

**U.S. Department of Energy
Portsmouth/Paducah Project Office**

**Protocol for the Environmental Regulatory Processes
for the Transfer of Real Property at the U.S. Department of
Energy Portsmouth and Paducah Sites**

**VOLUME 1: CERCLA 120(h)(4) –
Uncontaminated Property**



Date Issued – September 2022

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Paducah Gaseous Diffusion Plant
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REVISION LOG

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1	2017 Update	April 2017
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**Protocol for the Environmental Regulatory
Processes for the Transfer of Real
Property at the U.S. Department of Energy
Portsmouth and Paducah Sites**

VOLUME 1: Uncontaminated Property

Date Issued – September 2022

Prepared for
U.S. Department of Energy
Portsmouth/Paducah Project Office

Prepared by
Enterprise Technical Assistance Services, Inc.

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PREFACE

This *Protocol for the Environmental Regulatory Processes for the Transfer of Real Property at the U.S. Department of Energy Portsmouth and Paducah Sites, Volume 1. CERCLA 120(h)(4), Uncontaminated Property*, describes the process for transfer of uncontaminated real property by the U. S. Department of Energy (DOE) Portsmouth/Paducah Project Office (PPPO) for the Portsmouth Gaseous Diffusion Plant and the Paducah Gaseous Diffusion Plant sites in accordance with applicable requirements. This protocol describes the process for transfer of real property (including property with buildings) that is determined to be uncontaminated as defined under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 120(h)(4) based upon an Environmental Baseline Survey report (EBS) that identifies that the property is one where no hazardous substances nor petroleum products or their derivatives are known to have been released or disposed of and thus receives concurrence (of regulators and DOE headquarters) that the property is uncontaminated.

The EBS is intended to address applicable requirements with a focus on the environmental aspects of the process. The EBS will also collect and report information related to disclosures needed to support property transfer including disclosures associated with buildings present on the property. A clean parcel transfer is considered a timely transfer because no remedial action is needed before transfer. This protocol also provides a template for the property transfer process once EBS concurrence is obtained.

This protocol is used in conjunction with the *Protocol for the Environmental Regulatory Processes for the Transfer of Real Property at the U.S. Department of Energy Portsmouth and Paducah Sites, Volume 2. CERCLA 120(h)(3), Remediated Property and the Planning and Due Diligence for Real Property Transfer* (Procedure) to transfer excess, unneeded, unutilized, or underutilized real property at defense nuclear facilities for purposes of economic development per 10 Code of Federal Regulations (CFR) Section 770 and CERCLA 120(h). Non-economic-development property transfers (e.g., those conducted for conservation/recreation/mitigation/historic preservation) are also covered by this procedure.

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ACRONYMS

AEA	Atomic Energy Act of 1954, as Amended
ALARA	As Low As Reasonably Achievable
ALs	Authorized Limits
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended
CFO	Chief Financial Officer
<i>CFR</i>	<i>Code of Federal Regulations</i>
CI	Congressional and Intergovernmental Affairs
CPD	clean parcel determination
CRS	Certified Realty Specialist
CRO	Community Reuse Organization
CX	categorical exclusion
D&D	Decontamination & Decommissioning
DCGL	Derived Concentration Guideline Level
DFE&O	Director's Final Findings and Orders
DOE	U.S. Department of Energy
DOE O	DOE Order
DOE-HQ	U.S. Department of Energy Headquarters
DQO	data quality objective
EA	environmental assessment
EBS	Environmental Baseline Survey report
EIS	Environmental Impact Statement
EM	Environmental Management
EMCBC	Environmental Management Consolidated Business Center
EPA	U.S. Environmental Protection Agency
ES	Energy Secretary
ES/EXEC	Energy Secretary / Executive Office
FFA	Federal Facility Agreement
GC	Office of General Counsel
GSA	General Services Administration
HSA	Historical Site Assessment
IVR	Independent Verification Report
<i>KAR</i>	<i>Kentucky Administrative Regulation</i>
KDEP	Kentucky Department for Environmental Protection
KNREPC	Kentucky Natural Resources and Environmental Protection Cabinet
<i>KRS</i>	<i>Kentucky Revised Statute</i>
MA	Office of Management

<i>MARSSIM</i>	<i>Multi-Agency Radiation Survey and Site Investigation Manual</i>
NEPA	National Environmental Policy Act of 1969
NPL	National Priorities List
OEPA	Ohio Environmental Protection Agency
OMB	Office of Management and Budget
PACRO	Paducah Area Community Reuse Organization
PAD	Paducah Gaseous Diffusion Plant
PORTS	Portsmouth Gaseous Diffusion Plant
PPPO	Portsmouth/Paducah Project Office
RECO	Real Estate Contracting Officer
RMD	Risk Methods Document
SODI	Southern Ohio Diversification Initiative
<i>U.S.C.</i>	<i>United States Code</i>

INTRODUCTION

1. PURPOSE AND ORGANIZATION OF THE PROTOCOL

This document describes the real property transfer process used by the U.S. Department of Energy (DOE) Portsmouth/Paducah Project Office (PPPO) for the Portsmouth Gaseous Diffusion Plant (PORTS) and the Paducah Gaseous Diffusion Plant (PAD) sites, with a focus on the environmental aspects of the process. There are many potential benefits resulting from DOE property (land and included buildings) transfer, including: enabling creative, community-led development which may provide opportunities for job creation and improve the regional economy; enabling opportunities for conservation, recreation, and other public benefits; returning real property to private ownership, thereby enabling property tax collection by appropriate taxing entities; and reducing the DOE Environmental Management (EM) program footprint. This document discusses coordination between the PORTS and PAD sites, PPPO management, and the other DOE organizations involved in property transfer and approval. The working relationships among PPPO and site regulators regarding property transfers are also addressed. Regulatory agreements among PPPO and regulators – e.g., the *Director's Final Findings and Orders (DFF&O) for the Portsmouth Gaseous Diffusion Plant* and the *Federal Facility Agreement (FFA) for the Paducah Gaseous Diffusion Plant* – include provisions regarding property transfer and are discussed in this protocol.

The majority of the protocol is devoted to the environmental due diligence process conducted to support transfers of real property from federal ownership. The requirements of the process originate in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 120(h). The requirements of DOE Order (DOE O) 458.1 on Radiation Protection of the Public and the Environment (DOE 2020) are also triggered for property transfers and steps needed to ensure compliance with those DOE O 458.1 requirements are explained in the protocol. Requirements associated with the National Environmental Policy Act (NEPA), implementing regulations, and sensitive resources are also discussed.

Appendices to the protocol include useful tools such as a description of requirements for transferring uncontaminated/non-impacted buildings/structures as part of the real property transfer, an annotated outline of the due diligence report to be prepared to support transfer (i.e., the Environmental Baseline Survey report [EBS]), a discussion of other potential requirements and disclosures that may expedite transfer, a crosswalk of the environmental due diligence requirements and where they are addressed in the EBS, a template for the Business Case, and templates for various property transfer transmittals.

1.1 SCOPE OF THE PROTOCOL

PPPO will use the process described in this protocol to meet the environmental requirements necessary to transfer title of uncontaminated real property under CERCLA 120(h)(4). This document focuses on the environmental documentation required to obtain regulatory concurrence that the property is eligible for transfer as uncontaminated. The companion Volume 2, describes the process to meet the environmental requirements necessary to transfer remediated land (and structures associated with that land) under CERCLA 120(h)(3). For both protocols, the keystone feature is the preparation and acceptance of the EBS. A discussion of the balance of the transfer process that occurs after completion and acceptance of the EBS is included. The PPPO Reuse Lead coordinates the steps for property transfer with the realty office in the Environmental Management Consolidated Business Center (EMCBC) and with the DOE-Headquarters (DOE-HQ) EM liaison (DOE 2014d, DOE 2016). PPPO will facilitate the completion of

required activities by other DOE organizations, e.g., DOE-HQ, EMCBC, and others that are needed to enable PPPO to transfer real property.

The protocol is directed towards the transfer of uncontaminated land; however, it includes as Appendix O, a discussion of the requirements for transferring uncontaminated structures and buildings associated with that land, if present on the property.

This CERCLA 120(h)(4) protocol document includes information on lessons learned from implementation of the uncontaminated parcel transfer process at PORTS and PAD.

1.2 DOE AUTHORITY FOR TRANSFER OF REAL PROPERTY

The authority for DOE to transfer title to real property is found in the Atomic Energy Act of 1954 (AEA). Section 161(g) of the AEA authorizes DOE to “sell, lease, grant and dispose of such real and personal property as provided by the AEA.”

The implementation of DOE real property actions is carried out by Certified Realty Specialists (CRSs). The CRSs that support PPPO are located at the EMCBC. Real estate actions, subsequent to CRS review and approval, are executed at the appropriate level of delegated authority, such as authority possessed by a Real Estate Contracting Officer (RECO).

1.2.1 10 CFR 770 Economic Development Transfer Process

In February 2000, DOE issued an interim rule, which was finalized in November 2013, enabling the transfer of DOE property for economic development purposes. The authority for the rule – 10 *Code of Federal Regulations (CFR) 770*, entitled “Transfer of Real Property at Defense Nuclear Facilities for Economic Development” – is 50 *U.S.C. (United States Code) 2811* and AEA Section 161(g). Transfers of real property under 10 *CFR 770* are intended to offset negative impacts on communities caused by unemployment from related DOE downsizing, facility closeouts, and workforce restructuring at Defense Nuclear Facilities. Economic development is defined in 10 *CFR 770.4* as “the use of transferred DOE real property in a way that enhances the production, distribution, or consumption of goods and services in the surrounding regions(s) and furthers the public policy objectives of the laws governing the downsizing of DOE’s defense nuclear facilities.” PORTS and PAD are defense nuclear facilities as defined at 10 *CFR 770.4* and are therefore eligible to use the 10 *CFR 770* process. Although there are several mechanisms available to DOE for transferring real property, it is anticipated that the process outlined in 10 *CFR Part 770* for title transfers for economic development purposes will be the predominant process followed for transfers at PORTS and PAD.

10 *CFR 770* provides for indemnification (depending on availability of funding) to transferees (per Section 3158 of the Defense Authorization Act of 1998) if requested in writing at the time of their proposal for transfer. Indemnification offered under 10 *CFR 770* is for claims based on the release or threatened release of a hazardous substance or pollutant or contaminant resulting from DOE activities (10 *CFR 770.7(a)(2)*).

Transfer at less than fair market value is also available for economic development transfers if considerable infrastructure improvements are needed to make the use of the property economically viable, or if a less than fair market value transfer would further the public policy objectives of the laws governing the downsizing of defense nuclear facilities (10 *CFR 770.8*).

Because 10 *CFR* 770 is the most likely path to be taken for future transfers, it is explained as the base case. Should a non-10 *CFR* 770 process transfer be pursued (e.g., a General Services Administration [GSA] transfer), the environmental due diligence tasks under CERCLA Section 120(h) would be the same as those for the 10 *CFR* 770 process, though differences may occur in the realty-led aspects of the transfer and involved review processes. PPPO will coordinate with the CRS at the EMCBC for PPPO real property transfers, regardless of the process followed.

It should be noted that this protocol, CERCLA 120(h), and 10 *CFR* 770 address the transfer of real property (including associated buildings) but are not designed nor intended for use with personal property.

1.2.1.1 Transfer Process Steps

Consistent with the purpose of the 10 *CFR* 770 rule, it is intended that DOE will, over time and to varying degrees, make property available for transfer. In anticipation of future economic development requests or for mission needs potentially involving transfer for conservation or mitigation purposes, PPPO is committed to making excess property available pro-actively.

The property transfer process, illustrated in Figure 1, shows the PPPO process from planning in anticipation of real property title transfers, through to the execution of a quitclaim deed. An annotated summary of the transfer process is provided in Table 1 and is keyed to the numbered steps in Figure 1.

Figure 1. DOE PPPO Property Transfer Process Steps

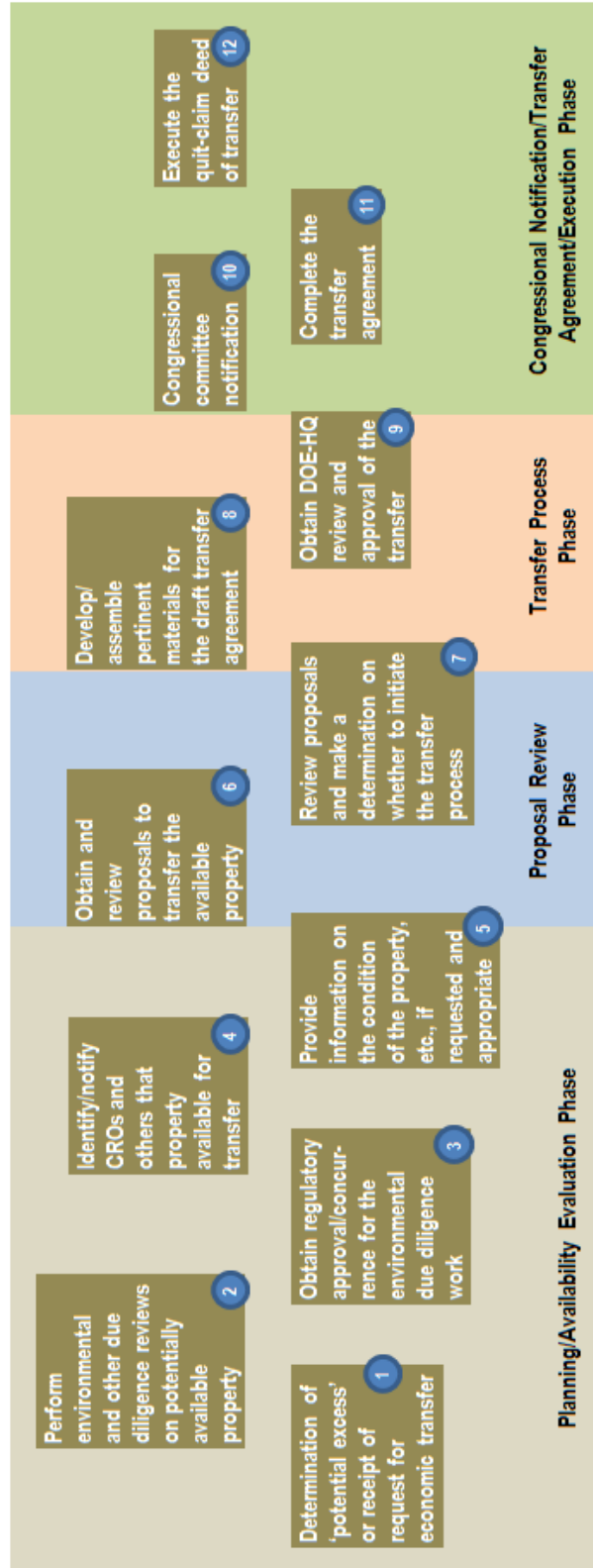


Figure 1. DOE PPPO Property Transfer Process Steps

Table 1. Summary of PPPO Property Transfer Process Steps

Phase	Step	Step Summary	Step description
Phase 1 Planning/ Availability Evaluation	1	Determination of ‘potential excess’ or receipt of request for economic transfer.	This planning step is coordinated between the site and the realty specialists at EMCBC. It is aimed at identifying land areas that are appropriate for transfer in consideration of when they may become available. Real property that is not utilized, underutilized, or not being put to optimum use may be considered potential excess property.
	2	Perform environmental/other due diligence reviews on potentially available property	This is the step that studies the property to determine if it is eligible for transfer as uncontaminated per CERCLA 120(h)(4) and DOE O 458.1.
	3	Obtain regulatory approval/concurrence for the environmental due diligence work	The completed CERCLA 120(h) documentation is submitted by DOE for approval/concurrence by the agencies/appropriate officials involved in the transfer and concurrence is obtained.
	4	Identify/notify of available property to CROs and others	Once approval/concurrence is obtained, notification of availability, in a manner consistent with 10 CFR 770, may be made to the CROs, community, and/or others who have expressed an interest in the available property.
	5	Provide information on the condition of the property, etc., if requested/appropriate	Information on the available property may be made to those who request it, such as information on the physical condition of the property.
Phase 2 Proposal Review	6	Obtain and review proposals to transfer the available property	Review proposals against the requirements of 10 <i>CFR</i> 770. Inquire about the proposal; obtain additional information as needed for proposals that have proposed future uses of interest/compatibility for the site.
	7	Review proposals and make a determination on whether to initiate the transfer process	During the review phase, identify if a 770 transfer is appropriate or whether a different type of transfer (e.g., GSA) is appropriate. Identify the transfer process to be used and develop the recommendation – “business case” – that supports proceeding with the transfer process.
Phase 3 Transfer Process	8	Develop/assemble pertinent materials for the draft transfer agreement	Develop materials needed to support transfer. For a GSA transfer, develop information/forms to support transfer and submit to GSA for acceptance. If a 770 transfer, develop materials needed to support the transfer and transmit to DOE-HQ Environmental Management (EM).
	9	Obtain DOE-HQ review and approval of the transfer	<u>For 770 transfer</u> , obtain review and approval from DOE-HQ EM, General Counsel, Chief Financial Officer, and Management and Administration. Obtain Secretarial signature on Congressional notification transmittals that serve as DOE-HQ support and approval of the transfer. <u>For a GSA transfer</u> , secure DOE-HQ approval for GSA transfer and obtain GSA acceptance of the property.
Phase 4 Congressional Notification/ Transfer Agreement/ Execution	10	Congressional committee notification	Select Congressional committees review the transfer package for a maximum of 60 days.
	11	Complete the transfer agreement	At the conclusion of the 60 day period, the transfer agreement (the deed) can be finalized.
	12	Execute the quitclaim deed of transfer	Following deed finalization, the deed is able to be executed between EMCBC and the transferee.

