



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE – SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

MEMORANDUM

DATE: August 8, 2022

SUBJ: Request for a Removal Action at the Merrymeeting Road Drum Site,
New Durham, New Hampshire 03855 - **Action Memorandum**

FROM: Lina Takahashi, On-Scene Coordinator
Emergency Response and Removal Section II

THRU: William Lovely, Chief
Emergency Response and Removal Section II

Carol Tucker, Chief
Emergency Planning & Response Branch

TO: Bryan Olson, Director
Superfund Emergency and Management Division

I. PURPOSE

The purpose of this Action Memorandum is to request and document approval of the proposed time-critical removal action at the Merrymeeting Road Drum Site (the Site), which is located at a private residence on Merrymeeting Road in New Durham, Strafford County, New Hampshire. Hazardous substances present in drums at the Site, if not addressed by implementing the response actions selected in this Action Memorandum, will continue to pose a threat to human health and the environment. There are no nationally significant or precedent-setting issues associated with this Site, and there has been no use of the On-Scene Coordinator's (OSC's) \$200,000 warrant authority.

II. SITE CONDITIONS AND BACKGROUND

CERCLIS ID# : NHN000153579
SITE ID# : 01RP
CATEGORY : Time-Critical

A. Site Description

1. Removal site evaluation

According to the Site owner, a former tenant dumped twenty-one 55-gallon drums in April 2022 after being evicted from a recreational camper on the residential property. The property owner consulted an environmental contractor and contacted the New Hampshire Department of Environmental Services (NHDES) Spill Response and Complaint Investigation Section. Additionally, the homeowner called the New Durham Police Department on May 10, 2022 and a police officer was dispatched to the property.

On May 12, 2022, NHDES visited the Site and assessed and stabilized the drums.

EPA received a referral on June 9th, 2022, from NHDES requesting assistance assessing and addressing the abandoned drums on the residential property.

On July 22, 2022, EPA conducted a site walk with NHDES and the property owner. During the site visit, EPA noted several threats to human health and the environment posed by the twenty-one abandoned drums. Specifically, the compromised drums are 100 feet away from a water source that impacts area drinking wells and ecologically sensitive environments; are fifty feet away from the road and are visible and unsecured, susceptible to tampering; and are vulnerable to extreme changes in weather due to their damaged condition.

Site conditions warrant a time-critical removal action without a preceding preliminary assessment and site investigation as a means of preventing the drums from being tampered with and/or the contents spilling into the environment and potentially contaminating drinking water wells and the nearby pond.

2. Physical location

The Site is located at a private residence on Merrymeeting Road, New Durham, Strafford County, New Hampshire.

The property is boarded by residential properties to the north and south. Just east of the Site is Merrymeeting Road, Marsh Pond and the Jones Dam. To the west is the Site's detached garage, residence and the remaining portion of the lot consisting of undeveloped woods.

Latitude: 43.446853018108214
Longitude: -71.17574603817228

3. Site characteristics

Located at the front of the 18-acre residential property, to the left of the driveway, the drums occupy an approximately 20-square foot area and have been allegedly abandoned by a former tenant who was living in a recreational camper on the property. NHDES and the New Durham Police Department both noted the poor condition of the drums. NHDES observed one drum to have a crack in the base of the drum and it was stored upside down so that the contents of the drum would not be able to leak out. NHDES responders covered up the crack in the drum and placed a polyethylene bag over the outside of the container. NHDES righted several drums and temporarily plugged and covered an unsealed container.

The daytime population in a one-mile radius around the Site is approximately 143 people. Immediately across the street is the Marsh Pond and Jones Dam, which protects the Merrymeeting Marsh. Homes on Merrymeeting Road rely on well water, some of which are impacted by the pond.

Based on information in EPA's EJSCREEN environmental justice screening tool, 0 out of 11 Environmental Justice Indexes for the area within a one-mile radius of the Site exceed the 80th percentile on a national basis, however the Index for Hazardous Waste proximity exceeds the 80th percentile on a state basis. Please see the attached EJSCREEN standard report for more information.

