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Office of
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Integrating Brownfields and Traditional Site Assessment

Office of Emergency and Remedial Response
State, Tribal, and Site Identification Center (5204G)

Quick Reference Fact Sheet

Regional Superfund Directors discussed the many changes in the Superfund site assessment program at a Policy Managers meeting in July of 1996. They identified concerns about changing program priorities, eligible uses of assessment funding, and reporting accountability requirements. This site assessment fact sheet provides interim guidance on these issues while a more detailed policy review is underway and while a series of brownfields initiatives are being developed. This is designed for use by EPA Regional offices, as well as State and tribal site assessment officials.

ACTIVITIES

Historically, the major activity for site assessment has been to evaluate sites for National Priorities List (NPL) placement. Now additional purposes/objectives have become increasingly important.

NPL Listing: SARA 105(a) (8) (B) requires EPA to list national priorities among the known releases or threatened releases throughout the U.S. This list is the NPL. The highest priority sites should still be evaluated for NPL listing, in consultation with States. A credible potential for NPL listing is often a critical component of a

successful State voluntary cleanup program.

- **CERCLIS Inventory:** Assessing sites in the CERCLIS Inventory is essential in identifying high priority sites and those not requiring Federal response action. Delays in addressing the thousands of CERCLIS sites where decisions are pending are impeding potential redevelopment of a number of those sites. Additionally, completing CERCLIS site assessments for sites adjacent to Brownfields Pilots and promptly archiving all sites of no further Superfund interest provides important support for EPA's Brownfields efforts. Brownfields sites are abandoned, idled, or

under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. The contamination is typically at lower levels than that found at NPL sites.

Brownfields Assessments: A portion of site assessment funds may be used to complete streamlined assessments at Brownfields sites, regardless of whether they are in CERCLIS. These could include sites adjacent to EPA Brownfields pilot sites and sites assessed by a State Brownfields project funded under a Multi-Site Cooperative Agreement. This may be most appropriate at abandoned sites and publicly-owned sites, and these should be given higher priority than those where private funds are available. However, other sites may also be appropriate, given a careful consideration of the benefits and sensitivity of expending federal assessment resources.¹

- Balancing Priorities: Given these three priorities and constrained site assessment resources, a careful balancing of activities is important. EPA's FY 97 appropriation provides \$3 million specifically for Brownfields assessments; any additional Brownfields assessment activities must come from site assessment funds.¹ Regions and States with significant CERCLIS backlogs need to ensure steady progress is made addressing them. Regions and States

¹A consolidated list of criteria for prioritizing and performing brownfields assessments is attached to this short sheet.

without such backlogs can give higher priority to Brownfields activities.

Funding Eligibilities/Availabilities

- In addition to conventional site assessment activities (PA, SI, ESI, HRS, and integrated assessments), it is appropriate to use some site assessment resources for innovative approaches.
- Among these are efforts to use readily available information to "prescreen" sites for potential CERCLIS entry, conduct streamlined assessments in support of Brownfields, and conduct streamlined risk assessments of CERCLIS sites.
- The Office of General Counsel has concluded that EPA can utilize CERCLA funds for these various assessment efforts including assessments at sites not in CERCLIS, in a memorandum dated July 7, 1994 (attached).
- OERR has amended the SF Program Management Manual to clarify that some site assessment funds may be used for brownfields site assessments. We believe funding flexibility is appropriate, given the direction and needs of the program. Regions have funds provided by the Brownfields pilot projects, and their apportioned share of the \$3 million that has been targeted in the fiscal 1997 budget for Brownfields assessments. Additional funding for Brownfields from the site assessment budget would need to be balanced against the Region's other site assessment needs. Regions should consult with the appropriate HQ site assessment team contact (see attached list) for expending funds beyond the targeted \$3

million, and provide a greater accounting and tracking, sufficient to justify expenditures under audit conditions.

- Regions have some discretion in selecting areas for Brownfields work. However, your selections should be based on, and you should document, how well the sites meet most, if not all, of the criteria developed jointly by Headquarters and Regions. Further, there needs to be a description of the assessment work being conducted and the expected benefits of this work available for review upon request.
- Funds may be expended by EPA for federal-lead site assessment activities or by States under Pre-Remedial Cooperative Agreements. Consistent with recent discussions between EPA and States, it is our general preference to have States take the lead on new site assessments. Where regions take the lead, it should be in full consultation with the State.