1.2.1.2 Discussion of the 10 CFR 770 Transfer Process Phases

Phase 1 – Planning/Availability Evaluation Phase

The transfer process begins with identification of potentially excess property by the site in coordination with the CRS at EMCBC. Refer to real property utilization survey requirements in 41 CFR 102-75.60. The primary consideration is the DOE mission need for the property and utilization. A “whole-site” planning effort best coordinates site cleanup activities with real property needs. This planning effort will include identifying real property potentially appropriate for transfer for economic development and possibly other purposes such as recreation or conservation, if applicable to the site. A discussion of the planning effort is described in Section 2.

Periodic coordination with the Community Reuse Organization (CRO) or others known to be interested in economic development at the site is also needed. This will enable the CRO to assess its proposed plans for site reuse, such as for particular infrastructure, and offer timely feedback to DOE, including information on the preferred sequence of transfer of their land interests, etc.

Once real property is identified that is potentially suitable for transfer in support of economic development, the environmental due diligence process commences, including the review of relevant records, walk-down and photography of the property, and interviews with people knowledgeable of the property and operations that may have occurred on it and immediately adjacent to it. During this phase, DOE will also begin to address the requirements of DOE O 458.1 so that DOE may be able to demonstrate that the property is suitable for release from DOE control from a radiological perspective.

The end result of the environmental due diligence effort is the preparation of a document called an Environmental Baseline Survey report (EBS). The EBS includes information that satisfies the requirements of CERCLA 120(h) and demonstrates that the property is eligible for transfer as uncontaminated. The purpose of the due diligence for a clean parcel is to adequately investigate the parcel to “. . . identify the real property on which no hazardous substances and no petroleum products or their derivatives were known to have been released or disposed of. Such identification shall be based on an investigation of the real property "to determine or discover the obviousness of the presence or likely presence of the release or threatened release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil” on the real property (CERCLA 120(h)(4)(A)). If contamination is identified on a portion of the parcel being evaluated for transfer as uncontaminated, the boundaries of the parcel proposed for transfer may be adjusted to exclude the contaminated portion; this portion may be proposed for transfer at a future time and its transfer may follow a different protocol.

Following completion, the EBS is transmitted to the state and/or federal regulators involved in the individual site’s transfer programs. It is anticipated that each site, with the knowledge and/or involvement of the PPPO Reuse Lead, will be communicating and coordinating with the regulators so that their questions can be answered in a timely manner to obtain faster reviews of the EBS and acceptance of the determination of the parcel as uncontaminated property.

The EBS identifies if the property is eligible for transfer as uncontaminated per CERCLA 120(h) and DOE O 458.1. Once regulatory acceptance is obtained and the property has been determined to be excess, unneeded, or underutilized, the property is considered to be available for transfer.¹

PPPO will communicate to the CRO, or others who have expressed an interest in the property, that the PORTS or PAD site has property available for transfer for economic development and is seeking proposals for transfer. These notifications are discussed further in Section 4.1. These proposals for transfer need to include the information specified in 10 *CFR* 770. If members of a site's CRO — Southern Ohio Diversification Initiative (SODI) for PORTS and the Paducah Area Community Reuse Organization (PACRO) for PAD — or others request additional information on the property, DOE will evaluate the request to determine if the requested information can be provided.

PPPO may also receive transfer requests for real property before it is determined to be available. In instances where DOE receives such a request, DOE will evaluate the property from a utilization and mission need perspective and inform the requester of the steps that would need to be performed to determine if the property is available. Example DOE response letters are provided in Appendix I. For example, the requested property may be underutilized and not have a mission need but still need to have the CERCLA 120(h) process completed before it is considered to be available.

In parallel with the main due diligence effort to demonstrate the property is eligible for transfer as uncontaminated, other environmental due diligence activities will be undertaken. Although certain transfers may qualify for a categorical exclusion (CX) under the DOE NEPA regulations, PORTS and PAD have prepared site-wide Environmental Assessments (EAs) for their proposed transfer activities. Individual property transfer proposals are evaluated against these site-wide NEPA documents to ensure that the proposed land use is adequately bounded by the analyses contained within the EAs. Additional evaluation of the site may be required before an actual transfer (during Phase 3) to determine if sensitive resources (e.g., historic resources, wetlands, endangered species, etc.) are present which would require additional consideration and/or protection.

Phase 2 – Proposal Review Phase

The proposal review phase follows the receipt of transfer proposals for the property that has been identified as available. During the review phase, PPPO will identify if a 770 transfer is appropriate or whether a different type of transfer (e.g., GSA) will be pursued.

Considerations in determining the transfer method include: (1) whether DOE independent authority is applicable; and (2) whether the excess property includes land or consists only of buildings, trailers, or structures that may only be available to non-DOE entities by off-site removal. Candidate transfer methods are:

- Sale or transfer under DOE independent authority, including a 770 transfer for economic development, or

¹ For purposes of this protocol and PPPO's proactive approach to transfer readiness, the availability of real property considers DOE's mission need for the land and its utilization, the ability to determine if the property is environmentally suitable for transfer, and the ability to obtain regulatory agreement of the environmental due diligence documents prepared for the property. This approach is used due to the common understanding of the term "available" (e.g., ready) and the time-sensitive nature of economic development endeavors. As a component of the mission and utilization evaluation, property transferred for economic development may be excess, unneeded, or underutilized.

- Conveyance to the GSA for transfer.

As noted above, proposals for the transfer of real property for economic development purposes shall follow 10 *CFR* 770. PPPO reviews the proposal to see if it offers a viable economic vision, sound logic for execution, and judgmental variables, such as being consistent with DOE's ongoing mission in adjacent areas. PPPO determines whether the appropriate content has been included in the proposal and whether additional information is needed from the requesting party, which could include a request for a new or revised proposal. PPPO also determines if the proposal is in the best interest of the Government and, if so, will proceed with the remaining steps in the process. This determination is a component of the recommendation (also known as the "business case") for the transfer. Communication and coordination with the HQ-EM liaison also occurs during this time to facilitate the overall process. In addition, if a transferee is requesting indemnification, the transferee must indicate the request at the proposal stage.

At the conclusion of the review, PPPO will write to the proposed transferee(s) and indicate whether a transfer (for their proposed use) will be pursued (see example DOE response letters in Appendix I). When affirmative replies are issued, PPPO will coordinate with the CRS at EMCBC and request their support with development of transfer agreements (and/or deeds) for the proposals deemed beneficial to the Government. Transfer processes will not proceed for proposals found not to be in the best interest of the Government.

Note that there may be instances where PPPO obtains a request for property that has not been determined to be available. In these situations, PPPO, in coordination with the site and in a manner consistent with the protocol, will assess the request and determine if it will pursue making the property available or if another piece of available land could satisfy the request. If PPPO decides to go through the steps to make the property available, the transfer process is initiated. Consideration as to property configuration and size is given so as to optimally integrate with EM activities and sequencing. PPPO communicates to let the requestors know its decision and path forward.

Phase 3 – Transfer Process Phase

If a GSA transfer process is selected, DOE will prepare and submit to GSA, a Standard Form 118 and attachments. DOE will then coordinate with GSA to submit documentation needed to obtain GSA acceptance of property.

Elements of a GSA Package (not all may be required):

- GSA Standard Form 118: Report of Excess Real Property,
 - Attachments to SF 118, as necessary:
 - *Schedule A: Buildings, Structures, Utilities and Miscellaneous Facilities*
 - *Schedule B: Land*
 - *Schedule C: Related Personal Property*
- Excess Real Property Checklist.
- HUD Title V Checklist, or documentation of submittal to HUD (if applicable).
- Summary of the affected site and DOE mission and reasons why this property is no longer required in support of the mission.
- General description, location, size, acquisition cost, nature of real estate interest proposed for transfer, brief history, effects upon severance, mineral, and other rights, impact upon the natural resource conservation program of the installation, existence of facilities of cultural or historical significance as defined by 36 CFR 800, and any other relevant information, which explains the proposed transfer.
- EBS (or equivalent) environmental characterization as required by CERCLA section 120(h) and 40

CFR 373.

- A brief discussion of the environmental and economic impact of the proposed transfer with a summary of applicable environmental requirements.
- Number of personnel affected.
- Estimate of one-time closing and other costs and of recurring annual savings, including operational and maintenance cost savings.
- Disposition of, and impact upon, tenants of the installation.
- Justification for portions of the installation proposed for retention.
- Nature of existing out-grants, permits, or permitted temporary uses.
- Information on existing easements and surveys.
- Recent appraisal reports that are available.
- Restrictions to be imposed on the excess land.
- Proposed date the facilities will be vacated.
- For transfer of real property with an estimated fair market value of \$3,000,000 or more, evidence of compliance with the requirements of 41 CFR 102-75.270, Applicability of Anti-Trust Laws.
- A site and vicinity real estate map identifying the parcels.
- Photographs, if available.
- Number, type, use, size, age, and general condition of facilities and utilities proposed for transfer.
- Parties known to have an interest in acquiring the property.
- Certification that requirements of DOE G 450.4-1C Integrated Safety Management System; Section 120(h) of CERCLA; and any other Federal, State, or local regulations have been met for residual radioactive material and any other hazardous substances. This applies whether Government-owned land, improvements, or both, are being transferred.
- Certification of compliance with 40 CFR 761 regarding use and storage of Polychlorinated Biphenyls (PCBs) where PCBs may have been utilized (e.g., in transformers).
- A statement regarding presence or absence of friable asbestos. And,
- Underground storage tanks should be identified in Block 18 of the SF 118 as to location, size, and former use.

For an Economic Development transfer, the transfer process phase consists of the consolidation and/or development of the transfer agreement and the supporting materials including the recommendation (business case) into a “transfer package,” which is sent to DOE-HQ EM requesting their review and approval. The transfer package elements shall parallel the elements described in the GSA package above. This is an effort involving the site, PPPO transfer program leadership, and EMCBC CRS and EMCBC counsel, in coordination with the EM program liaison at DOE-HQ.

PPPO coordinates completed documentation with the CRS, consolidates any changes into the transfer package, and submits the package to DOE-HQ EM to initiate the required 90-day notification to HQ. Required documentation includes: the approved EBS, DOE O 458.1 documentation (including the Independent Verification Report [IVR]), documentation of completion of the NEPA review for the proposed transfer (or the strategy for its completion), the recommendation that provides the rationale as to why the transfer is in the best interest of the government (the “business case”), the final draft deed, the transfer proposal in its final form, and the official DOE correspondence needed for the Secretary’s signature (an Action Memorandum for Transfer) for the Congressional notification that occurs in Phase 4 to ensure completeness. The DOE-HQ EM liaison for property transfers will be contacted to coordinate the routing through the HQ reviewers and ultimately to the Secretary of Energy for signature of the letters to various congressional committees that initiate the congressional review periods.

Phase 4 – Congressional Notification/Transfer Agreement/Deed Execution Phase

The final phase of the economic development transfer process begins when the Secretary has signed the letters to initiate the Congressional notification recommending the transfer. The letters are forwarded by the Assistant Secretary for Congressional and Intergovernmental Affairs (CI) to the Congressional Committees (e.g, House and Senate Appropriations, Armed Services, Strategic Forces, and Energy and Water subcommittees) for the required notification periods. The notification periods are 30 days for the House committees and 60 days for the Senate committees. The periods run concurrently so the overall Congressional notification period is 60 days. During that time, the Congressional committees may have questions that must be responded to expeditiously. The transfer may occur following the conclusion of the 60 day notification period. PPPO coordinates with the DOE-HQ EM liaison on the timing at the start of the notification process and upon its conclusion. Finally, the Real Estate Contracting Officer executes the Quitclaim Deed.

1.2.2 Additional Transfer Authorities

The due diligence and EBS for parcel transfer are essentially the same regardless of the transfer mechanism used. The primary transfer mechanism for real property transfers for economic development at PORTS and PAD is the 10 *CFR* 770 process, under DOE's real property authority of the AEA. There are, however, additional options for transfer through DOE and through the General Services Administration (GSA) for non-economic development transfers. PPPO consults the CRS at EMCBC to obtain their input and support on the most appropriate option for each particular property transfer.

2. PLANNING FOR TRANSFERS

In an effort to anticipate and plan for transfers and be able to convey this information accurately, each site may have prepared an integrated property transfer strategy that serves as a planning tool, consistent with the annual 'Five Year Site Plan' requirements established in the August 31, 2017, Memorandum *Guidance for Real Property Five-Year Site Plan Fiscal Years 2018-2022* (DOE 2017b). Similarly, each site is responsible for compliance with other relevant guidance, including, if applicable, the Office of Management and Budget, November 6, 2019, Memorandum *Implementation of Agency-wide Real Property Capital Planning* (OMB 2019), the 10 March 2015 DOE Memorandum, *Guidance on Notification of Available Property under 10 CFR Part 770* (DOE 2015c), *Transfer of Real Property at Defense Nuclear Facilities for Economic Development* (DOE 2008), and provisions of 10 CFR 770.

The property transfer strategy should account for site real property in consideration of site Decontamination & Decommissioning (D&D) and remediation activities and the site's end-state(s), e.g., industrial in some areas, recreational in others. This initial "sorting" will also define mission need for land with an understanding that revisiting this aspect periodically is important to the integration of cleanup with transfer planning and progress. The strategy is intended to be high-level and be able to facilitate comprehensive understanding of site transfer opportunities. Areas of long-term management, such as dedicated waste disposal areas that may transition at a future time, should also be identified. The information contained in the strategy is as follows:

(1) Property that is located within the D&D/cleanup footprint or proximate to planned D&D/cleanup activities is generally mapped and identified for transfer in the longer-term/post-D&D/post-cleanup.

(2) Property that is identified as clean/uncontaminated is mapped and considered for evaluation for transfer in the nearer-term.

(3) Property where PPPO has cleanup to perform (that can be completed before transfer) or where the contaminants requiring cleanup would not pose an unacceptable risk to a transferee (with appropriate deed notations) is mapped and could be evaluated for transfer in the nearer-term or middle-term (under 120(h)(3)).

(4) Property where PPPO is presumed to need to retain ownership (such as certain types of burial grounds) is mapped and identified.

Transfer Planning Timeframes

- Nearer-term is considered to be between the present and 5 years.
- Middle-term is considered to be between 5 and 15 years.
- Longer-term is considered to be a period up to 30 years.

These timeframes are for planning purposes and should be revisited periodically.

