EPA Region 9 Perspective on Removals at NPL Federal Facilities

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Overview

- Removal Basics
- Removal vs. Remedial
- EPA Region 9 issues wrt DoD’s application of removals at FF NPL sites
Removal Action Basics
Remedial Process

Discovery and Notification

Preliminary Assessment and Site Investigation

Remedial Investigation and Feasibility Study

Removal

Record of Decision

Remedial Design

Remedial Action

Operation and Maintenance

Construction Complete
Removal Response for Release of Hazardous Substances

Removals are generally short-term actions designed to prevent, minimize, or mitigate damage to human health and welfare or the environment.
Types of Removal Actions Under CERCLA

- There are three types of removal actions authorized for the release of hazardous substances:
  - Emergency – action is required within hours
  - Time-critical – action is required within six months
  - Non-time-critical – 6 months planning period available, 12 months to complete, < $2 mil
- On-Scene Coordinator determines urgency
Common Aspects of Emergency Removal Situations

- Pose immediate and easily discernible threats
- Often involve quickly changing circumstances
- Catastrophic discharges or very large releases
Common Aspects of Time-Critical Removal Situations

- Threats are imminent, but less urgent and often are potential situations that may require response within days
- May be large or small scale, depending on the nature of the problem
- Time-critical situations are the most common type of removal
Common Aspects of Non-Time-Critical Situations

◆ Threats are the least urgent of all removal situations
◆ Planning period of at least six months is available
◆ Remedial program is addressing most non-time-critical removal actions
Determining Whether a Removal Action Is Warranted

- A Removal Site Evaluation (RSE) is performed
- Several factors are used to determine the appropriateness of a removal action
  - Actual or potential exposure
  - Threat or fire or explosion
  - Availability of other response mechanisms
  - Other circumstances
Action Memorandum

- The primary decision document substantiating need for action
- Can be written after a removal
- Reserves funds for a response
- Documents the selected action
- Supports cost recovery actions
- Justifies exemption to statutory limits, if appropriate
Engineering Evaluation/ Cost Analysis (EE/CA)

- Required for non-time-critical removal actions
- Provides a basis for evaluating and selecting appropriate response
  - Describes site conditions
  - Identifies scope and objectives of the removal action
  - Analyzes alternatives
  - Identifies selected action
- Approval memorandum must be obtained
Removal vs. Remedial at FF NPL Sites
Removals

- Address imminent threats ASAP
- Get job done with minimal process, analysis
- Timely use of available funds
- DoD unilaterally selects action, although consults with EPA/State
Remedial Actions

◆ Sites prioritized based on risk plus other factors (site use/reuse, cost, EJ)
◆ Similar sites grouped together (OUs) – economy of scale
◆ Thorough evaluation of risk and alternatives
◆ Preference for treatment, permanent solutions
◆ Public, state involvement
◆ Decisions selected jointly by EPA
When Do Removals?

◆ Not a bright line
◆ Look to NCP, EPA guidance
◆ At FF, DoD is President so decides -- EPA/State concurrence not needed on removals. EPA involved with remedial decisions
◆ Consider stakeholder concerns
EPA Region 9 Experience w/Removals at FF NPL Sites

- DoD more liberal in removal application
- TC and NTC rationale often not justified
- Poor EE/CAs, Action Memos
- Often Very Expensive/Long Durations
- Often address controversial issues with minimal stakeholder involvement
- Avoiding risk assessment
- Avoiding regulator approval
Is the right action being done?

- Protective of HH and Environment
- Getting right the first time – consistent with LT action
- Comply with ARARs
- Preference for treatment, permanence
- Agency, Community acceptance
EPA Issues

- Circumvent remedial process
  - Less stakeholder involvement
  - 3 vs. 9 evaluation criteria
  - Less risk evaluation
  - Avoids regulatory approval

- When done with removal, are you actually done?
- Does it satisfy requirements for CC?
- For BRAC, may not satisfy requirements for property transfer
EPA Issues

◆ Enforceability

» DoD issues Action Memo – not jointly selected by EPA
» Removals not disputable under FFA
» If schedules slip:
  — Agency approval not required
  — Cannot assess stipulated penalties
EPA Issues

- Liberal application creates vulnerabilities
  - Often doesn’t fit w/i EPA removal framework
  - Avoiding remedial decisions
  - Utilizing age-old EE/CAs, Action Memos
  - Using removals to address long-standing threats
  - Removals that last years, cost millions
Conclusion

- Removals play critical role
- Easy when stakeholders agree
- Challenge DoD on appropriate use of removals
- NTC not always faster than FS/ROD, esp. when follow-on ROD required
- Show flexibility