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**GUIDANCE ON CONDUCTING NON-TIME-CRITICAL
REMOVAL ACTIONS UNDER CERCLA**

**Office of Emergency and Remedial Response
U.S. Environmental Protection Agency
Washington, DC 20460**

Notice

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List of Acronyms

AOC—Administrative Order on Consent
ARARs—Applicable or Relevant and Appropriate Requirements
ARCS—Alternative Remedial Contracting Strategy
ATSDR—Agency for Toxic Substances and Disease Registry
ATTIC—Alternative Treatment Technology Information Center
CA—Cooperative Agreement
CERCLA—Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended
CFR—Code of Federal Regulations
CLP—Contract Laboratory Program
CLU-IN—Cleanup Information Bulletin Board
CRP—Community Relations Plan
DOD—Department of Defense
DOE—Department of Energy
EE/CA—Engineering Evaluation/Cost Analysis
EIS—Environmental Impact Statement
EPA—United States Environmental Protection Agency
ERCS—Emergency Response Cleanup Services
ERRS—Emergency and Rapid Response Services
ERT—Environmental Response Team
FR—Federal Register
LTCS—Long-Term Contracting Strategy
MCLs—Maximum Contaminant Levels
MCLGs—Maximum Contaminant Level Goals
MOU—Memorandum of Understanding
NCP—National Oil and Hazardous Substances Pollution Contingency Plan
NPL—National Priorities List
NRT—National Response Team

List of Acronyms (Continued)

O&M—Operation and Maintenance
OMB—Office of Management and Budget
OPA—Office of Policy Analysis
ORC—Office of Regional Counsel
ORD—Office of Research and Development
OSC—On-Scene Coordinator
OSWER—Office of Solid Waste and Emergency Response
PA—Preliminary Assessment
PRP—Potentially Responsible Party
PRSC—Post-Removal Site Control
QA/QC—Quality Assurance/Quality Control
RA—Regional Administrator
RRT—Regional Response Team
RCRA—Resource Conservation and Recovery Act
RDT—Regional Decision Team
RI/FS—Remedial Investigation/Feasibility Study
ROD—Record of Decision
RPM—Remedial Project Manager
SACM—Superfund Accelerated Cleanup Model
SARA—Superfund Amendments and Reauthorization Act of 1986
SI—Site Inspection
SITE—Superfund Innovative Technology Evaluation
START—Superfund Technical Assessment and Response Team
TAT—Technical Assistance Team
TBC—To Be Considered
TIO—Technology Innovation Office
UAO—Unilateral Administrative Order

List of Acronyms (Continued)

USGS—United States Geological Survey

VISITT—Vendor Information System for Innovative Treatment Technologies

VOC—Volatile Organic Compound

CHAPTER 1

INTRODUCTION AND OVERVIEW

The purpose of this guidance is to provide information on the procedures and activities the U.S. Environmental Protection Agency (EPA) uses in conducting non-time-critical removal actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). On-Scene Coordinators (OSCs) and Remedial Project Managers (RPMs) should use this guidance to ensure that non-time-critical removal actions are conducted in accordance with applicable laws, regulations, and EPA policy.

This guidance focuses primarily on those aspects of the removal process that are unique to non-time-critical removal actions. Introductory material presented in this chapter provides a context for how non-time-critical removal actions fit within the overall Superfund program.

Chapter 1 contains seven sections, as follows:

- Section 1.1 describes non-time-critical removal actions in relation to the Superfund Accelerated Cleanup Model (SACM).
- Section 1.2 provides an overview of the removal process.
- Section 1.3 highlights the roles and responsibilities of Federal, State, and private entities in conducting non-time-critical removal actions.
- Section 1.4 outlines the resources available to OSCs/RPMs in conducting non-time-critical removal actions.
- Section 1.5 describes enforcement and cost recovery activities.
- Section 1.6 highlights public involvement and administrative record requirements for non-time-critical removal actions.
- Section 1.7 describes Action Memorandum requirements for non-time-critical removal actions.

Chapter 2 provides guidance for conducting an Engineering Evaluation/Cost Analysis (EE/CA), which analyzes removal action alternatives for a site. Chapter 2 supersedes the outline for conducting an EE/CA dated March 30, 1988. An EE/CA, required under section 300.415(b)(4)(i) of the NCP for all non-time-critical removal actions, provides a vehicle for public involvement and evaluates and recommends the appropriate response.

Chapter 2 describes the following EE/CA activities:

- Section 2.1 provides information on when non-time-critical removal actions may be appropriate and on the EE/CA development process.

INTRODUCTION AND OVERVIEW (CONTINUED)

- Section 2.2 describes the purpose and content of the EE/CA Approval Memorandum.
- Section 2.3 explains that the Executive Summary should provide a general overview of the EE/CA.
- Section 2.4 highlights the types of information that should be gathered to characterize the site, determine the source, nature, and extent of contamination, and assess risks posed by the site.
- Section 2.5 outlines how to identify removal action objectives for the non-time-critical removal action.
- Section 2.6 describes the process for identifying and analyzing removal action alternatives.
- Section 2.7 describes how to compare removal action alternatives for effectiveness, implementability, and cost.
- Section 2.8 describes how to determine the recommended removal action alternative.

Details on conducting removal actions are found in a variety of laws, regulations, and guidance documents. Additional references that may be consulted for further information are presented at the conclusion of each section of this chapter, with a list of references presented in Appendix A of this guidance. Appendix B presents a key word index of major terms used in this guidance. Appendix C presents a comparison of the EE/CA process and the remedial investigation/feasibility study (RI/FS) process. Appendix D presents a model Notice of Decision Not to Use Special Notice Procedures.