A periodic re-evaluation by PPPO of each site's strategy is appropriate to consider new information that may inform the general sequence categories. Examples of new information that could be considered include completed remediation work or the availability of new data that could result in shifting areas of real property from one category to another.

The land use factors (i.e., opportunities and constraints) are depicted in the strategy. Examples of opportunities include roads, linear infrastructure such as gas lines, water lines, electrical service, rail, etc. Examples of constraints are cemeteries and wetlands, which can be transferred, but are nevertheless constraints to maximize economic development potential.

The completed strategy will enable the sites to plan for transfers and determine areas eligible for transfer as uncontaminated. A useful planning tool that will be included in each site's strategy, and updated as appropriate, is the Status and Forecast of Property Transfer Activities (see examples in Appendix A). Information such as this may be requested by HQ transfer package reviewers to assist them in understanding a site's overall transfer strategy.

The factors of mission need and utilization are components of determining if property is appropriate for transfer for economic development. Both aspects of these analyses – the mission need and utilization – as well as what is known about the areas presumed to be uncontaminated and those where the status is not known, should be reviewed annually and updated as needed to remain current and provide a realistic picture of real property available for economic development.

In accordance with the requirements of 10 *CFR* 770.5 and reiterated by the 10 March 2015 memo (*Guidance on Notification of Available Property under 10 CFR Part 770*) from the DOE Senior Real Property Officer of the Office of Real Property Management, DOE is required to annually make available, to potentially interested persons or entities, a list of real property that has been identified as appropriate for transfer for economic development purposes. Only real property that may be considered "Excess," "Underutilized," or "Unneeded" is eligible for transfer under 10 *CFR* 770.

PPPO has developed a procedure, *Planning and Due Diligence for Real Property Transfer*, PPPO-3463195 (DOE 2022c), to assist staff in following the real property transfer process.

3. ENVIRONMENTAL DUE DILIGENCE FOR TRANSFERS OF UNCONTAMINATED PROPERTY

Notification and warranty obligations imposed by CERCLA Section 120(h) necessitate that all federal real property transfers require an environmental due diligence review². The environmental due diligence review establishes the conditions of property proposed for transfer and documents these conditions in an EBS (DOE 2005). Appendix B contains a crosswalk of the requirements of CERCLA 120(h)(4) and where they are found in an EBS. Appendix C contains additional detail, which includes a crosswalk of the requirements of CERCLA 120(h)(4) and a narrative on where and how they are addressed in an EBS. Examples of due diligence activities for uncontaminated property include a title search to determine prior ownership history, a property description, a review of aerial and other photographs, interviews with people familiar with the property and activities that took place on it, and visual and physical inspections of the property. These requirements originate in CERCLA 120(h)(4). The suggested outline / table-of-contents for an EBS for an uncontaminated property is included in Appendix L. If requested, a copy of a complete EBS will be made available as an example. The objective of the due diligence effort is to be able to determine if the property is eligible for transfer as uncontaminated.

3.1 CERCLA 120(h)(4) REVIEWS

3.1.1 Uncontaminated Property

CERCLA Section 120(h)(4) addresses uncontaminated property transfer, also known as a Clean Parcel Determination (CPD) transfer. The requirements of CERCLA 120(h)(4) and where they are found in an EBS is included in a crosswalk found in Appendix C. An uncontaminated parcel is one about which one is able to state one of two conclusions:

- That no hazardous substances and no petroleum products or their derivatives were known to have been released or disposed of, pursuant to CERCLA 120(h)(4), or
- There is no indication that the release or disposal of hazardous substances or petroleum products has resulted in an environmental condition that poses a threat to human health or the environment, pursuant to U.S. Environmental Protection Agency (EPA) *Military Base Closures: Revised Guidance on EPA Concurrence in the Identification of Uncontaminated Parcels under CERCLA 120(h)(4)* (EPA 1997)³.

This 1997 EPA guidance was issued to assist EPA in meeting its obligation under CERCLA 120(h)(4). The guidance states: “EPA is concerned with both protecting human health and the environment and achieving Congress' goal of expeditiously transferring uncontaminated real property to communities for

²CERCLA 120(h) requires that research be conducted to identify spills, releases, and storage of hazardous substances. Both CERCLA and 40 *CFR* 373 require that the findings of such research be included in the notification (in the case of title transfers, this will take place in the deed for title transfer). This notification is also included in the Environmental Baseline Survey report.

³ While the 1997 EPA Guidance was developed in support of Department of Defense Base Realignment and Closure (BRAC) activities, DOE evaluated the applicability of this guidance to other federal facilities. The research determined that it is the only guidance issued by EPA on the identification of uncontaminated property where releases have occurred but no threat to human health or the environment is posed. The guidance is also listed by EPA on their "Property Transfer at Federal Facilities – Policy and Guidances" website, indicating the broad federal facility applicability.

economic redevelopment. Interpreting CERCLA Section 120(h)(4) to allow the expeditious transfer of parcels where there is no indication that the release or disposal of hazardous substances or petroleum products poses a threat to human health or the environment would aid Congress' intent by increasing the amount of real property which would be available for expedited reuse and redevelopment.”

When pursuing an uncontaminated determination for a CPD, evidence must be provided that constituents in media are below action levels, which can include background levels, maximum contaminant levels, authorized limits (ALs), and risk-based criteria (including both human health [DOE 2022d] and ecological risk [DOE 2019]). In addition, depending upon the nature of the constituent, concentrations shall also be compared to vapor intrusion action levels (EPA 2015). For example, a CPD can be made if soil constituent concentrations are at or below soil background levels and/or ALs, and/or risk-based criteria, as set by the site and/or if groundwater constituent concentrations are below maximum contaminant levels.

To support a finding of no release, site background documentation for each of the media may be consulted to ascertain the background levels that may be used to support a comparison to background. Following the respective site's soil screening criteria (DOE 2015a and DOE 2022d for PORTS and PAD, respectively), if constituent concentrations shown in existing soil data (or found when sampling a parcel proposed for transfer) are at or below the background screening levels, a further evaluation of risk is not required. Where data are used to support a determination of the parcel as uncontaminated, the data will be assessed to confirm that they are usable for their intended purpose. In addition, comparisons to target levels should ensure that the site samples are representative of the medium used in the comparison. Similarly, comparisons shall identify, if possible, the potential source(s) of the constituent, whether the constituent is present due to an intended use, and whether its presence constitutes a release. To the extent practical, comparisons shall evaluate a range of concentrations of constituents and compare them to target levels as well as reportable quantities to determine if the distribution is obvious evidence of a release. The PPPO prefers to use existing data for the CPD; however, additional sampling and analysis may be needed to meet the data quality objectives for a CPD (see Appendix F).

3.1.2 Additional Steps for Uncontaminated Property Transfers Using the 1997 EPA Guidance

For parcels using the 1997 EPA guidance, where there has been some release or disposal of hazardous substances or petroleum products, but where there is no indication that the release or disposal poses a threat to human health or the environment, some level of risk evaluation may be needed. In this case, a screening human health risk assessment and a screening ecological risk assessment may be performed to support transfer of an uncontaminated land parcel. In this risk evaluation, background concentrations and the appropriate risk-based concentrations for each media type (as presented in the most recent Risk Methods Documents for Portsmouth and Paducah, or equivalent) will be used to determine if residual contamination poses an unacceptable risk.⁴ These risk-based concentrations shall include those developed for the intended future use and also for the unrestricted use of all media.

A screening human health risk assessment entails comparison of representative concentration data against the background concentrations and risk-based concentrations. If these contaminant concentrations in representative samples are not exceeded, “no further action” from a risk perspective can be selected for those land parcels because it can be demonstrated that no contamination is present that poses an unacceptable risk. If exceedances occur, this information/screening assessment(s) can then be used to

⁴ Human Health No Action Levels for Paducah (DOE 2022d) and Paducah background soil levels (summarized in Table A.12 of DOE 2022d), and Human Health Type 2 Screening Levels for Portsmouth (summarized in Table C.3 of DOE 2017a) and Portsmouth background soil levels (included in DOE 2015a).

determine if additional risk evaluation, up to and including a baseline risk assessment, and/or collection of additional site information, up to and including additional environmental sampling and analysis, is necessary.

A screening ecological risk assessment would follow the appropriate protocols in the Portsmouth and Paducah Ecological Risk Methods Documents (DOE 2013, DOE 2019, respectively).

3.2 DOE ORDER 458.1

DOE O 458.1 applies to PORTS and PAD because these are sites with a history of radiological activities (DOE 2014a). DOE O 458.1 (DOE 2020) requires the establishment of approved authorized limits and independent verification of the radiological condition of a property before it can be released from DOE control. DOE O 458.1 calls for a systematic approach to evaluating the property and determining if it has been impacted by DOE operations. Process knowledge and historical information are reviewed as a part of the determination. DOE, with the EPA and Nuclear Regulatory Commission, developed the *Multi Agency Radiological Survey and Site Investigation Manual (MARSSIM, EPA 2002)* that is a part of the process used by DOE to release property. PPPO has authorized limits implementation documents (DOE 2018b for PORTS and DOE 2014c for PAD) to be followed to complete DOE O 458.1 requirements, including the independent verification process needed to transfer real property. Completion of aspects of the DOE O 458.1 requirements that pertain to property transfer will occur as part of the DOE-HQ review process.

3.2.1 Authorized Limits

ALs, as defined in DOE O 458.1, Attachment 2 (Definitions), govern the release of real property and are radionuclide concentrations or activity levels that are approved by DOE to permit the release of property from DOE control, consistent with DOE's radiation protection framework (DOE 2014b). An AL is a limit on the concentration or quantity of residual radioactive material on the surfaces or within property that has been derived consistent with DOE directives including the As Low As Reasonably Achievable (ALARA) process requirements. An AL must state restrictions or conditions on the future use of real property and must be approved in accordance with DOE O 458.1, Section 4.k(6). ALs have been established for PORTS (DOE 2018a) and PAD (DOE 2014c).

Information sufficient to meet the requirements for the demonstration of protection of human health and the environment will be included in the EBS and/or its appendices and the IVR. PPPO will use the information in the EBS and the IVR, to demonstrate that requirements in DOE O 458.1 are met. This will eliminate duplication of effort and maximize utilization of resources. (It should be noted that DOE O 458.1 is a DOE requirement; approval by outside parties is not required and should not be requested or implied that it is being requested. A copy of the IVR will be provided to regulators upon request.)

3.2.1.1 Authorized Limits Implementation Plan

An Authorized Limits Implementation Plan for meeting the requirements of the release and clearance of real property per DOE O 458.1, Section 4.k.(6) et seq. is needed to transfer real property. An Authorized Limits Implementation Plan has been established for PORTS (DOE 2018b) and PAD (DOE 2014c).

3.2.1.2 Authorized Limits Communication Plan

Appropriate public involvement and notification are components of Authorized Limits development. The development and use of an Authorized Limits Communication Plan will assist the sites in their communications within DOE and to various stakeholder groups and individuals. Communication of the purpose of the Authorized Limits, their regulatory basis, the radionuclides addressed by the Authorized Limits, and how they were derived, proposed, reviewed, and approved within DOE are anticipated to warrant explanation to various audiences throughout the real property transfer process, as well as an explanation of how Authorized Limits are applied to property transfer. An Authorized Limits Communication Plan has been established for PORTS (DOE 2018c) and PAD (DOE 2014e).

3.2.2 Historical Site Assessment

An Historical Site Assessment (HSA) is conducted to address facilities and areas that had operations involving radioactive materials (DOE O 458.1, Section 4.k.(5)). The purpose of the HSA is to (1) identify potential, likely, or known sources of radioactive material and radioactive contamination based on existing or derived information; (2) identify sites that need further action as opposed to those posing no threat to human health; (3) provide an assessment for the likelihood of contaminant migration; (4) provide information useful to scoping and characterization surveys; and (5) provide initial classification of the site or survey unit as “impacted” or “non-impacted” in accordance with the assessment protocol as outlined in MARSSIM.

As a part of the HSA, documents are gathered from various sources and are reviewed and evaluated to extract information on the history of the real property proposed for transfer. Documents to be reviewed may include permits, licenses, storage records, waste manifests, authorizations, inventory records, surveys, drawings, and floor or other plans. Visual inspections and interviews, when possible, are also conducted as a part of the assessment, which is documented for the real property proposed for release from DOE control via transfer. A crosswalk of the requirements for the HSA with the contents of the EBS is found in Appendix D. Upon completion, the EBS becomes the HSA for the proposed property transfer.

3.2.3 Final Status Survey

Following completion of the HSA and the EBS, a Final Status Survey may be conducted, if needed, using a graded approach. The purpose of the survey is to determine whether the property meets release criteria and Data Quality Objectives (DQOs), and is therefore ready for the Independent Verification.

3.2.4 Independent Verification

DOE O 458.1 requires independent verification to ensure that control and release of property is consistent with DOE requirements, approved authorized limits, and procedures. Independent verification is integrated into the planning of each proposed property transfer and is performed independent of the PPPO Property Transfer Program and site project teams. Independent verification activities for the release of real property must, at a minimum, include review of the radiological characterization reports or data but, as appropriate, may include independent surveys or sample analysis to verify compliance. An Independent Verification Plan is required for each transfer. For PPPO, the Independent Verification Plan will be performed by a contractor that is independent of the DOE contractors conducting activities to support transfers.

The Independent Verification Plan will describe the tasks needed to prepare an Independent Verification

Report. The Independent Verification Report will include a description of the area to be transferred and the activities completed as part of the independent verification. The Independent Verification Report, after completing any necessary factual accuracy reviews, will be included in the parcel transfer package. The Independent Verification Report will include a statement indicating if the parcel to be transferred meets the requirements in DOE O 458.1.

3.2.5 Required Reviewers for DOE-HQ Approval of DOE O 458.1 Documentation

Approval of DOE O 458.1 information prepared for real property transfer is obtained from the Assistant Secretary for Environmental Management, who has delegated the approval authority to the Deputy Assistant Secretary for Site Restoration.

3.3 EBS REPORT CONTENTS FOR UNCONTAMINATED PROPERTY

Documentation prepared to support PPPO title transfers under CERCLA Section 120(h) and the implementing regulations found at 40 *CFR* 373 includes an EBS that fulfills the CERCLA Section 120(h) requirements and details the condition of the real property proposed for transfer. Preparation of this report includes the review of government records, title documents, and aerial photographs, visual inspections of the property and adjacent properties, and interviews with current and former employees (or others familiar with the site activities) to identify areas on the property where hazardous substances and petroleum products were stored for one year or more, known to have been released, or disposed. The report also summarizes the results of the characterization effort (and/or review of existing data) conducted to support title transfer. PPPO will coordinate with the CRS to ensure timely response, in particular with matters pertaining to title search and certification of 40 *CFR* 373-related information.

CERCLA 120(h)(4) specifies the information needed to be able to identify a parcel as uncontaminated property. As noted earlier, the crosswalk found in Appendix B includes the information needs from CERCLA 120(h)(4) and where they are found in an EBS. Appendix C includes the content narrative along with the requirements and crosswalk. Templates for the transmittal letters to the regulatory approval authorities for the draft and final EBSs are included in Appendix E. The interview form is found in Appendix K.

In addition, the EBS may include other information to support property transfer including real estate disclosures, limitations on to-be-transferred property use, and information on utilities and easements, including those that will remain with the transferred property. The ideal EBS will include information needed to ensure acceptance of the EBS by regulators and DOE Headquarters and facilitate property transfer without additional investigation/evaluation.

Parcels may be subdivided to facilitate preparation of each EBS. Once the EBSs are approved, the sub-parcels may be re-combined into a single parcel for the rest of the property transfer process.

3.3.1 Data Requirements for Uncontaminated Property Transfers

Data requirements for uncontaminated property transfers are specified in the Data Quality Objectives for PPPO, described in Appendix F. The DQOs are qualitative and quantitative statements that clarify the study objective, identify the appropriate type of data to collect (if any), determine the appropriate conditions for collecting the data, and specify limits on decision errors (EPA 2006). These DQOs define the performance criteria that limit the probabilities of making decision errors by considering the purpose of collecting the data, defining the appropriate type of data needed, and specifying tolerable probabilities

of making decision errors. The DQOs for the PPPO property transfer projects have been designed to meet the data requirements included in CERCLA 120(h)(4), setting the requirements for use of available data considered in the EBS. If additional data collection is required, project-specific DQOs consistent with DQOs in Appendix F may need to be developed.

