



**Superfund Task Force Recommendation 16:  
Provide Reduced Oversight Incentives to Cooperative, High  
Performing Potentially Responsible Parties**

**Summary of Findings**

July 2019

Office of Site Remediation Enforcement  
Office of Enforcement and Compliance Assurance

## Executive Summary

In May 2017, the Administrator commissioned the Superfund Task Force to provide recommendations on how the U.S. Environmental Protection Agency can restructure the cleanup process, realign incentives to expedite remediation, reduce oversight for cooperative potentially responsible parties (PRPs), incentivize PRPs to remediate sites, encourage private investment in cleanups and promote revitalization of properties across the country.

In July 2017, the Agency released the Superfund Task Force Report identifying opportunities to accelerate cleanup and reuse of Superfund sites. The Report identified 5 goals for the Agency with 42 specific recommendations for meeting the goals. Recommendation 16.1 proposed to incentivize cooperative, high-performing PRPs by reducing Agency oversight, as appropriate.

Pursuant to the Task Force recommendation, a workgroup was formed in September 2017 to develop recommendations to address Recommendation 16.1. The workgroup was guided by the basic premise that oversight plays an important role in ensuring that response actions are protective, and that reduced oversight must never jeopardize the protection of human health and the environment.

The workgroup's summary findings include several conclusions and recommendations. Principal among them are:

- Best practices to facilitate efficient oversight for all Superfund response actions by setting forth a framework for communication, maximizing internal resources, and streamlining the remedial review process through the collaborative review of documents, use of templates, and commitment to schedules.
- Criteria for determining whether a performing party is cooperative and capable and therefore eligible for reduce oversight during Superfund response actions such as limiting the number of required deliverables, samples, and site visits, and, where appropriate, allowing for flexibility in the remedial implementation process.
- Use of existing tools to implement these recommendations.

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## **SFTF #16.1 Workgroup Members:**

Captain:	Karen Melvin (Region 3)
Region 1	Joan Buonopane Bob Cianciarulo
Region 3	Joan Armstrong Mitch Cron Jeffery Garcia Darlene Kelly Carlyn Prisk Charlie Root Leslie Vassallo Humane Zia
Region 4	Greg Armstrong Stacey Haire Kim Jones
OSRE	David Dowton

## BACKGROUND

On October 2, 1995, the U.S. Environmental Protection Agency (EPA or the Agency) announced “common sense” reforms focused on making the Comprehensive Environmental Response, Compensation, and Liability Act (commonly referred to as Superfund) “faster, fairer, and more efficient,” including the initiative to encourage and reward cooperative potentially responsible parties (PRPs) by reducing EPA oversight at sites where quality work is being performed by such parties. To implement this reform, EPA issued three<sup>1</sup> guidance documents to the Regions.

On July 31, 1996, EPA issued the *Reducing Federal Oversight at Superfund Sites with Cooperative and Capable Parties Guidance*, OSWER Directive No. 9200.4-15 (“1996 Guidance”). The objective of the 1996 Guidance was to improve and/or recognize established relationships with cooperative parties by identifying sites where reduced oversight was appropriate without compromising human health and the environment. Specifically, the 1996 Guidance provided: 1) criteria for PRPs to demonstrate both technical capability and cooperativeness, 2) methods to identify eligible candidates for reduced oversight, 3) criteria for the EPA Regions to determine whether a site was appropriate for reduced oversight, 4) methods to identify oversight activities that could be modified or reduced as appropriate, and 5) examples on how to improve transparency and expectations regarding oversight bills. To determine the efficacy of the recommended reforms, the 1996 Guidance instructed EPA Headquarters and the Regions to develop methods to account for oversight reductions at each site.

