

United States
Environmental Protection
Agency

Solid Waste and
Emergency Response
(5305W)

PB96-963 219
EPA540-R-96-011
OSWER Directive 9205.5-07
March 1996



RCRA/UST, Superfund, & EPCRA Hotline Training Module

Introduction to:

**Superfund Administrative
Improvements/Reforms and the
Superfund Accelerated Cleanup Model**

Updated as of April 1996

DISCLAIMER

This document was developed by Booz-Allen & Hamilton Inc. under contract 68-W0-0039 to EPA. It is intended to be used as a training tool for Hotline specialists and does not represent a statement of EPA policy.

The information in this document is not by any means a complete representation of EPA's regulations or policies. This document is used only in the capacity of the Hotline training and is not used as a reference tool on Hotline calls. The Hotline revises and updates this document as regulatory program areas change.

The information in this document may not necessarily reflect the current position of the Agency. This document is not intended and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the United States.

RCRA/UST, Superfund & EPCRA Phone Numbers:

National toll-free (outside of DC area)	(800) 424-9346
Local number (within DC area)	(703) 412-9810
National toll-free for the hearing impaired (TDD)	(800) 553-7672

The Hotline is open from 9 am to 6 pm Eastern Standard Time,
Monday through Friday, except for federal holidays.

SUPERFUND ADMINISTRATIVE IMPROVEMENTS/REFORMS AND THE SUPERFUND ACCELERATED CLEANUP MODEL (SACM)

CONTENTS

1. Introduction.....	1
2. Administrative Improvements.....	3
2.1 Enhance Enforcement Fairness and Reduce Transaction Costs.....	4
2.2 Enhance Cleanup Effectiveness and Consistency.....	7
2.3 Enhance Public Involvement.....	9
2.4 Enhance State Role.....	10
2.5 On-Going Initiatives.....	11
3. Administrative Reforms.	15
3.1 February 1995 Reforms.....	15
3.2 October 1995 Reforms.....	20
4. Superfund Accelerated Cleanup Model (SACM).....	27
5. Brownfields Economic Redevelopment Initiative.....	31
6. Summary.....	35

1. INTRODUCTION

During the 15 years that the Superfund program has been in existence, EPA and other Superfund stakeholders have made significant progress toward reducing risks to human health and the environment from releases of uncontrolled hazardous substances. EPA has evaluated over 40,000 sites that may pose risks, conducted over 3,700 early actions to protect the public and the environment, and has completed construction of cleanup remedies at 348 of the Nation's worst hazardous sites.

EPA recognizes, however, that certain aspects of the Superfund program have generated criticism. Specific complaints have focused on the pace and cost of cleanups, the degree to which sites are cleaned, the fairness of the liability approach, the role of states in the process, and the ability of local communities to have meaningful participation in the process, particularly disadvantaged and minority communities.

The Agency has maintained an ongoing effort to address these complaints and improve the Superfund program through administrative improvements and reforms. EPA began its efforts in 1989, with the publication of A Management Review of the Superfund Program. Also known as the "90-day Study," the Management Review is a collection of observations, facts, and opinions contributed by Agency staff, as well as critics and supporters of Superfund. In the "90-day Study," EPA focused its attention on enforcing PRP liability, expediting cleanup response, and encouraging community participation.

In an effort improve the Superfund Program, the Agency established the Superfund Administrative Improvements Task Force, consisting of representatives from the Office of Solid Waste and Emergency Response (OSWER); the Office of General Council, the Office of Enforcement; the Office of Policy, Planning and Evaluation; the Office of Research and Development; the Office of Administration and Resources Management; the Department of Justice; and EPA Regions 2, 5, and 9. The mission of the Task Force was to explore potential initiatives for making administrative improvements. The Task Force published its recommendations in the Superfund Administrative Improvements Task Force Final Report, June 23, 1993. The Final Report discusses 17 initiatives, 9 new initiatives and 8 ongoing initiatives, and contains specific goals and milestones to improve the Superfund Program. Some of these initiatives address important issues such as enhancing enforcement fairness, accelerating site cleanup, increasing community involvement, and creasing the role of the state in the Superfund process.

The Superfund Administrative Improvements Closeout Report, February 1995, provides background on the development of each of the initiatives and reports on the progress made between June 23, 1993, and September 30, 1994. The Report serves to highlight EPA's successes in meeting its goals.

EPA has continued its efforts to improve the Superfund program by initiating a series of on-going Superfund Administrative Reforms. EPA announced the initial set of Administrative Reforms in February 1995. This initial set of Administrative Reforms is organized into six general areas; enforcement, economic redevelopment, community involvement and outreach, environmental justice, consistent program implementation, and state empowerment. The Agency is implementing each reform under CERCLA statutory authority, and under the current National Contingency Plan (NCP), while awaiting Congressional action on reauthorization of CERCLA.

In October 1995, the Agency announced a third set of administrative reforms. EPA initiated these reforms to serve three objectives — make smarter cleanup choices that protect human health at less cost, reduce litigation by achieving common ground instead of conflict, and ensure that states and communities are more informed and involved in cleanup decisions.

Two of the Agency's on-going efforts to improve the Superfund program warrant additional explanation — the Superfund Accelerated Cleanup Model (SACM), the Brownfields Economic Redevelopment Initiative. Sections 4 and 5 of this module examine these efforts in detail.

After completing this module, you will be able to:

- Explain the nine new initiatives in the Superfund Administrative Improvements Task Force Report and why they were implemented
- Explain the eight on-going initiatives outlined in the Superfund Administrative Improvements Task Force Report and their significance
- Explain the February 1995 and October 1995 Superfund Administrative Reforms and their respective roles within the Agency's overall efforts to improve the Superfund program
- Compare the linear Superfund response process with SACM and explain their differences
- Explain the Brownfields Economic Redevelopment Initiative, including the selection process for the Brownfields Pilots grants and the significance of the Brownfields Action Agenda.

Use this list of objectives to check your knowledge of this topic after you complete this training session.

2. ADMINISTRATIVE IMPROVEMENTS

Since the enactment of CERCLA in 1980, the Superfund program has made significant progress in reducing risk posed to human health and the environment. Seeking to improve the implementation of the program, EPA established the Superfund Administrative Improvements Task Force to develop options for the Agency to improve the program that do not require changes in statutory authority. On June 23, 1993, EPA published the Task Force's recommendations in a final report.

The final report established major goals of the Superfund program and designated specific initiatives to achieve these goals. The initiatives outlined in the report were developed to enhance enforcement fairness, reduce transaction costs, enhance cleanup effectiveness and consistency, increase public involvement and expand the role of states in the Superfund program. The following is a summary of the goals and initiatives presented in the report:

Goal: Enhance Enforcement Fairness and Reduce Transaction Costs

- Initiative 1 - Make greater use of liability allocation tools
- Initiative 2 - Foster more small volume waste contributor settlements
- Initiative 3 - Seek greater fairness for owners at Superfund sites
- Initiative 4 - Evaluate mixed funding policy

Goal: Enhance Cleanup Effectiveness and Consistency

- Initiative 5 - Streamline and expedite the cleanup process
- Initiative 6 - Develop soil screening levels

Goal: Enhance Public Involvement

- Initiative 7 - Implement an environmental justice strategy for Superfund sites
- Initiative 8 - Provide early and more effective community involvement

Goal: Enhance the Role of States

- Initiative 9 - Seek state deferral of certain site categories

In addition to the nine new initiatives recommended by the Task Force, EPA incorporated eight existing ongoing initiatives into the Superfund Administrative Improvements Final Report. The Agency developed this series of reforms to improve the effectiveness, efficiency and equity of the Superfund program. The following is a list of the on-going initiatives included in the report.

On-going Initiatives

- Initiative 10 - Adopt the Superfund Accelerated Cleanup Model (SACM)
- Initiative 11 - Increase the number of construction completions
- Initiative 12 - Improve contracts management
- Initiative 13 - Strive for enforcement first
- Initiative 14 - Accelerate cleanup at base closures
- Initiative 15 - Promote the use of innovative technology
- Initiative 16 - Increase compliance monitoring
- Initiative 17 - Improve the effectiveness of cost recovery

The Agency issued no regulations pursuant to any of these initiatives. Instead, EPA Regional and Headquarters Superfund offices implemented the administrative improvement initiatives through policy and decision-making. The Superfund Administrative Improvements Closeout Report details the Agency's efforts to achieve the goals of the Improvements between June 23, 1993, and September 30, 1994, the expiration date of the Task Force's charter. The following sub-sections describe the specific initiatives established by EPA and detail the Agency's progress, as reported in the Closeout Report, towards achieving those goals.

