



Department of Energy

Washington, DC 20585

January 5, 2021

MEMORANDUM FOR CARMELO MELENDEZ
DIRECTOR
OFFICE OF LEGACY MANAGEMENT

WILLIAM I. WHITE
SENIOR ADVISOR FOR ENVIRONMENTAL MANAGEMENT
TO THE UNDER SECRETARY FOR SCIENCE

FROM: PAUL M. DABBAR *Paul M. Dabbar*
UNDER SECRETARY FOR SCIENCE

SUBJECT: POLICY GUIDANCE MEMORANDUM:
RESOLUTION OF NEW CLEANUP OR REPAIR ACTIONS
ON FORMER OFFICE OF ENVIRONMENTAL
MANAGEMENT SITES IN THE OFFICE OF LEGACY
MANAGEMENT PORTFOLIO

Purpose

This memorandum provides guidance on specific actions to be undertaken by the Office of Legacy Management (LM) and the Office of Environmental Management (EM) to identify, program, execute and close out new cleanup actions or major repairs or modifications to due to failure of existing remedies on former EM sites that have been transferred to LM for long term surveillance and maintenance (LTSM), in which the required actions may exceed LM's mission authority, technical capabilities, and resources. The policy guidance stipulated herein does not relieve LM or EM of their post-closure responsibilities in the approved facility transfer agreement package for a site. The EM and LM Memorandum dated February 15, 2005, *Development of Site Transition Plan, Use of the Site Transition Framework, and Terms and Conditions for Site Transition*, remains in effect.

Background

In May 2020, the Government Accountability Office (GAO) submitted a report to the U.S. Senate Committee on Armed Services titled, *Environmental Liabilities: DOE Needs to Better Plan for Post-Cleanup Challenges Facing Sites* (GAO-20-373). The findings and recommendations in the report were based upon GAO's 2019 audit of LM's Environmental Liability Baseline. The first of three recommendations for Executive Action in the report is for the Secretary of Energy to "direct the Director of LM and the Assistant Secretary of the Office of Environmental Management to develop agreements and procedures for identifying and addressing circumstances at LM sites that require new cleanup work beyond the scope of LM's mission, capabilities, and resources." This memorandum is issued to address and implement the foregoing GAO recommendation.

Definitions

For the purpose of this guidance, the following terms are defined as follows:

- Unanticipated Remediation Scope and Costs. Remedial actions and associated costs driven by new requirements or new site conditions not documented under the facility transfer agreement for the site. This term includes all actions to address and correct remedy failure, new regulatory requirements, newly-discovered or formerly inaccessible legacy contamination that has become accessible, and restoration or upgrade to in situ remedies, when the scope of such new actions exceeds LM's programmatic LTSM responsibilities for a site.
- Remedy Failure. This term constitutes the underperformance or nonperformance of an environmental remedy in accordance with approved design specifications, construction practices, or found not to be protective as defined by the regulating agencies.

Guidance

LM administers the LTSM program for the Department of Energy's (DOE) post-cleanup sites for the life of the remedy. Challenges have been identified in providing LTSM at sites related to:

- Failure of a remedy containing or reducing residual contamination. A remedy at a site recently transitioned from EM to LM may not be performing as predicted or intended due to design parameters, construction flaws or unanticipated or unknown site conditions.
- Changes in geological or environmental conditions. Remedies may fail or suffer permanent degradation due to changes in climatic conditions or as a result of natural events such as earthquakes or fires, or human intervention.
- Application of new regulatory requirements. A site may be subject to new cleanup requirements imposed by one or multiple regulators at the Federal or State level.
- Newly discovered legacy contamination. Legacy contamination that was not identified during site characterization and remediation by EM prior to site transfer may be discovered post transfer to LM.

Upon identification of needed repair/modification of a remedy or a possible new requirement for remedial cleanup actions at a former EM site under LMs' LTSM portfolio, the following actions will occur:

- Perform a Joint Review. LM and EM will conduct a review and inspection of existing site conditions to verify and validate the need for new cleanup action or for significant repair or modification of a remedy. A co-authored inspection report documenting the results will be issued with a recommendation for the Under Secretary for Science to assign responsibility to LM or EM to lead further planning and execution of actions.

