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

SEP 26 1996

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: National Remedy Review Board

FROM: Stephen D. Luftig, Director Steve Luftig
Office of Emergency and Remedial Response

TO: Director, Office of Site Remediation and Restoration
Region I
Director, Emergency and Remedial Response Division
Region II
Director, Hazardous Waste Management Division
Regions III, IX
Director, Waste Management Division
Region IV
Director, Superfund Division
Regions V, VI, VII
Assistant Regional Administrator, Office of Ecosystems Protection and Remediation
Region VIII
Director, Environmental Cleanup Office
Region X

Purpose

The purpose of this memorandum is to update you on National Remedy Review Board progress and bring to your attention important Board operating procedures.

Background

As you know, Assistant Administrator Elliott Laws formed the Board in November 1995 as part of Administrator Browner's Superfund reform initiatives. The Board's goals are to help control remedy costs and promote consistent and cost-effective decisions at Superfund sites. It has been functioning since January 1996. Though impeded by FY 96 appropriation delays, to date, the Board has held four meetings and numerous conference calls, during which it completed reviews on twelve sites. The Board has also worked to finalize the procedures under which it will operate in the near future.

Printed on Recycled Pa

This dedicated group of Regional and national Agency experts, coupled with the hard work of many Regional program colleagues, has already contributed greatly to improved consistency and cost effectiveness in cleanup decisions. I want to thank you and your staff especially for working so closely with us during this important first year. Board efforts in FY 96 will be detailed in a year-end report for your information.

Key Operating Protocol

To ensure that the upcoming fiscal year's Board activities are as productive as those of the past nine months, we need your continued assistance. An effective site review requires significant advance preparation, organization, and time commitment from the Regional management and staff who participate. In particular, the RPM is responsible for several important coordination functions as highlighted below. I recognize that the past year's budget situation has stretched our already limited resources. Nonetheless, it is essential that we commit the resources necessary to guarantee informed and constructive dialogue at Board meetings.

For your information, the text below highlights several important operating protocol describing how the Board expects to work with the Regions, involve important stakeholders and handle the timing of reviews. Involvement of the Board is a key step for many sites in the Superfund remedy selection process. Each Regional office is responsible for ensuring that these protocol are followed to avoid delaying proposed plan issuance.

Regional Responsibilities

As indicated in the original Reform language, the Board makes "advisory recommendations" to the Regional decision maker who then makes the final remedy decision giving consideration to the complete range of available information. While the Region is expected to give the Board's recommendations substantial weight, other important factors, such as subsequent public comment or technical analyses of remedial options, may influence the final Regional decision. It is important to remember that the NRRB does not change the Agency's delegation authorities or alter in any way the public's role in site decisions. It is expected, however, that the Regions will provide for the record a written response to Board recommendations. In general, a Region should not issue the proposed plan until it has received and considered the written Board recommendations.

State/Tribal Involvement

The Board recognizes that the states and tribes have a unique role in the Superfund program as "co-regulators," and has taken steps to ensure their significant involvement in the review process. With this in mind:

- The Region is to consult with the affected state or tribal government well before the Board meetings to ensure that key decision makers understand the background and intent of the review process. The Region should also make clear that the states and tribes will have the opportunity to present their views directly to the Board.

- As part of current procedure, the Region develops an informational site package that forms the basis of Board review. The Board asks that each Region work with appropriate state and tribal personnel to ensure that the "summary of state issues" section of that package is accurately developed.

- The Regional RPM is to distribute the full site package to the appropriate state and/or tribe concurrent with Board distribution. He or she should also solicit their general reaction to the material at this time.

- For each site, the Board meets in two stages: information-gathering and deliberations. The Board will routinely invite state and/or tribal decision makers to the information-gathering phase of its site reviews. The Board will invite the state and/or tribe to participate in the deliberative discussion for state-lead fund-financed decisions, and for state/tribe enforcement-lead decisions where the state/tribe seeks EPA concurrence. Otherwise, the Board will limit its deliberative discussion to Agency personnel.

PRP Involvement

- Private parties significantly involved with the site study and/or response actions are to be notified by the appropriate Regional office of the Board's site review.