1.1 THE SACM APPROACH

SACM is now being implemented to make Superfund cleanups more timely and efficient. The non-time-critical removal action represents a primary SACM tool for accomplishing early actions, and can be applied to a broad array of response actions. Specifically, SACM involves:

- A continuous process for assessing site-specific conditions and the need for action
- Cross-program coordination of response planning
- Prompt risk reduction through early action
- Appropriate cleanup of long-term environmental problems
- Early public notification and participation
- Early initiation of enforcement activities.

SACM should be considered for all Superfund activities, so long as implementation is consistent with requirements of the NCP and CERCLA. Overall Superfund program priorities remain the same: address the worst problems first, aggressively pursue enforcement, and involve the public during all stages of the work. The goals of SACM are being accomplished by focusing on the front end of the cleanup process and better integrating all Superfund program components.

1.1 THE SACM APPROACH (CONTINUED)

SACM encourages EPA Regions to explore new ways to use removal authorities under the NCP to achieve prompt risk reduction. An integrated removal and remedial site management strategy under SACM will most likely involve the increased use of non-time-critical removal authority to achieve prompt risk reduction at Superfund sites. Regional Decision Teams (RDTs), a SACM concept introduced in OSWER Publication 9203.1-05I, Volume I, Number 5, "SACM Regional Decisions—Interim Guidance" (December 1992), PB93-96266, are anticipated to emphasize early actions such as non-time-critical removal actions without jeopardizing the Superfund program's commitment to enforcement first. Decisions will be made to ensure that an early action will be consistent with any long-term action that may eventually be required. In the context of non-time-critical removal actions, this means that opportunities for treatment and permanence should be fully evaluated in the EE/CA, where appropriate (see Chapter 2).

For More Information:

1. OSWER Publication 9203.1-05I, Volume 1, Numbers 1-5 (December 1992)
 - "Status of Key SACM Program Management Issues—Interim Guidance," PB93-963262.
 - "Early Action and Long-Term Action Under SACM—Interim Guidance," PB93-963263.
 - "Enforcement Under SACM—Interim Guidance," PB93-963264.
 - "Assessing Sites Under SACM—Interim Guidance," PB93-963265.
 - "SACM Regional Decision Teams—Interim Guidance," PB93-963266.
2. OSWER Publication 9200.2-02, "Accelerated Response at NPL Sites Guidance" (December 15, 1989), PB90-258302/CCE.
3. OSWER Publication 9203.1-03, "Guidance on Implementation of the Superfund Accelerated Cleanup Model (SACM) under CERCLA and the NCP" (July 7, 1992), PB93-963252.
4. OSWER Publication 9203.1-03A, "Exercising Flexibility Through the Superfund Accelerated Cleanup Model (SACM)" (October 26, 1992), PB93-963253.
5. OSWER Publication 9360.0-15, "The Role of Expedited Response Actions Under SARA" (April 21, 1987), PB91-214221/CCE.

1.2 OVERVIEW OF THE REMOVAL ACTION PROCESS

CERCLA and the NCP define removal actions to include "the cleanup or removal of released hazardous substances from the environment, such actions as may necessarily be taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release." EPA has categorized removal actions in three ways: emergency, time-critical, and non-time-critical, based on the type of situation, the urgency and threat of the release or potential release, and the subsequent time frame in which the action must be initiated. Emergency and time-critical removal actions respond to releases requiring action within 6 months; non-time-critical removal actions respond to releases requiring action that can start later than 6 months after the determination that a response is

1.2 OVERVIEW OF THE REMOVAL ACTION PROCESS (CONTINUED)

necessary. Each response is unique and may require more expedited response based on the threatened population, contaminants of concern, and other factors. The following are potential removal actions identified in section 300.415(b)(2)(i)-(viii) of the NCP:

