



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105

**MEMORANDUM**

**DATE:** JUN 12 2015

**SUBJECT:** Project Ceiling Increase Approval, Funding, and Exemption from the 12-Month Statutory Limit to Continue the Removal Action at the Eureka Smelters Site (aka Town of Eureka), Eureka NV

**FROM:** Tom Dunkelman, On-Scene Coordinator  
Emergency Response Section (SFD-9-2)

Bret Moxley, On-Scene Coordinator *Bcm 6/5/15*  
Emergency Response Section (SFD-9-2)

**THRU:** Harry L. Allen, Chief *HLA*  
Emergency Response Section (SFD-9-2)

**TO:** Dan Meer, Assistant Director  
Superfund Division (SFD-9)

**I. PURPOSE**

The purpose of this memorandum is to request an exemption from the 12-Month Statutory Limit and a ceiling increase of \$1,300,000 in direct extramural costs to continue response actions to mitigate threats to human health and the environment posed by the presence of lead and arsenic in soil and slag material at the Eureka Smelters Site, aka Town of Eureka, (the "Site") located in Eureka, NV. Approval of this request will bring the total removal action ceiling to \$5,050,000.<sup>1</sup>

The United States Environmental Protection Agency ("EPA") previously approved the response action in the July 30, 2013 Request for a Time-Critical Removal Action at the Eureka Smelters Site (the "Action Memorandum"), included as Attachment B to this memorandum. On April 19, 2014, EPA approved a Ceiling Increase Action Memorandum, which included an exemption from the \$2 million Statutory Limit, included as Attachment C

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<sup>1</sup> "Removal Action Ceiling Costs," as defined by EPA guidance OSWER 9360.0-42 (November 5, 2001), includes only direct extramural costs. As discussed in this memorandum, additional costs may be incurred and recoverable as "incurred response costs."

to this memorandum. The time-critical removal action is being taken pursuant to Section 104(a)(1) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9604(a)(1), to mitigate threats to human health and the environment posed by the presence of arsenic and lead present in soil at residential properties in Eureka. The required exemption to the 12-month Statutory Limit is justifiable under the criteria of 40 C.F.R. § 300.415(b)(5)(i), which allows for an exemption from the statutory limitation when: 1) there is an immediate risk to public health or welfare or the environment; 2) continued response actions are immediately required to prevent, limit, or mitigate an emergency; and 3) such assistance will not otherwise be provided on a timely basis.

As explained below, the exemption from the 12-month Statutory Limit requested in this memorandum is necessary for cleanup at residential properties that were not remediated during the initial removal actions due to a lack of time and funding and at additional residential properties with elevated levels of arsenic and lead that were identified during the performance of the initial removal actions. The additional funding is also necessary to provide permanent disposal of up to 15,000 cubic yards of contaminated soil, which includes soil that was excavated during the previous removal actions and soil that would be excavated as part of the proposed removal action. The contaminated soil which was excavated during the previous removal actions, was placed into temporary storage areas.

## **II. SITE CONDITIONS AND BACKGROUND**

Site Status: Non-NPL  
Category of Removal: Time-Critical  
CERCLIS: NVN000909500  
SITE ID: 09YJ

The Site description, background and conditions are generally addressed in the initial Action Memorandum. From early September 2013 through early November 2013 and from April 2014 through July 2014, EPA's Emergency Response Program conducted the following removal activities at the Site:

- Excavation of up to one foot of contaminated soil at 43 residential properties and at a portion of the Eureka Elementary School, replacement of excavated soil with clean backfill, and replacement of landscaping that was damaged during the excavation.
- Sampling and analysis of excavated areas to document contaminant levels at the base of the excavation.
- Placement of barrier tape at the base of excavation areas where removal action levels were not reached.
- Placement of excavated soil in a temporary storage areas at the north end of town.
- Air sampling and monitoring of all operations to monitor for off-Site emissions of hazardous substances.
- Sampling of 90 additional properties.

