



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

AUG 31 2007

**MEMORANDUM**

**SUBJECT:** Response to the Office of Inspector General's June 6, 2007 Evaluation Report, "EPA Needs to Take More Action in Implementing Alternative Approaches to Superfund Cleanups"

**FROM:** Granta Y. Nakayama, Assistant Administrator  
Office of Enforcement and Compliance Assurance (OECA)  
*Granta Y. Nakayama*  
Susan Parker Bodine, Assistant Administrator  
Office of Solid Waste and Emergency Response (OSWER)  
*Susan Parker Bodine*

**TO:** Carolyn Copper, Director for Program Evaluation  
Hazardous Waste Issues  
Office of Inspector General (OIG)

---

On June 6, 2007, OECA and OSWER received OIG's final evaluation report, "EPA Needs to Take More Action in Implementing Alternative Approaches to Superfund Cleanups." OECA's Office of Site Remediation Enforcement (OSRE) and OSWER's Office of Superfund Remediation and Technology Innovation (OSRTI) jointly oversee implementation of the Superfund Alternative (SA) approach and together prepared this response.

Our response has two components: overall comments (below) and specific comments to report recommendations along with milestones where appropriate (see Attachment 1).

**OVERALL COMMENTS**

- We concur with some of OIG's recommendations and, as specified in the attached chart, have initiated or plan to take corrective actions that address these recommendations. As you are aware, OECA/OSWER has conducted its own evaluation of the SA approach and, as a result, we have initiated or plan to initiate a number of actions that generally comport with the OIG's recommendations. Per your request, OSWER/OECA has provided estimated milestone dates for many of the recommendations.

- The SA approach is being used at a small percentage of sites. The tone of OIG's final report and broad scope of the recommendations suggest the approach is being widely used.
- OSWER/OECA continue to be troubled by the negative tone of OIG's report. OIG has stated that its goal was to report objectively on its findings. However, the final report as written appears to disproportionately reflect the limited feedback OIG solicited from two PRP groups rather than the extensive information OECA/OSWER provided OIG on this evaluation and other OIG evaluations examining the SA approach.
  - OECA/OSWER staff educated OIG staff generally on the Superfund program and Superfund enforcement and specifically on the SA approach; provided data and data analysis; responded to written and oral questions; and participated in numerous meetings and conference calls at OIG's request, often on very short notice. OECA and OSWER management also participated in numerous meetings over the course of the evaluation.
- In several places the report uses the term "subject to abuse", attributing it to comments made to authors of another report, but provides no evidence of abuse.
- As we indicated when we met with you during the exit conference, and on other occasions, the only way to score a site is to use the Hazard Ranking System. There are different software tools for performing preliminary site scoring, such as Pre-score and QuickScore. The final evaluation does not reflect this fact.
- We appreciate the removal of Recommendation 4-3, as OSWER/OECA/OGC all concur that negotiating and entering SA agreements does not deprive potentially responsible parties (PRPs) of any due process rights.

If you have questions about OSWER/OECA's response, please contact Ken Patterson (202-564-5134) in OSRE or Elizabeth Southerland (703-603-8855) in OSRTI.

Attachments

cc:

Barry Breen, OSWER  
 Lynn Buhl, OECA  
 Mary Kay Lynch, OGC  
 Earl Salo, OGC  
 Susan Bromm, OSRE  
 James Woolford, OSRTI

**ATTACHMENT 1**

**EPA/OIG Evaluation Report: EPA Needs to Take More Action in Implementing Alternative Approaches to Superfund Cleanups (6/6/07)**