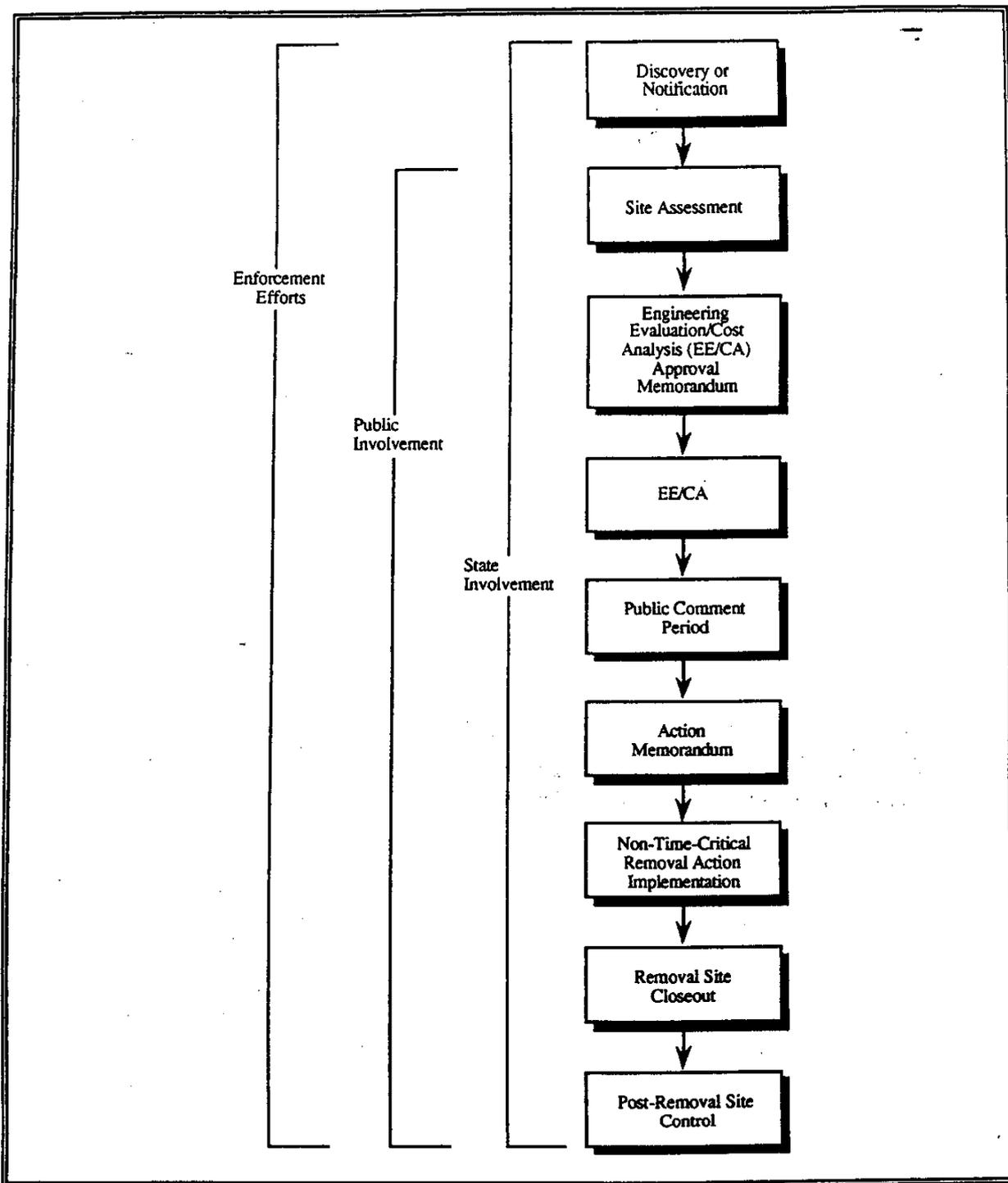
- Prevention or abatement of actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants, or contaminants
- Prevention or abatement of actual or potential contamination of drinking water supplies or sensitive ecosystems
- Stabilization or elimination of hazardous substances in drums, barrels, tanks, or other bulk storage containers that may pose a threat of release
- Treatment or elimination of high levels of hazardous substances, pollutants, or contaminants in soils largely at or near the surface that may migrate
- Minimization or elimination of the effects of weather conditions that may cause hazardous substances, pollutants, or contaminants to migrate or to be released
- Elimination of threat of fire or explosion
- Determination of availability of other appropriate Federal or State response mechanisms to respond to the release
- Mitigation or abatement of other situations or factors that may pose threats to public health, welfare, or the environment.

OSCs/RPMs must always consider section 300.415 in determining the appropriateness of taking any removal action. Section 300.415(d)(1)-(9) of the NCP provides a partial list of removal actions that may be taken to address specific situations. Exhibit 1, on the following page, illustrates the non-time-critical removal action process.

The following steps are for non-time-critical removal actions:

- Section 300.410 of the NCP outlines the process for conducting a **removal site evaluation**, which includes a removal preliminary assessment (PA) and, if warranted, a removal site inspection (SI). The OSC/RPM performs the removal PA, based on readily available information, to identify the source and nature of the release or threatened release and to assess the threat to public health, the magnitude of the threat, and the factors necessary to determine the need for a removal action. The removal PA also determines if more information is needed to characterize the release, such as off-site or on-site inspection of conditions and sampling. If more information is necessary, the OSC/RPM performs a removal SI. Data gathered during the removal site evaluation help OSCs/RPMs determine the need for response, if any, and the urgency of the response. For non-time-critical removal actions, OSCs/RPMs further characterize the release and propose the removal action as a result of the EE/CA process, as discussed in Chapter 2. The subsequent selection of the appropriate response is made in the Action Memorandum.

**EXHIBIT 1
Non-Time-Critical Removal Action Process***



* Additional removal actions or remedial actions may occur at any time, depending on the exigencies of the site conditions.

1.2 OVERVIEW OF THE REMOVAL ACTION PROCESS (CONTINUED)

- In general, the **EE/CA Approval Memorandum** is prepared by the OSC/RPM once the removal site evaluation has been completed and the need for a non-time-critical removal action has been determined. This memorandum serves three important functions. First, the memorandum is used to secure management approval and funding to conduct the EE/CA. Second, it documents that the situation meets the NCP criteria for initiating a removal action and that the proposed action is non-time-critical. Third, it provides detailed information pertaining to the site background; threats to public health, welfare, or the environment posed by the site (e.g., expected changes in the situation if no action is taken or if the action is delayed); enforcement activities related to the site; and projected costs.
- An **EE/CA** must be completed for all non-time-critical removal actions as required by section 300.415(b)(4)(i) of the NCP. The goals of the EE/CA are to identify the objectives of the removal action and to analyze the various alternatives that may be used to satisfy these objectives for cost, effectiveness, and implementability. While an EE/CA is similar to the RI/FS conducted for remedial actions, it is less comprehensive. The Action Memorandum summarizes the EE/CA. EE/CAs are considered CERCLA section 104(b)(1) studies. Therefore, EE/CA costs are not counted toward the \$2 million statutory limit on removal actions.
- A public notice describing the EE/CA (see Chapter 2) and announcing a **public comment period** must be published in a major local newspaper. The public notice may be combined with notice of the availability of the administrative record file, pursuant to the administrative record requirement in section 300.820 of the NCP. The EE/CA is part of the administrative record file and is subject to the public comment and comment response requirements for the administrative record.