- The Board believes that PRPs who conduct the RI/FS can provide valuable input to the review process. Therefore, the Regional RPM is to solicit technical comment or discussion, well before the Board meetings, from the PRPs that are substantively involved in conducting the RI/FS.

These submissions should not exceed five pages in length, and should be attached to the informational site package provided to all Board members.

- The Board recognizes that PRPs who do not conduct the RI/FS may conduct studies that might also be valuable to the Board's review process. In these cases, the Region may, at its discretion, solicit similar input from these stakeholders.

Community Involvement

- For sites at which EPA has awarded a Technical Assistance Grant (TAG) or recognized a Community Advisory Group (CAG), the Region is to notify appropriate contacts well before the meeting and ensure they also understand the review process.

- The Region is to offer the TAG recipient and/or CAG the opportunity to submit written comments or concerns to the Board concerning site-specific issues they think will be important to the Board's discussions. These submissions are also limited to five pages in length.

- Where the Region has established substantial working relationships with other stakeholder groups early in the RI/FS process, the Region may, at its discretion, offer similar opportunity for written comment from these parties.

Timing of Review

- The Board plans to review sites early in the remedy selection process, before the Region releases the proposed plan for public comment.

- Occasionally, however, a post-proposed plan site may benefit from Board review. For example, remedy changes in response to public comment may increase the total remedy costs. Where these additional cleanup costs exceed 20 percent of the original cost estimate and trigger normal Board review criteria, the Board may review the draft remedy.

Federal Facilities Review Criteria

The Board is continuing its discussions with representatives from the Federal Facilities Restoration and Reuse Office (FFRRO), the Federal Facilities Enforcement Office (FFEO), and with other federal agencies to develop review criteria for federal facility

sites. While these final criteria are under development, FFRRO and FFEO have recommended the following interim criteria:

- For federal facility sites where the primary contaminant is radioactive waste, the Board will raise the dollar trigger from $30 million to $60 million and delete the "50% greater than the least costly alternative" criterion.

- The Board will not review NPL site decisions on Base Realignment and Closure (BRAC) sites.

- All other federal facility sites (i.e., those that involve non-radioactive waste only) are subject to standard review criteria.

To assist you in communicating with other Superfund stakeholders about the Board review process, I am attaching to this memorandum a fact sheet titled "Questions and Answers on EPA's NRRB." Additional tools to assist you and your staff with the review process will be available shortly.

I believe this Reform has accomplished much during the past nine months. The hard work put forth by your staff and the Board members has paid off in significant cost savings. I look forward to similar success over the next fiscal year. Finally, the Board plans to continue its dialogue with interested stakeholders to work toward a process that is agreeable and fair to all involved. We welcome your thoughts in this area as well.

Please contact me, or National Remedy Review Board Chair Bruce Means (at 703-603-8815) if you have any questions or comments.

cc: E. Laws
T. Fields
OERR Center Directors
OERR Senior Process Managers
B. Breen
J. Woolford
W. Kovalic
L. Starfield
W. Farland
R. Olexsey
E. Trovato

EPA

ROUND THREE: SUPERFUND REFORMS AT A GLANCE

EPA National Superfund Remedy Review Board

This reform is one of twenty new "common sense" administrative reforms announced in October 1995, by US EPA Administrator Carol Browner. These reforms will fundamentally redirect the Superfund program to make it faster, fairer, and more efficient.

WHAT IS THE NATIONAL REMEDY REVIEW BOARD?

The National Remedy Review Board (the Board) is one of the principle Superfund Reforms that Administrator Browner announced in October 1995. Its goal is to promote cost-effectiveness and appropriate national consistency in remedy selection at Superfund sites. To accomplish this, the Board analyzes proposed site-specific cleanup strategies to ensure they are consistent with current law and regulations. The Board also considers relevant Agency guidance. The Board's members are technical experts and managers from each EPA Region and several EPA Headquarters offices.

After its review, the Board issues recommendations as to how or whether a potential Superfund site remedy decision can be improved. Although Board recommendations are not binding, EPA Regional decision makers give them substantial consideration. EPA believes the Board is contributing significantly to more cost-effective, consistent Superfund remedies.

WHAT ARE THE CRITERIA THAT TRIGGER BOARD REVIEW?

