



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

**DATE:** September 15, 2011  
**SUBJECT:** Region 1 Request for a Ceiling Increase at the Parker Street Waste Site, New Bedford, MA  
**HEADQUARTERS ADDENDUM**  
**FROM:** Dana Tulis, Deputy Director  
Office Emergency Management   
**TO:** Mathy Stanislaus, Assistant Administrator  
Office of Solid Waste and Emergency Response

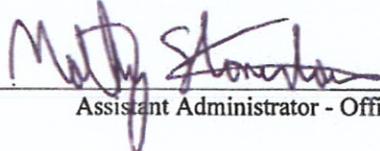
This Memorandum requests your approval of the Action Memorandum for Region 1's request for a ceiling increase for the on-going removal action at the Parker Street Waste Site located in New Bedford, Massachusetts. This Action Memorandum requests a proposed ceiling increase of \$2.4 million, which will bring the total project ceiling to \$8,100,000.

EPA initiated removal activities at the Parker Street Waste Site in October 2010, when commencing the removal of contaminated soil from residential properties. An additional site investigation was performed concurrently, which indicated the need to conduct removal activities at additional properties. As of mid-August 2011, EPA completed removals at 11 private residential properties. As of this date, removal activities yet to be completed include the following:

- i. Complete restoration of properties already excavated; and
- ii. Perform a removal action at additional properties.

According to EPA Delegation 14-2, only the AA of OSWER has the authority to approve emergency exemptions for sites that will cost more than \$6 million.

I recommend that you approve the Region 1 request. Extensive removal work and the restoration of residential properties are presently on-going at the Site, and your approval will allow the completion of the removal action. The conditions at the Site meet the emergency exemption criteria under Section 104(c) of CERCLA. This action will be funded from Region 1's FY-10, Region 1 and HQ's FY-11, and possibly Region 1's FY-12 budget. Please indicate your decision by signing below.

**APPROVE:**  **DATE:** 9/23/11  
Assistant Administrator - Office of Solid Waste and Emergency Response

**DISAPPROVAL:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
Assistant Administrator - Office of Solid Waste and Emergency Response

Attachment



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**CONTAINS ENFORCEMENT-SENSITIVE INFORMATION**

**MEMORANDUM**

**DATE:** September 15, 2011

**SUBJ:** Request to Continue a Removal Action, Change in Scope of Response, an Exemption from the Statutory 12-Month and \$2 Million Limits for the Removal Action, and Ceiling Increase at the Parker Street Waste Site, New Bedford, Bristol County, Massachusetts – **Action Memorandum Addendum**

**FROM:** James T. Owens III, Director  
Office of Site Remediation and Restoration *FOR JTO*

**THRU:** Dana Tulis, Deputy Director  
Office of Emergency Management

**TO:** Mathy Stanislaus, Assistant Administrator  
Office of Solid Waste and Emergency Response

**ATTN:** Gilbert Irizarry, Director  
Program Operations and Coordination Division

**I. PURPOSE**

The purpose of this Action Memorandum is to request and document approval for a Change in Scope of Response, an Exemption from the Statutory 12-Month and \$2 Million Limits for the Removal Action, and a \$2.4 Million Ceiling Increase in the project ceiling to continue a removal action at the Parker Street Waste Site (the Site), which is located in the currently estimated 114-acre area, intersected by Parker Street, in New Bedford, Bristol County, Massachusetts.

A 12-month and \$2 million exemption was approved in the original Action Memo of August 26, 2010. Hazardous substances present in soils at the Site, if not addressed by implementing the response actions selected in this Action Memorandum and previously approved Action Memorandum dated August 26, 2010, 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 OSC's \$200,000 warrant authority.

The total project ceiling, if approved, will increase from \$5,700,000 to \$8,100,000.

## II. SITE CONDITIONS AND BACKGROUND

**CERCLIS ID# :** MAN000105955  
**SITE ID# :** 01GB  
**CATEGORY :** Time-Critical

### A. Site Description

#### 1. Removal Site Evaluation

Please refer to the attached initial Action Memorandum dated August 26, 2010.

