



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

OSWER Directive: 9355.0-71P
EPA 540F-98-033
PB98-963305

MEMORANDUM

SUBJECT: Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions

FROM: Timothy Fields, Jr. *Timothy Fields, Jr.*
Acting Assistant Administrator

TO: Superfund National Policy Managers, Regions I-X
Regional Counsels, Regions I-X

Purpose

The purpose of this interim policy is to provide direction to EPA Regional decision makers on when to consider permanent relocation as part of a Superfund remedial action. EPA anticipates developing a final policy at some point in the future, using feedback generated by the Regions through the use of the interim policy and by stakeholders who may offer comment.

This policy applies to National Priorities List (NPL) sites where remedial authority¹ is being used. It does not affect previous remedy selection decisions, nor does it limit potentially responsible party (PRP) liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). PRPs may agree independently with residents (or

¹This policy addresses sites being cleaned up under remedial authority. As stated in the Preamble to the 1985 National Oil and Hazardous Substances Contingency Plan (NCP), "[t]here are certain situations where EPA's removal authority does not extend, e.g., permanent relocation cannot be performed as part of a removal response." 50 Fed. Reg. 37625 (September 16, 1985). There may, however, be cases where it is appropriate to provide alternative housing or rental space for tenants (residential or businesses). Such provision of alternative rental space does not constitute a permanent relocation. Regions should contact the Office of Emergency and Remedial Response prior to initiating tenant relocation under removal authority.

business owners) to relocate them, as long as the relocation neither compromises, nor interferes with EPA's actions at a site.

The major points of this directive are:

- EPA's preference is to address the risks posed by the contamination by using well-designed methods of cleanup which allow people to remain safely in their homes and businesses;
- EPA may consider a permanent relocation alternative as part of the Feasibility Study (FS) should certain site conditions, such as those described in this policy, be encountered;
- EPA should involve the community early in the process and keep residents informed of activities at the site; and
- EPA cannot conduct a permanent relocation of tribal members without Tribal government concurrence.

Background

Policy Development Activities

In January 1995, the National Environmental Justice Advisory Council's (NEJAC) Waste and Facility Siting Subcommittee requested that EPA develop a policy to determine when citizens should be relocated away from residential areas near or affected by Superfund sites. NEJAC was responding to requests from communities who wanted to be relocated away from Superfund sites because of: their fear of the potential health effects; their concerns that they could no longer sell their homes; and the effects on their overall quality of life. Responding to these concerns, the Assistant Administrator of the Office of Solid Waste and Emergency Response issued a memorandum entitled "Relocation of Residents Affected by Superfund Sites," on May 11, 1995, to announce EPA's intent to develop a national relocation policy.

To understand fully the issues associated with relocation, EPA initiated several efforts. First, EPA selected the Escambia Wood Treating Company site in Pensacola, Florida, as a national relocation pilot. On February 12, 1997, a Record of Decision (ROD) was issued for the permanent relocation of 358 households. The Agency made a decision to relocate the residences and clean up the properties to levels that are protective for industrial use. Although the pilot project has not yet been completed, several key themes are already emerging. These include the need for EPA to: keep communities informed throughout the process; promptly address community concerns; and factor community concerns into EPA decisions. Upon completion of the relocation pilot, EPA plans to conduct an evaluation to determine what lessons can be applied at future sites and in the final relocation policy.

Second, EPA reviewed a number of sites where cleanups in residential areas had been conducted. To date, the overwhelming majority of Superfund sites located in residential areas are being cleaned up without the need to permanently relocate residents and businesses. For example, at the Glen Ridge, Montclair/West Orange Radium sites in New Jersey, the Bunker Hill Mining site in Idaho, and the Tar Creek site in Oklahoma, EPA has successfully excavated contaminated soils from approximately 5,000 residential properties down to levels of contamination that no longer pose unacceptable risks. By addressing the risks at these three sites through cleanups, people were able to remain in their homes and entire communities were kept intact.

Finally, EPA sponsored a series of stakeholder forums to solicit views and experiences on the subject of relocation. Forums were held between May 1996 and October 1997 with representatives from state governments, local governments, federal agencies, Native American communities, environmental justice groups (which included citizens from communities near Superfund sites), industries, and public health officials. Many of the same themes emerged during these meetings as at the Escambia pilot site, including the need for EPA to: work closely with members of the community to address their issues; involve the community in the decision-making process; and communicate openly and honestly.

