

Best Practices for Oversight and Enforcement of Community Involvement Requirements to Strengthen Environmental Justice at Federal Facility NPL Sites

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1) Purpose

This Best Practices Guide provides EPA regional Superfund teams with best practices for oversight and enforcement of community involvement (CI) requirements at federal facility National Priority List (NPL) sites. This includes newly proposed best practices and a compilation of existing resources for successful CI. By enhancing CI at federal facility NPL sites through these best practices and the resources included herein, EPA Regions can support EPA's environmental justice (EJ) efforts through their existing oversight role.

2) Background

On January 27, 2021, President Biden signed Executive Order (E.O.) 14008, which outlines a whole-of-government priority for addressing EJ by requiring that “Agencies [] make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts....”

Section 222(b)(i) of the E.O. directs EPA to “strengthen enforcement of environmental violations with disproportionate impact on underserved communities through the Office of Enforcement and Compliance Assurance [(OECA)]....” Administrator Regan reinforced this directive in his April 7, 2021, message to EPA. On July 1, 2021, the OECA Acting Assistance Administrator issued a policy titled *Strengthening Environmental Justice through Cleanup Enforcement Actions*, which directs cleanup enforcement staff to require responsible parties to take early and prompt cleanup actions, press for more robust enforcement instruments, and increase cleanup oversight.

Through this Best Practices Guide, OECA's Federal Facilities Enforcement Office (FFEO) is implementing the July 2021 policy's objective to “build trust and capacity through community engagement” by helping Regions improve their oversight of federal agencies' CI practices at NPL sites.

Numerous guidance and informational documents regarding CI at Superfund sites—specifically at federal facility cleanups—already exist on the EPA website. To minimize duplication of information, key documents are cited in the Resources section at the end of this document. These documents include the Office of Superfund Remediation and Technology Innovation (OSRTI) Superfund CI Handbook (in particular, Chapter 6: Cleanup Process at Federal Facility Sites on the NPL) and other key documents found on the Federal Facilities Restoration and Reuse Office (FFRRO) website.

While Other Federal Agencies (OFAs) (e.g., Departments of Defense, Energy, etc.) have the lead for cleaning up federal facility NPL sites, EPA exercises oversight authority to ensure that all CERCLA requirements are being met. Federal agencies must comply with substantive and procedural CERCLA requirements to the same extent as private entities. CERCLA¹ and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP)² require public participation in the CERCLA process. At federal facility NPL sites, EPA and the affected OFA negotiate a federal facility agreement (FFA) outlining the specific requirements for individual cleanups. CERCLA also requires OFAs to develop a Community Involvement Plan (CIP, a/k/a a Community Relations Plan). Of the approximately 175 existing FFAs, the majority identify CIPs as primary documents.³ Many other FFAs identify CIPs as secondary documents.⁴

3) Enforcement and Other Tools Available to Seek Implementation of CI Requirements

EPA has several mechanisms available to enforce CERCLA, NCP, and FFA CI requirements. FFEO recommends the Regions consider utilizing these tools at federal NPL sites where OFAs are not adequately meeting CI requirements. These tools are not mutually exclusive.

A) Dispute Processes

Dispute Resolution

FFAs establish processes for dispute resolution to address disagreements that arise under FFAs. Although the dispute resolution process is similar across FFAs, Regions should consult the FFA for a specific site and confirm the requirements for appropriate contacts and timelines for initiating dispute resolution at that site.

Tiered Partnering

For Regions that use tiered partnering or similar processes for oversight of federal facility NPL sites, those Regions could elevate CI issues within the tiered partnering process. These Regions could use such elevation to raise concerns to higher-level decision makers within the OFA, and to discuss how the OFA is implementing E.O. 14008 within the CERCLA process and NCP obligations.

¹ See 42 U.S.C. § 9617.

² See 40 C.F.R. § 300.430(c).

³ Regions should review the FFA for each given site and confirm how CIPs and primary documents are defined and treated. Generally, primary documents are documents that are major, discrete portions of Remedial Investigation/Feasibility Study or Remedial Design/Remedial Action activities.

⁴ Regions should review the FFA for each given site and confirm how CIPs and secondary documents are defined and treated. Generally, secondary documents are documents that are discrete portions of primary documents and are typically input or feeder documents.

Modification of CIP

Typically, an FFA's "Consultation" provision will include a process to update a primary document that the Remedial Project Manager (RPM) considers outdated or not representative of the current community. When a CIP is listed as a primary document, the RPM may seek to change the CIP based on new information (e.g., community makeup, increased population, or new information on amount of pollution burden) and inform the other FFA parties. If there is no agreement to modify the CIP, EPA may initiate a dispute under the FFA.

B) Traditional Enforcement

Stipulated Penalties

Typically, EPA can assess stipulated penalties for violations of an FFA's terms and conditions. If the CIP or other CI requirements are a term or condition of an FFA, a region could consider assessing penalties for an OFA's failure to meet CI requirements.

CERCLA § 109 Actions

Section 109 of CERCLA allows for assessment of civil penalties for certain violations under CERCLA, including violations of agreements under CERCLA § 120 (i.e., an FFA). Section 109 actions could be an enforcement option for pursuing violations of CERCLA and FFAs relating to CIPs.

