



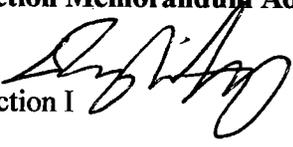
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
1 CONGRESS STREET, SUITE 1100  
BOSTON, MASSACHUSETTS 02114-2023

**CONTAINS ENFORCEMENT-SENSITIVE INFORMATION**

**MEMORANDUM**

**DATE:** September 21, 2009

**SUBJ:** Request for a Ceiling Increase, \$2 million and 12-month exemption to continue the Removal Action at the Rolnick Property Site, Brewer, Penobscot County, Maine - **Action Memorandum Addendum**

**FROM:** Dan Wainberg, On-Scene Coordinator   
Emergency Response and Removal Section I

**THRU:** David McIntyre, Chief   
Emergency Response and Removal Section I

Arthur V. Johnson III, Chief   
Emergency Planning & Response Branch

**TO:** James T. Owens III, Director   
Office of Site Remediation and Restoration

**I. PURPOSE**

The purpose of this Action Memorandum Addendum is to request and document approval for a total project ceiling increase and a \$2 million and 12-month exemption to continue the removal action at the Rolnick Property Site (the Site), which is located at 151 South Main Street in Brewer, Penobscot County, Maine. An increase to the total project ceiling of \$1,118,400, if approved, will bring the total project ceiling to \$2,954,400. The ceiling increase is required to address additional automobile battery disposal areas discovered during excavation work. The 12-month exemption is required to allow for the increased amount of time on Site that is necessary to excavate the riverbank and construct the rip-rap revetment only during the low-tide portion of the tidal cycle.

For additional information, see Action Memorandum dated August 18, 2008.

**II. SITE CONDITIONS AND BACKGROUND**

**CERCLIS ID# :** MEN000105888  
**SITE ID# :** 01EU  
**CATEGORY :** Time-Critical

**A. Site Description**

See Action Memorandum dated August 18, 2008.

**B. Other Actions to Date**

**1. Previous actions - None**

**2. Current actions**

EPA has conducted the following actions since approval of the original Action Memorandum dated August 18, 2008:

- Conducted a Site walk with the United States Army Corps of Engineers (USACE) and tasked them with developing, and presenting to the On-Scene Coordinator (OSC), concept of design options for stabilizing the riverbank. A rip-rap revetment and a seawall option were presented;
- Selected the rip-rap revetment construction option as part of the remedy. This option was selected for the following reasons: anticipated cost savings over the seawall option that would allow for the removal of the most highly contaminated soil, while armoring the riverbank for long-term protection against erosion; better habitat creation, reduced potential for a catastrophic failure that could occur with the seawall option;
- Engineering support from the Superfund Technical Assistance and Response Team (START) finalized design and specification plans for the rip-rap revetment;
- Performed an informal consultation with the US Fish and Wildlife Service pursuant to section 7 of the Endangered Species Act (ESA) of 1973. This was required because of the presence of Atlantic Salmon in the Penobscot River and the river's recent designation (June 2009) as critical habitat for the Atlantic Salmon;
- Mobilized the Emergency Rapid Response Services (ERRS) and the START contractors and initiated excavation and revetment construction; and
- Staged approximately 3000 tons of lead-contaminated soil and shipped approximately 1500 tons to a permitted disposal facility.

**C. State and Local Authorities' Roles**

**1. State and local actions to date**

See Action Memorandum dated August 18, 2008.

**2. Potential for continued State/local response**

MEDEP has limited funding and is supporting the response by providing personnel and equipment resources for on-Site soil analysis. Additionally, MEDEP has committed to provide funding for the required re-vegetation of the buffer strip along the top of the installed rip-rap revetment.

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

See Action Memorandum dated August 18, 2008.

### IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of hazardous substances from this Site, if not addressed by implementing the response action selected in this Action Memorandum Addendum, may present an imminent and substantial endangerment to public health, or welfare, or the environment.<sup>1</sup>

### V. EXEMPTION FROM STATUTORY LIMITS

CERCLA section 104(c) states that removal actions can exceed the 12-month and \$2 million statutory limits if conditions meet either the “emergency exemption” criteria or the “consistency exemption” criteria. Emergency exemption from the 12-month and \$2 million statutory limits are required for the following reasons:

- In order to protect the Atlantic Salmon and its critical habitat and because of construction limitations, riverbank excavation and revetment construction can only occur “in the dry” during the low tide portion of the tidal cycle. This requirement has proved to be more challenging, from an efficiency standpoint, than originally anticipated. The ERRS contractor did spend the first few weeks after mobilizing refining their proposed approach to excavation and revetment construction. Although the current approach has improved efficiency and the contractor is making steady progress, the setbacks during the initial weeks of activities and the “in the dry” requirement will require the removal action to go beyond the 12 month deadline of October 16, 2009.
- Additional funding to complete the removal action is required to address additional automobile battery disposal areas discovered during excavation work that had not been delineated during Site investigations and to fund additional time on Site to address these soils and work with the “in the dry” requirement.

Continued response at the Site is necessary and meets the following three components of the emergency exemption:

#### 1. There continues to be an immediate risk to public health or welfare or the environment.

Lead contaminated soils (up to 51,000 parts per million (ppm)) continue to pose a direct contact threat to nearby populations and, through erosion, to the Penobscot River and its aquatic receptors, including Atlantic Salmon.

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<sup>1</sup> In accordance with OSWER Directive 9360.0-34, an endangerment determination is made based on relevant action levels, cleanup standards, risk management guidance, or other relevant information published and relied upon by the State of Maine.

**2. Continued response actions are immediately required to prevent, limit, or mitigate an emergency.**

The stability of the contaminated riverbank continues to decline and the action of the river inundating and undercutting portions of the riverbank continues to cause erosion and subsequent migration of contaminated soil into the river. This condition will continue until the revetment construction is complete.

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

At this time, MEDEP, the local municipality, and the property owner continue to be unable to perform the necessary removal action. As mentioned above, however, MEDEP is able to provide limited assistance.

**VI. PROPOSED ACTIONS AND ESTIMATED COSTS**

**A. Proposed Actions**

**1. Proposed action description**

EPA and its contractors will continue with the removal activities delineated in the August 18, 2008 Action Memorandum.

**2. Community relations**

EPA issued a press release and distributed a neighborhood fact sheet at the commencement of on-Site removal activities. Additionally, the OSC has conducted various television and radio interviews.

Public outreach activities will continue to include:

- Coordination of removal activities with the City and MEDEP;
- Periodic fact sheets for local residents and area businesses;
- Visits to residents and area businesses in the immediate vicinity as appropriate;
- Coordination with the City and MEDEP to determine the need for and subsequent issuance of press releases and/or newsletters with removal action status;
- OSC availability at the Site during removal activities to address questions and/or concerns from the public;
- Public information sessions and/or public meetings as necessary; and
- Maintenance of an EPA OSC web Site.

### **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 at the Site would be consistent with and will not impede any future responses.

### **4. Description of alternative technologies**

On-Site soil stabilization is being considered due to the increased volume of contaminated soil being generated that fails the test for leaching. If this option is cost effective and logistically feasible it may be selected.

### **5. Applicable or relevant and appropriate requirements (ARARs)**

Federal ARARs:

40 CFR Part 262 Standards Applicable to Generators of Hazardous Waste:

Subpart B - The Manifest

262.20 : General requirements for manifesting

262.21 : Acquisition of manifests

262.22 : Number of copies of manifests

262.23 : Use of the manifest

Subpart C - Pre-Transport Requirements

262.30 : Packaging

262.31 : Labeling

262.32 : Marking

Subpart D - Recordkeeping and Reporting

262.40 : Recordkeeping

40 CFR Part 264 Standards for Owners and Operators of Hazardous waste Treatment, Storage, and Disposal Facilities:

Subpart I - Use and Management of Containers

264.171 : Condition of containers

264.172 : Compatibility of waste with containers

264.173 : Management of containers

264.174 : Inspections

264.175 : Containment

264.176 : Special requirements for ignitable or reactive waste

264.177 : Special requirements for incompatible wastes

40 CFR Part 264 Hazardous Waste Regulations - RCRA Subtitle C:

268-270: Hazardous and Solid Waste Amendments Land Disposal Restrictions Rule

40 CFR Part 300.440 Procedures for Planning and Implementing Off-Site Response Actions (Off-Site Rule)

State ARARs:

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 which is identified in a timely manner.

