



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF
LAND AND EMERGENCY
MANAGEMENT

September 19, 2023

OLEM Directive # 9230.0-139

MEMORANDUM

SUBJECT: Incorporating Community Input, Including Environmental Justice Considerations, Throughout CERCLA Investigations and Response Selection

FROM: Larry Douchand, Director **DOUCHAND**
Office of Superfund Remediation and Technology Innovation

TO: National Superfund Program Managers, Regions 1 - 10

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PURPOSE

This memorandum's objective¹ is to provide recommendations to U.S. Environmental Protection Agency Superfund site teams, primarily remedial project managers and on-scene coordinators, regarding ways to incorporate community input, including environmental justice considerations, when investigating, selecting, and documenting non-time critical removal actions or remedial actions under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and the National Oil and Hazardous Substances Pollution Contingency Plan. Application of this memorandum's recommendations will help ensure site teams establish and maintain a dialogue with communities as EPA makes site cleanup decisions while also helping ensure the agency gathers community input throughout the entirety of a site's cleanup, rather than only at a few key stages. The recommendations include a specific focus on incorporating environmental justice considerations, a component of community input, into decision-making to help EPA make better-informed cleanup decisions—decisions that address contamination and advance environmental justice in communities, as appropriate.

DISCUSSION

At uncontrolled or abandoned hazardous waste sites that the EPA is addressing under CERCLA authority (frequently called "Superfund"), the agency's RPM and/or OSC direct site response

¹ The policies and best practices set out in this document are intended solely for the guidance of Government personnel. They are not intended, nor can they be relied upon, to create any rights, substantive or procedural, enforceable by any party in litigation with the United States. The Agency reserves the right to act at variance with these policies and best practices and to change them at any time without public notice.

efforts pursuant to the NCP (40 CFR § 300.120). RPMs and OSCs coordinate the Superfund site team, typically comprised of community involvement coordinators, risk assessors, technical support, and site attorneys. The NCP (40 CFR § 300.155) states that the RPM/OSC and community involvement coordinator should ensure that the affected community is kept informed about response activities and that the EPA considers the community's concerns throughout a response. In 1991, the EPA elaborated on Superfund's statutory and regulatory foundation for considering community input in the agency's directive, "Incorporating Citizen Concerns into Superfund Decision-Making," (hereafter, "Incorporating Citizen Concerns;" attached), which states that the:

EPA should explain site decisions throughout the entire cleanup, rather than only at few key stages. That is, EPA must establish and maintain a dialogue through which we discuss site decisions as they develop, as well as make Superfund documents more available to the public throughout the cleanup process.²

The NCP specifies actions the lead agency should take to promote active communication between it and the affected community (40 CFR §§300.415, 300.430, and 300.435).³ It directs the lead agency to prepare (or to require potentially responsible parties to prepare) site-specific community involvement plans, which should include, per the EPA guidance, a comprehensive community profile:

The community profile is a narrative that describes the community affected by the Superfund site. It summarizes demographic information and identifies significant subgroups in the population, languages spoken, and other important characteristics of the affected community. It also should address whether the community might bear a disproportionate burden of exposure or environmental health effects due to race/ethnicity, national origin, or income compared to other communities (i.e., issues related to environmental justice).³

Within this framework and given that environmental justice⁴ considerations are a component of community input, site teams should exercise their authority to factor in such considerations and other community input consistent with CERCLA and the NCP's provisions. This memo lists some of the decision points where environmental justice considerations could inform the EPA's investigations and response selection process, leading the EPA to make better-informed decisions throughout site cleanup.

² "Incorporating Citizen Concerns into Superfund Decision-making;" "Superfund Management Review: Recommendation #43B;" OSWER Directive #9230.0-18; January 21, 1991 (attached).
<https://semspub.epa.gov/work/11/174494.pdf>

³ "Community Involvement Tool: Community Profiles;" EPA 540-K-01-004; May 1, 2018.
<https://semspub.epa.gov/work/HQ/100001429.pdf>

⁴ Under EO 14096, "Environmental justice" means the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people:

(i) are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and
(ii) have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.

Tribes affected by a Superfund site may also identify their own environmental justice concerns throughout the CERCLA process, and the EPA policy is to seek to be responsive to the environmental justice concerns of federally recognized tribes, Indigenous peoples throughout the United States, and others living in Indian country.⁵ Working to address tribal environmental justice concerns may also encompass additional considerations, such as tribal sovereignty, self-determination, and the federal trust responsibility with federally recognized tribes.

The best practices in this memo represent years of the EPA site teams' experience and innovation. Site teams can refer to these best practices to meet stakeholder expectations and to find new approaches for addressing environmental justice concerns at their sites. Site teams should also document how community input influences the EPA's decisions as the agency makes those decisions; better documentation will enable both the agency and the public to understand how community input informs the EPA's decision-making while also helping facilitate meaningful community involvement.⁶

While they will inevitably find community needs that Superfund authorities cannot address, site teams should not underestimate the EPA's ability to convene stakeholders to assist one another. For non-site-related issues, site teams are encouraged to help identify and direct communities to appropriate resources, such as another governmental entity or a non-governmental organization. Decades of experience support this approach as a best practice for Superfund site teams; the EPA's community involvement coordinators are the appropriate starting point for this approach.

