Five-Year Review (FYR) Process and Reports
General Guidance for Support Role Project Managers
Overview

Introduction

The purpose of this guidance is to provide general instruction on the State's role in the Five-Year Review (FYR) process under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), otherwise known as Superfund. The purpose of a FYR is to evaluate the implementation and performance of a remedy in order to determine if the remedy is or will be protective of human health and the environment. FYRs identify concerns with current remedies that may have been discovered during the review process, if any, and documents recommendations to address them in the FYR Report.

This guidance is intended to be used where the State is participating as the support agency at non-Federal Facility sites.

Sites that Require a FYR

FYRs are required at Superfund sites where the remedial action(s) was selected under CERCLA 121 and hazardous substances, pollutants, or contaminants (waste) remain on site above the levels that allow for unlimited use and unrestricted exposure (UU/UE) upon completion. A FYR can be categorized as either a "Statutory Review", "Policy Review" or a "Discretionary Review" per EPA guidance. "Discretionary reviews" are not required under CERCLA, the NCP or EPA policy/guidance but States or EPA Regions may complete those FYRs at their discretion.

The following are examples of sites that require a FYR:

- The remedy includes a containment system that has left "waste in place."
    - Example - waste has been solidified to form a monolith.
- The remedy includes engineering controls.
    - Example - engineered cap to prevent exposure to underlying waste.
- The remedy includes institutional controls.
    - Example - deed restriction limits land use (no residential land use), restriction on digging or excavation, restriction on installing potable wells, or maintaining the integrity of engineering controls.
- The site has been deleted or partially deleted from National Priority List (NPL), but the remedy left waste on-site above levels that allow for UU/UE, or institutional and/or engineering controls remain in place.
- The remedy, upon completion, will not leave waste on site but it will take five or more years to achieve Remedial Action Objectives and cleanup levels (construction is complete and post construction Operation and Maintenance (O&M) or monitoring is ongoing).
- The site is on the NPL and has gone through a removal action that leaves waste above UU/UE levels and there will be no further remedial action.

Triggers that Start the FYR

The initiation or "trigger" date depends on whether the review is categorized as statutory or policy.
When does the **first** FYR begin?

- Statutory reviews - the first FYR period begins with the "actual RA on-site Construction" date or the "actual RA start" for Federal Facilities. For sites where there are multiple RAs, the review period begins with the earliest RA that leaves waste on-site. This trigger also applies to interim RAs that leave waste on-site.

- Policy reviews - the first FYR period begins with the date that construction is completed at the site. This is documented by the date of the Preliminary Close Out Report (PCOR) or the date of the Final Close Out Report (FCOR). The PCOR or FCOR date also triggers the initial FYR at NPL removal-only sites.

Subsequent FYRs

Once a FYR has been completed, the signature date on the FYR Report becomes the trigger for the next FYR for non-Federal Facility sites. The lead agency may choose to conduct a FYR earlier or more frequently than every five years.

Technical Assessment and Protectiveness Determinations

Documented in the FYR Report, the technical assessment of the remedy will examine the following three questions:

A) Is the remedy functioning as intended by the decision documents?
B) Are the exposure assumptions, toxicity data, cleanup levels, and Remedial Action Objectives (RAOs) used at the time of the remedy selection still valid?
C) Has any other information come to light that could call into question the protectiveness of the remedy?

These questions will provide the basis and data necessary for determining if the remedy is and will remain protective.

Role of the Support Agency

The roles and responsibilities of lead and support agencies can vary and may be specified in Superfund Memoranda of Agreement (SMOAs), Cooperative Agreements (CAs), Superfund State Contracts (SSCs) or other agreement documents.

Generally, the lead agency conducts the FYR inspection, prepares the report, and submits the report to the support agency for review and comment. The lead agency conducts community involvement activities as part of the FYR process. As part of follow-up actions, the lead agency ensures that recommendations and actions defined in the FYR are completed.

The support agency or agencies review[s] response data and documents, may furnish necessary data to the lead agency, and provides other assistance as requested. The lead agency should provide adequate time for the support agency to review and provide written comments to the draft FYR.

Support agency roles may include:

- Tracking the schedule for upcoming FYRs.
- Participating in the FYR process, including the interview form, site inspection, and community involvement.
- Reviewing the draft FYR report and providing written comments.
- Working with the lead agency to address and resolve concerns/comments prior to issuance of the final FYR report.

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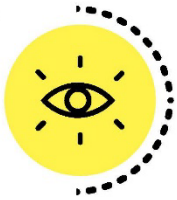
FYR ENGAGEMENT TIMEFRAME & REVIEW PROCESS

EPA RECOMMENDS THAT THE FYR PROCESS BEGIN 9 TO 12 MONTHS AHEAD OF THE UPCOMING FYR MILESTONE. THE FYR MAY BE LED BY EPA, THE STATE UNDER COOPERATIVE AGREEMENT, OR BY A FEDERAL AGENCY ADDRESSING THE SITE UNDER A FEDERAL FACILITIES AGREEMENT. IT IS RECOMMENDED THAT STATES MEET WITH THEIR REGIONAL COUNTERPARTS AT LEAST ONCE PER YEAR TO REVIEW THE SCHEDULES FOR UPCOMING FYRS

2 YEARS PRIOR — RECOMMENDATIONS

- Review recommendations of the previous FYR.
- Conduct minor repairs.
- Ensure any necessary sampling is conducted.



9-12 MONTHS PRIOR — NOTICE

- Lead agency provides notice to interested parties that FYR will be conducted.
- States provide lead agency copies of reports and data collected for State O&M activities.

6-9 MONTHS PRIOR — SITE VISIT & INTERVIEW

- Visit all accessible areas covered under the FYR.
- Interview forms from States and State contractors should be received by the lead agency.
- FYR Site Inspection Checklist is completed by the lead agency.

3-6 MONTHS PRIOR — DRAFT FYR

- State managers should identify any additional resource or subject matter experts needed for the review.
- Pay special attention to the Issues / Recommendations.

0-3 MONTHS PRIOR — FINAL FYR

- States should ensure all comments are addressed.
- EPA or the lead agency should finalize the FYR for signatures.

A Note on Timeframes

Specific situations at a site may result in changes to the engagement and review timeframe. Some sites with complicated remedies may need plan on more than 12 months for data gathering, community involvement and document drafting.

Additional Resources

Superfund Five-Year Reviews:
https://www.epa.gov/superfund/superfund-five-year-reviews

EPA Five-Year Review Guidance:
https://www.epa.gov/superfund/writing-five-year-reviews-superfund-sites#guidance

EPA Five-Year Review Recommended Template (January 20, 2016):
https://semspub.epa.gov/work/HQ/100000001.pdf

EPA Search Tool for FYRs:
https://www.epa.gov/superfund/search-superfund-five-year-reviews

EPA Comprehensive FYR Guidance (July 2001):
https://semspub.epa.gov/work/HQ/128607.pdf

Five-Year Review of Federal Facility Cleanups:
https://www.epa.gov/fedfac/five-year-review-federal-facility-cleanups

Superfund Community Involvement Handbook (March 2020):
https://semspub.epa.gov/work/HQ/100002505.pdf

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