



**Initial Guidance for Implementing the
Superfund Remedial Program Provisions of
the American Reinvestment and Recovery Act of 2009**

U.S. Environmental Protection Agency
Office of Superfund Remediation and Technology Innovation (OSRTI)
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Section 1 – General Information

1.1 Why is EPA issuing this guidance?

The U.S. Environmental Protection Agency (EPA) developed this guidance in response to the American Recovery and Reinvestment Act of 2009 (“Recovery Act” or “Act”) which provides a supplemental appropriation of \$600 million for Superfund remedial activities authorized by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)¹. The Recovery Act requires unprecedented levels of transparency, accountability, and oversight to ensure that taxpayers know how, when, and where their tax dollars are being spent. This program guidance is a resource to assist Headquarters and Regional Superfund remedial program offices in the effective management of Recovery Act activities and to help ensure that EPA expends the Recovery Act funds in an accelerated and accountable manner.

1.2 What is in this guidance?

This guidance provides information on the implementation requirements of the Act for the Superfund remedial program, the communication and reporting processes related to Recovery Act funds, enhancements to standard budget execution procedures, and funding award implementation information.

The goal of this guidance, consistent with the Office of Management and Budget’s (OMB’s) accountability objectives for all agencies, is to establish and clarify the requisite steps the Superfund remedial program, in consultation with Regional acquisition offices, must take to meet the following crucial accountability requirements of the Recovery Act:

- Funds are awarded and distributed in a prompt, fair, and reasonable manner;
- The recipients and activities related to all funds are transparent to the public and the benefits of these funds are reported clearly, accurately, and in a timely manner;
- Funds are used for authorized purposes and instances of fraud, waste, error, and abuse are mitigated;
- Projects funded under this Act avoid unnecessary delays and cost overruns; and
- Program goals are achieved, including specific Superfund remedial program performance measure outcomes.

¹ This document provides guidance to Regional staff and states regarding how the Agency intends to interpret and implement the American Recovery and Reinvestment Act of 2009. This document does not impose legally binding requirements, nor does it confer legal rights, impose legal obligations, or implement any statutory or regulatory provisions. This document does not change or substitute for any statutory or regulatory provisions. Any decisions regarding a particular situation will be made based on the statute and the regulations, and EPA decision-makers retain the discretion to adopt approaches on a case-by-case basis that differ from the guidance where appropriate.

EPA's goal is to obligate all Recovery Act funds by the end of FY 2009 (statutory deadline is 2010). Work conducted with Recovery Act funds will supplement the current cleanup activity projected to occur using base appropriated program resources.

1.3 To whom does this guidance apply to?

The provisions of this guidance apply to all EPA offices involved in or affected by the Superfund remedial activities funded by the Recovery Act. States should work with EPA Regions to ensure funds are used consistent with the Act.

1.4 Who is responsible for ensuring the requirements in this guidance are met?

The National Policy Managers for the Superfund remedial program are the responsible officials for ensuring that EPA implements and expends Recovery Act funds in accordance with the requirements of the Recovery Act and the related procedures outlined in this guidance. In Headquarters, the responsible official is the Director of the Office of Superfund Remediation and Technology Innovation (OSRTI). In the Regions, the responsible officials are the Superfund Program Division Directors.

On March 20, 2009, President Obama issued a memorandum, *Ensuring Responsible Spending of Recovery Act Funds*, which establishes requirements for ensuring merit-based awards, avoiding imprudent projects, and disclosing communications with lobbyists. All federal personnel involved in Recovery Act implementation must closely review this memorandum and take all necessary steps to ensure full compliance. The memorandum can be found at http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-20-09/. On April 3, 2009, OMB issued an update to its initial guidance, providing a second installment of government-wide guidance. The April guidance supplements, amends, and clarifies the initial guidance. That memorandum can be found at <http://www.recovery.gov/sites/default/files/m09-15.pdf>.

1.5 How will the Superfund program ensure accountability for Recovery Act implementation?

The Superfund program will ensure that the expenditure and monitoring of Recovery Act funds is transparent and that appropriate, qualified, and certified staff oversee the use of Recovery Act resources. Working with established Agency and Recovery Act guidelines, the Superfund program will ensure that it monitors and reports Recovery Act resource utilization and project progress in an effective and timely manner. The responsible officials for the Recovery Act funding (the Director of OSRTI and the Regional Division Directors) will have timely and regular meetings to assess implementation progress and resolve any issues related to Recovery Act-funded projects. In addition, EPA will update personnel performance standards for Agency management and staff to reflect Recovery Act management and oversight activities.

1.6 What are the roles and responsibilities of other EPA offices?

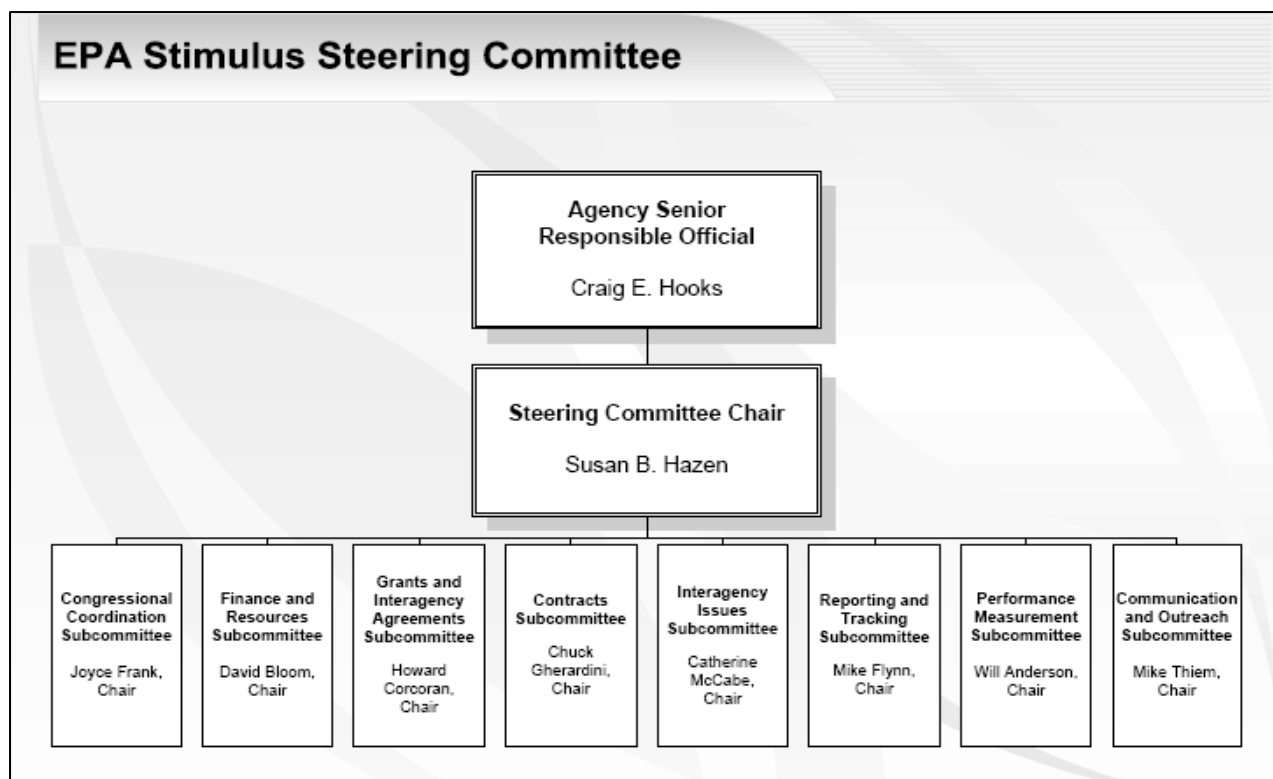
Several EPA offices are responsible for overseeing aspects of the Agency's Recovery Act implementation to ensure that the Superfund remedial program meets the Act's requirements:

