

Attachment A

Guidance for Documenting and Reporting the Superfund Sitewide Ready-for-Reuse Performance Measure

I. Purpose

The purpose of this guidance is to assist EPA managers and staff in fulfilling the Agency's GPRA responsibilities for documenting and reporting Superfund accomplishments in making National Priorities List (NPL) sites ready for reuse. It provides information for identifying, documenting and reporting construction complete Superfund NPL sites where the entire land portion of the site is being used, or has been made ready for use in the future, in a protective fashion.

II. Overview

The Office of Superfund Remediation and Technology Innovation (OSRTI), in coordination with the Federal Facilities Restoration and Reuse Office (FFRRO), has developed a new performance measure to report the Superfund program's accomplishments in making land ready for reuse at construction complete sites. This measure is included along with other Superfund measures as part of the Environmental Protection Agency's FY 2006 - 2011 Strategic Plan. All such performance measures have both annual and long-term cumulative targets.

The new Sitewide Ready-for-Reuse Superfund performance measure is:

The number of final and deleted construction complete National Priorities List (NPL) sites where, for the entire site,

- (1) All cleanup goals in the Record(s) of Decision or other remedy decision document(s) have been achieved for media that may affect current and reasonably anticipated future land uses of the site, so that there are no unacceptable risks; and*
- (2) All institutional or other controls required in the Record(s) of Decision or other remedy decision document(s) have been put in place.*

The Sitewide Ready-for-Reuse measure was developed to comply with the Agency's responsibility to report long-term outcome-based accomplishments under the Government Performance and Results Act (GPRA). The introduction of this measure also reflects the high priority EPA places on land revitalization as an integral part of the Agency's cleanup mission for the Superfund program, as well as the priority EPA is now placing on post-construction activities at NPL sites.

Regions will begin documenting this information and reporting on the Sitewide Ready-for-Reuse measure in CERCLIS in FY 2007, as sites are identified in accordance with this guidance.

III. Background

EPA places a high priority on land revitalization as an integral part of its Superfund response program mission. The Agency's policies have increasingly addressed the issue of making Superfund NPL sites protective for current and future users. For example, one of EPA's key responsibilities under CERCLA is to ensure that contaminated property owned by the Federal government is environmentally suitable for transfer or lease. EPA has been involved in making environmental determinations pertaining to site use since the first BRAC legislative action in 1988, and continues to ensure protective use at both operating and closed Federal facilities undergoing CERCLA environmental response actions.¹

Building on its experience supporting reuse at Superfund sites, in 1999 EPA created the Superfund Redevelopment Initiative² to help communities and other stakeholders in their efforts to return Superfund NPL sites to productive use. In April 2003, EPA announced its Land Revitalization Action Agenda,³ a plan for addressing the nation's contaminated lands to enable their reuse by communities. Building on this framework, in November 2004, the Agency developed the programmatic performance measures described in the Superfund Revitalization Performance Measures guidance,⁴ which serve to report the progress of EPA's activities in making Superfund NPL sites ready for their anticipated future use.

In addition, this new Sitewide Ready-for-Reuse measure directly supports the *National Strategy to Manage Post Construction Completion Activities at Superfund Sites*⁵ (PCC Strategy) by providing the Program with a way to assess its effectiveness in conducting post-construction completion activities.

1 Nothing in this guidance alters or affects the legal requirements related to property transferred by Federal agencies pursuant to CERCLA 120(h), nor does it alter or affect EPA guidance documents related to Federal real property transfer or lease.