For More Information:

1. CERCLA:
 - §101, Definitions
 - §104(a), Removal Action
 - §104(b), Investigations, Monitoring, etc., by President
 - §104(b)(1), Information; Studies and Investigations
 - §104(c)(1), Statutory Limits
 - §104(f), Contracts for Response Action; Compliance with Federal Health and Safety Standards
 - §113(g)(2), Actions for Recovery of Costs Statute of Limitations
 - §113(k), Administrative Record and Participation Procedures
2. NCP:
 - §300.5, Definitions
 - §300.400(b), Limitations on Response
 - §300.410, Removal Site Evaluation
 - §300.415, Removal Action
 - §300.415(b)(4), EE/CA Requirement
 - §300.415(b)(5), Exemptions to Statutory Limitations on Fund-Financed Removal Actions
 - §300.415(c), Contribution to Remedial Action

1.2 OVERVIEW OF THE REMOVAL ACTION PROCESS (CONTINUED)

- §300.150, Worker Health and Safety
- §300.160, Documentation and Cost Recovery
- §300.135(m), Reporting Requirements for Response Operations
- §300.165, OSC Reports
- §300.820, Administrative Record File for a Removal Action
- 3. OSWER Publication 9203.1-05I, Volume 1, Number 4, "Assessing Sites Under SACM—Interim Guidance" (December 1992), PB93-963265.
- 4. OSWER Publication 9285.1-03, "Standard Operating Safety Guides" (June 1992), PB92-963414.
- 5. OSWER Publication 9285.8-02, "Health and Safety Audit Guidelines: SARA Title I, Section 126" (December 1989), EPA/540/G-89/010, PB90-204157.
- 6. OSWER Publication 9360.0-02C, "Removal Cost Management System: Version 3.2" (May 1990), EPA/540/P-90/003, PB90-272691.
- 7. OSWER Publication 9360.0-12A, "Final Guidance on Implementation of the 'Consistency' Exemption to the Statutory Limits on Removal Actions" (June 12, 1989), PB90-274465/CCE.
- 8. OSWER Publication 9360.0-12FS, "Exemptions from the Statutory Limits on Removal Actions" (November 1990), PB91-921304/CCE.
- 9. OSWER Publication 9360.0-18, "Removal Program Priorities" (March 31, 1988), PB91-205484/CCE.
- 10. OSWER Publication 9360.2-04, "Authorization for Regional Administrators to Approve Consistency Exemption at NPL Sites" (February 24, 1992), PB92-963343.
- 11. 29 CFR §1910.120, HAZWOPER Regulations
- 12. 40 CFR Part 311, Worker Protection

1.3 ROLES AND RESPONSIBILITIES

Because of the urgency of emergency and time-critical removal actions, EPA OSCs/RPMs or U.S. Coast Guard OSCs generally retain the lead for conducting or overseeing these actions. For non-time-critical removal actions, it may be appropriate for the State to take the lead in conducting the removal action or taking enforcement actions. Regardless of who takes the lead, the OSC/RPM is responsible for determining whether technical assistance is needed from another agency and arranging for that assistance.

In carrying out a non-time-critical removal action, the OSC/RPM directs or reviews the work of other agencies, PRPs, and contractors to ensure compliance with CERCLA and the NCP; reviews all decision documents, enforcement orders, and workplans; oversees all expenditures of EPA funds; and ensures that all staff working on the response know site operating and safety procedures. The following section briefly describes the types of responsibilities specific to non-time-critical removal actions.

Regional Decision Team

The RDT convenes to consider response options at the point when assessment information is adequate to support decision-making. The RDT, a new concept under SACM, ensures effective coordination, communication, and integration of Superfund program authority, expertise, resources, and tools. For non-time-critical removal actions, the RDT should assist in assessing the

1.3 ROLES AND RESPONSIBILITIES (CONTINUED)

opportunity for response and in initiating the preparation of the EE/CA Approval Memorandum, the EE/CA, and the Action Memorandum. The RDT assists in determining whether proposed actions are time-critical or non-time-critical or whether the site requires remedial action. RDT involvement in emergency removal action and the more time-critical removal action decision-making may be limited based on the time available before initiating action. Also, RDT involvement in removal assessments and decision-making may vary from Region to Region.

State Involvement

Pursuant to 40 CFR Subpart O, section 35.6200, when a planning period of more than 6 months is available, States, political subdivisions, and Indian Tribes may apply for a removal Cooperative Agreement (CA) to lead a non-time-critical removal action. When a State does not participate in conducting and/or financially supporting a Fund-lead non-time-critical removal action, the RDT should first determine the urgency of the situation, and then, depending on the outcome of the urgency assessment, determine whether the non-time-critical removal action should proceed despite lack of State involvement. Headquarters will remain involved under SACM for approving consistency exemptions from the \$2 million removal limit at sites not on the National Priorities List (NPL).

Potentially Responsible Party (PRP) Involvement

One of EPA's primary objectives for any Superfund action is to have the parties responsible for the release of hazardous substances be accountable for the response. CERCLA authorizes EPA to negotiate settlements, issue orders to compel response, or sue PRPs to repay response costs when the Fund has been used to finance removal actions. Because non-time-critical removal actions permit a planning period of at least 6 months, there is time for enforcement planning before the start of on-site activity. As with other removals, the OSC/RPM should work with Regional technical enforcement staff to identify PRPs, initiate actions to obtain PRP response, and conduct negotiations to enter into settlement agreements (see section 1.5).