On May 17, 2000, the EPA issued the [Interim Guidance on Implementing the Superfund Administrative Reform on PRP Oversight](#), OSWER Directive No. 9200.0-32P (“2000 Guidance”), superseding the 1996 Guidance. Importantly, the 2000 Guidance restated the Agency’s commitment to reduce Superfund transaction costs where appropriate but found that the previous guidance’s charge to quantify the reduction of oversight based on the reforms was unattainable due to the difficulty in “establishing a baseline of oversight” against which site-specific cost reductions could be measured for the wide variability in site-specific characteristics. The 2000 Guidance, therefore, re-directed the EPA Regions to focus on engaging PRPs in the oversight discussion with the common goal of transparency and/or as a means to promote appropriate oversight. Additionally, the 2000 Guidance identified oversight management practices to be implemented at all sites with settled PRPs and provided examples of potential cost-saving techniques to improve the effectiveness and efficiency of oversight management, while recognizing that some methods might be inappropriate in site-specific situations.

On December 22, 2006, EPA issued a third memorandum, [Using RCRA’s ‘Results-Based Approaches and Tailored Oversight Guidance’ when Performing Superfund PRP Oversight](#) (“2006 Guidance”), recommending that the Superfund program use the specified RCRA guidance document (*Results-Based Approaches and Tailored Oversight Guidance for Facilities Subject to Corrective Action under Subtitle C of RCRA*, EPA 530-R-03-012, September 2003) to complement the 2000 Guidance, when considering the appropriate level of oversight at individual Superfund sites. Similar to the 2000 Guidance, the 2006 Guidance recommended tailoring the level of oversight to enhance timely, efficient and protective cleanups based on

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<sup>1</sup> EPA also issued *Federal Facilities Streamlined Oversight Directive*, Jim Woolford, OSWER Directive 9230.0-75, November 29, 1996 which deals with federal facility oversight versus private party oversight.

facility-specific conditions such as site complexity, compliance history, and financial and technical capability of the facility, and provided examples to reduce oversight activities that might be appropriate based on facility-specific circumstances.

Together, these three guidance documents demonstrate the Agency's ongoing commitment to reexamine and reduce oversight for cooperative and capable PRPs performing cleanups at Superfund sites.

This report reinforces previous efforts by the EPA to reduce oversight costs, where appropriate, emphasizes previously recommended practices, and outlines additional incentives for cooperative and capable performing parties.

The workgroup provides the following four recommendations that enhances the 2000 guidance, reinstates some concepts from the 1996 guidance, and proposes a tracking system to ensure sustainability of the concepts of reduced oversight, where appropriate.

### **Recommendation 1:**

#### **Recommended Practices to Facilitate Efficient Oversight**

The workgroup has identified the following best practices that have benefited the cleanup process. The workgroup recommends that these practices be used as appropriate, at all sites where the EPA oversees a response action by settling PRPs.

##### **1) Communication**

Active communication between the EPA and PRPs generally is beneficial during all PRP-lead Superfund response actions, but it is particularly important in the initial phases (e.g., scoping of remedial investigation and feasibility study (RI/FS)) of site work, or even before, i.e., during negotiations. During this time, the topic of EPA oversight costs should be squarely addressed, so that it is not overlooked amidst the myriad of site activity that routinely occurs.

The EPA, states, tribes, and PRPs should engage in early discussions regarding the response actions to be performed, corresponding oversight expectations, and billing to avoid unexpected surprises and disagreements. These discussions should be revisited on a regular basis. The discussion should consider the Conceptual Site Model<sup>2</sup>, work performance, oversight, and the means to achieve it. If the EPA has contractor support for the site, the Agency should consider whether the contractor should participate in such discussions.

The discussion should allow all participants to express their thoughts and expectations regarding the appropriate level of oversight for the work to be performed that year; however, the final decision on the appropriate level of oversight will ultimately be the EPA's, in consultation with the state or tribal partners as appropriate.

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<sup>2</sup> Environmental Cleanup Best Management Practices: Effective Use of the Project Life Cycle Conceptual Site Model (July 2011), <https://www.epa.gov/sites/production/files/2015-04/documents/csm-life-cycle-fact-sheet-final.pdf>.