| Rec # | EPA/OIG Recommendation                                                                                                                                                                                                                                                                                                                                                                                | OSWER/OECA Response / Corrective Action Plan                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2-1   | Publish a universe of SA sites that meets the SAS eligibility criteria and are designated SA sites and regularly update the list as the universe changes.                                                                                                                                                                                                                                             | <ul style="list-style-type: none"> <li>• While OECA/OSWER disagrees with the specifics of this recommendation*, we will be taking action that we believe meets the spirit of the recommendation.</li> <li>• Our August 2007 (estimated release) evaluation report identifies the number of sites actively using the SA approach as of January 2006 (i.e., non-NPL sites with an agreement for RI/FS, RD, RA, or NTCRA finalized after the June 2002 SAS Guidance was issued).</li> <li>• By 12/31/07, OSWER/OECA will have compiled an updated list of sites with agreements consistent with the SAS guidance and that meet eligibility criteria. This list will be posted on the internet.</li> <li>• OSWER/OECA will periodically update this list – at least annually.</li> </ul> <p>* OECA/OSWER will not attempt to identify a universe of sites that meet the SAA criteria. Such a list would be outdated as soon as it was published, and would serve little purpose, as most of the sites on such a list are not likely to use the SA approach. In addition, as we have learned through our own evaluation, identifying a site as SA can be misleading, especially if there is other, non-SA approach work ongoing at the site.</p> |
| 2-2   | Develop specific instructions on when to use the SA designation (e.g., for sites or agreements) and update the Superfund Program Implementation Manual (SPIM) accordingly. The instructions should include provisions that state the SAS flag should not be removed even if the site is deleted, cleaned up, or proposed for the NPL, so that controls over documentation of SA sites are maintained. | <ul style="list-style-type: none"> <li>• OECA/OSWER agrees with this recommendation as follows. By 9/30/08 OSWER/OECA will update the SPIM to specify that regions should use the “SA flag” in CERCLIS to specify agreements consistent with the SAS Guidance at sites satisfying eligibility criteria.</li> <li>• OSWER/OECA will specify in the SPIM that once an agreement has been given the SA flag (or an equivalent indicator), the flag should remain on the agreement even if the site ultimately is cleaned up under an approach other than SA (e.g., the site is later listed on the NPL).</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

|     |                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2-3 | Establish and direct Regions to use a consistent HRS scoring method that is acceptable and reliable for designating a Superfund Alternative site. At minimum, documentation on the score should be verifiable.                                                                                                          | <ul style="list-style-type: none"> <li>• <u>OSWER/OECA agrees with this recommendation, and we have already accomplished it.</u> Nevertheless, OSWER will reiterate to the Regions to use the same scoring process to score sites using the SA approach as they use to prepare an HRS package for listing a site on the NPL – the HRS scoring process (and tools that facilitate this process). These requirements are described in 40 CFR Part 300 Appendix A. In addition, 40 CFR Part 300 Appendix A provides a set of score sheets to assist in appropriate site scoring. OSWER will complete this milestone by 9/30/07.</li> </ul> |
| 3-1 | Track and report all Superfund GPRA measures at SA sites. This includes construction completions, final remedy selection, human exposure under control, migration of contaminated groundwater under control, and sitewide ready-for-reuse. Report GPRA measures at SA sites separately from GPRA measures at NPL sites. | <ul style="list-style-type: none"> <li>• OECA/OSWER agrees that more tracking and reporting on sites with SAA agreements will be useful, and will do the following:</li> <li>• OECA will continue tracking and reporting GPRA enforcement measures at sites using the SA approach.</li> <li>• OSWER will track and report GPRA measures at sites with SA agreements through an annual end-of-the-year report beginning in FY 2008.</li> </ul>                                                                                                                                                                                           |
| 3-2 | Revise applicable guidance, manuals, or directives to reflect that these performance measures will be tracked and reported for SA sites.                                                                                                                                                                                | <ul style="list-style-type: none"> <li>• OECA/OSWER agrees that the SPIM manual should be modified to better reflect what is being tracked for sites with SAA agreements.</li> <li>• As specified above (Recommendation 2-2), OSWER/OECA will update the SPIM by 9/30/08.</li> <li>• At this time, OSWER/OECA does not see a need to update other documents.</li> <li>• OSWER/OECA will consider the most appropriate way to educate Regions on the necessary data input for sites with SA agreements. OSWER/OECA intends to provide such instruction by 9/30/08.</li> </ul>                                                            |
| 4-1 | Determine the complete list of site assessment information regions can share with PRPs during SA site negotiations.                                                                                                                                                                                                     | <ul style="list-style-type: none"> <li>• OECA/OSWER agrees to restate what Regions can provide PRPs, when available. Such restatement will take by 9/30/08.</li> <li>• At sites using the SA approach that have not been proposed to the NPL, Regions can provide PRPs with site assessment reports, such as the PA, SI, and ESI reports. Data from these reports</li> </ul>                                                                                                                                                                                                                                                            |

