid Waste and Emergency Response (OSWER) issued a memorandum entitled, "Coordinating with the States on National Priorities List Decisions". According to that memorandum, an EPA Regional Office requests the position of the State on a site that the Region is considering for NPL listing. The Regional Administrator directs a written inquiry to the governor, with a copy to the State commissioner. For some sites, a State may not agree that EPA should proceed with NPL listing. The purpose of this memorandum is to outline the process that will be employed when the State does not agree that a site should be listed, but the Region believes it has sufficient reasons to proceed with the NPL listing process.

IMPLEMENTATION

EPA Regional Offices have been seeking the position of the States on sites that the Region is considering for NPL listing. In some cases, the State may not agree that EPA should pursue NPL listing, but the Region believes it has sufficient reasons to proceed.

In these cases, the Region should work closely with the State to try to resolve the issue before raising it to EPA Headquarters. The Region should take into account past, ongoing and planned response actions by the State.

If the Region determines that the issue cannot be resolved at the Regional level, the Regional Superfund Division Director should inform the Director of the State, Tribal and Site Identification Center (ST/SI) of the Office of Emergency and Remedial Response (OERR) and/or the appropriate ST/SI Regional Coordinator. OERR should then brief the Assistant Administrator (AA) for Solid Waste and Emergency Response. The State should have the opportunity to present its position in writing. The OSWER AA will then decide whether to pursue NPL listing. A case could arise where the Region notifies the State in writing of its desire to proceed with listing a site and provides an appropriate deadline for a response, but the State does not respond. In such a case, EPA may proceed with the NPL listing process.

CONCLUSION

The EPA Regional Offices have been working closely with the States to ensure that sites are evaluated and that response actions, if warranted, are taken as quickly as possible. EPA will continue to work with the States to assess sites and to prepare and submit HRS packages for those sites that are the highest priority for listing on the NPL. The Agency also will coordinate with the ATSDR and the Natural Resource Trustees in gathering information for the process.

If you or your staff have any questions, you may contact me at (202) 260-4610, or Dave Evans, Director of the ST/SI Center, at (703) 603-8885.

cc: Steve Herman, OECA
Steve Luftig, OERR
Lisa Friedman, OGC
Jim Woolford, FFRRO
All OERR Center Directors
Site Assessment Contacts, Regions I-X
Superfund Regional Division Directors
Regional Counsels, Regions I-X