



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 841 Chestnut Building
 Philadelphia, Pennsylvania 19107

August 23, 1990

Douglas F. Elznic, P. E.
 Commander, CEC, U.S. Navy
 Public Works Officer
 Naval Air Station Oceana
 Virginia Beach, Virginia 23460-5120

Re: RCRA 3008(h) Consent Order;
 Your letter 6280
 Ser. 186/3655
2 Jul. 1990

Dear Commander Elznic:

EPA Region III has given thorough consideration to the concerns which your Agency has expressed with regard to several issues in the proposed § 3008(h) consent order for the Naval Air Station Oceana (NAS). We have discussed them both in the Region and with EPA Headquarters. The enclosed language represents the best accommodation that we feel we can make to your concerns. The following are our reasons for our positions on these issues:

1. Funding. Since the language in this section was developed jointly with you, we assume that it will be acceptable to your Agency.
2. Dispute Resolution. As indicated, we are willing to add the two concepts you requested to the Yellow Book Dispute Resolution language.
3. Interim Measures. We have completely redrafted this section, which is now called "Emergencies; Interim Measures; Reporting of New Releases," in order to achieve several things. First, the section distinguishes between emergency situations and those less immediate situations which may also require interim measures. Second, it spells out in detail the kind of information which NAS should submit to EPA in the latter situation, so that EPA can determine whether, in fact, an Interim Measures Workplan is necessary. Finally, it provides for the reporting of all newly-discovered releases which are not being otherwise addressed.
4. RCRA/CERCLA integration. After careful consideration, we have concluded that your request that "All documents submitted pursuant to this Consent Order will be reviewed for compliance with both RCRA and CERCLA," (NAS draft of 5/31/90) is not only not presently possible and not desirable, but also is not necessary for the achievement of your stated goal.

It is not presently possible because, as we have discussed with you previously, our limited manpower within the Region does not allow us to have two

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different programs--RCRA and CERCLA--review documents for the same site. It is not desirable because, even if the manpower were available, such review by two programs would inevitably slow progress at the site.

Most important, we do not feel that such double reviews are necessary for the achievement of your goal. In your letter of July 2, 1990, you stated that:

The taxpayer, and hence the DOD, can only afford to remediate a site once, regardless of what program or authority effects the clean-up. . .A taxpayer has a right to expect the validity of our site remediation and technical conclusions to be independent of our programmatic vehicle of choice.

EPA agrees with this statement and has indicated as much in the Final Rule on the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"). The relevant pages are enclosed. The Rule states that the criterion which must be met before a site on the final NPL is deleted is that "no further response [at that site] is appropriate." 40 C.F.R. § 300.425(e) (55 Fed. Reg. 3845, March 8, 1990). Where a remedial action has been carried out under RCRA and there is no significant threat to public health or the environment, a CERCLA response should not be necessary. (See 40 C.F.R. § 300.425(e)(1)(iii)).

We have drafted the first paragraph of the "RCRA-CERCLA Integration" section to reflect this understanding. The material under subsections (a) and (b) simply adds the RCRA equivalent of the standard CERCLA "reopeners" that are incorporated into every Region III RD/RA order. These state that "previously unknown and undetected" conditions and newly-discovered information may make additional remediation necessary. We hope you agree that it is highly unlikely that these reopeners would need to be utilized, and that the language in paragraph 1 satisfies your concern.

In addition, we would prefer that "RCRA-CERCLA Integration" be a separate section, rather than a part of the more general "Purpose" section. The reason is that we intend to add a Table of Contents and feel that specific headings for specific matters will help us all to find them more quickly should we need to refer to them in the future. For the same reason, we are recommending that a more detailed version of the last sentence in your first paragraph under "Statement of Purpose" in your May 31, 1990 draft be included instead as new paragraph 5 under "Reservation of Rights." This new paragraph 5 is also enclosed.

5. Force Majeure and Extensions. Region III is unwilling to voluntarily adopt the DOD-EPA model IAG provisions on Force Majeure and Extensions. These provisions were negotiated as part of a total CERCLA package which included stipulated penalties as a quid pro quo. We are starting from a different point with a RCRA § 3008(h) consent order which contains no stipulated penalties. (Force Majeure provisions assume added importance for

responsible parties where stipulated penalties are involved.)

