



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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SUPERFUND &
EMERGENCY
MANAGEMENT DIVISION

August 24, 2020

MEMORANDUM

SUBJECT: Action Memorandum Amendment - Request for Approval for a Ceiling Increase to the Time-Critical Removal Action at Former Kaiser Smelter, Mead, Spokane County, Washington.

FROM: Brooks Stanfield, On-Scene Coordinator Spill Prevention and Removal Section

THRU: Calvin Terada, Director
Superfund and Emergency Management Division

TO: Peter C. Wright, Assistant Administrator Office of Land and Emergency Management

I. PURPOSE

The purpose of this Action Memorandum Amendment is to request and document approval of an increase of the project ceiling from \$5,990,350 to \$10,110,443. Increasing the cost ceiling for this removal action is being requested for two main reasons. First, following approval of the original Action Memorandum, EPA modified its removal approach to a more mechanical operations process to better account for worker safety issues that were not originally fully anticipated. Second, it is prudent to increase the ceiling to account for a scenario where all proposed removal actions – broken into three main Decision Units (DUs) – cannot be completed concurrently, and thus additional costs associated with mobilization, demobilization, and project management would be incurred. The continuing actions proposed herein will mitigate threats posed to human health and the environment from an ongoing release of hazardous substances to the environment and the potential for a catastrophic release of hazardous substances from the Former Kaiser Smelter Site located at 2111 East Hawthorne Road, Mead, Spokane County, Washington (Site). The Site is made up of three parcels owned by two separate entities, both of which are identified as potentially responsible parties (PRPs).

This selected Time-Critical Removal Action meets the criteria for initiating a removal action under the National Contingency Plan (NCP), 40 C.F.R. § 300.415. The total cost of the selected Removal Action is expected to exceed the \$2 million statutory limitation established in Section 104(c) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The approved June 1, 2020 Action Memorandum included an emergency exemption from this statutory, which still applies and is further discussed in Section V below.

II. SITE CONDITIONS AND BACKGROUND

The SEMS ID No: WAN001020091

See the previously approved Action Memo dated June 1, 2020 (attached).

A. Site Description

1. Removal site evaluation

See the previously approved Action Memo dated June 1, 2020 (attached).

2. Physical Location

See the previously approved Action Memo dated June 1, 2020 (attached).

3. Site characteristics

See the previously approved Action Memo dated June 1, 2020 (attached).

4. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant

See the previously approved Action Memo dated June 1, 2020 (attached).

5. NPL Status

See the previously approved Action Memo dated June 1, 2020 (attached).

6. Maps, pictures, and other graphic representations

See the previously approved Action Memo dated June 1, 2020 (attached).

B. Other Actions to Date

1. Previous Actions

See the previously approved Action Memo dated June 1, 2020 (attached).

2. Current actions

See the previously approved Action Memo dated June 1, 2020 (attached).

C. State and Local Authorities' Roles

1. State and local actions to date

See the previously approved Action Memo dated June 1, 2020 (attached).

2. Potential for continued State/local response

See the previously approved Action Memo dated June 1, 2020 (attached).

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

The current conditions at this Site meet the following factors which indicate that the Site is a threat to the public health or welfare or the environment, and a removal action is appropriate under Section 300.415(b)(2) of the NCP.

1. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants (40 C.F.R. § 300.415(b)(2)(i)).

See the previously approved Action Memo dated June 1, 2020 (attached).

2. Actual or potential contamination of drinking water supplies or sensitive ecosystems (40 C.F.R. § 300.415(b)(2)(ii)).

See the previously approved Action Memo dated June 1, 2020 (attached).

3. Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release (40 C.F.R. § 300.415(b)(2)(iii)).

See the previously approved Action Memo dated June 1, 2020 (attached).

4. High levels of hazardous substances or pollutants in soils largely at or near the surface that may migrate (40 C.F.R. § 300.415(b)(2)(iv)).

See the previously approved Action Memo dated June 1, 2020 (attached).

5. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released (40 C.F.R. § 300.415(b)(2)(v)).

See the previously approved Action Memo dated June 1, 2020 (attached).

6. Threat of fire or explosion (40 C.F.R. § 300.415(b)(2)(vi))

See the previously approved Action Memo dated June 1, 2020 (attached).