2.1 ENHANCE ENFORCEMENT FAIRNESS AND REDUCE TRANSACTION COSTS

The foundation of the Superfund enforcement program is liability. CERCLA is a strict liability statute and the courts impose joint and several liability for site cleanup costs on responsible parties. It has often been asserted that this liability approach creates inequity and postpones cleanup because parties seek to avoid individual liability for the entire cost of the site regardless of fault. Thus, parties such as small waste contributors and landowners that did not violate environmental laws may be required to pay a large percentage of cleanup costs or spend substantial amounts of money on transaction costs. In response to these concerns, the Task Force developed four initiatives to enhance enforcement fairness and reduce transaction costs associated with determinations of liability. The initiatives presented in this section include: making greater use of allocation tools, fostering more small volume waste contributor settlements, seeking greater fairness for owners, and evaluating mixed funding policy.

INITIATIVE 1: MAKING GREATER USE OF ALLOCATION TOOLS

A major goal of the Superfund program is to compel responsible parties to pay for and conduct cleanups at abandoned and uncontrolled hazardous waste sites. Often, the liability determination approach under CERCLA can result in delays and expensive litigation. To mitigate these impacts, EPA has initiated the use of alternative dispute resolution (ADR) as a tool to facilitate PRP liability allocation deliberations. The premise of this initiative is to use a neutral third party to assist in allocating responsibility to PRPs and to encourage settlements.

EPA has also emphasized the use of a non-binding allocation process to promote settlements. Non-binding allocations of responsibility (NBARs) allocate 100 percent of response costs among all PRPs. When preparing an NBAR, EPA considers factors such as volume, toxicity, and mobility of hazardous substances, strength of the evidence, and PRP viability (OSWER Directive 9839.1). EPA is currently preparing additional guidance on procedures for allocating responsibility among PRPs.

The Agency conducted several efforts to expand the use of allocation tools like ADR and NBARs. To promote a better understanding the uses of ADR, including allocations, the Agency conducted a national Superfund ADR workshop in November 1993. The Agency also supported the use of NBARs at over 30 sites. Finally, on September 30, 1994, the Agency issued a report entitled Developing Allocations Among Potentially Responsible Parties for the Costs of Superfund Site Cleanups. The report focuses on allocation methods and allocation implementation issues that were identified through interviews with nine parties from across the country who conducted or participated in allocations.

INITIATIVE 2: FOSTER MORE SMALL VOLUME WASTE CONTRIBUTOR SETTLEMENTS

Under CERCLA §122(g), EPA is encouraged to reach settlements early in the response process with two types of parties; de minimis waste contributors and de minimis landowners. The Agency may enter into de minimis settlements with parties whose waste contribution is minimal in volume and toxicity in comparison to other hazardous substances at the site, or innocent landowners who did not have knowledge of or contribute to the contamination at the site. Often it is difficult to reach de minimis settlements due incomplete volumetric information about the contamination. Thus, in many cases, small volume waste contributors are not able to settle with EPA very late in the response process, resulting in time consuming and resource intensive settlement negotiations.

In an effort to address these concerns, the Superfund Administrative Task Force recommended development of procedures to (1) expedite the resolution of the liability of small waste contributors and (2) complete settlements earlier in the process, preferably before signing the ROD. As a result, EPA issued guidance on streamlining the de minimis settlement process entitled Streamlined Approach for Settlements with De Minimis Waste Contributors Under CERCLA §122(g)(1)(A) (OSWER Directive 9834.7-1D). This guidance presents an approach to promote settlements before the PRP search has been completed and encourage early settlement decisions to simplify negotiations and litigation with remaining responsible parties. EPA also published guidance for a subset of de minimis waste contributors known as de micromis waste contributors, Guidance on CERCLA Settlements with De Micromis Waste Contributors (OSWER Directive 9834.17). To determine if a PRP qualifies for this type of de minimis settlement, a PRP must show the amount of waste they contributed was minuscule in comparison to other hazardous substances at the site. By implementing this new

approach, EPA has entered into about 125 de minimis settlements and has identified 35 potential de minimis settlements for fiscal year 1995.

INITIATIVE 3: SEEK GREATER FAIRNESS FOR OWNERS AT SUPERFUND SITES

To increase fairness in the application of Superfund authorities, EPA took steps to address three major concerns: federal liens; guidance on "all appropriate inquiry"; and prospective purchaser agreements.

Section 107 of CERCLA provides EPA the authority to impose a lien on the property subject to a cost recovery suit. Property owners are concerned because frequently EPA does not provide the PRP with notice before placing a lien on the property. EPA developed a strategy to provide greater fairness for current owners of Superfund sites entitled Supplemental Guidance on Federal Liens (OSWER Directive 9832.12-1a). This document outlines procedures to ensure the PRP is provided with adequate notice and an opportunity to respond prior to perfecting a federal lien.

Under CERCLA §107, for purposes of determining potential liability, property owners must have conducted "all appropriate inquiry" into the previous ownership and uses of the property. The lack of a standard or guidance on this requirement has discouraged many parties from purchasing or lending funds for the purchase of contaminated property. Although EPA decided not to set an Agency standard for "all appropriate inquiry," the Agency prepared a report that identified criteria for evaluating standards and summarized standards and related materials developed by other organizations.

Prospective purchasers of contaminated property may not use the "innocent landowner defense" if they had knowledge of contamination prior to their acquisition of property. In some cases, prospective purchasers are willing to conduct or finance cleanup work in return for a covenant not to sue from EPA. At the time of the Closeout Report, the Agency had produced a draft version of expanded criteria for evaluating circumstances in which EPA may provide an administrative covenant not to sue to a prospective purchaser of contaminated Superfund property. On July 3, 1995, EPA published guidance for prospective purchasers of contaminated property as part of the February 1995 Administrative Reforms, as discussed in Section 3.1 (60 FR 34792).

INITIATIVE 4: EVALUATE MIXED FUNDING POLICY

Mixed funding agreements allow EPA to settle with some PRPs at a site while continuing to pursue non-settling PRPs for cost recovery. Unfortunately concerns associated with liability, lengthy procedures, and documentation requirements have resulted in EPA reaching very few mixed funding settlements. Under this initiative, EPA agreed to conduct a two-part evaluation to examine the benefits of using mixed funding settlements.

The first part of the mixed funding evaluation involved collecting data to determine the potential costs of orphan shares associated with the settlements. An orphan share is the portion of liability allocated to PRPs who are bankrupt or the portion of the waste at a site which is not allocable. In September 1993, EPA published the results of the study in Mixed Funding Evaluation Report: The Potential Cost of Orphan Shares. The report found that mixed funding could be used more frequently, particularly at sites with a significant orphan share, because the projected costs to the fund would be minimal compared to Superfund appropriations and other program costs. The second part of the evaluation explored options for streamlining the mixed funding decision making process and simplifying the application and documentation requirements in a mixed funding settlement. EPA has selected several sites for mixed funding settlement pilot projects to analyze procedures for streamlining the mixed funding process and revising mixed funding policy. As of September 30, 1994, the Agency had used mixed funding techniques to settle six cases.

2.2 ENHANCE CLEANUP EFFECTIVENESS AND CONSISTENCY

One goal of enhancing cleanup effectiveness and consistency is to reduce the time and costs associated with the Superfund process. The next two initiatives focus on ways to achieve this goal.

INITIATIVE 5: STREAMLINE AND EXPEDITE CLEANUP PROCESS

All government programs involve evaluations of time and cost. Superfund is not free from this evaluation, and these factors have been the basis for many of the administrative improvement initiatives. There are five major aspects of the initiative to streamline and expedite the cleanup process: (1) presumptive remedies, (2) standardization of remedy design specifications, (3) guidance for addressing dense nonaqueous phase liquid (DNAPL) contamination, (4) lead (Pb) initiative guidance, and (5) land use.

A primary component of this initiative is presumptive remedies, a SACM concept, which is detailed in section 4.1. Presumptive remedies have been developed for some of the most common types of contaminated sites including municipal landfills, wood preserving sites, or sites with contaminated groundwater. Pre-selected remedies can save time in the site assessments and review of remedial alternatives and can ultimately save money. In September 1993, EPA issued guidance on presumptive remedies for municipal landfills, and on sites with volatile organic compounds (VOCs) in soils.

