



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF  
LAND AND EMERGENCY  
MANAGEMENT

### **MEMORANDUM**

**SUBJECT:** EPA Guidance Clarifying the Use of CERCLA Remedial Investigations for Scoping Releases and Defining the Nature and Extent of Per- and Polyfluoroalkyl Substance and Other Contamination at Federal Facilities on the National Priorities List

**FROM:** Gregory Gervais, P.E., Director  
Federal Facilities Restoration and Reuse Office

**TO:** Regional Superfund and Emergency Management Division Directors, Region I-X

This memorandum clarifies the process for scoping releases of newly identified hazardous substances, pollutants, or contaminants at federal facilities on the National Priorities List (NPL), Superfund Alternative Approach (SAA) sites, and sites deferred for response under other laws in accordance with CERCLA §120(d).<sup>1</sup> Specifically, this memorandum focuses on sites with per- and polyfluoroalkyl substances (PFAS), and hazardous substances, pollutants or contaminants not currently included as contaminants of concern (COC) at a site under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This process fundamentally requires scoping for a remedial investigation and feasibility study (RI/FS).<sup>2</sup> This memorandum is intended to guide EPA regions, state regulators, and federal agencies in performing such investigations to ensure the protection of human health and the environment through decision-making consistent with CERCLA, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) at 40 C.F.R. Part 300, and EPA guidance.

Where Other Federal Agencies (OFAs) serve as the CERCLA lead agency, they should consider all documentation of scoping activities to be part of an RI<sup>3</sup>, including the preliminary assessment/site inspections (PAs/SIs) used to scope and investigate PFAS and other hazardous substances, pollutants, or contaminants not currently included as COCs. Such consideration ensures that EPA, and states as appropriate, have an opportunity to review, comment, concur

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<sup>1</sup> 42 U.S.C. § 9620(d).

<sup>2</sup> See page 1-6 of EPA/540/G-89/004 OSWER Directive 9355.3-01 October 1988 Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, <https://www.epa.gov/superfund/superfund-remedial-investigationfeasibility-study-site-characterization>

<sup>3</sup> Ibid.

with, or dispute, all aspects of this process, in accordance with the legal framework governing federal NPL sites. If an OFA performs what it calls a PA, SI, or expanded site inspection (ESI) at a federal facility NPL or SAA site, EPA considers information gathered through these activities at these sites to be part of the RI<sup>4</sup> unless such documents are separately listed as primary documents in a Federal Facility Agreement (FFA).<sup>5</sup>

FFAs required under CERCLA Section 120(e)(2) provide the framework for conducting investigations and cleanup activities at federal facility NPL sites and include the RI and FS as primary documents subject to EPA review, comment, concurrence, and dispute. Additionally, many FFAs have an Operable Unit (OU) provision providing a process for establishing OUs to address new contamination identified through the investigatory process. FFAs are fully equipped to handle the discovery of new contamination at an NPL federal facility. This memorandum describes the appropriate CERCLA process/documents for site assessment evaluation, RI scoping activities and RIs at NPL or analogous cleanup program sites.

### Background:

Over the past few years, some OFAs have relied on site assessment approaches for scoping releases and informing response action decisions. These decisions are therefore based on inadequate or incomplete data and should not determine whether additional investigation or cleanup is needed, particularly for PFAS releases.<sup>6</sup> Regardless, the U.S. Department of Defense (DoD) has used the PA/SI process to scope CERCLA response actions for potential PFAS contamination and releases.<sup>7</sup>

CERCLA established PAs and SIs to support the consideration of sites for potential addition to the NPL (e.g., see <https://www.epa.gov/superfund/superfund-site-assessment-process> and Site Assessment Guidance, listed below).<sup>8</sup> For sites already on the NPL, the use of PA/SIs for scoping CERCLA investigations of hazardous substances, pollutants or contaminants is generally inconsistent with CERCLA and they should not solely be relied upon for decision-making regarding future cleanup. In many cases, using PA/SIs for decision making in this

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<sup>4</sup> Ibid: Scoping activities typically begin with the collection of existing site data, including data from previous investigations such as the preliminary assessment and site investigation. <https://www.epa.gov/superfund/superfund-remedial-investigationfeasibility-study-site-characterization>

<sup>5</sup> Where an FFA includes PA, SI, and/or site screening process (SSP) reports as primary documents, the regions and OFAs should continue to develop them as provided under that agreement. This guidance applies to FFAs that do not include site assessment documents as primary documents, to Superfund Alternative Approach sites, and to federal facility sites deferred to other cleanup programs under CERCLA Section 120(d).

<sup>6</sup> In some cases, OFAs have made independent no further action determinations based solely on a PA and/or SI. EPA is not bound by such No Further Remedial Action Planned decisions made unilaterally by the OFAs.

<sup>7</sup> EPA understands that developing a PA/SI for PFAS is often a result of Congressional funding for PFAS and a statutory requirement that DoD perform PA/SIs; nevertheless, while DoD may continue to call its scoping/investigatory work a PA/SI, EPA considers it part of an RI scoping process at federal facility NPL sites and will treat it as such.

