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OSWER Directive No. 9230.0-75

MEMORANDUM

SUBJECT: Federal Facilities Streamlined Oversight Directive

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PURPOSE

On October 2, 1995, Administrator Browner announced several Superfund Reforms including one to reduce oversight activities at sites where there are cooperative private parties that are performing quality work. Consistent with this Reform, for federal facilities on the Superfund National Priorities List (NPL), we are pursuing a similar initiative to streamline our oversight activities.

EPA is responsible for overseeing the Superfund remedial activities at NPL federal facility sites.

EPA's oversight is shaped by a variety of factors including statutory requirements, regulations, guidance, Federal Facility Agreements (FFA), Site Management Plans (SMP), and common practice. EPA's oversight activities of federal facilities include ensuring that, generally, work conducted by federal facilities is equivalent to work that EPA would conduct if that site were EPA-lead.

This Directive focuses on streamlining the regulatory oversight processes at federal facilities in a systematic, planned manner based on site-specific factors and general streamlining techniques. The intent of streamlining the oversight is to improve the efficiency and overall effectiveness of the oversight for the regulators and the federal facilities, while ensuring protection of human health and the environment. Additionally, a streamlined process may facilitate more effective community participation and involvement in the cleanup process by making the process more accessible to the public.

EPA Regions are already implementing components of streamlined oversight at several federal facilities. As such, the concepts described below are not new. What is required is a more systematic approach to ensure that EPA, federal agencies, states, and citizens impacted by contamination at federal facilities and associated activities secure benefits of a streamlined oversight approach. It is important to realize that the streamlined approach may not be applicable at each site or facility, but each facility should be evaluated for opportunities to streamline the oversight process.

BACKGROUND

There are currently estimated to be more than 61,000 contaminated sites at over 2,000 federal facilities in the United States. As of June 1, 1996, there are 160 proposed and final federal facilities on the NPL. The Department of Defense (DOD) currently is responsible for about 82% of the federal facilities on the NPL. The Department of Energy (DOE) has 11%, but far more releases/sites on each of its facilities than does the military or other federal agencies (e.g., DOI, USDA, NASA). According to EPA's CERCLIS information system, there are currently over 450 ongoing Remedial Investigation/Feasibility Studies (RI/FSs), over 100 Remedial Designs (RDs) and over 100 ongoing Remedial Actions (RAs). In parallel, there are also several time-critical and non time-critical removal actions ongoing. Regional programs may or may not be overseeing these removal actions.

Relative to federal facilities, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), provides the framework for Superfund federal facilities cleanup. Section 120(a) requires that federal facilities comply with CERCLA requirements to the same extent as private facilities. Section 120(d) sets forth requirements for facility site assessment, evaluation and NPL listing. Section 120(e) establishes remedial cleanup and cleanup agreement requirements.

Section 120(e) of CERCLA requires the federal facility to enter into a negotiated Interagency Agreement (IAG) with EPA within 180 days of EPA's review of the RI/FS. (As a matter of policy and where resources permit, EPA tries to negotiate the IAG after final listing on the NPL. In this context, the IAG is also known as a Federal Facility Agreement, and will be referred to as FFA in the text that

follows.) Under CERCLA Section 120 and the FFA, EPA oversees all of the phases of remedial activity (RI/FS, RD, RA, operation and maintenance) to be undertaken at a federal facility NPL site. States are usually signatories to the FFA. The FFA provides the technical, legal, and management framework to conduct the federal facility activities. The FFA is an enforceable document and contains, among other things, a description of the remedy selection alternatives, procedures for submission and review of documents, schedules of cleanup activities, and provisions for dispute resolution.

In addition to EPA, the states and Indian tribes, as regulators, also may have an oversight role. The particulars of these roles are established in the FFA at each facility.

In 1988, after agreement from DOD and DOE, EPA issued model provisions for FFAs for DOD and DOE (Attachment) to guide the oversight relationship between the federal facilities and EPA. The model FFA identifies primary documents and secondary documents. In addition, a specific consultation process is outlined both with regard to EPA comments and federal facility response to comments on primary and secondary documents, as well as other aspects of the cleanup process.

Oversight activities traditionally involve the production of a document by a federal agency or their contractor, delivery of the document, EPA review and written comments, revision of the document, another round of review and comment, ultimately ending with Agency concurrence on the document. At times there are multiple rounds of comments and revisions to these documents. Specific time frames for review, comment and response to comment are usually laid out in the FFA. Analysis has revealed that more than half of the time spent on the RI/FS process may be involved in this comment and review process.