Responsibility for Post-Removal Site Control (PRSC)

In some cases, PRSC activities will be necessary to ensure the continuing effectiveness of a completed non-time-critical removal action. Examples of these activities are relighting gas flares, replacing filters, and collecting leachate. Superfund program policy for completing removal actions states that protracted and costly long-term PRSC is more appropriately conducted by the affected State or local government or PRPs. If the OSC/RPM believes that PRSC may be necessary, the OSC/RPM should obtain a commitment from the State or local government or PRP to perform and fund necessary PRSC actions prior to initiating a response. Such commitments could be part of a settlement document with a PRP or take the form of a letter agreement or Memorandum of Understanding (MOU) with State or local governments. If the OSC/RPM is unable to obtain such an agreement, removal options that involve continuing PRSC should be avoided where other options are feasible.

1.3 ROLES AND RESPONSIBILITIES (CONTINUED)

For More Information:

1. NCP:
§300.500-300.525, State Involvement in Removal Actions
§300.525, State Involvement in Hazardous Substance Response
2. 40 CFR Part 35, Subpart O, Cooperative Agreements and Superfund State Contracts for Superfund Response Actions
3. 40 CFR §35.6200-6205, Removal Response Cooperative Agreements
4. 40 CFR §35.6240-6255, Support Agency Cooperative Agreements
5. OSWER Publication 9203.1-05I, Volume 1, Number 5, "SACM Regional Decision Teams—Interim Guidance" (December 1992), PB93-963266.
6. OSWER Publication 9360.2-02, "Policy on Management of Post-Removal Site Control" (December 3, 1990), PB91-921326/CCE.
7. OSWER Publication 9360.3-06, "Superfund Removal Procedures—Removal Enforcement Guidance for On-Scene Coordinators" (April 1992), PB92-963409.

1.4 RESOURCES

A number of resources can provide technical assistance to the lead agency carrying out a non-time-critical removal action. These include national, Regional, and specialized response teams; contractors; other Federal agencies; and State and local governments. Section 300.145 of the NCP describes special teams and other assistance available to OSCs/RPMs.

In addition, Superfund's Long-Term Contracting Strategy (LTCS) (OSWER Publication 9242.6-07, "Approval of Long-Term Contracting Strategy for Superfund [Superfund Management Review: Recommendations E.2]" [August 1990]), PB90-273822/CCE, provides OSCs/RPMs with mechanisms for greater flexibility in selecting contract support and improves oversight and cost management by giving the Regions full responsibility for contracts management. This strategy provides a road map to Superfund contractor support. The LTCS anticipated many of the underlying principles of SACM. For example, the increase in early action responses will be aided by the newly created Emergency and Rapid Response Services (ERRS) contracts. The LTCS also combines site assessment and removal technical assistance functions under single Superfund Technical Assessment and Response Team (START) contracts. The LTCS envisions that the Agency's non-time-critical removal actions will be performed using Response Action Contracts (RACs). Available contracting vehicles and capacities will affect the strategy for conducting both early and long-term actions under SACM. The process of developing these and other new contracts has begun and will continue over the next several years, consistent with the phase-in of SACM.

Currently, a variety of contractor resources is available to OSCs/RPMs. OSWER Publication 9200.5-402A, "Contracting and Subcontracting Guide to the Superfund Program" (May 1992), EPA/540/G-91/012, PR-923, lists available contractor firms in each Region and individuals to contact for information on available contracts.

1.4 RESOURCES (CONTINUED)

For More Information:

1. NCP §300.145, Special Teams and Other Assistance Available to OSCs/RPMs
2. OSWER Publication 9200.5-402A, "Contracting and Subcontracting Guide to the Superfund Program" (May 1992), EPA/540/G-91/012, PR 923.
3. OSWER Publication 9240.01-01D, "User's Guide to the Contract Laboratory Program" (January 1991), EPA/540/P-91/002, PB91-921278.
4. OSWER Publication 9242.2-01B, "Emergency Response Cleanup Services (ERCS) Contracts: User's Manual" (October 1987), PB90-191966/CCE.
5. OSWER Publication 9242.2-02, "Site-Specific Contracting for Removals" (April 10, 1989), PB91-215053/CCE.
6. OSWER Publication 9242.6-01, "ARCS Work Assignment Management, Field Guide" (January 1989), PB91-214965/CCE.
7. OSWER Publication 9242.6-07, "Approval of Long-Term Contracting Strategy for Superfund (Superfund Management Review: Recommendations E.2)" (August 1990), PB90-273822/CCE.
8. OSWER Publication 9360.6-08, "Technical Assistance Team (TAT) Contracts Users' Manual" (October 1991), PB92-963407.

1.5 ENFORCEMENT AND COST RECOVERY

PRP Search and Identification

EPA expects much of the early site assessment activities to be Fund-lead. However, changes to PRP-lead can occur during site assessment, prior to the EE/CA, or prior to initiating the non-time-critical removal action. The increased pace of response under SACM's integrated assessment process may require that the enforcement team work faster and devote more resources to PRP search and identification early in the process. This may lead to changes in PRP search methodology and, therefore, require less time to complete the PRP search than the current process.

Notice Letters

For time-critical and emergency removal actions, the time available to conduct enforcement activities will be limited, and notice letters will typically be issued simply to notify the PRP of its potential liability or to encourage informal negotiations. However, in many instances, formal negotiations may be more appropriate for non-time-critical removal actions. Regions may use CERCLA section 122(e) special notice letters for non-time-critical removal actions whenever practicable unless use of such procedures would interfere with the Agency's ability to implement a response in an expeditious manner. When deciding the appropriateness of using CERCLA section 122(e) special notice procedures, OSCs should consider whether viable PRPs have been identified, and whether identified PRPs are expected to respond favorably to the invitation to negotiate.