The second issue addressed in the streamlining initiative involves standardization of remedy design specifications: For example, an air stripper that was designed for one Superfund site could be adequate for other sites, so instead of redesigning new air strippers, previously developed construction specifications could be reused to save time and money. In the Closeout Report, the Agency detailed its efforts to set standard specifications through an interagency partnership with the U.S. Army Corps of

Engineers (USACE) to fund the development of standardized design specifications for various hazardous waste remediation activities.

EPA has completed the third part of the expedited cleanup initiative by developing guidance for sites contaminated with DNAPLs. This category of contaminants is unique because the chemicals are more dense than water. When the chemicals are in their pure form (i.e., not dissolved in water) they may adhere to soil and clay in the subsurface and form pools of contamination just above an aquifer. Given the right pathways underground, these chemicals will sink rapidly. This presents a problem, for example, if groundwater monitoring holes are drilled in an area containing DNAPLs. The well holes may provide the means for the heavy chemicals to migrate lower into the ground, potentially impacting aquifers and expanding contamination plumes. EPA developed guidance to address DNAPL concerns during site investigations entitled Guidance for Evaluating the Technical Impracticability of Groundwater Restoration (OSWER Directive 9234.2-25).

The fourth part of this initiative deals with lead (Pb). Lead is a common contaminant at Superfund sites and studies have shown that it can have acute toxic effects on humans. Two guidance documents have been issued under this initiative, Revised Interim Soil Lead Guidance for CERCLA Sites and RCRA Corrective Action Facilities (OSWER Directive 9355.4-12) and Guidance on Residential Lead-Based Paint, Lead Contaminated Dust, and Lead-Contaminated Soil. The first guidance document establishes a 400 ppm residential screening level for lead. A screening level is merely a guideline used by site assessors to determine if a site warrants further investigation. The residential guidance document was issued by EPA's Office of Pollution Prevention and Toxics, under the authority of Toxic Substance Control Act. It is strictly used as guidance for residential lead levels and exposure, and contains abatement information. It is not intended for use at CERCLA and RCRA corrective action sites. It is not a Superfund document, but it is relevant to the lead initiative administrative improvement.

The fifth and last part of this initiative is related to future use of potentially contaminated sites. On May 25, 1995, EPA released guidance on land use in the CERCLA remedy selection process as part of the Superfund Administrative Reforms. See Section 3.1 for a detailed discussion of this reform.

INITIATIVE 6: DEVELOP SOIL SCREENING LEVELS

As mentioned earlier, screening levels are used to identify whether contaminant levels at a site pose a concern, and are not intended to be used as cleanup levels. Sites containing levels of contaminants in soil above the screening levels would undergo further evaluation. In December 1994, the Agency released entitled Draft Soil Screening Guidance (OSWER Directive 9355.4-14FS) for 107 hazardous substances commonly found at Superfund sites.

The final soil screening level guidance is projected to be published early in 1996. Soil screening levels for specific chemicals can be generated on a site-specific basis. The generic list of soil screening levels that the Agency published in the draft guidance are conservative and are based on certain assumptions that may not be applicable to all sites. Even though the generic soil screening levels can be used at a site, in most cases it will be more appropriate to generate site-specific screening levels.

2.3 ENHANCE PUBLIC INVOLVEMENT

An important aspect of the Superfund program is public involvement. EPA is responsible for educating communities and opening a dialogue about the decision-making process at Superfund sites. To enhance community involvement and address issues raised concerning inequities in low income and minority communities, the Agency is pursuing initiatives to implement an environmental justice strategy and to provide early and more effective community involvement.

INITIATIVE 7: IMPLEMENT AN ENVIRONMENTAL JUSTICE STRATEGY FOR SUPERFUND SITES

Although the importance of public involvement in hazardous waste cleanup has long been recognized by EPA, the lack of a support infrastructure for many communities affected by Superfund sites still presents a problem. There are concerns that many poor and minority communities are disproportionately burdened by pollution from hazardous waste sites. On February 11, 1994, President Clinton signed Executive Order 12898, which requires each federal agency to include environmental justice considerations as an integral part of their work. To implement EPA's environmental justice goals, the Office of Solid Waste and Emergency Response (OSWER) established a task force to broaden the discussion of environmental justice issues and make recommendations specific to waste programs.

The OSWER Environmental Justice Task Force developed an environmental justice strategy to implement the requirements of the Executive Order. The task force also produced a report containing a number of recommendations, including issuing an environmental justice directive addressing development of policy, regulations, and guidance; developing interagency partnerships with the Department of Housing and Urban Development (HUD), the Department of Agriculture, the Economic Development Administration (EDA), the Department of Health and Human Services and others; expanding public participation in the Superfund remedial process through the use of community advisory groups; and expanding risk assessment to include multiple sources of risk in a community.

At the time of the Closeout Report, the Agency had followed through on many of the task force's recommendations. In August 1993, EPA completed the Preliminary Analysis of Population Demographics, a demographic analysis of 158 NPL sites. In addition, the Agency made plans to conduct a pilot proactive site assessment program

to ensure that areas with low income populations and minorities that warrant EPA action are identified. To establish trust between EPA and affected communities, EPA established the National Environmental Justice Advisory Council (NEJAC), under the Federal Advisory Committee Act (FACA). On September 21, 1994, OSWER's Assistant Administrator issued OSWER Directive 9200.3-17, requiring staff to evaluate each Superfund decision document for the possibility of disproportionately adverse impacts on minority and low-income communities. Other Agency environmental justice activities include the development of several interagency initiatives, various community involvement/outreach actions, and specific outreach efforts targeting Native American Tribes.

INITIATIVE 8: EARLY AND MORE EFFECTIVE COMMUNITY INVOLVEMENT

The current Superfund program includes formal community relations provisions to encourage public participation in the decision making process. As noted in the Community Involvement module, these activities include developing site-specific community relations plans, establishing an information repository and administrative record, providing technical assistance, holding public meetings, and providing public comment periods. Although Superfund community relations provisions are in place, citizens and communities may feel excluded from information about the cleanup process. For example, it is frequently difficult to obtain Technical Assistance Grants or information on the health risks posed by the site.

To remedy the situation, EPA focused on developing a new Superfund public participation plan. As part of this initiative EPA intends to use comments received by citizens to enhance effective community involvement through a variety of public outreach tools. The Agency held a meeting on September 21, 1993, to hear citizens' ideas on public participation, coordinated with regions to address issues raised at public meetings, and identified sites where enhanced public participation tools will be used. The Agency also reduced the paperwork required to obtain Technical Assistance Grants and revised a course that educates community members on the goals of the Superfund program as well as the stages a site must go through before cleanup is completed.

2.4 ENHANCE STATE ROLE

Although the NCP contains provisions for state involvement, EPA is considering expanding the role of states in the Superfund process. The number of sites eligible for the NPL is numerous, and addressing all of the sites is not possible with the funds available on the federal level. Enhancing the state role, therefore, is a significant administrative improvement that involves the concept of "state deferral."

INITIATIVE 9: STATE DEFERRAL OF CERTAIN SITE CATEGORIES

As part of the Superfund Administrative Improvements, EPA established a work group to develop guidance for the state deferral program and to pilot the deferral concept at NPL-caliber sites. EPA began a pilot study deferring low and medium NPL-caliber sites to state cleanup programs. There are roughly 6,000 NPL-caliber sites (i.e., having an HRS score above 28.5) that are not on the NPL due to procedural, budget, and time constraints. At the time of the Closeout Report, deferral pilots were ongoing at 22 sites in 7 different states.

2.5 ON-GOING INITIATIVES

Prior to the Superfund Administrative Improvements, EPA initiated administrative measures to improve the program in response to the "90-day Study." These measures have had a beneficial impact and are expected to continue improving the program. In addition to introducing the nine new goals and initiatives, the Superfund Administrative Improvements Final Report also reflected EPA's position on several existing administrative improvements that had already been initiated and had already had a positive effect on the Superfund program. A summary of each on-going initiative is presented in the following sections.

INITIATIVE 10: SUPERFUND ACCELERATED CLEANUP MODEL (SACM)

SACM is the most prominent of the on-going administrative improvements that EPA incorporated into the Final Report. Due to the ramifications of its implementation on the Superfund response process, SACM is described in detail in section 4.