EPA's oversight at federal facilities consists of ensuring that the federal facilities comply with CERCLA, the National Contingency Plan (NCP), the signed FFA and other agreements; and other statutes, as appropriate (e.g., RCRA); assisting in the determination of cleanup remedies or potentially selecting the remedies; concurring that there is consistency with all relevant guidances and policies determined by EPA to be appropriate for the facility; and determining that decisions protect human health and the environment and are technically sound.

Additional EPA activities include promoting community involvement through the community advisory boards, providing Technical Assistance Grants (TAGs), providing technical advice and assistance (e.g., assisting in identifying and implementing the sampling strategies and analytical requirements), identifying cleanup actions that are not justified based on risk, reviewing design documents and federal agency pollution abatement plans, and resolving disputes regarding noncompliance.

There are several EPA and other agency initiatives that are designed to improve (i.e., modify, streamline, etc.) how cleanup and oversight of cleanup is performed at NPL sites. This Directive incorporates aspects of several of these initiatives, especially Superfund Accelerated Cleanup Model (SACM), Data Quality Objectives (DQO) Process, Reduced Federal Oversight at Superfund Sites with Cooperative and Capable Parties, Variable Oversight (a DOD pilot), Streamlined Approach for

Environmental Restoration (SAFER, a DOE pilot). All of these initiatives address the interaction between regulators and federal facilities, with partnership and/or cooperation emphasized in the Reduced Oversight, Variable Oversight, and SAFER models. The SACM, DQO Approach, Variable Oversight, and SAFER initiatives in particular stress upfront planning and scoping to optimize remediation and data collection. This Directive builds on the Variable Oversight model with the emphasis on partnership, upfront scoping and planning, and streamlined document review but also includes principles from other initiatives.

PROPOSAL

This guidance applies to all federal facilities on the NPL. It requires that EPA Regions evaluate opportunities for streamlining oversight of the remedial process for NPL federal facility sites and discusses key areas for process implementation. Where all parties agree on streamlining activities that will affect requirements and/or milestones in an existing FFA, changes to the FFA and/or the Site Management Plan (SMP) should be implemented, as appropriate.

Streamlining regulatory oversight will tailor requirements in a systematic, planned manner based on site-specific factors and streamlining approaches. These site-specific factors include the relationship among the federal facility, the regulators, and community; the complexity of the site cleanup; the current status of the cleanup; and the rate of progress that has been made. The streamlined process should improve the efficiency of both the oversight and the site cleanup actions, enhance public involvement by highlighting issues of greatest interest to the public, and ensure that these issues are not obscured by excessive paper and discussions of methodologies.

Problems with Current Process

For CERCLA cleanup activities, a framework of extensive government regulation and guidance (federal and/or state) outlines the cleanup process and the associated requirements. Although the regulations and guidance provide flexibility, it is not clear that full advantage is taken of the flexibility. The traditional oversight system tends to place heavy emphasis on end-of-process activities such as inspection, review, and comment of documents and deliverables, and not as much on early planning and collaborating. Many documents repeat the same information (e.g., site descriptions) that regulators will comment on time and time again. Significant time and money may be spent on generating more data and documents than necessary.

In addition, the large number and size of documents inhibits public participation as the general non-technical public is overwhelmed by the documents. One outcome of a streamlined process could be more effective public participation in the federal facility cleanup process. Many members of restoration advisory boards and site-specific advisory boards have indicated that streamlined documents are very desirable and will facilitate their participation.

Identifying Sites for Streamlining Oversight

This guidance applies to all NPL federal facility sites requiring EPA oversight. Effective immediately, the Regions should use the criteria below to identify those facilities or, as appropriate, sites on the facility, where the oversight can be streamlined without reducing the level of protection at the site. This evaluation should be done at every site where the federal facility is performing the RI/FS, the RD/RA, or the engineering evaluation/cost analysis (EE/CA) and response action for non-time critical removals. If a facility (or site) does not currently meet the criteria, the facility may be reconsidered at an appropriate later date for application of streamlined oversight.

The regulated federal agencies may propose possible sites as candidates for streamlined oversight. The Regions should work with the federal agencies to identify appropriate sites.