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

Limited information is currently available; the labels on the drums appear to be representative of the contents. The markings indicate the drums contain two-part polyurethane spray foam insulation. Safety Data Sheets from the manufactures list 4,4'-Methylenediphenyl Diisocyanate (MDI) as a primary component. MDI is a hazardous substance as defined by Section 101(14) of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601(14). The abandoned and degraded drums on the Site pose a threat of release which may be exacerbated by weather conditions. The drums are visible from the road and the Site is not secure.

5. NPL status

The Site is not currently on the National Priorities List and has not received a Hazardous Ranking System rating.

6. Maps, pictures, and other graphic representations

Refer to attached pictures to display current conditions.



Figure 1 Drums on Merrymeeting Road.
Photo Taken 7/22/2022



Figure 2 Drums beside Camper
Photo Taken 7/22/2022



Figure 3 Drum with equipment attached.
Merrymeeting Road and Marsh Pond visible in
top left corner.
Photo Taken 7/22/2022



Figure 4 Drum covered to prevent release.
Photo Taken 7/22/2022

B. Other Actions to Date

1. Previous actions

EPA has not conducted any previous actions at the Site.

2. Current actions

Currently, no response actions have been taken by EPA to address the potential threat of release of hazardous substances.

C. State and Local Authorities' Roles

1. State and local actions to date

On May 10, 2022, the New Durham Police Department was contacted by the homeowner who reported the abandoned drums. A police officer went to the Site and saw 21 barrels, three of which were tipped over on their sides, located on the left side of the driveway, close to a camper; he photo documented the area. That afternoon an officer spoke with a NHDES Spill Response and Complaint Investigation Section representative, emailed his photographs of the drums, and was informed that NHDES had already been contacted by the homeowner.

On May 12, 2022, representatives of the NHDES Spill Response and Complaint Investigation Section visited the Site and found twenty-one 55-gallon drums abandoned in total; the majority are labelled and full. Most of the drums appear to contain Parts A and B Spray foam insulation, the primary component of which is 4,4'-methylenediphenyl diisocyanate, a hazardous substance.

One poly drum has a split near the bottom; NHDES placed it upside down and covered and sealed it to prevent release. A steel drum was missing a two-inch bung, so NHDES covered and sealed it and the three drums found lying sideways were righted. NHDES did not observe an apparent release and marked off the area with caution tape.

2. Potential for continued State/local response

EPA will continue coordinating with NHDES. EPA will also work with the New Durham Police Department.

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

As described below, Site conditions meet the general criteria for a removal action, as set forth in 40 C.F.R. §300.415(b)(1), in that “there is a threat to public health or welfare of the United

States or the environment,” and in consideration of the factors set forth in 40 C.F.R. §300.415(b)(2) as described below.

The following substance is a hazardous substance as defined by Section 101(14) of CERCLA, 42 U.S.C. 9601 (14):

- 4,4'-Methylenediphenyl Diisocyanate (MDI)

The following information is from ToxFAQs which are summaries about hazardous substances and their health effects. ToxFAQs are published by the Agency of Toxic Substances and Disease Registry (ATSDR):

ToxFAQ for Methylenediphenyl Diisocyanate (MDI), June 2018

Workers exposed to MDI have reported respiratory effects, including a decrease in lung function. Asthma and symptoms of asthma, such as wheezing and shortness of breath have been observed in some individuals who are sensitive to the toxicity of MDI.

Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants; [§300.415(b)(2)(i)];

Damaged drums containing parts A and B spray foam insulation are located within view of the road. Damages include a crack in the side of one drum, and a missing two-inch bung in another. While temporarily stabilized, the damage could potentially cause a release. The homeowner has expressed concerns about the person who allegedly abandoned the drums returning to the Site and tampering with them. The compromised nature of the drums could result in a release. Safety Data Sheets corresponding to the labels on the drums indicate that the materials are a human health hazard.

Actual or potential contamination of drinking water supplies or sensitive ecosystems [§300.415(b)(2)(ii)];

The residence on site as well as neighboring homes use private wells for drinking water, which may be impacted if the drums were to leak into the adjacent Marsh Pond. The drinking water well on the Site is less than 75 feet away from the location of the drums.

Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release [§300.415(b)(2)(iii)];

The drums on the Site are compromised and pose a threat of release into the environment. Some of the drums are damaged, including one which had a crack in the side and another missing a 2-inch bung, both temporarily stabilized.

Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released [§300.415(b)(2)(v)];

Unsecured and deteriorating drums at the Site are continually being exposed to all weather conditions. Precipitation, extreme temperatures, and weather events will increase the likelihood of release and potential off-Site migration due to the Site's position relative to Marsh Pond which is 100 feet away.

The availability of other appropriate Federal or State response mechanisms to respond to the release [§300.415(b)(2)(vii)];

There are no other appropriate Federal or State response mechanisms available. NHDES requested EPA's assistance to address the release and/or potential for release.

IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of hazardous substances or pollutants or contaminants from this Site, if not addressed by implementing the response action selected in this Action Memorandum, may present an imminent and substantial endangerment to public health, welfare, or the environment. In accordance with OSWER Directive 9360.0-34 (August 19, 1993), an endangerment determination is made based on "appropriate Superfund policy or guidance, or on collaboration with a trained risk assessor," which is outlined and discussed in Section III above. "Appropriate sources include, but are not limited to, relevant action level or clean-up standards, Agency for Toxic Substances and Disease Registry documents or personnel, or staff toxicologists." For this Site, actual or threatened releases of hazardous wastes may present an imminent and substantial endangerment to public health, or welfare, or the environment due to the identification of CERLCA hazardous substances listed on Safety Data Sheets that correspond to the drums' labels.

V. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Actions

1. Proposed action description

It is expected that specific removal activities will include, but are not limited to, the following:

- Conducting a Site-walk with EPA contractors to determine appropriate equipment and personnel needed to perform the response;
- Mobilizing personnel and equipment;

- Developing and implementing of the following plans:
 - Site Specific Health and Safety Plan;
 - Sampling and Analysis Plan;
- Clearing vegetation and debris as needed;
- Conducting additional sampling, as needed, to better define extent and nature of hazards and/or contamination;
- Controlling releases from drums;
- Collecting samples from drums for disposal analysis;
- Securing, segregating, and storing drums;
- Excavating, segregating and stockpiling soils and non-hazardous waste in preparation for disposal;
- Planning for and executing proper sampling, characterization, and disposal of site-related hazardous materials at an EPA approved off-site disposal facilities;
- Demobilize personnel and equipment; and
- Repairing response related damage.

2. Community relations

The OSC will receive assistance from the EPA Community Involvement Coordinator to assist with all public relations activities.

3. Contribution to remedial performance

The cleanup proposed in this Action Memorandum is designed to mitigate the threats to human health and the environment posed by the Site. The actions taken would be consistent with and will not impede any future responses.

4. Description of innovative technologies and sustainable approaches

In accordance with the December 23, 2013 Memorandum, updated August 2, 2016, issued by Office of Land and Emergency Management, as well as the Region 1 Clean and Greener Policy for Contaminated Sites, greener cleanup practices should be considered for all cleanup projects. Greener cleanup means incorporating practices that minimize the environmental impacts of cleanup actions and maximize environmental and human benefit. Alternative technologies and sustainable approaches will be considered and incorporated, as appropriate, throughout the implementation of the removal action.

5. Applicable or relevant and appropriate requirements (ARARs)

Federal ARARs:

Clean Water Act, National Pollutant Discharge Elimination System (NPDES), 40 C.F.R. Parts 122 – 125; 122.26: Establishes the specifications for discharging pollutants from any point source into the waters of the U.S. Also, includes storm water standards for construction sites over one acre. Removal activities will be managed to prevent stormwater discharge from the Site

Clean Water Act, 40 C.F.R. Sections 122.26(c)(ii)(C) and 122.44(k): NPDES regulations for storm water control and management.

Clean Water Act Section 404(b), (40 C.F.R. Parts 230 and 231, 33 C.F.R. Parts 320-323, and 33 C.F.R. Part 332): No activity that adversely affects a wetland shall be permitted if a practicable alternative with lesser impacts is available. Controls discharge of dredged or fill material to protect aquatic ecosystems. Any wetlands altered by the cleanup will be restored as required by regulatory standards.

Clean Water Act Federal Water Quality Criteria, Section 304(a), 40 C.F.R. 131.11: National Recommended Water Quality Criteria for chemicals for both the protection of human health and the protection of aquatic life; to be used as water quality monitoring standards for any work in or adjacent to wetlands or water bodies.