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

Conditions at the Site represent a release, or a substantial threat of a release of a CERCLA hazardous substance to public health, welfare, or the environment based on the factors set forth in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR § 300.415(b)(2). Specific factors of the release, including the potential exposure of hazardous substances to populations, animal or the food chain are addressed in the Action Memorandum. In addition to the discussion in the Action Memorandum, EPA intends to complete response actions at approximately 20 additional residential properties.

### **IV. ENDANGERMENT DETERMINATION**

See, the Action Memorandum, determining that arsenic and lead contamination at the Site poses a threat of release and represents an imminent and substantial endangerment to the public health or welfare or the environment.

### **V. EXEMPTION FROM STATUTORY LIMITS**

In the previous Action Memorandum, EPA approved an exemption to the \$2,000,000 Statutory Limit. Pursuant to EPA delegations 14-2 and R9 1290.03A, the Regional Administrator, through his delegation to the Assistant Director for the Emergency Response, Preparedness and Prevention Branch, is authorized to determine whether an exemption from the \$2,000,000 or the 12-month statutory limitations is warranted, so long as the total response costs do not exceed \$6,000,000. The total response costs (exclusive of EPA direct and indirect costs) for the response action proposed in this memorandum would not exceed \$6,000,000.

EPA response staff believe that an exemption from the 12-month limitation is justifiable under 40 C.F.R. § 300.415(b)(5)(i), which provides that the exemption is appropriate when: 1) there is an immediate risk to public health or welfare or the environment; 2) the response actions are immediately required to prevent, limit, or mitigate an emergency; and, 3) such assistance will not otherwise be provided on a timely basis. As stated in this memorandum, there is an immediate risk posed by the conditions at the Site and an emergency exemption to the 12-month Statutory Limit is necessary to abate these threats. Each of these criteria is addressed below:

#### **1. There is an Immediate Risk to Public Health or Welfare or the Environment**

Uncontained materials at the Site contain high levels of lead and arsenic, which are hazardous substances and are present on the surface in residential yards on many lots located within the town of Eureka.

**2. Continued Response Actions are Immediately Required to Prevent, Limit or Mitigate an Emergency.**

The removal of the lead and arsenic containing wastes from the residential lots is necessary to prevent further exposure to the public due to contact with lead and arsenic in soils in yards of residential homes.

**3. Assistance will not otherwise be provided on a timely basis.**

State and local resources are not able to address the conditions at the Site in a timely manner. Unless EPA conducts the response anticipated in this memorandum, it appears that assistance will not otherwise be provided on a timely basis.

**VI. PROPOSED ACTIONS AND ESTIMATED COSTS**

**A. Proposed Actions**

In the initial Action Memorandum, EPA identified initial Removal Action levels of 600 ppm arsenic and 3,000 ppm lead. These initial Removal Action levels were intended to identify only the most contaminated residential properties requiring immediate cleanup. In the fall of 2013 and spring of 2014, EPA completed cleanup at 43 residential properties and at a portion of the Eureka Elementary School.

The additional work to be performed addresses properties with soil contamination in excess of the initial Removal Action levels, which were not addressed in the fall of 2013 or spring of 2014 due to lack of time and funding and additional properties which were identified through sampling conducted in the spring of 2014 as having soil contamination in excess of the initial Removal Action levels. The additional work to be performed may also include residential properties that have elevated levels of arsenic and lead but which are below the initial Removal Action Levels, where young children, pregnant women or individuals with elevated blood lead levels are living. It is anticipated that up to 15 additional properties will require cleanup.

The work to be performed at each property will be similar to the work performed during the initial removal action and will include the following:

- Excavation of up to one foot of contaminated soil at residential properties, replacement of excavated soil with clean backfill, and replacement of landscaping that was damaged during the excavation.
- Sampling and analysis of excavated areas to document contaminant levels at the base of the excavation.
- Placement of barrier tape at the base of excavation areas where removal action levels were not reached. Currently there are no zoning laws or regulation in the town of Eureka. However, as part of an upcoming Engineering Evaluation and Cost Analysis (EE/CA), EPA will explore options for post removal site control.

