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

JAN 9 1996

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MEMORANDUM

SUBJECT: Remedial Action Priority Setting

FROM: Elliott P. Laws
Assistant Administrator

TO: Regional Administrators
Regions I-X

Thank you for your participation in our conference call on January 16, 1996 regarding the impact of potential budget cuts on the Superfund program. I asked my staff to prepare the three enclosed attachments in response to our discussions, and request that you provide any comments on them to Steve Luftig, Director of OERR by February 2, 1996.

The first attachment is a summary of Congressional action on our FY 1996 Superfund appropriation. Under any scenario proposed so far, the Superfund program will face severe reductions from the 1995 Operating and 1996 President's Budget resource levels. OSWER is currently using the following principles for our FY 1996 resource planning:

- Emergency removals will be funded at 1995 levels to the extent possible.
- Core Cooperative Agreements and the Brownfields initiative should be maintained at the 1995 level.
- A very limited number of front-end pipeline activities will be funded.
- Fund-lead remedial actions will absorb a significant cut.

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The second attachment is a summary of what I believe to be a sound policy course with regard to managing the Superfund program in light of weighing our discussions with Agency commitments and existing policy. In this context, we need to be aware of the continued Agency commitment to national risk-based priority setting and the success we are demonstrating by completing construction at NPL sites.

The third attachment is a detailed summary of practices we will employ for priority setting on a national basis with regard to funding new Superfund cleanup projects while keeping in mind our discussions regarding the need to support ongoing projects. I trust we will continue to work together through these challenging circumstances. Please call on me if you have any questions, and continue to call on Steve Luftig for support in addressing Superfund issues as they arise.

Attachment

Attachment 1

FY 1996 Superfund Budget Summary

The accompanying chart depicts Congressional action to-date on the Agency's FY 1996 Superfund Appropriation. The chart shows five major budget functions for the Superfund program: Response, Enforcement, Research and Development, Management and Support, and Other Federal Agencies. It is important to remember that the resources shown for the five budget functions are the result of Congressional report language, not Bill language. Therefore, while the Agency may at some point receive a total Superfund appropriation, any additional details shown in Congressional report language accompanying our appropriation may be changed, subject to Congressional approval.

The chart is intended for informational purposes only. The function subtotals are subject to change resulting from Congressional or Agency decisions.

Note: FY 1995 column equals enacted Operating Plan less $100 million rescission.

/19/96

Superfund

FY 1996 Superfund Congressional Action
(Dollars in Millions)

Category	FY 1995 Enacted Op Plan	FY 1996 President's Request	*FY 1996 House Level*	*FY 1996 Senate Level*	*FY 1996 November Conference*
Response	**$805.11**	**$995.95**	**$649.61**	**$631.29**	**$803.46**
Response Action	$801.69	$992.53	$646.53	$627.87	$800.38
Response Support - OAR	$3.42	$3.42	$3.08	$3.42	$3.08
Enforcement	**$169.71**	**$192.74**	**$77.74**	**$127.74**	**$127.00**
Research and Development	**$61.25**	**$58.22**	**$13.22**	**$18.22**	**$0.00**
Management and Support	**$126.62**	**$150.23**	**$115.73**	**$97.85**	**$122.00**
Management and Support	$111.22	$136.15	$110.73	$86.15	$111.00
Inspector General Transfer	$15.40	$14.08	$5.00	$11.70	$11.00
Other Federal Agencies	**$168.50**	**$165.79**	**$147.10**	**$125.79**	**$140.95**
ATSDR	$68.80	$68.00	$62.00	$54.00	$59.00
NIEHS	$58.70	$54.53	$49.50	$34.53	$48.50
DOJ	$32.20	$33.94	$27.16	$27.94	$25.00
USCG	$4.80	$4.80	$4.35	$4.80	$4.35
NOAA	$2.20	$2.21	$2.00	$2.21	$2.00
FEMA	$0.90	$1.20	$1.10	$1.20	$1.10
DOI	$0.60	$0.76	$0.68	$0.76	$0.68
OSHA	$0.30	$0.35	$0.32	$0.35	$0.32
Gulf Coast Haz Sub Res Ctr				**$2.50**	**$0.00**
General Reduction					**($30.00)**
Appropriation Total	**$1,331.20**	**$1,562.94**	**$1,003.40**	**$1,003.40**	**$1,163.40**

ATTACHMENT 2

DRAFT PRIORITY SETTING POLICY SUMMARY

Criteria for Defining Existing Cleanup Work:

- In general existing work should be given priority over new work.
- Completion of construction activities at NPL sites continues to be a high priority for the Agency.