BACKGROUND

In September 2022, EPA's Office of Land and Emergency Management issued the "OLEM Environmental Justice Action Plan"⁷ to develop and implement policies and strategies that incorporate environmental justice considerations into OLEM's work, thereby strengthening compliance and enforcement and increasing community engagement. The Office of Superfund Remediation and Technology Innovation committed under Goal 2.7 of OLEM's action plan to issue this policy memorandum to identify approaches to incorporate community input and environmental justice considerations throughout the EPA's decision-making when investigating, selecting, and documenting response decisions. In so doing, the document supports the EPA's

⁵ "EPA Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples;" July 24, 2014. <https://www.epa.gov/environmentaljustice/memo-epa-policy-environmental-justice-working-federally-recognized-tribes-and>.

⁶ "Meaningful involvement" in this memo means: Potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; the public's contribution can influence the regulatory agency's decision; the concerns of all participants involved will be considered in the decision-making process; and the decision makers seek out and facilitate the involvement of those potentially affected. Consistent with Section 3(a)(vii) of EO 14096, meaningful participation includes providing meaningful access to individuals with limited English proficiency, individuals with disabilities, and individuals who are not regular participants in Federal decision-making.

Additional definitions of "Meaningful Involvement" and other terms are discussed in the "Compendium of EJ-Related Terms" in the "OLEM Environmental Justice Action Plan," EPA 502/P-21/001, September 2022. https://www.epa.gov/system/files/documents/2022-09/OLEM-EJ-Action-Plan_9.2022_FINAL-508.pdf

⁷ "OLEM Environmental Justice Action Plan."

efforts to incorporate new and enhanced approaches and to promote additional resources for advancing environmental justice and equity.

This memo builds on other EPA efforts to advance environmental justice, including “EPA Legal Tools to Advance Environmental Justice” and “Cumulative Impacts Addendum,”⁸ which detail the agency’s general authorities to consider and address environmental justice and equity in decision-making pursuant to CERCLA and the NCP. The recommendations provided are also consistent with EPA’s most recent strategic plan⁹ as well as applicable executive orders.¹⁰ Specifically, this memo supports the EPA’s efforts to:

- Identify communities with environmental justice concerns.¹¹
- Ensure meaningful outreach to and meaningful involvement of those communities.
- Identify, analyze and address disproportionate impacts.
- Demonstrate how EPA’s decision documents are responsive to community concerns.
- Provide capacity-building resources to overburdened and underserved communities.
- Engage federal, state, tribal, and local partner agencies to help address environmental justice concerns.
- Reduce risks to human health and the environment while also returning sites to productive reuse and providing economic and additional environmental benefits.

This memo expands on the EPA’s “Incorporating Citizen Concerns,”¹² which provides a four-step framework for ensuring EPA decisions reflect community concerns: (1) Listen carefully to what citizens are saying; (2) Take the time necessary to address their concerns; (3) Change planned actions (or decisions) where citizen suggestions have merit; and (4) Explain to citizens

⁸ “EPA Legal Tools to Advance Environmental Justice,” May 2022. <https://www.epa.gov/system/files/documents/2022-05/EJ%20Legal%20Tools%20May%202022%20FINAL.pdf>

“EPA Legal Tools to Advance Environmental Justice: Cumulative Impacts Addendum,” Publication No.: 360R22002, January 2023. <https://www.epa.gov/system/files/documents/2022-12/bh508-Cumulative%20Impacts%20Addendum%20Final%202022-11-28.pdf>

⁹ “FY 2022-2026 EPA Strategic Plan,” March 2022. <https://www.epa.gov/system/files/documents/2022-03/fy-2022-2026-epa-strategic-plan.pdf>

¹⁰ Among other things, the following EOs direct agencies to address as appropriate disproportionate and adverse human health and environmental effects, including those related to climate change and cumulative impacts of environmental and other burdens on, and to secure environmental justice and spur economic opportunity for, disadvantaged communities: EO 12898; EO 13985; EO 14008; and 14096.

¹¹ “EPA Legal Tools to Advance Environmental Justice,” uses the term “Communities with environmental justice concerns” to refer to communities overburdened by pollution as identified in EO 12898.

“Potential environmental justice (EJ) concern” refers to the “actual or potential lack of fair treatment or meaningful involvement of minority populations, low-income populations, tribes, and indigenous peoples in the development, implementation and enforcement of environmental laws, regulations and policies” as defined in the EPA “Guidance on Considering Environmental Justice During the Development of Regulatory Actions,” May 2015. <https://www.epa.gov/sites/default/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf>

¹² “Incorporating Citizen Concerns into Superfund Decision-making.”

what EPA has done and why. These steps are consistent with the NCP, which directs EPA to “Ensure the public appropriate opportunities for involvement in a wide variety of site-related decisions, including site analysis and characterization, alternatives analysis, and selection of remedy.” (40 CFR § 300.430(c)(ii)(A)). This memo’s implementation section shows site teams where community input, including environmental justice considerations or other emerging concerns, can shape many of the incremental decisions EPA makes prior to selecting a response action.

IMPLEMENTATION

Site teams should use this section to help plan and execute actions to solicit and incorporate community input into the EPA’s decisions. Applying these best practices can also help site teams better document and explain how community input shapes the agency’s decision-making. This section highlights the points in the cleanup selection process where community input and environmental justice considerations will be most relevant. While they should listen, incorporate, and document public input in all communities, OSRTI encourages site teams to consider these best practices, particularly when working in overburdened or underserved communities or when working in communities with environmental justice concerns or potential environmental justice concerns. Finally, this section is intended to help site teams respond to stakeholder questions and concerns about how the EPA responds to both community input and environmental justice concerns.