Criteria for Evaluating Federal Facility Sites

Cooperativeness/Compliance (Federal Facility/Agency Relationship)

- Federal facility has agreed to reasonable time frames for completing site work (including deliverables), and has historically completed such work on a timely basis.
- Federal facility has been and remains substantially in compliance with the terms of the FFA, other agreements, and environmental laws and regulations.
- Federal facility follows through on commitments made to EPA.

Technical Capability (Based on Site Complexity)

- Federal facility consistently produces technically sound documents.

The following are some additional criteria that should be considered when determining the appropriate oversight at a federal facility site.

Site-Based Criteria

- The community has reason to believe additional oversight is necessary. In response, EPA may increase site monitoring. At a minimum, EPA should discuss with the federal facility and the affected community at the site the Agency's plan concerning the site.
- At sites where the remedy involves a complex technical model, EPA may decide to carefully monitor all critical site work.
- The severity of risk to human health or environment posed by the site will be considered in determining applicable oversight.

IMPLEMENTATION

EPA believes that at sites that may be amenable to streamlining oversight after applying the criteria above, Regions should work with the federal facilities, states, local governments, and communities, as appropriate, to develop an effective partnership in implementing this reform. The FFA and/or the SMP may also need to be revised to implement this reform but opportunities should be examined that will not require formal renegotiation. Streamlining the oversight activities should be implemented as soon as possible. This streamlining of monitoring activities should lead to a reduction in oversight costs and also decrease the time needed to complete that phase of the response action.

Opportunities for Streamlining Oversight

The following is a list of some activities that can be instituted, modified or streamlined, as appropriate, to facilitate streamlining the oversight and cleanup process. They are dependent on each other in that success in one area will increase the chances for success in the other areas. In particular, an effective working partnership lays the groundwork and fosters cooperation that leads to progress in the other areas. The activities can be separated into four broad categories although there is overlap between the categories. Activities that may be implemented include, but are not limited to:

Partnering

- Developing partnerships among federal facility, EPA, state, tribes, and stakeholders

Early and Substantial Regulator Involvement

- Engaging in installation-wide joint planning efforts
- Developing common cleanup "vision" with goals and objectives
- Participating in federal facility budget formulation and execution process
- Establishing cleanup standards on the basis of existing and reasonably anticipated future land use as soon as possible in the remedial process
- Improving scoping and planning
- Optimizing the data review process
- Utilizing computerized file/document transfer

Defining Each Regulator's Role

- Clearly defining role of EPA and state in terms of oversight responsibilities including establishing a lead regulator, wherever possible
- Eliminating or otherwise mitigating RCRA/CERCLA overlap
- Developing appropriate side agreements to facilitate environmental restoration process (e.g., memorandum of understanding (MOU) with EPA Region, state, and the Defense Nuclear Facility Safety Board (DNFSB))

Streamlining Documentation and Review

- Using standard operating procedures (SOPs) and standard document formats
- Reducing production of documents by increasing the use of in-person meetings, briefings, and other communication methods to identify issues early on and resolve identified issues
- Eliminating interim deliverables or milestones, where applicable, while continuing accountability to produce an acceptable end product

The FFA/SMP should incorporate the above activities to the extent practical depending on the site. These elements are not necessarily enforceable portions of the FFA.

Some of these activities are described below.

Partnership

One key to streamlining oversight is creating and then maintaining a framework for partnership between EPA, the federal facility, state, tribes and the community. The history of federal facilities cleanup has been one marked with considerable distrust between the communities, the regulators, and the federal facility. One outcome of this distrust was a need for extensive regulator and community oversight of cleanup activities. At some facilities, the atmosphere of distrust has changed or is being changed. At other facilities, much needs to be done and, in some cases, this section may not be appropriate for these facilities.

Creating and maintaining an effective working relationship often requires extensive interaction at both a site (RPM) level and at a Regional (supervisory) level. Additionally, training to support effective partnering is often required. Where this approach has been successfully implemented, the result has been to dramatically improve the cleanup process. Communication is key among partners. In addition to planned meetings, the use of informal and technology-assisted communication (e.g., telephone, e-mail, fax) is encouraged.

One goal of the partnership is to establish a long-term working relationship in which the parties can commit to up-front agreements designed to produce savings in terms of time and resources needed for cleanup. The participants work together to define the site problems and develop potential options for addressing the problems. The direction of investigation and cleanup work by a working partnership allows parties to focus on key issues that are critical and provides a means to resolve substantive issues prior to action. The partnership approach recognizes that there may be significant initial differences of opinion concerning decisions affecting site cleanup. The partnership should acknowledge that each individual is responsible for representing their agency. The ground rules require that the team agree on the goal, such as site remediation, and that consensus must be reached to achieve the agreed upon goal. The partnership promotes the building of trust and the confidence that important issues are addressed and resolved at appropriate times.

