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

OSWER Directive 9200.0-21

SEP 25 1996

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: National Consistency in Superfund Remedy Selection

FROM: Elliott P. Laws
Assistant Administrator

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

This memorandum emphasizes the critical importance of maintaining appropriate national consistency in the Superfund remedy selection process, and requests that program managers make full use of existing tools and consultation opportunities to promote such consistency.

Background

Among the 20 Superfund Administrative Reforms announced by Administrator Carol Browner in October, 1995, were several designed to improve the transparency and appropriate national consistency of remedy selection decisions. This memorandum is being issued to further support these important Reform goals.

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Nationally consistent remedy selection decisions remain a prominent and valid concern among stakeholders of the Superfund program. Consistent application of national policy and guidance (reflected in documentation which "tells the decision-making story") is an important means by which we ensure the reasonableness and predictability of our decisions to States, communities, potentially responsible parties, and to our many other customers.

National "consistency" does not mean identical decisions or cleanup levels at all sites across the nation. Site-specific considerations are crucial to making rational, cost-effective decisions. "Appropriate consistency" means applying in a reasonable manner the decision-making processes recommended in our national policies and guidance, using the criteria they lay out, and exercising the built-in flexibility as appropriate to address site-specific circumstances. It is vital then to write proposed plans and Records of Decision (RODs) that articulate the thought process by which program principles and guidelines are applied in the site-specific context. However, with this in mind, it is also reasonable to expect that similar response strategies may be selected at sites with similar contamination problems.

As you know, this concept is not new. In fact, I am very pleased to say that trends in Regional decision-making reflect consistent implementation of various program guidances such as the recent OSWER land use directive (OSWER Directive No. 9355.7-04) and selected groundwater cleanup guidances. This memorandum reemphasizes the importance of this critical concept and requests your continued support in promoting it at the Regional level.

Implementation

We should already be using the national policies and guidance currently available, and anticipating the new tools being developed under our recent Superfund Reforms. The Superfund program has issued many excellent guidance documents through the collaboration of Regional implementors and a variety of Headquarters program offices. Increasingly, States and other federal agencies contribute significantly to the development of these documents. Further, we continue to increase the role of scientific peer review and broader public input. National policies and guidance, thus, reflect the collective wisdom of a wide variety of very experienced individuals and stakeholders, and represent the official recommendations of the Agency on difficult issues. **I expect these policies and guidance to be implemented in the field.**

I am proud that by and large our policies and guidance have provided sufficient flexibility to address the wide variability among site contamination problems. However, on rare occasions, site circumstances may warrant management innovations that reach beyond the tools provided by existing policies and guidance. I encourage creativity in such situations. These innovative approaches, however, should be taken only after thorough consideration of existing flexibility available within current guidance. In cases where such innovation may set a national precedent, you should consult your Office of Emergency and Remedial Response (OERR) Regional Accelerated Response Center or the Federal Facilities Restoration and Reuse Office (FFRRO). Please consult with the Office of Site Remediation Enforcement (OSRE) for assistance on enforcement-related issues. For your information, OERR Center Directors, and the appropriate FFRRO and OSRE contacts are listed in Attachment A. OERR, FFRRO, and OSRE staff and management will work closely with you to ensure that the range of Regional and National perspectives are reflected in final remedy selection decisions. Ultimately, documentation must clearly explain the basis for the selected cleanup strategy and as well as any departure from relevant guidance to ensure decision making transparency for our stakeholders.

In addition to guidance and policy, the Superfund program has established the following efforts to support appropriate national consistency in remedy selection, encourage informed discussion of cross-cutting issues, and disseminate site-specific lessons learned:

- On October 1, 1995, OERR formally reorganized to facilitate Headquarters support of Regional operations and decision making. As a result, Regional staff and managers are encouraged to consult regularly with appropriate OERR Regional Accelerated Response Center personnel.

- A National Remedy Review Board (NRRB) was established to promote cost effectiveness and appropriate national consistency in high cost decisions in real time as one of the Superfund Administrative Reforms announced in October of 1995.