Stakeholders also offered their opinions as to what types of situations warrant the use of permanent relocation at a site. Many believed that there should be clearly defined trigger conditions under which permanent relocation automatically should be offered, regardless of whether or not the residential areas could be cleaned up. One such suggested trigger condition was the presence of adverse health effects for those who live on or immediately adjacent to a Superfund site. There was a range of opinions on what type of health effects data should be considered, and how exactly they should factor into a relocation decision. Some suggested using the baseline risk assessment performed to assess the threats posed by the Superfund site, while others believed any unexplained or anecdotal reports of health effects in the area of the Superfund site should be sufficient to trigger a relocation offer. Still, others asked EPA to consider cumulative and synergistic effects of multiple contaminants from other industrial sources.

In addition to health effects, stakeholders recommended that relocation be considered whenever the site has a negative influence on the residents' quality of life. Stakeholders provided anecdotal information about residents who curtailed all outside activities (e.g., allowing children to play outside, socializing outdoors, or opening windows) because of their fear of living near a Superfund site. Several also expressed concern that EPA might impose restrictions on normal residential activities (e.g., recommending that children not play in their yards) instead of cleaning up residential areas. Others questioned EPA's ability to implement a remedy safely, adding that relocation should be considered whenever cleanups result in dust emissions or heavy equipment in residential areas. Although stakeholders acknowledged that temporary relocations could address these safety concerns, some suggested that EPA offer permanent relocation when temporary relocation exceeds an acceptable duration.

Stakeholders also recommended that EPA make relocation experts available as early as possible whenever relocation is being contemplated as a potential remedial alternative so the community can be better informed of their options before a decision is made. There was also a general view that if relocation is necessary, EPA should seek ways to enhance stability and restore the remaining community's viability by working with other governmental and nonprofit agencies.

A comprehensive description of the forums can be found in "Proceedings: Superfund Relocation Roundtable Meeting" (December 1996, OSWER 9378.0-03, EPA 540-K-96-010, PB96-963254), and "Meeting Summaries from the EPA/ICMA Relocation Stakeholder Forums" (May, 1998, OSWER 9378.0-12, EPA/540-R-98-002, PB98-963203). EPA has also prepared a response to comments made during the forums, which can be found in "Relocation Stakeholder Forums Responsiveness Summary," (June 1999, OSWER 9375.1-14, EPA 540-F-98-058, PB99-963206).

Remedy Selection in the Superfund Program

CERCLA section 101(24) grants explicit authority to conduct permanent relocations by defining remedial action to include, "...the costs of permanent relocation of residents and businesses and community facilities where the President determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect the public health..." Additionally, the National Oil and Hazardous Substances Contingency Plan (NCP), which constitutes CERCLA's implementing regulations, states that, "[t]emporary or permanent relocation of residents, businesses, and community facilities may be provided where it is determined necessary to protect human health and the environment" (40 CFR section 300, App. D(g)).²

The NCP (40 CFR section 300.430) establishes a remedy selection process to ensure that remedies meet the principal requirements of CERCLA section 121. Remedies must:

1. Protect human health and the environment;
2. Comply with applicable or relevant and appropriate requirements (ARARs) unless a waiver is justified;
3. Be cost-effective;
4. Utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable; and
5. Satisfy the preference for treatment as a principal element or justify why the preference was not met.

² Temporary relocations are used to address health or safety concerns that EPA may have during removal or remedial actions. This policy does not provide guidance on determining when temporary relocation should be considered.

In accordance with the NCP, (40 CFR section 300.430(a)), the national goal of the remedy selection process is to "select remedies that are protective of human health and the environment, that maintain protection over time, and that minimize untreated waste." The NCP defines a process where nine criteria (40 CFR section 300.430(e)(9)(iii)(A)-(I)) are to be used to analyze remedial alternatives to ensure that selected remedies meet the program's goals. Because permanent relocation is considered a remedial action, it is selected for use at a Superfund site only when it has been evaluated through this process and determined to be the best overall remedy for the site.