In support of the IAG language, you state in your letter of July 2, 1990, to Joseph Kotlinski that

. . .use of model language promotes uniformity and eliminates the need to draft separate language for each type of order and with each Region. In this regard it serves both our interests.

It is precisely to promote uniformity in the treatment of respondents that EPA has developed the model RCRA § 3008(h) language which we are proposing. We want to maintain that model language in this instance for the sake of uniformity among the Region's § 3008(h) orders. We are continually receiving FOIA requests for copies of our latest orders from members of the private Bar. In the area of Force Majeure, unlike the areas of Funding, Dispute Resolution, Emergencies and RCRA-CERCLA integration, there is no characteristic unique to the Navy or to federal facilities with which we could justify a deviation from the model § 3008(h) language for the Navy which we were not also willing to grant to the private Bar.

It is noteworthy that Region IV's Cherry Point order did not adopt the Extensions language. Its "Force Majeure and Excusable Delay" language (p. 28) is a hybrid between the IAG language, in the first paragraph, and the model § 3008(h) language, in the second and third paragraphs. In the IAG portion it retains EPA's standard § 3008(h) statement, which your version omits, that "Respondent shall have the burden of proving a force majeure." So, even if Region III were to adopt your proposed Force Majeure and Extensions language, there would be no uniformity between Regions III and IV.

In our experience the Force Majeure clause is seldom invoked. Therefore, we don't anticipate "many disputes that would result from more general clauses." (P. 1 of your letter of July 2, 1990). We propose giving the Project Coordinators the authority to agree to minor modifications in the schedules (Section XII, paragraph 4, line 1). We have added paragraph 3, which is standard § 3008(h) language we inadvertently omitted initially. (See the Cherry Point order). And we have clarified that if the Navy fails to obtain a required permit or approval after having made all reasonable efforts to do so, an extension in time will be granted. Beyond this the Region feels it cannot go.

We would add only that the more general § 3008(h) model language does not eliminate the possibility that any of the circumstances specified in the IAG language could be determined to be a force majeure. We anticipate that the Navy will proceed diligently in carrying out its requirements under the consent order, and that the relationship between our agencies will remain a cooperative one.

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We hope that these explanations of our positions satisfy your concerns. We would appreciate your response by mid-September. I will be out of the office from Monday, August 27th until Monday, September 10th. In the meantime, if there are any questions, please contact either Bob Stroud at (215) 597-8214 or my supervisor, Diane Ajl (pronounced "aisle"), at (215) 597-8905. Thank you.

Sincerely,

Patricia Hilsinger 2618

Patricia D. Hilsinger
Assistant Regional Counsel

Proposed Language on "Funding" for Oceana NAS Consent Order

1. The source of funds for activities required by this Consent Order shall be the Defense Environmental Restoration Account ("DERA"), authorized by 10 U.S.C. § 2703, as allocated to the Department of the Navy by the Secretary of Defense or his designee, according to the annual fiscal guidance established for the DERA account. For those activities ineligible for DERA funding, or if the Navy's total annual DERA appropriation is insufficient to meet the total requirements for those funds, funds specifically designated for activities required by this Consent Order shall be sought by the most expeditious means possible, and/or new authorizations shall be sought, from Congress, if necessary, through the Department of Defense and Department of the Navy budgetary processes, to achieve the attached schedule of compliance in accordance with Sections 1-4 and 1-5 of Executive Order 12088 as implemented by the Office of Management and Budget Circular A-106 (as amended). Section 1-5 of E.O. 12088 states, "The head of each executive agency shall ensure that sufficient funds for compliance with applicable pollution control standards are requested in the Agency budget." Failure to obtain adequate funds or appropriations from Congress does not, in any way, release Respondent from its obligations to comply with this Consent Order.

2. Any obligation for the payment or obligation of funds by Respondent established by terms of this Consent Order shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation of payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring payment or obligation of such funds shall be appropriately adjusted.

3. If appropriated funds are not available to fulfill Respondent's obligations under this Consent Order, Respondent shall promptly notify EPA. EPA reserves the right to initiate an action against any other person, or to take any corrective action which would be appropriate absent this consent order.