An effective partnership requires working relationship at all levels of the decision chain and a

clear understanding of individual roles, scopes of authority, and responsibilities within each organization. Participants in partnerships must: communicate the workings of their organization, the decision-making process within their organization, and the boundaries of their authority; understand and respect each other's expectations and constraints; be empowered to make decisions within the scope of their authority, bring others to the table when necessary, and be supported by their organization; and be sufficiently trained and experienced to exercise professional judgment as appropriate to the needs of the site.

Early and Substantial Regulator Involvement

Develop Common “Vision” with Goals, Objectives and Priorities

Even without “partnering”, it is generally productive to develop a common vision for the near-term to long-term future for the facility and related cleanup objectives, activities, and priorities. The vision may include concrete goals and objectives that direct the remediation efforts. The vision should be integral to the scoping and planning efforts for the site. It should be verified on a recurring basis that the scoping and planning and the progress at the site are consistent with the vision.

As part of developing this vision, EPA and other stakeholders need to continue to participate in the application and evaluation of the outcomes of DOD's and DOE's “relative risk” evaluation models. The results of these models are being used as the point of departure for establishing site cleanup priorities but other factors must be considered. EPA participation is critical to ensuring that our mission to protect human health and the environment is part of the prioritization process.

Budget Formulation and Execution Process

Consistent with the consensus principles and recommendations of the April 1996 Final Report of the Federal Facilities Environmental Restoration Dialogue Committee, EPA Regions should be actively engaged in the budget formulation and execution process surrounding DOD and DOE site cleanup activities. Such involvement facilitates EPA's understanding of how and why funding decisions are made and affords EPA the opportunity to influence these decisions. EPA's participation on the budget could include an annual review of federal facility cleanup progress on a basewide level in relation to the current and planned budget, in sufficient time to be able to influence the process and decisions. In addition, meetings/phone contacts should include a frequent (i.e., monthly) discussion on the current status of site budget issues. Discussions could include what projects have been put out to bid, what projects have been awarded, the potential for end-of-year funding and forward funding projects, and the results from prioritization dialogues.

Improve Project Scoping and Planning

The purpose of project scoping and planning is to reach cleanup decisions and actions in the most efficient manner. By effectively tying data collection to a specific decision, scoping and planning activities streamlines the oversight process. The time and expense of planning, producing, and

reviewing excess data and additional superfluous material, (e.g., site descriptions repeated in each deliverable) can be minimized through efficient project definition.

The streamlined process should focus on upfront scoping and identification of what is actually needed at a particular site to make a particular decision. Various alternatives to focus project planning are commonly used, such as the Data Quality Objectives (DQO) process, the Streamlined Approach for Environmental Restoration (SAFER), Expedited Site Characterization, the Observational Approach, Superfund Accelerated Cleanup Model (SACM), etc. The DQO and SAFER processes emphasize teamwork and consensus building whereas the Expedited Site Characterization and the Observational Approach do not necessarily stress communication. However, all the various approaches develop answers to the same basic questions and can contribute to streamlining activities:

- 1) What questions do you want to answer?
- 2) What data are necessary to answer the question?
- 3) What degree of uncertainty is acceptable?
- 4) What is the strategy to gather information?

Focusing on the definition of the problem and the decision that will be made is critical to support an environmental action and to frame the necessary degree and specific mechanism of the oversight role.

Data collection is typically planned during scoping and conducted as part of the RI. Defining the review requirements (i.e., parameters, limits, quality assurance, etc.) upfront and focusing on data elements that will affect decisions (e.g., contaminants of concern at or above action limits) saves time and resources for all parties. The review process should concentrate on the data that will be used in decision-making at the site. For example, exhaustive review of detection limit level contaminants two to three orders of magnitude below or above an action level uses valuable resources but does not add value or contribute to the decision-making process. In this case, the relatively high uncertainty will not change the decision. However, questionable presence or high uncertainty at an action level should trigger rigorous evaluation.

As part of the planning process, the participants need to consider alternative investigative approaches, such as the use of on-site analytical measurements with or without field labs, and innovative sampling methods and well installation techniques. Additionally, the RPMs need to participate and be available in field decisions to accommodate changes in the sampling plan.