The first step of the remedy selection process is to conduct a remedial investigation (RI) to characterize the nature and extent of site contamination. As part of the RI, a baseline risk assessment is performed to estimate the current and potential risks to human health and the environment posed by conditions at the site.³ If the baseline risk assessment indicates that there is no unacceptable risk to human health or the environment, then remedial action would generally not be warranted. If there are current or potential risks that need to be addressed, a feasibility study (FS) is completed. The FS encompasses an evaluation of a range of potential remedial alternatives, which may include permanent relocation, as appropriate, along with an array of treatment and containment options.

A detailed evaluation of the alternatives is performed using the nine evaluation criteria. These criteria are protection of human health and the environment, compliance with ARARs, long-term effectiveness and permanence, reduction of toxicity, mobility, or volume through treatment, short-term effectiveness, implementability, cost, state agency acceptance, and community acceptance.

The evaluation comprises two steps: an individual analysis of each alternative with respect to each of the criteria; and a comparison of the alternatives to determine their relative performance and identify the major tradeoffs among them. EPA weighs these tradeoffs in terms of the nine criteria and identifies the option which it believes strikes the best balance and fulfills the statutory requirements. This preferred option is presented to the public for comment in a proposed plan, which preliminarily summarizes why EPA considers this option to be most favorable. Following receipt and evaluation of public comments on the proposed plan, EPA makes a final decision and documents the selected remedy in a ROD.

Additional information concerning the Superfund remedy selection process can be found in "A Guide to Selecting Superfund Remedial Actions" (April 1990, OSWER Directive 9355.0-72FS).

³Key information should be collected to support the reasonably anticipated future land use assumptions used in the baseline risk assessment. EPA must carefully consider whether potential land use changes that may be offered by local authorities are reasonable or are too speculative to ensure protectiveness for future use. EPA does not anticipate many situations where the current use is residential and the reasonably anticipated future land use will be different. See "Land Use in the CERCLA Remedy Selection Process," (May 25, 1995, OSWER Directive 9355.7-04) for additional information on how to determine land use assumptions.

Implementation

Having proven our ability to successfully restore contaminated property at many Superfund sites, generally, EPA's preference is to address the risks posed by the contamination by using well-designed methods of cleanup which allow people to remain safely in their homes and businesses. This is consistent with the mandates of CERCLA identified above, and the implementing requirements of the NCP which emphasize selecting remedies that protect human health and the environment, maintain protection over time, and minimize untreated waste.

Because of CERCLA's preference for cleanup, it will generally not be necessary to routinely consider permanent relocation as a potential remedy component. Whenever permanent relocation is under consideration, EPA must ensure that the vacated properties do not pose a current or future risk to human health and the environment for those that may come in contact with the site. As a result, some type of cleanup or other response action generally will be needed to address the vacated properties.

The following list, although not inclusive, provides examples of the types of situations where permanent relocation may be considered. Generally, the primary reasons for conducting a permanent relocation would be to address an immediate risk to human health (where an engineering solution is not readily available) or where the structures (e.g., homes or businesses) are an impediment to implementing a protective cleanup. The examples are discussed in terms of how EPA could conduct an alternatives analysis applying several of the NCP nine criteria, leading to the consideration of permanent relocation as an appropriate option.

- Permanent relocation may be considered in situations where EPA has determined that structures must be destroyed because they physically block or otherwise interfere with a cleanup and methods for lifting or moving the structures safely, or conducting cleanup around the structures are not **implementable** from an engineering perspective. The methods may be technically infeasible because they are too difficult to undertake or success may be too uncertain. Additionally, these methods may prove not to be cost-effective when compared with other alternatives that are protective of human health and the environment.
- Permanent relocation may be considered in situations where EPA has determined that structures cannot be decontaminated to levels that are **protective of human health** for their intended use, thus the decontamination alternative may not be **implementable**.
- Permanent relocation may be considered when EPA determines that potential treatment or other response options would require the imposition of unreasonable use restrictions to maintain protectiveness (e.g., typical activities, such as children playing in their yards, would have to be prohibited or severely limited). Such options may not be **effective in the long-term**, nor is it likely that those options would be **acceptable to the community**. For further discussion about developing remedial alternatives that include institutional

controls see "Land Use in the CERCLA Remedy Selection Process."