Existing or ongoing cleanup work at a site, in contrast to new work at that same site, is not of a separable and discrete nature. Work considered as existing or ongoing is exempt from national ranking by the National Risk-Based Priority Panel, and in general exhibits one of the following characteristics:

- The work consists of existing continuous operations conducted under a single construction contract mechanism.
- The work supports a Long Term Response Action (LTRA), for example, a ground-water pump and treat remedy.
- Discontinuing the work would result in imminent endangerment of human health or the environment.
- The cost of the work element is relatively low, for example, less than $100,000 and is integral to the overall cleanup of the site.

In addition, Regions have identified several EPA/PRP mixed funding and mixed work projects which may require funding in FY 96. These projects will be considered separately for funding.

Criteria for Defining New Cleanup Work:

- New, Fund-financed cleanup work is subject to priority ranking by the National Risk-Based Priority Panel, with the exception of "emergency" and "time critical" response actions.
- All new cleanup work is funded in sequence of national ranking, unless the Assistant Administrator of OSWER grants an exception.
- Determinations on whether a project represents new or existing work will be made by the National Risk-Based Priority Panel.

New cleanup work consists of large removal actions which exceed funding levels available within a Region's baseline removal budget, as well as cleanup activities at sites where no previous actions have taken place. In addition, activities at sites are considered new work if they constitute "separarable and discrete" elements of existing site activities.

Separable and discrete implies an element of work associated with the overall cleanup of a site that may be considered on an independent pathway with regard to timing and implementation. The National Risk-Based Priority Panel is scheduled to meet on January 30 & 31, 1996, in Crystal City, Virginia to complete the ranking of new work scheduled to begin in FY 96.

<u>Criteria for Cessation of Work at Ongoing Projects</u>:

- There may be situations where work can be discontinued and the recovered funds used to support other national priority projects. These actions require prior consultation with Headquarters.

As noted, maintaining our ongoing projects remains a top priority. This is particularly true for ongoing remedial action projects. These projects are intended to mitigate an identified risk and we should follow through on our commitments to the States/Tribes and the communities to complete this work.

Also, it can be very costly to terminate a construction project under a fixed price contract, with specific costs incurred for securing the site and demobilization, as well as claims for costs already incurred by the contractor (e.g. long lead time equipment), other costs incurred in shut-down, and potential impact claims for lost profits. Additional costs could be incurred later if the project is restarted. These facts weigh heavily against stopping projects through contract terminations.

However, situations may occur where stopping a project or work at a site should be considered as a viable option.

<u>Criteria</u>:

- Changed field conditions at a site have been identified and will result in a substantial cost increase to implement the remedy as defined in the ROD calling into question the rationale for the remedy selection decision.

- Evidence has been uncovered which demonstrates that maintaining an ongoing long term remediation effort (e.g. ground water pump/treat, soil vapor extraction, bioremediation) will not result in a significant

additional reduction in residual waste concentration or risk.

- Consultation with the State or PRP group indicates another party is prepared to take over the work.

Regional proposals to terminate ongoing projects will require consultation with OERR prior to initiating the action. Also, the Region must coordinate closely with the affected State/Tribe, and involve the community in the decision process.

Funds recovered from stopping work at an ongoing project must go through the deobligation process and be recertified by the Comptroller back to the national Superfund program. These funds will be used to start new projects based on the national risk-based priorities.

Criteria for Reopening RODs:

- Records of Decision should **not** be reopened to select cheaper remedies simply based on diminished availability of Federal remedial action funds.