1. Within thirty (30) days of the date of any action by EPA which leads to or generates a dispute, Respondent shall submit to EPA a written statement of dispute setting forth the nature of the dispute, Respondent's position with respect to the dispute and the information Respondent is relying upon to support its position. If Respondent does not provide such written statement to EPA within this thirty (30) day period, Respondent shall be deemed to have agreed with the action taken by EPA which led to or generated the dispute.

2. Upon receipt of the written statement of dispute, the parties shall engage in dispute resolution among the Project Coordinators and/or their immediate supervisors. The parties shall have fourteen (14) calendar days from the receipt by the EPA of the written statement of dispute to resolve the dispute. During this period, the Project Coordinators shall meet as many times as are necessary to discuss and attempt resolution of the dispute. If agreement cannot be reached on any issue within this fourteen (14) day period, any Party may, within ten (10) calendar days of the conclusion of the fourteen (14) day dispute resolution period, submit a written notice to the parties escalating the dispute to the Dispute Resolution Committee ("DRC") for resolution. If neither party elevates the dispute to the DRC within this ten (10) calendar day escalation period, the Parties shall be deemed to have agreed with EPA's position with respect to the dispute.

3. The DRC will serve as a forum for resolution of disputes for which agreement has not been reached pursuant to paragraphs 1 and 2 of this Section. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Consent Order. Following escalation of a dispute to the DRC as set forth in paragraph 2 of this Section, the DRC shall have thirty (30) calendar days to unanimously resolve the dispute. If the DRC is unable to unanimously resolve the dispute within this thirty (30) calendar day period, either Party may, within ten (10) calendar days of the conclusion of the thirty (30) calendar day dispute resolution period, submit a written notice of dispute to the Administrator of EPA for final resolution of the dispute. In the event that the dispute is not escalated to the Administrator of EPA within the designated ten (10) calendar day escalation period, the parties shall be deemed to have agreed with the EPA DRC representative's position with respect to the dispute.

4. Upon escalation of a dispute to the Administrator of EPA pursuant to Paragraph 3 of this Section, the Administrator will review and resolve such dispute as expeditiously as possible. Upon resolution, the Administrator shall provide the Respondent with a written final decision setting forth the resolution of the dispute.

Upon request, The Administrator shall confer with The Secretary of The Navy before making his decision on the dispute.

The Administrator's role in dispute resolution shall be non-delegable.

A. EMERGENCIES; INTERIM MEASURES; REPORTING OF NEW RELEASES

1. Emergencies

If, at any time during the term of this Consent Order, Respondent discovers that a release of hazardous waste or hazardous constituents at or from the Facility is presenting or may present an imminent and substantial endangerment to human health or the environment, Respondent shall:

- (a) notify EPA as soon as practicable of the source, nature, extent, location and amount of such release, the endangerment posed by such release and the actions taken and/or to be taken to address such release;
- (b) immediately take such actions as are necessary and appropriate to address such release, unless otherwise directed by EPA; and
- (c) confirm the notification to EPA in writing within three (3) calendar days of discovery of such release.

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→ 2. Interim Measures

a. If, at any time during the term of this Consent Order, Respondent discovers a release of hazardous waste or hazardous constituents at or from the Facility which is adversely affecting or may adversely affect human health or the environment, and such release is not being addressed by corrective measures at the time of such discovery and does not constitute an emergency under Subsection 1 of this Section, Respondent shall:

- (1) submit to EPA, in writing, the following information concerning the release within the specified time:
 - (a) the nature, source, extent, amount and location within three (3) calendar days of discovery;
 - (b) the concentration of each hazardous waste or hazardous constituent and, if known, the background level of each such hazardous waste or hazardous constituent within () calendar days of discovery;
 - (c) the known or expected pathway through which the contamination is migrating or may migrate; the extent, rate, direction of contamination, and the estimated quantities and/or volumes released within () calendar days of discovery; and

