



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

SEP 30 2015

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Issuance of Revised Model Remedial Design/Remedial Action Unilateral Administrative Order and New Statement of Work

FROM: Cynthia L. Mackey, Director
Office of Site Remediation Enforcement

TO: Regional Counsels, Regions 1-10
Superfund National Policy Managers, Regions 1-10

I. INTRODUCTION

This memorandum transmits the revised Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) *Model Unilateral Administrative Order for Remedial Design/Remedial Action* (RD/RA UAO) and the new CERCLA *Model RD/RA UAO Statement of Work* (SOW). These models are designed to be used together with the SOW as an attachment to the UAO. They were developed in collaboration with Headquarters, Regional, and Department of Justice (DOJ) staff. The Office of Site Remediation Enforcement (OSRE) worked closely with the Office of Solid Waste and Emergency Response's (OSWER), Office of Superfund Remediation and Technology Innovation (OSRTI), which has reviewed these documents and concurs with their issuance.

These documents are now available in the Remedial Design/Remedial Action category of the Cleanup Enforcement Model Language and Sample Documents Database ("Cleanup Models Database") at <http://cfpub.epa.gov/compliance/models/>. These models are effective today and supersede the *Model Unilateral Administrative Order for Remedial Design and Remedial Action Under Section 106 of CERCLA* (March 30, 1990) and the *Revised Language for the March 1990 Model RD/RA Unilateral Administrative Order (UAO)* (August 1, 2001).

II. EXPLANATION OF REVISIONS

EPA's practice in drafting RD/RA UAOs has evolved substantially in the 25 years since the 1990 UAO was issued. The new UAO brings the model in line with current drafting practices. In addition, the new UAO and SOW closely track the language of the Model RD/RA Consent

Decree (CD) and SOW issued in 2014.¹ Differences between the RD/RA CD SOW and the new UAO and its companion SOW relate mainly to the differences between a negotiated consent decree and a unilaterally issued administrative order. To conform with the RD/RA CD and SOW, we edited the 1990 UAO to move the technical provisions out of the UAO's body and into the SOW. Together, the UAO and SOW provide complete and up-to-date legal and technical national model language that will assist the Regions in drafting speedy, nationally-consistent CERCLA § 106(a) RD/RA UAOs.

A. Revisions to RD/RA CD SOW Introduced by RD/RA UAO SOW

The new RD/RA UAO SOW makes several changes to the 2014 RD/RA CD version of the SOW. Those changes are explained in full in the Appendix to this memorandum, and the revised RD/RA CD SOW is available in the Remedial Design/Remedial Action category of the [Cleanup Models Database](#). All changes were developed in consultation with the Environmental Enforcement Section of the Environment and Natural Resources Division at DOJ (EES/ENRD/DOJ).

B. Incorporation of 2015 UAO Financial Assurance Language

On April 6, 2015, this office issued new Financial Assurance and Enforcement/Work Takeover model language as well as sample financial assurance mechanisms for use in UAOs.² The RD/RA UAO being issued today incorporates that new model language. Recognizing that the UAO financial assurance section may not always be practical, the section is presented as optional language in the model. However, Regions are encouraged to incorporate the financial assurance section as often as possible to ensure completion of the work.

C. Restructuring of the UAO

Another significant change is the restructuring of the UAO model to place four related sections (Order, Opportunity to Confer, Effective Date, Notice of Intent to Comply) together consecutively toward the beginning of the UAO, instead of separated throughout the order. In addition, changes have been made to several of these sections to address the process for modifying the UAO based on the conferences or any written comments submitted by the UAO respondents.

III. CONTACTS

If you have any questions about the RD/RA UAO, please contact Tina Skaar of OSRE's Regional Support Division (RSD) at 202-564-0895 (skaar.christina@epa.gov).

¹ See *Issuance of 2014 CERCLA Model Remedial Design/Remedial Action Consent Decree and Statement of Work* (9/29/14), available at <http://www2.epa.gov/enforcement/guidance-2014-cercla-rdra-cd-and-sow>.

² See *Guidance on Financial Assurance in Superfund Settlement Agreements and Unilateral Administrative Orders*, available at <http://www2.epa.gov/enforcement/guidance-financial-assurance-superfund-settlements-and-orders>. The attached sample FA mechanisms for use in connection with CERCLA settlement agreements and UAOs are available in Word format from the Financial Assurance - Orders category of our Cleanup Models Database at <http://cfpub.epa.gov/compliance/models/>.

If you have any questions about the RD/RA UAO SOW, please contact Tracy Hopkins, OSWER/OSRTI, Assessment and Remediation Division at 703-603-8788 (hopkins.tracy@epa.gov), or Mark Gallagher, DOJ Environmental Enforcement Section at 202-514-5405 (mark.gallagher@usdoj.gov).

IV. DISCLAIMER

This memorandum and the documents referenced herein are intended as guidance for EPA employees. They are not rules and do not create any legal obligations. The extent to which EPA applies them in a particular case will depend on the facts of the case.

Attachments

cc: John Michaud, Acting Associate General Counsel, OGC/SWERLO
James Woolford, Director, OSWER/OSRTI
W. Benjamin Fisherow, Chief, Environmental Enforcement Section, DOJ
Regional Counsel Branch Chiefs
RD/RA CD SOW Workgroup

APPENDIX

Explanation of Changes to 2014 Remedial Design/Remedial Action Consent Decree Statement of Work (RD/RA CD SOW) Introduced by 2015 RD/RA Unilateral Administrative Order SOW (UAO SOW)

The changes to the RD/RA CD SOW, issued September 29, 2014, that are outlined below are incorporated into the RD/RA CD SOW available for download from the Cleanup Enforcement Model Language and Sample Documents Database at http://cfpub.epa.gov/compliance/models/view.cfm?model_ID=543.

