



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

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**MEMORANDUM**

**SUBJECT:** "Enforcement First" for Removal Actions

**FROM:** Cynthia Giles, Assistant Administrator  
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**TO:** Regional Administrators, Regions 1-10  
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EPA has a longstanding policy to pursue "enforcement first" throughout the entire Superfund cleanup process. Under this policy, EPA seeks, as appropriate, to find potentially responsible parties (PRPs) to perform response actions before EPA proceeds with an action funded by the Hazardous Substance Trust Fund (Fund). This policy promotes the "polluter pays" principle and helps to conserve the resources of the Fund for the cleanup of those sites where liable and viable responsible parties do not exist.

The application of the "enforcement first" policy to removal actions is not new. Previous memoranda have expressly applied the "enforcement first" policy to removal actions.<sup>1</sup> The policy remains as relevant today as it was when it was first developed. We appreciate the diligent practice to obtain PRP-lead removals and request your renewed attention to ensure the continued implementation of EPA's "enforcement first" policy, where appropriate and feasible, for removal actions in your Region.<sup>2</sup>

<sup>1</sup> See "Superfund Enforcement Strategy and Implementation Plan," EC-G-2000-0159800.0 at 15 (Nov. 3, 1990); see also "Transmittal of Superfund Removal Procedures-Removal Enforcement Guidance for On-Scene Coordinators," OSWER Directive 9360.3-06 (Apr. 6, 1992); "Enforcement First for Remedial Action at Superfund Sites," at 1 (Sept. 20, 2002); and "Superfund Program Implementation Manual FY11," OSWER Directive 9200.3-14-1G-V at 10 (Oct. 1, 2010).

<sup>2</sup> As part of the Integrated Cleanup Initiative (ICI), a three-year strategy to identify and implement improvements to EPA's land cleanup programs, EPA has committed to enhance EPA's early enforcement work for removal actions. More information about ICI is available on EPA's website at <http://www.epa.gov/oswer/integratedcleanup.htm>.

The “enforcement first” policy applies to the three types of removal situations: emergency, time critical and non-time critical. In emergencies, however, the need to mitigate threats immediately may limit the amount of time EPA has to identify PRPs and (where PRPs are known) to pursue a PRP-lead removal. Thus, in emergencies, if a responsible party is not known or is not capable or willing to perform the necessary removal promptly or properly, EPA would not be able to implement the “enforcement first” policy. Instead, the only practical enforcement mechanisms will likely be to recover costs after the removal action is completed or have the PRP take over the initial Fund-lead federal response work. In emergencies where a willing and capable responsible party *is* known but EPA does not have sufficient time to issue a unilateral administrative order or negotiate an administrative order on consent, EPA may allow the PRP to proceed with a PRP-lead response without an enforceable instrument in place. EPA should, however, subsequently consider bringing such work within the scope of an enforceable instrument if the emergency response is ongoing or if additional response work (i.e., time critical or non-time critical response work) is needed after the immediate threat is abated.

For time critical and non-time critical removals funded from the Regional allocation of the base Advice of Allowance (AOA) for removals, given fact-specific circumstances, Regions are expected to complete a preliminary PRP search<sup>3</sup> prior to initiating the removal action. Removals funded from the AOA for Remedial Action are subject to evaluation by the National Risk Based Priority Panel.<sup>4</sup> For removals funded from the AOA for Remedial Action, Regions are expected to, at a minimum, complete the preliminary PRP search and, where appropriate, complete negotiations with PRPs prior to submitting a removal action for panel evaluation. Regions should document their preliminary PRP search activities in the “PRP Search Progress and Strategy” section of the Enforcement Addendum to the Action Memorandum.<sup>5</sup>

In support of EPA’s “enforcement first” efforts, Regions are also encouraged to have in place practices that expedite the removal enforcement process and promote PRP-lead removals. For example, to help ensure that PRPs perform removals whenever possible and practicable, Regions should rely on their case teams to maintain and update enforcement timelines and strategies.

To foster consistent and efficient enforcement practices for removals nationally, EPA recently formed a national Removal Enforcement Workgroup. The purpose of this Workgroup is to share information on effective removal enforcement approaches and to provide recommendations for methods that could be used by the Regions in an effort to increase PRP participation in removal actions.

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<sup>3</sup> See “Transmittal of ‘Preliminary Potentially Responsible Party Search Completion’ Measure Definition for Incorporation into the Superfund Program Implementation Manual for 2012” (June 23, 2011) (describing preliminary search activities for identifying PRPs related to a site and providing guidance on how to properly document the search activities conducted in order to perform, or finance, all or a portion of the initial non-emergency CERCLA removal or remedial response action at a site).

<sup>4</sup> More information about the National Risk-Based Priority Panel is available on EPA’s website at <http://www.epa.gov/superfund/programs/nrbpp/index.htm>.

<sup>5</sup> For an outline of information to include in the Enforcement Addendum to the Action Memorandum, see pages 26-27 of the “Superfund Removal Guidance for Preparing Action Memorandum” (Sept. 2009).

This memorandum is available on EPA's website at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/enf-first-removal.pdf>. If you have questions about this document, or would like assistance in evaluating the appropriate enforcement strategy at a particular site, please contact Rebekah Reynolds at (202) 564-4306 in OECA's Office of Site Remediation Enforcement, Terry Eby at (202) 564-0927 in OSWER's Office of Emergency Management, or Robin Anderson at (703) 603-8747 in OSWER's Office of Superfund Remediation and Technology Innovation.

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