The Board will review proposed remedies for which (1) the proposed remedy cost is more than $30 million; or (2) the proposed remedy costs more than $10 million and is 50% greater than the least-costly, protective cleanup alternative that also complies with other laws or regulations that are either "applicable" or "relevant and appropriate" to a site decision.

The Board expects to review every proposed decision that meets the above criteria at Superfund sites that are not Federal facilities. Because of their size and complexity, the Board is developing a separate set of Federal facility site review criteria. EPA encourages anyone with concerns about a particular site to contact the EPA Region in which that site resides.

WHAT DOES THE BOARD LOOK AT WHEN IT REVIEWS A SITE?

The Board analyzes the cleanup strategy to ensure that it is consistent with the Superfund law and the National Oil and Hazardous Substances Pollution Contingency Plan (or NCP). The NCP is the Federal regulation that details procedures for responding to oil or hazardous substance releases. The Board also considers relevant EPA cleanup guidance.

When they review a site, the Board members ask many questions about the proposed cleanup strategy. Site-specific circumstances often influence the nature of the discussion. Among others, Board members investigate subjects like these below:

--What are the details of the Regional proposal for site cleanup?

--What are the positions of the State/Tribe, potentially responsible parties (PRPs), and communities?

--Will the cleanup strategy be effective?

--What is the rationale behind exposure scenarios and risk assumptions?

--Are the cleanup goals appropriate and attainable?

--Have other approaches to achieve the cleanup goals been evaluated?

--Are the cost estimates reasonable?

--Is the strategy consistent with other Agency decisions?

WHAT IS THE ROLE OF INTERESTED PARTIES IN THE REVIEW PROCESS?

Community Involvement

For sites at which EPA has awarded a Technical Assistance Grant (TAG) or recognized a Community Advisory Group (CAG), the Region will notify appropriate contacts well before the Board meets to ensure they understand the nature and intent of the review process.

The Region will offer the TAG recipient and/or CAG the opportunity to submit written comments or concerns to the Board concerning site-specific issues they think are important. These submissions are limited to five pages in length.

Where the Region has established substantial working relationships with other interested groups early in the RI/FS process, the Region, at its discretion, may offer similar opportunity for written comment.

State/Tribe Involvement

The Board recognizes the unique State/Tribe role in the Superfund program as "co-regulators," and has taken steps to ensure significant State involvement in the review process.

The Region will consult with the affected State/Tribe well before the Board meeting to ensure that key State/Tribe decision makers understand the nature and intent of the review process. They will also make clear that the State/Tribe will have the opportunity to present their views at Board meetings.

As part of current procedure, the Region develops an informational site package that forms the basis of Board review. The Board will ask that each Region work with the

appropriate State/Tribe to ensure that the "summary of State/Tribe issues" section of that package is accurately developed.

The Region will distribute the full site package to the appropriate State/Tribe concurrent with Board distribution. They also will solicit the State/Tribe's general reaction to the material.

For each site, the Board meets in two stages: information-gathering and deliberations. The Board will routinely invite State/Tribe decision makers to the information-gathering phase of its site reviews. The Board will invite the State/Tribe to participate in the deliberative discussion for State/Tribe-lead Fund-financed decisions, and for State/Tribe enforcement-lead decisions where the State/Tribe seeks EPA concurrence. Otherwise, the Board will limit its deliberative discussion to Agency personnel.

PRP Involvement

The Board believes that PRPs who conduct the RI/FS can provide valuable input to the review process. Therefore, the Regional Project Manager (RPM) will solicit technical comment or discussion, well before the Board meetings, from the PRPs that are substantively involved in conducting the RI/FS. These submissions should not exceed five pages in length, and should be attached to the informational site package provided to all Board members.

The Board also recognizes that PRPs who do not conduct the RI/FS may conduct valuable studies. In these cases the Region, at its discretion, may solicit similar input.

How Do I Find Out Whether The RRB Will Review A Site?

If you have questions about a particular Superfund site, please call the EPA Region in which it is located. They will put you in touch with someone who knows about the site.

For More Information.

You may also call EPA's Superfund Hotline at 1-800-424-9346 (or 703-412-9810 within the Washington, D.C. area) to get general information about EPA, the Remedy Review Board, and the Superfund program. The Hotline will refer you to the appropriate EPA Region, program office, or staff member should you have questions they cannot answer.