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

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OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

OSWER 9360.3-24

MEMORANDUM

SUBJECT: Analyzing Compensation Alternatives for Partially or Completely Demolished Structures

FROM: Michael B. Cook, Director
Office of Superfund Remediation and Technology Innovation (OSRTI)

Deborah Y. Dietrich, Director
Office of Emergency Prevention, Preparedness and Response (OEPPR)

TO: Superfund National Policy Managers, Regions I-X
Offices of Regional Counsel, Regions I-X

Purpose

This memorandum serves three purposes: first, to provide revised consultation and approval procedures for regional requests to restore or rebuild partially or completely demolished structures; second, to clarify the term "major restoration;" and third, to transmit guidance on how to analyze the various compensation alternatives. Revised consultation and approval procedures are necessary because of a determination by the Assistant Administrator of the Office of Solid Waste and Emergency Response (OSWER) that the Directors of the Office of Superfund Remediation and Technology Innovation (OSRTI) and the Office of Emergency Prevention, Preparedness and Response (OEPPR) may make the final decision on these issues.[1] That determination is documented in "OSWER's Decision to Transfer Authority to Approve Regional Requests to Rebuild Structures Using Government Contractors," OSWER Directive 9360.3-25, October 21, 2003.

[1] This policy does not alter any other consultation and approval procedures that may apply (e.g., nationally significant or precedent setting removal actions).

This memorandum supersedes OSWER Directive 9360.3-20, "Response Actions that Affect Residential or Commercial Structures," May 29, 1998. That memorandum set in place a requirement that Regions consult with Headquarters for assistance in analyzing alternatives for compensating the property owner(s), and receive approval from OSWER before making any final decisions regarding this aspect of a removal or remedial site response. Lessons learned suggest that these types of projects have the potential of being very complicated as well as costly. Therefore, to assure national consistency, the requirement that Regions receive approval from Headquarters before reaching an agreement with property owner(s) on *rebuilding* a demolished structure or before agreeing with owners to use government contractors to *restore* a partially demolished structure will continue.

This memorandum also serves to clarify the term "major restoration." Because of the variability in Superfund projects, it is difficult to be precise in defining major restoration. In many cases, the number of structures involved, the extent of restoration, the complexity of the restoration and the requirements or limitations of the relevant response authority could be factors in identifying the best option for compensating the owner(s). For the purpose of this memorandum, major restoration is generally defined as work necessary to restore partially demolished residential or commercial structures when such work may include replacement of all or a significant portion of a room or other key components that are part of a larger structure (as opposed to a detached garage or shed).[2] These factors are important because we have learned that major restoration may result in unexpected, significant cost overruns and project delays.

In the May 1998 memorandum, OSWER committed to developing a final policy based in part on implementation of the May 1998 memorandum. Today's memorandum fulfills that commitment. "Analyzing Compensation Alternatives for Partially or Completely Demolished Structures" presents OSWER policy recommendations regarding compensation of the owner(s) of partially or completely demolished structures. Interested parties are free to raise questions on and objections to the substance of this memorandum and the appropriateness of the application of this document to a particular situation. EPA will consider whether or not the recommendations or interpretations in this memorandum are appropriate to specific situations. This memorandum does not impose any requirements or obligations on EPA, States, other Federal agencies, or the regulated community. The sources of authority and requirements in this matter are relevant statutes and regulations including the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended and the Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally-assisted programs. (This policy does not apply to lessees, who may nevertheless be entitled to relief under other laws such as the URA.)

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[2] Restoration of real property or construction of a building may be considered part of EPA's general response authorities.

The memorandum is intended to provide Regions with tools for making difficult decisions on how best to provide compensation to these owners. The guidance includes an emphasis on the following:

- Early planning even before the decision to demolish or partially demolish the structure is essential. This includes evaluating options for designing response actions that avoid partially or completely demolishing structures.

- Unanticipated cost overruns, project delays and community frustration are common with rebuild and relocation projects. Finding the best option for compensating property owners may be difficult, and thus worthy of very careful analysis.

- If a structure must be partially demolished, the preference is to provide the owner with funds to manage the restoration themselves. If a structure must be completely demolished, the preference under remedial authority is to permanently relocate owners where possible; the preference under removal authority is to provide the owner with funds to manage the rebuild themselves.