- Develop a Scope of Work and Cost Estimate. LM and EM will develop a scope of work and estimate for the appropriate cleanup action, repair or modification of an in-place remedy. A third-party independent cost estimate may be sought.
- Consult Cognizant Regulatory Agencies. The cognizant Federal and State regulators will be consulted to ensure the work plan will satisfy regulatory requirements.
- Perform Programming, Funding and Execution (Also see Table 1 - Summary).
 - LM will plan, fund, and execute repair or modification of an existing remedy for which the life cycle cost does not exceed \$50 million or contain a modification exceeding the minor construction threshold, currently \$20 million (50 USC 2743). The scope of work shall be within LM's mission, program of record, and the technical capabilities of its LTS&M contractor.
 - LM and EM will conduct a joint review of an existing remedy once the following circumstances are identified: a remedy exceeds a life cycle cost of \$50 million; or a repair or modification with a preliminary TPC exceeding the minor construction threshold; or newly discovered legacy contamination, regardless of cost, not previously remediated (or not effectively remediated) by EM. A Joint Review should account for all unanticipated remediation scope and costs.
 - EM will typically plan, fund, and execute repair or modification of an existing remedy for which the life cycle cost exceeds \$50 million or a modification exceeds the minor construction threshold. However, LM may plan, fund, and execute repair or modification of an existing remedy post LTSM transfer, for which the life cycle cost exceeds \$50 million or a modification exceeds the minor construction threshold if a Joint Review determines the scope of work is within LM's mission, program of record, and the technical capabilities.
 - EM will plan, fund (subject to Congressional appropriations and authorizations), and execute cleanup work of newly discovered legacy contaminated material post LTSM transfer--for which containment or remediation is required based on regulatory, statutory or risk considerations – regardless of cost, if a Joint Review determines the scope of work is not within LM's mission, program of record, and the technical capabilities.

Table 1 – Summary Funding Responsibility

Circumstance	Decision Criteria	Responsibility
Remedy Repair or Modification	≤\$20M project cost ≤\$50M lifecycle cost	LM
Remedy Repair or Modification	>\$20M project cost >\$50M lifecycle cost	EM, unless LM deems within its mission and capabilities and accepts responsibility
New Legacy Contamination	Any cost <u>Outside LM mission and capabilities</u>	EM

- Assignment of Responsibility. Once a Joint Review determines the significance of unanticipated scope and costs related to circumstances, the Under Secretary for Science will be notified of the Joint Review’s recommendations and will assign responsibility to the appropriate organization to pursue the needed resources and accomplish the corrective actions.
 - When EM is assigned responsibility, LM will lead development of a joint memorandum with EM outlining the terms and conditions of respective responsibilities during execution of corrective actions, including but not limited to: the scope and nature of corrective actions, regulatory interactions and obligations, contractor autonomy, site health and safety requirements, site security and access controls, continuation of other LTSM actions, closeout criteria, and custody/ownership and operational control of the site while actions are completed.
- Project Closeout. LM will coordinate with EM and cognizant regulators to conduct a joint inspection of the completed project to ensure that the scope of work, statutory and regulatory requirements, as well as any National Environmental Policy Act (NEPA) requirements, if applicable, are met. A completion report documenting the project closeout with lessons learned will be issued.

For any further information or clarification regarding the guidance outlined in this memorandum, please contact the Deputy Under Secretary for Science.

References

DOE Order 430.1C Real Property Asset Management

DOE Order 413.3B, Chg. 5, Program and Project Management for the Acquisition of Capital Assets

DOE Manual 135.1-1A Budget Execution-Funds Distribution and Control Manual
EM and LM Memorandum dated February 15, 2005:

- Attachment A: Terms and Conditions for Site Transition, February 2005
- Attachment B: EM-LM Site Transition Plan Guidance, December 2004
- Attachment C: Site Transition Framework for Long-Term Surveillance and Maintenance

DOE Financial Management Handbook, Chapter 24, Minor Construction

50 U.S. Code § 2743. Minor construction projects