INITIATIVE 11: CONSTRUCTION COMPLETIONS

The construction completion category, is an NPL designation provided to Superfund sites where the remedial action is complete, but there may still be on-going operation and maintenance activities. This category is an important way to show the Superfund program successes. Since the site deletion process can be lengthy due to administrative procedures that must be followed (i.e., proposal in the Federal Register, public comment period, and final publication in the Federal Register), it is difficult to demonstrate program success based on the number of sites that have actually been deleted. The Construction Completion initiative involves keeping a tally of sites in construction completion by contacting regions frequently to obtain recent data on sites in this category. By March 1996, EPA has placed 348 NPL sites in the construction completion category.

Also, as part of the construction completion initiative, EPA produced several guidance documents, including the Superfund Construction Completion Care Package, May 1993,

and the NPL Construction Completion Definition at Bioremediation and Soil Vapor Extraction Sites (OSWER Directive 9320.2-06, June 21, 1993).

INITIATIVE 12: CONTRACTS MANAGEMENT

EPA relies on the services of contractors to investigate the type and extent of contamination, identify cleanup options, and perform response actions. Under the contracts management initiative, EPA focused on two areas for improved performance. First, the Agency continued implementation of the Superfund Long-Term Contracting Strategy (LTCS) for the next generation of Superfund contracts. Second, EPA developed and issued guidance to improve cost planning and cost oversight.

EPA developed the LTCS to analyze long-term contracting needs such as oversight and cost management and to ensure that sufficient funds are used for actual site cleanup rather than administrative activities. On March 15, 1994, EPA completed the Long-Term Contracting Strategy Review Final Report that recommended adjustments to the strategy, including providing more resources for contract management in the Regions. As part of the Superfund base budget review for FY 1995, EPA redirected resources to contracts management in the Regions.

In addition to the LTCS, the Agency also developed and issued several guidance documents to increase the effectiveness of EPA's contracts management procedures and control costs, including the Guide for Preparing Independent Government Cost Estimates (July 29, 1993) and the Cost Management Manual for Superfund (June 23, 1994).

INITIATIVE 13: ENFORCEMENT FIRST

From CERCLA's inception, aggressive enforcement efforts were necessary to compel PRP cleanup. The "enforcement first" concept was developed early on to encourage responsible party cleanup and integrate response and enforcement activities. The "90-day Study" made several recommendations which involved the increased use of enforcement and settlement authorities and EPA is continuing its "enforcement first" approach. EPA continues to monitor PRP compliance with existing consent decrees, administrative orders and unilateral orders. In addition, EPA will develop draft guidance that will establish procedures for regional offices to follow to monitor CERCLA compliance.

INITIATIVE 14: ACCELERATE CLEANUP AT BASE CLOSURES

In July 1993, President Clinton announced a five-part plan for revitalizing communities impacted by military base closures. The goals of the program were to ensure that environmental cleanup took place as quickly as possible, and to hasten redevelopment. As part of the Superfund Administrative Improvements, EPA completed several key activities under this initiative.

In September 1993, EPA assisted the Department of Defense (DOD) with guidance covering several elements of the Fast Track Cleanup Program, including Finding of Suitability to Lease (FOSL). The FOSL addresses restrictions or limitations on reuse necessary to protect human health and the environment. EPA also provided input to DOD for guidance on Finding Suitability to Transfer (FOST), although the FOST guidance released by DOD on June 1, 1994, does not fully reflect the position developed jointly by EPA and DOD.

On August 22, 1994, EPA, DOD, and the Department of Energy signed the Guidance on Accelerating CERCLA Environmental Restoration at Federal Facilities. The three agencies developed the guidance to institutionalize accelerated cleanup approaches already in place at federal facilities and to further encourage efforts by federal agencies to develop streamlined approaches to hazardous waste cleanup. EPA incorporated into the guidance those SACM initiatives that have application at federal facilities.

INITIATIVE 15: PROMOTE USE OF INNOVATIVE TECHNOLOGY

Effective cleanup technologies are needed to achieve the desired results at Superfund sites. There have been several initiatives involving the testing of innovative technologies at federal facilities and encouraging private companies to develop innovative cleanup technologies. EPA's Technology Innovation Office (TIO) is also reviewing the existing and potential technology databases. These on-going efforts will help Superfund identify technologies that are most efficient and cost effective.

As part of the administrative improvements, through a cooperative agreement with TIO, Clean Sites, Inc. (a public interest organization which works with governments, private companies, and communities to foster collaboration at Superfund cleanups), worked to establish several partnerships between various federal agencies, states, and Fortune 500 companies. The Agency also developed an EPA Policy for Innovative Environmental Technologies at Federal Facilities that reaffirms that federal facilities should be used as test and demonstration centers for innovative technologies. Specifically, the policy encourages remedial project managers (RPMs) to be flexible at federal facility sites, allowing greater use of innovative technologies.

INITIATIVE 16: COMPLIANCE MONITORING

To ensure that PRPs perform cleanups satisfactorily and in a timely manner, EPA must have an effective compliance monitoring and enforcement program. In November 1992, OSWER implemented a long-term strategy for facilitating implementation of Regional compliance monitoring and enforcement programs. The strategy focuses on the development of Regional compliance monitoring and enforcement procedures and the installation of enhanced compliance tracking systems.

INITIATIVE 17: IMPROVE THE EFFECTIVENESS OF COST RECOVERY

CERCLA authorizes EPA to either enter into settlements with responsible parties or recover cleanup costs from responsible parties when the Agency conducts the cleanup. While CERCLA §107 provides that responsible parties are liable for cleanup costs, it does not specify which costs are recoverable. EPA also published proposed regulations in the Federal Register to clarify what costs are recoverable, how costs are determined, and what information will support the Agency's cost recovery efforts. EPA is still considering changes to the proposed Cost Recovery Rule before it is finalized (57 FR 34742; August 6, 1992).

3. ADMINISTRATIVE REFORMS

This section describes the Superfund Administrative Reforms, a series of initiatives designed to continue to build upon the Superfund Administrative Improvements. The Administrative Reforms were first introduced in February 1995. EPA announced a second set of administrative reforms in October 1995. Each reform may be implemented under existing CERCLA statutory authority, and under the current National Contingency Plan, while awaiting Congressional action on reauthorization of CERCLA.

3.1 FEBRUARY 1995 REFORMS

The February 1995, set of Administrative Reforms is organized into six general areas: enforcement, economic redevelopment, community involvement and outreach, environmental justice, consistent program implementation, and state empowerment.

ENFORCEMENT REFORM

Seeking to accelerate the enforcement process, reduce transaction costs, and promote fair and effective settlements, EPA will implement procedures to facilitate PRP searches, expedite settlements, and make greater use of allocation tools.

Facilitate PRP Searches

Continuing the enforcement first initiative, the Agency plans to test streamlined PRP search procedures at pilot sites during fiscal years 1995 and 1996. These procedures will improve the quality and the timeliness of PRP searches, while providing a foundation for the allocation process. Additionally, EPA will make certain enforcement information more accessible to the public.

Expedite Settlements

Building upon the Administrative Improvement goal to expedite de minimis settlements, EPA proposes to identify, offer, and finalize such settlements before the Record of Decision. This approach will be piloted at select sites in 1995. To assist Regions and private parties in making ability to pay determinations, the Agency has summarized its ability to pay guidance in Overview of Ability to Pay Guidance and Models, issued in May 1995.

Cost Allocations

In response to Agency findings from the Administrative Improvements initiative to promote the greater use of allocation tools, the Agency plans to examine the use of a

neutral third party. This third party would allocate shares of responsibility for cleanup costs among all parties at a site. The orphan share, that portion of response costs attributable to insolvent or defunct parties, would be assumed by the Trust Fund. This non-binding process will be conducted at pilot sites in fiscal years 1995 and 1996.

ECONOMIC REDEVELOPMENT

In an effort to encourage the redevelopment of contaminated and unused properties, EPA has initiated a series of initiatives described in the Brownfields Action Agenda. The Action Agenda includes the funding of redevelopment pilots and grants (discussed in Section 5 of this module), encouragement of state and tribe voluntary cleanup programs, purging EPA's inventory of Superfund sites (CERCLIS) of sites which are no longer of federal interest, and identification of uncontaminated portions of NPL sites.

Voluntary Cleanup Programs

EPA is working with states, tribes, and municipalities to help develop cleanup programs. The Agency will provide limited financial assistance for these efforts, which could reduce the need for federal involvement at many low-risk, contaminated, and unused properties.

Refining CERCLIS

The Agency has removed approximately 25,000 sites from its inventory of sites investigated under CERCLA, known as CERCLIS. These sites, at which EPA had planned no further remedial action, were removed from CERCLIS and placed in an "archive" list. This initiative is ongoing, and is intended to eliminate any stigma associated with these properties and promote economic redevelopment.