- Office of Environmental Information (OEI) manages the information to support the goals of the Recovery Act, including transparency, reporting, and accountability. OEI is responsible for facilitating the transparency of information related to Recovery Act activities, and ensuring information collection and proper dissemination.
- EPA's Office of Inspector General (OIG) ensures that EPA manages its Recovery Act funds economically and efficiently. The Act specifically authorizes EPA's OIG to mitigate fraud, waste, error, and abuse in the use of Recovery Act funds.
- Office of the Chief Financial Officer (OCFO) manages financial services, strategic planning, Agency budgets, annual plans, and performance and accountability reporting. Under the Act, OCFO has major responsibilities for risk management tied to the allocation and distribution of Recovery Act funds. OCFO is responsible for accounting for EPA's expenditures of these funds.
- Office of Administration and Resources Management (OARM) directs the Agency's acquisition management function, consistent with the Federal Acquisition Regulations (Office of Acquisition Management- OAM). OARM also manages EPA's grants and debarment activities (Office of Grants and Debarment-OGD) as well as the Agency's human resource and facility management functions. OARM has developed the Agency's procurement strategy for the Recovery Act to ensure that EPA awards and distributes the funds in a prompt, fair and reasonable fashion. EPA has designated Craig E. Hooks, Acting Assistant Administrator of OARM, as the Agency's Senior Responsible Official (SRO). The SRO has responsibility and authority to coordinate Recovery Act activities across Agency programs.
- Office of Public Affairs (OPA) coordinates and approves all press events related to the Recovery Act. They also shepherd press announcements through the OMB and White House approval process.
- Office of Congressional and Intergovernmental Affairs (OCIR) coordinates and implements all Congressional Recovery Act notification activities.
- Office of Enforcement and Compliance Assurance (OECA) assists other Federal agencies in their timely compliance with NEPA, acquires other necessary EPA approvals for Recovery Act funded actions, and assists with reporting and green principles coordination.

1.7 What is EPA’s internal structure for governance and risk management of Recovery Act funds?

The Recovery Act (Division A, Title XV, Subtitle B, §1521) established the Recovery Accountability and Transparency Board to coordinate and conduct oversight of covered funds and to prevent fraud, waste, and abuse. OMB will support the Board in its oversight of Recovery Act implementation and will work with agencies to meet the accountability objectives.

OMB’s guidance sets out the requirement that agencies designate a senior accountable official for Recovery Act activities. EPA has designated Craig E. Hooks, Acting Assistant Administrator of OARM, as the Agency’s Senior Responsible Official (SRO). The SRO has responsibility and authority to coordinate Recovery Act activities across Agency programs. In addition, EPA has established a stimulus steering committee, chaired by Susan B. Hazen, which is organized into eight subcommittees. The following chart shows the steering committee structure and the chair persons of each subcommittee. Each subcommittee includes an Office of Solid Waste and Emergency Response (OSWER) representative.



1.8 How is the Inspector General involved with the Recovery Act funding?

The Recovery Act allocated \$20 million for the OIG to carry out Agency oversight of the \$7.2 billion of Recovery Act funding allocated to EPA (including the \$600 million allocated for the Superfund remedial program). The OIG has developed an initial plan (March 2009) for oversight activities and their funds are available for obligation through September 30, 2012.

The OIG will assess whether EPA is using Recovery Act funds in accordance with the requirements and whether EPA is meeting the Act's accountability objectives. They will also monitor EPA's progress in achieving program goals and ensure that EPA accurately tracks and reports expenditure of Recovery Act funds. Their work is being closely coordinated with the Recovery Accountability and Transparency Board.

Once EPA has awarded its Recovery Act funds, the OIG will focus on performance and financial audits of the Recovery Act programs. This focus will include evaluating and auditing EPA's use of the Recovery Act funds and assessing the accuracy of the Agency's reporting information. The OIG will continue to take proactive actions to prevent mismanagement of funds and will undertake investigations tied to allegations of fraud, waste, and abuse.

1.9 Where may I find more information about Recovery Act implementation activities?

More information on the Recovery Act and related guidance and implementation activities can be found at the following web areas:

- National Recovery Act Website: <http://www.recovery.gov/>
- EPA Recovery Act Website: <http://www.epa.gov/recovery/>
- OSRTI Recovery Act Website: <http://www.epa.gov/superfund/eparecovery/index.html>
- Recovery Act Plan for the Superfund remedial program:
www.epa.gov/superfund/eparecovery.
- The American Recovery and Reinvestment Act:
http://www.whitehouse.gov/the_press_office/ARRA_public_review/
- OMB's Recovery Act guidance documents:
 - Updated guidance (April 3, 2009)
<http://www.recovery.gov/sites/default/files/m09-15.pdf>
 - Initial guidance (February 18, 2009)
<http://www.recovery.gov/files/Initial%20Recovery%20Act%20Implementing%20Guidance.pdf>
- EPA Office of Inspector General initial plan for oversight:
http://www.epa.gov/oig/reports/2009/InitialEPAOIG_StimulusPlan03-05-09.pdf

Section 2 – Superfund Remedial Program Provisions of the Recovery Act

2.1 How much Recovery Act funding is available for the Superfund remedial program?

The Recovery Act provides \$600 million for Superfund remedial activities. In accordance with the provisions of the Recovery Act, up to 3 percent may be retained by the Agency for management and oversight purposes. As such, EPA will allocate \$18 million to internal EPA activities related to the management, oversight, and reporting of Superfund Recovery Act funds, and will allocate \$582 million to remedial cleanup activities at sites.

Recovery Act resources for Superfund remedial activities will be available for obligation until September 30, 2010, and available for expenditure until September 30, 2017. OSRTI has established an internal goal to obligate all remedial cleanup resources by September 30, 2009. The Recovery Act management and oversight resources will be available for obligation until September 30, 2011, and are available for expenditure until September 30, 2018. EPA will incrementally allocate and obligate management and oversight resources during the three-year obligation period (i.e., 2009 – 2011).

2.2 What are the objectives of the Recovery Act funding for the Superfund remedial program?

The overall objectives for the use of Recovery Act funding for the Superfund remedial program are to further cleanup at National Priorities List (NPL) sites, maximize job creation and retention, and provide human health, environmental, and economic recovery benefits. EPA will achieve these objectives by starting new cleanup projects, accelerating cleanups at projects already underway, increasing the number of workers and activities at cleanup projects, and returning affected sites to more productive use.

Cleanup activities at Superfund sites receiving Recovery Act funds may also yield significant site-specific, non-environmental economic benefits, including improved site property values and job opportunities. EPA will ensure that it conducts Recovery Act-related activities in a manner that considers environmental justice at sites that suffer disproportionate environmental impact to ensure that environmentally and economically distressed communities are protected.

The Superfund remedial program will also implement the Recovery Act activities in a manner that creates an overall healthier environment and lays the groundwork for more efficient, greener ways to clean up hazardous waste sites. The use of “green technology”² can emphasize low-carbon footprint technologies to lower green house gas emissions as well as provide other substantial “green benefits” such as increased energy and water efficiencies through technology and use of renewable resources; reduction of land and water contamination and air emissions; and development of new technologies for broader applications. EPA will consider, to the extent feasible and permitted by law, using green remediation practices, clean diesel technologies, and anti-idling practices at Superfund projects receiving Recovery Act funding.

² **Green Remediation: Incorporating Sustainable Environmental Practices into Remediation of Contaminated Sites** US Environmental Protection Agency, Office of Solid Waste and Emergency Response, EPA 542-R-08-002 April, 2008. Link: <http://www.cluin.org/greenremediation/>

2.3 How does Recovery Act funding for the Superfund remedial program differ from annual Superfund funding?

There are two main differences between the Recovery Act remedial program funds and the Superfund remedial program's regular, annual appropriations:

- Unlike the Agency's annual Superfund appropriations which have no required timeframe for obligation or expenditure, EPA must obligate the Recovery Act appropriation by September 30, 2010 (Recovery Act, Division A, Title XVI, Subtitle D, §1603) and expend Recovery Act funds by September 30, 2017 (September 20, 2018 for management and oversight resources).
- The Recovery Act includes unique reporting and funds tracking requirements for activities funded under the Recovery Act (e.g., jobs created, and more frequent reporting).

2.4 What activities are eligible?

The Recovery Act neither expands nor limits eligible uses of Superfund remedial funds, with the exception of prohibiting Recovery Act funds from uses related to casinos and other gambling establishments, aquariums, zoos, golf courses, or swimming pools. Under the Recovery Act, EPA will fund cleanup projects it traditionally funds with its annual appropriations.

2.5 How will EPA distribute the Recovery Act funds?

EPA will distribute Recovery Act funding in a manner that promotes both a healthier environment and jobs that benefit the environment. Recovery Act funding will support both new start and ongoing Superfund remedial projects to provide immediate short and longer-term health, environmental, and economic benefits. The Agency anticipates that Recovery Act funds will support at least 50 NPL sites in 28 states across the country. A list of the sites anticipated to receive Recovery Act funding is on the Superfund Recovery Act web area and can be found at: <http://www.epa.gov/superfund/eparecovery/sites.html>.

