



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

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Incorporating Sustainability Principles in Cleanup Enforcement Actions Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

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TO: Regional Counsels, Regions 1-10
Superfund National Program Managers, Regions 1-10
Land, Chemicals, and Redevelopment Division Directors, Regions 1-10
Enforcement and Compliance Assurance Directors, Regions 1-10

The purpose of this memorandum is to reinforce the U.S. Environmental Protection Agency's (EPA) positions on sustainability by: (1) encouraging cleanup enforcement staff in Headquarters and the regional offices to collaborate with their program office counterparts to incorporate these principles in Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund) and Resource Conservation and Recovery Act (RCRA) cleanup enforcement work; (2) describing the identified sustainability principles; and (3) providing information resources on these principles in a centralized location. Additionally, this memorandum supports the "*Climate Enforcement and Compliance Strategy*"¹ from the Office of Enforcement and Compliance Assurance (OECA) signed on September 28, 2023. In particular, this memorandum helps fulfill OECA's charge to the Office of Site Remediation Enforcement (OSRE) to incorporate climate adaptation and resilience principles into all enforcement activities.

This memorandum includes a case compendium (Attachment A) that highlights enforcement settlement agreements that incorporate the seven sustainability principles and the

¹ [Climate Enforcement and Compliance Strategy](#) (Sept. 28, 2023; [EPA press release \(Sept. 28, 2023\)](#)).

Sustainability Resource Library (Attachment B), currently a spreadsheet that provides access to the seven principles developed by EPA, other federal agencies, and external organizations related to the seven principles.

Introduction to Sustainability Principles

There are multiple definitions of sustainability within scientific literature. For the purposes of this memorandum, sustainability is defined as “the continued protection of human health and the environment while fostering economic prosperity and societal well-being.”² EPA’s *Sustainability Primer* states the following related to research proposals embodying sustainability:

The goal of sustainability, derived from the U.S. National Environmental Policy Act of 1969 (NEPA), is to, ‘create and maintain conditions, under which humans and nature can exist in productive harmony, . . .’ A sustainable approach is a systems-based approach that seeks to understand the interactions that exist among environmental, social, and economic pillars to better understand the consequences of our actions.³

Accordingly, OSRE has identified the following principles for potential inclusion in the Agency’s cleanup enforcement efforts.⁴

- **Climate change** adaptation, mitigation, and resilience
 - **Adaptation** – The adjustment or preparation of natural or human systems to a new or changing environment that moderates harms or exploits beneficial opportunities.
 - **Mitigation** – Actions limiting the magnitude and rate of future climate change by reducing greenhouse gas emissions and/or advancing nature-based solutions.
 - **Resilience** – The capability to anticipate the threat of, prepare for, respond to, and recover from significant multi-hazard threats with minimum damage to social well-being, the economy, and the environment.
- **Ecosystem services** – Also known as ecosystem goods and services, these are the benefits humans receive from nature.
- **Environmental justice** – The fair treatment and meaningful involvement of all people regardless of race, color, culture, natural origin, income, and educational levels with respect to the development, implementation, and enforcement of protective environmental laws, regulations, and policies.
- **Greener cleanups** – Cleanup strategies designed to help minimize the environmental footprint of cleaning up contaminated sites and ensure a protective remedy within the applicable CERCLA and RCRA statutory and regulatory framework.
- **Indigenous Knowledge** - Also known as Traditional Ecological Knowledge, is a body of observations, oral and written knowledge, innovations, practices, and beliefs developed by tribes and Indigenous Peoples through interaction and experience, over hundreds of years, with the environment. Indigenous Knowledge is developed by Indigenous Peoples

² See e.g., EPA’s [Terms and Acronyms database search results for sustainability](#).

³ See [EPA’s Sustainability Primer, version 9](#).

⁴ See [Sustainability Resource Library](#) for definition citations.

including, but not limited to, Tribal Nations, Native Americans, Alaska Natives, and Native Hawaiians. Each tribe or Indigenous community has its own place-based body of knowledge that may overlap with that of other tribes.⁵

- **Long-term stewardship** – The activities and processes used to control and manage on-site waste materials and contaminated environmental media to ensure protection of human health and the environment over time.
- **Sustainable reuse** – The land use, building, and redevelopment practices that best manage environmental, economic, and social responsibilities for the long-term, whether through smart growth or other strategies that reuse contaminated and uncontaminated land and materials in environmentally sound, economically competitive, and socially responsible ways.

OSRE Support for Collaboration on Sustainability

The CERCLA and RCRA statutory language, regulations, policy, and guidance documents, and associated executive orders provide a foundation for implementing sustainability principles in the cleanup of contaminated sites.⁶ OSRE encourages enforcement staff to collaborate with EPA technical staff, early in the Superfund and RCRA corrective action processes,⁷ to identify and apply the relevant sustainability principles as they relate to planning for cleanup and enforcement at a contaminated site. Once sustainability principles are reflected in cleanup decision documents or other technical documents, site-specific case teams are encouraged to specifically reference these documents in administrative and judicial settlement agreements. OSRE can assist regional case teams⁸, as needed, in incorporating the sustainability principles into site-specific settlement documents.