- It also provides a decision framework that will ensure consistency in the fair and equitable treatment of property owners.

Background

The Headquarters approval requirement established by the May 1998 memorandum was put in place, in part, because of questions raised by several Regions in carrying out these types of responses, coupled with two Office of Inspector General (OIG) reports: "Results of Assessment of Controls over Emergency Removal Actions at Methyl Parathion Sites," (E1SFB7-06-0020-7400069), and (in Region 3) "Replacement Housing at the Austin Avenue Radiation site," (E1SFF7-03-0017-8100090). Both OIG reports were critical of the lack of appropriate cost overrun controls, and the Austin Avenue report concluded that EPA should not rebuild homes due to its lack of expertise.

Today's memorandum applies to fund-lead National Priorities List (NPL) or non-NPL Superfund removal and remedial actions,[3] where a structure, either residential or commercial, is

[3] For residential property owners, OSWER Directive 9834.6, "Policy Towards Owners of Residential Property at Superfund Sites," and "Interim Enforcement Discretion Guidance Regarding Contiguous Property Owners," may be applicable. If potentially responsible parties (PRPs) are identified, the Agency will seek to recover, among other things, its costs for compensating the owner(s) under this policy.

partially or completely demolished as a result of the implementation of a response action.[4] EPA's experience since then has taught us that each site situation is different, and analysis needs to be conducted on a site-specific basis, balanced with a need for national consistency.

Mobile or manufactured homes that require restoration and serve as the owner(s)' primary residence are also subject to this policy. Regions should keep in mind that, in general, restoring mobile or manufactured homes is rarely cost effective unless the repairs are minor. Regions should work with Headquarters to determine which option for addressing major restoration is best and whether approval from OSRTI or OEPPR is necessary.

Alternatives for compensating the owner(s) of partially or completely demolished structures using CERCLA funds include the following: property acquisition and permanent relocation (except at non-NPL sites under removal authority),[5] providing the owner(s) a financial settlement for the replacement value of the structure or demolished components, where the owner(s) restore or rebuild,[6] and restoring or rebuilding the structure using government contractors.

EPA Headquarters has been working closely with the Regions for several years to develop guidance on compensating the owner(s) of partially or completely demolished structures. There is clearly no single compensation mechanism that works best for every situation. It is often complicated by issues such as the lack of readily available building contractors, local permitting and zoning requirements, and the difficulty of satisfying the property owner(s) while limiting cost overruns.

Other OSWER policies and guidance address issues related to the decision to take response action that may damage or demolish a structure. To summarize, Regions should, where possible, design response actions that avoid a need to partially or completely demolish a structure. Remedial Project Managers (RPM) should refer to OSWER Directive, 9355.0-71P, "Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions," for additional guidance. If there is any reason to suspect that a structure may be affected by a

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[4] CERCLA funds should not be used to restore or rebuild structures that collapse as a result of conditions unrelated to the CERCLA response action.

[5] As stated in the Preamble to the 1985 National Oil and Hazardous Substance 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." Authority to acquire an interest in real property to conduct a remedial action is provided by CERCLA section 104(j).

[6] If the owner(s) would prefer to receive the appraised value of the structure or the demolished components, and not rebuild but retain the land, the owner(s) should receive the appraised value of the property but not the estimated cost to restore or rebuild.

response action, OSWER recommends that Regions develop site-specific criteria to assist them in making the decision to demolish a structure. The criteria may include technical information on how far to go in attempting to save a structure and when it is no longer technically or financially optimal. Regions should also have a strategy for working with the affected owner(s). The owner(s) need to know as early as possible of the potential for partial or complete demolition of their property and have a basic understanding of how and when EPA might know if the action will impact their property.

Implementation

Rebuilding or conducting major restoration of residential or commercial structures using government contractors is the least preferred alternative method of compensating the owner(s) and should be done only in the rarest of circumstances. The "rarest of circumstances" standard establishes a very high threshold for decisions to restore or rebuild structures for several reasons including the potential for unforeseen cost overruns, potential liability, and project delays. Further, EPA is experienced in the decontamination and disposal rather than the restoration or construction of residential or commercial structures. While EPA strives to include consideration of the owner(s)' preference in the final decision, the owner(s)' preferences should be balanced with the Agency's responsibility to manage public funds appropriately and within its expertise. The determination should be made on a case-by-case basis and is at the discretion of the Agency.