2 See EPA's Superfund Redevelopment Initiative (SRI) web site at <http://epa.gov/superfund/programs/recycle/index.htm>

3 The Land Revitalization Action Agenda at http://www.epa.gov/oswer/LANDREVITALIZATION/agenda_full.htm.

4 See Guidance for Documenting and Reporting the Superfund Revitalization Performance Measures, OSWER 9202.1-26, November 5, 2004

5 See EPA's PCC Strategy at http://www.epa.gov/superfund/action/postconstruction/pcc_strategy_final.pdf.

IV. Sitewide Ready-for-Reuse Selection Elements

The Sitewide Ready-for-Reuse measure reports sites documented as ready for reuse where for the entire construction complete NPL site:

- *All cleanup goals in the Record(s) of Decision or other remedy decision document(s) have been achieved for media that may affect current and reasonably anticipated future land uses of the site, so that there are no unacceptable risks; and*
- *All institutional or other controls required in the Record(s) of Decision or other remedy decision document(s) have been put in place.*

Controls in Place: In order for a site to be qualified under this measure, all controls (engineered as well as institutional) used as part of the justification for considering that a site is Sitewide Ready-for-Reuse must be in place. Depending on the type of institutional controls used at a site, the term “in place” could include, for example: the enactment of ordinances (*e.g.*, ground water use restrictions), codes, or other regulations by local government; recording of legal instruments in the chain of title for a property; issuance by a regulatory authority of enforcement tools or permits; agreements between the regulatory authority and the property owners or facility operators; listing of property on a state registry of contaminated sites; recording of deed notices or hazard advisories in local land records; and for active military bases, use of base master plan, instructions, orders, and dig permit systems.

Human Exposure Under Control: The Superfund program also reports on another NPL sitewide measure, Human Exposure Under Control. The Human Exposure determination for sites that qualify for the Sitewide Ready-for-Reuse measure should either be:

- "Current Human Exposure Controlled and Protective Remedy in Place"; or
- "Long-Term Human Health Protection Achieved"

Human exposure site determinations that are not one of the two categories above are inconsistent with the requirements that must be met for the Sitewide Ready-for-Reuse measure.

Ecological exposures: If cleanup goals were established in the Record(s) of Decision or other remedy decision document(s) for ecological exposures, they must also be met for the site to be designated Sitewide Ready-for-Reuse.

Determining Which Media Affect Current and Reasonably Anticipated Future Land Uses: Any media that may affect current and reasonably anticipated future land uses should be considered when making the Sitewide Ready-for-Reuse designation. The NCP (40 CFR 300.5) defines 'on-site' to mean "the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for the implementation of a response action." If media such as wetlands, surface water bodies, sediments, and groundwater may pose an unacceptable

risk to areas of current and reasonably anticipated future land use, cleanup goals for these media must be set and met before declaring the site to be Sitewide Ready-for-Reuse.

V. Implementation

Beginning in Fiscal Year 2007, Regions will report on the Sitewide Ready-for-Reuse measure. To establish a national baseline, Regions must review site data to determine which sites currently meet the selection elements outlined in this guidance. These sites will form the baseline against which future performance will be measured. Upon establishment of the baseline, annual and long-term targets will be set to evaluate the Agency's performance. EPA will be expected to report on the progress of this measure in achieving those targets externally to the Office of Management and Budget, and to Congress.

Attached to this guidance is a Sitewide Ready-for-Reuse Checklist for documenting and reporting this new measure. The Sitewide Ready-for-Reuse measure is for construction complete Superfund final and deleted NPL sites only. Regions will submit completed Checklists for the Sitewide Ready-for-Reuse measure to Headquarters for approval before the reported site may be counted to meet the GPRA target for this measure.

The new Sitewide Ready-for-Reuse measure will supplement, not replace, the previous reporting measures: "Acres Ready for Reuse" and "Sites with Land Ready for Reuse." The Superfund program will continue to report "Acres Ready for Reuse" and "Sites with Land Ready for Reuse" for the Agency's own internal management purposes. These measures reflect cleanup progress at portions of sites and provide Agency managers with valuable programmatic information. These measures have never had targets, and are not expected to have targets at this time.