|     |                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |                                                                                                                                                                                                                                                                        | can be input into "Quick Score" (developed by EPA and available on the internet) to calculate a preliminary HRS score.                                                                                                                                                                                                                                                                                                                                                           |
| 4-2 | Revise the SAS general notice letter to include specific details about how site assessment information should be shared with PRPs during SA site negotiations. The revisions should include the complete list of site assessment information (see recommendation 4-1). | <ul style="list-style-type: none"> <li>OSWER/OECA will revise the sample general notice letter by 9/30/08 to include more specific information about the site assessment information that can be shared with PRPs.</li> <li>OSWER/OECA's August 2007 (estimated release) evaluation report clarifies that, at sites using the SA approach, Regions can provide PRPs with PA, SI and ESI reports.</li> </ul>                                                                      |
| 5-1 | Develop, and release to the public, a communication and outreach strategy, to include information on how a site becomes an SA site, the benefits of the SA approach, and SA site progress profiles.                                                                    | <ul style="list-style-type: none"> <li>OSWER/OECA will consider the need for a communication and outreach strategy, or other public education documents or methods specific to the SA approach.</li> <li>By 12/31/07, OSWER/OECA will post on the internet a list of sites using the SA approach.</li> <li>OSWER/OECA will periodically update this list, at least annually.</li> <li>By 9/30/08, EPA's web site will include the appropriate site progress profiles.</li> </ul> |
| 5-2 | Direct regions to discontinue use of terms such as NPL caliber and NPL equivalent to describe the status of SA sites, or the SA approach.                                                                                                                              | <ul style="list-style-type: none"> <li>OECA/OSWER agrees that it is confusing to use multiple titles to describe a specific tool, policy or approach.</li> <li>By 9/30/08, OSWER/OECA will have made educational efforts with EPA Regions about implementation of the SA approach, including use of appropriate terminology.</li> </ul>                                                                                                                                          |
| 5-3 | Finalize, and release to the public, the TAP guidance for SA sites.                                                                                                                                                                                                    | <ul style="list-style-type: none"> <li>OSWER/OECA anticipate issuing this guidance by 9/30/07.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                        |

## ATTACHMENT 2

### **OIG Evaluation Report: EPA Needs to Take More Action in Implementing Alternative Approaches to Superfund Cleanups (6/6/07)**

#### Additional Comments Not Tied to Particular Recommendations

##### *At a Glance Section*

- Here, and in other places in the report, OIG discusses the need to “finalize the universe of [SA] sites.” More accurate wording would be to “finalize the criteria for flagging in CERCLIS a site using the SA approach.” By its optional nature the SA “universe” is dynamic. Sites that meet the SA approach criteria will not necessarily have an SA approach agreement. Thus, it would not be prudent or useful to “finalize the universe of [SA] sites.”
- We recognize that OIG has spoken with some external parties recently about their views on the SA approach. However, references to comments made by internal and external parties in 2004 (e.g., the 120 Day Study, the NACEPT Subcommittee report) are no longer “recent.”

##### Chapter 4

- The OIG references feedback from its discussions with NAM. EPA notes that NAM has not met with OSWER/OECA on this topic.

##### Appendix D

- OSWER/OECA suggested OIG remove the last sentence referencing the Supreme Court ruling in *Cooper Industries, Inc. v. Aviall Services, Inc.* Aviall-related issues are not unique to sites using the SA approach. Furthermore, the case law on cost-recovery issues changed substantially post-Aviall, and we anticipate further changes as a result of the Supreme Court’s June 2007 decision in *Atlantic Research Corporation vs. United States*.