Preferably, discussions with PRPs for the performance of work should occur during the initial stages of settlement negotiations. Additionally, once a PRP is performing work pursuant to a consent decree, administrative settlement agreement and order on consent, and/or other settlement enforcement document, the EPA should engage in oversight discussions at the beginning of each new phase of work and/or at a minimum on a yearly basis.<sup>3</sup> Interested state and tribal partners should be invited to participate in any discussion of appropriate oversight between EPA and PRPs. EPA, PRPs, and the state or tribes should review the nature and complexity of the work ahead and discuss appropriate levels of EPA and state or tribal oversight necessary to ensure that the Superfund response work being conducted will result in a response that is protective of human health and the environment. Periodic meetings may also be useful to review levels of PRP oversight by the EPA and the state or tribes over the past year, and to allow the EPA, PRPs, and the state or tribes to discuss levels of oversight for the coming year.

## **2) Use of In-House Experts**

Generally, Agency contractor costs are a large portion of the EPA's oversight costs. The use of contractors may be necessitated by EPA's available staffing resources; however, it is important that, where possible, Regions consider relying upon in-house expertise rather than engaging outside contractors if it would result in cost savings.

When cleanup work involves a discrete task, it may be more cost effective to use an in-house expert who is familiar with the site and can focus on the task more efficiently than a contractor that is unfamiliar with the site's complexity and enforcement history. Based on feedback from a survey of Superfund remedial project managers (RPMs) throughout the Regions, below are some examples where RPMs may consider using in-house experts when possible:<sup>4</sup>

- Preparing and analyzing data during five-year reviews;
- Site visits to oversee PRP response activities;
- Reviewing periodic progress reports (e.g., annual work progress reports for ground water cleanup sites);
- Using state/tribal resources for oversight;
- Technical support for:
  - ESDs
  - Record of decision (ROD) amendments
  - Interim actions
  - Remedy optimization study
  - Non-Time critical removal actions

## **3) Synchronizing Document Review**

The state's role in the Superfund process is described, among other places, in Subpart F of the National Oil and Hazardous Substances Pollution Contingency Plan, more commonly known as the National Contingency Plan (NCP) (40 C.F.R. Part 300). Specifically, Section 300.500 of the

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<sup>3</sup> Regions may consider timing their offer to meet letter with the issuance of the periodic oversight bill.

<sup>4</sup> The discussion to use in-house versus contractor review should be part of the initial and subsequent oversight discussions referenced in subsection titled "Communication," above.

NCP states that, “EPA shall ensure meaningful and substantial state involvement in hazardous substance response...” The EPA and the state or tribes should communicate periodically regarding the possibility of reducing any duplicative reviews of Superfund response-related documents, while at the same time providing opportunity for the state to have substantial and meaningful involvement in Superfund response activities.<sup>5</sup>

To best represent their stakeholders’ interests, the EPA and the state or tribes may each have their own toxicologists, hydrologists, geologists, or other staff review the same information for particular parts of a response action. However, where the work that is being overseen is relatively non-complex and/or non-controversial, there may be instances when it is unnecessary for both the EPA and the state or tribes to review the same information. In such instances, the EPA should work cooperatively with the state or tribes to reduce unnecessary simultaneous reviews of documents.

#### **4) Use of Site Work/Cleanup Models**

Submissions by PRPs implementing a response action are frequently voluminous and complex, with large variations in organization and content. RPMs and their teams work closely with PRP contractors to close data gaps and/or reorganize sections of such submissions prior to Agency review and approval. This process can be time consuming and increase the EPA oversight costs. However, transaction costs may be significantly curtailed if PRPs consider the use of models for the required submission (e.g., quality assurance project plans (QAPP), health safety plans, etc.). The use of models provides clear guidance on what the documents should contain and serve as tangible examples to define expectations. As view QAPP example, see <https://www.epa.gov/fedfac/assuring-quality-federal-cleanups>.