- On April 17, 1996, a memorandum from OERR to the Regional Superfund Managers entitled "Administrative Reforms for Lead Risk Assessment" requested that all completed lead risk assessments be submitted to Superfund's Lead Technical Review Workgroup for review. In addition, Superfund will establish a "Lead Risk Managers Policy Group" this fall consisting of senior managers from the Regions and Headquarters to develop decision-making guidance for cleanup at lead sites. These two groups provide specialty consultation resources for Regional lead site issues.

- A program for Headquarters support of Regional decision-making in key "focus areas" was anr ··nced in an OERR memorandum dated May 22, 1996. This memorandum identifies selected issue areas that represent the current focus of OERR's national Regional coordination effort. These areas include risk management and cost-effectiveness decision documentation, ground water policy, lead policy, and presumptive remedies implementation.

- Cost-effectiveness "rules of thumb" are now under development as part of the Superfund Reforms effort announced in October, 1995. This guidance (available in draft this fall) will identify circumstances that warrant special consideration or discussion among program officials.

- Criteria for identifying sites or conditions in which Headquarters consultation is likely to benefit the program as a whole are presented in an October 8, 1993, memorandum from Richard Guimond to EPA Regional Administrators entitled "Twenty-Fifth Delegation Report - FY 1994." Consultation requirements identified in this memorandum remain in effect. However, OERR acknowledges that with the recent program reforms, and given the ongoing Regional reorganization efforts, a closer look at how the Regions and Headquarters work together in these areas is warranted. Therefore, OERR plans to initiate a cross-Regional effort this fall to consolidate and simplify these and related Headquarters consultation requirements.

- CERCLIS 3, Superfund's new national data base and information system should be fully installed in all Regional offices by fall of 1996. CERCLIS 3 will contain detailed technical data from site assessments, RI/FSs, risk assessments, RODs and RD/RA activities. With this wealth of technical information readily available to all EPA site managers and decision makers, CERCLIS 3 will become a valuable tool and resource in our efforts to ensure appropriate consistency in Superfund decision making.

Finally, we must continue to make decisions that achieve cross-program consistency. On May 1, 1996, the Agency issued a statement asserting the concept of parity between the decisions made under the Superfund and the RCRA Corrective Action programs (see Corrective Action for Solid Waste Management Units at Hazardous Waste Management Facilities, 61 FR 19432). In addition, the Agency is drafting a "RCRA/CERCLA integration" policy memorandum, as well as holding "Lead Regulator" workgroup meetings, designed to address cleanup at Federal Facilities with overlapping remedial authorities. We encourage the Regions to strive towards consistency between these programs as well in their management of contaminated sites.

Both Regional and Headquarters staff have worked hard to ensure that new program policies and guidance are both relevant and of practical value for program decision makers. I recommend that you rely heavily upon these guidances for the appropriate decision-making framework. However, there will be instances when decisions must be made under unique or unpredictable circumstances. In these cases, I encourage you to talk to your fellow decision-makers in other Regions and to consult with Headquarters. Use of national policies and guidance, along with collaboration within and across Regions and with EPA Headquarters, will go far to promote the appropriate national consistency in remedy selection that is so critical to our program's success.

Should you have any questions about this directive, please do not hesitate to call Bruce Means, Senior Process Manager for Response Decisions, at 703-603-8815. As mentioned, above OERR will be contacting Regional management this fall to begin planning for the cross-Regional effort to consolidate and simplify the way we work together on these issues and related Headquarters consultation requirements.

Attachment

cc: S. Luftig, OERR
B. Breen, OSRE
J. Woolford, FFRRO
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J. Baylson, OUST
W. Kovalick, TIO
Regional Superfund Managers

Attachment A

CONTACTS FOR CONSULTATION ON SUPERFUND REMEDIES

OERR Regional Accelerated Response Center Directors

Regions 1/9:	Murray Newton	703-603-8795
Regions 2/6:	Betsy Shaw	703-603-9034
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