Issuance of the CERCLA section 122(e) special notice letter triggers a 60- to 120-day moratorium on on-site response activities under CERCLA section 104(a), including conducting the RI/FS. However, this does not mean that all activity related to the non-time-critical removal falls under the moratorium. Pursuant to section 122(e)(2)(A), the Agency may commence any

1.5 ENFORCEMENT AND COST RECOVERY (CONTINUED)

additional studies or investigations authorized under section 104(b) during the negotiation period. Since EE/CAs are considered CERCLA section 104(b) studies, preparation of the EE/CA may continue during the moratorium. Under this moratorium, if the PRP does not provide EPA with a good faith offer, the moratorium ends after 60 days.

Whenever EPA decides to forego use of CERCLA section 122(e) special notice procedures, CERCLA section 122(a) requires EPA to notify the PRP in writing of the reasons why formal negotiations are inappropriate. OSCs issuing such notice should refer to Appendix D, which presents a model Notice of Decision Not to Use Special Notice Procedures.

PRP Negotiation

Preparing certain documents before negotiations ensures that EPA will enter negotiations with a well-defined plan for PRP or agency response. One of the goals of negotiations is to develop an Administrative Order on Consent (AOC). The AOC may contain a workplan as an attachment. The AOC also might require the PRP to draft a detailed workplan as a first deliverable. AOCs should contain reimbursement provisions for past costs and oversight costs, where appropriate. If the initial removal assessment indicates that a non-time-critical removal action should be taken, the Region could negotiate an order with the PRPs for the EE/CA and include the eventual non-time-critical removal action in the order under CERCLA section 106 authority.

For non-time-critical removal actions, sufficient time is usually available to negotiate consent agreements with the PRP. However, if the PRP does not respond to notice letters or refuses to sign an AOC, EPA has the authority to proceed with a Fund-lead response or under CERCLA section 106, where an imminent and substantial endangerment exists, to issue a Unilateral Administrative Order (UAO) requiring a PRP to perform the removal action.

It is generally anticipated that by using SACM's phased PRP search approach, as described in OSWER Publication 9203.1-05I, Volume I, Number 3, "Enforcement Under SACM—Interim Guidance" (December 1992), PB93-963264, there will be sufficient time before initiating non-time-critical removal actions to allow those actions to be PRP-lead. For example, if the RDT decides, based on the early results of a PRP search, to initiate a Fund-lead EE/CA to support a non-time-critical removal action, the Region can continue PRP search activities during the EE/CA. After completing the EE/CA, the RDT can decide, based on supplemental PRP data, to seek PRP participation in conducting the non-time-critical removal action.

Cost Recovery

The statute of limitations for cost recovery for removal actions is 3 years from the completion of the removal action, unless a consistency exemption to the statutory limits under CERCLA section 104(c)(1)(C) has been approved. (In these circumstances, the statute of limitations is 6 years from the date of the last exemption.) A consistency exemption may be sought if the continued response action under CERCLA removal authorities is appropriate and consistent with the remedial action to be taken (see OSWER Publication 9360.0-12A, "Final Guidance on Implementation of the 'Consistency' Exemption to the Statutory Limits on Removal Actions" [June 12, 1989], PB90-274465/CCE). EPA's past costs should be sought in negotiations with PRPs, when appropriate. A decision not to pursue cost recovery must be documented in a Removal Action Cost Recovery Close-Out Memorandum prepared in consultation with the Office of Regional Counsel (ORC).

1.5 ENFORCEMENT AND COST RECOVERY (CONTINUED)

For More Information:

1. CERCLA:
§106, Abatement Actions
§122(e), Special Notice Procedures
2. OSWER Publication 9200.3-01H-1, "Superfund Program Implementation Manual 1993" (June 1993), PB92-963276.
3. OSWER Publication 9203.1-05I, Volume 1, Number 3, "Enforcement Under SACM—Interim Guidance" (December 1992), PB93-963264.
4. OSWER Publication 9360.0-12A, "Final Guidance on Implementation of the 'Consistency' Exemption to the Statutory Limits on Removal Actions" (June 12, 1989), PB90-274465/CCE.
5. OSWER Publication 9360.2-04, "Authorization for Regional Administrators to Approve Consistency Exemption at NPL Sites" (February 24, 1992) PB92-963343.
6. OSWER Publication 9360.3-01, "Superfund Removal Procedures—Action Memorandum Guidance" (December 1990), EPA/540/P-90/004, PB90-274473.
7. OSWER Publication 9360.3-06, "Superfund Removal Procedures—Removal Enforcement Guidance for On-Scene Coordinators" (April 1992), PB92-963409.
8. OSWER Publication 9832.0-1A, "Procedures for Documenting Costs for CERCLA Section 107 Actions" (January 30, 1985), PB91-138958/CCE.
9. OSWER Publication 9832.1, "Cost Recovery Actions Under CERCLA" (August 26, 1983), PB91-138966/CCE.
10. OSWER Publication 9832.11, "Guidance on Documenting Decisions Not to Task Cost Recovery Actions" (June 7, 1988), PB91-139048/CCE.
11. OSWER Publication 9832.13, "Superfund Cost Recovery Strategy" (July 29, 1988), PB91-139063/CCE.
12. OSWER Publication 9833.0-1A, "Guidance on CERCLA Section 106(a) Unilateral Administrative Orders for Remedial Designs and Remedial Actions" (March 13, 1990), PB91-139089/CCE.
13. OSWER Publication 9834.10, "Interim Guidance on Notice Letters, Negotiations, and Information Exchange" (October 19, 1987), PB91-139253/CCE.
14. OSWER Publication 9834.10-1b, "Model Notice Letters" (February 7, 1989), PB91-139279/CCE.
15. OSWER Publication 9837.2B, "Enforcement Project Management Handbook: FY1993 Update" (May 1993), PB93-963602.
16. Superfund Indirect Cost Manual, Financial Management Division, Office of the Comptroller (July 1991).

