Superfund Program – Materials for the March 17th SLT Meeting

Superfund 101

The Superfund Program plays a vital role in protecting human health and the environment. The Superfund program responds to the release and potential release of hazardous wastes at sites in the Rocky Mountains and Plains. Superfund activities include both short-term and emergency cleanups as well as long-term remedial actions at National Priorities List (NPL) and Superfund Alternative Approach sites.

The Remedial Program oversees long-term cleanup of the most complex contaminated sites. The Denver and Helena offices work closely with many partners – state, local and tribal governments, businesses, non-governmental organizations, communities and individuals – to ensure the protection of human health and the environment at these sites. While states are key partners in the program, the Superfund Program is a non-delegable, direct implementation program. Superfund also functions in an oversight role at Department of Energy and Department of Defense Federal Facility sites.

From start to finish, the Superfund process requires resources from many of the Region's Offices and Programs. Specifically: EPR-SR/MOO, EPR-S, EPR-AR, EPR-ER, TMS-FMP, TMS-GAP, OCPI/MOO, ENF-L and ENF-RC/MOO.

Superfund Cleanup Process

Preliminary Assessment/Site Inspection (PA/SI)

The preliminary investigation of site conditions to determine a path forward.

National Priorities List (NPL) Site Listing Process

The NPL is a list of the country's most seriously contaminated sites.

Remedial Investigation/Feasibility Study (RI/FS)

An evaluation of the nature and extent of contamination at the site and an evaluation of potential treatment technologies.

Record of Decision (ROD)

A summary of cleanup alternatives and the proposed/selected remedy.

Remedial Design (RD)

The preparation of plans and specifications for the selected site remedy.

Remedial Action (RA)

The implementation/construction of the selected remedy.

Post Construction

The long-term monitoring and protection of the remedy. Specifically: Long-Term Response Actions (LTRA), Operations and Maintenance (O&M), Institutional Controls (ICs), Five Year Reviews, and Remedy Optimization.

Community Involvement

CERCLA, as implemented by the NCP, requires specific community involvement activities at certain points throughout the Superfund process.

Superfund Office/Program Roles and Responsibilities

Site Assessment Program (EPR-AR) - PA/SI and NPL Listing

The Site Assessment Program works with states and tribes to assess and prioritize Hazardous waste sites for cleanup. In conjunction with states and affected tribes, the program evaluates sites to determine whether they need to be addressed and whether they qualify for listing on the NPL. Site Assessment Managers evaluate sites for potential threats to public health and the environment. If it is determined that another program could better address site conditions, Site Assessment Managers direct sites to different programs, such as the Superfund Emergency Response program, the Resource Conservation and Recovery Act (RCRA) program or state voluntary cleanup programs.

Supporting Offices/Programs: EPR-SR/MOO, EPR-S, EPR-ER, TMS-FMP, TMS-GAP, OCPI/MOO, ENF-L and ENF-RC/MOO.

Superfund Remedial Program (EPR-SR/MOO) – PA/SI, RI/FS, ROD, RD, RA and Post Construction

The Remedial Program is a multi-media, community-centered program. It is responsible for investigating contaminated sites, selecting appropriate remedies, conducting remediation and ensuring the long-term protectiveness of the remedy. Remedial Program staff manage multi-discipline, cross-regional teams and along with OCPI/MOO staff are the most visible government presence in the impacted communities.

Supporting Offices/Programs: EPR-S, EPR-ER, EPR-AR, TMS-FMP, TMS-GAP, OCPI/MOO, ENF-L and ENF-RC/MOO.

Emergency Response and Preparedness (EPR-ER) – Removal Actions and RA

The Superfund Emergency Response Program responds rapidly to releases of hazardous substances and oil to protect human health and the environment. Emergencies range from small-scale spills to large events requiring prompt action and evacuation of nearby populations. Removal staff work with local, state and tribal responders to investigate and clean up environmental contamination.