As soon as it becomes apparent that residential or commercial structures will be partially or completely demolished by a response action, the On-Scene Coordinator (OSC) or RPM should consult with the appropriate OEPPR (for removal actions) or OSRTI Regional Coordinator at Headquarters (for non-time critical actions and remedial actions) on the alternatives for compensating the owner(s). When there is a removal action at an NPL site, Regional Coordinators from both Headquarters offices will coordinate within OSWER.

Headquarters' preference is to reach a financial settlement with the owner(s) of *partially* demolished structures to allow them to *restore* their property. In the case of a *completely* demolished structure under removal authority, Headquarters prefers that a financial settlement be reached with the owner(s) to allow them to *rebuild* (see footnote 5 for more information); for sites where action is being taken under remedial authority, Headquarters' preference is to acquire the property and arrange for permanent relocation of the owner(s) and/or tenant(s).[7] If the Region decides that the best alternative is property acquisition and permanent relocation, the Region should prepare a formal memorandum including support documentation and request

[7] OSWER Directive, 9355.0-71P, documents OSWER's policy that in instances where owners are expected to be temporarily relocated for more than one year (tenants six months), Regions should evaluate the appropriateness of offering permanent relocation.

approval according to Superfund delegation 14-30, "Acquisition of Real Property."[8]

If the Region believes, based on site-specific factors, that property acquisition and permanent relocation is not the best option, the OSC or RPM should, with the Regional Coordinator's help, evaluate the appropriate alternatives. The attachment to this memorandum, "Key Factors to Consider When Analyzing Alternatives for Compensating the Owner(s) of Partially or Completely Demolished Structures," identifies issues to consider in this process.[9] An analysis that includes these and other relevant factors should be conducted for each option, including permanent relocation where applicable. The analysis should be detailed and provide enough information to lead to a decision based on comprehensive research rather than assumptions or conjecture. If, after consultation with Headquarters, the Region believes that major *restoration* should be addressed through a financial settlement with the owner(s), allowing the owner(s) to restore the property, approval from Headquarters is not necessary. If the Region concludes that *rebuilding* a demolished structure can best be achieved through a financial settlement with the owner(s), approval from the appropriate Headquarters offices is necessary. If the Region concludes that the best approach to restoring or rebuilding a demolished structure is to use government contractors, approval from Headquarters is also necessary.

IS HEADQUARTERS APPROVAL NECESSARY?		
Scope of Work	With Financial Settlement	By Government Contractors
Major Restoration	no	yes
Rebuild a Demolished Structure	yes	yes

In all situations where Headquarters' approval is necessary, the Region should prepare the analysis and a memorandum to request approval from the Director of OSRTI or OEPPR as appropriate. See below for more information on preparing this memorandum.

If the property is to be restored or rebuilt, using either method, the Region should obtain a written agreement with the owner(s) to document the understanding. The agreement should be detailed enough so that both the owner(s) and EPA clearly understand what is expected of each party. The agreement is also intended to document that Constitutional (Fifth Amendment) and URA waivers protecting the United States from subsequent claims by the property owner(s) are secured. The significance of a carefully written agreement cannot be overstated. Headquarters

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[8] Consistent with CERCLA Section 104(j), EPA and the appropriate state must reach agreement that the state will accept title to any acquired real property.

[9] Rebuilding demolished structures with manufactured housing constructed off-site and delivered whole or in sections for assembly on site is also within the scope of this policy.

has examples of documents like these for the various alternatives. Regions are encouraged to contact their Regional Coordinator and/or OGC/Finance and Operations Law Office (FOLO) for assistance in developing a site specific agreement. The appropriate Headquarters Regional Coordinator should be sent a copy of the written agreement.

