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

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

AUG 27 2001

OSWER 9355.7-07

MEMORANDUM

SUBJECT: Five-Year Review Program Initiatives

FROM: Larry G. Reed, Acting Director
Office of Emergency and Remedial Response

TO: Superfund National Policy Managers
Regions 1-10

Purpose:

Now that the "Comprehensive Five-Year Review Guidance" has been issued, we need to focus our attention on implementing the guidance and other related Five-Year Review program issues. Several areas need to be addressed and processes implemented that will allow us to better categorize and track the progress of Five-Year Review activities.

Background:

The Office of the Inspector General (OIG), and more recently Resources for the Future (RFF) in a recently published report titled "Superfund's Future, What Will It Cost?," have made a series of recommendations to improve the Five-Year Review process. Some of the recommendations include:

- Ensure that the "Statement of Protectiveness" in the Five-Year Review reports are adequately supported and that the Agency follows its own guidance when evaluating the protectiveness of remedies. RFF raised concerns about the protectiveness statements in 48 Five-Year Reviews completed during FY99/00.

- Include milestone dates for implementing report recommendations, and identify parties responsible for performing required corrective actions as well as the

organization responsible for overseeing performance of corrective actions in the Five-Year Review reports.

- Create and maintain a system that compiles the recommendations made in Five-Year Review reports and establish a mechanism to make certain that the recommendations are, in fact, implemented.

- Ensure that communities are informed in a timely manner of the results of Five-Year Reviews, and improve public access to Five-Year Review reports by increasing their clarity and posting them on the EPA website.

- Eliminate the backlog of overdue Five-Year Reviews, and complete Five-Year Reviews on-time.

Required Action:

In response to the recommendations identified above, the Agency has developed a series of initiatives to improve the management of the Five-Year Review program and the quality of the reports:

1) **Improve the quality and consistency of Five-Year Review reports.**

- Completion and issuance of the "Comprehensive Five-Year Review Guidance." The guidance is designed to provide an approach for conducting Five-Year Reviews; facilitate consistency across the ten Regions; clarify current policy; and discuss roles and responsibilities of various entities in conducting or supporting Five-Year Reviews. The guidance is now available on the Superfund web page and copies are being printed for distribution.

- Develop and offer Five-Year Review training to Regional staff and others involved with Five-Year Reviews. A 4-hour long training package has been developed, highlighting the components of the new "Comprehensive Five-Year Review Guidance," as well as the process of conducting Five-Year Reviews. The training was presented during the July 2001 meeting of the National Association of Remedial Project Managers. We plan to present the training in all ten Regions during FY2002.

- Starting in FY2002 conduct quality reviews of selected Five-Year Review reports prepared by each Region. In an effort to improve the consistency and quality of the Five-

Year Review reports, as well as to ensure effective implementation of the "Comprehensive Five-Year Review Guidance," OERR Regional Center staff will review a sample of draft Five-Year Review reports from each Region. OERR will review the draft reports and provide comments back to the Regions within two weeks. Please direct your staff conducting Five-Year reviews to send the draft reports to their designated OERR Regional Center Five-Year Review Coordinator (see attachment).

- Complete review of sites where the Five-Year Review report protectiveness statement was questioned by RFF. We recently made available to the Regions a list of 48 Five-Year Review reports identified by RFF as not having clearly supported protectiveness statements. By September 30, 2001, please confirm in writing to this office that you have reviewed the identified reports prepared by your Region, and briefly summarize the actions taken or planned to clarify and reaffirm the protectiveness statement. We suggest that a brief addendum to each of the 48 Five-Year Review reports be prepared (signed by a regional manager) providing the necessary clarification. For reviews where the remedy is not complete, or where institutional controls required to ensure protectiveness are not in place, use of the protectiveness statement options in the "Comprehensive Five-Year Review Guidance" may be appropriate. All actions to clarify these reviews should be completed by December 31, 2001, to the extent possible. A copy of the Five-Year Review report addendums should be forwarded to this office.

- Track corrective actions and recommendations in Five-Year Review reports. The new guidance indicates that each EPA Region should report annually to EPA Headquarters on the progress of the Five-Year Reviews for each of their sites. The report should include a status of follow-up actions identified in Five-Year Review reports from previous fiscal years. Also, for each completed Five-Year Review, a summary of the protectiveness determination(s), issues that impact protectiveness, follow-up actions, and the schedule and entity responsible for implementing such actions should be provided. This requirement becomes effective in FY2002, and the first report is due to Headquarters 30 days after the end of FY2002.

2) Provide public access to Five-Year Review Reports.

- Provide public access to Five-Year Review reports prepared during and after FY2002 via the internet. Through this

initiative, we are responding to concerns regarding notifying communities about the findings and recommendations in Five-Year Review reports. Starting in FY2002 and beyond, we request that within 10 days of completion (EPA Region signature/concurrence) of a Five-Year Review the complete report be made available to the general public through the regional internet web page.

3) **Eliminate backlog and ensure timely completion of overdue Five-Year Review reports.**

- The OIG recommended that the Assistant Administrator for Solid Waste and Emergency Response include the backlog of Five-Year Review reports as a weakness under the Federal Managers' Financial Integrity Act. The backlog of overdue reports has been included as a material weakness and a commitment was made to clear the backlog in three years. FY2001 is the second year of this effort. Although progress has been made in reducing the backlog we must ensure that we do not continue to add to the backlog and are able to clear the backlog by the end of FY2002. We expect as many as 175 reviews will be required during FY2002, including the reports scheduled for FY2002 as well as the remainder of the backlog. This will require a concerted effort by regional managers and staff to ensure successful completion.

Conclusion:

We want to thank you for your continued support and attention to the Five-Year Review process. The "Comprehensive Five-Year Review Guidance" is available on the Internet at http://epa.gov/superfund/pubs.htm. We will be in contact with your staff in the near future to arrange a schedule for training. If you have any questions, please contact your Headquarters Regional Accelerated Response Center.

Attachment

Attachment

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