Supporting Offices/Programs: EPR-SR/MOO, EPR-S, EPR-AR, OCPI/MOO, TMS-GAP, TMS-FMP, ENF-L and ENF-RC/MOO

Support Program (EPR-S) - PA/SI, RI/FS, RD, RA, ROD, Removal Actions and Post Construction

The Support Program provides: 1) internal science and toxicology expertise in the form of Human Health and Ecological Risk Assessment, Chemistry and Hydrogeology support; 2)

budget/financial management; State, tribal and community grant and contract management; and 3) data systems support (data management, analytic/laboratory services, GIS support, and records management).

Supporting Offices/Programs: EPR-SR/MOO, EPR-AR, EPR-ER, TMS-FMP, TMS-GAP, OCPI/MOO, ENF-L and ENF-RC/MOO

Community Involvement (OCPI/MOO-PAI) - PA/SI, NPL Listing, RI/FS, RD, RA, ROD, Removal Actions and Post Construction

Superfund requires community involvement support to ensure early and often community involvement at sites. Community outreach and engagement are core components of the Superfund commitment to safe, healthy communities and environmental protection. The PAI Program provides community involvement and outreach expertise including community education about the site, community outreach assessment and planning, identification of key stakeholders, conflict resolution, technical support services and grants to communities, Community and Technical Advisory Group support, and media, local, State and Congressional relations. Supporting Offices/Programs: EPR-SR/MOO, EPR-S, EPR-AR, EPR-ER, TMS-GAP, ENF-L and ENF-RC/MOO

Legal Enforcement (ENF-L) - PA/SI, NPL Listing, RI/FS, RD, RA, ROD and Post Construction

Superfund involves federal administrative and judicial CERCLA matters against potentially responsible parties. Superfund requires legal and policy support to ensure regulatory compliance in the region's cleanup activities. Superfund responsibilities include the preparation/issuance of administrative orders; preparation of judicial referrals; administrative and judicial litigation with attendant hearings; preparation of consent orders and decrees; and counseling involving NCP compliance, FOIA and Confidential Business Information issues.

Supported Offices/Programs: EPR-SR/MOO, EPR-AR, EPR-ER, TMS-FMP, TMS-GAP, OCPI/MOO and ENF-RC/MOO

Technical Enforcement (ENF-RC/MOO) - PA/SI, NPL Listing, RI/FS, RD, RA, ROD and Post Construction

The cornerstone of Superfund is the unique legal authority which compels the Agency to ensure, to the extent possible, those responsible for creating Superfund sites to either cleanup the site themselves or to reimburse EPA for costs incurred for cleanup. The Superfund program seeks to identify those responsible (the potentially responsible parties or PRPs), recover EPA response costs, manage large volumes of data collected from PRPs, lead complex and often sensitive investigations and/or interviews, investigate past practices and relationships at Superfund sites, and testify as an EPA fact witness in enforcement actions.

Supported Offices/Programs: EPR-SR/MOO, EPR-AR, EPR-ER, EPR-S, TMS-FMP, TMS-GAP, OCPI/MOO and ENF-L.

Technical Management Services – Grant and Audit Procurements (TMS-GAP) - PA/SI, NPL Listing, RI/FS, RD, RA, ROD and Post Construction

Superfund contract and grant support is on-going at the majority of the region's superfund sites. Examples include: START IV, risk assessment, Rocky Mountain Arsenal, and ERRS IV contracts and approximately 40 cooperative agreements.

Supported Offices/Programs: EPR-SR/MOO, EPR-AR, EPR-ER, EPR-S, TMS-FMP, OCPI/MOO, ENF-RC/MOO and ENF-L.

Technical Management Services – Financial Management Program (TMS-FMP) - PA/SI, NPL Listing, RI/FS, RD, RA, ROD and Post Construction

The Superfund program expends between $50M and $100M annually through contracts, grants and interagency agency agreements. A high percentage of the funds expended are funds from responsible parties as a result of cost recovery requiring enforcement cost documentation and cash receivable tracking and management.

Supported Offices/Programs: EPR-SR/MOO, EPR-AR, EPR-ER, EPR-S, TMS-GAP, OCPI/MOO, ENF-RC/MOO and ENF-L.