- Permanent relocation may be considered when an alternative under evaluation includes a temporary relocation expected to last longer than one year. A lengthy temporary relocation may not be **acceptable to the community**. Further, when viewed in light of the balancing of tradeoffs between alternatives, the temporary relocation remedy may not be practicable, nor meet the statutory requirement⁴ to be **cost-effective**. Additionally, a shortage of available long-term rentals within the immediate area, may make any potential temporary relocation extremely difficult to **implement**.

Whenever permanent relocation is to be considered, it is imperative that EPA work with the affected stakeholders (e.g., potentially affected residents and businesses, the state, the tribe, the local government, and other members of the community) to identify the major issues associated with the relocation, including acceptability of relocation to the community, so the issues can be factored into the nine criteria evaluation. For example, an "**implementability**" concern that may arise during this evaluation is the lack of comparable housing. Additionally, the willingness of the state to provide a cost-share or accept title to the acquired properties may affect "**state acceptance**".⁴

It is possible that the need for permanent relocation may not become apparent until a remedy reaches the remedial design or remedial action phase. In those cases, it may be appropriate to prepare either an Explanation of Significant Differences (ESD) or a ROD Amendment, depending on the scope of the change this would represent (See "Guide to Addressing Pre-ROD and Post-ROD Changes," April 1991, OSWER Publication 9355.3-02FS-4).

A permanent relocation funded through CERCLA should be implemented in accordance with the Uniform Relocation and Real Property Acquisition Policies Act (URA), 42 U.S.C. section 4600-4655, and applicable regulations, 49 C.F.R. section 24, *et seq.* The purpose of the URA is to ensure that persons displaced as a direct result of a project are treated fairly, consistently, and equitably. EPA uses the services of the U.S. Army Corps of Engineers and U.S. Bureau of Reclamation to assist in conducting relocations because of their expertise in applying the URA. All relocations funded by PRPs, as part of the remedy selected by EPA, should follow procedures comparable to the URA. EPA may enter into a consensual agreement with PRPs to conduct a relocation, or EPA may issue a unilateral administrative order to do so.

In cases where a State or local government entity is a PRP conducting the relocation and exercises its sovereign authority to condemn the affected property, EPA should be consulted regarding the application of the URA on a site-specific basis. For example, EPA should ensure

⁴CERCLA §104(j) authorizes EPA to acquire property needed to conduct a remedial action only if the state in which the property is located assures EPA that it will accept transfer of the property following completion of the remedial action.

that the state assuming title to the property does not interfere with access to the property for implementation of the remedy; the affected community receives fair and equitable treatment for the condemned property; and there is effective outreach to the affected community and stakeholders.

Community Involvement

As soon as EPA becomes involved at a site, discussions with the community should begin to inform residents and businesses of activities at the site and to allow the opportunity for citizens to become part of the process. These activities may include, but are not limited to: distributing fact sheets to inform the community of site activities; conducting availability sessions for residents to ask questions; posting news releases about site activities; and establishing hotlines to answer citizens' questions.

When a permanent relocation is considered, residents and businesses should understand the multitude of issues associated with the relocation process, including the financial benefits. Communities may want to use a relocation expert or advisor to provide independent assistance to the residents and businesses before EPA makes a decision to relocate. A relocation expert may be accessed through EPA's Technical Assistance Grant (TAG) program.

The TAG program awards grants of up to \$50,000 to eligible communities so they can hire independent technical advisors to interpret information about the site. A relocation expert, funded under a TAG, would need to meet requirements regarding activities and qualifications that apply to TAGs (see 40 CFR Part 35, Subpart M). Generally, a qualified relocation expert should possess the following credentials: experience in working on family and/or business relocations, including knowledge of the URA, and private relocation programs; experience working with real estate brokers and lenders; and demonstrated knowledge of appraisals, title searches, real estate title insurance, and relevant state and local real estate tax laws. In Indian country, the relocation expert should also understand relevant federal Indian law and tribal law. The relocation expert should be impartial and have the ability to explain the costs, benefits, pitfalls, and other lifestyle effects of relocation to residents. If a relocation decision is made, then EPA will provide relocation counseling services as required under the URA. On a voluntary basis, PRPs may fund a relocation expert for a community.

