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

DEC 18 1997

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MEMORANDUM

SUBJECT: Review of Non-Time-Critical Removal Actions by the National Remedy Review Board

FROM: Stephen D. Luftig, Director
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
Regional Counsels
Regions I - X

Purpose

The purpose of this memorandum is to notify you that the National Remedy Review Board (NRRB) will be reviewing proposed non-time-critical removal action (NTCRA) decisions beginning in FY 1998. The NRRB will review all proposed NTCRAs for sites at Fund- and enforcement-lead NPL sites where costs for the preferred action are estimated to exceed $30 million. The Office of Emergency and Remedial Response (OERR), the Federal Facilities Restoration and Reuse Office (FFRRO), and the Federal Facilities Enforcement Office (FFEO) are working together with other Federal agencies to determine how best to consider expensive proposed decisions at Federal facility sites. Until agreements are reached with appropriate Federal agency officials, the NRRB will not review NTCRAs for Federal facility sites.

I ask that you please forward this notice to the appropriate Regional contacts for implementation.

Background

As you know, the Office of Solid Waste and Emergency Response established the NRRB in November 1995 as one of Administrator Browner's Superfund Reform initiatives. The Board's goals are to help control remedy costs and promote both consistent and cost-effective decisions at Superfund sites, including those at Federal facilities.

The Board reviews proposed decisions when the following criteria are exceeded: (1) estimated costs for the preferred alternative exceed $30M; or (2) proposed remedy costs exceed $10 M and they are 50% greater then than those of the least-costly, protective, ARAR-compliant alternative. These criteria have triggered Board review of 23 remedial actions representing all ten Regions in the last two years.

As a result of implementation of the Superfund Accelerated Response Model (SACM) and recent Reform efforts, many Superfund managers have looked to the removal program for ways to expedite site cleanup. Since removal actions often provide excellent, cost-effective tools for quick response to a range of health or environmental threats, NTCRAs are being used more than they were in the past to carry out relatively high-cost response actions. Given this increased role for NTCRAs in costly site cleanups, I believe it is prudent to extend the NRRB program for review of high-cost decisions to these actions as well.

Discussion

Generally, we do not believe there will be many high cost NTCRAs. In fact, most NTCRAs are likely to cost less than $5M. However, I believe it is important to review a portion of Superfund's NTCRAs in order to provide the necessary assurances that our decisions are consistent with national program requirements and guidance. With this in mind, I ask that you submit all proposed NTCRAs that are estimated to cost more than $30M to the NRRB for review. This review should occur before the Engineering Evaluation/Cost Analysis (EE/CA) is issued for public comment.

The Board will review information packages for NTCRAs similar to those reviewed for high-cost remedial actions. In doing so, the NRRB will consider the nature of the site; the risks posed; the response actions considered, with associated costs; Regional, PRP, State/Tribal, and community opinions on the proposed action (to the extent they are known at the time); and any other relevant factors or program guidance in making advisory recommendations to the Regional decision maker. The Region, in turn, is asked to respond in writing to these recommendations. As with remedial decisions, both the NRRB recommendations and the Regional response will generally become part of the site Administrative record.

I fully appreciate that the timing and coordination of proposed NTCRAs with other ongoing cleanup activity will often be critically important. As a result, I expect the NRRB to make every effort to provide the review within a satisfactory timeframe. However, it is incumbent on the Regions to bring the actions triggering review to the Board as soon as possible. This will likely require advanced planning by the Regions and others to account for the NRRB review time (i.e., about 8 weeks). I recognize that many NTCRAs potentially subject to Board review are led by PRPs or State/Tribes; thus, the planning process should consider the time required both to coordinate with and solicit input from relevant stakeholders, and the time for concurrence in enforcement actions. Generally, stakeholders are invited to participate in the review of NTCRAs in the same manner as for remedial actions. Please talk with your Regional NRRB representative for more details.

As you know, Federal facilities have broad authority to conduct NTCRAs at their sites. For this reason, OERR, FFRRO, and FFEO are working together with other Federal agency officials to determine how best to consider expensive proposed decisions at Federal facility sites. It should be noted that a recent EPA memorandum on the Final FY 1998 Superfund Reforms Strategy (dated November 13, 1997) indicated that NTCRAs at Federal facility sites (other than BRAC sites) that are estimated to cost more than $30 million (or $75 million for Department of Energy (DOE) radioactive waste sites) are expected to be reviewed by the NRRB in FY '98. Recently, however, EPA officials met with DOE Headquarters and other Federal agency officials to discuss the NRRB review of NTCRAs in more detail. As a result, EPA and DOE have agreed to work together to explore additional options for NRRB involvement. Dialogue also continues between EPA and the other Federal agencies. Therefore, until an official agreement is reached with other Federal agency officials, the NRRB will not review NTCRAs at Federal facility sites.

Implementation

Effective immediately, please identify for NRRB review all proposed NTCRAs at sites other than Federal facility sites that are estimated to cost more than $30 million. Your Regional NRRB representative will work with appropriate managers and staff to address relevant site-specific questions about timing and review materials, and to establish a review schedule that minimizes potential for pipeline delays.

I believe that this Reform has accomplished much to improve both the consistency and cost effectiveness of our cleanup decisions over the last two years. Without question, this reform's success is the direct result of the hard work of your staff and management. We greatly appreciate these efforts and look forward to your continued support in the review of NTCRAs. Please contact me, or Bruce Means, NRRB Chair, (703-603-8815), if you have any questions or comments.

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