Technical Management Services – Quality Assurance (TMS-QA) - PA/SI, NPL Listing, RI/FS, RD, RA, ROD and Post Construction

The goal of the Quality System is to ensure environmental data used to support Agency decision-making are of appropriate quality, quantity, and usability; reproducible; traceable; have scientific integrity; and defendable in a court of law.

Supported Offices/Programs: EPR-SR/MOO, EPR-AR, EPR-ER, EPR-S, TMS-GAP, OCPI/MOO, ENF-RC/MOO and ENF-L.

Superfund Workload and Prioritization

The Denver and Montana Offices currently manage approximately 90 NPL and NPL-equivalent Superfund sites. The Superfund workload across each Office/Program includes proposed sites, newly listed sites, NPL-equivalent sites (or Superfund Alternative), RI/FS/RD/RA sites, post construction sites, and sites requiring more attention due to new contaminants or remedy related issues.

The Superfund program is a non-delegable program. The CERCLA statute obligates EPA to address the risk of exposures to the public and the environment. The program has successfully completed cleanup work at various sites across the region and has reduced efforts at non-NPL and lower priority sites. De-listed sites often require on-going attention due to waste left in place, new contaminants and statutory five year reviews. The Superfund workload continues to grow due to new NPL listings and initial remedial work at future (non-NPL) sites (e.g. Colorado Smelter, Columbia Falls Aluminum, Upper Animas). These sites require significant staff and extramural resources. Additionally, a national suite of Superfund contracts (Remedial

Acquisition Framework) are transferring to the region from Headquarters. The new suite of contracts will be enormously work intensive for RPMs (task order administration and construction field oversight) and contract staff (competing work at the task order level). Ensuring long-term protection/stewardship of remedies through institutional controls and Operation and Maintenance is a critical component of the Superfund process. Long-term stewardship requirements also require working with communities on the re-use and redevelopment aspects of cleaned up sites. Revised Agency guidance on community involvement at sites, the national Community Engagement Initiative, and critical IG reports on community outreach have resulted in increased national community involvement service interest and has led to maintaining the accuracy of websites and other social media.

Special Account – Salary Charging Analysis

The Program reviewed existing special account settlements and evaluated the potential to utilize these accounts to supplement allocated Superfund resources.

In Feb. 2015, the Superfund Remedial Program, the Superfund Support Program and the Montana Office conducted a comprehensive analysis of Region 8 NPL sites with special accounts. Denver and Helena Remedial Program Managers:

1. Identified all the sites in Region 8 with special accounts.
2. Analyzed/reviewed actual FY14 special account site charging.
    a. Twenty-Seven (27) Superfund sites were identified as sites generating special accounts.
    b. Actual site charging at these 27 sites totaled 21 FTE; i.e., in FY14, 21 FTE could have charged payroll for all or a portion of their time to these special accounts.
3. Reviewed the future workload at each site and determined that 10 sites had *5 years or more of intensive future work* and *available/projected of future funding* and that these 10 sites and the special accounts for these sites could support the salary for 9.5 potential FTE.
4. The region discussed this approach with OSWER managers and received their support to utilize special account funds for paying salary at the expense of funding extramural needs. The degree to which the regions choose to utilize special account funds for payroll is a regional decision.
5. The Program met with TMS staff. Financial Management/TMS-FMP management believes that it can absorb the additional workload associated with tracking special account payroll charging as long as the Program limits the number of sites being site charged. However, it is possible that TMS-FMP may need additional resources to support this activity.
6. Although 9.5 FTE were identified as potential supportable for special account payroll charging, the workgroup agreed that an additional level of conservatism should be considered and recommends only 6 FTE be charged to special accounts. Note: these 6 FTE do not directly align with the potential special account that could be used for payroll; staffing plans would need to be adjusted accordingly.
7. EPR-SR currently has 6 RPMs eligible for retirement and 8 RPMs eligible for retirement in the next 5 years. Additionally, EPR-SR has not back-filled it last three vacancies. EPR-ER believes they have 3 OSCs eligible for retirement and at least 2 OCS eligible for retirement in the next 5 years. ENF-L has 1 known retirement in FY15. ENF-RC currently has 1 FTE working in the Seattle Office, that FTE will be lost to the region in FY15. And, all 4 FTE in TMS-QA are eligible for retirement.