Accountability for Results

- As the nature of site assessment changes we need to address new reporting and accountability challenges in order to accurately portray the extent of State, federal, and local government site assessment activities.
- Conventional CERCLIS site assessments, including integrated assessments, should continue to have accomplishments coded into CERCLIS on a routine (i.e., at least quarterly) basis.
- As Regions provide States flexibility in Cooperative Agreement applications and work plans by expanding the definition of

types of assessment activities to be performed, the States also need to provide accountability for the activities performed through quarterly or annual reporting of the number of sites assessed, types or nature of assessments performed, and assessment results. Management systems at the State and probably federal level will be needed to provide the accountability necessary and also identify program accomplishments.

- Headquarters will work with the regions to develop appropriate reporting systems and measures of success.

Important Considerations

- Early and meaningful opportunities for community involvement are always expected. This applies to both conventional and innovative site assessment activities.
- Since only a small percentage of the sites, even in conventional site assessments, will be considered for the NPL, field analyses will typically meet data quality and usability needs, taking into consideration development of Data Quality Objectives, NCP requirements, and Agency Order 5360.1. Regions are encouraged to consider using field analyses for all assessments, especially those at Brownfields sites. Confirmatory sampling usually will be needed, consistent with federal and State requirements.
- We are actively working to enhance the role of States and Tribes in Superfund. The site assessment program has always had strong State involvement and this should continue and expand as its purposes are broadened beyond CERCLIS sites.

Conclusion

- The purposes and nature of site assessment work are evolving. This fact sheet is intended to clarify current priorities, funding eligibilities, and accountability needs.
- HQ and Regions have work underway to develop a more efficient and effective Superfund site assessment strategy. More detailed policy guidance will be issued early in 1997.
- In the interim, please adhere to concepts in this fact sheet when developing site assessment priorities for your Region and with your States and Tribes.

"Consolidated List of Criteria for Prioritizing and Performing Brownfields Assessments."

The following criteria reflect elements suggested by several Regions and then discussed at the September 19, 1996 Pittsburgh Brownfields Coordinators Meeting. These criteria are useful in determining where resources should be directed for Brownfields assessments, irrespective of the source of funding. These criteria may change based on experience gained from implementation of this policy. All of the criteria should be considered by the Regions in the allocation of Brownfields resources, but not all criteria will be met by all Brownfields projects. These criteria are intended to be used only as a tool to help establish relative priorities among the sites within a Region that are being considered for Brownfields assessments.

Site control and ownership transfer is not an impediment.

- Site is currently publicly owned or may be publicly owned either directly by municipality or through a quasi-public entity such as a community development corporation.
- Site is privately owned and a clear means of recouping EPA expenditures is available (e.g., through an agreement with the owner or developer or through a lien).

There is a strong municipal commitment.

- There is a strong municipal commitment as demonstrated by a willingness to legally take the property if necessary, establishment of financial incentives, or commitment of municipal resources for other components of the project.

There is a clear municipal/community vision and support for property revitalization.

- The site is clearly an integral part of a local development plan and there is no known public opposition.

There are adequate resources and high developer interest.

- The municipality or potential site developer has demonstrated an ability to leverage additional funds for cleanup and other future work at the site; and/or the site has strong development potential as demonstrated by past or present interest by a developer(s).

EPA assessment assistance is crucial to the redevelopment of the site.

- The lack of site assessment is the major obstacle to redevelopment and other resources are not available for assessing the site.

State/Congressional support

- The State/Congressional members have no objection to Federal involvement or the redevelopment project.

Existing information supports directing resources to the site.

- Based on existing information, the site is likely to have low to moderate levels of contamination.
- Commitments are in place for the cleanup and redevelopment of the site.
- Redevelopment will result in benefits to the community, such as an increase in jobs for the surrounding residents.

Project area has a clear need for revitalization.

- The project has existing significant deterioration or significant environmental justice issues, which provide a clear need for revitalization.

There is State support.

- There is a clear coordination between the Region and the State program.

There is consistency with other EPA/ Federal agency initiatives.