NPL Clarification

Regions have been authorized to identify those areas on or adjacent to NPL sites which are uncontaminated. This information will then be communicated to the public in an effort to return these uncontaminated areas to productive uses despite their proximity to NPL sites.

Because CERCLA contains a broad liability scheme, and because cleanup can be very expensive, contaminated properties are often overlooked for development or slow to be returned to productive use. The Agency has issued several guidance documents which provide options for removing these liability barriers, and clarify liability issues associated with contaminated properties.

Liability of Owner of Property Containing Contaminated Aquifers

The Final Policy Toward Owners of Property Containing Contaminated Aquifers states that the Agency will not take enforcement actions against owners of property which contains an aquifer contaminated solely as the result of subsurface migration from a source outside of the property, subject to certain conditions (60 FR 34790; July 3, 1995).

Prospective Purchaser Agreements

In a revision of existing guidance, EPA expanded the circumstances under which it would consider entering into an agreement with a prospective purchaser of a contaminated property in the Guidance on Agreements with Prospective Purchasers of Contaminated Property (60 FR 34792; July 3, 1995). EPA will consider entering into a prospective purchaser agreement when the agreement benefits EPA or some combination of EPA and the public; activities at the property will not interfere with response actions, aggravate contamination, or pose health risks to the community or persons involved with the site; and the prospective purchaser is financially viable.

NPL Listing Policy

The Agency clarified its NPL listing policy in an August 3, 1995, memorandum. NPL sites are often described informally, on a "fenceline to fenceline" basis, for example the "Smith Factory Site." However, the release may have been confined to discrete parcels of the site, or may extend beyond the boundaries of the property name used to refer to the site.

Transfers of Federally Owned Property

On August 9, 1995, EPA issued a memorandum entitled "Transmittal of the Model Comfort Letter Clarifying NPL Listing Policy, Uncontaminated Parcel Identifications, and CERCLA Liability Involving Transfers of Federally Owned Property." The memorandum states that while a parcel of land may lie within the area described as an NPL site, the parcel would only be considered to be part of the NPL site if it was contaminated. In addition, the liability of a purchaser of such a parcel would depend on whether the parcel itself met the CERCLA §101(9) definition of "facility" and whether a release (CERCLA §101(22)) or threatened release of a hazardous substance occurred at the facility. Lastly, the model comfort letter clarifies provisions of CERCLA §120(h) involving the transfer of federal property.

COMMUNITY INVOLVEMENT AND OUTREACH

Several of the Administrative Reforms provide opportunities for earlier, direct, and regular community involvement in the Superfund process. Specifically, EPA will support Community Advisory Groups (CAGs), augment the Technical Assistance Grant (TAG) program, and examine ways to involve the community in enforcement actions.

EPA has issued guidance supporting CAGs, and is encouraging Regions to establish CAGs at selected NPL and federal facility sites. Regions have been asked to consider other means of promoting community involvement, including providing TAGs earlier in the process and authorizing training for TAG recipients. The Agency is studying several ways to increase community participation in enforcement activities at a site. Proposals include inviting public comment on draft statements of work and actively disseminating information to the community. Innovative methods will be tested at pilot sites.

ENVIRONMENTAL JUSTICE

EPA has joined with other federal agencies to provide training and medical assistance to low-income and minority communities living near Superfund sites.

Medical Assistance Plan

Growing out of the Administrative Improvement goal to establish an environmental justice strategy at NPL sites, EPA and the U.S. Public Health Service are piloting the Medical Assistance Plan (MAP) program at three sites in fiscal year 1995. MAP provides for physician training and placement, testing to assess health effects of hazardous substance exposure, technical assistance to local agencies and health care providers, referral services for specialists or specialty clinics, and medical follow-up for those who have documented exposure to hazardous substances or adverse health conditions related to possible exposure.

Step-Up Program

EPA, the Department of Housing and Urban Development, and the National Institute for Environmental Health Sciences are cooperating on a program to share the economic benefits of site cleanup with minority and low-income communities. Under the Step-Up program, the agencies will develop strategies for recruiting and training people who live in or near Superfund sites to work in the environmental field.

Curriculum Development

The Hazardous Materials Training and Research Institute has received a grant from the Agency to develop environmental work force training programs and conduct workshops for community colleges located near Superfund sites. Two pilot projects have been chosen as part of a greater effort to increase the number of community colleges offering environmental training.

CONSISTENT PROGRAM IMPLEMENTATION

Because the Superfund process employs site-specific cleanup levels, each site must undergo an intensive evaluation to establish cleanup goals and select remedies. To improve consistency and streamline the evaluation process, EPA has developed

guidance on the use of soil screening levels, considering future land use in the remedy selection process, and the use of presumptive remedies. The Agency is also studying ways to further the application of innovative technologies in remedial actions.

Soil Screening Levels

Soil screening levels are levels of contamination in soil below which no further investigation is warranted. The use of these levels is expected to accelerate the site assessment process by allowing a site manager to quickly determine areas of a site which are not of concern under CERCLA. The site manager may then focus on areas that require additional study. EPA plans to issue final guidance on the use of soil screening levels by Spring 1996.

Considering Future Land Use

The Agency has completed an Administrative Improvement initiative and issued Land Use in the CERCLA Remedy Selection Process, a directive which emphasizes the consideration of future land uses when selecting a remedy at NPL sites. Communities are asked how they anticipate using the property after remedial action is complete. The RI/FS focuses on that land use, and a remedy is selected consistent with the anticipated land use. This policy is expected to produce expedited, cost-effective cleanups, as well as greater community support for selected remedies.

Presumptive Remedies

An initiative started during Administrative Improvements, EPA will continue to develop presumptive remedies for contaminated groundwater, wood treatment facilities, PCB-contaminated sites, manufactured gas plants, and grain storage sites.

Supporting Innovative Technology

EPA will share financial risk with PRPs who select remedies employing low-cost, high performance technologies. The Agency will also identify barriers to the selection and use of innovative technologies.

STATE AND TRIBAL EMPOWERMENT

Although the federal government has the primary responsibility for implementing the Superfund program, EPA has identified three initiatives to increase the role of states and tribes in the program's implementation. The Agency will participate in the development of voluntary cleanup programs, implement a policy to defer certain cleanups to states, and identify ways to provide block funding to states and tribes to conduct response actions.

Voluntary Cleanup Programs

EPA will identify ways to assist, fund, or endorse state or tribal voluntary cleanup programs which address lower risk sites.

State Deferral

Begun during Administrative Improvements, the Agency has published its policy on deferring certain NPL-caliber sites to the state for response action, entitled Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions. Under certain conditions, EPA will allow states and tribes to perform response actions, allowing some sites to be addressed sooner than if the Agency retained responsibility.

Block Funding

EPA, states, and tribes are working together to identify options to streamline the cooperative agreement process through block funding.

3.2 OCTOBER 1995 REFORMS

EPA's latest efforts to make Superfund faster, fairer, and more efficient include 20 new Administrative Reforms announced on October 2, 1995. This set of reforms is based upon three principles; select remedies that are cost-effective and protective, reduce litigation by achieving common ground instead of conflict, and ensure that states and communities stay more informed and involved in cleanup decisions. These are the final reforms EPA plans on implementing without new reauthorizing legislation since the Superfund funding may run out soon.

SELECT REMEDIES THAT ARE COST-EFFECTIVE AND PROTECTIVE

CERCLA §121(d) mandates a level of cleanup which is protective of human health and the environment. However, EPA is faced with a large inventory of uncontrolled hazardous waste sites and limited resources with which to address them. Thus the Agency has proposed four reforms to fulfill the mandate of CERCLA §121(d) while controlling remedy costs and promoting cost-effectiveness.

Establish Cost-Effectiveness Thresholds and New "Rules of Thumb"

EPA will establish a National Remedy Review Board, composed of senior Agency experts, to review proposed high cost remedies at specific sites. The Board would review proposed remedies where estimated costs exceed \$30 million, or where estimated costs exceed \$10 million and are 50 percent greater than the costs of the least expensive, protective, and ARAR-compliant remedy. Regional decisionmakers will be expected to consider the Board's recommendations in the final remedy selection.

decisions. Further, EPA will develop "rules of thumb" to ensure that other costly and controversial remedy selections will be reviewed by senior management.