#### 2. Physical Location

The Parker Street Waste Site is currently estimated to be a 114-acre area located in New Bedford, Bristol County, Massachusetts. Geographic coordinates of the Site are approximately 41° 38' 33" north latitude and 70° 56' 44" west longitude, as measured from the approximate center of the Site. The estimated extent of the Site is believed to be bounded to the north by Durfee Street, to the east by Liberty Street and the Oak Grove Cemetery, to the south by North Street, and to the west by Summit Street. Located within the bounds of the former waste site is the New Bedford High School campus, the Keith Middle School, the Hetland Memorial Skating Rink property, Walsh Field, the new Andre McCoy Field, residential properties, New Bedford Housing Authority properties, Carabiner's Indoor Climbing Facility, and two privately-owned apartment complexes. The estimated size of the Site has increased with the addition of the impacted properties identified during the preliminary assessment/site investigation (PA/SI).

#### 3. Site Characteristics

According to the EPA Region 1 Environmental Justice Mapping Tool, the Site is located in an environmental justice area. All additional information in this section remains unchanged since the original Action Memo of August 26, 2010.

#### 4. Release or threatened release into the environment of hazardous substances, or pollutants or contaminants

There has been no change since the original Action Memo of August 26, 2010.

#### 5. NPL Status

No change since the original Action Memo of August 26, 2010. The Site is not currently on the National Priorities List, and it has not received a Hazardous Ranking System rating.

## **B. Other Actions to Date**

### **1. Previous Actions**

Please see the original Action Memo for actions performed before August 26, 2010. EPA mobilized to the Site on October 29, 2010 to initiate removal activities, which included preparing the Site, excavating contaminated soil, arranging for transportation and disposal (T&D) of the contaminated soil, and backfilling the excavated areas with clean fill material. During the winter of 2010, EPA conducted removal activities at 5 residential properties which were identified to have Imminent Hazard conditions by the Massachusetts Department of Environmental Protection (MassDEP). EPA demobilized from the Site at the end of January 2011 due to adverse weather conditions. EPA and its contractors remobilized to the Site at the end of April 2011 to initiate restoration activities at the 5 residential properties addressed during the winter of 2010 as well as to initiate response activities at additional properties with contaminated soils warranting a response action. As of mid-August 2011, excavation and disposal of contaminated soils from 11 private residential properties have been completed. Approximately 6,745 tons of contaminated soils have been transported off-site to EPA-approved disposal facilities for final disposition.

### **2. Current Actions**

Currently, EPA is scheduled to conduct removal activities on 13 additional properties located within the Site. Besides these 13 properties, EPA expects that MassDEP will be recommending removal activities on additional properties at the Site when MassDEP completes its risk evaluations on all of the properties sampled during Phase I and Phase II of the preliminary assessment/site investigation (PA/SI).

EPA requests to increase the ceiling of the original Action Memo to cover response actions needed to address a large public housing complex owned by the New Bedford Housing Authority (NBHA), as well as the additional properties sampled during the Phase II PA/SI which may warrant response actions. The response action, pursuant to the National Contingency Plan (NCP), to be conducted at the NBHA's Westlawn property will primarily address surface soil contamination within the top foot of soil to remove any potential contact threat. Any potential exposure to subsurface contaminated soils are eliminated or controlled through institutional controls implemented by the NBHA. Some controls already implemented by the NBHA include the restrictions on planting or disturbance of soils by the tenants on the Westlawn property. In addition, MassDEP will continue to work with NBHA to identify other potential long term measures that may be needed under the Massachusetts Contingency Plan.

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

EPA is working in consultation with MassDEP on the current removal action. In addition, MassDEP is reviewing sampling data collected by EPA and providing risk evaluations pursuant

to the state's cleanup program for the properties sampled during the PA/SI. Please see the original Action Memo of August 26, 2010 for additional information.

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

There have been no changes to the threats to public health or the environment since the original Action Memo of August 26, 2010.

### **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, may present an imminent and substantial endangerment to public health, or welfare, or the environment.<sup>1</sup>

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

CERCLA § 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. The consistency exemption requires that the proposed removal action be appropriate and consistent with the remedial action to be taken. As described below, conditions at the Site meet the criteria for the emergency exemption.