#### **5) Timely Review of PRP Submissions by EPA and State/Tribes**

To manage expectations, an estimate of the amount of time required for the EPA and the state or tribes to review and provide comments on the PRPs’ submissions should be discussed during the initial stages of site work as referenced in the Communications section of this document, taking into account the resource constraints of the EPA and the state or tribes. The EPA and the state or tribes should make every effort to complete reviews of the PRP submissions within the estimated timeframe to the extent possible. Oral discussions, such as face-to-face meetings or video conferences, may reduce the time needed for review and revisions as well as resolve issues more quickly.

### **Recommendation 2**

#### **Additional Reduced Oversight Incentives for Cooperative and Capable PRPs**

The recommended practices set forth above, when applied appropriately, should increase efficiency and decrease oversight costs. These tools also provide ample opportunity for EPA, the state/tribes, and PRPs to interact and develop a strong working relationship. In addition, for PRPs who qualify as cooperative and capable, according to the recommended criteria set forth

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<sup>5</sup> See § 300.515(h)(3) of the NCP, *Requirements for State Involvement in Remedial and Enforcement Response and Superfund Memorandums of Agreements*, where applicable. See also CERCLA § 104(d), 40 C.F.R. Part 35.

below, the EPA may provide the additional reduced oversight incentives described in this section, below.

Prior to offering the additional oversight reduction incentives described below, EPA should carefully evaluate the PRPs to determine whether they are indeed cooperative and capable. In all circumstances, the EPA should carefully weigh the site-specific circumstances in deciding the approach to be taken at a given site. It is in the EPA's discretion to adopt approaches that differ from these recommendations where appropriate, on a case-by-case basis.

### **1) Eliminate or streamline interim deliverables or milestones**

The EPA may determine that only preliminary and final design submissions are necessary, or that several plans can be incorporated into one document. When appropriate, the EPA may also decide that documented working meetings can serve as adequate replacements for certain interim deliverables.

### **2) Reduce number of split samples or accept alternatives to split sampling**

Depending upon site-specific circumstances, EPA can explore a reduction in the number of split samples that might otherwise be collected or consider other alternative approaches to verify the accuracy of PRP-collected data. Such approaches could include, for example, more frequent use of laboratory audits, performance evaluation samples, use of field screening methods, or performing field oversight of sample collection without collecting any (or a very limited number of) split samples.

### **3) Use site audits or unannounced site visits instead of full-time or continuous oversight.**

Rather than maintaining a permanent and/or continuous presence at a site to oversee PRP work or phases of work, the EPA and/or its contractors may instead perform sporadic unannounced inspections at any time during the response process, including but not limited to, at the beginning of a construction phase, during a particularly complex or critical process of the response action, and/or during routine or repeated site construction or field activities. The EPA may also consider having the state or tribes perform site visits without the EPA present and vice-versa.

## **Recommendation 3:**

### **Eligibility Criteria for PRPs to be Considered Cooperative and Capable**

The EPA and the state or tribes oversee work performed by the PRPs to ensure that it is being implemented in accordance with enforcement documents<sup>6</sup>, scopes or statements of work, and corresponding work plans. Oversight plays an important role in ensuring that response actions are protective of human health and the environment. Reduced oversight should never jeopardize the protection of human health and the environment. Ongoing discussions are essential between all entities to determine appropriate oversight of the response work. For the most part, if the EPA, the state or tribes, and the PRPs have participated in various phases of the response, the

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<sup>6</sup> Parties conducting work pursuant to a unilateral administrative order do not qualify for the additional reduced oversight incentives since the EPA had to compel their performance and therefore parties are not considered cooperative.



PRPs should have a clear understanding of the relevant performance standards described in site decision documents and what they must do to achieve these standards.

In many instances, cooperative and capable PRPs should be able to implement the response work plan as approved by the EPA and the state or tribes, resulting in reduced oversight throughout the response process. As such, the PRPs themselves may influence the oversight costs that the EPA incurs, as their cooperation, quality work, timeliness, and overall competence may dictate the level of oversight required for a site.

EPA may consider the following recommended criteria in evaluating whether a PRP has demonstrated both acceptable technical capability and full cooperation with EPA, in either current or prior work at the site or at other sites.