In addition to addressing the community's information needs, there are other procedural ways the community can be involved in the cleanup process. In response to the President's Executive Order on Environmental Justice 12898, Superfund established the Community Advisory Group (CAG) program. CAGs, comprising representatives with diverse community interests, provide a public forum for community members to present and discuss their needs and concerns about a site. At sites where relocation is being considered, EPA recommends that a CAG or similar-type group be formed to fully engage all the interested parties in a meaningful dialogue about the site cleanup and how relocation may or may not fit into a community's long-term vision and plans. For additional information, see "Guidance for Community Advisory

Groups at Superfund Sites," (December 1995, OSWER Directive 9230.0-28, PB94-963293, EPA 540-K-96-001).

The prospect of permanent relocation as a remedial action alternative may raise a number of practical problems that should be carefully considered by citizens residing in an affected community. In some communities, a permanent relocation could alter the fabric of a locality by affecting the local tax base and the services that the communities support, including small businesses, schools, churches, and hospitals. Furthermore, permanent relocation can result in the break up of neighborhoods dissolving valuable social cohesion. Community involvement activities at a particular site should be tailored to meet the various needs and concerns of individual citizens within the affected community. EPA should also explore opportunities to partner with other federal agencies (e.g., Department of Housing and Urban Development, Agency for Toxic Substances and Disease Registry, or Department of Transportation), the state, local agencies, non-governmental organizations, and non-profit organizations (e.g., Red Cross) to help identify other potential assistance that may be available to the relocated residents or to those in the community that remain behind.

Additional Considerations for Native Americans. Including Alaska Native Villages

For all decisions affecting federally recognized tribes, EPA is guided both by statute and policies. As provided in CERCLA section 126(b), if the Agency finds that "...the proper remedial action is the permanent relocation of tribal members away from a contaminated site because it is cost effective and necessary to protect their health and welfare, such finding must be concurred on by the affected tribal government before relocation shall occur..." If there is nonconcurrence, EPA should work with the tribal government and community on a site-specific basis to address other cleanup options at these sites to protect tribal members' health and welfare. Additionally, CERCLA section 126(b) states that if the tribal government concurs in the relocation decision, then EPA, in cooperation with the Department of the Interior, "...shall also assure that all benefits of the relocation program are provided to the affected tribe and that alternative land of equivalent value is available and satisfactory to the tribe. Any lands acquired for relocation of tribal members shall be held in trust by the United States for the benefit of the tribe..." Further, Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments," dated May 14, 1998, and the "Policy for the Administration of Environmental Programs on Indian Reservations," dated November 8, 1984, describes how EPA should work with federally-recognized Indian tribes and Alaska Native Villages on a government-to-government basis.

As discussed previously, EPA conducted a stakeholder forum with Native American and Alaska Native participants. During that meeting, they generally expressed their views that permanent relocations should not be conducted on tribal lands. The participants asked that tribal lifestyles be considered when evaluating any potential relocation alternative. These considerations should include subsistence lifestyles (e.g., hunting/fishing territories, dietary needs, medicinal plants), treaty-protected resources, and religious beliefs tied closely with the

land (e.g., sacred religious sites). Due to the close relationship between Native Americans and specific lands, relocation of tribal communities can have a profound impact on community well-being and integrity. Given these unique considerations, EPA expects that tribal government concurrence on the use of permanent relocation, as required by CERCLA section 126(b), may be quite limited.

Conclusion

Permanent relocation is a complicated process that can cause personal and social disruption and stress. It is EPA's preferred approach to address the risks posed by the contamination by using well-designed methods of cleanup so people can remain safely in their homes and businesses. Therefore, permanent relocation as part of a Superfund response action generally should not be necessary to protect human health and the environment. However, as indicated above, there are limited cases where permanent relocation may be an important part of a remedial action. Regardless of the remedy selected, EPA should continue to: involve the community as early as possible in the Superfund process; partner with the local, state, and tribal governments; and make every effort to implement the action in an expeditious, thoughtful, and fair manner.

If there are any questions regarding this policy, please contact Jo Ann Griffith of the Office of Emergency and Remedial Response at (703) 603-8774. Additionally, for enforcement implications related to this policy, please contact Clarence Feathersson of the Office of Enforcement and Compliance Assurance at (202) 564-4234.

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