7. The availability of other appropriate federal or state response mechanisms to respond to the release (40 C.F.R. § 300.415(b)(2)(vii)).

See the previously approved Action Memo dated June 1, 2020 (attached).

8. Other situations or factors that may pose threats to public health or welfare of the United States or the environment. (40 C.F.R. § 300.415(b)(2)(viii)).

See the previously approved Action Memo dated June 1, 2020 (attached).

IV. ENDANGERMENT DETERMINATION

See the previously approved Action Memo dated June 1, 2020 (attached).

V. EXEMPTION FROM STATUTORY LIMITS

Site conditions continue to meet previously documented emergency exemption criteria specified in the June 1, 2020 Action Memorandum. EPA is also requesting an additional \$4,120,093 in direct extramural costs. The June 1, 2020 Action Memorandum approved an emergency exemption from the \$2 million limit for fund-financed removal actions as outlined in Section 104(c) of CERCLA. This exemption continues to be warranted and the statutory criteria in Section 104(c)(1)(A) of CERCLA are met as outlined below:

1. Continued response actions are immediately required to prevent, limit, or mitigate an emergency.

As outlined in previous sections of this Action Memorandum, EPA has documented as part of its Removal Site Evaluation that there is an ongoing release of hazardous substances to the environment including, but not limited to polychlorinated biphenyls (PCBs), (polycyclic aromatic hydrocarbons) PAHs, and asbestos from this Site that create a current risk of exposure to these contaminants. The RSE also documents the potential of a catastrophic release of highly contaminated sediment from the 1,700 cubic yards of sediment that have accumulated in a sediment pond to Deadman Creek.

2. There is an immediate risk to public health or welfare or the environment.

As outlined in previous sections of this Action Memorandum, the contaminants currently being released from the Site to the environment include but are not limited to PCBs, PAHs, and asbestos all of which are known human carcinogens. Due to the ongoing presence of commercial activity and illegal trespassers on the Site, there is an immediate risk to human health from on-Site exposure. The documented migration of PCBs through stormwater into watersheds that are already designated as impaired waterbodies because of the presence of PCBs present an immediate risk to the health of the local environment and human health among populations that consume fish from this river system.

3. Such assistance will not otherwise be provided on a timely basis.

As outlined in section III(7) of this Action Memorandum the State of Washington's cleanup statutes do not provide authority to address contaminants in building materials, which represent the primary and largest source of contamination at the Site.

Additionally, there are no state or local authorities that can order removal of asbestos containing materials (ACM). While it has been determined that the risks described in this memorandum require immediate action, no state or other federal cleanup authorities can provide a response within a near-term timeframe and likely will require at least a year of planning and procedural steps to initiate cleanup activities.

VI. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Action

1. Proposed Action Description

See the previously approved Action Memo dated June 1, 2020 (attached).

Post Removal Site Controls

See the previously approved Action Memo dated June 1, 2020 (attached).

2. Description of alternative technologies

See the previously approved Action Memo dated June 1, 2020 (attached).

3. Engineering Evaluation/Cost Analysis (EE/CA)

See the previously approved Action Memo dated June 1, 2020 (attached).

4. Applicable or relevant and appropriate requirements (ARARs)

See the previously approved Action Memo dated June 1, 2020 (attached).

Best Management Practices

See the previously approved Action Memo dated June 1, 2020 (attached).

5. Project Schedule

See the previously approved Action Memo dated June 1, 2020 (attached).

B. Estimated Costs

The amended EPA extramural costs are shown below. These costs account for a "worst

case” scenario in which multiple mobilizations will be required to complete the three main removal DUs consecutively, not concurrently. The primary DUs outlined in Section VI of the original June 1, 2020 Action Memorandum include: (1) removal of an estimated 488,000 square feet of Robertson Siding that is actively releasing PCBs and chrysotile asbestos; (2) removal of an estimated 12,000 linear feet of Thermal System Insulation (TSI) pipe insulation that is deteriorated and friable; and (3) removal of several thousand cubic yards of abandoned waste piles containing elevated concentrations of PAHs and other secondary contaminants of concern (COCs). If sufficient funding becomes available so that removal actions at all DUs can proceed concurrently, with remobilization, a cost savings of approximately \$625,963 may occur.