#### **A. Emergency Exemption**

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<sup>1</sup> In accordance with OSWER Directive 9360.0-34, 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, EPA relevant action level or clean-up standards, Agency for Toxic Substances and Disease Registry documents or personnel, or staff toxicologists." EPA relied on the Massachusetts Contingency Plan's (MCP) cumulative risk approach which compares site-specific information to a Cumulative Cancer Risk Limit (*See* 310 Code of Massachusetts Regulations (CMR) 40.0000). In addition, MassDEP has, and is continuing to, evaluate the data collected during this PA/SI to determine whether Imminent Hazard and/or Significant Risk conditions, as defined in the MCP, are present at this Site.

Under CERCLA § 104(c)(1)(A), removal actions may exceed the 12-month and \$2 million statutory limits if:

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.

**1. There is an immediate risk to public health or welfare or the environment:**

MassDEP and its Site Assessment Remediation Support Services (SARSS) contractor, MACTEC, are performing an evaluation of the analytical data for the properties sampled during the PA/SI (Phase I and Phase II) to determine whether response actions are required under the MCP.

Currently, MassDEP has identified approximately 24 residential properties sampled during Phase I of the PA/SI with soil contamination at or near the surface where an Imminent Hazard Condition exists or a Condition of No Significant Risk does not exist. During Phase II of the PA/SI, 24 properties were sampled and are also undergoing risk evaluations by MassDEP. Some of these properties may have soil contamination at or near the surface that may require response actions to abate the contact threat. Unrestricted access to elevated levels of PCBs, heavy metals, and PAHs exists largely in soils at or near the surface. Site residents include families with young children who utilize the yard for recreational activities.

In addition, on the NBHA's Westlawn property, there are elevated levels of lead at the surface. Despite the activity and use limitations implemented by the NBHA, limited hot-spot removal of contaminated soils at the surface is necessary to eliminate the contact threat.

Failure to approve the 12-month and \$2 million exemption request for this removal action will result in the continued exposure of the public and the environment to these hazardous materials.

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

With the contamination affecting such a large area and several properties impacted, continued response actions, including fully characterizing the extent of Site related contamination, soil removal, and property restoration, are required to prevent, limit, or mitigate this substantial contact threat posed to the public. In order to complete these actions, an exemption from the 12-month and \$2 million ceiling is required.

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

The State of Massachusetts currently does not have the resources to abate the threat at this Site due to the large area of contamination. In a letter dated August 19, 2010, MassDEP has requested EPA's assistance on addressing properties at this Site that are determined to have elevated levels of contamination that trigger either an Imminent Hazard or Significant Risk Condition to surface soils under State criteria. In addition, referral of this Site to the remedial program is not practicable, despite the projected expense of the removal, due to the time required for the remedial process.

## **VI. PROPOSED ACTIONS AND ESTIMATED COSTS**

### **A. Proposed Actions**

#### **1. Proposed action description**

The goals of this action remain the same as the goals described in the original Action Memo of August 26, 2010: to conduct sampling to define the full extent of the boundaries of the Site and to remove contaminated surface soils from properties at the Site. Specific to this amendment are these objectives:

- Conduct additional sampling, as necessary, to define the boundaries of the Site.
- For the NBHA's Westlawn property which has activity and use limitations imposed by the NBHA, surface soils contaminated with hazardous substances will be addressed within the top foot of soil by response actions consistent with the NCP.
- Remove surface soils contaminated with elevated levels of hazardous substances from additional properties.
- Restore properties to pre-excavation conditions, to the extent practicable.
- Transport and dispose of all contaminated material.

The remaining proposed actions will not be changed from those actions described in the original Action Memo of August 26, 2010.

#### **2. Community relations**

Upon approval of the Action Memorandum, the OSC will continue to coordinate with the EPA's Office of Public Affairs Community Involvement staff to disseminate information regarding the project to the community and the impacted residents.

#### **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 cleanup objectives have been established using state action levels and risk evaluations. For the NBHA's Westlawn property which has activity and use limitations imposed by the NBHA, surface soils contaminated with hazardous substances will be addressed within the top foot of soil by response actions consistent with the NCP.

MassDEP believes that the actions taken at the Site would be consistent with and will not impede any future responses. Also, MassDEP will be responsible for any long-term regulatory oversight for this Site.

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

Please see the original Action Memo of August 26, 2010. This removal action will also incorporate environmentally responsible practices when practical and applicable.