**6. Project schedule**

Pending receipt of the requested funding, EPA anticipates completion of removal activities, which include completion of riverbank excavation, revetment installation, and disposal of contaminated soils, to occur by the end of November 2009. MEDEP has committed to installing a vegetative buffer strip along the top of the revetment. This is scheduled for the spring of 2010. It is not anticipated that EPA assistance will be required for this final portion of the Site activities.

**B. Estimated Costs**

<b>COST CATEGORY</b>	<b>CURRENT CEILING</b>	<b>COSTS TO DATE</b>	<b>PROPOSED CEILING</b>
<i>REGIONAL REMOVAL ALLOWANCE COSTS:<sup>2</sup></i>			
ERRS Contractor	\$1,339,000	\$850,000	\$2,030,000
Interagency Agreement (USACE)	\$50,000	\$45,000	\$50,000
<i>OTHER EXTRAMURAL COSTS NOT FUNDED FROM THE REGIONAL ALLOWANCE:</i>			
START Contractor	\$141,000	\$170,000*	\$382,000
Extramural Subtotal	\$1,530,000	\$1,065,000	\$2,462,000
Extramural Contingency (20%)	\$306,000	\$0	\$492,400
<b>TOTAL, REMOVAL ACTION CEILING</b>	<b>\$1,836,000.00</b>	<b>\$1,065,000</b>	<b>\$2,954,400</b>

\* Approximately \$100,000 of contingency funding was re-allocated to START.

<sup>2</sup> This cost will be driven by the selected option(s). Should longer term options need to be implemented, additional funding may be required.

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

Delayed action will increase both environmental and health risks posed by the presence of hazardous substances in soils that may migrate and contaminate nearby properties and the abutting Penobscot River.

**VIII. OUTSTANDING POLICY ISSUES**

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

**IX. ENFORCEMENT ... For Internal Distribution Only**

See attached Enforcement Strategy.

The total EPA costs for this removal action based on full-time accounting practices that will be eligible for cost recovery are estimated to be \$2,954,400(extramural costs) + \$64,000 (EPA intramural costs) = \$3,018,530 X 1.33 (regional indirect rate) = \$4,014,647.09<sup>3</sup>.

**X. RECOMMENDATION**

This decision document represents the selected removal action for the Rolnick Property Site in Brewer, Maine 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 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)];*

*High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate [§300.415(b)(2)(iv)];*

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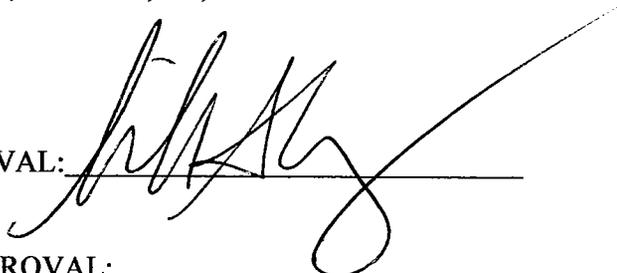
<sup>3</sup> Direct Costs include direct extramural costs \$2,954,400 and direct intramural costs \$64,000. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of Site specific costs [33% x \$3,018,530] consistent with the full accounting methodology effective October 2, 2000. These estimates do not include pre-judgement 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.

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

*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 removal action. The total removal action project ceiling, if approved, will be \$2,954,400.

APPROVAL: \_\_\_\_\_

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be the name of the approving official.

DATE: \_\_\_\_\_

9-22-09

DISAPPROVAL: \_\_\_\_\_

DATE: \_\_\_\_\_