The Superfund Revitalization Performance Measure guidance (November 5, 2004) governing "Acres Ready for Reuse" and "Sites with Land Ready for Reuse" will be updated to include Federal facilities and to address the new Sitewide Ready-for-Reuse measure. Today's new Sitewide Ready-for-Reuse guidance supersedes the November 5, 2004 guidance with respect to institutional controls. Therefore, without exception, no "Acres Ready for Reuse," "Sites with Land Ready for Reuse" or "Sitewide Ready-for-Reuse" accomplishments shall be reported where necessary institutional or other controls have not been put in place for that portion of land that is being reported as ready for reuse. This guidance otherwise supplements, but does not change, existing Agency policies and practices for carrying out the investigation and cleanup of sites under CERCLA.

The determination that a site is Sitewide Ready-for-Reuse is based on the information available at the time the determination is made. That determination may revert if site conditions change, or if new or additional information is discovered regarding the contamination at the site. If after a site has been designated as Sitewide Ready-for-Reuse, EPA becomes aware that any of the Ready-for-Reuse requirements are no longer met, then the site will cease to be designated as Sitewide Ready-for-Reuse. The site can be re-designated as Sitewide Ready-for-Reuse only when the requirements outlined in this guidance are met.

If at the time of determination or at any other time, EPA becomes aware of other environmental problems that pose unacceptable risk relevant to site use or reuse, including risks addressed under other cleanup or public health authorities, the site should not be reported under this measure.

It should be noted that there is likely to be a small set of NPL sites that may never be ready for reuse. For example, extremely hazardous site conditions, the pervasiveness of contamination, and even the size of larger sites may preclude a site from achieving the Sitewide Ready-for-Reuse designation. Additionally, there are also those NPL sites in which institutional controls specifically state that no future uses are advisable.

VI. Disclaimer

This guidance is not a regulation itself, nor does it change or substitute for any regulations. Thus, it does not impose legally binding requirements on EPA, States, or the regulated community. This guidance does not confer legal rights or impose legal obligations upon any member of the public. The determination that a site is Sitewide Ready-for-Reuse does not provide any legal rights or legally enforceable commitments regarding EPA's enforcement intentions or any party's potential liability at the site and does not preclude EPA from taking any necessary enforcement action at the site. Although this guidance does not confer legal rights or impose legal obligations upon any member of the public, interested parties are free to raise questions and objections about the substance of this guidance and the appropriateness of the application of this guidance to particular situations.

Superfund Property Reuse Evaluation Checklist for Reporting the Sitewide Ready-for-Reuse GPRA Measure

	United States ENVIRONMENTAL PROTECTION AGENCY Washington, DC 20460	
SUPERFUND PROPERTY REUSE EVALUATION CHECKLIST FOR REPORTING THE SITEWIDE READY-FOR-REUSE GPRA MEASURE Office of Superfund Remediation & Technology Innovation and Federal Facilities Restoration & Reuse Office		
PART A – GENERAL SITE INFORMATION		
1. Site Name	2. EPA ID	
3. Site ID	4. RPM	
5. Street Address		
6. City	7. State	8. Zip Code
9. Site Wide Ready-for-Reuse Determination Requirements (all must be met for the entire construction complete site) ☐ All cleanup goals in the Record(s) of Decision or other remedy decision document(s) have been achieved for any media that may affect current and reasonably anticipated future land uses, so that there are no unacceptable risks. ☐ All institutional or other controls required in the Record(s) of Decision or other remedy decision document(s) have been put in place.		
PART B – SIGNATURE (Branch Chief or above should sign)		
NOTE: The outcome of this Property Reuse Evaluation does not have any legally binding effect and does not expressly or implicitly create, expand, or limit any legal rights, obligations, responsibilities, expectations, or benefits of any party. EPA assumes no responsibility for reuse activities and/or any potential harm that might result from reuse activities. EPA retains any and all rights and authorities it has, including but not limited to legal, equitable, or administrative rights. EPA specifically retains any and all rights and authorities it has to conduct, direct, oversee, and/or require environmental response actions in connection with the site, including but not limited to instances when new or additional information has been discovered regarding the contamination or conditions at the site that indicates that the response and/or the conditions at the site are no longer protective of human health or the environment.		
10. Name	11. Title/Organization	
12. Signature	13. Date	

EPA Form 9100-4 (9-2004)