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

Pursuant to 40 C.F.R. 300.415(j), removal actions shall, to the extent practicable considering the exigencies of the situation, attain ARARs. Current ARARs identified, but not limited to, are listed below.

##### **Federal ARARs:**

40 C.F.R. Section 122.26(c)(ii)(C) and 122.44(k) Clean Water Act NPDES Regulations (Stormwater Control and Management)

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 - Massachusetts has been delegated the authority to administer these RCRA standards through its state hazardous waste management regulations. State regulations that have adopted these federal standards are listed below.

40 CFR Section 761.61 : TSCA requirements for cleanup and disposal of PCBs

40 C.F.R. Section 761.79 TSCA Decontamination of Equipment Used

40 C.F.R. Part 61 Clean Air Act – Standards for controlling dust

##### **State ARARs:**

310 CMR 40.0900 Procedures and Standards for the Characterization of the Risk of Harm to Health, Safety, Public Welfare and the Environment

310 CMR 30.100 Hazardous Waste Rules for Identification and Listing of Hazardous Wastes

310 CMR 30.300 Hazardous Waste Management Rules - Requirements for Generators

310 CMR 30.500 Hazardous Waste Management Rules - General standards for hazardous waste facilities

310 CMR 30.680 Hazardous Waste Rules - Containers

310 CMR 30.690 Hazardous Waste Rules - Management, Storage, and Treatment in Tanks

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**

Removal activities under the original Action Memo are in progress. Pending funding availability, removal activities will continue. EPA anticipates completing on-site activities within 18 months of the original start date.

**B. Estimated Costs**

| <b>COST CATEGORY</b>  | <b>CURRENT CEILING</b> | <b>PROPOSED INCREASE</b> | <b>PROPOSED CEILING</b> |
|---|------------------------|--------------------------|-------------------------|
| <i>REGIONAL REMOVAL ALLOWANCE COSTS:</i>                              |                        |                          |                         |
| ERRS Contractor   | \$4,000,000.00         | \$2,000,000.00           | \$6,000,000.00          |
| Interagency Agreement   | \$0.00                 | \$0.00                   | \$0.00                  |
| <i>OTHER EXTRAMURAL COSTS NOT FUNDED FROM THE REGIONAL ALLOWANCE:</i> |                        |                          |                         |
| START Contractor  | \$750,000.00           | \$0.00                   | \$750,000.00            |
| Extramural Subtotal   | \$4,750,000.00         | \$2,000,000.00           | \$6,750,000.00          |
| Extramural Contingency (20%)  | \$950,000.00           | \$400,000.00             | \$1,350,000.00          |
| <b>TOTAL, REMOVAL ACTION CEILING</b>                                  | <b>\$5,700,000.00</b>  | <b>\$2,400,000.00</b>    | <b>\$8,100,000.00</b>   |

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

A delayed removal action or the absence of a removal action described herein will cause conditions at the Site to remain unaddressed, and threats associated with the presence of hazardous substances will continue to pose a threat to human health and the environment.

Not continuing this action would be inconsistent with EPA's previous actions at the Site.

## 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 \$8,100,000 (extramural costs) + \$750,000 (EPA intramural costs) = \$8,850,000 X 1.3284 (regional indirect rate) = \$ 11,756,340.<sup>2</sup>

## X. RECOMMENDATION

This decision document represents the selected removal action for the Parker Street Waste Site in New Bedford, Massachusetts, 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)];*

*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>2</sup>Direct Costs include direct extramural costs \$8,100,000 and direct intramural costs \$750,000. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site specific costs 32.84% x \$8,850,000, consistent with the full 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 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)]; and*

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

Furthermore, site conditions continue to meet the NCP section 300.415(b)(2) criteria for a removal and the criteria for the CERCLA Section 104(c) emergency exemption from the 12-month and \$2 million limitations on removal actions. The removal action proposed in this Action Memorandum will abate, prevent, minimize, stabilize, mitigate and/or eliminate the release or threat of release of hazardous substances at the Parker Street Waste Site. I recommend your approval of the proposed removal action, the exemption from the 12-month and \$2,000,000 limitations, and the proposed project ceiling increase of \$2,400,000. The total removal action project ceiling if approved will be \$8,100,000.

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

DATE: 9/23/11

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

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