Regions should keep in mind that replacing a partially or completely demolished structure is intended to compensate the owner(s) for the structure; it is not intended to totally compensate individuals for expenses or losses associated with actual contamination or the effects thereof, or other components of the Superfund response action (e.g., the owner(s) may feel that have been inconvenienced by the Superfund action or have suffered health affects as a result of exposure to the contaminant and want compensation for the inconvenience or health effects). EPA is not responsible for providing an exact replica of the original structure, essentially "like for like."[10] Rather, appropriate replacement housing should be consistent with the URA: decent, safe, and sanitary; meet applicable housing and occupancy codes; be functionally equivalent to the previous house; be adequate in size to accommodate the occupants; and be within the financial means of the displaced persons.[11]

Memorandum Requesting Headquarters Approval

A request for approval should be prepared for either the Director of the OSRTI or the Director of OEPPR as appropriate. The memorandum should include a background section that provides a description of the overall response action, an explanation of why the structure(s) must be or has been partially or completely demolished and the number of households and businesses affected. Regions should include a detailed cost analysis for all relevant options as well as a reasonable time line for each of them. A table that lists the relevant options across the top and the individual expenses along the side is one way to display the costs analysis. Along with the detailed analysis, a narrative that discusses the non-quantitative factors (pros and cons) for all relevant options should be included. An analysis that shows good cause for the structure to be rebuilt instead of acquired is not enough; in situations where the government would rebuild the structures, the analysis should show why the government, not the owner(s), should manage the rebuilding. The Region should demonstrate why the site circumstances clearly meet the very high threshold of "rarest of circumstances." Regions should incorporate all relevant information discussed in the attachment to this memorandum, "Key Factors to Consider When Analyzing Alternatives for Compensating the Owner(s) of Partially or Completely Demolished Structures."

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[10] Office of Inspector General's Audit, "Replacement Housing at the Austin Avenue Radiation site," (E1SFF7-03-0017-8100090).

[11] Functionally equivalent as defined by the Uniform Relocation Assistance and Real Property Acquisition Policies Regulations, 49 CFR Part 24.

Communication with the Owner(s)

People's homes are likely to be their most valuable asset. Whenever EPA's response actions will directly affect a home, EPA should treat the owner(s) with a great deal of care and sensitivity. In communicating with the owner(s), it is critical that EPA be clear about what we know and don't know about the impact of the response action on their homes at each stage of the cleanup. EPA should tell the owner(s) what information EPA needs to get, in order to better inform them of the potential impact on their property and give them some idea when EPA may have the information. The Regions should avoid creating false expectations. Regions should inform the owner(s) that it is EPA's policy to avoid demolishing structures whenever possible but also inform them if there is any possibility that part or all of the structure may be affected by EPA's response action. In conversations with the property owner(s), Regions should not promise or state a preference for one option or another before they have fully coordinated with Headquarters and received any necessary approvals. Whatever course of action, EPA should keep the owner(s) updated on EPA's progress and any changes in the plans. EPA's responsibility is always to treat the owner(s) fairly, equitably and with respect.

Conclusion

Response actions that affect residential and commercial structures should always be carefully managed to minimize their impact on communities. Regions should have a goal of designing response actions to allow communities to remain whole where possible. In situations where structures must be partially or completely demolished under removal authority, Headquarters' preference is to reach a financial agreement with the owner(s). For actions taken under remedial authority, Headquarters' preference is to reach a financial agreement to *restore partially* demolished structures and permanently *relocate* the owner(s) of *completely* demolished structures. Only in the rarest of circumstances should EPA consider using government contractors to restore or rebuild structures.

If you have any question about this memorandum or the attachment contact Terri Johnson of OSRTI at (703) 603-8718, or Kevin Mould of OEPPR at (703) 603- 8728.