Due to federal procurement regulations, the Agency does not release precise cost estimates prior to financial awards. For projects funded with Recovery Act resources, as with projects funded with regular appropriations, the Superfund program will use one of three types of financial awards to implement remedial activities—contracts, interagency agreements or cooperative agreements. (See Section 5 for more information)

2.6 Will a state have to cost share?

Yes. The Recovery Act did not provide a waiver from the provision in the Superfund statute (CERCLA §104(c)(3)(C)) that requires states to pay a 10 percent (or more) cost share for all remedial actions conducted with federal Superfund appropriations.

In order to ensure that states will agree to satisfy the cost share and other CERCLA requirements under a Superfund state contract (SSC) without delaying the use of Recovery Act funds for Superfund remedial activities, EPA modified the timeframe requirements associated with SSC cost share agreements. EPA's regulation normally requires that a state pay its cost share upon completion of all activities within the scope of the SSC. Recognizing the economic and budgetary constraints states currently face, EPA issued a class deviation to modify these requirements. Under the class deviation, EPA can negotiate with SSC signatories to set a mutually agreeable final payment date for all SSCs signed or amended from February 17, 2009, through September 30, 2010. (See Section 5 for more information)

2.7 How will the Superfund remedial program monitor and evaluate the implementation of the Recovery Act funds?

EPA Headquarters will review Recovery Act resource utilization and performance progress on a regular basis. Headquarters will also discuss any concerns related to Recovery Act resource utilization, activities, and progress with the Regions during established mid-year and end-of-year Superfund remedial program work planning meetings.

Activity	Projected Date
Evaluate Recovery Act resource utilization and performance progress	Monthly
Re-allocate funds, if necessary	Quarterly
Complete obligation of Recovery Act Funds to all sites (<i>Internal OSRTI goal: September 30, 2009</i>)	September 30, 2010

All EPA Recovery Act awards (i.e., cooperative and interagency agreements, and contract work assignments or task orders) will include reporting requirements. The purpose of these reports is to provide EPA with detailed project progress information in a manner consistent with the reporting requirements identified in the Recovery Act (Division A, Title XV, Subtitle A, §1512).

EPA will also conduct quarterly in-depth reviews to ensure Recovery Act recipients are making sufficient progress with Recovery Act funds. These reviews will allow EPA to ensure that recipients are expending Recovery Act funds quickly and prudently. Funds that EPA identifies as being at risk of not being spent in a timely matter may be re-obligated to another project in order to meet the statutory deadline of obligating all funds by September 30, 2010.

In order to monitor and preserve accountability for Recovery Act expenditures, the Superfund remedial program will follow OEI's Management Action Plan, "Quality Assuring EPA's ARRA Grants, Contracts, and Interagency Agreements".

Section 3 – Superfund Recovery Act Communications and Reporting

3.1 Now that the Administrator has announced the Superfund sites receiving Recovery Act funding, what are the procedures for additional press releases related to Recovery Act activities?

The Administrator announced on April 15, 2009 that EPA would be distributing approximately \$600 million to 50 Superfund sites; the announcement included a site list. With the exception of three sites, the Regions issued press releases for all of the sites receiving Recovery Act funds.

The process and template for subsequent press releases on Recovery Act activities is currently under development and will be provided to the Regional Public Affairs Directors (PADs) as soon as it is available. If Regions are interested in doing a press release on site-specific Recovery Act activities they should contact OSRTI (Suzanne Wells at 703-603-8863, wells.suzanne@epa.gov; and Lois Gartner at 703-603-8711, gartner.lois@epa.gov) and the OSWER Communications Director (Marsha Minter at 202-566-0215, minter.marsha@epa.gov).

3.2 What notification procedures should the Regions follow when awarding Recovery Act funding?

Prior to the funding of any Recovery Act awards including contracts, interagency agreements (IAs), and cooperative agreements (but not including management and oversight funds), EPA must notify the White House in advance of the award according to this process. Note that the project must be ready to be funded when White House notification is made. The template for Recovery Act financial award notifications can be found in Appendix A.

Monday Close of Business

- Regional Recovery Act points of contact (POC) will send award notifications for contract actions to OAM (Tim Farris) and award notifications for IAs and cooperative agreements to OGD (Catherine Vass and Alexandra Raver) with a cc to OSRTI (James Woolford, Robin Richardson, Elizabeth Southerland, and Phyllis Anderson).

Tuesday Noon

- OARM completes a table for Recovery Act awards and submits that table to the White House by noon. OARM copies OPA, OCIR, OCFO, Susan Hazen, the Regions, and Headquarters program offices.

Thursday

- If there is no feedback from the White House, the Recovery Act awards move to "stand by" pending Congressional notification. Regional POCs will be notified by Thursday if there is a problem. It is important to note that Congressional notification should be made prior to any public notification.

Friday

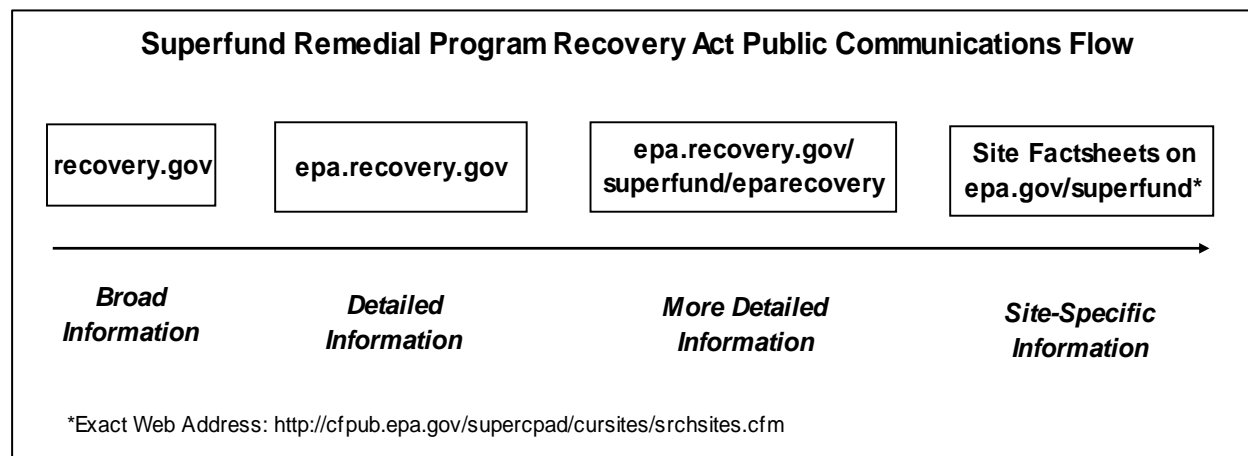
- If no problems have been identified, awards should be signed and obligations completed.

3.3 How will EPA communicate Recovery Act information to the public?

On an ongoing basis, EPA will provide information on the performance, progress, and accomplishments of Superfund-related Recovery Act remedial activities in a transparent fashion, as outlined in the Agency and Recovery Act guidelines. The Agency will also continue to publicize information regarding site activities as required by CERCLA.

Recovery Act progress information will be posted on the EPA Recovery Act web area at www.epa.gov/recovery as well as on the Federal Recovery Act web area at www.recovery.gov. The Superfund remedial program has also created its own web area, located at www.epa.gov/superfund/eparecovery and will publicly post information on activities conducted with Recovery Act funds.

In addition, site-specific information for all sites receiving Recovery Act funding is available through individual site fact sheets located on the Superfund program web area at <http://cfpub.epa.gov/supercpad/cursites/srchsites.cfm>. EPA’s Cleanups in My Community web tool can be used to create maps of Superfund sites receiving Recovery Act resources. The Cleanups in My Community tool can be accessed by using the instructions on the following webpage: <http://iaspub.epa.gov/Cleanups/>.



3.4 What reporting is required for recipients of Recovery Act funds?

The Recovery Act and OMB’s guidance require extensive reporting from recipients of Recovery Act funding. The Recovery Act defines “recipient” as any entity that receives Recovery Act funds directly from the Federal Government (including Recovery Act funds received through cooperative agreement or contract) other than an individual and includes a State that receives Recovery Act funds. See Division A, Title XV, Subtitle A, § 1512 of the Recovery Act.

