



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

JUL 31 1996

OSWER Directive No. 9200.4-15

MEMORANDUM

SUBJECT: Reducing Federal Oversight at Superfund Sites with Cooperative and Capable Parties

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Purpose

On October 2, 1995, Administrator Browner announced several new Superfund Reforms including an initiative to encourage and reward cooperative parties by reducing EPA oversight



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activities at sites where quality work is being performed by such parties. The purpose of this memorandum is to foster an improved relationship, or recognize existing relationships, with cooperative parties. This memorandum is also intended to help the Regions identify sites where parties have been cooperative and where reduced oversight is appropriate and can be implemented without sacrificing the quality of site characterization and cleanup.

This memorandum also provides examples of oversight monitoring activities that should be considered for reduction depending upon site circumstances. The Regions have already identified approximately 100 sites with cooperative and capable parties and have either already reduced oversight or plan to reduce oversight activities. However, oversight costs for actions at some sites still may be reduced further. Some of these reductions have already been realized, and should be identified by the Regions as part of this reform. EPA's overall goal is for a nationwide 25% reduction in oversight costs over the next year at these 100 sites.

Background

Potentially responsible parties (PRPs) are performing approximately 50% of the ongoing remedial investigations and feasibility studies (RI/FSs) and approximately 75% of the remedial designs and remedial actions (RD/RAs). Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended, EPA oversees the RI/FS and the RD/RA at these sites. In most cases, costs incurred by EPA in performing oversight of PRP response activities at a site may be recovered pursuant to CERCLA Section 107(a).¹ OSWER has issued guidance on performing oversight of PRP-lead RI/FSs and RD/RAs giving Regions the flexibility to adjust the level of oversight based on the circumstances of the site.²

For the purposes of this reform only, oversight is defined as the process EPA uses to ensure that all studies and work performed by PRPs: comply with CERCLA, the National Contingency Plan, and the signed settlement agreement; take into account all relevant guidances and policies determined by EPA to be appropriate for the site; and are technically sound.

At sites where the PRPs have been cooperative and where high-quality work has been consistently performed, reductions in Agency oversight activities may be possible without compromising the quality of response actions. The initial determination and subsequent re-

¹See United States v. Rohm & Haas Co., 2 F.3d 1265 (3d Cir. 1993) (costs of overseeing a PRP removal or remedial action are not recoverable, except for the costs of overseeing an RI/FS). It is the Agency's position that Rohm & Haas was wrongly decided and several courts have rejected or criticized the Third Circuit's ruling. See United States v. Ekotek, 41 ERC 1981 (D. Utah 1995); United States v. Atlas Mineral and Chemicals, Inc., 851 F. Supp. 639 (E.D. Pa. 1994); United States v. Lowe, 864 F. Supp. 628 (S.D. Tex. 1994).

²"Guidance on Oversight of Potentially Responsible Party Remedial Investigations and Feasibility Studies," OSWER Directive No. 9835.1, July 1991; and "Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties," OSWER Directive No. 9355.5-01, April 1990.

evaluations of PRP cooperativeness and capability should be based on the criteria listed below. The use of such criteria is intended to encourage and reward PRP cooperation.

For this reform, EPA is focusing on reducing the oversight activities of EPA staff and contractors after a settlement agreement has been signed and until all work at a site has been completed pursuant to the agreement. By increasing communication, cooperation, and early planning with PRPs, oversight activities and their resulting costs to cooperative and capable PRPs can be reduced. At some sites where EPA has already significantly reduced oversight for cooperative and capable PRPs, additional oversight reductions may not be realized, but any ongoing oversight reduction activity at a site will be considered as part of this reform. This guidance offers the site manager specific suggestions for reducing oversight costs at Superfund sites and is meant to complement the existing guidance for tailoring levels of oversight at RCRA corrective action facilities.³

Identifying Sites Eligible for Reduced Oversight

This guidance applies to all enforcement-lead remedial and non-time-critical removal actions at NPL and non-NPL sites. For each response action at each site, Regional site managers should consider the following criteria in determining if a PRP (including its contractors) has both demonstrated acceptable technical capability and fully cooperated with EPA in previous work at the site (or other sites). PRPs (and their contractors) should substantially meet the following criteria to be considered capable and cooperative.

- Technical Capability (Based on Site Complexity)
 - PRP consistently produces technically sound documents, and
 - PRP has performed acceptably in laboratory or field audits.
- Cooperativeness/Compliance (PRP/Agency Relationship)
 - PRP has agreed to a reasonable time frame for completing site work (including deliverables), and has completed such work on a timely basis (e.g., the first drafts are complete and require only minimal revision),
 - PRP has been and remains substantially in compliance with the terms of the settlement document, and
 - PRP follows through on oral commitments made to EPA.