The EBS will include an assessment of the data against the DQOs and confirm that the data are usable for their intended purpose; e.g., the data are representative of the media sampled, the data support the hypothesis for which they are being used, and the data are sufficient to support the EBS conclusions that there is no evidence of a release. To expedite the regulatory review process, it is advantageous to coordinate with regulatory agencies when evaluating data and other information against DQOs.

3.3.2 Other Information to be Included in EBS

The EBS may include other information to support property transfer, including real estate disclosures, limitations on to-be-transferred property use, and information on utilities and easements that will remain with the transferred property. The ideal EBS will include information needed to ensure acceptance of the EBS by regulators and DOE Headquarters. Other information that may support property transfer should also be included in the EBS; for example:

- building-related questions per Appendix O,
- types of utilities / easements present,
- availability of utilities,
- presence in a floodplain,
- historical drainage / erosion events,
- historical boundary disputes / encroachments,
- other legal issues,
- historical code violations, and
- designations of wetlands or historic properties, etc.

3.4 OBTAINING CONCURRENCE WITH THE UNCONTAMINATED PROPERTY DETERMINATION

Concurrence with the determination of uncontaminated property follows PPPO's completion of the requirements of the CERCLA 120(h)(4) review process for the identification of uncontaminated property. Regulatory requirements are specified in CERCLA 120(h)(4) and note that for transfers stating that the property is uncontaminated, the identification as an uncontaminated parcel is not complete until the concurrence of the appropriate regulatory authority has been obtained.

PORTS and PAD have different regulatory environments associated with their cleanup. Early involvement of the regulatory agencies in the DQO development process will expedite the regulatory concurrence process.

PORTS is regulated by the State of Ohio (i.e., the Ohio Environmental Protection Agency [OEPA]). PORTS is not a National Priorities List (NPL) site. PAD is a CERCLA site which is listed on the NPL and regulated by a combination of the EPA (Region 4) and the Commonwealth of Kentucky.

For non-NPL sites, like PORTS, EPA Region 5 has declined to review/concur with the EBS. Thus, once OEPA has concurred with the EBS or otherwise indicated that the site is considered uncontaminated, DOE can self-certify the EBS.

The CERCLA 120(h)(4)(B) section of the statute goes on to say, “In the case of concurrence which is required from a State official, the concurrence is deemed to be obtained if, within 90 days after receiving a request for the concurrence, the State official has not acted (by either concurring or declining to concur) on the request for concurrence.” There is not a similar time period that applies to EPA concurrence or non-concurrence. As explained above, the DOE-HQ approvals required for demonstration of compliance with DOE O 458.1 will occur as a part of the DOE-HQ review of the EBS and Independent Verification Report.

The transfer cannot proceed under this protocol if concurrence with the determination as an uncontaminated parcel is not received. Optionally, the transfer can be sought subsequent to preparation of a revised EBS that is sufficient to receive concurrence as uncontaminated or, alternatively, following preparation of an EBS that meets the requirements of a CERCLA 120(h)(3) transfer, per its protocol. A determination of the suitability to transfer personal property is outside the scope of this protocol but the process has been established for both PAD and PORTS.

3.5 PROPERTY TRANSFER OF UNCONTAMINATED LAND WITH BUILDINGS

If the property identified for transfer has buildings (or other real property structures) within its confines, additional work will be needed to ensure that these buildings also meet the requirements to be considered uncontaminated and non-impacted real property as summarized in Appendix O. Compliance with these requirements will also be demonstrated in the EBS. A determination of the suitability to transfer personal property is outside the scope of this protocol.

4. POST-COMPLETION OF ENVIRONMENTAL DUE DILIGENCE 10 CFR 770 TRANSFER PROCESS STEPS

4.1 NOTIFICATION OF AVAILABILITY

As previously mentioned in Section 2, the property transfer will occur in accordance with the requirements of 10 CFR 770 reiterated by the 10 March 2015 memo (*Guidance on Notification of Available Property under 10 CFR Part 770*) from the DOE Senior Real Property Officer of the Office of Real Property Management (DOE 2015c), and consistent with the annual *Five Year Site Plan* requirements established in the August 31, 2017, Memorandum *Guidance for Real Property Five-Year Site Plan Fiscal Years 2018-2022* (DOE 2017b), and with other relevant guidance or regulation, including, if applicable, the Office of Management and Budget, November 6, 2019, Memorandum *Implementation of Agency-wide Real Property Capital Planning* (OMB 2019),

DOE is required to annually make available, to potentially interested persons or entities, a list of real property that has been identified as appropriate for transfer for economic development purposes. Only real property that may be considered “Excess,” “Underutilized,” or “Unneeded” is eligible for transfer under the regulation.

Notification consists of providing information to the CRO, local government, tribal nation, and other persons and entities who may have expressed an interest in available property. PORTS and PAD recognize the value of regular communication with their CROs, communities, and other stakeholders and will continue to keep them informed of the status and progress of property transfer efforts. Appendix M provides a Property Transfer Communication Plan and a Presentation Curriculum. Property that has been identified as appropriate for transfer for economic development and has obtained regulatory concurrence on the EBS is considered to be available. Additional relevant information, including information about the property's physical condition, will be made available during the process, either in the EBS or after concurrence with the EBS.

As described in Section 1.2.1.2 Phase 2, there may be instances where the site or PPPO obtains a request for property that has not been determined to be available. In these situations, PPPO, in coordination with the site, will assess the request and determine if it will pursue making the property available or if another piece of available land could satisfy the request. If PPPO decides to go through the steps to attempt to make the property available, the process described in Section 3 is initiated. PPPO communicates with the requestor regarding DOE's decision and path forward, and provides status information as the evaluation process advances.

4.2 RECEIPT AND REVIEW OF PROPOSALS

After the notification / communication of available property is made, it is expected that DOE will receive proposals, especially where there have been prior requests for property for economic development. PPPO will review proposals against the requirements of 10 CFR 770, particularly with respect to the viability of the proposal, the economic development that is to be furthered by the proposal, and any larger vision for economic development of which it may be a part. Generalized excerpts that regard the content of a proposal from the DOE Asset Revitalization Guide for Asset Management and Reuse (DOE 2015b) are provided below for assistance in the review of proposals. In certain instances, such as those pertaining to infrastructure, the sites may need to provide information to the requestor so they can make a more complete request.

Real Property Transfer Proposal Requirements per 10 CFR 770.7

- **A description of the real property proposed to be transferred – 10 CFR 770.7 (a)(1)(i)**
The description should include the site’s infrastructure assets, such as buildings, land, and utilities. A map showing the location and any proximate roads and other features is helpful.
- **The intended use and duration of use of the real property – 10 CFR 770.7(a)(1)(ii)**
 - What are long term plans for the property?
 - Which utilities and services will be required (water, power, sewage disposal, transportation)? Which companies will provide the utilities and services? If DOE provides utilities, services, and infrastructure, how will DOE be reimbursed? Federal regulations require full-cost recovery for utilities and services.
 - Provide an evaluation of the desired property’s infrastructure assets (i.e., buildings, transportation, and utilities) and required improvements proposed to be made.
- **A description of the expected economic development that would be furthered by the transfer (e.g., jobs to be created or retained, infrastructure improvements to be made) 10 CFR 770.7(a)(1)(iii)**
 - How will this development lead to job creation or retention?
 - What improvements will be made to the property, and how will they be financed?
- **Information supporting the economic viability of the proposed development 10 CFR 770.7(a)(1)(iv)**
 - What products and services are in demand in the region?
 - Which industries in the region may be interested in locating at the site?
 - What is the marketing plan for attracting industries to the site?
 - What are the strengths and weaknesses of the property and surrounding community?
- **The consideration offered and any financial requirements 10 CFR 770.7(a)(1)(v)**
Does the prospective transferee want the property for less than fair market value? If so, what is the basis for not paying market value? The value of the property (at least a range of values for the area) should be included in the proposal.

Once the PPPO Manager has assessed the proposal and determined that the transfer will be pursued, the PPPO Reuse Lead will work with the Site Reuse Lead to develop and assemble the necessary components of a transfer package for transmittal to DOE-HQ. Appendix G contains an example listing of the transfer package contents for an uncontaminated parcel for submittal to DOE-HQ.

4.2.1 National Environmental Policy Act (NEPA) Reviews

NEPA requires federal agencies, such as DOE, to review proposed actions to assist in the decision-making process prior to taking an action. (DOE's NEPA Implementing Regulations are found in 10 *CFR* 1021 and establish the procedures under which DOE complies with NEPA.) The decision to transfer property calls for a NEPA review before the transfer. The title transfer of real property could result in impacts that range from no effect, to minor effect, to significant effect. The impacts are evaluated in the appropriate documentation; which, for the proposed future use of PORTS and PAD, are assessed in EAs.

Site-wide NEPA reviews have been prepared for both PORTS and PAD to capture the transfer program's effects at each site. Following the receipt of proposals to transfer available property, the proposed transfer actions and the locations are "screened" against the scope of the existing site-wide documents. After reviewing a proposal, DOE may inquire about adjustments to the proposed use or to where the proposed use would occur if the adjustments would create a more compatible use or more favorable outcome. DOE may suggest these adjustments in consideration of details in the proposal or its execution, as well as the range of factors that are evaluated with development projects of any type, such as safety and ingress / egress. If the proposed use is beyond the scope of the site-wide NEPA review, additional review is required.

4.2.2 Sensitive Resource Reviews

Individual transfers will be screened against site-wide NEPA documents for transfer actions as described above. Proposals for the transfer of available property are anticipated to identify types of proposed uses intended for particular pieces of real property. As a part of the NEPA review, sensitive resource reviews will be conducted; however, additional actions may be needed to support a given proposal. For example, a wetland may need to be surveyed. Threatened and endangered species surveys may be needed so that the transferee is cognizant of their presence in a transfer footprint. If the proposal includes the transfer of an historic property, DOE will need to complete the National Historic Preservation Act Section 106 process and include a notation in the deed or a requirement in the deed that any work done by the transferee that could adversely affect the historic property must be coordinated with the State Historic Preservation Officer.

4.3 CERCLA 120(h)(4) DEED REQUIREMENTS FOR UNCONTAMINATED PROPERTIES

The CRS, in coordination with DOE counsel, incorporates the following requirements into the deed for an uncontaminated parcel:

- (i) A notice of no hazardous substance activity (on the property proposed for transfer) based upon a complete search of agency files; the DOE must assert that there is no evidence that hazardous substances were stored, released, or disposed on site;
- (ii) A covenant warranting that any response action or corrective action found to be necessary after the date of such sale or transfer shall be conducted by the United States; and
- (iii) A clause granting the United States access to the property in any case in which a response action or corrective action is found to be necessary after such date at such property or such access is necessary to carry out a response action or corrective action on adjoining property.

PPPO will review each deed and proposal on a case-by-case basis to determine if groundwater use restrictions are needed. PORTS has a site-wide groundwater restriction. PAD also has groundwater restrictions associated with its Water Policy (DOE 1994). A proposed transfer or documents supporting transfer need to identify and document site-wide deed notations in place at the time of transfer.

4.3.1 Timely Transfer

Timely transfer may occur when all remedial action has been completed, as needed. Because there is no record of hazardous substance activity at an uncontaminated parcel and because no remedial action is needed to protect human health and the environment, timely transfer applies to 120(h)(4) transfers.

NOTE: The GSA chooses not to use the authority under 120(h)(4) because the procedures that need to be followed to qualify for a CPD are seen (by GSA) as more onerous than the requirements for a Timely Transfer under 120(h)(3). GSA indicates grantees can obtain the same level of protection from the government through a CERCLA 120(h)(3) Timely Transfer, which would likely be available for use in most cases that might otherwise appear to be eligible for transfer under the Clean Transfer provisions.

4.3.2 Pre-Transfer Site-Specific Regulatory Requirements

At PORTS, pursuant to the April 13, 2010, (updated July 16, 2012), DFF&O Clause 29 (Ohio EPA 2012), DOE needs to notify Ohio EPA at least 10 days in advance of each conveyance by DOE of any portion of the Site. The full text of Clause 29 of the April 13, 2010, (updated July 16, 2012) DFF&O is as follows:

29. Notice of Transfer of Property

Prior to each conveyance by Respondent of an interest in any portion of the Site, including but not limited to easements, deeds, leases and mortgages, Respondent shall notify Transferee of the existence of any security, containment, treatment, and/or monitoring systems, and/or activity and use limitations, including environmental covenant(s), that are part of removal or remedial actions under these Orders and that apply to the portion of the Site to be conveyed, and shall provide a copy of these Orders to Transferee. Respondent shall notify Ohio EPA at least ten (10) days in advance of each conveyance by Respondent of an interest in any portion of the Site.

Respondent's notice shall include the name and address of the Transferee and a description of the provisions made for the continued access to and maintenance of the security, containment, treatment, and/or monitoring systems at the Site that are part of a removal action or remedial action under these Orders.

At Paducah, pursuant to the requirements of the FFA (EPA 1998), DOE must notify EPA and the Kentucky Department for Environmental Protection (KDEP) of any transfers of property at least 90 days prior to executing the realty instrument while the FFA is in effect (FFA Section XLII). This notification could be included in the correspondence to EPA Region 4 and KDEP transmitting the EBS for review and concurrence. The language from FFA Section XLII regarding property transfers is as follows:

XLII. Property Transfers

In the event that DOE decides to enter into any contract for the sale or transfer of any of the Site, DOE shall comply with the requirements of Section 120(h) of CERCLA, 42 U.S.C. § 9620 (h), in effectuating that sale or transfer, including all notice requirements. In addition, DOE shall include notice of this Agreement in any document transferring ownership or operation of the Site to any

subsequent owner and/or operator of any portion of the Site and shall notify EPA and KNREPC (Kentucky Natural Resources and Environmental Protection Cabinet) of any such sale or transfer at least ninety (90) days prior to such sale or transfer. No change in ownership of the Site or any portion thereof or notice pursuant to Section 120(h)(3)(B) of CERCLA, 42 U.S.C. § 9620 (h)(3)(B), shall relieve DOE of its obligation to perform pursuant to this Agreement. No change of ownership of the Site or any portion thereof shall be consummated by DOE without provision for continued maintenance of any containment system, treatment system, or other response action(s) installed or implemented pursuant to this Agreement. This provision does not relieve DOE of its obligations under 40 C.F.R. 270, and KRS (Kentucky Revised Statute) 224 § 46, 401 KAR (Kentucky Administrative Regulation) chapter 38.

5. COORDINATION TO COMPLETE THE TRANSFER PROCESS

Once the site has obtained proposals for transfer that have been determined by the site and the PPPO Manager to be in the best interest of the Government, the site, in coordination with the PPPO Reuse Lead, (and working with the CRS), completes the necessary steps to complete a transfer package. The PPPO Reuse Lead, upon receiving approval from the PPPO Manager, transmits the transfer package to HQ for review. This transmittal initiates the 90-day HQ notification period. HQ will then review the package to ensure completeness. Questions that the various HQ reviewing organizations may have will be forwarded to the PPPO Reuse Lead for resolution. Once questions have been resolved and the transfer package has been determined to be complete, the DOE-HQ EM liaison, working with the transfer package (including materials provided to resolve questions), will be able to take the necessary steps to ensure that the required Congressional notification may be initiated by the Secretary of Energy.

The Secretary's office transmits the transfer package to Congress for a 60-day notification period. Congress does not have approval authority; the 60-day period is strictly for notification. If questions arise, they will be communicated by the DOE-HQ EM liaison to the PPPO Reuse Lead for response. Note that the 60-day Congressional review period for transfers under the authority of 10 *CFR* 770 is required and may not be changed by DOE. However, the review period can be shorter if the involved Congressional committees complete their review more quickly and notify DOE that it has been completed. Figure 2 and Table 2 summarize the EM 10 *CFR* 770 Property Transfer Process Steps.