4) Factors to Consider in Deciding Whether OFAs Are Adequately Meeting CI Requirements

Roles and Responsibilities

EPA should work closely with OFAs to clarify roles and responsibilities early in the cleanup process to promote successful CI at sites with potential EJ concerns.

- Role and Responsibilities of OFA:
 - Lead agency for CI activities at federal facility sites
 - Comply with CERCLA and NCP requirements related to CI activities.
 - Develop CIPs and ensure that CIPs or similar primary or secondary documents are successfully implemented at the clean-up site.
 - Coordinate with EPA and other clean-up partners (e.g., States, etc).
- Role and Responsibilities of EPA:
 - Ensure that all relevant EPA players, including RPMs, site attorneys, and Community Involvement Coordinators (CICs) are actively involved in encouraging the OFA to assess and meet community needs at the site.
 - Assist OFAs, as requested.

- Ensure that the OFA is implementing all applicable federal rules, regulations, and requirements governing CI activities.
- Encourage the RPM to advocate for early and meaningful CI.
- Advise the OFA, as appropriate, about planning and implementing CI activities.
- Bring community issues to the site team's attention, sharing best practices to address the situation.
- Immediately address any lapses in agreed-upon CI procedures or milestones.
- At sites impacting tribal communities, adhere to the [*1984 EPA Policy for the Administration of Environmental Programs on Indian Reservations*](#).
- Use EPA's networking capacity to encourage collaboration among stakeholders and with OFAs, state and local agencies, universities, and non-profits.
- Seek from States information on the characteristics of the communities surrounding the facility and information regarding other sources of contamination and releases to help inform EPA's understanding of impacted communities and their needs for improved EPA oversight.
- Seek from States knowledge of local organizations and events that may be useful for building relationships to help inform EPA's understanding of impacted communities and their needs for improved EPA oversight.

Proper Identification of Sites with EJ Concerns

RPMs are encouraged to use tools such as EJScreen to review demographic data and EJ Indexes to identify sites with EJ concerns. EJScreen is one of many tools for identifying information about surrounding communities that may raise challenging questions that require outreach and engagement to ground truth. For the most precise analysis, RPMs should use specific Operable Units or trace pathways of contamination and generate an EJScreen Report capturing the areas potentially impacted by any site-related environmental hazards. This could include drawing buffers to capture heavy truck traffic to and from a site or tracing the path of a contaminated groundwater plume. If an RPM has on-the-ground knowledge or is aware of EJ concerns from the impacted community, that knowledge may be used to identify a site as having potential EJ concerns. If OFAs need assistance in conducting EJ assessments of their sites, RPMs may refer them to EPA's Office of Environmental Justice and External Civil Rights or to FedCenter.gov, where many EJScreen training modules are posted. While OFAs may use other approaches, RPMs can use the above and other methods to provide input and oversight on whether OFAs have performed due diligence in identifying communities with potential EJ concerns.

Development and Implementation of the CIP

EPA RPMs and EPA CICs should provide input as OFAs develop new or revised CIPs. EPA can provide OFAs with examples of CIPs (*see* Key Additional Resources) and provide input on CIPs such as sample community interview questions designed to elicit EJ-related information (e.g., demographics). Best practices for successful development and implementation of CIPs include:

- Developing and refining a community profile to identify community organizations and ways the community receives and shares information.
- Conducting surveys and outreach to community leaders to determine the best way to communicate with the public and adjust CIPS to address community feedback and needs.
- Determining whether the community faces unique exposure pathways that may disproportionately burden that community, and its human and environmental health, compared to other communities (e.g., prevalence of subsistence fishing).
- Regularly assessing the CIP and determining if different and/or additional CI activities are needed to address community needs, and updating the CIP accordingly at an appropriate frequency, but no longer than at 5-year intervals.
- Ensuring staff leading community involvement efforts have appropriate skills and qualifications as a public participation practitioner.

To determine whether an OFA is fully and effectively implementing a CIP to the benefit of an affected community, Regional site teams should consider:

- Whether the CIP is specific to the affected communities and identifies potential EJ concerns. The CIP should be site-specific, not generic, and clearly address the needs of the affected communities.
- Whether the CIP is up-to-date and reflects new information such as changes in demographics or the presence of new affected communities with potential EJ concerns. Site teams should evaluate the CIP at least every five years to ensure that it accurately reflects the site surroundings and affected communities' needs.
- Whether the CIP is publicly available and easily accessible (also taking into consideration limitations in the community such as lack of internet, dominant language of the community, etc.). For other best practices associated with making the plan accessible, see the below section on dissemination of written materials.

RPMs can further support implementation of the CIP by regularly referencing the CIP as it relates to CERCLA process steps. For example, when the CERCLA process requires public notice, engage with the OFA to ensure that identified community members receive notice through the communication methods identified in the CIP as preferred methods.