Update Remedies at Selected Sites

To take advantage of innovative technologies that provide for more efficient and cost-effective cleanups, EPA proposes to reassess remedial actions at selected sites. The Agency will study whether updating the remedy would result in cost savings or increases in efficiency while maintaining the same level of protectiveness.

Clarify the Role of Cost Throughout the Remedy Development Process

EPA will release two new directives intended to emphasize cost considerations throughout the remedy development process. The first will explain the role of cost, and how the Agency will determine whether a potential remedy is cost-effective. The second directive will promote consistency among Regional offices in the application of land use policies, groundwater restoration, and implementation of presumptive remedies.

Clarify Information Regarding Remedy Selection Decisions

The Agency will publish summary sheets for each ROD to provide a concise and understandable summary of the nature of the threats posed by a site, and actions taken to address those threats. Each ROD Summary Sheet would also detail the tradeoffs EPA considered in selecting the remedy for a site.

As part of a larger effort to improve the risk assessment process, EPA is proposing to solicit stakeholder input on the design of risk assessments. The Agency is also focusing on the consistent implementation and the standardization of some components of the risk assessment process. Finally, EPA has created a workgroup to provide expert assistance to Regions when conducting risk assessments at lead-contaminated sites.

Include Stakeholder Input in Risk Assessments

EPA will pilot a process which requests early stakeholder input on land use assumptions, exposure pathways, and characteristics of affected populations. This information would help form a framework for the risk assessment and a realistic basis for developing cleanup options. Additionally, EPA will allow PRPs conducting the RI/FS to perform risk assessments under limited circumstances.

Ensure Reasonable and Consistent Risk Assessments

The Agency will establish national criteria which Regions can use to review, approve and report Superfund risk assessments. The use of standard review practices and checklists will help ensure national consistency and eliminate unlikely exposure scenarios. EPA further proposes to ensure consistency by standardizing parts of the

risk assessment that vary little from site to site, and by developing presumptive default assumptions about exposure pathways for different types of land uses or activities. Lastly, the Agency has created an expert workgroup to support Regions involved in risk assessments at sites contaminated with lead.

Some sites are subject to several federal regulatory authorities, such as CERCLA, RCRA, and state provisions. These different authorities may have similar goals, but may promote different methods to achieve those goals. EPA is seeking to clarify the roles of various regulatory authorities to simplify the cleanup process.

Foster Integration of Overlapping Cleanup Programs

EPA is chairing an interagency workgroup charged with developing guidance that will specify roles and outline general principles that various federal and state regulatory stakeholders should follow when a response is implemented under multiple legal authorities. The guidance is expected to be issued in early 1996.

The listing of a site on the NPL often discourages interested parties from reusing or redeveloping the property. To help remove the stigma of NPL listing, the Agency will revise guidance on listing sites on the NPL and issue new guidance on the deletion of clean parcels of a site from the NPL.

Revise Listing Policies

EPA will revise current guidance in early 1996 to allow current or recent response actions to be considered when proposing a site to the NPL. The guidance will direct the Agency to evaluate a site based on whether the response action has reduced contamination to a level protective of human health and the environment. EPA would consult with the state or tribe, the Agency for Toxic Substances and Disease Registry, and the local community in making this decision.

Partial Deletion Policy

EPA published its policy on partial deletion of sites listed on the NPL on November 1, 1995 (60 FR 55466). Portions of NPL sites may be deleted when no further response action is appropriate for those portions of the site. Such partial deletions will effectively communicate cleanup progress, and stimulate the return of property to productive use.

Faced with limited resources, EPA and other federal agencies must prioritize cleanup efforts. EPA has proposed to conduct national risk-based priority setting for both federal facilities and non-federal facility sites.

Establish National Priority Systems for Funding Cleanups

The Agency will issue guidance to the Regions endorsing the use of priority setting systems developed by federal agencies to evaluate federal facilities for cleanup efforts.

Priorities will be risk-based, addressing the “worst problems first.” Both regulators and stakeholders will participate in identifying priority projects. Individual Regions have already prioritized their non-federal sites, and Trust Fund money has been issued accordingly. A panel of Headquarters and Regional program managers will assess priorities on a national level based on risks to humans, ecological risks, stability of contaminants, contaminant characteristics, and economic, social, and program management considerations.

REDUCE LITIGATION BY ACHIEVING COMMON GROUND INSTEAD OF CONFLICT

A major Administrative Improvements and Reforms goal has been to increase fairness in the enforcement process. EPA has received criticism that cleanup costs are not distributed fairly, that settlement funds do not always go to the site at which the settlement was reached, and that cleanup orders are not issued fairly. The Agency has proposed to address these concerns by compensating settling parties for a portion of the orphan share, ensuring that settlement funds are dedicated to specific sites, and issuing cleanup orders in an equitable manner.

Compensate Settlers for a Portion of the Orphan Share

Subject to adequate funding, EPA will seek to compensate parties performing cleanup for a portion of the orphan share of cleanup costs. If circumstances do not permit orphan share compensation, the Agency will explore providing funds for a portion of the work, or performing part of the work itself, in an attempt to equitably distribute the cost of cleanup.

Ensure Settlement Funds are Dedicated to Specific Sites

EPA is negotiating with the Department of the Treasury and the Office of Management and Budget to establish site-specific, interest-bearing accounts. Settlement funds will be placed in these accounts and be available exclusively for the site at which settlement occurred.

Issue Cleanup Orders to Parties in an Equitable Manner

Regions will implement a process in which each decision to exclude a party from a cleanup order is reviewed by a regional decisionmaker, ensuring that parties are not inappropriately excluded from enforcement actions. This will be an additional step in implementing Guidance on CERCLA Section 106(a) Unilateral Administrative Orders for Remedial Designs and Remedial Actions (OSWER Directive 9833.0-1a). This guidance directs enforcement staff to issue orders to the largest manageable number of parties, after evaluating a party's liability, financial viability, and waste contribution to the site.

Building on previous Administrative Improvements and Reforms, EPA will enact three new initiatives to reduce transaction costs. In the first initiative, the Agency will double the threshold level for small volume waste contributors. Second, EPA will adopt private party allocations that have attributed shares to all participating parties. Finally, the Agency may reduce oversight of cooperative PRPs who perform response activities.

Increase Number of Protected Small Contributors

Though EPA has policy against taking enforcement action against the smallest waste contributors (de micromis parties), these parties may still be threatened with litigation by other private parties. In order to protect small waste contributors from such contribution suits, the Agency will settle with these parties for one dollar. EPA has established threshold levels to identify de micromis parties which will be, at the minimum, double the level previously identified for small waste contributor protection.

Adopt Allocations Proposed by Parties at a Site

In negotiating settlements, EPA often seeks to allocate shares of cleanup costs amongst parties at a site. The Agency will now review allocations made by private parties themselves, using criteria such as methodology of allocation, inclusion of all parties including any orphan share, and fairness. If the allocation meets EPA approval, the Agency will attempt to provide compensation for a portion of the orphan share.

Reduce Oversight for Cooperative Parties

The Agency will reduce or tier oversight of parties who perform high quality work and cooperate throughout the response and enforcement processes. EPA will, however, continue to provide some oversight to ensure that the cleanup is performed in a timely and proper manner.

ENSURE THAT STATES AND COMMUNITIES ARE MORE INFORMED AND INVOLVED IN CLEANUP DECISIONS

The NCP gives EPA ultimate authority for selecting remedies at NPL sites. In a final set of reforms, EPA is seeking to further empower states and communities by giving them direct input into remedy selection. The Agency will allow certain states to conduct the remedy selection process. At some NPL sites, communities will be given a direct role in selecting a remedy.

Shift Remedy Selection Process to Selected States

EPA and qualified states will enter into cooperative agreements, giving those states control over the remedy selection process for certain NPL sites. Each state must select the remedy consistent with both CERCLA and the NCP, and the Agency will provide minimal oversight.

Pilot New Community-Based Remedy Selection Process

The Agency learned during the course of Administrative Improvements that community working groups can be effective in assisting in remedy selection decisions. In a number of pilots to be selected in fiscal year 1996, EPA will seek to provide communities with sufficient understanding of CERCLA statutory, regulatory, and policy objectives to enable them to play a direct role in the remedy selection process. While the Agency hopes pilot participants will select a remedy consistent with such objectives, it will retain final decisionmaking authority. Guidance describing various options to increase community involvement will be developed in winter 1996.