1.6 PUBLIC INVOLVEMENT AND THE ADMINISTRATIVE RECORD

As with all CERCLA actions, early and frequent involvement of the public, including involvement above and beyond the requirements, is crucial to expedited cleanups under SACM.

1.6 PUBLIC INVOLVEMENT AND THE ADMINISTRATIVE RECORD (CONTINUED)

Public involvement activities in Superfund promote communication between members of the public, including PRPs, and the lead government agency responsible for removal or remedial actions. Public involvement activities should be tailored to the needs of the community as well as to the technical action schedule.

Section 113(k)(2) of CERCLA provides for involving communities affected by response decisions at Superfund sites. Public involvement in the Superfund program, as a whole, consists of public outreach activities conducted throughout the planning and implementation of Superfund removal and remedial responses.

Since removal actions generally proceed quickly, there is less time to plan or conduct public participation activities than during remedial responses. Sections 300.415(m) and 300.820 of the NCP specify two forms of public participation for all removal actions:

- **Community relations activities**—designed to integrate the information needs of the community into the communications approach or community relations plan for the site.
- **Administrative record activities**—designed to chronicle the basis for the response selection and serve as a vehicle for public participation in the removal action.

Community Relations Requirements

The NCP and CERCLA outline a variety of community relations requirements to promote communication. The following are requirements for non-time-critical removal actions:

- **Designate Community Relations Spokesperson.** This person shall inform the community of actions taken, respond to inquiries, and provide information concerning the release.
- **Conduct Community Interviews.** Before completing the EE/CA, the lead agency must conduct community interviews to gather background information for the Community Relations Plan (CRP). The purpose of these interviews is to solicit information about community concerns, information needs, and how or when citizens would like to be involved in the removal action.
- **Prepare CRP.** Pursuant to sections 300.415(m)(4), 300.415(m)(4)(i), and 300.415(m)(3)(ii) of the NCP, a CRP must be prepared before the EE/CA is completed. The CRP is a site-specific document that relates the community relations techniques and approaches deemed appropriate and relevant to the site.
- **Establish Information Repository.** The information repository must be established no later than the signing of the EE/CA Approval Memorandum (see Chapter 2). The repository is a project file or collection of materials relating to the specific Superfund site and to the Superfund program in general. The administrative record file is included in the repository.
- **Provide Public Notice of Availability of EE/CA.** A public notice describing the Agency's preferred alternative and EE/CA results (see Chapter 2) and announcing

1.6 PUBLIC INVOLVEMENT AND THE ADMINISTRATIVE RECORD (CONTINUED)

its availability for review and comment must be published in a major local newspaper. The EE/CA is part of the administrative record file.

Administrative Record Requirements

The administrative record file, a subset of the site file, is the body of documents EPA uses to form the basis for the selection of a response. It should not be confused with the administrative record, which is not complete until a response action has been selected. The administrative record file, as provided in section 300.820 of the NCP, may include site-specific data and comments, documents which were considered or relied on to select the removal action, guidance documents, technical references, and documents that reflect the views of the public, including PRPs, concerning the selection of a removal action. A strong administrative record helps ensure cost recovery, helps uphold EPA's remedy selection, and helps limit litigation-related information gathering discovery. For non-time-critical removal actions, the EE/CA Approval Memorandum, the EE/CA, and the Action Memorandum are critical components of the administrative record file. The administrative record closes once the decision document, in the case of a non-time-critical removal action the Action Memorandum, is signed. The record will reopen if the Action Memorandum is amended. The required administrative record activities for non-time-critical removal actions are:

- **Establish the Administrative Record File.** The administrative record file must be established no later than the signing of the EE/CA Approval Memorandum. The OSC/RPM, as the lead for on-site activity, is responsible for compiling and maintaining the administrative record in accordance with the NCP. The administrative record file must be made available for public inspection and copying when the EE/CA is made available for public comment at a central location at or near the site.
- **Publish Notice of Availability of the Administrative Record File.** A public notice must be published when the EE/CA is placed in the administrative record file and is available for comment. Additionally, if the notice also is used to announce a public comment period on the EE/CA, then it must state that upon timely receipt of a request (defined in the NCP preamble as generally within 2 weeks after the public comment period starts, but it may be considered valid if received within the 30-day period), the comment period will be extended a minimum of 15 additional days.
- **Hold Public Comment Period.** For non-time-critical removal actions, the NCP requires a 30-day public comment period on the EE/CA and any supporting documentation (including fact sheets or other documents summarizing the alternatives under consideration) at the time the EE/CA is made available for public comment.
- **Develop Written Response to Significant Comments.** After the public comment period is over, the OSC/RPM is required to prepare a written response to significant comments received during the comment period. The response to comments should be included in the administrative record file.