<sup>8</sup> See pages 2-8 of EPA/540/G-89/004 OSWER Directive 9355.3-01 October 1988 Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, <https://www.epa.gov/superfund/superfund-remedial-investigationfeasibility-study-site-characterization>

context contributes to delays in the efficient investigation and remediation of PFAS contamination.

While site assessment approaches may be useful in a variety of situations<sup>9</sup> EPA generally does not consider the PA/SI/ESI as adequate for decision-making at facilities already on the NPL, because the sampling methods and overall scope may not provide data sufficient to make risk-based decisions.<sup>10</sup> The quality of data collected at these stages of investigation may also be inadequate for use in other comparable federal and/or state regulatory programs.<sup>11</sup>

EPA understands that new information may necessitate unforeseen additional assessment. Most FFAs envision an evolution of identification of OUs at the facility and have additional work clauses to address new information at the facility. The additional work clause does not stipulate the type of work to be completed; however, any work requested requires EPA and state review, comment, and approval and is subject to dispute resolution if necessary. The OFAs would determine whether further investigation is required under the additional work clause, and this determination is subject to EPA approval, and state concurrence in some cases.

Reliance on the PA/SI process to investigate PFAS and other emerging and newly identified contaminants has led to disagreements among EPA, states, and OFAs regarding protective decision-making, proper documentation, data sharing, notification, and regulatory oversight. Because the PA/SI documents are rarely included as primary documents under FFAs, OFAs have sometimes disregarded EPA and state oversight authority for PA/SI work, in conflict with the requirements of CERCLA Section 120, the *NCP*, and *FFAs*.

#### Preliminary Assessment and Site Inspection at Federal Facility Sites:

CERCLA Section 120(c) requires EPA to establish a Federal Agency Hazardous Waste Compliance Docket (Docket). This Docket contains information reported to EPA by federal facilities that manage hazardous waste<sup>12</sup> or have had releases of hazardous substances.<sup>13</sup> The Docket identifies federal facilities that must be evaluated through the CERCLA site assessment process to determine whether they warrant inclusion on the NPL. The site assessment process includes a PA and SI that the responsible federal agency generally prepares, and that EPA uses to evaluate the actual and potential release of CERCLA hazardous substances at federal facilities that may be comingled with pollutants and/or contaminants when considering a potential NPL

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<sup>9</sup> In some FFAs, PAs and/or SIs or similar documents are included as primary documents subject to EPA, and state as appropriate, review, comment, concurrence, and potential dispute. See discussion of the “additional work clause” below for situations where new information arises at existing NPL sites where PAs and/or SIs are not listed as primary documents.

<sup>10</sup> See pages 1-6 of EPA/540/G-89/004 OSWER Directive 9355.3-01 October 1988 Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, <https://www.epa.gov/superfund/superfund-remedial-investigationfeasibility-study-site-characterization>.

<sup>11</sup> For sites not currently on the NPL, the PA/SI/ESI process may be appropriate and useful for site reassessment and EPA’s recalculation of a Hazard Ranking System (HRS) score to inform whether the site warrants inclusion on the NPL.

<sup>12</sup> See 42 U.S.C. §§ 6925, 6937.

<sup>13</sup> See 42 U.S.C. § 9603.

listing<sup>14</sup> (*also see* Site Assessment Guidance, listed below with other guidances and references). The purpose of the PA and SI is to collect data in support of calculating an HRS score and determining whether the site is eligible for inclusion on the NPL. While information collected at this stage may be adequate to determine potential unacceptable risk or whether the potential risk may require a removal or remedial action, it may not be adequate to make a determination to eliminate the need for any future response action.<sup>15</sup>

OFA sometimes contend that they are under no obligation to accept EPA or state oversight because the PA/SI reports are not identified as primary documents in FFAs. However, FFAs generally do not include PA/SI reports because they were not intended to be used at NPL sites to support decisions regarding the appropriateness of future response actions. At privately-owned and fund-lead (“non-Federal”) sites, EPA does not use the PA/SI after NPL listing. Any subsequent site characterization activities at NPL sites are then carried out using the Superfund remedial response process, starting with the RI/FS as described in NCP Section 300.430 and extending as necessary through the five-year review. CERCLA Section 120(a)(2) requires the same standards for investigation and cleanup for OFAs as non-federal parties.<sup>16</sup>

In some instances, the exclusion of EPA and states from OFA PA/SI-related decision-making has resulted in additional necessary rounds of PA/SI/ESI scoping to address non-aqueous film forming foam (AFFF) PFAS sources. EPA recommends, consistent with CERCLA RI and Conceptual Site Model (CSM) policy and guidance, that OFAs develop a CSM, assess all potential sources, and take a holistic approach to the evaluation. Focusing solely on AFFF sources is one example of an inefficiency that could be avoided by working with the regulators initially and following the CERCLA process.

Because of concerns regarding data collection and quality, EPA regions and FFRRO have notified OFAs on multiple occasions that EPA’s acceptance of PFAS data collected under these circumstances and decisions made based on these data should not necessarily be supported by EPA.