- **Community Involvement**: Community involvement occurs throughout the Superfund process, and community input can shape many of the EPA’s decisions. Best practices to ensure meaningful involvement include:
 - Work closely with communities to identify their environmental justice concerns.
 - Develop an understanding of data related to demographics, health, and potential environmental exposures.
 - Document community information in the community involvement plan, including findings about specific demographic, environmental, and social conditions.
 - Adjust the community involvement strategy based on the needs of the community.
 - Assess the community’s need for capacity building to help ensure its ability to meaningfully participate in in the Superfund process.
- **Consultation and Coordination with Tribal Governments**: EPA’s consultation and coordination with federally recognized tribes occurs throughout the investigation and remedy selection process, which includes many decision points that can be informed by tribal input and environmental justice considerations. Section 126(a) of CERCLA states that tribes “shall be afforded substantially the same treatment as a state” with regard to a number of specific provisions in the statute, including those dealing with consultation on remedial actions, and roles and responsibilities under the NCP. EPA policy¹³ provides

¹³ “EPA Policy on Consultation and Coordination with Indian Tribes;” May 4, 2011. <https://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes>

that the EPA engage in government-to-government consultation with federally recognized tribes when agency actions or decisions may affect tribal interests. Tribal consultation may be appropriate at multiple points throughout the Superfund process.¹⁴ Tribes may also choose to share traditional ecological knowledge or Indigenous knowledge, which EPA may consider throughout the cleanup process.¹⁵

- Site Strategy: Community input should inform the EPA’s overall site cleanup strategies. A site strategy can be an informal statement of priorities or a formal document developed by a site team. Site strategies focus on big picture goals and should be tailored to the nature and complexity of each site. The EPA’s immediate goal during a response is to protect human health and the environment by addressing short-term exposures; however, once EPA addresses those exposures, other human health, environmental, or community needs may emerge, such as: preventing long-term exposure, protecting a natural resource, coordinating with local infrastructure construction, supporting economic growth, or planning to return a contaminated property to beneficial reuse. Considering community input can lead to site strategies that align with community priorities and better advance environmental justice. Best practices for developing sites strategies include:
 - Tell the community what EPA’s current site strategy is and ask for community input.
 - Prioritize risk reduction for particular receptors or exposure pathways.
 - Phase the investigation, response selection, and cleanup of a site.
 - Expedite the completion of part of a site.
- Remedial Investigation or Engineering Evaluation/Cost Analysis: Community input should inform the EPA’s decisions when investigating sites and assessing risks. The EPA should seek community input early enough to help shape risk assumptions and conclusions. Key assumptions about how people use the land or resources and how people are exposed should be realistic and incorporated into the site conceptual exposure model. The agency’s existing directives regarding land use¹⁶ remain applicable and provide detailed guidance on soliciting community input and determining reasonably anticipated land uses, even when there is uncertainty or differing viewpoints.

Best practices during the remedial investigation or the EE/CA include:

¹⁴ “EPA Clarification of Superfund Actions or Decisions in the Remedial Process that May Require Tribal Consultation;” March 31, 2020. <https://semspub.epa.gov/src/document/HQ/100002929>

¹⁵ “EPA Consideration of Tribal Treaty Rights and Traditional Ecological Knowledge in the Superfund Remedial Program;” OLEM Directive 9200.2-177; January 17, 2017. <https://semspub.epa.gov/src/document/11/500024668>

¹⁶ “Considering Reasonably Anticipated Future Land Use and Reducing Barriers to Reuse at EPA-lead Superfund Remedial Sites;” OSWER Directive 9355.7-19; March 17, 2010 . <https://semspub.epa.gov/work/11/175563.pdf>
“Reuse Assessments: A Tool To Implement The Superfund Land Use Directive and Superfund Land Use Directive” OSWER Directive 9355.7-06P; June 4, 2001. <https://semspub.epa.gov/work/HQ/175564.pdf>

- Engage the community when determining the reasonably anticipated future land use.
- Document community information, (including demographic, cultural, environmental, and social conditions) in the community involvement plan.
- Determine if there are sensitive subpopulations near the site.
- Identify if non-site related health risks contribute to the vulnerability of sensitive subpopulations or disproportionate impacts.
- Use site-specific information to inform the risk assessment (including any traditional ecological knowledge or Indigenous knowledge freely shared by tribes where appropriate).
- Communicate exposure assumptions to the community and ask for community input.
- Include community input in the appropriate sections of the remedial investigation report or the EE/CA.
- Feasibility Study or Engineering Evaluation/Cost Analysis: Community input can shape how the EPA develops and evaluates alternatives to address unacceptable risks during the FS or the EE/CA. Best practices during these phases include:
 - Explain when:
 - Remedial action objectives or removal action objectives are based on sensitive subpopulations or disproportionate and cumulative environmental impacts (such as a pregnant woman, child, or other receptor) or were informed by community input (such as using site-specific exposure pathways).
 - Preliminary cleanup goals or proposed cleanup levels are based on sensitive subpopulations or disproportionate and cumulative environmental impacts.
 - Account for sensitive subpopulations and disproportionate, cumulative impacts when evaluating technologies and alternatives.
 - Engage with the community prior to treatability testing or pilot studies.
 - Update the community involvement plan as needed.
 - Preview possible alternatives with the community before finalizing the feasibility study or the EE/CA.
 - Build community capacity as needed to prepare the community to comment on the EPA's proposed response.
- Proposed Plan and Record of Decision (including Amendments and Explanations of Significant Difference, as appropriate) or Engineering Evaluation/Cost Analysis and Action Memorandum:

Proposed plans and the EE/CAs present the lead agency's preliminary recommendation

for addressing site contamination, the alternatives evaluated when developing the recommendation, and the rationale for the recommended response action. Their issuance also serves as a point to solicit public input on proposed responses. Site teams should explain how the public's input and concerns shaped the many decision points leading to the EPA's recommended response.

