



February 20, 2018

**Memorandum**

To: File *AM for BA*

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 Andy Helkey – PHD *AH*  
 Rob Hanson – DEQ *RH*

Subject: Bunker Hill Superfund Site Responsibilities for Repair of Impacted Barriers from Small Scale and Localized Floods or Natural Disasters

**Background:** Clean soil, gravel and other types of barriers were installed as part of the Bunker Hill Superfund project to protect human health and the environment. Once installed the maintenance of the barriers is the responsibility of the property owner as regulated under the Institutional Controls Program (ICP). The ICP provides a no fee permitting program to ensure clean barriers are protected and contaminated soils are disposed of properly. The program also prohibits contaminant transport from a property. The ICP has regulatory authority to enforce compliance with its rules. An exception to this is if barriers are damaged by a natural disaster. See the text below from the OU3 ICP rule.

**05. Statement of Intent.** It is the intent of the PHD to work with local governments, the State of Idaho, the United States Environmental Protection Agency, Federal Land Management Agencies (Bureau of Land Management, USDA Forest Service), Coeur d’Alene Tribe, and private parties in managing Contaminants within the regulated Institutional Controls Administrative Area by way of an ICP. These Rules establish standards for Barrier construction and maintenance, and other Contaminant management practices. *These Rules do not address financial liability for Contaminant management resulting from a failure of a CERCLA remedy due to a natural disaster. (Emphasis added).*

**Purpose:** The purpose of this memorandum is to document the procedures and information needed to determine responsibility and financial liability for repair of barriers damaged by small scale/localized floods and natural disasters. The first part of the memo is organized in the format of asking and answering questions to determine if the property owner, another entity, or the Agencies (EPA, DEQ, and ICP) are financially liable for repair of damaged barriers. Or if work would fall under local, state, or federal emergency response programs. The second part of the memo identifies resource options to assist and/or implement barrier repair.

## Evaluation of Potential Liability

1. **Did the event cause damage to a barrier?** This requires on-site observation and documentation by ICP. EPA and DEQ may join in on these and subsequent site visits.
  - a. **No.** If no damage to barriers is identified, then no action is required.
  - b. **Yes.** If a barrier is damaged, go to Question #2.
2. **Did the damage cause contaminant release or damage warranting repair?**
  - a. **No.** If no contaminant is released and barrier damage is minor, then no action is required.
  - b. **Yes.** If contamination is released or barrier is severely compromised, go to Question #3.
3. **Did property owner or any other entity alter the landscape, change land use, etc. in a manner that resulted in or contributed to barrier damage?**
  - a. **No.** Go to Question #6.
  - b. **Yes.** Go to Question #4.
4. **Was the alteration design or construction negligent in light of the existence of clean barriers(s)?**
  - a. **No.** Go to Question #5.
  - b. **Yes.** Property owner and/or other entity may be responsible for repairs to meet ICP barrier standards. Consider Resource Option #1.
5. **Did the property owner or other entity have an ICP permit for the alteration, if required?**
  - a. **No.** The property owner and/or other entity may be responsible for repairs to meet ICP requirements if the alteration activities would have required an ICP permit. Consider Resource Option #1.
  - b. **Yes.** Go to Question #6.
6. **Did inadequate barrier installation by the Remedial Action or under an ICP permit result in or contribute to the barrier damage?** This could be due to materials, errors in design or installation, or other factors.
  - a. **No.** Go to # 7
  - b. **Yes.** The Agencies will determine the appropriate corrective action, determine funding source, and will coordinate with local, state, and federal response officials in implementing corrective action. Consider Resource Option #2.
7. Conclusion is that the barrier functioned as designed and was damaged by an event that exceeded barrier design durability. The damage should be addressed as part of the overall response effort when damage to the barrier was not a result of/or exacerbated by the property owner or other entity activities that were in compliance with the ICP actions and when the damage is not a result of or exacerbated by inadequacies of Remedial Action or ICP permitted barrier installation. The Agencies will coordinate with local entities, and possibly state and federal response officials to review performance of local infrastructure to determine if maintenance, repairs, or upgrades are warranted to prevent similar barrier damage, protecting human health and the environment from mine waste contamination in the future. The process

for review, determination, responsibility, and funding, if necessary, is outside the scope of this memo. Consider Resource Option #3.

## **Resource Options to Address Damage**

1. If the damage is linked to a modification made to the property by the owner or another entity, repair and funding for repair work is the responsibility of the property owner or other entity. This work will require an ICP permit. Agency funding may help by providing the services and supplies listed below which are part of the existing ICP.
  - a. Provide a cubic yard of soil/gravel (or possibly more) for qualifying property.
  - b. Provide barrier fabric to property owners doing work themselves.
  - c. Provide sand bags to property owners who are experiencing overland flow/channeling issues to limit barrier damage.
  - d. Provide a trailer for contaminated soil or tree stumps to be placed in for disposal.
  - e. Sample areas of property to determine what is re-contaminated or in need of remediation.
  - f. Provide free disposal of contaminated soils in an ICP repository.
  