- Site has an important linkage to other EPA/State initiatives.
- A direct health/environmental threat will be mitigated or site revitalization will serve to spur further beneficial activity in nearby locations.
- There is consistency with other Federal agency Brownfields efforts, e.g., economic redevelopment efforts.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 7 1994

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Legal Authorities to Conduct and Fund "Brownfield" Projects

FROM: Earl Salo *ES*
Assistant General Counsel
for Superfund
Solid Waste and Emergency
Response Division (2366)

TO: Marjorie Buckholtz
Director
Office of External Relations
Office of Solid Waste and Emergency Response (5101)

You have asked for our opinion on whether CERCLA¹ provides legal authority to fund various "Brownfield" pilot projects. While Brownfield projects will vary in the methods and activities implemented, their ultimate objective remains the same - to return contaminated inner city properties to productive use. It is our understanding that the sites proposed for inclusion under the "Brownfield" projects program present either an actual, threatened or suspected release of a hazardous substance for which the various section 104 response authorities could, as appropriate, be invoked (section 104(a) requires a release or threatened release, while section 104(b) provides authority to act whenever there is a reason to believe a release has occurred or is about to occur).²

¹ Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601, et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-299.

² Sections 104 and 111 allow EPA to address pollutants and contaminants as well as hazardous substances. This memorandum, however, addresses only hazardous substances.

If the activities proposed under a "Brownfield" project are authorized under section 104, they would be appropriate for a section 104(d)(1) contract or cooperative agreement, and may be funded by the Superfund.

Section 104 Authorities

Section 104(a) grants the President³ broad authority to take response actions whenever there is a release or substantial threat of release of hazardous substances. The Administrator may:

"remove or arrange for removal . . . provide for remedial action . . . or take any other response measure consistent with the National Contingency Plan [NCP] . . . deem[ed] necessary to protect the public health or welfare or the environment." (emphasis added)

Section 101(23) defines removal actions to include, without limitation:

such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, disposal of removed material . . . security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 104(b) of this title, and any emergency assistance which may be provided under the Disaster Relief and Emergency Assistance Act [41 U.S.C.A. § 5121 et seq.]

While section 101(24) defines remedial actions to include:

those actions consistent with permanent remedy taken instead of or in addition to removal actions . . . such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and

³ The President has delegated these authorities to the Administrator through Executive Order 12580, Section 2(g), dated January 23, 1987.

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community facilities . . . offsite transport and offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.

Section 104(b) permits the Administrator to:

"undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate . . . In addition the [Administrator] may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary and appropriate to plan and direct response actions . . ."

This authority is triggered where the Administrator is authorized to act under section 104(a) or when the Administrator has reason to believe that a release has occurred or is about to occur.⁴

"Brownfield" project proposals submitted to the Agency cover a broad spectrum of activities. One project proposes "acquiring an abandoned industrial and railway site, removing existing structures, remediating any environmental hazards and developing a comprehensive civic, municipal services and recreation complex in the center of the community." Another pilot project proposes setting up a "brownfields" policy development forum, creating an electronic "brownfields" catalogue, and conducting economic analysis of specific sites. Several other projects propose educating stakeholders about the Superfund process, developing mechanisms to involve community leaders in the site screening and selection process, and forming strategies to remove environmental and financial barriers to development. These general activities should be evaluated on a case by case basis to determine whether they constitute response actions authorized under section 104.

Section 104(d) Cooperative Agreement Criteria

Section 104(d)(1) authorizes the award of contracts or cooperative agreements to States, political subdivisions or Indian tribes to carry out actions authorized in section 104. Through cooperative agreements, EPA would be authorizing a State, political subdivision, or Indian tribe to undertake activities that EPA itself has the authority to pursue under sections 104(a) or 104(b), thus satisfying the requirements of section 104(d)(1).

⁴ The authorities in section 104(b) relating to "illness, disease, or complaints thereof" have been delegated to the Secretary of Health and Human Services. E.O. 12580, section 2(a) (Jan. 23, 1987).

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However, before a contract or cooperative agreement is awarded, the applicant must satisfy the eligibility criteria of section 104(d) and 40 CFR Part 35, Subpart O.

Use of Superfund to Support "Brownfield" Projects

Section 111 of CERCLA specifies the purposes for which the Superfund may be used, and supports the use of the Superfund for the section 104(d)(1) cooperative agreements. Section 111(a)(1) authorizes the "[p]ayment of governmental response costs incurred pursuant to section 104" of CERCLA. The proposed "Brownfield" projects would qualify for such funding where the activities involved, as described above, constituted response actions.