Section 1512(f) of the Recovery Act requires recipient reporting to begin 180 days after enactment and for reports to be submitted by recipients 10 days after the end of each calendar quarter. This results in an initial statutory reporting deadline of October 10, 2009, with quarter reports due 10 days after the end of each calendar quarter thereafter. OMB is currently working

with the Agencies, including EPA, to determine the most appropriate method for collecting information from the recipients. Guidance will be forthcoming. It is anticipated that detailed reporting instructions will be made available at www.FederalReporting.gov no less than 45 days before the October 10, 2009 reporting deadline.

3.5 What EPA reporting is required for Recovery Act activities and performance?

OMB's Recovery Act guidance sets out the schedule for Agency reporting requirements under the Recovery Act. The following table provides a sampling of Agency level Recovery Act reports.

Reporting Requirement	From	To	CC	Projected Date
Funding Award Notification Reports	Regional POC	OAM for contracts (Tim Farris) OGD for IAs and cooperative agreements (Catherine Vass/Alexandra Raver)	James Woolford, Elizabeth Southerland, RobinH Richardson, Phyllis Anderson	Immediate/ongoing
Regional Submissions for the Weekly Financial and Activity Reports (<i>see Section 3.6</i>)	Regions	OSRTI (thru CERCLIS web module)	N/A	Weekly/ongoing
Weekly Financial and Activity Reports (<i>see Section 3.6</i>)	OSRTI	OSWER	N/A	Weekly/ongoing
Award-level Reporting (as required for USAspending.gov)	TBD	TBD	TBD	TBD
Agency-Wide and Program-Specific Recovery Act Plans	OSRTI	OSWER	N/A	Draft: May 1, 2009 Final: May 15, 2009

3.6 What is required for the EPA Weekly Financial and Activity Reports?

OMB's guidance requires all agencies receiving Recovery Act funds to submit weekly financial and activity reports. These are broad-level reports that are posted on the federal Recovery Act web area at <http://www.recovery.gov/?q=content/agency-weekly-reports>. The reporting frequency and details may change slightly over time, reflecting the information needs of the Administration and the public.

The weekly financial reports provide total obligations and gross outlays to date (See Appendix B for OMB's definitions of obligations and outlays). For EPA, the financial report is developed by the Office of the Chief Financial Officer (OCFO) and the information is drawn from the Agency's Integrated Financial Management System (IFMS). The weekly activity reports provide a short bulleted list of the major activities taken to date and major planned activities. "Major" actions include those of likely interest to senior government officials, Congress, and the public. The Superfund weekly activity reports are developed by OSRTI, cleared by the Agency and OMB, and then posted on Recovery.gov.

Currently, the Superfund weekly activity reports are at a broad program level. Once Recovery Act funding is awarded and site activities are underway, OSRTI anticipates collecting major activity information from the Regions on a weekly basis for inclusion in the report. A template and process for the regional contributions to the weekly report is under development and being tested. It is anticipated that the Regions will enter major site-specific activity information each week into the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) using a webform. The webform will be pre-populated with Superfund site and Recovery Act program information already stored in CERCLIS. By Monday of each week, the Regions will input information into the webform on any major cleanup activities achieved the previous week and any major activities anticipated in the week ahead. If there are no major activities that have occurred or are planned, then the Regions do not need to enter any information in CERCLIS. On Tuesdays, Headquarters will compile the regional contributions into the Superfund weekly activity report summary that will then undergo EPA review and be released the following week to the public.

3.7 What are the Agency and Program-Specific Recovery Act plans?

Guidance issued by the Office of Management and Budget (OMB) requires programs receiving funding under the Act to develop formal Agency and program-specific plans that summarize planned implementation activities. Draft plans were due to OMB no later than May 1 and were finalized on May 15. The Agency and Superfund remedial program Recovery Act plans are posted on recovery.gov.

3.8 Will the Superfund remedial program have reportable Recovery Act performance measures?

Yes. The Superfund program will measure its Recovery Act performance using the eight performance measures listed in the table on the following page. These measures will be reported for the public on EPA's Recovery Act website (www.epa.gov/recovery).

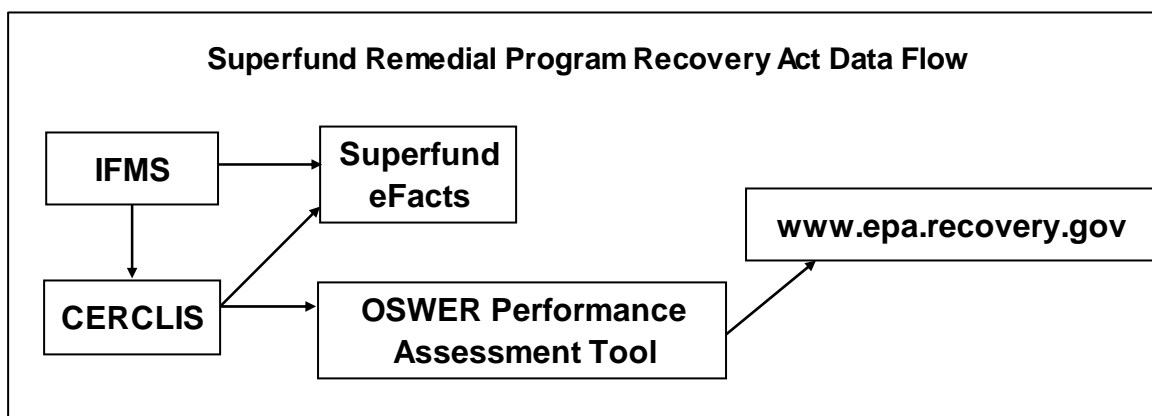
Performance Measure Title	Source	Description/Definition	Reporting Frequency	Reporting Office
Total Number of Sites in Receipt of Recovery Act Funding	CERCLIS IFMS & eFacts	The total number of National Priorities List (NPL) sites where Recovery Act resources were obligated.	Monthly (5 th Business Day)	OSRTI
Total Number of Projects in Receipt of Recovery Act Funding	CERCLIS IFMS & eFacts	The total number of projects at NPL sites where Recovery Act resources were obligated.	Monthly (5 th Business Day)	OSRTI
Number of Sites with New Construction in Receipt of Recovery Act Funding	CERCLIS IFMS & eFacts	The total number of NPL sites where Recovery Act resources were obligated for new construction.	Monthly (5 th Business Day)	OSRTI
Number of Projects with New Construction in Receipt of Recovery Act Funding	CERCLIS IFMS & eFacts	The total number of new construction projects at NPL sites where Recovery Act resources were obligated.	Monthly (5 th Business Day)	OSRTI
Percentage of Recovery Act Funding Obligated	IFMS	The amount of Recovery Act resources obligated divided by the total amount of Recovery Act funds.	As needed	OCFO
Number of Projects Receiving Recovery Act Funding Achieving Completion	CERCLIS	The number of projects receiving Recovery Act funding achieving completion by the end of FY 2012. <i>(Completion of projects is defined as those projects receiving Recovery Act funds which achieve a CERCLIS action for remedial action completion or remedial design completion as defined through the Superfund Program Implementation Manual)</i>	Monthly (5 th Business Day)	OSRTI
Number of Sites Achieving Construction Completion (CC) with Recovery Act Funding	CERCLIS & eFacts	The number of sites receiving Recovery Act funding achieving construction completion by the end of FY 2012. <i>(The current FY 2009 through FY 2012 CC GPRA targets for the Superfund remedial program include accomplishments anticipated at Recovery Act funded sites)</i>	Monthly (5 th Business Day)	OSRTI
Number of Sites Achieving Human Exposure under Control (HEUC) with Recovery Act Funding	CERCLIS & eFacts	The number of sites receiving Recovery Act funding achieving HEUC by the end of FY 2012. <i>(The current FY 2009 through FY 2012 HEUC GPRA targets for the Superfund remedial program include accomplishments anticipated at Recovery Act funded sites)</i>	Monthly (5 th Business Day)	OSRTI

EPA will use the first six measures, which are new, for Recovery Act reporting purposes only. The last two measures are based on existing Government Performance and Results Act (GPRA) measures that EPA uses for traditional Annual Performance Reporting and will now also use to track Recovery Act accomplishments. EPA chose all of the measures to reflect new and continuing cleanup activities at Superfund sites receiving Recovery Act funding.

EPA will use the Annual Commitment System (ACS) to track performance for these measures, using codes to be created specifically for this purpose (more guidance will follow from OCFO). OSRTI anticipates that these ACS codes will be similar to the parallel codes previously established for the EPA Quarterly Report (EQR). Until Headquarters provides further instructions, Regions should continue to promptly enter their performance data into the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) according to normal business operations. Headquarters will utilize CERCLIS data to enter accomplishments into ACS for all Recovery Act accomplishments.