³“RCRA Corrective Action Oversight,” OSWER Guidance No. 9902.7, January 1992.

If the above criteria are substantially met (particularly for more recent activities), the site is a candidate for reduced oversight. EPA recognizes, however, that even at sites where the PRP has been cooperative and capable, there may be other reasons why significant reductions in oversight are not appropriate for some site activities. The following are some additional criteria that should be considered when determining the appropriate level of oversight at a candidate site.

- Site-Based Criteria (Community Involvement, Scope of Activities, Severity of Risk)
 - EPA may increase site monitoring if the community has reason to believe additional oversight is necessary. At a minimum, EPA should discuss with the PRPs and the affected community at the site the Agency's oversight plan concerning the site.
 - At sites where the remedy involves a complex technical model, EPA may decide to carefully monitor all critical site work. EPA also recognizes that there may be some sites where, due to substantial uncertainty in the use of a model or a specific technology, PRPs may request EPA to provide intensive oversight, and it may be appropriate for EPA to do so.
 - EPA will consider the severity of risk to human health or the environment posed by the site in determining whether reduction in oversight is appropriate.

Examples of Opportunities for Oversight Reduction

The following is a list of some oversight activities that can be modified or reduced as appropriate for the site. These include, but are not limited to:

- Eliminating duplicative State/Federal reviews of documents by working with the state to designate the appropriate entity with responsibility for conducting oversight at the site,
- Eliminating interim deliverables or milestones (e.g., the 30% and 60% design progress reports) while maintaining accountability of the PRP to produce an acceptable end product,
- Reducing production of documents by increasing the use of meetings, briefings and other communication methods to identify and resolve issues early on,
- Reducing the number of field visits to observe routine field activities (e.g., sampling and well drilling) where the PRP has shown competence, and using occasional unannounced visits instead, and/or

- Taking fewer split samples (using Contract Laboratory Program buy-ins, where available), and relying on audits instead.

Implementation

Effective immediately, the Regions should use the above criteria to identify those sites, both NPL and non-NPL, where the level of oversight can be reduced without reducing the level of protection at a site. This evaluation should be done for every site where the PRP is performing the RI/FS, the RD/RA, or the engineering evaluation/cost analysis (EE/CA) and response action for non-time-critical removals.

EPA believes that at sites meeting the above criteria, Regions should work with states, local governments, communities and PRPs, as appropriate, to develop an effective partnership in implementing this reform. Workplans may need to be revised to implement this reform, but many of the goals of this initiative can be achieved without changing existing contracts or agreements. Reductions in oversight activities should be implemented as soon as possible. This reduction in monitoring activities should lead to a reduction in oversight costs and may also decrease the time needed to complete one or more phases of the response action.

At the time of annual billing, Regions should provide PRPs with an estimate of the oversight costs for the next year.

Site managers should record and maintain documentation showing the criteria used, including the specific criteria set forth in this guidance, in determining that each site is or is not appropriate for reduced oversight. For FY 1996, the site manager for each of the 100 or so sites already identified under this reform should also report the oversight activities that have been eliminated or reduced. The site manager should also document those instances where reduced oversight may have led to subsequent problems with completing quality work on time. PRPs should be notified of these findings and be provided with a summary of these reductions with their annual bill. Finally, each Region should report estimates of how much oversight has been reduced at sites during FY 1996 (e.g., number of sites, activities reduced, estimates of costs saved). For FY 1997, to assist in developing estimates of oversight savings, Headquarters staff and the Regions will work together to develop methods for measuring reductions in specific oversight activities for different types of sites. Headquarters and the Regions should also attempt to improve the quality of Agencywide data concerning Superfund oversight costs and to apply oversight practices consistently across Regions.

If the responsible party becomes unresponsive and uncooperative or the quality of the work substantially diminishes, the site manager may decide that increased oversight is required. After discussing these issues with the PRP, the site manager should consider what level of oversight is appropriate. Also, if at any time, conditions at the site change and present an immediate and substantial threat to human health or the environment, or the community has

significant need for increased site monitoring, the site manager should take appropriate steps which would likely involve, among other things, increased EPA presence or oversight at the site.

If you have any questions regarding this Directive, please contact either Steve Rollin of OSRE at 202-564-5142 or Steve Ells of OERR at 703-603-8822 or one of the Headquarters or Regional workgroup representatives listed below.

NOTICE: The policies set out in this memorandum are intended solely as guidance. They are not rules and do not create legal obligations. The extent to which EPA follows these policies will depend on the facts of a specific case.

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