### **1) Technical Capability**

To be considered technically capable, PRPs should:

- Consistently produce technically sound documents;
- Perform quality work as outlined in the NCP, agency regulations and policies; and
- Perform acceptably in laboratory and/or field audits.

### **2) Cooperativeness**

To be considered fully cooperative, PRPs should:

- Agree to reasonable (based on specific site factors) time frame(s) for completing site work, including all required deliverables, and demonstrate timely completion of such work (e.g., first drafts are timely submitted, complete, and require only minimal revision);
- Demonstrate good faith resolution of technical issues;
- Remain in compliance with the terms of enforcement document(s); and
- Follow through on oral commitments made to EPA.

In general, if the criteria above are met, the PRP's work may qualify for reduced oversight as discussed in this guidance. The EPA should be mindful that there may be site-specific circumstances, such as technical complexity, the degree of risk to human health or the environment, or a community's desire for increased oversight, that may make reduced oversight inappropriate for some sites as a whole, or for some site activities in particular. All site-specific circumstances should be considered in deciding whether reduced oversight is appropriate at a site.

## **Recommendation #4**

### **Implementation: Tracking Requirements**

The EPA Regions should provide any settling PRPs with an opportunity to discuss and mutually consider which of the recommendations set forth above may apply to their work at the site. To verify that this opportunity is provided consistently, and to ensure the successful implementation of these concepts, it is recommended that the EPA Regions utilize the enforcement module in the

Superfund Enterprise Management System (SEMS) to track a written offer to discuss the appropriate level of oversight at each site. The EPA Regions should periodically run a report in SEMS to verify that the offer has been extended. An example of a written offer to the PRPs is attached as Appendix A.<sup>7</sup>

#### **SUMMARY OF RECOMMENDATIONS:**

The workgroup spent a great deal of time analyzing previous and existing guidance documents related to reducing oversight for response actions at Superfund sites. In addition, the workgroup surveyed RPMs across the nation to determine which of the concepts in those guidance documents were most likely to achieve the goal of reduced oversight where appropriate. Based on these considerations, the workgroup recommends the following:

- The EPA's Office of Site Remediation Enforcement and the Office of Superfund Remediation and Technology Innovation should re-emphasize the 2000 Guidance to ensure its continued implementation by providing the four recommendations of the workgroup. These additional four recommendations are:
  - Recommended practices to facilitate efficient oversight;
  - Additional reduced oversight incentives for cooperative and capable PRPs;
  - Eligibility criteria for PRPs to be considered cooperative and capable;
  - Implementation: tracking requirements.

Attachment

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<sup>7</sup> As an alternative to sending a separate letter, the EPA Regions may include the offer to discuss the appropriate level of oversight in the periodic oversight bill transmittal letter.

APPENDIX A

Sample Offer to Meet letter

[DATE]

[PRP Contact and Address]

Re: Site Name/SSID

EPA's Commitment to Appropriate Level of Oversight

Dear [PRP Contact]:

The EPA recognizes the value of working cooperatively with potentially responsible parties (PRPs), with whom the Agency has entered into a settlement agreement to perform Superfund response actions to ensure that the level of oversight activities is appropriate.

The EPA continues to be committed to the implementation of Superfund reforms on the administration of PRP oversight, most recently highlighted in the June 2017 Superfund Task Force Report to the EPA Administrator. These reforms encourage the EPA to look for opportunities to achieve oversight costs savings while ensuring that PRPs conduct cleanups that protect public health and the environment and are consistent with the terms of the settlement agreement, the Comprehensive Environmental Response Compensation and Liability Act (CERCLA, commonly referred to as Superfund) and the National Oil and Hazardous Substances Pollution Contingency Plan (referred to as NCP).

EPA is hereby offering you the opportunity to discuss oversight expectations for current and upcoming activities at the [insert site name] Superfund Site. Please contact [RPM name, email address and phone number] to arrange these discussions or to schedule a meeting.

Sincerely,

\_\_\_\_\_  
[Regional Designated Signature]

[insert regional name]

[insert title]