3.9 What structure has the Superfund remedial program put in place for tracking and reporting Recovery Act funds?

Recovery Act funding for the Superfund remedial program will be tracked and reported from two EPA databases. Financial data will be reported from the Integrated Financial Management System (IFMS) and program data will be reported from CERCLIS. The primary device used to automate reports, graphics, and charts for Superfund remedial program Recovery Act information will be the OSWER Performance Assessment Tool (PAT) and Superfund eFacts. The following diagram illustrates the flow of data between these systems to support Superfund remedial program data moving to the EPA Recovery Act web area.



- **IFMS:** This database will be the primary location of all financial information related to Recovery Act funds. EPA has modified IFMS to contain the necessary budget structure and account coding for FY 2009 Recovery Act funds (See Section 4 for more details on the budget structure and account coding). Data for reporting actual obligation and expenditure data will be pulled from IFMS.
- **CERCLIS:** This is EPA's primary database to report data for NPL sites and non-NPL Superfund sites. EPA has modified CERCLIS to track budget accounting codes related

to Recovery Act data elements, including fund account coding and program priority flags. The Superfund Comprehensive Accomplishment Plan (SCAP) reports in CERCLIS also reflect new account coding. In addition, CERCLIS data may be used to populate new eFacts reports, reports from OSWER's PAT, or ReportLink reports specifically designed to track sites and projects receiving Recovery Act funds. More detail will follow as EPA specifies additional job-related and progress-related requirements and procedures for reporting.

- **Superfund eFacts:** This tool will serve as the primary internal servicing resource tool for organizing and reporting data on Recovery Act activities. Information will be extracted from both IFMS and CERCLIS and used to populate eFacts to provide the required Recovery Act reports. It is important to note that eFacts reports provide CERCLIS data at a certain time (e.g., reports pulled on March 10th reflect accomplishments in the database as of March 9th). A specific Recovery Act section in the Superfund eFacts intranet web area will display frequently used charts, forms, and graphics to report the performance measures previously noted in Section 3.8. Some of these charts will allow site-specific drilldown capability to provide additional site detail. For additional information on eFacts or to obtain intranet access to eFacts, contact Sheldon Selwyn at 703-603-8776, or selwyn.sheldon@epa.gov.
- **OSWER Performance Assessment Tool (PAT):** This tool will serve as the primary external servicing resource for organizing and reporting data on Recovery Act activities. PAT is a central reporting mechanism for OSWER traditional performance data, which collects information from OSWER program systems, and conforms it for uniform reporting and data provisioning. OSWER has modified PAT to support not only traditional OSWER reporting, but also for Recovery Act purposes. PAT will collect Recovery Act measures data for Superfund, Brownfields, and Leaking Underground Storage Tanks, then deliver that data to EPA staff and managers via a business intelligence dashboard interface for analytic and reporting use. At this time OSWER is developing PAT reporting tools to report Recovery Act site information for program reporting measures to include sites achieving Construction Completion, Human Exposure Under Control, and Site-Wide Ready for Anticipated Use. In addition, PAT will deliver the same data to the Agency's Recovery Act reporting facility (currently under design) for submission to OMB's Recovery.gov site.

Section 4 – Recovery Act Budget Execution Guidance for the Superfund Remedial Program

4.1 What is the budget structure and coding for the Superfund remedial program Recovery Act funds?

To maximize the transparency of Recovery Act spending, agencies must separately track Recovery Act apportionments, allotments, obligations, and expenditures. The following table provides an outline of the budget structure and coding that EPA has established for Recovery Act Superfund resources:

Recovery Act: Superfund Remedial Actions

Appropriation Code:	T
Fund Code:	TS
Budget Fiscal Years:	2009/2010
NPM:	OSWER
NPM Code:	D
PRC Codes:	302DD2
Activities Codes:	C, D, E
Add-On Codes (positions 5-7 of Budget Org Field):	

Recovery Act: Reimbursable Superfund Remedial Actions

Appropriation Code:	T
Fund Code:	TRS
Budget Fiscal Years:	2009/2010
NPM:	OSWER
NPM Code:	D
PRC Codes:	302DD2
Activities Codes:	C, D, E
Add-On Codes (positions 5-7 of Budget Org Field):	

Recovery Act: Superfund Management and Oversight

Appropriation Code:	B
Fund Code:	BS
Budget Fiscal Years:	2009/2011
NPM:	OSWER
NPM Code:	D
PRC Codes:	ZZZDJ8
Activities Codes:	C, D, E
Add-On Codes (positions 5-7 of Budget Org Field):	RSF

4.2 How is the Superfund remedial program allocating Recovery Act: Superfund Remedial Action resources?

OSRTI is responsible for allocating “Recovery Act: Superfund Remedial Actions” (Fund Code: TS) to the Regions. By law, these resources are available for obligation until September 30, 2010 and are available for expenditure until September 30, 2017. OSRTI has an internal goal to obligate all remedial cleanup resources by September 30, 2009. In order to identify and track the allocation of TS funds, OSRTI has developed a Region-specific “FY 2009 Recovery Act Remedial Action (RA) Funding Plan”. This plan contains information on a site/project-specific basis (site/RAT/ACT codes), including the total amount of funds planned for allocation to the Regions during FY 2009, the actual allocated amounts, and the amounts remaining to be allocated for the remainder of the year. Although the plan primarily pertains to funding RA activity, it also supports a small number of pipeline (remedial design) activities in support of remedial action projects. EPA will maintain and update the plan in subsequent years until the Agency expends all TS funds. The plan does not include project obligations and expenditures information; however, such information can be found elsewhere, as described in the following sections.

The Recovery Act funding plan documents funding decisions and any later modifications to those decisions. Throughout the year, OSRTI will monitor this plan in partnership with the Regions to accommodate changing project circumstances and to adjust project-specific funding decisions. Regions should immediately discuss any modifications to the plan with their OSRTI/Assessment and Remediation Division (ARD) regional coordinator for design/construction.

The Recovery Act RA Funding Plan will be updated continuously as necessary and be reviewed by OSRTI management on a bi-weekly (i.e., twice monthly) basis. OSRTI management will also review Superfund eFacts reports to monitor the financial status of each project on the Recovery Act RA Funding Plan. Also, in addition to routine staff level interaction with the Regions, OSRTI will use scheduled Superfund Remedial Program work planning discussions with the Regions to assess progress in using Recovery Act resources in a timely and efficient manner and meeting Superfund program and Recovery Act objectives

4.3 How is the Superfund remedial program allocating Recovery Act: Superfund Management and Oversight resources?

OSRTI is also responsible for allocating “Recovery Act: Superfund Management and Oversight” (“BS”) resources to the Regions. These resources are available for obligation until September 30, 2011. Because BS resources are for management and oversight purposes, they will be allocated on a Region-specific rather than site-specific basis over a three year period. Pursuant to the pending Program/Project Description Book narrative for the new Recovery Act Program/Project “J8”, Superfund management and oversight resources may be used to:

- Coordinate, monitor, and evaluate analytical, technical, and financial aspects of Recovery Act funded Superfund remedial cleanups, including making site visits and overseeing contracts, contract modifications, interagency agreements (IAs), and cooperative agreements;
- Provide liaison to states and communities affected by Recovery Act funded Superfund remedial cleanups, including managing state cost share agreements (Superfund State Contracts [SSCs] or cooperative agreements);
- Provide high level review and analysis of project and financial information submitted to EPA and reported to Agency management and the public (e.g., Recovery.gov);
- Provide resources to states and tribes through support agency cooperative agreements to support Recovery Act funded Superfund remedial cleanups; and
- Modify existing IT systems to address collection and reporting requirements of Recovery Act required data and information.

OCFO has subdivided the BS budget into three portions, to be allocated each of three years. In FY 2009, OSRTI will reprogram the FY 2009 “BS” resource allotment to the Regions based on the following methodology:

- Each Region will first receive a fixed share (5%) of FY 2009 BS resources, based on the presumption that each Region has a minimal BS requirement, regardless of the amount of Recovery Act remedial resources it receives.
- The remainder of “BS” resources will be allocated to each Region based on the total amount of Recovery Act remedial construction resources it will receive based on the OSRTI Recovery Act Remedial Construction Funding Plan.

Headquarters intends to retain this methodology for allocating subsequent years’ BS resources but minor adjustments will be considered based on regional utilization and changes in regional plans.