In addition, at the time of the original cost estimate, assumptions and estimated costs were based on the existing Emergency and Rapid Response Services Contract (ERRS). Subsequent to the approval of the original Action Memorandum, a new Region 10 ERRS contract was awarded, with new and higher rates. The new rates coupled with a modified mechanical approach to remove the Robertson Siding and the contingency costs for potential demobilization and remobilization, and the increased costs associated with coronavirus protection measures including, the costs of the project have increased as follows.

Extramural Costs	Current Ceiling	Proposed Increase	Proposed Ceiling
Emergency and Rapid Response Services (ERRS)	\$4,721,622	\$3,745,541	\$8,467,163
Superfund Technical Assessment and Response Team (START)	\$724,149	\$0	\$724,149
Contingency (10%)	\$544,579	\$374,552	\$919,131
Total Removal Action Project Ceiling	\$5,990,350	\$4,120,093	\$10,110,443

Direct Costs include direct extramural costs and direct intramural costs. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2000. These estimates do not include pre-Judgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustration purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual total costs from this estimate will affect the United States' right to cost recovery.

VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

If the proposed Removal Action should be delayed or not taken, COCs will continue to be released on Site creating ongoing potential exposures to cancer-causing contaminants for authorized and unauthorized visitors of the Site. COCs will continue to migrate through stormwater into Deadman Creek with an increasing risk of catastrophic release of these contaminants as a result of a storm event. Even without a catastrophic release in the short-term, the risk of stream sediment becoming contaminated and requiring cleanup increases with time. Finally, it is currently unknown whether COCs are migrating from source material through stormwater into groundwater. Given that the Site sits atop a federally designated sole source aquifer, an uncontrolled pathway to groundwater could result in a greatly expanded scope for needed cleanup operations.

VIII. OUTSTANDING POLICY ISSUES

In consultation with the Office of Emergency Management (OEM), it was determined that the removal does not involve any nationally significant and precedent-setting issues. While removal of ACM where it is the primary contaminant of concern does fall within that category, OEM believes that category does not apply to this removal action because ACM is not the primary contaminant of concern. The Office of Site Remediation Enforcement (OSRE) reviewed the Action Memorandum and Confidential Enforcement Addendum because the cost of the removal action will exceed the \$2 million statutory limit. OSRE completed this review and provided concurrence via email on May 21, 2020.

IX. ENFORCEMENT

The total EPA costs of this removal action based on full-cost accounting practices, and accounting for an estimated \$301,363 in EPA salary costs, eligible for cost recovery are estimated to be \$14,919,077¹.

$$(\$10,110,443 + \$301,363) + (43.29\% \times \$10,411,806) = \$14,919,077$$

¹ Direct Costs include direct extramural costs and direct intramural costs. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2000. These estimates do not include pre-judgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual total costs from this estimate will affect the United States' right to cost recovery.

See the attached “Confidential Enforcement Addendum” for enforcement details.

X. RECOMMENDATION

This decision document represents the selected Removal Action for the Former Kaiser Smelter Site, located at 2111 East Hawthorne Road, Mead, Spokane County, Washington, developed in accordance with CERCLA, and not inconsistent with the NCP. This decision is based on the administrative record for the Site. Pursuant to EPA Delegation 14-2, the Assistant Administrator for the Office of Land and Emergency Management (OLEM) has authority to approve Action Memoranda where the emergency waiver in Section 104(c)(1)(A) of CERCLA is used and removal costs exceed \$6 million.

Conditions at the Former Kaiser Smelter Site meet the criteria in Section 300.415(b)(2) of the NCP for a removal action and the CERCLA section 104(c) emergency exemption from the \$2 million limitation, and I recommend your approval of the amended Removal Action. The total project ceiling if approved will be \$10,110,443. Of this, as much as \$10,110,443 comes from the Regional Removal Allowance.

XI. APPROVAL / DISAPPROVAL

APPROVAL:

Peter C. Wright, Assistant Administrator
EPA Office of Land and Emergency Management

DISAPPROVAL:

Peter C. Wright, Assistant Administrator
EPA Office of Land and Emergency Management