Attachment

cc: Dana Tulis, OEPPR, 5104A
OEPPR Managers, 5104A
Mark Mjoness, OEPPR, 5204G
Nancy Riveland, Superfund Lead Region Coordinator, USEPA Region 9
NARPM Co-Chairs
Susan Bromm, OSRE
Robert Springer, Senior Advisor to AA/OSWER

Removal Managers, Regions 1-10
OSRTI Managers
OSRTI Records Manager, IMC 5202G
Joanna Gibson, OSRTI Documents Coordinator, 5202G
Earl Salo, OGC, 2366A
Lee Tyner, OGC, 2366A
Charles Openchowski, OGC, 2366A
Stephen Hess, OGC, 2377A
Patricia Sigur, USACE, CERE-R-PD
Chris Milligan, USACE

ATTACHMENT

KEY FACTORS TO CONSIDER WHEN ANALYZING ALTERNATIVES FOR COMPENSATING THE OWNER(S) OF PARTIALLY OR COMPLETELY DEMOLISHED STRUCTURES

ANALYSIS OF ALTERNATIVES

This supplements OSWER Directive 9360.3-24, "Analyzing Compensation Alternatives for Partially or Completely Demolished Structures." Regions should refer to both this attachment and the above Directive when analyzing the alternatives for compensating the owner(s) of partially or completely demolished structures. Most of this attachment applies only to residential structures. **Commercial structures may have unique enforcement issues that should be considered separately**. Additionally, commercial structures will have factors to consider that are unique to the type of commercial operation. Regions should work with their Headquarters Regional Coordinators and Regional enforcement experts to identify both enforcement issues and other issues that will impact the selection of a compensation method if compensation is determined to be appropriate.

The following is a list of some of the key factors to consider when determining the best method for compensating the owner(s) of partially or completely demolished structures. Additional site-specific factors may be identified as relevant for the analysis. Regions should work with their Regional Coordinators at Headquarters to determine the best options. Regions are encouraged to work with other Federal Agencies such as the U.S. Army Corp of Engineers (USACE) who have real estate experience, particularly in developing property appraisals.

I. Factors Common to All Options

An appraisal of the existing structure is necessary. A licensed appraiser should be able to provide the appraised value of the structure without consideration of the fact that the structure may be partially or completely demolished or contaminated. An appraiser should also provide an estimate of the cost of replacing or restoring the structure. The Office of General Counsel (OGC), Finance and Operations Law Office (FOLO) can offer advice on requirements for appraisals. The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as well as the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, 49 CFR Part 24 (URA), also provide information on the appraisal process.

The URA also has a definition of what is considered comparable replacement housing. The comparable replacement housing definition provides relevant guidance on what features and attributes should be available in a replacement home. The URA makes it very clear that the

government is not required to provide housing that exactly replicates the demolished structure. The URA can be found at http://www.fhwa.dot.gov/realestate/index.htm. If the owner(s) requests improvements beyond this standard, they may, based on a case-by-case analysis and in appropriate circumstances, pay for the improvements themselves. One example of when this may not be appropriate is if the Region determines that construction of the improvements would unreasonably delay the response action.

The owner(s) should receive payment for the appraised value of their property once agreement on that amount is reached and the owner(s) and EPA have executed an agreement (see Section V below). The owner(s) should not receive the additional amount it would cost to replace the structure (replacement value is generally higher in cost than the appraised value) unless and until the funds are actually spent to restore or rebuild the structure. Other factors you should consider include the following:

- What are the owner's concerns?
- Will a delay in completing the construction and restoration, or in completing the permanent relocation delay the overall response or increase the project costs (such as an increase in temporary relocation costs)?
- Can the ownership of the property be determined with certainty? Are there any complexities regarding the title?
- If there is a lien on the property, will the lien holder(s) agree with the recommended alternative?

Cost should not be the sole determining factor in selecting the appropriate option even if the estimated cost of rebuilding is less than the estimated cost of permanent relocation. Keep in mind that it is often easier to predict the cost of property acquisition and permanent relocation more accurately than it is to anticipate all the potential factors that may drive the cost of restoring or constructing housing beyond the originally estimate. In nearly all situations where permanent relocation is a viable alternative, rebuilding should not be selected if the initial cost estimate for rebuilding a demolished structure is greater than the estimated cost of permanent relocation.

II. Partially Demolished Structures

In most cases, the Office of Superfund Remediation and Technology Innovation (OSRTI) and the Office of Emergency Prevention, Preparedness and Response (OEPPR) prefer that owners of partially demolished structures be compensated for the cost to restore the damaged structure, thereby allowing the owner(s) to make the arrangements and oversee the restoration. Regions should perform a comparative analysis of the options, to support the final recommendation. Enough information should be available to support a detailed cost analysis for each of the two alternatives (financial settlement or using government contractors to rebuild) for

all property owners as a group and for each property's owner(s) separately. The following two alternatives apply when major restoration of a structure is needed:

A. Financial settlement - the owner(s) arrange the restoration – The analysis should include but not be limited to consideration of the following:

- Are contractors immediately available to start work without delays?