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- (d) the projected fate and transport (to the extent known), within () calendar days of discovery;
- (2) identify the following, with respect to potential human exposure, within () calendar days of discovery, without doing either a risk assessment or an endangerment assessment:
 - (a) the exposure pathway(s), e.g., air, fire/explosion, groundwater, surface water, contact, ingestion;
 - (b) the location and demographics of populations potentially at risk from exposure;
 - (c) the potential short-term and long-term effects of human exposure;
 - (d) whether and how human exposure has actually occurred or when and how human exposure may occur; and
 - (e) the possible consequence(s) of delaying response to such release;
 - (3) identify potential environmental exposure and threats such as those listed below within () calendar days of discovery:
 - (a) the media which have been and may be contaminated, e.g., groundwater, air, surface water, soil;
 - (b) the likely short-term and long-term threats and effects on the environment; and
 - (c) how the situation will change if response is delayed; and
 - (4) submit an outline of proposed interim measures which will temporarily or permanently arrest the release, and which are expected to be a necessary component of the corrective measures, within () calendar days of discovery.
- b. If the Regional Administrator determines, on the basis of the information submitted pursuant to Subsection A.2.a. above, or any other information, that corrective action is necessary to protect human health or the environment from a release of hazardous waste or hazardous constituents, Respondent shall:
- (1) submit an Interim Measures Workplan, in accordance with the Scope of Work in Attachment B to this Order, to the

extent that EPA deems appropriate, and within the time period directed by EPA; and

- (2) upon receipt of EPA approval of the Interim Measures Workplan, implement the Workplan in accordance with the requirements and schedules contained therein.

3. Reporting of New Releases

If, at any time during the term of this Consent Order, Respondent discovers a release of hazardous waste or hazardous constituents at or from the Facility which is not being addressed by corrective measures at the time of such discovery, and is not being addressed pursuant to Subsections 1 or 2 above, Respondent shall notify EPA, in writing, of the nature, source, extent, location and approximate amount of such release within seven (7) calendar days of discovery of such release.

4. Other Reporting Obligations

Nothing in this Section shall be construed as relieving Respondent of whatever obligations it may have under any other federal, state or local law, including, but not limited to, CERCLA and the National Contingency Plan, 40 C.F.R. Part 300, to report releases of hazardous wastes, hazardous constituents, hazardous substances, pollutants or contaminants.

RCRA-CERCLA INTEGRATION

1. The Facility has interim status and is subject to RCRA corrective action requirements. The Facility may, at some future time, be listed on the CERCLA National Priorities List ("NPL") and be required by statute to enter into an Interagency Agreement ("IAG") under CERCLA Section 120. The parties intend that any corrective action selected, implemented and completed under any future RCRA Section 3008(h) order to remediate releases identified in this Order, will be protective of human health and the environment and will obviate the need for further remedial action for such releases under CERCLA. However, EPA reserves its right to require Respondent to perform additional remediation at the Facility under either RCRA or CERCLA if:

(a) prior to EPA's certification of completion of the corrective action under any future RCRA 3008(h) order,

(1) conditions at the Facility previously unknown and undetected by EPA are discovered after the effective date of said future order, and these conditions indicate that a hazardous substance other than one which has been or is being addressed under said future order has been or is being released, or that there is a substantial threat of such release into the environment; or

(2) EPA determines, based on information received in whole or in part after the effective date of said future order, that the corrective action taken under that order is not protective of human health and the environment; or

(b) On or after EPA's certification of completion of the corrective action under any future RCRA 3008(h) order,

(1) conditions at the Facility previously unknown to and undetected by EPA are discovered after the certification of completion, and these conditions indicate that a hazardous substance has been released since the certification of completion, or is being released, or that there is a substantial threat of such release into the environment; or

(2) EPA determines, based on information received in whole or in part after the certification of completion, that the corrective action taken under said future RCRA § 3008(h) order is not protective of human health and the environment.

2. Nothing in this Consent Order shall be interpreted to require Respondent to comply with CERCLA.

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New Paragraph 5 under Reservation of Rights

4. EPA reserves all rights and authorities it may have to require Respondent to perform response actions at the Facility under CERCLA in the event that corrective action as necessary to protect human health and the environment cannot be fully accomplished under RCRA.