4.4 How will Headquarters reprogram the funds to the Regions?

Based on the Recovery Act RA funding plan, OSRTI will reprogram TS resources from a “9R” account in the Integrated Financial Management System (IFMS) to the appropriate Region in the “R” (Remedial Action Site Allowance) or “P” (Pipeline Operations Site Allowance) accounts, using the appropriate Recovery Act funding codes. The reprogramming comment field will specify the amount of Recovery Act funds to be allocated to each site/project. Once these funds are available in the Region through IFMS, the Region will, within 5 business days, enter planning data into the CERCLIS financial transaction screens corresponding to the Recovery Act RA Funding Plan. Before OSRTI reprograms TS resources to a Region, OSRTI will consult with the Regional Budget Coordinator to determine into which Budget Object Class (BOC) to reprogram the resources. Once the Region receives its TS resources in IFMS, it may shift these

resources across BOCs as necessary, but may not cross Budget Organizations or Site Allowances without first consulting with the OSRTI Budget Planning and Evaluation Branch (BPEB) budget contact.

OSRTI will also reprogram BS resources from another “9R” account in IFMS to the appropriate Region pursuant to the M&O methodology described in the previous section. As noted in the table above, OSRTI will reprogram all BS resources to the “ZZZDJ8” PRC and will use the “RSF” add-on code in the 5-7 positions of the Budget Organization field of the IFMS account number.

A Region may choose which Budget Object Class (BOC) and which Allowance Holder should receive BS resources (“A” or “O” account). “A” account resources are for extramural (BOCs 36, 37, 41) remedial program purposes only and their use must be planned out in CERCLIS. Payroll (BOC 10) and site travel resources (BOC 28) should be reprogrammed to the “O” account, though other BOCs may also be used in the “O” account. Although OSRTI expects that most BS resources will be used site-specifically, BS resources may also be used non-site-specifically but they must directly support implementation of Recovery Act Superfund remedial program activities. Regions may only use BS resources for costs incurred from 3/15/2009 forward. Site travel resources may only be used at sites that are receiving TS funds.

The Regional Finance Management Office (FMO) and the Superfund Regional Program Office (RPO) will consult on how to allocate BS resources within the Region, and each Superfund Regional Budget Coordinator will send its OSRTI BPEB budget contact (copying the FMO) a request to reprogram the BS resources using the appropriate Budget Organization and Budget Object Class codes. Once the Region receives its BS resources in IFMS, it may shift these resources across BOCs as necessary but may not cross Budget Organization codes without consulting with the OSRTI BPEB budget contact first.

4.5 How will the Superfund remedial program use CERCLIS for planning Recovery Act resources?

The CERCLIS database will be used to plan obligations of TS and BS resources. Appropriate revisions to CERCLIS planning screens and reports contain the required account code structures.

Regions will plan the use of TS resources in CERCLIS in generally the same manner as any other Superfund site allowance resources. Once OSRTI identifies its funding decisions to a Region, OSRTI will assign the “TS” designation in the program priority initiative field to each site identified as a recipient of Recovery Act funds. Then, as described above, the Region will have 5 business days to enter obligation planning data into the financial transaction screen in accordance with the stimulus RA funding plan, selecting the “TS” fund code and the “Approved” planned budget funding code. Note that CERCLIS will not allow a Region to plan any site-specific obligations of TS resources unless the TS designation is used in the program priority initiative field.

Although EPA has budget authority to obligate TS funds for two fiscal years, OSRTI's goal is for Regions to plan and obligate all Recovery Act resources by the end of FY 2009. Thus, all planned obligation data should reflect budget FY 2009. Regions must also assure that CERCLIS start date data for specific projects (identified by RAT/ACT codes) correspond with the Recovery Act RA Funding Plan (i.e., projects defined under the Recovery Act as new starts or ongoing must be accordingly coded in CERCLIS).

Management and Oversight (Fund Code: BS) resources have significantly more coding requirements than TS resources. The BS resources not only use different fund and PRC codes (akin to EPM resources), but also require the use of add-on codes in the Budget Organization field of the IFMS account number that override the Site Allowance code. CERCLIS has been modified to automatically assign the appropriate PRC and add-on codes to any planned obligation that used the BS fund code.

Because TS resources are two-year appropriations, both the BFY (budget fiscal year) and EFY (end fiscal year) must be included in the IFMS account number. CERCLIS generated account numbers do not include the EFY, and therefore procurement officials must take care to add the appropriate data ("2010") into the EFY field (or alternatively "20092010" into the BFY field, as appropriate) in procurement request forms and when entering commitment and obligation information into IFMS.

Likewise, since BS resources are three-year appropriations, both the BFY (budget fiscal year) and EFY (end fiscal year) must also be included in the IFMS account number. Procurement officials must take care to add the appropriate data ("2011") into the EFY field (or alternatively "20092011" into the BFY field, as appropriate) in procurement request forms and when entering commitment and obligation information for BS resources into IFMS.

Once a Region obligates Recovery Act resources, it must make a corresponding adjustment to its approved planned obligation financial transaction data in CERCLIS. Planning data may not be modified at the time of resource commitment.

4.6 What happens if a project is unable to use its allocated Recovery Act resources?

Regions must notify their OSRTI/ARD Remedial Action (RA) funding coordinator immediately of any obstacle to OSRTI's goal of obligating all TS resources by September 30, 2009 or of any potential change to a project funding amount identified through the Recovery Act RA funding plan. Timely notification will enable the Regions and OSRTI to work together to overcome the obstacles or, if mitigation of the impediment is not possible, to re-evaluate the Recovery Act RA funding plan.

If it is determined that a project is unable to use any portion of its allocated Recovery Act resources, then the Region will promptly notify the OSRTI Office Director and reprogram those funds back to OSRTI for appropriate reallocation nationally based on a revised Recovery Act RA funding plan.

4.7 How will EPA handle Superfund remedial program Recovery Act deobligations?

On September 30, 2010, budget authority to incur new obligations against the Recovery Act appropriation of TS resources expires. Once this budget authority ends, no new obligations can be incurred against the appropriation. Expired obligated balances (unliquidated obligations) and unobligated balances will remain available until September 30, 2017, to liquidate obligations (expended funds) that were properly incurred prior to September 30, 2010.

Consequently, any Recovery Act funds deobligated after September 30, 2010, will not be available for use by the Superfund program to incur new obligations. Likewise, expenditures of Recovery Act funds should not be included in any reclassification of special account resources unless they can be recertified and obligated before September 30, 2010. OSRTI will establish periodic reviews of unliquidated obligations and a deadline for deobligations and reclassifications of Recovery Act funds.

With the exception of budget object class changes and financial transaction corrections, all deobligations of TS funds are modifications to the Recovery Act RA funding plan, and Regions must consult with their OSRTI regional coordinators before initiating such actions. Regions must recertify all deobligated TS funds to the TS “9R” account (unless otherwise directed by OSRTI), and OSRTI will reallocate these resources based on the revised Recovery Act RA funding plan.

4.8 How are cost recovery funds treated?

For cost recovery purposes, the Recovery Act is a supplemental appropriation and thus should be treated the same as the annual Superfund remedial program appropriation. Any cost recovery funds must be returned to the Trust Fund for future appropriations as required by 26 U.S. C. 9507 or, if future work is anticipated at the site, placed into a special account, under the authority of CERCLA 122(b)(3). Unlike annual Superfund remedial program "no-year" appropriations, by law Recovery Act funds must be obligated by September 30, 2010, and therefore, expenditures of stimulus funds should not be included in any reclassification of special account resources unless they can be recertified and obligated before September 30, 2010 and liquidated by September 30, 2017. There are no stimulus-specific coding requirements for recoveries of EPA costs incurred using Recovery Act funds or for the establishment of special accounts using such recoveries.

Section 5 – Recovery Act Superfund Contracts, Interagency Agreements, and Cooperative Agreements

5.1 What type of financial award vehicles will the Superfund Remedial Program use for Recovery Act resources?

The support for Superfund remedial program activities under the Recovery Act will occur through three types of financial awards: EPA contracts, interagency agreements, and cooperative agreements. The following table identifies the type of financial vehicle in conjunction with the anticipated recipient and description.