While other reforms give stakeholders increased opportunities to become involved in the Superfund program, EPA has proposed two reforms that would help with problem resolution and increase communication between all parties. First, each Region will designate an Ombudsman to address stakeholder concerns. Second, the Agency will use tools such as electronic bulletin boards and educational institutions to improve communication among stakeholders.

Establish a Regional Ombudsman

By March 31, 1996, each region nominated an Ombudsman to address stakeholder concerns at the Regional level. The Ombudsman has two functions; to help resolve issues that cannot be resolved informally between Regional staff and stakeholders, and to serve as a resource for information related to common Superfund concerns. This person will be in direct contact with stakeholders, and report to a top Regional management official.

Improve Stakeholder Communications

EPA will create an Internet-accessible electronic bulletin board to improve communication among stakeholders, and to provide access to state and federal Superfund guidance. Universities and the Hazardous Substance Research Centers may be used to provide further information and assistance to communities located near Superfund sites.

4. SUPERFUND ACCELERATED CLEANUP MODEL (SACM)

Of all the Agency's efforts to improve the Superfund Program, the Superfund Accelerated Cleanup Model and the Brownfields Economic Redevelopment Initiative are particularly noteworthy. For this reason, the following sections include a detailed discussion of the activities conducted by EPA under these two initiatives/reforms.

Since the inception of Superfund many lessons have been learned. The removal and remedial processes at Superfund sites are time consuming and expensive. The Superfund process has proven to be problematic because it takes a linear approach to a multifaceted cleanup, and it contains inherent redundancies in site assessment. To respond to these issues, EPA introduced SACM as a new improved alternative to approaching Superfund site cleanups in April 1992.

The main goals of SACM are to achieve immediate risk reduction at more sites, perform more efficient and cost effective cleanups, and avoid duplicative site assessments. This paradigm is consistent with the NCP, and does not require major regulatory amendments. After conducting and reviewing pilot studies, EPA announced its expectation for full implementation of the SACM process at Superfund sites (OSWER Directive 9203.1-13). The primary aspects of the SACM process are described below and presented in Figure 1.

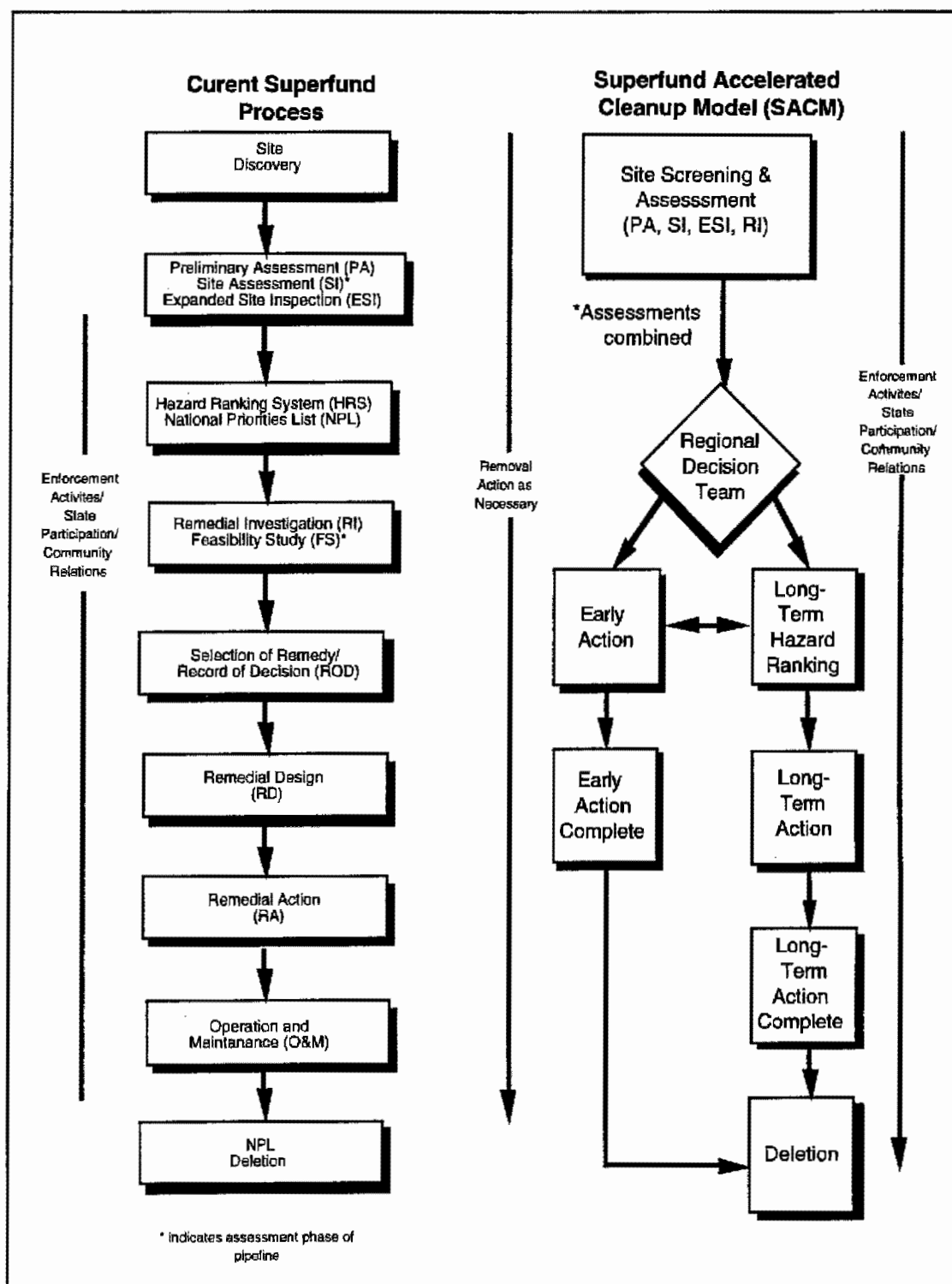
SITE SCREENING AND ASSESSMENT

The site screening and assessment step in the SACM process combines the preliminary assessment and the site investigation to ensure a site is assessed thoroughly once, without repetitive and duplicative steps. If the site is determined to be seriously contaminated, HRS and RI/FS level data is collected and a risk assessment is conducted. If the site is not contaminated enough to be placed on the NPL, it may be deferred to another authority such as the state, or RCRA. For more guidance on this aspect of the SACM process, refer to Assessing Sites Under SACM -- Interim Guidance (OSWER Directive 9203.1-05I).

REGIONAL DECISION TEAM

Determining whether a site should be considered for the NPL requires thorough deliberation. For this reason, the SACM process incorporates a Regional Decision Team (RDT) to oversee the activities and help make effective decisions about site response. The RDT consists of experienced managers in Superfund enforcement, site and risk assessors, the On-Scene Coordinator, the Remedial Project Manager, community relations coordinators, and state officials. The team provides for greater flexibility in the Superfund process and acts as a traffic cop by determining whether a site receives (1) no action, (2) early action, (3) long term action, or (4) deferral to RCRA, the state, or another authority. More guidance on the RDT can be found in SACM Regional Decision Teams -- Interim Guidance (OSWER Directive 9203.1-05I).

Figure 1: Two Versions of the Superfund Site Evaluation and Cleanup Process



EARLY ACTIONS

An early action operates under the same authority and follows the same process outlined in the NCP for removal actions. The types of response included in the early action are emergency removals, time critical responses, and non-time critical responses. In addition, early actions can include early remedial actions where identification of applicable or relevant and appropriate requirements (ARARs), a RI/FS, a risk assessment, and a quick ROD are required. These actions are performed at sites where the RDT decides the contamination warrants quick action and the response is expected to take less than five years to complete. An early action may involve the containment of a groundwater plume that is directly threatening a drinking water supply. An early action can occur in conjunction with a long-term action at a site. This is referred to as a "phased approach" and ensures a site is cleaned up as quickly and effectively as possible.

LONG-TERM ACTIONS

Long-term actions follow the remedial process requirements outlined in the NCP. These actions take longer than five years to implement and complete. Examples of situations that involve long-term actions are sites where extensive groundwater restoration is required, restoration of wetlands or estuaries is necessary, or large mining sites that require cleanup as well as major environmental restoration such as revegetation. Long-term action sites will follow the full NPL process including NPL listing, a RI/FS, and a complete ROD. The main difference between a long-term action and an old remedial action is that the selected remedy will be implemented more quickly under SACM. For more information on both early and long-term actions see Early Action and Long-Term Action Under SACM -- Interim Guidance (OSWER Directive 9203.1-05I).