Figure 2. EM 10 CFR 770 Property Transfer Process

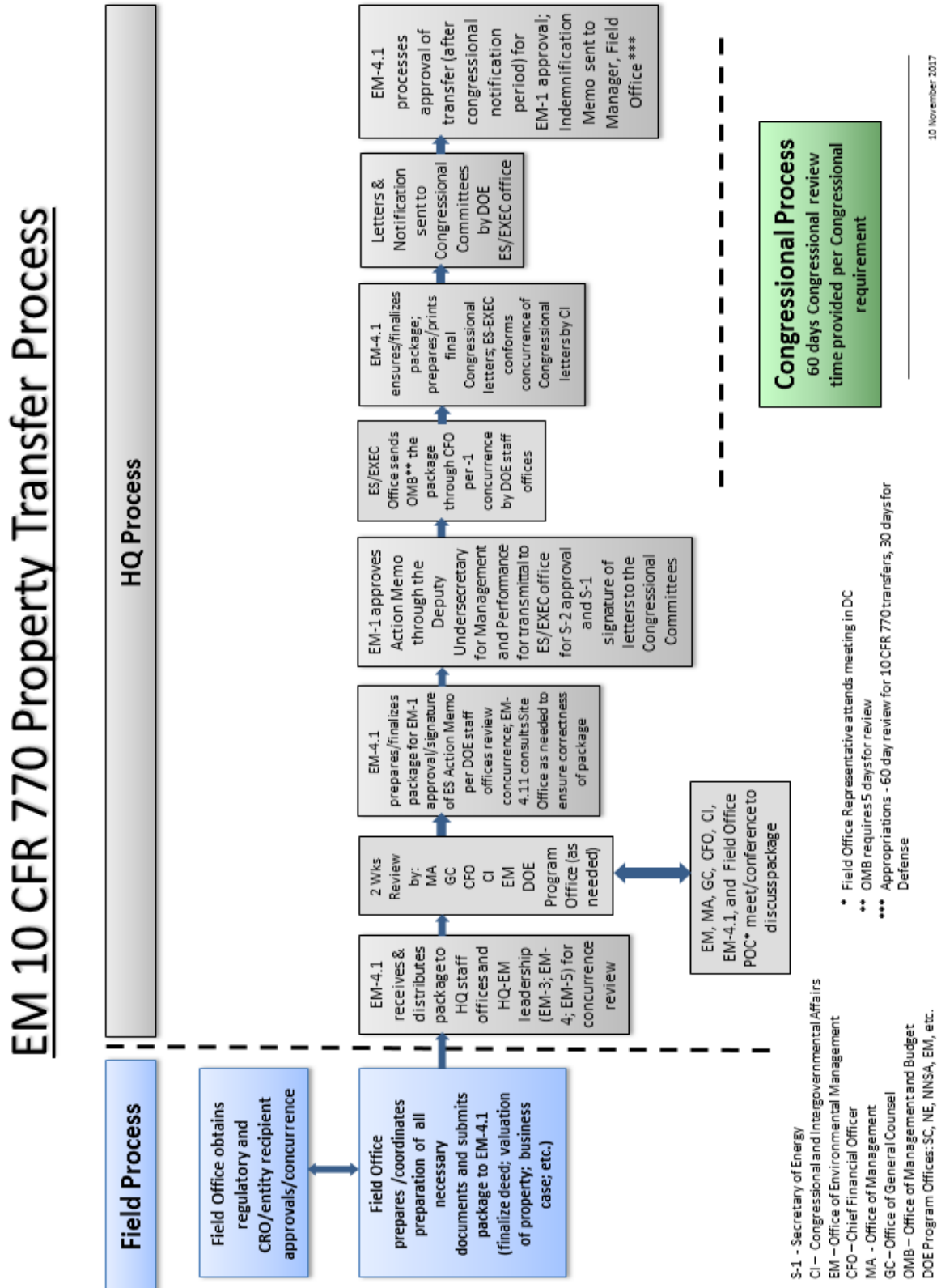


Figure 2 – EM 10 CFR 770 Property Transfer Process

Table 2. Summary of EM 10 CFR 770 Property Transfer Process Steps

Phase	Step	Step Summary	Step description
Field Process Preparation / Approvals / Coordination	1	Field Office obtains regulatory and CRO/entity recipient approvals/concurrence	This step is for the Field Office to prepare the appropriate materials for the property transfer, and obtain approvals/concurrence from regulatory agency(ies) and the Community Reuse Organization (CRO) or other recipient.
	2	Field Office prepares / coordinates preparation of necessary documents and submits package to EM-4.1 (finalize deed; valuation of property; business case; etc.)	The DOE Field Office prepares, coordinates, and compiles the complete transfer package for transmittal to DOE-HQ (EM-4.1).
HQ Process Review / Concurrence / Coordination	3	EM-4.1 receives & distributes package to HQ staff offices and HQ-EM leadership (EM-3; EM-4; EM-5) for concurrence review	EM-4.1 coordinates DOE-HQ review of the complete transfer package provided by the Field Office.
	4	2 Weeks Review by: MA, GC, CFO, CI, EM, and DOE Program Office (as needed)	DOE-HQ offices have two weeks for review of the complete transfer package provided by the Field Office. Field Office Representative attends meeting in DC as needed.
	5	EM-4.1 prepares/finalizes package for EM-1 approval/signature of ES Action Memo per DOE staff offices review concurrence; EM-4.11 consults Site Office as needed to ensure correctness of package	EM-4.1 prepares the transfer package for EM-1 approval.
	6	EM-1 approves Action Memo through the Deputy Undersecretary for Management and Performance for transmittal to ES/EXEC office for approval and signature of letters to the Congressional Committees	EM-1 approves the transfer package and submits it to the Secretary of Energy for approval.
	7	ES/EXEC Office sends OMB the package through CFO per -1 concurrence by DOE staff offices	ES/EXEC send the transfer package to Office of Management and Budget (OMB) for review. OMB requires 5 days for review.
	8	EM-4.1 ensures/finalizes package; prepares/prints final Congressional letters; ES-EXEC conforms concurrence of	EM-4.1 finalizes transfer package for ES-EXEC office.

		Congressional letters by CI	
	9	Letters & Notification sent to Congressional Committees by DOE ES/EXEC office	DOE ES/EXEC office sends letters and notification to Congressional Committees.
	10	EM-4.1 processes approval of transfer (after congressional notification period) for EM-1 approval; Indemnification Memo sent to Manager, Field Office	EM-4.1 coordinates EM-1 approval of transfer and sends Indemnification Memo to the Field Office Manager.
Congressional Process Review	11	60 days Congressional review time provided per Congressional requirement	Congressional review is required before completion of 10 CFR 770 property transfers.

<p>Acronyms used in this table: CRO – Community Reuse Organization ES – Energy Secretary HQ – DOE Headquarters CI – Congressional and Intergovernmental Affairs EM – Office of Environmental Management ES/EXEC – Energy Secretary / Executive Office CFO – Chief Financial Officer MA – Office of Management GC – Office of General Counsel OMB – Office of Management and Budget DOE Program Offices – SC, NE, NNSA, EM, etc.</p>

5.1 THE “BUSINESS CASE”

A critical component of the transfer package for internal DOE consideration, is the “business case”. The business case is prepared by the Site Reuse Lead with input from the requestor and is submitted in the transfer package to HQ. The business case is the recommendation by the Field Office that, taken in its entirety, the proposed transfer is in the best interest of the Government. PPPO will coordinate with DOE-HQ to ensure that the business case clearly portrays the long-term vision of how the proposed transfer integrates with the site mission and how it is beneficial. (The information to communicate this site vision to DOE-HQ is that which is described in Section 2. Planning for Transfers.) A template for the business case is found in Appendix H.

As noted earlier, a listing of transfer package contents is presented in Appendix G. Recent examples that can serve as templates for the transmittal letters for DOE-HQ reviews; and the Congressional Notifications that are referred to in Appendix G are included in Appendix J. PPPO will coordinate the preparation of these draft letters with the DOE-HQ EM liaison.

5.2 EXECUTION OF THE DEED

Once the Congressional notification period has ended, PPPO will be notified by the EM Liaison that the transfer process is complete and the transfer action is approved. The DOE-HQ EM liaison will send the completed package to the PPPO Reuse Lead. The PPPO Reuse Lead will then coordinate with the EMCBC CRS, providing them the information they need to enable the preparation of the final deed for signature. The DOE Real Estate Contracting Officer then executes the Quitclaim Deed. Once executed, the deed will be recorded in the county where the property is located.

5.3 POST-TRANSFER SITE-SPECIFIC REGULATORY REQUIREMENTS

At PORTS, in accordance with the April 13, 2010, (updated July 16, 2012) DFF&O Clause 30, DOE is required to notify Ohio EPA within 30 days of each conveyance of an interest in any portion of the site. The full text of the clause is as follows:

30. Confirmation of Conveyance

Within thirty (30) days after each conveyance of an interest by Respondent in any portion of the Site, the Respondent shall submit to Ohio EPA, via certified mail, the following information:

- a. A copy of the deed or other documentation evidencing the conveyance;*
- b. The name, address, and telephone number of the new property owner and the name, address, and telephone number of the contact person for the Property owner;*
- c. A legal description of the Property, or the portion of the Property, being transferred;*
- d. If prepared as part of the transaction, a survey map of the Property, or the portion of the Property, being transferred; and*
- e. The closing date of the transfer of ownership of the Property, or portion of the Property.*

By comparison, PAD does not currently have such a post-transfer site-specific regulatory requirement.

6. GENERAL COORDINATION AND COMMUNICATION

Property transfers involve site and PPPO coordination as well as coordination with other organizations within DOE, including those at the EMCBC and DOE-HQ EM. Additionally, external regulators or other points of contact at the state/commonwealth level, as well as at the federal level (via EPA) may be involved, depending on the type of transfer. Other external communication will occur among the sites and PPPO with the CROs or other potential transferees, along with a broad spectrum of members of the public. Effective, consistent communication and information-sharing among the various parties is important to the overall success of the property transfer program. The PPPO Land Transfer Communication Plan is found in Appendix M of this report.

To facilitate communication among stakeholders, programmatic and site documents prepared in support of property transfer must be appropriately marked.

6.1 SITE COORDINATION

Communication within the site organizations, projects, and programs is an important part of property transfer planning, management, and effective execution. Overall transfer program planning is most important and needs to consider the integrated efforts at a site that are necessary to transfer property. Forward planning is also warranted to consider the changed conditions that will occur with non-DOE activities taking place on site post-transfer by the transferee and other members of the public who may be present on the transferred real property. Other important points of coordination are with the utility / infrastructure organizations considering associated easements. Infrastructure features may have a dual role as both an asset to a transferee and a site closure task for DOE. Coordination to ensure regulatory coverage for infrastructure removal, if necessary, may be needed. A consideration of leaving infrastructure in place as an asset, if the infrastructure itself does not present a risk or hazard, is also necessary and needs to be coordinated with site functions. Sequencing of the cleanup and D&D activities is also important to transfers so that the expressed interests of the CRO or others may be factored into timing of specific D&D tasks.

Other points of coordination for the property transfer program need to include environmental compliance. Environmental compliance will provide project environmental screening once a proposal for transfer is obtained; and environmental compliance considers the need for permit modifications, utilities, health and safety, nuclear safety, and other considerations. Because transferees are members of the public, there is a need to evaluate site aspects such as nuclear safety bases and other permits or licenses that presume a member of the public is located at the fence line *versus* in closer proximity for the property transferred to the public.

Overall communication about planned transferee activities in their (transferred) space is needed so that site occupants and site stakeholder organizations are aware of the proposed changes. A curriculum of presentation used to discuss real property transfer requirements and activities at PAD is included as an attachment to the PPPO Land Transfer Communication Plan in Appendix M.

6.2 PROGRAM COORDINATION

PPPO will facilitate the completion of required activities by other DOE organizations, e.g., DOE-HQ, EMCBC, and others that are needed to enable PPPO to transfer real property. Coordination among the

sites and PPPO is essential and expected. PPPO's leadership role calls for awareness and involvement. It is important to enable senior management understanding of transfer program status, issues, and progress. The PPPO Reuse Lead needs to be informed of communication that is planned to occur that will occur at levels above the individual sites, such as coordination with EMCBC. The involvement of the PPPO Reuse Lead will provide for clarity of message, the provision of technical expertise, and consistency and management of expectations. Effective coordination is also used to enable PPPO to provide management-level assistance in matters of policy, direction, and decision-making.

The PPPO and Site Reuse Leads will plan to meet with EMCBC CRS who support PPPO site real property transfers on a regularly scheduled periodic and as-needed basis to discuss the status of current and future activities. Sites will provide updated schedules of planned activities and other information to forecast needs and to keep transfer team members informed.

PPPO will also have the responsibility for obtaining the services of outside support that may be needed, such as for the provision of services for DOE O 458.1 Independent Verification. Support services may also need to be obtained by PPPO from EMCBC or others for tasks such as land property surveys and property appraisals.

6.3 DOE-HQ COORDINATION

DOE-HQ Coordination is addressed in Section 5. DOE-HQ Coordination is managed and led by PPPO to ensure consistency in messaging and information. A briefing of DOE-HQ management, to include Asset Management, the Chief Financial Officer, Environmental Management, and General Counsel, is proposed to occur for each site so that DOE-HQ can be informed of each site's proposed transfer actions, sequencing, timing, issues, and opportunities. This briefing (which is prepared by performing the planning actions described in Section 2) will assist DOE-HQ in working with PPPO and anticipating their needs when transfer packages are submitted. Appendix N contains an outline of anticipated content for the briefing with DOE-HQ. The *Status of Transfer Package Contents* is contained in Appendix G.

6.4 EXTERNAL COORDINATION

Communication and coordination external to DOE needs to be focused, systematic, and consistent. With regard to regulators, DOE's external communication is intended to offer an opportunity to update status on existing proposed transfers and provide a forecast of upcoming proposed transfers. PPPO and the sites will plan to meet with the regulators periodically to discuss the status of current and future real property transfer activities. These meetings should include discussion of updated schedules of planned activities or other information to forecast support needs from the regulators. Other points of mutual interest will be discussed, as appropriate, such as the integration of title transfers and cleanup, data collection efforts, etc. The purpose of communicating regularly to share information about the status of a proposed transfer is to raise and resolve issues as quickly as possible to avert transfer schedule impacts.

Informational meetings with regulators will be conducted for new proposed transfers, generally when information on the proposed transfer can be gathered, reviewed, and shared. At this meeting, DOE would have a map of the proposed footprint and be able to brief the external parties on site history of use, existing data review results, and a preliminary schedule for when a draft EBS would be submitted. The proposed CERCLA 120(h) approach (e.g., uncontaminated/clean parcel transfer) would also be discussed.

If planned transfer efforts will have a field component involving sampling, DOE can also offer an opportunity for the regulatory or other points of contact to observe field activities, participate in laboratory audits, and split field samples.

In addition to DOE, regulators, and other transfer points of contact, the public is also involved in the transfer process. Although uncontaminated parcel transfers do not include a public review requirement in CERCLA 120(h), it is anticipated that the sites will keep their communities informed of proposed transfers via their stakeholder organizations and other appropriate means. The requirements of 10 *CFR* 1021, DOE's NEPA Implementing Procedures, include a public review requirement for EAs, and also a requirement that the application for categorical exclusions (CXs) for DOE actions be posted to the web. Opportunities for public review can be made available through periodic meetings of the Site Specific Advisory Board at PORTS, Citizens Advisory Board at PAD, and/or other public meetings. A curriculum outlining the real property transfer requirements and activities at Paducah is included as an attachment to the PPPO Land Transfer Communication Plan in Appendix M. Final CERCLA 120(h) documents are also placed on the PPPO website.

