



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

75 Hawthorne Street
San Francisco, CA 94105

ACTION MEMORANDUM

SUBJECT: \$2-million Exemption Request and Ceiling Increase Action Memorandum for a Time Critical Removal Action at the Supply Creek Asbestos Site, Hoopa, Humboldt County, California, Hoopa Valley Reservation

FROM: Olivia Trombadore
Federal On-Scene Coordinator (SFD-9-2)

THRU: Peter Guria, Assistant Director
Emergency Response, Planning & Preparedness Branch

TO: Michael Montgomery, Director
Superfund & Emergency Management Division

I. PURPOSE

The purpose of this memorandum is to request and document approval of a combined \$2-million exemption and ceiling Increase for the Supply Creek Asbestos Site (the "Site") located in Hoopa, California on the Hoopa Valley Reservation. This memorandum requests an additional \$1,308,000 in extramural costs beyond the current ceiling, which increases the removal allowance costs from \$1,560,000 to \$2,868,000.

The initial action memorandum dated May 16, 2022, which is included as Attachment 1 ("Action Memo"), documented the threats posed to human health and the environment from the presence of exposed asbestos debris piles.

Since the initial Action Memo, additional funds are required to cover higher costs for the transportation and disposal of 3,100 cubic yards of asbestos debris and soil.

This memorandum would serve as approval for the expenditure required for EPA to take actions described herein to abate the substantial endangerment to human health and the environment posed by asbestos at the Site. The response action at the Site is consistent with removal activities authorized pursuant to Section 104(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9604(a); and Section 300.415 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. § 300.415.

II. SITE CONDITIONS AND BACKGROUND

Site Name: Supply Creek Asbestos Site
CERCLIS ID: CAN000920218
SSID: A9DT
Site Location (Lat/Lon): 41.052059, -123.678743
Removal Category: Time Critical
NPL Status: Non-NPL

The original action memo was approved May 16, 2022 and is included as Attachment 1. The removal will be initiated by EPA on July 25, 2022. Actions completed by the EPA include a Site Assessment to determine the extent of asbestos contamination at the site. The week of July 25th, the Emergency and

Rapid Response Services (ERRS) contractor will begin work at the site to consolidate the asbestos containing materials (ACM) and soil and prepare for offsite transportation and disposal.

The reason a ceiling increase is required to complete this removal is because transportation and disposal costs are significantly higher than the originally estimated. The original Action Memorandum relied on transportation and disposal costs from recent removals to build the cost estimate for the project. Once request for bids were put out by the ERRS contractor, multiple trucking companies and landfills responded with bids four to five times higher than the historic cost data, revealing the actual costs for this work. The current lowest cost combination of trucking and disposal bids is three to four times higher than the original cost estimate. This unanticipated jump in transportation and disposal costs may be a result of the COVID-19 pandemic, high inflation, reduction in truck drivers, and/or increased cost of fuel over seen over the past several months in the United States.

Should this ceiling increase be granted, the additional funds would be used to transport and dispose of the 3,100 cubic yards of asbestos contaminate debris at the Site. Should this ceiling increase be denied this removal would not be able to proceed and the exposed asbestos containing debris would remain in place. This debris would continue to pose a health hazard to children at the nearby elementary school and soccer field as well as adults passing through the area, which is centrally located and accessible on the Hoopa Valley Tribe Lands.

A. Site Description

1. Physical Location

Refer to previous action memorandum dated May 16, 2022, included as Attachment 1.

2. Site Characteristics

Refer to previous action memorandum dated May 16, 2022, included as Attachment 1.

3. Site Operations and Enforcement History

Refer to previous action memorandum dated May 16, 2022, included as Attachment 1.

4. Removal Site Evaluation

Refer to previous action memorandum dated May 16, 2022, included as Attachment 1.

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

Refer to previous action memorandum dated May 16, 2022, included as Attachment 1.

6. National Priority List (NPL) status

This Site is not on the NPL.

B. Other Actions to Date

Refer to previous action memorandum dated May 16, 2022, included as Attachment 1

C. State and Local Authorities' Roles

1. State and local actions to date

Refer to previous action memorandum dated May 16, 2022, included as Attachment 1.

2. Potential for Continued State/Local Response

Refer to previous action memorandum dated May 16, 2022, included as Attachment 1.

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

Asbestos remains the only contaminant of concern at the Site. Refer to previous action memorandum dated May 16, 2022, included as Attachment 1.

IV. ENDANGERMENT DETERMINATION

Refer to previous action memorandum dated May 16, 2022, included as Attachment 1.

V. EXEMPTION FROM STATUTORY LIMITS

Section 104(c)(1) of CERCLA generally restricts federal lead removal actions to a total extramural direct cost of \$2,000,000 (42 U.S.C. § 9604(c)(1)). EPA anticipates that the proposed removal action now will cost in excess of \$2,000,000. EPA response staff believe that an exemption from the \$2,000,000 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 \$2 million 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

The Site consists of approximately 3,100 cubic yards of soils mixed with ACM and much of this ACM is exposed at the surface, in piles, and in the footprint of the unfinished road project. An elementary school yard and soccer field are located just meters from the debris piles and exposed ACM. This combination of factors creates an inhalation pathway for asbestos to reach sensitive receptors, children, and teenagers. The parcel is also a common throughfare between Loop Rd and HWY 96 for vehicles. Across Loop Rd from the property are two baseball fields.