Decision documents explain the legal basis for the EPA's selected response, summarize a site's administrative record, provide technical details for implementing the response, and communicate the EPA's decisions with the public. Throughout each section of a decision document, site teams should explain if and how community input shaped the EPA's decisions. Best practices for documenting how community input and environmental justice concerns were considered and addressed include:

- Explain how the EPA considered community input throughout each section of the proposed plan or the EE/CA and:
 - In proposed plans, explain how the EPA sought input and adjusted decisions in the "Site Background - Description of major public participation activities" section.¹⁷
 - In EE/CAs, explain how the EPA sought input and adjusted decisions in the "Site Description and Background" section¹⁸ (particularly relevant subsections are "surrounding land use and populations," "possible pathways of exposure," and "identification of sensitive populations").
- Explain throughout decision documents the role of community input in shaping the EPA's decisions, and:
 - In records of decision, explain how the EPA sought input and adjusted decisions in the "Community Participation" section of the Decision Summary.¹⁹ Common types of input to mention in a record of decision relate to land use assumptions, exposure assumptions, non-required community outreach, and site strategy. An example of this approach is included as an attachment to this memo.
 - In non-time critical action memos, explain how the EPA sought input and adjusted decisions in the "Responsiveness Summary" or, if needed, as an attachment to the action memo.

¹⁷ "Recommended Outline and Checklist for a Proposed Plan," page 3-14 of "A Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents" OSWER Directive 9200.1-23P, July 1999. <https://semspub.epa.gov/src/document/HQ/500009392>

¹⁸ Section 2.4 of "Guidance on Conducting Non-Time-Critical Removal Actions Under CERCLA," EPA/540-R-93-057, August 1993. <https://semspub.epa.gov/work/HQ/122068.pdf>

¹⁹ The lead agency should also describe any other major public participation activities (e.g., community relations plans, special activities related to environmental justice concerns). Efforts to solicit views on the assumptions about reasonably anticipated future land use and potential beneficial uses of ground water should also be described in this section of the Decision Summary." Section 6.3.3, Page 6-7 of "A Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents."

- Explain if community-specific factors, such as health disparities and disproportionate or cumulative environmental impacts, shaped decisions forming the basis for the response.
- **Capacity Building:** Capacity building provides stakeholders with the resources and capabilities to make informed decisions and provide meaningful input. When beginning a cleanup or engaging with new stakeholders, site teams should assess how familiar the community is with the CERCLA process and ensure the community has the resources to be meaningfully engaged. Such an assessment can be undertaken informally or achieved formally through a technical assistance needs assessment,²⁰ known as a “TANA.” The EPA can then identify capacity-building support to help communities better participate in the cleanup process. The EPA site teams have found that capacity building can also leave a community better prepared to address issues beyond the scope of the Superfund cleanup.

In many communities, regular community meetings, factsheets, and availability sessions are adequate outreach. In some cases – especially in underserved and overburdened communities – additional capacity building support may be needed. The EPA should tailor capacity building to each community’s needs, with a site’s community involvement coordinator playing a lead role in planning these actions. Support can include helping communities understand the Superfund process, contribute to the EPA’s decision-making, and shape their post-cleanup future. Such support can also connect communities with appropriate points of contact for non-CERCLA issues. The agency has many tools to facilitate community engagement in Superfund response activities.²¹

Local hiring is another strategy that can build local capacity, keep more cleanup money in the community, and provide other community benefits. Sites teams may pursue local hiring through EPA contracting strategies or supporting a responsible party in local hiring. The Office of Superfund Remediation and Technology Innovation manages the Superfund Job Training Initiative,²² known as “SuperJTI,” which is an environmental remediation job readiness program that provides free training and career development opportunities for people living in communities affected by Superfund sites. SuperJTI creates partnerships with cleanup contractors, local businesses, and other federal agencies

²⁰ <https://www.epa.gov/superfund/technical-assistance-needs-assessments-tanas>

²¹ Capacity building tools to help communities meaningfully engage in Superfund cleanups include: Technical Assistance Grants, known as “TAGs,” <https://www.epa.gov/superfund/technical-assistance-grant-tag-program>;

Technical Assistance Plans, known as “TAP,” <https://www.epa.gov/superfund/technical-assistance-plan-tap>;
 Technical Assistance Services for Communities, known as TASC, <https://www.epa.gov/superfund/technical-assistance-services-communities-tasc-program>;

The Community Advisory Groups, known as “CAG,” <https://www.epa.gov/superfund/superfund-community-advisory-groups>;

Support Agency Cooperative Agreements, known as “SACA” (for eligible recipients), <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-B/part-35/subpart-O>; and

The Superfund Redevelopment Program, <https://www.epa.gov/superfund-redevelopment>

²² <https://www.epa.gov/superfund/superfund-job-training-initiative>

to identify cleanup-related job needs and then structures site-specific training programs to meet those needs.

Site teams regularly encounter other community needs that are not directly related to the cleanup. Residents, particularly in underserved and overburdened communities, may not be able to fully engage on cleanup-related issues until other needs are acknowledged or addressed. While the Superfund program has limited authority to address issues that are not related to the release at a site, site teams should not underestimate EPA's ability to connect communities with resources who can address other needs. The Office of Superfund Remediation and Technology Innovation encourages site teams to collaborate, as appropriate, to advance community-driven solutions and to help identify non-Superfund and non-EPA resources to address some of a community's most urgent non-site-related needs. The EPA's community involvement coordinators and environmental justice staff are the appropriate resources to lead such efforts. Building capacity and leveraging outside resources to assist communities with needs that are deeper and broader than the Superfund cleanup has proven one of the most lasting contributions of the Superfund program in many communities.