Identifying and Involving Community Representatives

RPMs should encourage OFAs to identify a broad range of public entities that are potentially familiar with EJ concerns in the site CIP. Such entities may include local government officials, religious leaders, nongovernmental organizations, grassroots organizations, health care centers, concerned citizens, schools, local businesses, and members of Community Advisory Boards (CABs), such as Restoration Advisory Boards (RABs) or Site-Specific Advisory Boards (SSABs). OFAs should establish CABs that are representative of community perspectives and provide support for meaningful and early involvement in site decision-making. These boards comprise representatives of the OFA, EPA, major stakeholder groups, and concerned citizens

who are committed to reviewing site plans and sometimes receiving technical assistance. RABs at Department of Defense (DOD) sites or SSABs at Department of Energy (DOE) sites are examples of CABs. EPA works with DOD and DOE and their respective stakeholders at the local level by providing technical and regulatory input and addressing questions by the board members as needed. Community members should be encouraged to join CABs, which are more actively involved in providing input to site clean-up efforts and can serve as one conduit for keeping the broader community informed. CABs are not, however, a substitute for OFAs to provide meaningful and timely opportunities for *direct* community involvement by residents or interested parties.

Best Practices that RPMs can follow to foster advisory committee success include:

- EPA RPM and CIC representation at advisory board meetings.
- Ensuring that advisory board members represent a broad range of community interests and participate in site decisions and board meetings.
- Encouraging OFAs to establish good working relationships with the advisory board members, keeping the community well-informed of the board activities, and providing ample and early opportunities for community participation at board meetings.

Disseminating Written Materials

It is critical for site information to be widely and timely distributed to the public so that community members can be fully aware of site decisions and key developments. An informed community can provide valuable perspectives that help address EJ concerns. EPA RPMs can recommend the following best practices to OFAs including:

- Posting of concise, readily understood, and timely site fact sheets and press releases in dominant language(s) at key junctures in the cleanup process.
- Distribution of information in formats that are readily accessible, including internet postings in addition to hard copies.
- Location of Information Repositories/Administrative Record documents at a central location that is readily accessible by the public, such as the local school or library, to help address transportation concerns.
- Identification of key information that is most useful to share with the community related to contaminants and risks, such as profiles for selected key contaminants of concern.
- Distribution of information should include a contact mechanism (person/position, email, phone) for responding to questions and concerns and adding community members and organizations to distribution lists.

Holding Public Meetings

Public meetings represent indispensable opportunities for community members to increase their awareness and understanding of site developments by directly engaging with the site cleanup teams on their questions and issues. EPA RPMs can recommend the following best practices to OFAs for successful public meetings, including:

- Strategic planning and publicizing of public meetings to maximize attendance (e.g., holding meetings outside of business hours or on weekends), with participation by key members of the cleanup team (e.g., RPMs, CICs, EJ coordinators, and site attorneys from both OFAs and EPA); consider EPA cohosting public meetings with OFAs.
- Establishing an on-site office in the neighborhood, preparing site videos, and conducting door-to-door outreach.
- Conducting and publicizing regular on-site tours during hours when the public is available (to encourage participation by working families) and providing transportation (to help address limited accessibility).
- Providing verbal and written translation and interpretation for predominant non-English languages spoken in the community.
- Providing transcription, including making transcripts publicly available in accordance with CERCLA § 117(a), where applicable.

Empowering Communities

EPA RPMs should encourage OFAs to provide support for community knowledge building and capacity building by sharing with the community specific resources that are available for technical assistance. Community Technical Advisors (CTAs) can assist with the community's understanding of complex technical and scientific information (such as testing data and risk assessments) and can also help the community better engage in site decision-making. Some of the best practices that can help empower communities include:

- Ensuring that an evaluation of the technical assistance needs of the community is conducted early in the cleanup process, ideally when the CIP is being developed.
- Informing communities of the availability of technical assistance funding and providing useful information on how to secure these resources. Such resources include EPA Technical Assistance Grants (TAGs), where the community applies for and is the direct recipient of these grant funds. Other sources may include EPA's Technical Assistance Services for Communities (TASC) where EPA hires a technical advisor to support the community and community members' involvement in the cleanup process. OFAs may also have such resources; for example, the Department of Defense has a Technical Assistance for Public Participation (TAPP) program that operates similarly to EPA's TASC.

5) Key Additional Resources

Below is a non-exhaustive list of useful resources that include additional best practices.

- [Superfund Community Involvement Tools and Practices](#) (particularly, Community Profiles)
- [Superfund Community Involvement Handbook](#) (particularly, Chapter 6 “Community Involvement at Federal Facilities)
- [Community Involvement Plans \(CIPs\) Tool](#)
- Community Involvement Plan Examples:
 - [2019 Colorado Smelter Community Involvement Plan Update](#)
 - [Community Involvement Plan for the Lower Passaic River - July 2017](#)
- [EPA public participation clearing house webpage](#)
- FFRRO’s [webpage](#) on Restoration Advisory Boards (RABs)
- [2007 Restoration Advisory Board \(RAB\) Handbook](#)
- [FedCenter information and training materials related to community involvement and EJ](#)
- [Superfund EJ Case Study Webinar Series](#) (five archived webinars covering several useful topics at various private party sites)
- [EPA Conflict Prevention and Resolution Center](#)

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