1.6 PUBLIC INVOLVEMENT AND THE ADMINISTRATIVE RECORD (CONTINUED)

For More Information:

1. CERCLA §113(k)(2), Participation Procedures
2. NCP:
 - §300.415(m), Community Relations in Removal Actions
 - §300.810, Contents of the Administrative Record File
 - §300.820, Administrative Record File for a Removal Action
 - §300.825, Record Requirements After the Decision Document is Signed
3. OSWER Publication 9230.0-03C, "Community Relations in Superfund: A Handbook" (January 1992), EPA/540/R-92/009, PB92-963341.
4. OSWER Publication 9360.3-05, "Superfund Removal Procedures—Public Participation Guidance for On-Scene Coordinators: Community Relations and the Administrative Record" (June 1992), PB92-963416.
5. OSWER Publication 9833.3A-1, "Final Guidance on Administrative Records for Selection of CERCLA Response Actions" (December 3, 1990), PB91-139121/CCE.
6. OSWER Publication 9836.0-1A, "Community Relations During Enforcement Activities and Development of the Administrative Record" (November 3, 1988), PB91-139519/CCE.

1.7 ACTION MEMORANDUM

An Action Memorandum provides a concise, written record of the decision to select an appropriate removal action. Exhibit 2, on the following page, provides an outline of the information that should be included in the Action Memorandum. As the primary decision document, it substantiates the need for a removal action, identifies the proposed action, and explains the rationale for the removal action selection. In this respect, the Action Memorandum for removal actions parallels the function of the Record of Decision (ROD), which documents the final action plan for a remedial response; however, the Action Memorandum is not as elaborate as the ROD. An Action Memorandum may also reserve the appropriate funding needed for the proposed removal action.

Action Memoranda follow a standard format. Specific topics must be addressed in the Action Memorandum to demonstrate that the release meets statutory and NCP requirements for a removal action. For non-time-critical removal actions, an EE/CA summary or the EE/CA Executive Summary, the EE/CA Approval Memorandum or a summary thereof, and a summary of the written comments on the EE/CA for alternative actions considered for non-time critical removal actions should be part of the "Proposed Actions and Estimated Costs" section of the Action Memorandum. In addition, a copy of the EE/CA, or the Executive Summary, and the Agency's response to significant public comments on the EE/CA should be attachments to the Action Memorandum and become part of the administrative record file.

EXHIBIT 2
Action Memorandum Outline

- I. Purpose**
- II. Site Conditions and Background**
 - A. Site Description**
 - 1. Removal site evaluation
 - 2. Physical location
 - 3. Site characteristics
 - 4. Release or threatened release into the environment of a hazardous substance, or pollutant, or contaminant
 - 5. NPL status
 - 6. Maps, pictures, and other graphic representations
 - B. Other Actions**
 - 1. Previous actions
 - 2. Current actions
 - C. State and Local Authorities' Roles**
 - 1. State and local actions to date
 - 2. Potential for continued State/local response
- III. Threats to Public Health or Welfare or the Environment, and Statutory and Regulatory Authorities**
 - A. Threats to Public Health or Welfare**
 - B. Threats to the Environment**
- IV. Endangerment Determination (see page 16 of Action Memorandum Guidance)***
- V. Proposed Actions and Estimated Costs**
 - A. Proposed Actions**
 - 1. Proposed action description
 - 2. Contribution to remedial performance
 - 3. Description of alternative technologies
 - 4. Engineering Evaluation/Cost Analysis (EE/CA)
 - 5. Applicable or relevant and appropriate requirements (ARARs)
 - 6. Project schedule
 - B. Estimated Costs**
- VI. Expected Change in the Situation Should Action Be Delayed or Not Taken**
- VII. Outstanding Policy Issues**
- VIII. Enforcement**
- IX. Recommendation**
- Enforcement Addendum**
- Attachments**

* OSWER Publication 9360.3-01, "Superfund Removal Procedures—Action Memorandum Guidance" (December 1990), EPA/540/P-90/004, PB90-274473.

1.7 ACTION MEMORANDUM (CONTINUED)

For More Information:

OSWER Publication 9360.3-01, "Superfund Removal Procedures—Action Memorandum Guidance" (December 1990), EPA/540/P-90/004, PB90-274473.

1.8 ON-SCENE COORDINATOR REPORTS

As currently stated in section 300.165 of the NCP, within 1 year after completion of removal activities involving a major release, or when requested by the Regional Response Team (RRT), the OSC/RPM must submit to the RRT a complete report on the removal operation and the actions taken. A copy of the report must also be sent to the Secretary of the National Response Team (NRT). The report shall record the situation as it developed, the actions taken, the resources committed, and the problems encountered.

There is an established format for OSC reports set out in section 300.165 of the NCP. The report must contain the following:

- Summary of Events—a chronological narrative of all events, including:
 - Location of the hazardous substance
 - Cause of the discharge or release
 - Initial situation
 - Efforts to obtain response by responsible parties
 - Organization of the response, including State participation
 - Resources committed
 - Content and time of notice to natural resources trustees
 - Federal or State trustee damage assessment activities and efforts to replace or restore damaged natural resources
 - Details of any threat abatement action taken
 - Treatment/disposal/alternative technology approaches pursued and followed
 - Public information/community relations activities.
- Effectiveness of removal actions taken by:
 - Responsible party(ies)
 - State and local entities
 - Federal agencies and special teams
 - Contractors, private groups, and volunteers (if applicable).
- Difficulties encountered—a list of items that affected the response, with particular attention to issues of intergovernmental coordination.

1.8 ON-SCENE COORDINATOR REPORTS (CONTINUED)

- Recommendations, including:
 - Means to prevent a recurrence of the discharge or release
 - Improvement of response actions
 - Recommended changes in the NCP, regional contingency plan, area contingency plan, OSC contingency plan or other local emergency response plans.