Moreover, OSRE is reviewing the Agency's cleanup enforcement tools, such as model language and policy and guidance documents, to determine how best to incorporate sustainability concepts recognized in executive orders, the U.S. Environmental Protection Agency's (EPA) 2022-2026 Strategic Plan,⁹ the EPA Office of General Counsel's analysis of legal tools for environmental justice,¹⁰ and Agency directives such as OECA's efforts to strengthen civil, cleanup, and criminal enforcement in communities with environmental justice concerns.¹¹

⁵ See [Guidance for Federal Departments and Agencies on Indigenous Knowledge \(Nov. 30, 2022\)](#)

⁶ For example, several provisions in The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) support the incorporation of sustainability principles into cleanups. See the NCP/Sustainability cross-reference table in the Sustainability Resource Library.

⁷ See [EPA's 2022-2026 Strategic Plan](#) (2021). The corresponding RCRA Corrective Action processes are: Development of Conceptual Site Model; Implementation of Interim Measures; RCRA Facility Investigation (RFI); Corrective Measures Study (CMS); and Corrective Measures Implementation (CMI).

⁸ For example, regional case teams may want to include the regional redevelopment coordinator, environmental justice coordinator, eco risk assessor, and others in the Agency to identify and incorporate these principles in enforcement documents.

⁹ See [EPA 2022-2026 Strategic Plan pages 6, pp 88-89, p. 100, pp. 102-103, p. 106](#). See also, The [FY 2003-2008 EPA Strategic Plan](#); [The FY 2006-2011 EPA Strategic Plan](#); [The 2011-2015 EPA Strategic Plan](#); and The [2014-2018 EPA Strategic Plan](#).

¹⁰ See EPA's [Legal Tools to Advance Environmental Justice web page](#).

¹¹ See [EPA's Environmental Justice in Enforcement and Compliance Assurance web page](#).

Recently, OSRE, in partnership with EPA regional offices and the U.S. Department of Justice, incorporated key sustainability provisions into several model settlement documents. For example, the

- Model remedial design and remedial action (RD/RA) statement of work (SOW) includes enhanced community involvement provisions to support environmental justice.
- Model remedial investigation and feasibility study (RI/FS) SOW includes environmental justice, greener cleanup, and climate change language, and
- Model removal action prospective purchaser settlement agreement that includes enhanced community engagement provisions.

To further assist EPA regional cleanup enforcement staff, OSRE plans to work with the Office of Land and Emergency Management, Office of Research and Development, and regional offices to develop a training series on these principles. These trainings will include lessons from regional offices to highlight real-world opportunities and challenges they have encountered.

Sustainability Tools

In support of these principles, OSRE has issued the following tools:

- [Sustainability Resource Library](#) that contains the following:
 - An introduction to each of the principles;
 - Links to published resources on sustainability from across the Agency, other federal agencies, and external organizations; and
 - Case studies to highlight how sustainability principles can be incorporated into cleanup enforcement.
- Revised model language documents that contain language that support sustainability principles:
 - [Remedial Design/Remedial Action Consent Decree Statement of Work \(RD/RA CD SOW\)](#)
 - [Remedial Investigation and Feasibility Study Administrative Settlement Agreement and Order on Consent \(RI/FS ASAOC\)](#)
 - [Remedial Investigation/Feasibility Study Statement of Work \(RI/FS SOW\)](#)
 - [Removal Action by Prospective Purchaser Administrative Settlement Agreement \(Removal PPA ASA\)](#)

Conclusion

The principles of sustainability span multiple cleanup programs, reflect a developing set of human health and environmental protection practices, and help achieve the Agency's goals and priorities of protecting human health and the environment. Although legal authorities, environmental issues, and community priorities differ across cleanup programs and from site-to-site, OSRE expects enforcement and technical staff to work together to secure commitments to implement response actions that incorporate the sustainability principles to protect human health and the environment. This can help protect vulnerable populations, facilitate economic development, and provide long term stewardship of the land, among other things.

Going forward, OSRE will continue to review our cleanup enforcement tools to find opportunities for new or revised language that makes it easier for regional enforcement personnel, working with their program partners, to incorporate sustainability principles at specific sites.

For more information or assistance or if you have a suggestion or innovative idea within the concept of sustainability, please contact Elisabeth Freed (freed.elisabeth@epa.gov and (202) 564-5117) or Phil Page (page.phil@epa.gov and (202) 564-4211) in OSRE's Policy and Program Evaluation Division.

Disclaimer

This memorandum is intended solely for the guidance of EPA employees. It is not a rule, and it does not alter liabilities or limit or expand obligations under any federal, state, tribal, or local law. It is not intended to and does not create any substantive or procedural rights for any person at law or in equity. The extent to which EPA applies the Sustainability memorandum will depend on the facts of each case.

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