Exposure to airborne, friable asbestos poses a potential health risk to the public resulting from the inhalation of asbestos fibers. According to ATSDR, breathing asbestos can cause tiny asbestos fibers to get stuck in the lungs and irritate lung tissues. Asbestos exposure increases the risk of developing certain cancers such as lung cancer and mesothelioma. Additionally, breathing asbestos can lead to chronic diseases such as asbestosis and pleural disease. Asbestos fibers can enter the air from wind, sun, and temperature degradation of the ACM. Wind can lead to the migration of small asbestos fibers, and fiber-containing particles may remain suspended in the air for a long time and be carried long distances by wind before settling. The ACM at the Site may present a potential threat to public health or welfare or the environment through migration as windblown particles or suspended in rainwater runoff.

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

The removal of asbestos at the Site is necessary to prevent the threat to public health and welfare posed by exposed ACM debris at the Site. The transport and disposal of this ACM debris cannot be completed without the requested ceiling increase and thus the ACM would be left exposed on site.

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

There is no additional source of funding, including from the Hoopa Valley Tribe, nor is there an identifiable responsible party to complete this removal. Thus, this removal will otherwise not occur on a timely basis if EPA cannot complete the work. The proposed ceiling increase will allow for the completion of removal activities at the Site.

VI. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Actions

1. Proposed action description

Refer to previous action memorandum dated May 16, 2022, included as Attachment 1.

2. Contribution to remedial performance

Refer to previous action memorandum dated May 16, 2022, included as Attachment 1.

3. Applicable or relevant and appropriate requirements (ARARs)

Refer to previous action memorandum dated May 16, 2022, included as Attachment 1.

4. Project schedule

Refer to previous action memorandum dated May 16, 2022, included as Attachment 1.

B. Estimated Costs

Extramural costs

Regional Removal Allowance Costs:	<u>Current Ceiling</u>	<u>Proposed Change</u>	<u>Proposed Ceiling</u>
Total ERRS Contractor Costs:	\$1,000,000	\$1,090,000	\$2,090,000
Total START Contractor Costs:	\$300,000	\$0	\$300,000
Subtotal Extramural Costs:	\$1,300,000	\$1,090,000	\$2,390,000
Extramural Contingency (20%):	\$260,000	\$218,000	\$478,000
TOTAL PROJECT CEILING:	\$1,560,000	\$1,308,000	\$2,868,000

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

Refer to previous action memorandum dated May 16, 2022, included as Attachment 1.

VIII. OUTSTANDING POLICY ISSUES

None.

IX. ENFORCEMENT

Please see the attached, updated, Confidential Enforcement Addendum for a discussion regarding enforcement in this matter. In addition to the extramural costs estimated for the proposed action, a cost recovery enforcement action also may recover the following intramural costs:

Intramural Costs¹

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

	<u>Current Ceiling</u>	<u>Proposed Increase</u>	<u>Proposed Ceiling</u>
U.S. EPA Direct Costs:	\$75,000	\$0	\$75,000
U.S. EPA Indirect Costs: (85.17% of (AM Ceiling + EPA Direct Costs))	\$1,392,529	\$1,114,024	\$2,506,553
Subtotal Intramural Costs:	\$1,467,529	\$1,114,024	\$2,581,553

The total EPA extramural and intramural costs for this removal action, based on full-cost accounting practices that will be eligible for cost recovery, are estimated to be \$5,449,553. Of this, an estimated \$2,868,000 comes from the regional removal allowance.

X. RECOMMENDATION

This decision document represents an appropriate removal action for the Supply Creek Asbestos Site, in Hoopa, California, developed in accordance with CERCLA and not inconsistent with the NCP. This decision is based on the Administrative Record for the Site.

Conditions at the Site meet the criteria for a CERCLA section 104(c) emergency exemption, and I recommend your approval of an exemption from the \$2 million limitation and a ceiling increase of \$1,308,000. The total removal action project ceiling if approved will be \$2,868,000. If you approve of this action, please indicate your decision by signing below.

MICHAEL MONTGOMERY

Digitally signed by MICHAEL

MONTGOMERY

Date: 2022.07.29 09:02:10 -07'00'

Approve: _____

Michael Montgomery, Director
Superfund & Emergency Management Division

Date

Disapprove: _____

Michael Montgomery, Director
Superfund & Emergency Management Division

Date

Attachments

1. Supply Creek Asbestos Site Action Memorandum dated May 16, 2022
2. Index to the Administrative Record for the Supply Creek Asbestos Site Action Memorandum dated May 16, 2022
3. Enforcement Confidential Addendum

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.

bcc : Site File
 G. Krauss, ORC
 C. Whitenack, SFD-7-5
 O. Trombadore, SFD-9-2
 M. Matthews, SFD-9-3
 B. Lee, SFD-9-3
 K. Castro, SFD-2
 P. Guria, SFD-9
 L. Keller, SFD-9-1
 J. Musante, SFD-9-2
 A. Helmlinger, ORC

ATTACHMENT 2
Index to the Administrative Record

- 1) Framework for Investigating Asbestos-contaminated comprehensive environmental response, Compensation, and Liability Act Sites, U.S. EPA, 2021.
- 2) Agency for Toxic Substances and Disease Registry (ATSDR) ToxFAQs, Asbestos CAS#1332-21-4, September 2001.
- 3) Supply Creek Asbestos Phase II ESA Report: Site Investigation Report of Findings, August 2021.
- 4) Supply Creek Asbestos Phase I ESA Report: Phase 1 Environmental Site Assessment, Supply Creek Site, Using ASTM Practice E 1527-13, May 2019.
- 5) Hoopa Valley Tribal Council letter to U.S. EPA Region 9 requesting assistance with the Supply Creek Asbestos Site, March 2022.
- 6) Asbestos TEM Laboratories, Inc., Laboratory Report #360738, analytical results for 4 bulk samples, October 2018.
- 7) Supply Creek Sampling and Analysis Plan for the Phase II ESA, January 2021.