Floodplain Management and Protection of Wetlands, (44 C.F.R. Part 9): Regulations that set forth the policy, procedure and responsibilities to implement and enforce Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands). Prohibits activities that adversely affect a federally-regulated wetland unless there is no practicable alternative and the proposed action includes all practicable measures to minimize harm to wetlands that may result from such use. Requires the avoidance of impacts associated with the occupancy and modification of federally-designated 100-year and 500-year floodplain.

Fish and Wildlife Coordination (50 C.F.R. Part 297; 16 U.S.C. Section 661 et seq.): Any modification of a body of water requires consultation with the U.S. Fish and Wildlife Services and the appropriate state wildlife agency to develop measures to prevent, mitigate or compensate for losses of fish and wildlife. This requirement is addressed under CWA Section 404 requirements.

State ARARs:

New Hampshire:

40 C.F.R. Parts 260-262 and 264 Resource Conservation and Recovery Act, Subtitle C-Hazardous Waste Identification and Listing Regulations; Generator and Handler Requirements, Closure and Post-Closure – New Hampshire has been delegated the authority to administer these RCRA standards through its state hazardous waste management regulations. Waste generated will be tested to determine whether it exceeds hazardous waste thresholds and, if so, the hazardous waste will be managed on-site and until such time as it is shipped to an EPA-approved off-site disposal location.

The OSC will coordinate with State officials to identify additional State ARARs, if any. In accordance with the National Contingency Plan and EPA Guidance Documents, the OSC will determine the applicability and practicability of complying with each ARAR that is identified in a timely manner.

6. Project schedule

The project is estimated to begin after the Action Memorandum is signed, likely by late August or early September 2022. It is estimated to be completed within six months.

B. Estimated Costs

COST CATEGORY		CEILING
<i>REGIONAL REMOVAL ALLOWANCE COSTS:</i>		
ERRS Contractor		\$250,000.00
Interagency Agreement		\$0,000.00
<i>OTHER EXTRAMURAL COSTS NOT FUNDED FROM THE REGIONAL ALLOWANCE:</i>		
START Contractor		\$70,000.00
Extramural Subtotal		\$320,000.00
Extramural Contingency	15%	\$48,000.00
TOTAL, REMOVAL ACTION CEILING		\$368,000.00

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

In absence of the response action described herein, conditions at the Site will continue to worsen. The drums will continue to deteriorate, increasing the risk to public health and the environment.

VII. OUTSTANDING POLICY ISSUES

There are no precedent-setting policy issues associated with this Site.

VIII. ENFORCEMENT ... For Internal Distribution Only

See attached Confidential Enforcement Strategy.

The total EPA costs for this removal action that will be eligible for cost recovery are estimated to be \$368,000 (extramural costs) + \$50,000 (EPA intramural costs) = \$418,000 X 1.4009 (regional indirect rate) = **\$585,576.20¹**.

IX. RECOMMENDATION

This decision document represents the selected removal action for the Merrymeeting Road Drum Site in New Durham, New Hampshire, developed in accordance with CERCLA, as amended, and is not inconsistent with the National Contingency Plan. The basis for this decision will be documented in the administrative record to be established for the Site.

Conditions at the Site meet the NCP Section 300.415 (b) (2) criteria for a time critical removal action due to the following:

Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants [§300.415(b)(2)(i)];

Actual or potential contamination of drinking water supplies or sensitive ecosystems [§300.415(b)(2)(ii)];

Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release [§300.415(b)(2)(iii)];

Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released [§300.415(b)(2)(v)];

¹Direct Costs include direct extramural costs \$368,000 and direct intramural costs \$50,000. Indirect costs are calculated by using regional indirect rate in effect at time cost estimate is prepared, and is expressed as a percentage of the direct costs, 40.09% (effective February 8, 2022) x \$585,576.20, consistent with EPA's full cost accounting methodology. 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.

The availability of other appropriate Federal or State response mechanisms to respond to the release [§300.415(b)(2)(vii)];

I recommend that you approve the proposed time critical removal action. The total extramural removal action project ceiling if approved will be \$368,000.00.

APPROVAL: _____

DATE: _____