PRESUMPTIVE REMEDIES

As mentioned previously in section 3.2, presumptive remedies are a key component of the SACM paradigm. Before SACM, EPA operated on the presumption that each site on the NPL was unique and required a site-specific cleanup remedy. Through time, EPA has learned that many sites are contaminated with the same types of wastes, involve the same types of units, and as result, will most likely have a similar remedy. For example, it has taken many years to determine that the best remedy for leaking municipal landfill is a cap to prevent further contamination of groundwater. When faced with many leaking municipal landfill sites, a significant amount of time can be saved in the remedy selection process if it is presumed that the best remedy for these sites is a cap. Presumptive remedies will reduce the amount of time it takes to select a remedy by adopting remedies already shown to be effective at similar sites. Pilot studies using presumptive remedies have occurred at wood preserving sites, municipal solid waste landfills, sites with groundwater contamination, and sites with volatile organic compound and PCB contamination. Presumptive remedies ensure that a site is can be cleaned up faster while still protecting human health and the environment. More

guidance on presumptive remedies is found in Presumptive Remedies: Policy and Procedures (OSWER Directive 9355.0-47FS).

5. BROWNFIELDS ECONOMIC REDEVELOPMENT INITIATIVE

Superfund imposes liability on both past and present owners of contaminated sites. The stigma of potential Superfund liability diminishes the attractiveness of investing in previously used industrial or commercial areas. As a result, the market value of older industrial sites can be depressed, thereby causing these sites to become brownfields. Brownfields are abandoned, idled, or under-used industrial and commercial facilities where expansion or development is complicated by real or perceived environmental contamination.

EPA believes that the environmental cleanup of brownfields sites is a building block to economic redevelopment. EPA designed the Brownfields Economic Redevelopment Initiative to empower states, communities, and other stakeholders in economic redevelopment to work together to assess, safely cleanup, and sustainably reuse brownfields.

BROWNFIELDS ACTION AGENDA

On January 25, 1995, EPA announced the Brownfields Action Agenda, an outline of EPA's activities and future plans to help states and communities implement and realize the benefits of the Brownfields Initiative. The efforts outlined in the Brownfields Action Agenda can be grouped into four broad and overlapping categories; brownfields pilots, clarification of liability and cleanup issues, partnerships and outreach, and job training and development. Many of the initiatives announced as part of EPA's Superfund Administrative Improvements and Reforms are important components of the Action Agenda. The Action Agenda is a work in progress and EPA will continue to seek advice and input from a broad range of stakeholders as the Agency's understanding of the issue evolves.

BROWNFIELDS PILOTS

EPA will select 50 states, cities, towns, counties, and Tribes for brownfields pilots by the end of 1996. The pilots, each funded up to \$200,000 over two years, will test redevelopment models, direct special efforts toward removing regulatory barriers without sacrificing protectiveness, and facilitate coordinated public and private efforts at the federal, state, and local levels. These funds are to be used to generate interest by pulling together community groups, investors, lenders, developers, and other affected parties to address the issue of cleaning up sites contaminated with hazardous substances and returning them to appropriate, productive use.

By February 1996, EPA had awarded 40 of the 50 pilots, 28 "National Pilots" selected by EPA Headquarters, and 12 "Regional" pilots selected and sponsored by EPA Regional offices.

NATIONAL PILOTS

- Baltimore, MD
- Birmingham, AL
- Bridgeport, CT
- Detroit, MI
- Emeryville, CA
- Houston, TX
- Indianapolis, IN
- Knoxville, TN
- Laredo, TX
- Lawrence, MA
- Louisville, KY
- New Orleans, LA
- New York, NY
- Northampton County -
Cape Charles, VA
- Oregon Mill Sites
- Phoenixville, AZ
- Portland, OR
- Richmond, VA
- Rhode Island
- Rochester, NY
- Sacramento, CA
- St. Louis, MO
- Stockton, CA
- Tacoma, WA
- Trenton, NJ
- West Central Municipal
Conference (WCMC)
- Worcester, MA

REGIONAL PILOTS

- Boston, MA
- Buffalo, NY
- Dallas, TX
- Duwamish, WA
- Illinois
- Indiana
- Minnesota
- Northwest Indiana Cities
- Philadelphia, PA
- Pittsburgh, PA
- Sand Creek Corridor, CO
- West Jordan, UT

EPA Headquarters selected the National pilots based on their program statement and needs assessment, community-based planning and involvement, implementation plan, and long-term benefits and sustainability. The Regions used their own criteria to select the Regional pilots.

CLARIFICATION OF LIABILITY ISSUES

Inheritance of cleanup liability for past contamination is a significant barrier to assessing, cleaning up, and redeveloping brownfields sites. EPA hopes to mollify the concerns of lenders, property owners, municipalities, and others by clarifying relevant liability issues. Clarification of liability issues will facilitate the purchase, cleanup, and redevelopment of sites that might otherwise be avoided due to misconceptions of incurring federal liability. The Brownfields Initiative targets many specific Superfund and Underground Storage Tank (UST) liability issues, including prospective purchaser

liability, the liability of owners of contaminated aquifers, municipal acquisition liability, and lender liability at both Superfund and UST sites.

PARTNERSHIPS AND OUTREACH

To promote public participation and community involvement in brownfields decision-making and to streamline and improve brownfields efforts, EPA is working to build lasting partnerships with states, cities, and community representatives. In addition, EPA will continue to develop its existing partnerships with federal Agencies to ensure a coordinated federal approach to the redevelopment of brownfields.

During the summer of 1995, the National Environmental Justice Advisory Council (NEJAC) sponsored a series of one-day dialogues across the country, known as "loop trips," in an effort to involve community groups and environmental justice advocates in the Brownfields Initiative. The Agency also formed a workgroup to explore the potential effects that EPA endorsement of state voluntary cleanup laws might have on brownfields cleanup and redevelopment. Finally, EPA has begun assigning staff to various cities through inter-governmental personnel assignments (IPAs) to assist cities in the development of their own brownfields programs.

JOB DEVELOPMENT AND TRAINING

In keeping with its efforts to aid the economic redevelopment of brownfields communities, EPA has undertaken several job development and training activities. Together, EPA brownfields staff and local contacts have established partnerships with community colleges to provide quality training for local workers and to ensure the recruitment of students from socio-economically disadvantaged communities. The Agency's intention is to provide local residents with an opportunity to qualify for jobs developed through brownfields efforts.

Specifically, EPA and the Hazardous Materials Training and Research Institute are participating in an effort to expand training and develop curriculum at community colleges in brownfield communities. The Agency has already been successful establishing job training programs at community colleges in Cleveland, Ohio; Whittier, California; and Bridgeport, Connecticut.

BROWNFIELDS TAX INCENTIVE

Building on the momentum of the Brownfields Action Agenda, on March 11, 1995, President Clinton announced the details of a new, targeted tax incentive to spur the clean up and redevelopment of brownfields in distressed rural and urban areas. Under the President's proposal, companies can fully deduct environmental clean up costs in the year in which they are incurred, rather than capitalizing them over five to ten years as the tax code currently requires. The tax incentive would be available in existing EPA brownfields pilot areas, in areas with a poverty rate of 20 percent or more, in adjacent

industrial or commercial areas, and in Empowerment Zones and Enterprise Communities.

The President included the \$2 billion incentive in the proposed budget that was submitted March 18, 1996. The tax incentive will require Congressional approval to become effective.

6. SUMMARY

In response to criticism of various aspects of Superfund, EPA has implemented and continues to implement a series of administrative initiatives intended to improve the Superfund program as it exists under the current statute. The Superfund Administrative Improvements, closed out on September 30, 1994, focused on increasing enforcement fairness and reducing transaction costs, improving cleanup effectiveness and consistency, expanding public involvement, and enhancing the state role. A second set of Superfund Administrative Reforms, announced February 13, 1995, seeks to reform enforcement, encourage economic redevelopment, expand community involvement and outreach, promote environmental justice, ensure consistent program implementation, and empower states in the CERCLA process. The third set of Administrative Reforms, announced October 2, 1995, is designed to improve Superfund by making smarter cleanup choices that protect human health at less cost, reducing litigation by achieving common ground instead of conflict, and ensuring that states and communities stay more informed and involved in cleanup decisions. Other initiatives such as SACM and Brownfields Economic Redevelopment provide additional ways in which to make cleanups faster, fairer, and more efficient. While some initiatives have been completed, work on others will continue as EPA awaits statutory reform of CERCLA by Congress.