



Exemptions From the Statutory Limits on Removal Actions

Office of Emergency and Remedial Response
Emergency Response Division OS-210

Quick Reference Fact Sheet

CERCLA section 104(c) provides two exemptions from the statutory time and dollar limits on removal actions. The "emergency" exemption may be obtained when a response action is immediately required to protect public health or welfare or the environment, and when no other assistance will be provided on a timely basis. The "consistency" exemption, added by SARA in 1986, may be obtained when further response actions are appropriate and consistent.

Section 104(c) of CERCLA provides two exemptions from the statutory time and dollar limits on removal actions. The first is the "emergency" exemption. The second, added by SARA in 1986, is the "consistency" exemption.

To obtain an exemption from the \$2 million or 12 month limitation, the site must meet the underlined statutory requirements in either (a) or (b) listed below. The AA, OSWER retains the authority to approve requests for exemption from the \$2 million limit. RAS may approve requests for exemption from the 12-month time limit.

(a) Emergency Exemptions

- (i) Continued response actions are immediately required to prevent, limit or mitigate an emergency;
 - (ii) There is an immediate risk to public health or welfare or the environment; and
 - (iii) Such assistance will not otherwise be provided on a timely basis.
- The action memo requesting an "emergency" exemption must contain an evaluation of the nature of the immediate threat, including hazardous substances involved and estimates of the amounts; human populations and environmental resources threatened and the nature of that threat; and the degree of threat involved.

(b) Consistency Exemptions

Continued response actions are otherwise appropriate and consistent with remedial action to be taken.

- According to OSWER Directive 9360.0-12A (June 12, 1989), use of this exemption is "appropriate" in four situations:
 1. to avoid a foreseeable threat;
 2. to prevent further migration of contaminants;
 3. to use alternatives to land disposal; or
 4. to comply with the Off-Site Policy.
- The Directive states that an action is "consistent" if it contributes in some positive way to the remedial action to be taken or, at a minimum, does not hinder or interfere with future remedial actions.
- The action memo requesting approval of the "consistency" exemption must specifically cite the new exemption criterion and document how it is met at the site, addressing both its consistency and its appropriateness.
- This exemption will be used primarily at NPL sites and only in limited circumstances at non-NPL sites.

For more information please call Elizabeth Zeller in the Emergency Response Division at (202) 382-7735 or see the Superfund Removal Procedures Manual - Action Memorandum Guidance, OSWER Directive 9360.3-01 (September 26, 1990).