XIV. FORCE MAJEURE AND EXCUSABLE DELAY

OC-00128 - 8.01-8/23/90

Respondent shall perform the requirements of this Consent Order within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a force majeure. Respondent shall have the burden of proving such a force majeure. A force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of Respondent, which cannot be overcome by due diligence and which delays or prevents performance by a date required by this Consent Order. Such events do not include increased cost of performance, changed economic circumstances, reasonably foreseeable weather conditions or weather conditions which could have been overcome by due diligence, or failure to obtain federal, state or local permits. Respondent's failure to obtain a requisite permit or approval after Respondent has made all reasonable efforts to do so, including making a complete and timely application for such permit or approval, shall be considered a circumstance beyond Respondent's control and the time period for Respondent to perform the activities affected shall be extended until the requisite permit or approval is obtained.

Respondent shall notify EPA in writing within seven (7) calendar days after it becomes aware of any event which causes or may cause a delay in complying with any requirement of this Consent Order or any event which Respondent claims constitutes a force majeure. Such notice shall estimate the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to prevent or minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with the notice provision of this Section shall constitute a waiver of Respondent's right to assert a force majeure claim with respect to such event. Respondent shall take all reasonable steps to prevent or minimize delay.

If EPA determines that the delay has been or will be caused by circumstances not reasonably foreseeable and beyond the control of Respondent, which cannot be overcome by due diligence, the time for performance for that requirement of this Consent Order will be extended by EPA for a period equal to the delay resulting from such circumstances. Except as provided in Section XII, "PROJECT COORDINATORS," paragraph 4, this shall be accomplished through an amendment to this Consent Order pursuant to Section XXI, "SUBSEQUENT MODIFICATION." Such an extension does not alter the schedule for performance or completion of any other tasks required by this Consent Order, unless those tasks are also specifically altered as provided by Section XII, paragraph 4, or by Section XXI. In the event that EPA and Respondent cannot agree that any delay or failure has been or will be caused by circumstances not reasonably foreseeable and beyond the control of Respondent, which cannot be overcome by due diligence, or if there is no agreement on the length of the extension, the dispute shall be resolved in accordance with Section , "DISPUTE RESOLUTION."

Thursday
March 8, 1990

Final Rule

Part II

Environmental Protection Agency

40 CFR Part 300
National Oil and Hazardous Substances
Pollution Contingency Plan; Final Rule

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(B) The nature of activities that have occurred where the release is located; and

(C) Whether local and state authorities have been contacted about the release.

(iii) The lead federal agency shall complete a remedial or removal PA within one year of the date of receipt of a complete petition pursuant to paragraph (b)(5) of this section, if one has not been performed previously, unless the lead federal agency determines that a PA is not appropriate. Where such a determination is made, the lead federal agency shall notify the petitioner and will provide a reason for the determination.

(iv) When determining if performance of a PA is appropriate, the lead federal agency shall take into consideration:

(A) Whether there is information indicating that a release has occurred or there is a threat of a release of a hazardous substance, pollutant, or contaminant; and

(B) Whether the release is eligible for response under CERCLA.

(c) *Remedial site inspection.* (1) The lead agency shall perform a remedial SI as appropriate to:

(i) Eliminate from further consideration those releases that pose no significant threat to public health or the environment;

(ii) Determine the potential need for removal action;

(iii) Collect or develop additional data, as appropriate, to evaluate the release pursuant to the HRS; and

(iv) Collect data in addition to that required to score the release pursuant to the HRS, as appropriate, to better characterize the release for more effective and rapid initiation of the RI/FS or response under other authorities.

(2) The remedial SI shall build upon the information collected in the remedial PA. The remedial SI shall involve, as appropriate, both on- and off-site field investigatory efforts, and sampling.

(3) If the remedial SI indicates that removal action may be appropriate, the lead agency shall initiate removal site evaluation pursuant to § 300.410.

(4) Prior to conducting field sampling as part of site inspections, the lead agency shall develop sampling and analysis plans that shall provide a process for obtaining data of sufficient quality and quantity to satisfy data needs. The sampling and analysis plans shall consist of two parts:

(i) The field sampling plan, which describes the number, type, and location of samples, and the type of analyses, and

(ii) The quality assurance project plan (QAPP), which describes policy,

organization, and functional activities, and the data quality objectives and measures necessary to achieve adequate data for use in site evaluation and hazard ranking system activities.