Local colleges and universities can also be capable partners for communities facing non-site-related issues. One way the EPA facilitates partnerships between communities and universities is through the College/Underserved Community Partnership Program.²³ This program's partnerships have addressed needs as diverse as planning outdoor recreation spaces, developing a rural community website, and assisting with grant research and application submissions. University students provide technical assistance to communities through planned projects each semester. The projects are completed by the students at no cost to the community. The students gain course credit and experience while the communities benefit from free support. Another higher-education resource is the Superfund Research Program,²⁴ a part of the National Institutes of Health. Through this program, communities gain access to practical, scientific solutions to protect their health and environments. The Superfund research program funds university-based grants to find solutions to hazardous substance exposures. Grantees are encouraged to support communities affected by hazardous waste sites.

- Screening tools: Several desktop tools have been developed to evaluate community demographic, environmental, and social conditions. These tools can provide supplemental information about a community to inform many EPA decisions. For example, EPA's EJScreen²⁵ can provide context about a community's vulnerability or its composition that a site team may otherwise overlook (such as poor air quality or the number of non-English speakers). Site teams may want to confirm information from screening tools with community interviews or through focused outreach. Site teams can document screening tool results in the community involvement plan and/or other documents in a site's administrative record. Where appropriate, reports should be specific as to the nature of environmental burdens or disproportionate impacts. However, site

²³ <https://www.epa.gov/environmentaljustice/collegeunderserved-community-partnership-program>

²⁴ <https://www.niehs.nih.gov/research/supported/centers/srp>

²⁵ <https://www.epa.gov/ejscreen>

teams should be sensitive to and understand how the community wants demographic information to be presented in public documents.

Screening tools are not a substitute for engaging with communities. Site teams should distinguish between information provided about a community and information from a community. Figure 2 shows one way to visualize how information from a community, demographic information about a community, and non-site-related concerns or issues can inform different decisions throughout the cleanup process.

NEXT STEPS

To promote these best practices and ensure their consistent application, OSRTI will provide training for EPA site teams. The training will also serve to solicit and develop more detailed best practices and examples. The Office of Superfund Remediation and Technology Innovation will use the training to refine additional details for each best practice, documenting them in an upcoming factsheet, “Best Practices for How and Where to Consider Environmental Justice in the CERCLA Response Action Selection Process.” Details about the training are forthcoming.

Also, regions are encouraged to reference the attached “Incorporating Citizen Concerns” memo and apply these principles throughout the Superfund process as well as the OSRTI and EPA Region 5 jointly issued report, “Superfund Environmental Justice Best Practices.”²⁶ This August 2023 document outlines 13 successful tools, strategies and approaches for site teams to consider while addressing environmental justice concerns throughout the cleanup and redevelopment process.

CONCLUSION

Both CERCLA and the NCP, as well as EPA guidance, direct site teams to incorporate community input into the agency’s decisions throughout the Superfund process. Likewise, as a component of community input, site teams should incorporate relevant environmental justice considerations throughout the Superfund process. The Office of Superfund Remediation and Technology Innovation encourages site teams to clearly document how such input, including environmental justice considerations, informs the EPA’s decisions when investigating and selecting responses. These best practices and clear documentation will help keep the public informed and improve agency’s dialogue with communities prior to the EPA’s selection of a response action.

Attachments

Cc: Barry Breen, OLEM
Cliff Villa, OLEM
Greg Gervais, FFRRO/OLEM
Brendan Roache, OEM/OLEM
Kent Benjamin, OCPA/OLEM
Brigid Lowery, OSRTI/OLEM

Jen Hovis, OSRTI/OLEM
Bill Denman, OSRTI/OLEM
Helen Duteau, OSRTI/OLEM
Ken Patterson, OSRE/OECA
Kathryn Caballero, FFEO/OECA
Jen Lewis, SWERLO/OGC
Office of Regional Counsels (Regions 1-10)
Matt Tejada, OEJECR
Remedial Branch Chiefs, Regions 1-10
Regional CI Managers, Regions 1-10
Shelly Lam, Lead Region
NARPM Co-Chairs

Figure 1. Best practices at different points in the response action selection process to seek and incorporate community input, including environmental justice concerns.

Integrating Community Input and Environmental Justice Throughout the CERCLA Response Selection Process

Seek, incorporate, and document community input and environmental justice in key Superfund decisions.

Remedial Investigation and Engineering Evaluation/Cost Analysis

- Seek community input on land use, exposure assumptions, and community vulnerabilities.
- Incorporate community input as site-specific assumptions in the risk assessment.

Feasibility Study and Engineering Evaluation/Cost Analysis

- Seek community input about cleanup alternatives early enough to shape decisions.
- Ensure community has capacity to comment on EPA's proposed response.

Proposed Plan and Engineering Evaluation/Cost Analysis

- Document how community input shaped EPA decisions in the appropriate section:
 - Proposed plans - "Site Background - Description of major public participation activities."
 - EE/CAs - "Site Description and Background."

Record of Decision (including Amendments and Explanations of Significant Difference) and Action Memorandum

- Explain Document how community input shaped EPA decisions in the appropriate section:
 - Records of decision - "Community Participation."
 - Non-time critical action memos - "Responsiveness Summary" or as an attachment.