- Placement of excavated soil in a permanent repository Disposal of the excavated soil will be conducted in compliance with 40 C.F.R. § 300.440.
- Air sampling and monitoring of all operations to monitor for off-Site emissions of hazardous substances.

**B. Estimated Costs with Ceiling Increase**

	Original Cost	Additional Costs	Total Costs
<u>Extramural Costs from the Regional Allowance</u>			
Cleanup Contractor	3,300,000	1,100,000	4,400,000
<u>Extramural Costs not from the Regional Allowance</u>			
START	400,000	200,000	600,000
Pacific Strike Team	50,000	0	50,000
 Total Extramural Removal Ceiling	 \$3,750,000	 \$1,300,000	 \$5,050,000

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

If the ceiling increase requested in this memorandum is not granted, the response action for the cleanup of up to 15 additional residential properties would not be completed in a timely manner. Accordingly, the threat determined in the July 30, 2013 Action Memorandum will continue to be unabated.

**VIII. OUTSTANDING POLICY ISSUES**

At this time, there are no identified outstanding policy issues with the Site.

**IX. ENFORCEMENT**

Please see the Enforcement Confidential Addendum attached to the Action Memorandum and an updated Enforcement Confidential Addendum attached to this document for a discussion regarding potentially responsible parties and anticipated enforcement. In addition to the extramural costs estimated for the proposed action, a cost recovery enforcement action also may recover the following intramural costs:

<u>Intramural Costs</u>	<u>Original Cost</u>	<u>Additional Costs</u>	<u>Total Costs</u>
U.S. EPA Direct Costs <sup>2</sup>	125,000	50,000	175,000
U.S. EPA Indirect Costs (52.39% of 5,050,00 + 175,000)	1,723,500	1,013,877	2,737,377
Total Intramural Cost	<u>\$1,848,500</u>	<u>\$1,063,877</u>	<u>\$2,912,377</u>

The total EPA extramural and intramural costs for this removal action that will be eligible for cost recovery, based on full-cost accounting practices, are estimated to be \$7,962,377. Of this, an estimated \$5,050,000 comes from the Regional removal allowance. The requested additional funding is \$1,300,000.

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<sup>2</sup> 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 costs from this estimate will affect the United States' right to cost recovery.

## X. RECOMMENDATION

This decision document would commit additional funding to complete the response determined necessary in the July 30, 2013 Action Memorandum for the Eureka Smelters Site. The Administrative Record for the Site includes information supporting this decision. If you approve of this action, please indicate your decision by signing below. The total removal project ceiling, if approved, will be \$7,962,377. Of this, an estimated \$5,050,000 comes from the Regional removal allowance. The requested additional funding is \$1,300,000.

Approve: \_\_\_\_\_

Daniel Meer, Assistant Director  
Superfund Division

12 June 2015  
Date

Disapprove: \_\_\_\_\_

Daniel Meer, Assistant Director  
Superfund Division

Date

Attachment A:  
Enforcement Confidential Addendum

Attachment B:  
Index to the Administrative Record Index

Attachment C:  
Request for a Time Critical Removal Action the Eureka Smelters Site, July 30, 2013

Attachment D:  
Project Ceiling Increase Approval, Funding and Exemption from the \$2 Million Statutory Limit to Continue the Removal Action at the Eureka Smelters Site, April 9, 2014

cc: G. Lovato, NDEP

bcc: Site File  
Larry Bradfish, ORC-3  
Tom Dunkelman, SFD-9-2  
Bret Moxley, SFD-9-2  
Celeste Temple, SFD-9-4  
Barbara Lee, SFD-9-4  
Ramon Albizu, SFD-9-4