Type Of Financial Vehicle	Type Of Recipient / Beneficiary	Description
EPA Response Action Contracts (RACs), Site-Specific Contracts, and Emergency and Rapid Response Services (ERRS) Contracts	Contractors	Use of existing competitively awarded contracts and some new awards to site-specific contracts
Interagency Agreements (IAs) with the US Army Corps of Engineers (USACE), primarily Interagency Assisted Acquisitions (IAAs)	Contractors	Use of IAs with existing competitively awarded contracts and some new awards
Cooperative Agreements (CAs)	States, Political Subdivisions, or Tribes	All CAs with States, Political Subdivisions, or Tribes are non-competitively funded

Each of these vehicles has unique programmatic and administrative procedures as described in the following sections. For acquisition or contract guidance, please refer to the contract guidance issued by the Office of Acquisition Management (OAM). <http://oamintra.epa.gov/files/OAM/recoveryact.pdf> For IA and CA guidance, there are separate guidance documents prepared for each by the Office of Grants and Debarment (OGD). (<http://epa.gov/ogd/>).

5.2 What type of contracts will be used for Superfund remedial Recovery Act activities?

Typically, Superfund remedial activities are conducted using Response Action Contracts (RACs), site-specific contracts, or task orders awarded under the Emergency and Rapid Response Services (ERRS) contracts. Information regarding other vehicles for Superfund remedial work appears in subsequent sections.

The majority of contracts supporting work under the Recovery Act are currently in place, although some new awards are anticipated (i.e., site-specific contracts). When adding funding to an existing contracting vehicle, Regions will need to issue a new tasking document to the contractor to ensure segregation of Recovery Act activities and funds and to comply with OMB's contract guidance. Regions may "cross-over" to another Region to obtain additional contract capacity, although the Region should consult the headquarters RAC liaison in OSRTI prior to making a RAC "cross-over" decision.

5.3 What type of Interagency Agreements (IAs) and Interagency Assisted Acquisitions (IAAs) will be used for Superfund remedial Recovery Act activities?

Superfund remedial program activities conducted through interagency agreements (IAs) are typically agreements with the U.S. Army Corps of Engineers (USACE) for their support in the acquisition and management of remedial contracts (i.e., IAAs). For ongoing work, the Regions may choose to amend existing IAs, provided that the amendment is within scope of the existing IAs, or award new IAs. If the Region intends to use an IA amendment, that IA amendment must show how the Recovery Act work will be segregated and tracked. Regions should work with the USACE to ensure site-specific monthly progress reports adequately segregate Recovery Act funded activities and associated costs.

The Interagency Agreement Shared Service Center (IASSC) Web site, <http://intranet.epa.gov/ogd/IASSC/main/index.htm> contains the applicable IA forms and terms and conditions for IAs with the USACE.

5.4 Do Best Interest Reviews need to be completed for Assisted Acquisitions?

USACE's IAs utilizing contractors for remedial work are considered interagency assisted acquisitions (IAAs). Only new IAs with contracting require best interest determinations. OSWER requested a class best interest determination, which OAM approved on April 7, 2009. OAM has provided a cover memorandum outlining the roles and responsibilities of project officers and contracting officers in implementing the determination. The class determination and the form for Contracting Officer (CO) review can be found on the IASSC Web site. Additionally, as part of the class determination, Regions must continue to follow the justification and documentation requirements of OSRTI's April 3, 2008 policy on selecting another federal agency to acquire and manage remedial contracts.

<http://www.epa.gov/superfund/cleanup/pdfs/rdra/iagpolicy2008.pdf>

5.5 How does Recovery Act funding relate to the Direct Cite Program?

Obligation and payment of Superfund Remedial Program work through Interagency Assisted Acquisitions (IAAs) with the USACE follow a unique procedure.

<http://www.epa.gov/superfund/cleanup/pdfs/rdra/payment.pdf>.

Under the "EPA/U.S. Army Corps of Engineers Payment Process, Direct Cite/Revised Reimbursement Methods," issued March 21, 1990, the USACE receives the contractor invoices and after review and approval, submits them to EPA's Cincinnati Financial Management Center for payment directly from EPA's appropriation. A copy of the payment request is sent by USACE to the Remedial Project Manager for review. The USACE staff time, or in-house costs, is reimbursed by EPA through the standard intergovernmental payment process. Regions may use the Superfund Remedial Program Recovery Act appropriation (TS) for both revised reimbursable and direct cite costs.

5.6 How will Cooperative Agreements be used for Superfund remedial Recovery Act activities?

Superfund Recovery Act remedial activities may also be conducted through cooperative agreements with states, tribes or political subdivisions. EPA's Office of Grants and Debarment (OGD) has issued guidance regarding the use of Recovery Act funds under grants and cooperative agreements. This guidance, which includes standard terms and conditions for Recovery Act funds, can be found on the OGD website: <http://epa.gov/ogd>. IGMS will use program code 2S to track all Recovery Act-related CAs.

5.7 Will the EPA allow extended Superfund State Contract payment schedules?

Yes. On March 9, 2009, EPA issued a class deviation to permit an additional option for the timing of EPA's invoice to the state for final payment under the state's payment schedule. The two options for EPA to invoice a state for its final payment, with the exception of any change orders and claims handled during reconciliation of the SSC, are: (1) upon completion of activities in the site-specific statement of work (SOW) (currently permitted), or (2) after the final payment date as negotiated by the signatories in the SSC (additional option), whichever is later. This class deviation will permit signatories to an SSC to negotiate a payment schedule that extends beyond the completion of activities in the site-specific SOW. The payment schedule negotiated should generally not exceed five years after completion of SOW activities.

While EPA issued this class deviation to facilitate Recovery Act implementation, it is only available for SSCs signed or amended from February 17, 2009 through September 30, 2010, at which time the deviation will expire (See Appendix C). Note: Although a state cost share is required for remedial actions under both the SSC and a cooperative agreement, under a cooperative agreement states generally satisfy the cost share requirement without making payments to EPA. Therefore, this guidance does not address a state payment schedule under a cooperative agreement.

5.8 Are there socio-economic goals for the Recovery Act funds?

EPA Regions are encouraged to award Superfund remedial program appropriations, including Recovery Act funds, to contractors meeting EPA's socio-economic goals. The Administration and the Agency would like to see overall improvement in this area; therefore, Regions should keep the utilization of such contractors in mind when determining their Superfund remedial program contracting strategy.

EPA anticipates the use of standard reporting tools for tracking progress in achieving socio-economic goals, including the Federal Procurement Data System–New Generation (FPDS-NG). Thus, obligations using the EPA treasury symbol established for the Superfund remedial program's Recovery Act appropriation will be used to track and report socio-economic contract utilization. Obligations under both EPA contracts and USACE contracts will be entered into FPDS-NG using the EPA treasury symbol by the respective agencies and credited towards EPA's socio-economic goals. Obligations through cooperative agreements are not reported in FPDS-NG and, thus, are not included in EPA's socio-economic calculations.

5.9 How does the Bona Fide Needs Rule apply to Recovery Act Funds?

All funds appropriated under the Recovery Act must be obligated by September 30, 2010 to meet bona fide needs that arose prior to that date. If the Bona Fide Needs Rule is satisfied, the work may extend beyond September 30, 2010, unless the funds are used for severable services. If Superfund remedial activities are deemed to be non-severable, the contractor may perform work and costs may be incurred after September 30, 2010. See Section 4 of this Guidance for more details on OSRTI's goals for timely obligations and expenditures.

The Bona Fide Needs Rule applies differently to Superfund cooperative agreements and EPA contracts and interagency agreements (IAs). For Superfund cooperative agreements, the award of the cooperative agreement meets a bona fide need to provide financial assistance to the eligible recipient that arises on the day of the award. The fact that the cooperative agreement recipient performs the work funded by EPA after September 30, 2010 does not implicate the “severable versus non-severable services” concept that applies to contracts and IAs. If a contractor's services for Superfund remedial activities under EPA contracts or IAs are non-severable, the Agency may obligate funds prior to September 30, 2010 even though the contractor performs all or part of the service after that date.

The severable versus non-severable services analysis may be made on a case by case basis in consultation with the Office of General Counsel.