The last step of the scoping phase is to ensure that all participants understand and reach a consensus on the planning process. Consensus building may be a time-consuming and taxing process. However, the investment upfront at the scoping stage of a project will generally provide significant savings later in terms of shorter review and revision cycles, and a final product that addresses participants' concerns.

Optimizing the Data Review Process

Current interagency efforts to develop required data sets and an electronic transmission standard offer significant opportunities to improve quality and efficiency of the review processes. Standardization allows efficient sharing of site information and automation of the review process through the use of software developed by EPA for Superfund analytical data. This data review software has been adapted by DOE (and potentially by DOD) to meet broader program needs (e.g., radionuclides and RCRA compliance).

Defining Each Regulator's Role

The role of EPA and state in terms of oversight responsibilities should be clearly defined, including establishing a lead regulator, wherever possible. Having a lead regulator conserves regulator resources, and minimizes duplicative requirements and conflict between the regulators. However, EPA is still responsible for ensuring that the remedy is protective of human health and the environment and that, ultimately, the site can be deleted from the NPL. Therefore, effective communication between regulators is especially important in implementing the lead regulator concept.

The EPA RPM should assume the responsibility to serve as liaison between RCRA and CERCLA and assure that CERCLA actions will satisfy RCRA concerns and that fundamental RCRA requirements are integrated into the FFA process and schedules and visa versa. In non-authorized states, the RPM can be granted RCRA corrective action and decision-making authority.

Streamlining Documentation and Review

Standard Operating Procedures and Document Formats

In addition to reaching up-front agreements, developing Standard Operating Procedures once that will cover all cleanup activities for the federal facility will streamline the oversight process. These may include: a Health and Safety Plan; Quality Assurance Plan; Field Sampling and Analysis Plan; Investigation Derived Waste Plan; ARARs list; and a stand alone background document describing the environmental setting of the facility, as well as the history. In addition, for the sake of consistency, document formats can be developed for: RI/FS work plans and reports; Risk Assessment Reports; RD/RA work plans and reports; and RODs. These will ensure that all the required components of each document will be included the first time around.

Eliminating Interim Deliverables or Milestones

A large number of documents are typically generated on a site-specific (or operable unit specific) basis to describe and support site-specific decisions. Regions should evaluate opportunities to eliminate interim deliverables and to generate more focused documents that answer specific questions. In some cases, drafts may be eliminated, or an entire deliverable may be eliminated, depending on the site-specific project needs. Attached is the Model FFA list of primary and secondary documents. There may be situations where some of these deliverables can be eliminated, such as when a presumptive remedy is being utilized.

CONCLUSION

Streamlined oversight can enhance cooperation among the stakeholders; expedite the cleanup of federal facilities; and avoid the unnecessarily high cost of the current oversight process with no decrease in protection to human health and the environment.

The major statutes and regulations that implement cleanup requirements at NPL sites establish the involvement of numerous institutions and individuals in that process. The roles of EPA, the states, the tribes, the federal facility, and community groups and other external stakeholders are carefully prescribed. Guidance and regulations establish the framework in which cleanup is to be carried out. Nonetheless, there is a wide range of flexibility in the details of the cleanup action and how individual responsibilities are carried out. It is up to all the participants in the federal facility remediation process to use the flexibility to conserve resources while ensuring adequate environmental protection.

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Attachment

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ATTACHMENT

MODEL FFA LIST OF PRIMARY AND SECONDARY DOCUMENTS*

PRIMARY DOCUMENTS

- 1) RI/FS Scope of Work
- 2) RI/FS Work Plan - including Sampling and Analysis Plan and QAPP
- 3) Risk Assessment
- 4) RI Report
- 5) Initial Screening of Alternative
- 6) FS Report
- 7) Proposed Plan
- 8) Record of Decision
- 9) Remedial Design
- 10) Remedial Action Work Plan

SECONDARY DOCUMENTS

- 1) Initial Remedial Action/Data Quality Objectives
- 2) Site Characterization Summary
- 3) Detailed Analysis of Alternatives
- 4) Post-screening Investigation Work Plans
- 5) Treatability Studies
- 6) Sampling and Data Results

* This list may be modified based on individual partnership needs.

Generally, secondary documents are seen as “feeder” documents and are not subject to dispute resolution as are primary documents.