We note that, under the NCP, the Superfund cannot be used to pay for remedial actions at non-NPL sites. See 40 CFR § 300.425. Thus, the Agency must ensure that any Superfund money provided through any cooperative agreement not be used for remedial action at non-NPL sites. Since the "Brownfield" project proposals cover a spectrum of sites and activities, the Agency must be mindful of this limitation in accepting applications, and entering into cooperative agreements for those projects.

Conclusion

Our analysis is limited to the authorities available to conduct, under section 104, and fund, under section 111, proposed "Brownfield" projects. We would be happy to provide you and your staff with more specific advice on individual projects.

Please contact me at 202-260-7698, or Rich Albores of my staff at 202-260-7981 should you have any comments or additional questions.

cc: Rich Albores, OGC (2366)
Carol Cowgill, OGC (2378)
Henry Longest, OERR (52010)
Helen Keplinger, OECA (2244)
Lorie Boughton, OECA (53026)
Crane Harris, OSWER (5101)
Carolyn Offutt, OERR-HSCD (52036)
Nicole LaCoste, OERR-HSCD (52036)
Larry Reed, OERR-HSCD (52046)

⁹ This limitation on Superfund use does not apply to removal actions (including pre-remedial actions, such as PA/SI, RI/FSS, RD, and other section 104(b) activities).

SITE ASSESSMENT TEAM HQ CONTACT LIST

Below is a "Who to Contact on the HQ Site Assessment Team" list for Site Assessment Managers and Brownfields Coordinators. Your Region's first point of contact for Brownfields issues should be OSPS's team member. Your Region's first point of contact for Superfund site assessment should be your Regional Center's Site Assessment Team member. The OERR policy area expertise is provided for additional information. Your OERR Regional Center representative will coordinate with other OERR centers to get you the information you need.

Office of Emergency and Remedial Response (OSWER/OERR- 703 area code)

<u>REGIONAL CENTER</u>	<u>CONTACT/PHONE NUMBER</u>	<u>POLICY AREA</u>
Regions I & IX Fax 603-9112	Chuck Sands- 603-8857 Mike Hurd- 603-8836	Regional Coordinator, ORD Liaison, Field analytical Regional Coordinator Economic Reuse, Step-up
Regions II & VI Fax 603-9133	Terri Johnson- 603-8718 Janine Dinan- 603-8824 Betsy Shaw- 603-9034	Funding, Regional Coordinator Risk Characterization Team Mentor- general program direction
Regions III & VIII Fax 603-9100	Roxana Mero- 603-9150 Anne Spencer- 603-8716 Frank Avvisato- 603-8949	Regional Coordinator Regional Coordinator Phase I & II
Regions IV & X Fax 603-9104	Dan Thornton- 603-8811	Data useability, Groundwater Sampling, Listing Policy, Response to Comments
Regions V & VII Fax 603-9133	Scott Fredericks- 603-8771 Bonnie Gittlin- 603-8868	Presumptive Site Assessments Regional Coordinator Backup, budget
State/SI Fax 603-9104	Bob Myers- 603-8851 Marti Otto -603-8853 Terry Keidan 603-8852 Steve Caldwell - 603-8833	Team Leader, Coordinator for Revising Site Assessment NPL listing issues, response to comments for proposed sites, NPL lawsuits NPL listing issues, QA of HRS packages, getting sites proposed, NPL FR notices, SNAP Team Mentor- general program direction

**Contracts Oversight
Fax 603-9116**

Randy Hippen- 603-8829

CERCLIS and tracking

Pat Hawkins- 603-8714

START contract

**Program Analysis and
Resource Management
Fax 603-9116**

Angelo Carasea- 603-8828

Resources, GPRA

Outreach/Special Projects Staff (OSWER/OSPS)

For assistance on Brownfields programmatic issues, such as Brownfields pilots, pending legislation, Brownfields assessments and criteria, and other Brownfields issues, the assessment contacts in OSPS are:

**OSPS-Brownfields
Fax (202) 260-6606**

**Beau Mills
(202) 260-3525**

**Brownfields Assessments
and Criteria, other issues**

**Linda Garczynski
(202) 260-1223**

**Director of OSPS,
Brownfields Pilots,
Pending Legislation**