- Under the Superfund reforms, EPA has committed to evaluating earlier decisions where new scientific information or technological advancements indicate that another remedial strategy would be more effective or appropriate for the site (while maintaining protectiveness). The principal focus of this effort is to reassess older ground-water decisions which did not consider the potential presence of dense nonaqueous phase liquids (DNAPLs) or may benefit substantially from newly available remediation technologies.

- Records of Decision may be modified whenever significant new information persuades EPA that the selected remedy is no longer the most appropriate solution for the site. Procedures for making such modifications are outlined in CERCLA section 117(c) and (d), the NCP, and the ROD guidance.

A selected remedy represents EPA's judgment as to the most appropriate solution for a Superfund site -- that protective, ARAR-compliant option which achieves the best balance of tradeoffs between remedial alternatives with respect to the remedy selection criteria, including cost.

Remedies are selected for individual sites such that they satisfy the requirements of CERCLA and the NCP, **without** consideration of who will pay for the cleanup or their financial capability. Therefore, variations in available Federal funding should have no

bearing on our judgments regarding whether the remedy is the most appropriate solution for a site, although other information may.

Deobligated Funds:

- Use of deobligated funds is subject to all established provisions of national Superfund program funding criteria.

The Office of the Comptroller has been leading the 1994 and 1995 deobligation effort. Historically we have tried to assure Regions would receive a portion of the funds they deobligate for reprogramming in the Region of origin. As a result of the budget situation in 1996 we will need to establish procedures and guidelines for deobligations during this fiscal year. Any reprogramming of funds would still be subject to the national priority setting scheme.

Additionally, the processing of Superfund State Contract funds will be a higher priority than the deobligation of other funds

Attachment 3
National Risk-Based Priority Panel

In response to funding shortfalls and an agreement between Superfund Senior Managers and Congress, a change from a regional prioritization system to a national prioritization system was implemented in Fiscal Year 1995 for all large dollar removals and new start remedial action projects where funding was requested during Fiscal Year 1996. This system involves employment of a ranking scheme that prioritizes projects based on the following principles:

* Protection of human health
* Protection from significant environmental threats
* Potential human health or environmental threats based upon current site conditions.

Five criteria and associated weighting factors (below) are used to classify threats that contaminants may pose. These include risks to human population exposed, contaminant stability, contaminant characteristics, threat to a significant environment and program management considerations. Each criteria is ranked on a scale of one to five. The highest score for any criteria is five representing a current risk-current exposure scenario posing risk to human health and the environment. The lowest score for a factor is one representing a future risk-future exposure scenario.

A national prioritization panel comprised of national program experts from Regional offices and Headquarters ranks projects. The panel met for the first time in August 1995 to finalize the protocol for ranking projects on a national level and to begin voting on projects that were ready for funding during Fiscal Year 1996.

The Superfund program in the 1990s has shifted from a program with the largest percentage of projects in a study phase to a program in which the largest percentage of sites have at least started remedial design. A national priority list is seen as a way for each Region to list its priority projects in order of importance and rank these projects against priority projects from other Regions ensuring that scarce resources are allocated to the projects posing the most risk to human health and the environment.

Criteria Factors and Weights

Weight	Factors
5	A. Risks to Human Population Exposed: Population size, proximity to contaminants, likelihood of exposure.
5	B. Stability: Mobility of Contaminant, Site Structure and Effectiveness of any Institutional or Physical Controls.
3	C. Contaminant Characteristics: Concentration, Toxicity and Volume.
3	D. Threat to a Significant Environment: Endangered Species or their Critical Habitats, Sensitive Environmental Areas.
4	E. Program Management Considerations: Innovative Technologies, Cost Delays, High Profile Projects, Environmental Justice, State Involvement, Brownfields/Economic Redevelopment.

The raw score for each factor is multiplied as follows to obtain the maximum score.

			Raw Score		Weight Factor		Total Score
Factor A	Population Exposed	1 -	5	x	5	=	25
Factor B	Stability	1 -	5	x	5	=	25
Factor C	Contaminant Char	1 -	5	x	3	=	15
Factor D	Threat to a Significant Environment	1 -	5	x	3	=	15
Factor E	Program Management Considerations	1	5	x	4	=	20
			Total			=	100