FFRRO has directed EPA regional offices not to concur with findings of No Further Action/No Further Remedial Action Planned determinations at sites where the decision was made independently by an OFA and without EPA and/or state oversight. Data collected and decisions made using the PA/SI process without EPA concurrence will be examined further as part of the ongoing remedial investigation. In the event of a disagreement, the EPA Administrator has the authority to select the final remedy in accordance with CERCLA § 120(e)(4).<sup>17</sup> If conflicts stemming from the scoping stages remain, this could delay remedy selection timelines and decision-making.

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<sup>14</sup> See 42 U.S.C. § 9620(d), 9605. See also: <https://www.epa.gov/superfund/section-1-regulatory-context-hrs>

<sup>15</sup> See EPA’s Superfund Glossary. Compare definitions of (i) preliminary assessment: An assessment of information about a site and its surrounding area. A Preliminary Assessment is designed to determine whether a site poses little or no threat to human health and the environment or if it does pose a threat, whether the threat requires further investigation and (ii) remedial investigation: An investigation intended to gather the data necessary to: (1) determine the nature and extent of problems at the site; (2) establish cleanup criteria for the site; (3) identify preliminary alternative remedial actions; and (4) support the technical and cost analyses of the alternatives.

<https://www.epa.gov/superfund/superfund-glossary#p>

<sup>16</sup> See 42 U.S.C. § 9620(a)(2).

<sup>17</sup> See 42 U.S.C. § 9620(e)(4).

### Remedial Investigation:

After EPA adds a site to the NPL, EPA or a potentially responsible party performs an RI/FS<sup>18</sup> (*also see* Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, listed below with other guidances and references). At federal facilities listed on the NPL, federal agencies must begin the RI/FS within 6 months of NPL listing.<sup>19</sup> The RI serves as the mechanism for collecting data to characterize site conditions, determine the nature of the contamination, and assess risk to human health and the environment. RI documents are FFA primary documents, subject to EPA review, comment, concurrence, and possible dispute. Data collected in the RI help determine the development of remedial alternatives in the FS, which in turn affects the data needs and scope of treatability studies and additional field investigations. This phased approach encourages an iterative scoping of the site characterization, which minimizes the collection of unnecessary data and maximizes data quality.

As previously stated, the RI is the appropriate framework to scope and investigate emerging and newly identified COCs, such as PFAS, at facilities that are on the NPL. EPA understands that federal facility sites are often large and complex by nature. If additional work is required, under the FFA's "additional work clause" the OFA is required to obtain EPA and state review, comment, and approval, and state concurrence in certain cases.

### Conclusion:

For these reasons, and to avoid cleanup delays and ensure protectiveness at federal facility sites on the NPL (consistent with CERCLA, the NCP, EPA Superfund guidance, and enforceable FFAs), EPA expects OFAs to provide EPA with full access to all PFAS scoping, planning, and assessment documents (including quality assurance project plans). Additionally, EPA expects OFAs to provide all data and draft documents in accordance with CERCLA and respond to EPA's comments as they would any other primary document.

cc:

Barry Breen, OLEM  
Anne Heard, OLEM  
David Hockey, FFRRO  
Larry Douchand, OSRTI  
Dana Stalcup, OSRTI  
Kathryn Caballero, OECA FFEO  
Cyndy Mackey, OECA OSRE  
Jennifer Lewis, OGC SWERLO  
Shelly Lam, SEMD Lead Region Coordinator

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<sup>18</sup> <https://www.epa.gov/superfund/superfund-remedial-investigationfeasibility-study-site-characterization>, EPA, 1988, 2020

<sup>19</sup> See 42 U.S.C. § 9620(e)(1).

## Appendix

### **Guidance and additional references:**

CERCLA: <https://www.govinfo.gov/content/pkg/USCODE-2011-title42/html/USCODE-2011-title42-chap103.htm>. See 120(a)(2)

NCP: <https://www.govinfo.gov/content/pkg/CFR-2015-title40-vol28/xml/CFR-2015-title40-vol28-part300.xml>. See 300.415(b)(4)(ii)

EPA 1988. Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, OSWER Directive 9355.3-01, October 1988. Available here: <https://semspub.epa.gov/work/HQ/100001529.pdf>

EPA 1991. Guidance for Performing Preliminary Assessments Under CERCLA, OSWER 9345.0-01A, September 1991. Available here: <https://semspub.epa.gov/work/HQ/157081.pdf>

EPA 1992. Guidance for Performing Site Inspections Under CERCLA, Interim Final, OSWER 9345.0-01A, September 1992. Available here: <https://nepis.epa.gov/Exe/ZyPDF.cgi/2000IRVN.PDF?Dockey=2000IRVN.PDF>

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EPA 2005b. Federal Facilities Remedial Site Inspection Summary Guide, July 2005. Available here: <https://www.epa.gov/fedfac/federal-facilities-remedial-site-inspection-si-summary-guide>

Remedial Investigation/Feasibility Study and Selection of Remedy (NCP). 40 CFR 300.430. Available here: <https://www.govinfo.gov/content/pkg/CFR-2011-title40-vol28/xml/CFR-2011-title40-vol28-sec300-420.xml>

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