(5) Upon completion of a remedial SI, the lead agency shall prepare a report that includes the following:

(i) A description/history/nature of waste handling;

(ii) A description of known contaminants;

(iii) A description of pathways of migration of contaminants;

(iv) An identification and description of human and environmental targets; and

(v) A recommendation on whether further action is warranted.

§ 300.425 Establishing remedial priorities.

(a) *General.* The purpose of this section is to identify the criteria as well as the methods and procedures EPA uses to establish its priorities for remedial actions.

(b) *National Priorities List.* The NPL is the list of priority releases for long-term remedial evaluation and response.

(1) Only those releases included on the NPL shall be considered eligible for Fund-financed remedial action. Removal actions (including remedial planning activities, RI/FSs, and other actions taken pursuant to CERCLA section 104(b)) are not limited to NPL sites.

(2) Inclusion of a release on the NPL does not imply that monies will be expended, nor does the rank of a release on the NPL establish the precise priorities for the allocation of Fund resources. EPA may also pursue other appropriate authorities to remedy the release, including enforcement actions under CERCLA and other laws. A site's rank on the NPL serves, along with other factors, including enforcement actions, as a basis to guide the allocation of Fund resources among releases.

(3) Federal facilities that meet the criteria identified in paragraph (c) of this section are eligible for inclusion on the NPL. Except as provided by CERCLA sections 111(e)(3) and 111(c), federal facilities are not eligible for Fund-financed remedial actions.

(4) Inclusion on the NPL is not a precondition to action by the lead agency under CERCLA sections 106 or 122 or to action under CERCLA section 107 for recovery of non-Fund-financed costs or Fund-financed costs other than Fund-financed remedial construction costs.

(c) *Methods for determining eligibility for NPL.* A release may be included on the NPL if the release meets one of the following criteria:

(1) The release scores sufficiently high pursuant to the Hazard Ranking System described in Appendix A to this part.

(2) A state (not including Indian tribes) has designated a release as its highest priority. States may make only one such designation; or

(3) The release satisfies all of the following criteria:

(i) The Agency for Toxic Substances and Disease Registry has issued a health advisory that recommends dissociation of individuals from the release;

(ii) EPA determines that the release poses a significant threat to public health; and

(iii) EPA anticipates that it will be more cost-effective to use its remedial authority than to use removal authority to respond to the release.

(d) *Procedures for placing sites on the NPL.* Lead agencies may submit candidates to EPA by scoring the release using the HRS and providing the appropriate backup documentation.

(1) Lead agencies may submit HRS scoring packages to EPA anytime throughout the year.

(2) EPA shall review lead agencies' HRS scoring packages and revise them as appropriate. EPA shall develop any additional HRS scoring packages on releases known to EPA.

(3) EPA shall compile the NPL based on the methods identified in paragraph (c) of this section.

(4) EPA shall update the NPL at least once a year.

(5) To ensure public involvement during the proposal to add a release to the NPL, EPA shall:

(i) Publish the proposed rule in the Federal Register and solicit comments through a public comment period; and

(ii) Publish the final rule in the Federal Register, and make available a response to each significant comment and any significant new data submitted during the comment period.

(6) Releases may be categorized on the NPL when deemed appropriate by EPA.

(e) *Deletion from the NPL.* Releases may be deleted from or recategorized on the NPL where no further response is appropriate.

(1) EPA shall consult with the state on proposed deletions from the NPL prior to developing the notice of intent to delete. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria has been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

(2) Releases shall not be deleted from the NPL until the state in which the release was located has concurred on the proposed deletion. EPA shall provide the state 30 working days for review of the deletion notice prior to its publication in the Federal Register.

(3) All releases deleted from the NPL are eligible for further Fund-financed remedial actions should future conditions warrant such action. Whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the HRS.

(4) To ensure public involvement during the proposal to delete a release from the NPL, EPA shall:

(i) Publish a notice of intent to delete in the Federal Register and solicit comment through a public comment period of a minimum of 30 calendar days;

(ii) In a major local newspaper of general circulation at or near the release that is proposed for deletion, publish a notice of availability of the notice of intent to delete;

(iii) Place copies of information supporting the proposed deletion in the information repository, described in § 300.430(c)(2)(iii), at or near the release proposed for deletion. These items shall be available for public inspection and copying; and

(iv) Respond to each significant comment and any significant new data submitted during the comment period and include this response document in the final deletion package.