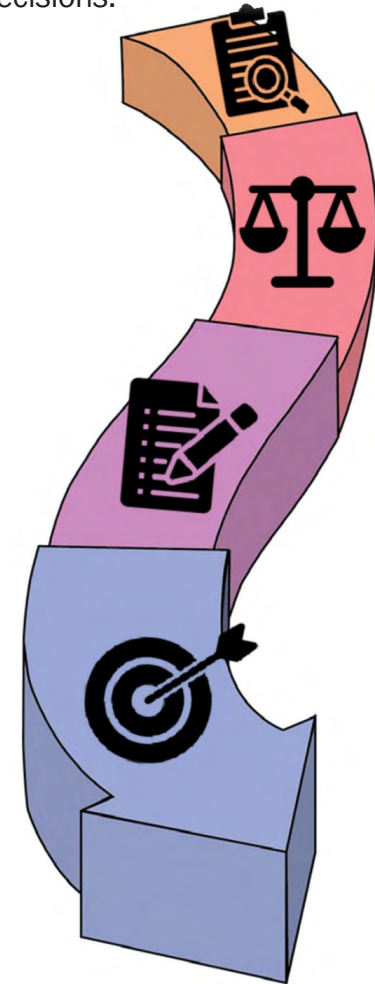
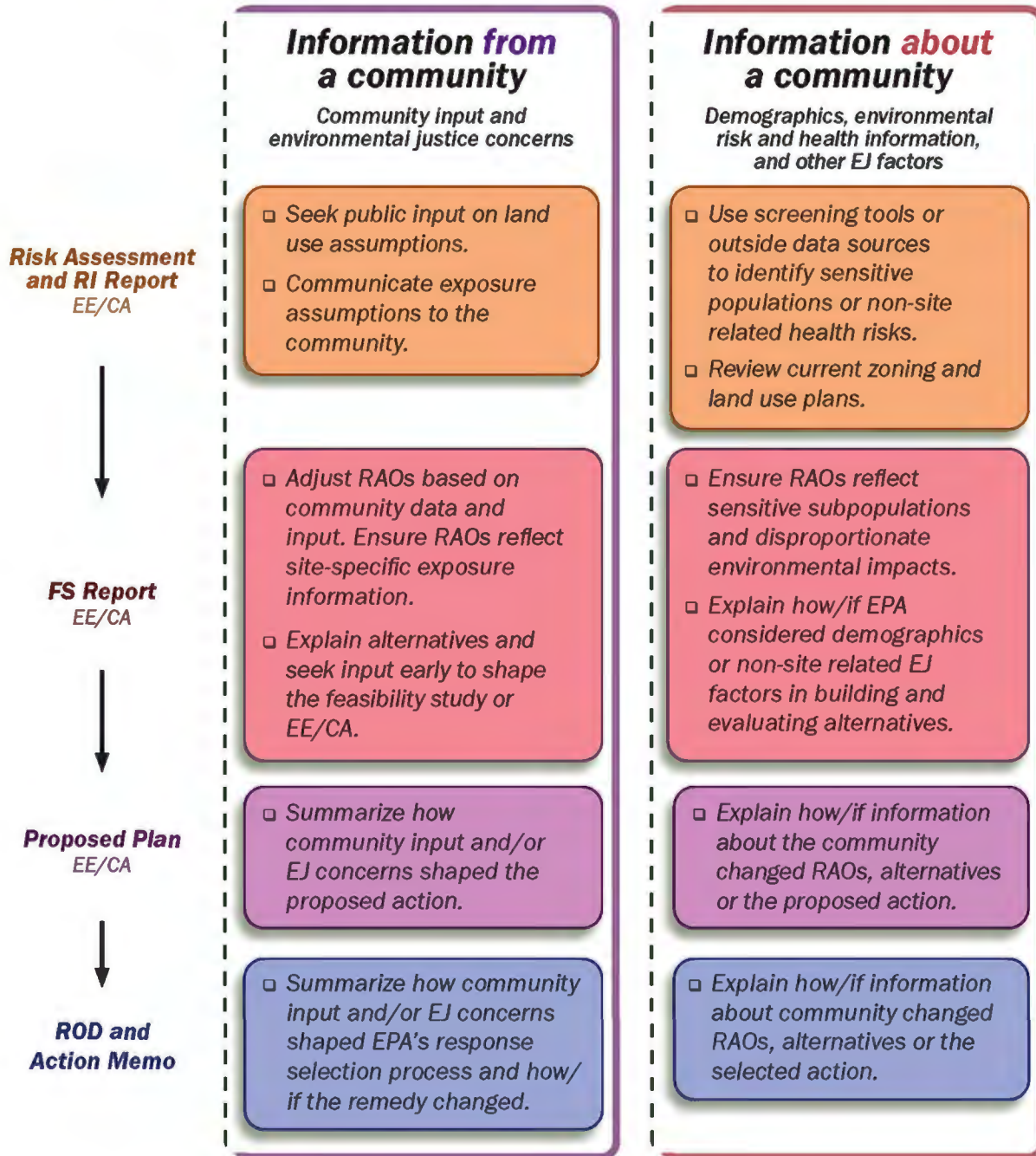


Figure 2. How site teams can incorporate information from and about a community into the response selection process.

Integrating Environmental Justice Concerns into the Cleanup Decision Process



ATTACHMENTS

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Attachment 1

Appendix H

Community Relations Handbook



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

Jan 21 1991

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

OSWER Directive 923C.0-16

MEMORANDUM

SUBJECT: Incorporating Citizen Concerns into Superfund
Decision-making (Superfund Management Review:
Recommendation #43B)

FROM: Henry L. Longest, II, Director /s/
Office of Emergency and Remedial Response

TO: Director, Waste Management Division
Regions I, IV, V, VII, VIII
Director, Emergency and Remedial Response Division
Region II
Director, Hazardous Waste Management Division
Regions III, VI, IX
Director, Hazardous Waste Division
Region X

Community Relations Coordinators, Regions I - X

Purpose:

To ensure the incorporation of citizen concerns into Superfund site decision-making.