1. We clarified Paragraph 2.1 (Community Involvement Responsibilities) by expressly including tasks that are often undertaken at CERCLA sites:

(b) If requested by EPA, SDs [Settling Defendants] shall ~~support~~ participate in ~~EPA's~~ community involvement activities~~-, including participation in (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. SD's support of EPA's community involvement activities~~. ~~This~~ may include providing online access to initial submissions and updates of deliverables to (1) any Community Advisory Groups, (2) any Technical Assistance Grant recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. EPA may describe in its CIP [Community Involvement Plan] SDs' responsibilities for community involvement activities. All community involvement activities conducted by SDs at EPA's request are subject to EPA's oversight. Upon EPA's request, SDs shall establish a community information repository at or near the Site to house one copy of the administrative record.

2. We clarified the submission of deliverables process by modifying the manner in which the SOW explains when each of the Paragraph 7.7 (Supporting Deliverables) is due. Specifically, we:

- Deleted the following sentence from Paragraph 7.7: "The deliverables must be submitted, for the first time, by the deadlines in the RD [Remedial Design] Schedule or the RA [Remedial Action] Schedule, or any other EPA-approved schedule, as applicable."
- Amended Paragraphs 3.1 (RD Work Plan), 3.5 (Preliminary (30%) RD), and 3.7 (Pre-Final (95%) RD) to add a new final bullet listing the supporting deliverables required to be first submitted or updated as part of each submission.
- Deleted the long Note after Paragraph 8.2 (RD Schedule), which explained when each submission was initially due and how each would be updated, as needed, with each subsequent submission.
- Moved the Periodic Review Support Plan from Paragraph 7.7(k) to new Paragraph 4.8, because it is more appropriately placed as a free-standing obligation in Section 4 (Remedial Action) than with the supporting deliverables.

3. We clarified Paragraph 4.5 (Off-Site Shipments) as it relates to shipment of Investigation Derived Waste (IDW). The revised text provides:

(a) SDs may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. SDs will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if SDs obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b). ~~SDs may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with EPA's Guide to Management of Investigation Derived Waste, OSWER 9345.3-03FS (Jan. 1992).~~

(b) . . .

(c) SDs may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's Guide to Management of Investigation Derived Waste, OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the ROD [Record of Decision]. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 CFR § 261.4(e) shipped off-site for treatability studies, are not subject to 40 C.F.R. § 300.440.

4. We added that the EPA Project Coordinator may specify the electronic form for submission of deliverables in Paragraph 7.3, now titled "General Requirements for Deliverables," as follows:

" . . . SDs shall submit all deliverables to EPA in electronic form. **Technical specifications for sampling and monitoring data and spatial data are addressed in ¶ 7.4. All other deliverables shall be submitted to EPA in the electronic form specified by the EPA Project Coordinator.** . . . "

5. We added the following redlined sentence to the deliverables certification in Section 7 (Deliverables), Paragraph 7.5, stating that the certifier attests that he or she has no personal knowledge that the information submitted is other than true, accurate, and complete:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

6. We also made the following additional minor corrections to the CD SOW:

- Paragraph 1.2 (Structure of the SOW): Reformatted paragraph into bullet points.

- Note before Paragraph 1.3: Added redline, “Insert description of remedy from ROD (and any ROD Amendments or ESDs [Explanations of Significant Differences]) in ¶1.3” as a reminder that these are included in the ROD definition.
- Paragraph 1.4: Added redline, “The terms used in this SOW. . . have the meanings assigned to them in. . . the CD, except that the term “Paragraph” or “¶” means a paragraph of the SOW, and the term “Section” means a section of the SOW, unless otherwise stated.
- Paragraph 3.6 (Intermediate (60%) RD): Corrected name of submittal to “Preliminary (30%) RD.”
- Paragraph 3.8 (Final (100%) RD): Corrected name of submittals to “all Pre-Final RD Deliverables.”
- Paragraph 4.3(c) (Inspections): “(1) EPA or its representative shall conduct periodic inspections of [or have an on-site presence during] the Work. At EPA’s request, the Supervising Contractor or other designee shall accompany EPA or its representative during inspections.”
- Paragraph 7.7 (Supporting Deliverables): Instead of saying, “The Field Sampling Plan ~~supplements the QAPP~~” in 7.7(c), we are saying, “The Quality Assurance Project Plan (QAPP) augments the FSP” in 7.7(d). Also, moved reintroduction of Performance Standards (PS) acronym from Paragraph 7.7(f)(2) to 7.7(e).
- Paragraph 8.2 (RD Schedule): Corrected Final (100%) RD reference to Paragraph 3.8.
- Paragraph 8.3 (RA Schedule): Updated Periodic Review Support Plan reference (to 4.8) and corrected deadline: “[Five years] after Start of RA Construction~~l~~.”
- Corrected Reference 10.1(r): *Quality management ~~S~~ystems for ~~E~~nvironmental information and Data-and technology programs -- Requirements with ~~G~~uidance for ~~U~~se*, ASQ/ANSI E4:2014 (American Society for Quality, February 2014).