2. If the damage is linked to inadequate Remedial Action program barrier installation, the Agencies would have to come up with the funding for the repair work. The options to implement and pay for the repairs are listed below.
  - a. CDA Trust.
  - b. DEQ's O&M contractor – with DEQ or combination EPA/DEQ funding.
  - c. PHD O&M contractor - with DEQ or combination EPA/DEQ funding.
  - d. Provide free soil, gravel, and barrier fabric.

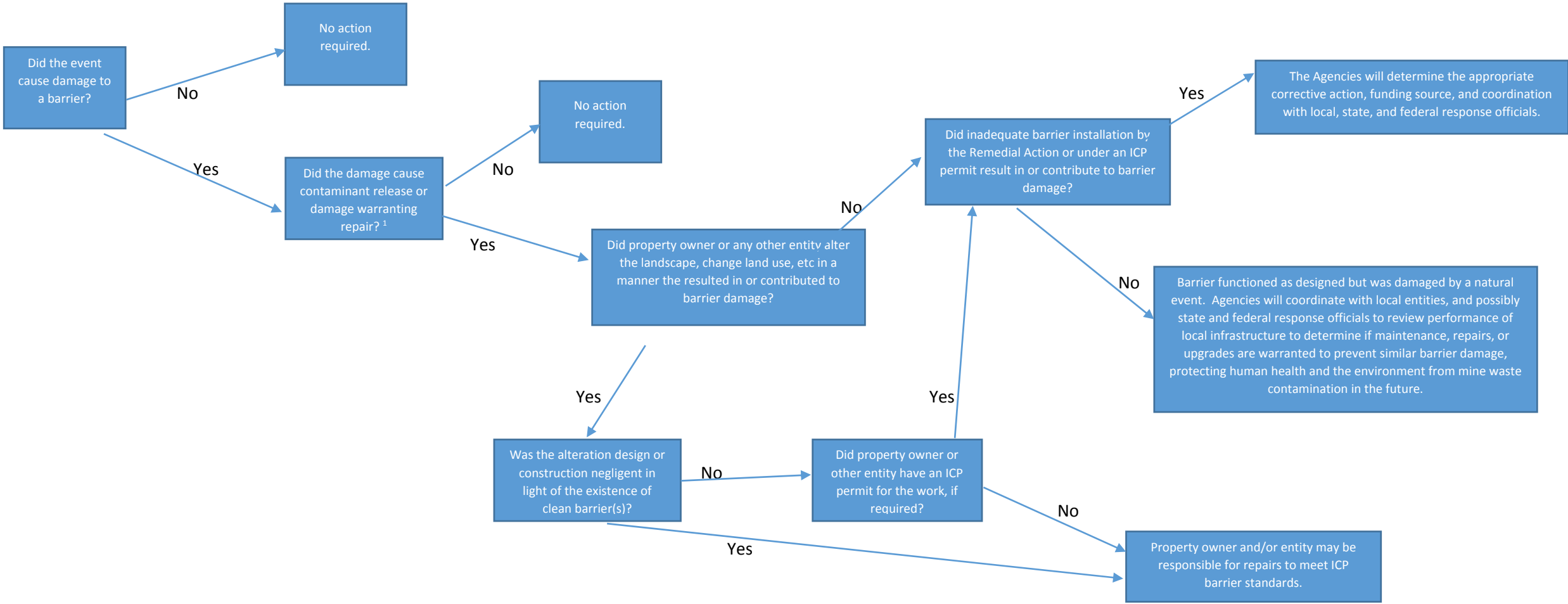
Funding for b and c will be covered by establishment of a maintenance budget line item in the ICP annual budget to hire repair contractors or pay for materials as needed. This would probably work for most events, but not larger events that create the need for numerous repairs.

3. If the Agencies determine that the damage was caused by an event beyond the barrier's design, the Agencies will coordinate with local entities, and possibly state and federal response officials. In a large enough event state and federal dollars may be available to address response and repair issues. The Agencies can provide technical expertise to assist with contamination management issues and may be asked to contribute some funding.

## **Funding Sources to Provide Relief**

1. Property owner or other entity.
2. Property owner or other entity insurance.
3. Flood and disaster relief funds available through county.
4. Cleanup funds.
  - a. EPA RA funds.
  - b. DEQ Match or O&M funds.
  - c. CDA Trust RA or O&M funds.

### BUNKER HILL SUPERFUND SITE RESPONSIBILITIES FOR REPAIR OF IMPACTED BARRIERS FROM SMALL SCALE AND LOCALIZED FLOODS OR NATURAL DISASTERS



<sup>1</sup> If direct human exposures are occurring (based on location, concentration, volume, and exposure route), immediate action should be taken by the responsible entity. If a private responsible entity is not cooperative, the Agencies may determine it is necessary to implement an action to protect human health.