- Are a few properties involved or are there many properties that would all need restoration contractors concurrently?

- How will Federal liability for the restoration be limited? (The Government has an interest in seeing that the structure is restored in a timely manner to limit temporary relocation costs, but the EPA should not play a management role in the restoration or approve the final work).

- What are the projected costs of temporary relocation of all affected owners and how will these costs be controlled especially if the restoration is delayed?

- Are there any issues associated with zoning and acquiring necessary permits? What are the potential solutions to these issues?

If financial settlement, allowing the owner(s) to arrange the restoration, is selected, the Region should execute an agreement with the owner(s). On Scene Coordinators (OSC) and Remedial Project Managers (RPM) should work with their Office of Regional Counsel and the Office of General Counsel to develop the agreement. The importance of developing a thorough carefully written agreement cannot be overstated. That agreement should include a notice to the owner(s) that temporary relocation assistance will be terminated once the restoration is complete or after a period of time, as determined by EPA, in which the restoration should have been completed (see Section V below for additional details). The financial settlement could take two forms depending on the type and scope of the restoration. For large or complicated restorations or restorations where delays can be anticipated, Regions could distribute funds at key points in the restoration to ensure that the restoration is completed in a timely manner. For this option, distribution of the funds may be handled by a third party such as an escrow manager. EPA would provide the funds to the escrow manager who would distribute the funds at key milestones. Reimbursement of reasonable escrow management fees is an appropriate expense and should be included in the cost analysis. Where restoration is not expected to be costly, complicated, or time consuming, Regions may authorize a check to be issued to the owner(s) for the agreed-upon amount. EPA should encourage owner(s) to start working with contractors to plan for the restoration as soon as possible to allow them to start once the cleanup work is completed on their property. Regions should contact their Headquarters Regional Coordinator, ORC representative and/or OGC/FOLO for examples of agreements for this type of financial settlement to use as templates.

B. Government contractors carry out a major restoration – In general this alternative is discouraged. In rare circumstances, EPA may determine that it is more appropriate and/or cost-effective to make some or all of a major restoration using government contractors. This alternative will require approval from the appropriate Headquarters office(s). Headquarters will need the Region to support the selection of this alternative with an analysis that evaluates the pros and cons of the two alternatives. The analysis should include consideration of the following:

- What are the projected costs of temporary relocation of all affected owners and how will these costs be controlled especially if the restoration is delayed?

- How will EPA limit the time period the owner(s) or tenant(s) need to be temporarily relocated? (If tenant(s) are expected to be temporary relocation for more than six months, Region should consider providing the tenant(s) permanent alternative housing. See OSWER Directive 9230.0-97, April 2002, "Superfund Response Actions: Temporary Relocations Implementation Guidance.")

- Is there a detailed plan for containing costs? (Include the plan with information submitted to Headquarters.)

- How will Federal liability for the restoration be limited?

- How will the owners be involved in decisions about the selection of options such as room designs, carpet quality and color, and paint without costly delays to the project?

- How will the project managers oversee the restoration without neglecting the cleanup operations?

- Are there any issues associated with zoning? What are the potential solutions to these issues? (Local authorities should be contacted for this information before submitting a request to Headquarters for approval.)

- Are there local contractors available to start the restoration work without delay?

- What is unique about this site that warrants an exception to EPA's preference of financial settlement with the owner(s)? Why is this the "rarest of circumstances?"

III. Completely Demolished Structures

There are three alternatives available to compensate the owner(s) using CERCLA funds when a response action completely demolishes a structure. For sites on the National Priorities List (NPL) where action is being taken under remedial authority, EPA's preference is to acquire property and permanently relocate the owner(s). If the property is to be acquired, a comparative

analysis of the rebuilding options is not necessary. To properly evaluate other options, Regions should analyze and document the strengths and weakness of each of the relevant alternatives: property acquisition (a buyout); a financial settlement that would allow the owner(s) to rebuild; or EPA rebuilding the structure using government contractors. An analysis should include a detailed breakdown of the costs associated with each alternative as well as a statement describing how costs will be contained.

