



Structure and Components of Five-Year Reviews

Office of Emergency and Remedial Response
Hazardous Site Control Division

Quick Reference Fact Sheet

This fact sheet provides guidance for planning and conducting five-year reviews. The fact sheet focuses primarily on implementation of five-year reviews and the issues associated with implementation. These include: initiation and termination of reviews; responsibilities and funding; content; and documenting results of reviews. The goal of this fact sheet is to help assure that reviews are implemented in a consistent manner nationally, with appropriate consideration of local concerns and widely varying site conditions. Additional information, including an explanation of the five-year review policy and a matrix that outlines the components of five-year reviews, is contained in *Structure and Components of Five-Year Reviews* (May 1991, OSWER Directive No. 9355.7-02). Further information regarding five-year reviews will be provided by the Agency this year. Questions about documents should be directed to the Superfund Document Center, (202) 475-9760, mail code OS-240.

Background

This fact sheet provides guidance on periodic reviews EPA plans to implement consistent with section 121(c) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, and section 300.430 (f)(4)(ii) of the National Contingency Plan.

For purposes of this fact sheet, five-year reviews that EPA plans to implement consistent with CERCLA section 121(c) and the NCP are referred to as "Statutory Reviews." Such reviews will be conducted at least every five years or until contaminant levels allow for unlimited use and unrestricted exposure. The fact sheet also refers to "Policy Reviews," which are five-year reviews that the Agency believes should be conducted, as a matter of policy, although they are not expressly required by CERCLA section 121(c). While most Policy Reviews

Section 300.430(f)(4)(ii) of the National Contingency Plan (NCP) states that:

If a remedial action is selected that results in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure, the lead agency shall review such action no less often than every five years after initiation of the selected remedial action.

are of remedies selected prior to the enactment of the Superfund Amendments and Reauthorization Act of 1986 (SARA), some are of post-SARA remedies (e.g., response actions where, upon completion of the remedial action no hazardous substances will remain, but five or more years are required to reach that point).

Consistent with the NCP, Statutory Reviews are conducted of sites at which hazardous substances, pollutants, or contaminants remain above levels that allow for unlimited use and unrestricted exposure following completion of all remedial action. Consequently, EPA will ensure that all remedies requiring any engineering controls, or access or land-use restrictions or controls, are reviewed, including remedies that attain protective levels for the current use, but which include restrictions on activities due to limits on possible future exposure. For purposes of implementing five-year reviews, "hazardous substances, pollutants, or contaminants" are those that are identified in the Record of

Decision (ROD) as "contaminants of concern."

Deletion of a site from the NPL does not affect the site's potential need for a five-year review. For information on the relationship between five-year reviews and the deletion of sites from the NPL, consult the Agency's guidance on Completion and Deletion of National Priorities List Sites (OSWER Directive No. 9320 2-3).

Implementation

Purpose of Reviews: Five-year reviews are intended to evaluate whether the response action remains protective of public health and the environment. The focus of the five-year review will depend on the original goal of the response action. If protectiveness is being assured through exposure protection (e.g., containment with a cap) and institutional controls, the review should focus on whether the cap remains effective and the controls remain in place. For a Long-Term Remedial Action (LTRA) (i.e., an ongoing remedial action that has not yet achieved the cleanup standards set in the ROD), the review should focus on both the effectiveness of the technology and on the specific performance levels established in the ROD (e.g., performance of an extraction and treatment system for groundwater).

Sites at which Reviews will be Conducted: EPA will conduct a Statutory Review of any site at which a post-SARA remedy, upon attainment of the ROD cleanup levels, will not allow unlimited use and unrestricted exposure, and a Policy Review of (1) Sites where no hazardous substances

Section 121(c) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, provides that:

If the President selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the site, the President shall review such remedial action no less often than each five years after the initiation of such remedial action to assure that human health and the environment are being protected by the remedial action being implemented.

will remain above levels that allow unlimited use and restricted exposure after completion of the remedial action, but the cleanup levels specified in the ROD will require five or more years to be attained (e.g., LTRA sites); and (2) sites addressed pre-SARA at which the remedy, upon attainment of the ROD cleanup levels, will not allow unlimited use and unrestricted exposure. In addition, EPA will examine previously deleted sites, as a matter of policy, to determine the appropriateness of five-year reviews.