Background:

EPA's capacity and willingness to incorporate community concerns into site decision-making are among the most important measures of Superfund's community relations program. Although EPA has made significant progress in its promotion of mutually satisfactory two-way communication with the public, room for improvement exists in integrating the public's concerns into site decisions.

EPA has established methods for soliciting citizen concerns, but that represents only the first step. Citizens rightfully expect that EPA will then carefully consider and fairly evaluate the concerns the community has voiced, making it imperative that EPA pay close attention to such input. It is not enough that we

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solicit and read public comments. It is important that we demonstrate to citizens that they are involved in the decision-making process.

The impacts of citizen input will be more obvious at some sites than at others, and will not always, of course, be the principal determinant in site decisions. EPA must make every effort, however, to fully incorporate those concerns into site decision-making. The Superfund Management Review (SMR) mentions four steps necessary to satisfactorily accomplish this: "...listen carefully to what citizens are saying; take the time necessary to deal with their concerns; change planned actions where citizen suggestions have merit; and explain to citizens what EPA has done and why." (p.5-7). The following recommendations discuss in detail each of these steps.

Implementation:

1) Listen carefully to what citizens are saying. Superfund managers and staff should listen carefully throughout the technical process to the concerns and comments of local communities. It is in the interest of Superfund to listen to what citizens are saying not only during the comment period after the Proposed Plan is issued, but during the entire process. Although some may see only the short term view that a community's involvement slows the decision-making process and causes costly delays, it has been EPA's experience that the long term success of the project is enhanced by involving the public early and often. Carefully considering citizen concerns before selection of a preferred remedy will lead to better decision-making.

Some Regions have successfully adopted innovative techniques for soliciting citizen input. These include community workgroups, open houses, and informal "roundtable" discussions. Regions are encouraged to try as many of these techniques as possible to communicate with citizens.

2) Take the time necessary to deal with citizens' concerns. Incorporating citizen concerns into site decisions need not be a cause for delay or, for that matter, excessive cost. By allocating sufficient resources to community relations and maintaining an awareness of citizen concerns throughout the process, Regions can successfully assimilate citizen concerns into site decisions.

The most effective way to provide time to deal with citizen concerns is by building a schedule at the outset that allows adequate time (and resources) for public involvement. Such

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planning should include, among other things, the likelihood that commentors may request an extension of the public comment period following issuance of the Proposed Plan, as allowed by Section 300.425 (f)(3)(i)(C) of the National Contingency Plan (NCP). In accordance with the SMR, site managers should announce a thirty-day comment period, but anticipate the possibility of a sixty-day period. Also, effective planning and early citizen involvement will allow site managers to anticipate those particularly controversial sites or proposed remedial actions which may warrant an additional extension of the comment period.

OSWER Directive #9230.0-08 of March 8, 1990, entitled "Planning for Sufficient Community Relations," provides additional guidance and instructs Regions to dedicate adequate resources to support additional community relations needs. The guidance included the SMR recommendation that Regions "... establish a discretionary fund that they could use to fund additional work necessary to respond to citizen concerns." (p.5-7).

3) Change planned actions where citizen suggestions have merit. It is crucial that EPA remain flexible, and willing to alter plans where a local community presents valid concerns. In recent years, EPA has demonstrated an increased willingness to change or significantly alter its preferred remedy. In some instances, citizen input has saved EPA from mistakes and unnecessary costs. It is obviously more cost effective to spend time, energy and money working with the public on a regular basis, than to deal with resistance created when a community believes it has been left out of the process.

With regard to changing planned actions, EPA's measure of success should not be whether or not the community applauds the remedy because EPA did what it asked, but whether or not EPA honestly listen to citizens, and genuinely took into account their concerns. EPA may remain unpersuaded after hearing from citizens, but it is EPA's responsibility to reinforce to citizens that their comments were carefully and thoughtfully considered.

4) Explain to citizens what EPA has done and why. Regardless of the outcome of site decisions, EPA must fully communicate those decisions to the public. The most thorough vehicle for such communication is the responsiveness summary. As recommended by the SMR, EPA has revised the format of responsiveness summaries to make them more easily understandable to citizens without compromising the legal and technical goals of the document. It is imperative that the public be able to see in writing EPA's response to their concerns and comments. As the

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SMR notes, "Whether EPA can do what citizens ask or not, we should always provide them a clear explanation of the basis for our decision." (p.5-7). The public needs clear, candid responses, rather than volumes of technical and legal jargon piling up evidence for why EPA's original decision was the only possible one.

Although the responsiveness summary represents the most visible and comprehensive vehicle for explaining EPA decisions to the public, it is only one component of a process. EPA should explain site decisions throughout the entire cleanup, rather than only at few key stages. That is, EPA must establish and maintain a dialogue through which we discuss site decisions as they develop, as well as make Superfund documents more available to the public throughout the cleanup process.

Conclusion:

Although Superfund has firmly established its ability to share information with, and receive it from, the public, the program nevertheless needs to better incorporate citizen concerns into site decisions. The recommendations outlined above will move Superfund closer to that goal. For more information regarding Community Relations in Superfund, contact Melissa Shapiro or Jeff Langholz of my staff at FTS 398-8340 or FTS 398-8341, respectively.