Another unique communication responsibility is between DOE and parties (e.g., CROs) submitting proposals to transfer available property. Frequent communication is anticipated so the potential transferees can be kept informed about project status, issues that may have arisen, schedules, etc. Back and forth discussions are also anticipated among DOE and the parties that have submitted proposals to transfer property as the proposal review process occurs so that DOE can have the information needed to evaluate a proposal during the proposal review process. Additional communication may be necessary for the PPPO's and the Site Reuse Lead's development of the business case for the transfer. The recommendation to DOE-HQ to proceed with a transfer will come from PPPO on behalf of the sites, so communication among the parties to develop as strong a proposal as possible is expected.

7. GLOSSARY

Appropriate for Economic Development – As defined in 10 CFR 770, is Real property identified by DOE that may be used/transferred in a way that enhances the production, distribution, or consumption of goods and services in the surrounding region(s) or which furthers reuse or redevelopment and furthers the public policy objectives of the laws governing the downsizing of DOE's defense nuclear facilities.

Authorized Limits – As defined in DOE O 458.1, means a limit on the concentration or quantity of residual radioactive material on the surfaces or within property that has been derived consistent with DOE directives including the ALARA process requirements. An authorized limit may also include conditions or measures that limit or control the disposition of property.

Available Real Property – Per 10 CFR 770, for purposes of this protocol and PPPO's pro-active approach to transfer readiness, "available" considers DOE's mission need for the land and its utilization, a determination that the property is environmentally suitable for transfer, and the ability to obtain regulatory agreement of the environmental due diligence documents prepared for the property. This approach is used due to the common understanding of the term "available" (e.g., ready) and the time-sensitive nature of economic development endeavors. Prior to transfer, available real property must be determined to be excess.

Certified Realty Specialist (CRS) – A DOE professional authorized to review and approve realty actions. CRSs provide guidance and assistance to the field in the entire range of real property activities, including excess determinations.

Clean Parcel Determination (CPD) – Property on which no hazardous substances and no petroleum products or their derivatives were known to have been released or disposed (pursuant to CERCLA 120(h)(4)), *or* where there is no indication that the release or disposal of hazardous substances or petroleum products has resulted in an environmental condition that poses a threat to human health or the environment.

Community Reuse Organization (CRO) – As defined in 10 CFR 770.4, a CRO is a DOE-recognized governmental or non-governmental organization that represents a community adversely affected by DOE work force restructuring at a defense nuclear facility and that has the authority to enter into and fulfill the obligations of a DOE financial assistance agreement. The Southern Ohio Diversification Initiative and the Paducah Area Community Reuse Organization are the CROs for Portsmouth and Paducah facilities, respectively.

Comprehensive Environmental Response Compensation and Liability Act 120(h) (CERCLA 120(h)) – The section of CERCLA that applies to the transfer of real property from the government.

Data Quality Objectives (DQOs) – DQOs are qualitative and quantitative statements that clarify a study objective, identify the most appropriate type of data to collect, determine the most appropriate conditions for collecting the data, and specify limits on decision errors (EPA 2000, EPA 2006). They define the performance criteria that limit the probabilities of making decision errors by considering the purpose of collecting the data, defining the appropriate type of data needed, and specifying tolerable probabilities of making decision errors.

Defense Nuclear Facility – As defined in 10 CFR 770.4, a defense nuclear facility means "Department of Energy defense nuclear facility" within the meaning of Section 318 of the Atomic Energy Act of 1954.

Both PORTS and PAD are identified in the preamble to 10 *CFR* 770 (65 FR 10687) as defense nuclear facilities for the purposes of the 10 *CFR* 770 rule.

End State – The risk-based cleanup end point for a site, typically defined by a combination of exposure and use type, such as industrial, recreational, agricultural and residential. An exposure assumes a certain number of hours/day and days/year over a number of years and looks at inhalation, dermal contact, and ingestion pathways for any accessible residual contamination the theoretical occupant could be expected to encounter. An industrial use end state, as contemplated for PORTS and PAD, would accommodate industrial/commercial/business use by occupants who would not be exposed to unacceptable risks.

Environmental Baseline Survey Report (EBS) – The report prepared using the results of research and analysis of the environmental condition of the property proposed for transfer to ensure the CERCLA 120(h) environmental due diligence requirements are met.

Environmental Due Diligence – The action of conducting thorough and systematic research into the history of a parcel of real property, in particular its environmental history. A thorough due diligence effort establishes a “baseline” of conditions at the time of transfer. For real property transfers from DOE, the methodology to follow for environmental due diligence is called out in CERCLA 120(h).

Excess Real Property: Real property assets no longer required to support the Department’s needs, present or future missions or functions, or the discharge of its responsibilities.

Final Disposition Survey – A term used to describe the final survey conducted for a property proposed for transfer to document that contaminants are below release limits and that the property is ready for the Independent Verification Review.

Historical Site Assessment (HSA) – A term used for a process that evaluates a site’s history (with a focus on its environmental history) in accordance with the joint Environmental Protection Agency (EPA), DOE, and Nuclear Regulatory Commission (NRC) *Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM)* to collect existing information describing a site’s complete history from the start of site activities to the present time (EPA 2002).

Indemnification – As defined in 10 *CFR* 770.4, means the responsibility for reimbursement of payment for any suit, claim, demand or action, liability, judgment, cost, or other fee arising out of any claim for personal injury or property damage, including business losses consistent with generally accepted accounting practices, which involve the covered real property transfers. Indemnification payments are subject to the availability of appropriated funds.

Institutional Controls – Are non-engineered instruments such as administrative and legal controls that help minimize the potential for human exposure to contamination and/or protect the integrity of the remedy (EPA 2017).

Land Use Controls – Limits that help to minimize the potential for exposure to contamination and/or protect the integrity of a response action and are typically designed to work by limiting land and/or resource use by providing information that helps modify or guide human behavior at a site. Example land use controls may consist of non-engineered instruments (such as administrative or legal controls) or engineered or physical barriers such as fences and security guards. A deed notation is a type of land-use control.

Property Transfer – The process of disposing of real property (land and associated buildings) by PPPO—conveying real property from DOE ownership to another party.

Real Estate Contracting Officer (RECO): Per the U.S. DOE Real Estate Desk Guide, is a A Certified Realty Specialist who has been issued a contracting officer warrant to execute real estate actions, within prescribed limits.

Real Property – Interest in land, together with the improvements, structures, fixtures located on the land (that may include prefabricated moveable structures), and associated appurtenances under the control of a federal agency. Property that is not real property is personal property. Transfer of personal property is separate from real property transfer and not addressed herein.

Reuse – The use of a property after transfer/disposal. As used in this protocol and related documents, it is assumed that the reuse will occur by other (non-federal) entities.

Risk Screen – A risk screen is a type of screening human health risk assessment which entails comparison of representative environmental media concentration data against background levels and human health screening levels. If exceedances occur, additional risk evaluation may be needed.

Site: A geographic area owned or leased by or for the Federal Government for the performance of DOE program activities. The term includes buildings, trailers, infrastructure, land, or other improvements.

Transfer Package: The materials developed and compiled by PPPO and sent for review by DOE-HQ to enable the transfer of real property. A listing of the contents of a Transfer Package is found in Appendix G of the Property Transfer Protocols.

Uncontaminated Parcel – The same as a clean parcel (see above) per CERCLA 120(h)(4).

8. REFERENCES

References potentially-relevant to property transfer are provided below. When used to support property transfer, the most-recent version of the reference shall be used.

- 10 *Code of Federal Regulations* Part 1021, Department of Energy National Environmental Policy Act Implementing Regulations.
- 10 *Code of Federal Regulations* Part 770, Transfer of Real Property at Defense Nuclear Facilities for Economic Development, Final Rule, 78 FR 67925-67927, *Federal Register*, Wednesday November 13, 2013.
- 40 *Code of Federal Regulations* Part 373, Reporting Hazardous Substance Activity when Selling or Transferring Federal Real Property, Final Rule, 55 FR 14242, *Federal Register*, Monday April 16, 1990.
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9. APPENDICES

- APPENDIX A – Example Status and Forecast of Property Transfer Activities
- APPENDIX B – Crosswalk of CERCLA 120(h)(4) Requirements and Where to Find Them in an Environmental Baseline Survey Report
- APPENDIX C – Crosswalk and Narrative of the CERCLA 120(h)(4) Requirements and Environmental Baseline Survey Report Contents
- APPENDIX D – Crosswalk of Requirements for Historical Site Assessment with Contents of Environmental Baseline Survey Report
- APPENDIX E – Environmental Baseline Survey Report Transmittal Letter Templates to Commonwealth or State and Federal Regulators
- APPENDIX F – PPPO Data Quality Objectives for an Uncontaminated Property
- APPENDIX G – Transfer Package: Status of Transfer Package Contents
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APPENDIX A – EXAMPLE STATUS AND FORECAST OF PROPERTY TRANSFER
 ACTIVITIES

Portsmouth Status and Forecast of Property Transfer Activities

<i>Nearer-term Projected Transfers</i>					
Building/Parcel	Type of Facility	Approx. Size	Use of Property	Site	Status

<i>Middle-term Projected Transfers</i>					
Building/Parcel	Type of Facility	Approx. Size	Use of Property	Site	Status

<i>Longer-term/Post D&D Transfers</i>					
Building/Parcel	Type of Facility	Approx. Size	Use of Property	Site	Status
				PORTS	

Paducah Status and Forecast of Property Transfer Activities

<i>Nearer-term Projected Transfers</i>					
Building/Parcel	Type of Facility	Approx. Size	Use of Property	Site	Status

<i>Middle-term Projected Transfers</i>					
Building/Parcel	Type of Facility	Approx. Size	Use of Property	Site	Status

<i>Longer-term/Post D&D Transfers</i>					
Building/Parcel	Type of Facility	Approx. Size	Use of Property	Site	Status
				PAD	

APPENDIX B – CROSSWALK OF CERCLA 120(h)(4) REQUIREMENTS AND WHERE TO FIND THEM IN AN ENVIRONMENTAL BASELINE SURVEY REPORT

<p>CERCLA 120(h)(4)(A): identification of uncontaminated property... shall be based on an investigation of the real property to determine or discover the obviousness of the presence or likely presence of a release or threatened release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, on the real property for greater than or equal to one year. The identification shall consist, at minimum, of a review of each of the following sources of information concerning the current and previous uses of the real property:</p>	
<p>Conclusions about the real property proposed for transfer will be presented first in the document. This is where DOE presents its findings.</p>	
<p>Section 1 (Real Property Summary) of the document consists of a summary of the history and description of use of the real property proposed for transfer. It will introduce the property and provide information on site, situation, and context for the reader and reviewer and also address the information needs of a <i>MARSSIM</i> Historical Site Assessment. Conclusions about the real property proposed for transfer will be included in Section 1.</p>	
CERCLA 120(h)(4) cite	Environmental Baseline Survey Report Section
(i) a detailed search of federal government records pertaining to the property	Section 2. Federal Records Search
(ii) recorded chain of title documents regarding the real property	Section 3. Title Search
(iii) aerial photographs that may reflect prior uses of the real property and that are reasonably obtainable through State or local government agencies	Section 4. Aerial and Other Photographs and Drawings
(iv) a visual inspection of the real property and any buildings, structures, equipment, pipe, pipeline, or other improvements on the real property, and a visual inspection of properties immediately adjacent to the real property	Section 5. Results of Visual and Physical Inspections
(v) a physical inspection of property adjacent to the real property, to the extent permitted by owners or operators of such property	Section 5. Results of Visual and Physical Inspections
(vi) reasonably obtainable Federal, State, and local government records of each adjacent facility where there has been a release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, and which is likely to cause or contribute to a release or threatened release of any hazardous substance or any petroleum product to its derivatives, including aviation fuel and motor oil on the real property proposed for transfer	Section 6. Records Search of Adjacent Facilities
(vii) interviews with current or former employees or others with knowledge of operations on (or conditions of) the real property	Section 7. Interviews
Such identification shall also be based on sampling, if appropriate under the circumstances. The results of the identification shall be provided immediately	Section 8. Sampling (if performed)

to the Administrators and State and local government officials and made available to the public	
	Section 9. Screening Risk Evaluation (if performed)
	Section 10. References
	Appendix A – Real Estate Acquisition Letter
	Appendix B – Aerial and Other Photographs and Drawings
	Appendix C - Interviews
	Appendix D – Data Quality Objectives and Data Quality Assessment
	Appendix E - Sampling Results
	Appendix F – Screening Risk Evaluation
	Appendix G – Historical Site Assessment (if prepared as a separate document and only if the information is not included in the EBS)
Guidance on EPA Concurrence in the Identification of Uncontaminated Parcels Under CERCLA 120(h)(4)	
the objective is to include parcels where there is no indication that the release or disposal of hazardous substances or petroleum products has resulted in an environmental condition that poses a threat to human health or the environment	Conclusions
information available concerning the current and historical uses of the parcel, the proximity of the parcel to sources of contamination requiring response actions, and the nature of the threat, if any, reasonably associated with the type of activity or contamination associated with the parcel.	Section 1. Property Identification / Real Property Summary

APPENDIX C – CROSSWALK AND NARRATIVE OF THE CERCLA 120(h)(4) REQUIREMENTS AND ENVIRONMENTAL BASELINE SURVEY REPORT CONTENTS

<p>CERCLA 120(h)(4)(A): identification of uncontaminated property... shall be based on an investigation of the real property to determine or discover the obviousness of the presence or likely presence of a release or threatened release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, on the real property. The identification shall consist, at minimum, of a review of each of the following sources of information concerning the current and previous uses of the real property:</p>		
<p>Conclusions about the property proposed for transfer will be presented first in the document. This is where DOE presents its findings.</p>		
<p>Section 1 (Real Property Summary) of the document consists of a summary of the history and description of use of the real property proposed for transfer. It will introduce the property and provide information on site, situation and context for the reader and reviewer and also address the information needs of a <i>MARSSIM</i> Historical Site Assessment.</p>		
CERCLA 120(h)(4) cite	Environmental Baseline Survey Report Section	Narrative
(i) a detailed search of federal government records pertaining to the property	Section 2. Federal Records Search	Describe the federal records searched on the property. Consider sources such as the Atomic Energy Commission, Department of Defense, Army Corps of Engineers, etc. The purpose of the search is to identify if there is evidence that there was a release or disposal of hazardous substances or petroleum products or their derivatives. Inquiry also with DOE Realty Office so that they may check their files to determine if there is evidence of release or disposal of hazardous substances, petroleum products, or their derivatives.
(ii) recorded chain of title documents regarding the real property	Section 3. Title Search	This chapter documents that the title history of the property was searched to establish prior ownership, identify past land uses or use types, and determine whether the prior owners or land uses indicate that there was a release or disposal of hazardous substances or petroleum products or their derivatives. Information on prior ownership may be available in existing site documentation and should also be available from the DOE Certified Realty Specialists. Research at the county register of deeds may be needed. Information on prior federal ownership will be available from DOE, but additional searches with the other federal agency owner's realty offices may be needed. The title search needs to go back to at least one prior owner, preferably two. Easements need to be reviewed in case they indicate pipelines, power lines, or other utilities. The final paragraph in the chapter is pro forma from the DOE Realty Office Desk Guide and accommodates the requirements of DOE Realty and 40 <i>CFR</i> 373.