Sites with greatest potential for Special Account Payroll Charging			
Site Name	**FTE**	**SA Type ***	**Comment**
Rocky Mountain Arsenal	0.50	RE	This would be in addition to current 1.0 FTE
Anaconda Smelter	1.00	CO	5 -10 years of additional work
ACM/Great Falls Refinery	0.50	RE	10 + years of additional work
Kennecott (various OUs)	1.00	RE	5 - 10 years of additional work
Silver Bow Creek	2.00	CO	10 + years of additional work
Milltown Reservoir	0.50	CO	5 + years of additional work
Gilt Edge Mine	0.75	CO	10 + years of additional work
Libby Asbestos OU3	0.75	RE	10 + years of additional work
U.S. Magnesium	1.50	RE	10 + years of additional work
Lincoln Park/Cotter	1.00	RE	5 -10 years of additional work
	9.50		

* FTE = Based on an analysis of actual charging in 2014.

These FTE are less than the actual charging and are conservative estimates of potential FTE charging commitments that could be made.

** CO = Cash Out (one time cash settlement with responsible parties)

Salary dollars generally represent a small percentage of the overall cost of conducting the work. Payroll charging against special accounts is widespread in other regions. This approach is consistent with OSWER's emphasis on utilizing special accounts for near-term work.

* RE = Reimbursable (special accounts are replenished annually)

Salary dollars are replenished based upon previous year cost packages.

Summary and Next Steps

The Superfund Program workload centers around the 90 NPL sites managed in the Denver and Montana Offices. The workload encompasses everything from site assessment, removal, remedial, post construction, enforcement actions and cost recovery and touches EPR, OCPI/MOO, ENF, TMS and the Montana Office. The Superfund Program is dependent on its internal resources (site assessment managers, remedial project manager, project officers, enforcement specialist, attorneys, etc.) and its reliance on community, state and local government partnerships. Furthermore, the Superfund Program is reliant on its contracts, grants and interagency agreements to accomplish work and meet community expectations.

Each Superfund Program Office has strived to create efficiencies through process improvements; sharing resources; prioritizing work; reducing grant funding to states and local governments; funding contracts, grants and interagency agreements below optimum project levels; and where possible, cutting back on services.

The Superfund Program Functional Needs Assessment identified 6 critical functional needs. Specifically, project officer duties, legal and technical enforcement activities, contract officer duties, community involvement duties and remedial project management. These needs are based upon vulnerabilities with managing Superfund contracts, grants and interagency agreements (one FTE is managing over 50 contracts, grants and interagency agreements; and a new suite of contracts transitioning to the region in FY16); ensuring responsible parties conduct investigations and cleanups and/or collecting reimbursements for past and future costs (there are approximately 100 open/unassigned cases in ENF-L; enforcement specialists manage approximately 50 cases each); meeting statutory community involvement requirements (limited Federal Facility and Emergency Response support), and effectively managing current and future sites (new NPL listings and new problems at old Superfund sites.)

Based upon the Site Charging – Special Account Analysis, the Deputies Group and SLT are in a position to evaluate the results of the Functional Needs Assessment and determine if the six critical functional needs can/should be addressed above the region's FTE ceiling using special account funds. Reimbursable charging does not count against our regional Superfund ceiling. Consideration will also have to be given to what specific PRC code may be freed up if staff begin charging to special accounts. There are 12 Superfund PRC codes. We may have specific ceilings by PRC code which could limit flexibility in deploying Superfund resources to certain functions (e.g., if RPM charging was freed up through use of special account funds, that PRC code should not be used for Superfund enforcement charging.) Note: more than half of EPA's regional offices support staff with special account payroll. Their processes could serve as a model/starting point for Region 8.

Other things to consider if the Region decides to go forward with this recommendation (initial list.)

- How will this plan work?
- What is the implementation strategy?
- Who will receive special accounts payroll and what flexibility does that give us to deploy resources across Superfund programs where they are most needed? (i.e., what PRC is freed up as a result?)
- Overhead can't be charged to special accounts so how do we factor this in to our budget planning.
- Other…