Attachment 2

Kerr-McGee Chemical Corp – Navassa OU2
Record of Decision
September 2022

The Multistate Trust posts additional information, such as meeting recordings, presentations, and fact sheets on navassa.greenfieldenvironmental.com. The EPA Site profile page also includes site documents at www.epa.gov/superfund/kerr-mcgee-chemical-corp.

The local information repositories provide computer access for the community to access the online administrative records and are located at the Navassa Community Center, 338 Main Street, Navassa, North Carolina, 28451, and Leland Library, 487 Village Road NE, Leland, North Carolina, 28451.

3.3 How the EPA Considered Community Input

Community involvement and input are vital for a successful remedial action. Community input has informed the following aspects of the EPA's Superfund decision making at the Site: the overall Site strategy; the EPA's determination of reasonably anticipated land use; and how the EPA evaluates risk at the Site. This section will summarize the role of community input in the Superfund process.

In the EPA's role as lead beneficiary of the Multistate Trust, the EPA works with the other beneficiaries and the Multistate Trust to ensure that community input, environmental justice considerations, and local control of land use decisions are guiding principles for the Multistate Trust's strategy to market the site property for community-supported reuse.

Since 2006, the Navassa community has helped the EPA's site team understand the history and cultural importance of the property to the community. Historically, the property provided housing, jobs, and recreation opportunities for the community. Historical aerial photos (Figure 2 and Figure 3) show the facility alongside agricultural areas, homes, a baseball field, and footpaths to the marsh. The property's location along the Brunswick River shaped its history and informs future uses. A rice plantation was located on the property before the Civil War. After the Civil War, a rural-industrial economy developed in the area. A bluff next to the property allowed barges to unload freight and became the location for a rail line connecting Wilmington to the rest of the country. The Navassa Guano Company, which imported guano from the Caribbean island of Navassa, used the bluff. Eventually, four fertilizer companies operated in the vicinity of the Site. A railyard developed in Navassa, North Carolina, as did other wood-treating company facilities. The community's entire river frontage consists of three properties: this Site, the active Pacon Manufacturing operation, and a former fertilizer plant, Estech. The Estech plant is vacant and is currently ready for industrial or commercial use following a 2011 cleanup.

Through community meetings in 2010 and 2011, the community explained that economic redevelopment of the Site and public access to the river were higher priorities than the cleanup of the source area. As a result, the EPA and the State agreed to shift the focus of the investigation from the most contaminated areas to the least contaminated areas, which have the highest potential for reuse.

In 2015, an EPA contractor conducted a technical assistance needs assessment and community interviews. In 2016 through 2018, the Multistate Trust engaged the community in regular meetings and a redevelopment planning initiative to understand possible future land uses and inform the risk assessments. The EPA based a 2019 OU1 Proposed Plan on the community's desire to see the Site remain under commercial or industrial uses. In 2019, when the community

decided that residential uses should also be possible in OU1, the EPA updated its anticipated land use to include residential uses. This led the Multistate Trust to collect 228 more samples in OU1 and OU2. In 2020, the EPA issued a revised OU1 Proposed Plan for a smaller OU1 that was acceptable for unrestricted use with no action. The EPA deleted OU1 from the NPL in September 2021, which should reduce barriers to redevelopment.

In 2020 and 2021, during quarterly community meetings, the community expressed concerns about stormwater runoff. The Multistate Trust conducted a detailed analysis of stormwater runoff and included it in the 2021 OU2 feasibility study (FS).

For OU2, the EPA also determined that the reasonably anticipated land use is a mixture of residential, commercial/industrial, and recreational. These future land uses form the basis for the exposure assumptions that are used for the OU2 risk assessments and for the development of remedial objectives and remedial alternatives.

During the June 14, 2022 OU2 Proposed Plan public meeting, a regional stakeholder raised concerns about off-site disposal of the OU2 soils in a Subtitle D (non-hazardous) landfill and recommended coordination with the NCDEQ Title VI and Environmental Justice Coordinator. The EPA, NCDEQ, and Multistate Trust engaged with the NCDEQ Title VI and Environmental Justice Coordinator, which led to additional outreach to local and regional stakeholders. The EPA incorporated this stakeholder input and concerns about environmental justice impacts into the EPA's nine criteria evaluation, leading EPA to re-evaluate five of the nine criteria. Incorporating this new information, this ROD selects Alternative 3 from the proposed plan, rather than Alternative 2, which was the preferred alternative presented in the Proposed Plan for public comment.

4.0 Scope and Role of the Response Action

The EPA's Site strategy is to expedite cleanup so that acreage becomes available for reuse, and to support partial deletions from the NPL as OUs are completed. The EPA manages the Site as five OUs, numbered in order from simplest to most complicated in terms of the extent of contamination and the required cleanup.

- OU1: The northernmost 20.2 acres of the Site, formerly used for treated and untreated wood storage. The boundary of OU1 was selected to only include areas requiring no action and no land use controls. The EPA issued a "no action" ROD in April 2021 and deleted OU1 from the NPL in September 2021.
- OU2: The 15.6-acre area south of OU1 and north of the process area. OU2 was used for treated and untreated wood storage. The extent of OU2 is drawn to include soils that require cleanup under CERCLA, but to exclude the former process area and groundwater contamination. OU2 is the subject of this ROD.
- OU3: The Southern Marsh, which consists of an about 30-acre area of tidally influenced marsh that borders the former facility boundary. OU3 will be addressed in a future action.
- OU4: The pond and former process area consists of a 36-acre area at the southern end of the former facility that includes the former facility pond area, the process area, and an area used for treated wood storage. OU4 will be addressed in a future action.