<p>(iii) aerial photographs that may reflect prior uses of the real property and that are reasonably obtainable through State or local government agencies</p>	<p>Section 4. Aerial and Other Photographs and Drawings</p>	<p>Include a figure/map of the property proposed for transfer shown in the context of the site. Include a figure showing the footprint of the property with topography, including a label indicating its acreage. Include, in chronological order of when they were taken, aerial photographs of the property supplemented with other photographs showing use of the property by prior owners and by DOE. Boundaries of the property proposed for transfer need to be depicted on the photos and be labeled to show the year taken. If there is extensive aerial photography, select the photos that best document the site or show changes.</p>
<p>(iv) a visual inspection of the real property and any buildings, structures, equipment, pipe, pipeline, or other improvements on the real property, and a visual inspection of properties immediately adjacent to the real property</p>	<p>Section 5. Results of Visual and Physical Inspections</p>	<p>Document the results of the inspections of the property proposed for transfer and the immediately adjacent property. Separate the portions of the chapter based on the property proposed for transfer vs. what is adjacent to it. Describe what was done and how, e.g., a vehicle tour, a walk-down, a radiological survey where the site was walked over or driven over (and where the results of the survey are found [e.g., which chapter or appendix]), and what was observed. Representative photographs from the inspections may be included and need to be dated and labeled regarding the directional view.</p>
<p>(v) a physical inspection of property adjacent to the real property to the extent permitted by owners or operators of such property</p>	<p>Section 5. Results of Visual and Physical Inspections</p>	<p>Document the results of the <i>physical</i> inspection of the property <i>immediately adjacent to the property proposed for transfer</i>. Separate the portions of the chapter based on the property proposed for transfer vs. what is adjacent to it. Describe what was done and how, e.g., a vehicle tour, a walk-down, a radiological survey where the site was walked over or driven over (and where the results of the survey are found [e.g., which chapter or appendix]), and what was observed. Representative photographs from the inspections may be included and be dated and labeled regarding the directional view.</p>
<p>(vi) reasonably obtainable Federal, State, and local government records of each adjacent facility where there has been a release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, and which is likely to cause or contribute to a release or threatened release of any hazardous substance or any petroleum product to its</p>	<p>Section 6. Records Search of Adjacent Facilities</p>	<p>This is where the discussion belongs about adjacent DOE facilities that bound the property proposed for transfer. Indicate what DOE or other records were searched, and the results of the search, that enable you to describe releases of hazardous substances or petroleum products or their derivatives or aviation fuel and motor oil that is likely to cause an impact, under reasonable conditions, to the property proposed for transfer.</p>

derivatives, including aviation fuel and motor oil on the real property proposed for transfer		
(vii) interviews with current or former employees or others with knowledge of operations on or conditions of the real property	Section 7. Interviews	Insert a table with the name and affiliation of the people spoken with about the property and what type of information was gathered. Note the duration of their involvement with operations on/knowledge of the property and the years it occurred. Note the capacity in which they were involved – for example, facility manager, waste management, environmental compliance, grounds maintenance, regulator, etc.
Such identification shall also be based on sampling, if appropriate under the circumstances. The results of the identification shall be provided to the Administrators and State and local government officials and made available to the public	Section 8. Sampling (if performed)	Include sections on the review of existing chemical and radiological data. Include summary tables of existing data collected, by media if appropriate. Discuss data gaps that resulted in the decision to collect data; and if the decision to sample was discussed with the regulators, note that, as well as when the discussions occurred. Include the sampling scheme tables (sample number, GPS coordinate, analyses performed, analytical method, monitoring results, etc.). In the balance of the chapter, include the results in the same order as they were presented in the first part of the chapter. Results are presented in tables that follow the format in Attachment 1 to this Appendix. The radiological survey and sampling history need to be described with a summary of existing data. If data gaps exist, such as for a lack of data to satisfy DOE O 458.1 needs, they are discussed. This is followed by a summary discussion of the survey and/or sampling conducted (and a reference to the survey and/or sampling plan in an appendix). The next section is on the results of the radiological survey and/or sampling conducted and an analysis of the results. The results of the survey and/or sampling are to be presented in tables that follow the format shown in Attachment 2 to this appendix.
	Section 9. Screening Risk Evaluation (if performed)	A screening risk evaluation presents the comparison of representative soil concentrations against background levels and human health screening levels. If exceedances occur, additional risk evaluation may be needed.
	Section 10.	References
	Appendix A.	Real Estate Acquisition Letter is the documentation of the CRS of the research of hazardous substance activity for the property and also contains a tract map of the property reviewed (and proposed for transfer).
	Appendix B	Aerial and Other Photographs and Drawings – aerial photographs over time (as available), photographs of the property over time and as collected as part of the site

		inspection, and maps or other drawings that can assist in documenting the environmental baseline of the property.
	Appendix C	Interviews with persons involved in the current or former operations on the property or persons with knowledge about operations on or conditions of the property proposed for transfer are conducted to gain knowledge of the property's history.
	Appendix D	Data Quality Objectives and Data Quality Assessment – the objectives of the data gathering and the assessment of the data used. Are the data of sufficient quality to be used for their intended purpose and do they support the conclusions of the EBS.
	Appendix E	Sampling Results – sampling and survey results for the property that inform on its environmental conditions.
	Appendix F	Screening Risk Evaluation – an evaluation of the data and associated risk/hazard used to determine protectiveness for human health and the environment for the site proposed for transfer.
	Appendix G	Historical Site Assessment (if prepared as a separate document and if information is not included in the EBS)
Guidance on EPA Concurrence in the Identification of Uncontaminated Parcels Under CERCLA 120(h)(4)		
Identify parcels where there is no indication that the release or disposal of hazardous substances or petroleum products has resulted in an environmental condition that poses a threat to human health or the environment	Section 1. Property Identification / Real Property Summary	The Conclusions section and the property identification information in Section 1 will address this
Information available concerning the current and historical uses of the parcel, the proximity of the parcel to sources of contamination requiring response actions, and the nature of the threat, if any, reasonably associated with the type of activity or contamination associated with the parcel.	Section 1. Property Identification / Real Property Summary	Real property summary will address this

**APPENDIX D – CROSSWALK OF REQUIREMENTS FOR HISTORICAL SITE
 ASSESSMENT WITH CONTENTS OF ENVIRONMENTAL BASELINE SURVEY
 REPORT**

Historical Site Assessment Requirements from MARSSIM Rev 1, August 2000	Environmental Baseline Survey Report Section
Glossary of Terms, Acronyms, and Abbreviations	Acronyms and Abbreviations
Executive Summary	Conclusions and Section 1
Purpose of the Historical Site Assessment	Section 7 – to establish classification
4.1 - property identification - name, owner/operator name, address, city and state. Location: city, county, state, coordinates. Topography - USGS 7.5 minute series map, stratigraphy. 4.2 - environmental setting: geology, hydrogeology, hydrology, meteorology	4.1 - Conclusions, Section 1, and supporting drawings and maps; 4.2 - Section 1 – created to address this and to provide useful contextual information
5.0 - Historical Site Assessment methodology; 5.1 - approach and rationale; 5.2 - boundaries of site; 5.3 - documents reviewed; 5.4 - property inspections; 5.5 - personal interviews	5.0 & 5.1 - an Appendix and/or Section 8 – where a review of existing sampling and surveying data are discussed, data gaps identified and results presented; 5.2. - Section 1; 5.3. Sections 2, 3 & 4; 5.4. - Section 5; 5.5. - Section 7
6.0 - History and current usage; 6.1 - history: years of operation, type of facility, description of operations, regulatory involvement, permits and licenses, waste handling procedures; 6.2 - current usage: type of facility, description of operations, probable source types and sizes, description of spills or releases, waste manifests, radionuclide inventories, emergency or removal actions; 6.3 - adjacent land usage - sensitive areas such as wetlands or preschools	6.1. - Section 1 6.2. - Section 1 6.3. - Sections 1, 5, & 6
Findings: 7.1 - potential contaminants; 7.2 - potential contaminated areas; 7.2.1 - impacted areas - known and potential; 7.2.2 - non-impacted areas; 7.3 - potential contaminated media; 7.4 - related environmental concerns	7.1. - Sections 1, 7, & 8
Conclusions	Conclusions, Sections 7 & 8
References	References
Conceptual Model and Site Diagram Showing Classifications	
List of Documents	References
Photo Documentation - original photographs of the site and pertinent site features	Section 4

APPENDIX E – ENVIRONMENTAL BASELINE SURVEY REPORT TRANSMITTAL
LETTER TEMPLATES TO COMMONWEALTH OR STATE, AND FEDERAL
REGULATORS

The information in the example letters, templates, and distribution lists in this appendix (and other appendices) are examples only and are subject to change. When using the provided example, ensure that the information in the correspondence is up to date. For example, the current governor of the State of Ohio is Mike DeWine.



Department of Energy

Portsmouth/Paducah Project Office
1017 Majestic Drive, Suite 200
Lexington, Kentucky 40513
(859) 219-4000

NOV 02 2016

The Honorable John R. Kasich
Governor of Ohio
Riffe Center, 30th Floor
77 South High Street
Columbus, OH 43215-6117

PPPO-03-3807566-17

Dear Governor Kasich:

U.S. DEPARTMENT OF ENERGY SUBMITTAL OF THE ENVIRONMENTAL BASELINE SURVEY REPORT FOR THE TRANSFER OF PARCEL 1 AT THE PORTSMOUTH GASEOUS DIFFUSION PLANT IN PIKETON, OHIO

The U.S. Department of Energy (DOE) Portsmouth/Paducah Project Office (PPPO) is pleased to submit the enclosed Environmental Baseline Survey (EBS) report in support of the planned transfer of ~ 80 acres of real property, referred to as Parcel 1, at the Portsmouth Gaseous Diffusion Plant (PORTS) in Piketon, Ohio.

The EBS was prepared pursuant to the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 120(h) for the transfer of real property from the federal government. DOE has identified the property as uncontaminated pursuant to CERCLA 120(h)(4). This determination is based on our investigation of the real property to “determine or discover the obviousness of the presence or likely presence of a release or threatened release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, on the real property.” The investigation included information gathering and review, visual and physical inspections, interviews with individuals familiar with past and present operations on the property, and data collection and evaluation. DOE has determined the transfer is protective of human health and the environment for the intended use and is seeking State concurrence with the determination of an uncontaminated parcel.

CERCLA 120(h)(4)(B) states that the identification of uncontaminated property not on the National Priorities List (PORTS is *not* on the National Priorities List), “is not complete until the appropriate State official has concurred.” 120(h)(4) goes on to say that “In the case of a concurrence which is required from a State Official, the concurrence is deemed to be obtained if, within 90 days after receiving a request for the concurrence, the State Official has not acted (by either concurring or declining to concur) on the request for concurrence.”

DOE PPPO is requesting concurrence on the EBS by the state official you designate to perform the review within 60 days of the date of receipt, so that DOE PPPO can continue to advance the transfer process.

Governor Kasich

-2-

PPPO-03-3807566-17

The transfer of DOE property for economic development is consistent with the views of PORTS stakeholders. We look forward to working with you on this important revitalization project for the State of Ohio, and in particular for southern Ohio.

If you have any questions or need additional information, please contact me at (859) 219-4002 or Richard Bonczek of my staff at (859) 219-4051.

Sincerely,



Robert E. Edwards, III
Manager
Portsmouth/Paducah Project Office

Enclosure:

EBS Report for the Title Transfer of Parcel 1 at PORTS

cc w/enclosure:

Vince.Adams@lex.doe.gov, PPPO/LEX
Rich.Bonczek@lex.doe.gov, PPPO/LEX
Greg.Simonton@lex.doe.gov, PPPO/PORTS
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Joel.Bradburne@lex.doe.gov, PPPO/PORTS

APPENDIX F – PPPO DATA QUALITY OBJECTIVES FOR UNCONTAMINATED PROPERTY

1. DQO STEP 1 – STATE THE PROBLEM

Draft Problem Statement:

The [parcel]⁵ is preliminarily considered to be non-impacted and uncontaminated. Information needs to be gathered or developed to meet the due diligence required by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) 120(h)(4) to confirm this designation and to demonstrate protectiveness under U.S. Department of Energy (DOE) Order 458.1.

What is the description of the media?

The media consist of soil, sediment, surface water, and any asphalt, concrete, or gravel areas including buildings or structures within the area designated as the [parcel] at PORTS or PAD.

Who needs this information regarding media constituents?

DOE and site contractors will use these data to demonstrate that the area and buildings on this land are uncontaminated per CERCLA 120(h)(4) and non-impacted and protective under DOE Order 458.1.

Who comprises the project planning team?

- PORTS or PAD Site Reuse Lead
- Site Contractors
- Additional subject matter experts as needed to support DOE real property transfer (i.e., Portsmouth Paducah Project Office [PPPO] Reuse Lead, PPPO Certified Health Physicist, Technical Support subcontractors).

What is the project budget?

DOE and site contractors will evaluate project budget and resources.

What is the project schedule?

The goal is to have information/data available by [date] to support development of an Environmental Baseline Survey (EBS) and to support completion of independent verification.

2. DQO STEP 2 – IDENTIFY THE GOALS OF THE STUDY

The objective of this second step in the data quality objective (DQO) process is to develop one or more decision statements that, when fully defined during DQO Steps 3 and 4, result in the decision rules of Step 5. The process of developing decision statements in this step is one of defining the principal study questions to address the problem statement in Step 1 and assigning alternative actions to the principal study question(s).

⁵ For items in brackets, revise as appropriate for the specific parcel

What are the Principal Study Questions?

- What DOE infrastructure is located on or off the parcel that data or history show could be a potential source of contamination to the [parcel]?
- Does any process history since completion of the area of investigation or remediation indicate disposal or release of hazardous substances or petroleum products or their derivatives onto or within the boundaries of the [parcel]?
- What are the measurement quality objectives (MQOs) for a radiological scoping survey, if needed?
- What action level from the radiological scoping survey necessitates the collection of a physical sample (grab sample)?
- What are the metrics for determining “non-impacted⁶” and “uncontaminated?” This includes storage and release of hazardous substances and presence of contamination in the media.
- Does the radiological scoping survey meet the [PORTS or PAD] Implementation Plan for DOE Order 458.1 and demonstrate attainment of Authorized Limits)?
- What are the requirements for DOE to demonstrate the [parcel] is uncontaminated under CERCLA 120(h)(4)?
- If analytical results for chemical constituents are necessary to comply with the ability to demonstrate that there has not been a release or disposal of hazardous substances or petroleum products or their derivatives onto the [area], or where there is no indication that the release or disposal of hazardous substances or petroleum products has resulted in an environmental condition that poses a threat to human health or the environment (per CERCLA 120(h)(4) criteria), how are those results obtained and evaluated? What are the MQOs for the results?
- What are the requirements for the visual walkover/physical inspection MQOs and how will the information be evaluated?

What are the Alternative Actions related to the Principal Study Questions?

The expected action, based upon the Problem Statement, is that the entire [parcel] selected for evaluation is confirmed to be eligible for transfer as an uncontaminated parcel per CERCLA 120(h)(4), and non-impacted and protective under DOE Order 458.1.

The alternative actions are:

- 1) Only portions of the [parcel] are found to be non-impacted and uncontaminated (i.e., some portions are found to be impacted/contaminated), and the area is subdivided to allow a portion to be transferred as non-impacted/uncontaminated per CERCLA 120(h)(4).
- 2) The [parcel] is determined to be impacted/contaminated and not eligible for transfer per CERCLA 120(h)(4).

⁶ Per the *Multi-Agency Radiation Survey and Site Investigation Manual* (MARSSIM) (DOE et al. 2000) guidance, areas that have no reasonable potential for residual radioactivity or contamination are classified as “non-impacted areas”.

What is the primary Decision Statement?

Determine whether the [parcel] is eligible for transfer per CERCLA 120(h)(4) as uncontaminated/non-impacted⁷ or whether areas of contamination (chemical and/or radiological) exist that would require further evaluation.

3. DQO STEP 3 – IDENTIFY INFORMATION INPUTS

The objective of Step 3 is to identify the information inputs required to resolve the decision statements developed previously.

Data and information inputs used to evaluate the [parcel] include the following:

- Detailed search of federal government records pertaining to historical land use for the real property (required by CERCLA 120(h)(4))
- Information from the visual walkover survey (including any photographs taken during the walkover survey)
- Site utility drawings
- Aerial photographs (over time)
- Aerial radiological survey results (photographs/maps)
- Decision documents
- Interviews with current or former employees involved in operations on or near the real property and/or with persons familiar with the site conditions over the history of site operations
- Historical environmental data and results from previous radiological surveys
- Initial list of chemicals of potential concern (COPCs) for all media, including common site-related contaminants such as metals, uranium, polychlorinated biphenyls (PCBs), and polycyclic aromatic hydrocarbons (PAHs)⁸. In addressing buildings, additional COPCs may need to be evaluated, such as radon, VOCs, lead-based paint, asbestos, etc.
- Environmental data collected to address data gaps for due diligence, as necessary.