Timing of Reviews: Statutory five-year reviews are required no less often than each five years after the initiation of the remedial action. Statutory Reviews should be commenced in sufficient time to assure completion of the review within five years of initiation of the remedial action (i.e., award of the contract for remedial action). Initiation of the first remedial action may trigger a five-year review.

Termination of Reviews: EPA may terminate Statutory five-year reviews when no hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unrestricted use and unlimited exposure. Once begun, reviews should be discontinued, only if levels of contaminants-of-concern are reported based on the appropriate period of monitoring below this level, and requirements promulgated or modified after ROD signature that are ARARs do not result in a determination that the remedy is no longer protective.

Responsibilities for Conduct of Reviews: EPA will retain final review and approval authority for five-year reviews. However, through contracts and/or other agreements, EPA may authorize other parties to perform portions of the reviews (e.g., studies, investigations, and analyses) and identify alternatives to assure protection of human health and the environment.

Funding of Reviews: Five-year reviews are response actions selected under section 121 and, as such, expenditures for review activities are authorized uses of the Fund under CERCLA section 111(a). EPA Regions should reflect plans to conduct five-year reviews in their annual Superfund Comprehensive Accomplishment Plan (SCAP) or other appropriate strategic plan-

ning and budgeting system.

Public Participation: EPA will inform the public of its determination that a five-year Statutory or Policy Review is appropriate, the planned scope of such reviews, the location of the report on the review, on-site review activities, actions taken based on any review, and the location of the administrative record file for the site. The Five-Year Review Report should be made available to the public through the administrative record file.

Five-Year Review Matrix

OSWER Directive 9355.7-02 contains a matrix that explains the activities which should be considered in determining the scope of reviews proposed in future RODs and in developing work plans for five-year reviews. Additionally, the matrix may be useful in explaining the scope, structure, and possible components of five-year reviews to the public. The matrix is designed to reflect the different levels of review that may be appropriate depending on the site-specific circumstances or the status of the site with regard to completion of the response action

FIVE-YEAR REVIEW ACTIVITIES
Document Review Background Information Design Review Maintenance and Monitoring
Standards (ARARs) Review Background Information Changing Standards Risk Assessment
Interviews Background Information Local Considerations Operational Problems
Inspection/ Technology Review Performance and Compliance Offsite Considerations Recommendations
Report Background Site Conditions Risk Assessment Recommendations

FIVE-YEAR REVIEW REPORTS

- Summary of Site Conditions
- Summary of Response Action Selected
- Summary of Response Action Performed
- Description of Post-Response Action Activities
- Scope and Nature of Five-Year Review
- Results and Recommendations of Five-Year Review

Reports on Five-Year Reviews

EPA will develop and issue a report on each review. OERR will issue additional guidance on the form and substance of such reports later this year. The Report will include the scope and nature of the current review, the results of the review, actions taken or proposed on the basis of the review, and the scope and nature of future reviews

Conduct of Five-Year Reviews

The policy outlined in the referenced Directive 9355.7-02 is effective immediately. Regions should initiate their development of work plans and proceed with reviews to assure completion within five years of initiation of the remedial action. OERR will issue more detailed supplementary guidance on five-year review model work plans, agreements, and sample reports later this year.

NOTICE: The policies set out in this document are intended solely as guidance. They are not intended, nor can they be relied upon, to create any rights enforceable by any party in litigation with the United States. EPA officials may decide to follow the guidance provided in this document or to act at variance with this document based on an analysis of specific circumstances. The Agency also reserves the right to change the policies set out in this document at any time, without public notice.