5.10 How do the Infrastructure and Buy American provisions apply to Recovery Act funds?

Division A, Title XVI, §1605 of the Recovery Act (Buy American) requires that Recovery Act funded projects for the construction, alteration, maintenance or repair of a public building or public work, use only iron steel and manufactured goods produced in the United States. OMB has implemented this provision for direct procurement in Federal Acquisition Regulation; FAR Case 2009–008, American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Buy American Requirements for Construction Material, 48 CFR Part 25, Subpart 25.6. The Buy American provision as applied to assistance agreements is implemented in 2 CFR Part 176, Subpart B and the provisions contained therein are uploaded into IGMS as terms and conditions for all Recovery Act assistance agreements. Under Superfund cooperative agreements, projects that are subject to the Buy American provision include, but are not limited to, projects for the construction, alteration, maintenance, or repair of caps, wells, reservoirs, water distribution systems, and water treatment plants. The Recovery Act provides some exceptions to the Buy American requirement. The exceptions involve complex issues that are addressed in the OMB regulations and are beyond the scope of this guidance.³

Some Superfund remedial activities conducted by States and local governments pursuant to a CERCLA 104(d) cooperative agreement may be considered infrastructure investments for purposes of the Recovery Act under the Agency's interpretation of the term “infrastructure.”

³ The Buy American provision, however, will not be applied if doing so is inconsistent with United States obligations under international agreements. Additionally, EPA, in certain circumstances, may waive the Buy American provision.

Examples include, but are not limited to, projects where the principal purpose is to construct a cap to be directly incorporated into a public building or public work project as defined in 2 CFR 176.140(a)), or to extend a municipal water supply to residents and businesses affected by contaminated drinking water. If a project is an infrastructure investment, the grantee must comply with Division A, Title XVI, §1602 (Preference for Quick-Start Activities). If the grantee is a State or local government and the project is an infrastructure investment, then the grantee must also comply with Division A, Title XV, Subtitle A, §1511 (Certifications). Also, if the grantee is a State or local government conducting a project that constitutes an infrastructure investment, there are additional reporting requirements for the infrastructure investment imposed under Division A, Title XV, Subtitle A, §1512(c)(3)(E). The Recovery Act terms and conditions uploaded into IGMS define infrastructure investment and set forth the reporting, preference for quick-start activities, and certification requirements applicable to infrastructure investments. The Recovery Act does not require infrastructure investment certification or reporting requirements for contracts and IAs.

5.11 How does the Davis Bacon Act apply?

As a practical matter, the Davis Bacon Act applies to expenditures of Superfund Recovery Act funds to the same extent as it does to remedial activities funded from EPA's annual Superfund appropriation. Division A, Title XVI, §1606 of the Recovery Act (section 1606). Section 1606 requires that contractors and subcontractors on projects funded directly by or assisted in whole or in part with Recovery Act funds pay prevailing wages as determined by the Secretary of Labor under the Davis Bacon Act. However, pursuant to CERCLA, section 104(g)(1), the Davis Bacon Act already applies to "construction repair, or alteration work" funded with annual Superfund appropriations.

Detailed information on how EPA applies the Davis Bacon Act to Superfund Remedial work is found in the January 27, 1992, memorandum entitled "Superfund Guidance on the Applicability and Incorporation of the Davis Bacon Act and Service Contract Acts into Superfund Acquisitions" ("1992 Davis Bacon Guidance"). EPA will continue to insert the Davis Bacon clauses required by FAR Part 22 when applicable into Agency contracts funded with Recovery Act appropriations. EPA will include the term and condition that OMB prescribed at 2 CFR 176.190 for compliance with the Davis Bacon wage rate requirements in section 1606 of the Recovery Act for Superfund cooperative agreements awarded with Recovery Act funds.

5.12 How are Funds-In Interagency Agreements handled for Federal Facility Oversight?

EPA's Federal Facility program oversees Superfund cleanups at certain properties owned and operated by other federal Agencies. EPA may receive Recovery Act funds from other federal Agencies to support increased oversight requirements for accelerated cleanup actions at their facilities. These funds would be transferred to EPA through IAs for Regional Oversight Contract support and/or EPA intramural expenses. Funds-In agreements for Federal Facilities are outside of the scope of this guidance. Regions should work with their Federal Facility Restoration and Reuse Office (FFRRO) counterparts for additional information.

Appendix A

Funding Award Notification Template

Funding Notification Version 1.3											
Agency Name:	(020) Environmental Protection Agency										
Submission Date:	0X/0X/2009										
Submitter Name:	Name										
Submitter Contact Info:	E-mail										
Funding Notification Amount	Award Type	CFDA Program Number	CFDA Program Title	Program Description	US Indicator	Place of Performance County	Place of Performance State	Place of Performance Zip Code	Performance Congressional District	Program Source/Treasury Account Symbol: Account Code	Source/Treasury Account Symbol: SubAccount Code
	Contract			Superfund	Y-US						
	Interagency Agreement			Superfund	Y-US						
	Cooperative Agreement			Superfund	Y-US						

For clarification, the table categories are:

- Agency Name
- Submission Date
- Submitter Name
- Submitter Contact Info
- Funding Notification Amount
- Award Type
- CFDA Program Number (if applicable)
- CFDA Program Title (if applicable)
- Program Description
- US Indicator
- Place of Performance County
- Place of performance State
- Place of Performance Zip Code
- Place of Performance Congressional District
- Program Source/Treasury Account Symbol: Account Code
- Program Source/Treasury Account Symbol: SubAccount Code (Optional)

Appendix B

The table below defines Obligations and Gross Outlays for purposes of the reporting required in the OMB guidance. Please note that the title “Total Expenditures” has now been updated to Total Gross Outlays (As noted in OMB Circular A-11, Gross Outlays are also called Disbursements).

Term	Definition
Obligations, as adjusted	<p>A binding agreement that will result in outlays, immediately or in the future. Budgetary resources must be available before obligations can be incurred legally. This term includes obligations as well as recoveries of the current and prior year obligations. Recoveries of prior year obligations are reported as budgetary resources in budget execution reporting rather than as obligations. Here is a link to the definition in OMB Circular A-11. http://www.whitehouse.gov/omb/circulars/a11/current_year/s20.pdf</p>
Gross Outlays, as adjusted	<p>Amount of obligations paid. Includes payments in the form of cash (currency, checks, or electronic fund transfers) and in the form of debt instruments (bonds, debentures, notes, or monetary credits) when they are used to pay obligations. This term includes obligations paid as well as refunds of payments made in current and prior years. Refunds collected from prior year obligations that have been paid are reported as budgetary resources in budget execution reporting rather than as gross outlays. Here is a link to the definition in OMB Circular A-11. http://www.whitehouse.gov/omb/circulars/a11/current_year/app_f.pdf</p>

Appendix C

MEMORANDUM

March 9, 2009

SUBJECT: Class Deviation from 40 C.F.R. §35.6805(j)(3)

FROM: Howard F. Corcoran, Director
Office of Grants and Debarment

TO: James E. Woolford, Director
Office of Superfund Remediation and Technology Innovation (OSRTI)

This responds to your request (copy attached) for a class deviation from the requirements of 40 C.F.R. §35.6805(j)(3) under the regulation, "Subpart O -- Cooperative Agreements and Superfund State Contracts for Superfund Response Actions". This provision requires EPA to invoice a State for its final payment, with the exception of any change orders and claims handled during reconciliation of the Superfund State Contract (SSC), upon completion of activities in the site-specific Statement of Work (SOW). Specifically, OSRTI is requesting an exception from these requirements to add an additional option for when EPA invoices a State for its final payment under a SSC for all SSCs signed or amended from February 17, 2009 - September 30, 2010. An exception would permit EPA to invoice a State for its final payment on a final payment date as negotiated by the signatories to the SSC.

As explained in your request, OSRTI believes a deviation is necessary because States will need to match 10 percent (or more) of the American Recovery and Reinvestment Act of 2009 (ARRA) funding amount (\$600 million), in addition to the normally appropriated funding (approximately \$600 million for FY 2009 and FY 2010) for Superfund remedial cleanup. During the current recession, this places a huge burden on the States to pay their cost share match by completion of activities in site-specific SOWs for Superfund remedial clean-ups. If States cannot provide the assurances for matching funds, EPA may not be able to obligate the ARRA's \$600 million by September 30, 2010.

The requirements in 40 C.F.R. §35.6805(j)(3) are regulatory and not a statutory mandate. Under these circumstances, to expedite the award of the ARRA funds, I am approving your request. If you have any questions, please contact me at (202) 564-1903.

cc: Lauren Willis, OGC
Steve Pressman, OGC
Janet Kasper, OIG
Doug Ammon, OSRTI
Angelo Carasea, OSRTI
Barbara McDonough, OSRTI
Phyllis Anderson, OSRTI
Elizabeth Southerland, OSRTI
Robin Richardson, OSRTI
Sue Priftis, OPM
Denise Benjamin-Sirmons
Catherine Vass
Jeanne Conklin