A. Property acquisition – EPA has determined that fund-lead property acquisition is not an alternative at non-NPL sites where action is being taken under removal authority. Regions should look to other authorities, such as state or local governments, or potentially responsible parties for funding. In lieu of other authorities, Regions should work with their Headquarters Regional Coordinators to decide on the best of the two remaining alternatives. There are specific procedures for seeking approval from OSRTI to acquire real property for sites where action is being taken under remedial authority. The Office of Regional Counsel can help you with these procedures. Information on conducting permanent relocations, including appraisals, is also available at http://www.fhwa.dot.gov/realestate/index.htm.

B. Rebuild by the owner(s) or the government – Although some factors may support using government contractors, it should be a rare circumstance where those factors outweigh the factors that favor property acquisition or a financial settlement with the owner(s) who will arrange and oversee the rebuilding of the structure. The OSC or RPM should work closely with the owner(s) to understand their preferences and concerns and also to gather the information necessary in areas such as their finances, the status of any liens, and the owner(s)' ability to handle the complexities of contracting for building a structure. Controlling costs and time delays is critical. Although rebuilding the structure using government contractors may appear to give maximum control to EPA over time delays, the costs may be much higher because EPA must pay Davis-Bacon rates for work done on site and contract management fees. Also, whenever the government rebuilds a structure, the OSC or RPM will necessarily be closely involved, taking their time and attention away from other site cleanup activities.

If the Region believes site specific factors warrant an analysis of options other than permanent relocation, they should coordinate with their Headquarters Regional Coordinators and the Offices of Regional and General Counsel to get help in analyzing the options available to rebuild the structures. Below are some additional factors that may be applicable:

- It can be difficult for EPA to control the length of time it takes the owner(s) to rebuild the structure. What controls will be put in place to assure that the rebuilding progresses in a timely fashion?

- Are there design factors that may make rebuilding difficult, such as in the case of replacing duplex homes, where two owners must agree on the design?

- What would the impact of each alternative be on nearby property and the community?

- Are local builders immediately available?
- Can the owner(s) afford the potential increase in property tax of each alternative?
- Are there obstacles that may hinder the owner(s) from arranging and overseeing the construction project?
- Is there any reason why the property owner(s) may not be able handle the complexity, stress, and time commitment necessary to rebuild their home?
- A financial settlement based on the replacement value of the structure would likely give the owner(s) maximum control over the rebuilding of their structure. Do the owner(s) want to make changes to the design of the home, or have very specific plans for the interior decor?
- If the Government rebuilds the structure how will decisions be made in the selection of options such as room designs, carpet quality and color, and paint in such a way as to involve the owner(s) without costly delays to the project?
- If the Government rebuilds the structure how will the project managers oversee the rebuilding of the structure without neglecting the cleanup operations?
- If modular housing is being considered, are there zoning limitations?
- What is the most efficient way to manage a large project with many structures involved?
- Have local zoning rules changed since the construction of the original structure such that it would be difficult to rebuild on the same property (e.g., set back rules have changed and the buildable property is no longer large enough to accommodate the same size structure)? (Check with local authorities before requesting approval from Headquarters.)
- Is it expected that the local government and community will support the compensation methods under consideration?
- If rebuilding is selected, is there available housing for the temporary relocation of the owner(s) while the rebuild is done? How will the duration of the temporary relocation be controlled?
- If a financial settlement is recommended, who will assure that the funds are used to rebuild a structure that meets the requirement of being decent, safe and sanitary?
- Who will inspect the builder's work as the rebuild proceeds?

- If government contractors rebuild the structure, how will EPA's liability be limited?

- What is unique about this site that warrants an exception to EPA's preference to acquire property? Why is this the "rarest of circumstances?"

A cost analysis that compares the options is an important part of making the best decision. Below is a limited list of some of the potential costs you may need to factor into your analysis. Keep in mind that some of these costs apply to all three options and you will need to look at site specific factors for additional potential expenses. This list is intended to capture potential costs of rebuilding residential structures. Rebuilding commercial structures will have additional expenses associated with the particular commercial operation. There are many other factors or expenses to consider and most will not be apparent until information is gathered from each property owner(s).