(5) EPA shall place the final deletion package in the local information repository once the notice of final deletion has been published in the Federal Register.

§ 300.430 Remedial investigation/feasibility study and selection of remedy.

(a) *General*—(1) *Introduction*. The purpose of the remedy selection process is to implement remedies that eliminate, reduce, or control risks to human health and the environment. Remedial actions are to be implemented as soon as site data and information make it possible to do so. Accordingly, EPA has established the following program goal, expectations, and program management principles to assist in the identification

and implementation of appropriate remedial actions.

(i) *Program goal*. The national goal of the remedy selection process is to select remedies that are protective of human health and the environment, that maintain protection over time, and that minimize untreated waste.

(ii) *Program management principles*. EPA generally shall consider the following general principles of program management during the remedial process:

(A) Sites should generally be remediated in operable units when early actions are necessary or appropriate to achieve significant risk reduction quickly, when phased analysis and response is necessary or appropriate given the size or complexity of the site, or to expedite the completion of total site cleanup.

(B) Operable units, including interim action operable units, should not be inconsistent with nor preclude implementation of the expected final remedy.

(C) Site-specific data needs, the evaluation of alternatives, and the documentation of the selected remedy should reflect the scope and complexity of the site problems being addressed.

(iii) *Expectations*. EPA generally shall consider the following expectations in developing appropriate remedial alternatives:

(A) EPA expects to use treatment to address the principal threats posed by a site, wherever practicable. Principal threats for which treatment is most likely to be appropriate include liquids, areas contaminated with high concentrations of toxic compounds, and highly mobile materials.

(B) EPA expects to use engineering controls, such as containment, for waste that poses a relatively low long-term threat or where treatment is impracticable.

(C) EPA expects to use a combination of methods, as appropriate, to achieve protection of human health and the environment. In appropriate site situations, treatment of the principal threats posed by a site, with priority placed on treating waste that is liquid, highly toxic or highly mobile, will be combined with engineering controls (such as containment) and institutional controls, as appropriate, for treatment residuals and untreated waste.

(D) EPA expects to use institutional controls such as water use and deed restrictions to supplement engineering controls as appropriate for short- and long-term management to prevent or limit exposure to hazardous substances, pollutants, or contaminants. Institutional controls may be used during the conduct

of the remedial investigation/feasibility study (RI/FS) and implementation of the remedial action and, where necessary, as a component of the completed remedy. The use of institutional controls shall not substitute for active response measures (e.g., treatment and/or containment of source material, restoration of ground waters to their beneficial uses) as the sole remedy unless such active measures are determined not to be practicable, based on the balancing of trade-offs among alternatives that is conducted during the selection of remedy.

(E) EPA expects to consider using innovative technology when such technology offers the potential for comparable or superior treatment performance or implementability, fewer or lesser adverse impacts than other available approaches, or lower costs for similar levels of performance than demonstrated technologies.

(F) EPA expects to return usable ground waters to their beneficial uses wherever practicable, within a timeframe that is reasonable given the particular circumstances of the site. When restoration of ground water to beneficial uses is not practicable, EPA expects to prevent further migration of the plume, prevent exposure to the contaminated ground water, and evaluate further risk reduction.

(2) *Remedial investigation/feasibility study*. The purpose of the remedial investigation/feasibility study (RI/FS) is to assess site conditions and evaluate alternatives to the extent necessary to select a remedy. Developing and conducting an RI/FS generally includes the following activities: project scoping, data collection, risk assessment, treatability studies, and analysis of alternatives. The scope and timing of these activities should be tailored to the nature and complexity of the problem and the response alternatives being considered.

(b) *Scoping*. In implementing this section, the lead agency should consider the program goal, program management principles, and expectations contained in this rule. The investigative and analytical studies should be tailored to site circumstances so that the scope and detail of the analysis is appropriate to the complexity of site problems being addressed. During scoping, the lead and support agencies shall confer to identify the optimal set and sequence of actions necessary to address site problems. Specifically, the lead agency shall:

(1) Assemble and evaluate existing data on the site, including the results of any removal actions, remedial