Estimated Acquisition/Relocation Costs:
Appraised value of the structure and land (You will need both costs to compare the cost of rebuilding to the cost of permanent relocation.)
Housing of last resort payment
Closing costs
Moving costs
Temporary relocation
Other relocation costs

Estimated Demolition and Restoration Costs:
Demolition costs
Restoration of yards/driveways

Estimated Rebuilding Costs:
Appropriate permits (relevant when the owner(s) restores or rebuilds only)
Other City fees
Architect costs
Project manager's fees
Cost of managing funds (for example, escrow account management)
Construction costs
Builders' insurance
Cost of an extended warranty for new construction
There may be additional costs associated with manufactured housing (for example, the cost of delivery)

Estimated Administrative Costs:
Appraisals cost and review
Title costs (contract)

Title costs (attorney)
Mapping/legal description cost
Negotiations (USACE or contractor costs)
Closings (USACE costs)
Relocation Assistance (USACE or contractor costs)
Travel costs (USACE)
Other USACE or contractor administrative costs

IV Agreement Between Property Owner(s) and EPA

If the decision is made to restore or rebuild a structure either through a financial settlement or using government contractors, the Region should document the agreement with the owner. The agreement should be as detailed as possible to minimize confusion or disagreements later. The agreements may include but would not be limited to the following:

- A description of the Superfund site history;
- Identification of the owner(s) and the parcel of land and structure affected;
- Agreement to provide EPA access to partially or completely demolish the structure;
- Documentation that the owner(s) were offered permanent relocation (if relevant) and that the owner(s) rejected the Government's offer;
- Defining the obligations of the Government including the appraised value of the demolished structure and the amount that the Government will provide for restoration or construction of the replacement dwelling;
- The period of time that temporary relocation assistance will be provided and how the owner(s) will be notified of the termination of assistance;
- Agreement that the Government will inspect the replacement dwelling to determine whether it is decent, safe and sanitary as required by the URA;
- The Government's expectation regarding its role in coordination with local zoning officials, insurance companies, construction permitting and real property taxing and assessment entities;
- The Government's expectation regarding the condition of the property at the time it is made available to the owner(s) for reconstruction (i.e., grading and compaction of the soil); *
- Notification to the owner(s) of their responsibility to have an agreement for construction in place within a specific period of time and to secure all permits and zoning approvals;*
- Notification to the owner(s) of their responsibilities for any increase in property taxes that may result;
- Notification to the owner(s) of their responsibility to provide the Government a copy of the construction contractor's final invoice(s) and their canceled check(s) evidencing the total cost of construction;*
- A notification to the owner(s) that any excess of the depreciated replacement cost, which is not expended in the restoration or construction of the replacement

dwelling shall be returned to the government by Certified Mail within a specified period of time after the issuance of the Certificate of Occupancy;*

- A statement about the release of claims against the government;
- A statement to inform the owner(s) that Government shall not be responsible for any structural, mechanical, legal, or other problems discovered during or after construction;
- Addresses where the Government and the owner(s) will send correspondence.

* May not apply to situations where the Government is rebuilding the structure.

This guidance cannot anticipate all details that may need to be included in a financial agreement. Coordination with ORC and OGC/FOLO for additional recommendations is critical. The agreement should be signed by EPA and the property owner(s) with a copy to the site file and to the owner(s).

V. Conclusion

Expect each situation to be unique. It is important to work closely with the owner(s) and answer their questions, but be very careful not to commit to a specific alternative until the analysis is complete and approval is received. OSCs and RPMs will find themselves working with bankers, builders, the local zoning board, and local social service agencies. Keep in mind that replacing a partially or completely demolished structure is intended to compensate owner(s) for the structure; it is not intended to totally compensate individuals for expenses or losses associated with contamination or other components of the Superfund response action. OSRTI, OEPPR and OGC are available to help you develop an analysis of the alternatives available.

If you have any question about this memorandum or attachment, contact Terri Johnson of OSRTI at (703) 603-8718, or Kevin Mould of OEPPR at (703) 603-8728.