Criteria used to evaluate data and information collected above includes the following:

⁷ As protective measures, DOE filed deed notations for groundwater and land use in the Pike County, Ohio, records which place restrictions and/or prohibitions on future uses of the groundwater and limits future uses of PORTS property to conservation, commercial, or industrial land use, or any combination of those uses (DOE 2003, DOE 2017a). PAD also has groundwater restrictions associated with its Water Policy (DOE 1994).

⁸COPC should be consistent with the PORTS or PAD RMDs

⁸COPC should be consistent with the PORTS or PAD RMDs

- For purposes of CERCLA 120(h)(4), “uncontaminated” will be defined as a level of the radiological or chemical constituent⁹. that is below background or that is within the CERCLA risk range.
- Areas that have no reasonable potential for residual radioactivity are classified as “non-impacted areas,” whereas areas with reasonable potential for residual radioactivity are classified as “impacted areas.”
- The level of detection for the radiological survey equipment needs to be no greater than the Authorized Limits for [PORTS or PAD]. For example, the detection limit for a high-purity germanium [HPGe] detector, if used, will be set at a value of half the Authorized Limit for uranium-238, or 8 pCi/g.
- Soil data will be evaluated based on [PORTS or PAD] background soil levels. Following the background screen, data for constituents exceeding background will be compared to appropriate risk-based concentrations for residential, industrial worker, and construction worker land use scenarios (i.e., concentrations calculated at an excess lifetime cancer risk [ELCR] of 1×10^{-5} and a hazard index [HI] of 1.0 for a residential, industrial worker, and construction worker exposures from the current approved risk methods document [RMD]) and Authorized Limits.
- Soil data will be evaluated against screening values for residential use derived with the RESidual RADioactivity (RESRAD) computer code (Version 7.2)) to ensure the public does not receive greater than 25 mrem/year of dose through all exposure pathways, including groundwater.
- If collected, building surface data will be evaluated against screening values for residential use derived with the RESidual RADioactivity (RESRAD) computer code (Version 7.2)) to ensure the public does not receive greater than 25 mrem/year of dose through all exposure pathways, including groundwater.
- Interior-to-the-building chemical data above screening values do not constitute a release to the environment but these constituents may be removed to support property transfer. These data will be evaluated against screening values (at 1×10^{-5} ELCR and HI of 1.0. if not otherwise specified by ordinance) for residential use, as available, to ensure the building can be documented as uncontaminated.
- The presence and condition of other interior-to-the-building constituents may need to be disclosed to support property transfer. For example, the presence and condition of asbestos containing materials shall be evaluated (and sampled if necessary) to determine whether these materials may remain in a building considered uncontaminated. Similarly, the presence of closed USTs shall be documented along with a determination that they were properly closed to meet residential standards.
- The potential for radon and vapor intrusion at levels of concern shall be evaluated per DOE O 458.1 and regulatory guidance. Other evaluations associated with disclosures to support real estate transfers shall also be performed and documented in the EBS and these disclosures confirmed as sufficient for residential use.
- Reporting limits for fixed-base laboratories will be those defined and previously approved in recent investigation documents. These limits should be reviewed against project objectives.

⁹ Regulatory preference needs to be considered when established these concentrations

- Soil screening levels (SSLs) (at 1×10^{-5} ELCR and HI of 1.0) for protection of groundwater from the RMDs.
- Surface water screening levels from the [PORTS or PAD] Human Health RMD and other applicable standards (e.g., DOE's Derived Concentration Standards [DOE 2021] may also be used for screening surface water data.

If data are needed to satisfy data gaps, then additional criteria will need to be developed (the bullets below are examples from Parcel 2 at PORTS):

- The radiological scan coverage will be 100 percent near areas of infrastructure (e.g., roads), including infrastructure that data or history show could be a potential source of contamination (e.g., storm drains and sewer lines); 100 percent of identified anomalies from the visual walkover survey (identified visual anomalies will be based on areas of staining, mounding, depressions, debris, areas of disturbance [indications of possible anthropogenic activity], lack of vegetation or distressed vegetation, and evidence of infrastructure that could be a potential source of contamination from DOE operations); 100 percent for identified areas that have been backfilled or disturbed (unless the area is wooded); and 20 percent in open areas along a transect pattern established in the sampling and analysis plan (SAP). For wooded areas where a drive-over unit cannot traverse a closely spaced scan path, serpentine traverses through the wooded areas will be used (there is no specified scan coverage for wooded areas and no plans to remove vegetation to facilitate the survey). The highest gamma activity, as determined by the sodium iodide detector survey, for each 10,000-m² (approximately 2.5-acres) area will be identified as a location for HPGe measurements.
- Physical samples (grab samples) will be collected based on the radiological survey if the applicable Authorized Limit is exceeded (based on HPGe measurements for uranium-238). If there are no exceedances, sample collection will be based on locations with highest, or elevated, radiological survey results (physical samples will be identified based on results of the HPGe measurements; a minimum of 10 samples per 100 acres will be collected based on highest HPGe measurements).
- Physical samples (grab samples) will be collected based on evaluation of historical analytical data and visual walkover survey information (e.g., identification of contaminant anomalies from historical data and visual anomalies). One sample will be collected at each location where a visual anomaly is identified. During the walkover survey, surface water features (e.g., perennial streams or ponds) may be identified for sampling, particularly if there are no historical data related to the surface water features. Also, if evaluation and mapping of the historical data indicates an area of potential contamination, a sample will be collected from the approximate center of the area identified from the evaluation and mapping. Sample details will be presented in the SAP.
- Physical samples (grab samples) will be collected based on evaluation of sample coverage, or sample density, after the completion of physical sampling conducted based upon radiologic survey results and sampling conducted based upon identification of anomalies, and with consideration of the historical data set. The parcel will be subdivided into 10,000-m² sized polygons or cells. All cells in which there are no physical samples collected resulting from application of the above criteria will be included in a cell set. From that set, 20 percent of those cells will be selected randomly and a physical sample will be collected from the approximate center of each randomly selected cell.

- Physical samples will be analyzed using fixed-base laboratories. If additional laboratory data are to be collected, the detection limits should be low enough to allow comparison to residential criteria. Field screening methods may also be used to assist DOE in developing correlations between results of various field screening methods and fixed-base laboratory results. This information may support use of cost effective screening tools during future DOE actions. Field screening methods, if used, will be employed at established physical sample locations described above.)

4. DQO STEP 4 – DEFINE THE BOUNDARIES OF THE STUDY

What are the spatial boundaries?

The spatial boundaries for [area] are designated in the [figure]. [Insert brief geographical description of the area] The visual survey will include adjacent property (e.g., this could include roads and ditches along the boundaries but not the areas on opposite sides of the bounding roads/ditches). At locations where bounding roads and ditches are not present, the visual survey area will extend 25 ft beyond the area boundary.

What are the vertical boundaries for this project?

The vertical boundary is 0 to 10 ft below ground surface¹⁰ (bgs) (e.g., soil samples, if needed, will be collected from the 0-to-1-ft-depth (surface) to 0-to-10-ft-depth interval).

What are the temporal boundaries for this project?

The temporal boundaries for this project are related to the schedule needed to support development and completion of the EBS and IVR.

[Include Figure of Parcel Being Evaluated]

5. DQO STEP 5 – DEVELOP THE ANALYTIC APPROACH

The goal of DQO Step 5 is to screen existing data against decision rules. The fifth step in the DQO process specifies appropriate population parameters, defines the action levels, and develops an “if...then...else/otherwise...” decision rule. The decision rules to consider are as follows:

¹⁰ In areas where subsurface infrastructure exists, then the vertical boundary may need to be the depth of the infrastructure.

Table 2. Decision Rules for Soils

Decision Rule No.	If	Then	Otherwise
1	Visual anomalies are identified based on areas of staining, mounding, depressions, debris (e.g., concrete, metal), areas of disturbance (indications of possible anthropogenic activity), lack of vegetation and/or distressed vegetation, and evidence of infrastructure that could be a potential source of contamination from DOE operations (such as storage pads or storm sewer lines);	Verify radiological survey data exists for the anomaly;	Implement a radiological survey of the anomaly with 100 percent coverage (unless area is wooded and 100 percent coverage is not feasible);
2	Visual anomalies are identified based on areas of staining, lack of vegetation (or distressed vegetation), and/or areas of infrastructure that could be a potential source of contamination from DOE operations (such as storage pads or storm sewers);	Verify sampling data exist for the anomaly;	Collect a grab sample of the media which shows the visual anomaly for laboratory analysis (if the anomaly is on concrete or other man-made object, sample soil media immediately adjacent to the observed anomaly);
3	Areas of subsurface infrastructure that could be a potential source of contamination from DOE operations are identified;	Historical data from areas of subsurface infrastructure will be evaluated;	Determine if infrastructure should be sampled or excluded.
4	The radiological scoping of a previously identified anomaly (from Decision Rule 1) exceeds the Authorized Limit for uranium-238(+D);	Verify if adequate radiological data exists;	Determine the extent of the area with elevated measurements and collect a grab sample for laboratory analysis to determine if area should be excluded;
5	The radiological scoping survey of the open areas or traverses through the wooded areas identifies elevated areas based on exceedance of the Authorized Limit for uranium-238(+D);	Verify if sampling data exists;	Collect a grab sample from the area of elevated activity for laboratory analysis;
6	Analytical results from physical samples exceed the SSLs or Authorized Limits;	Designate a location as needing further evaluation;	Exclude the portion of the parcel with exceedances.
7	Additional data are going to be collected;	Subdivide the parcel into 10,000-m ² cells/polygons and randomly sample 20 percent of the cells that do not contain a sample location (including historical data from 2006 to present) and conduct a radiological scoping survey to eliminate large tracts with no survey data;	Proceed with development of the EBS.

Notes:

Field screening methods may be used to assist DOE in developing correlations between results of various field screening methods and fixed-base laboratory results. Methods will be specified in the applicable SAP.

COPCs and analytical requirements will be defined in the applicable SAP.

COPC = contaminant of potential concern
 DOE = U.S. Department of Energy
 HPGe = high-purity germanium

SAP = sampling and analysis plan
 SSL = soil screening level

Table 3. Decision Rules for Roads and Other “Non-soil” Areas

Decision Rule No.	If	Then	Otherwise
8	The radiological scoping of roads or other non-soil areas exceeds 2 times the established background for comparable building materials;	Further evaluate the potential cause of the elevated radioactivity;	No additional radiological survey is performed.

Table 4. Decision Rules for Surface Water and Sediment

Decision Rule No.	If	Then	Otherwise
9	Perennial streams or open-water bodies (ponds) exist within the area;	Evaluate historical data to see if contamination exists;	Collect grab samples for further evaluation.
10	Sediment accumulation areas ^a (such as low-lying areas, areas along streams and open-water bodies, and wetlands) exist within the area;	Evaluate historical data;	Collect grab samples from sediment accumulation areas.

Notes:

^aSediment accumulation areas are those areas where overland flow and surface drainage gradients decrease and sediment may accumulate. These areas will generally be low-lying area that would tend to accumulate surface water runoff and any associated sediments. Sampling these areas may indicate if any potential contaminants lie within the area of surface water runoff.

COPCs and analytical requirements will be defined in the applicable SAP.

COPC = chemical of potential concern
 SAP = sampling and analysis plan

The following is an example of historical data evaluation and data gap identification from the PORTS Parcel 2 DQOs.

Historical Data Evaluation

Historical soil data were collected from 32 sampling stations at 25 unique locations associated with Parcel 2 as part of previous environmental studies and investigations at PORTS. Analytical results from soil samples were collected during four projects in 1991, 1993, 2011, 2015, and 2016. Table 1 identifies the number of samples associated with each analytical group for each soil sampling depth interval. While approximately 28 samples were collected from the 0-to-2-ft-depth interval, only 18 of those samples were specifically collected within the 0-to-1-ft bgs interval. For the 0-to-1-ft bgs interval, there are 15 to 19 analyses for total uranium, primary uranium isotopes, and technetium-99. For the 1-to-16-ft bgs interval, there are approximately 43 to 54 analyses for several PORTS-related COPCs. Tables 2 and 3 summarize the frequency of detection and maximum detected values based on the historical data (data shown include only the detected constituents from 0-to-1-ft bgs and 1-to-16-ft bgs intervals, with the exception of technetium-99 in the 0-to-1-ft bgs interval which was not detected) and show a screening against background, residential, and industrial risk screening values (Table 2 is the data summary for the area east of Perimeter Road, and Table 3 is for the area west of Perimeter Road). In the 0-to-1-ft bgs interval, total uranium exceeds background at two locations; uranium-233/234 and uranium-235/236 exceeded background, residential, and industrial screening criteria; and uranium-238 exceeded background and residential criteria. All of the uranium and radionuclide exceedances in the 0-to-1-ft bgs interval occurred in the portion of Parcel 2 located west of Perimeter Road. Only arsenic, cobalt, and manganese in the 1-to-16-ft bgs interval exceeded both background and residential screening criteria (while these metals exceeded the “background value,” both arsenic and manganese were within the range of values detected during the background study [DOE 2015a]) (Table 4).

The site-wide COPCs for PORTS include volatile organic compounds (VOCs), semivolatile organic compounds, metals, radionuclides, PCBs, and PAHs. Based on historical data and process knowledge, VOCs are not expected to be present in the surface soil in Parcel 2 at levels above SSLs. Radionuclides above background concentrations may be a concern for the Parcel 2 area as it is generally downwind from the PORTS process facilities. Past aerial surveys conducted at PORTS have not identified any radiological sources within the Parcel 2 area, and the analytical data from the 12 surface soil locations did not indicate any exceedances of applicable criteria. There are no historical data for surface water (i.e., the ponds related to historic-era farmsteads) for the Parcel 2 area.

A radiological scoping survey of an adjacent 108-acre area, which included approximately 12 acres of Parcel 2, was performed in October and November 2015. Parallel-patterned traverses of the survey area with a sodium iodide detector array were followed with the goal to achieve 20 percent survey coverage of the open areas. The data generated by the sodium iodide survey were reviewed daily to determine locations for subsequent HPGe measurements.

HPGe locations were determined based on highest sodium iodide readings from the area scanned. The data generated by the HPGe measurements were then used to define the physical soil sample locations. There were four HPGe measurements (3 unique locations and 1 replicate measurement) made within the area of Parcel 2 west of Perimeter Road and two of those measurement locations were selected for physical soil sampling.

Table 5. Historical Soil Sampling Depth Intervals and Analytical Groups

Soil Sampling Depth Interval (ft below ground surface)	Analytical Group	Number of Historical Samples
Surface (0-1)	VOCs	0
	SVOCs	2
	PCBs	0
	Metals	15 ^a
	Radionuclides	4 to 19
Subsurface (1-16)	VOCs	43
	SVOCs	46
	PCBs	46
	Metals	46
	Radionuclides	40 to 54 ^b
Subsurface (> 16)	VOCs	13
	SVOCs	12
	PCBs	12
	Metals	25
	Radionuclides	12 to 24 ^b

Notes:

^a Total uranium only.

^bVaries by radionuclide.

PCB = polychlorinated biphenyl

SVOC = semivolatile organic compound

VOC = volatile organic compound

Table 6. Historical Soil Data Summary for Parcel 2 East of Perimeter Road

Parameter	Detection Frequency	Minimum Detection	Maximum Detection	Units	Background Value	Number of Exceedances above Background	Residential Screening Value ¹	Number of Exceedances above Residential Value	Industrial Screening Value ¹	Number of Exceedances above Industrial Value
Surface Soil (0 to 1 ft below ground surface)										
Total Uranium	12/12	1.82	2.68	mg/kg	4.1	0	2.34E+02	0	6.79E+03	0
Technetium-99	0/12	--	--	pCi/g	--	--	1.14E+03	--	1.70E+04	--
Uranium-233/234	12/12	0.551	0.887	pCi/g	1.3	0	5.83E+01	0	5.69E+02	0
Uranium-235	12/12	0.0227	0.044	pCi/g	0.1	0	1.94E+00	0	7.51E+00	0
Uranium-238	12/12	0.606	0.895	pCi/g	1.4	0	8.13E+00	0	3.52E+01	0
Subsurface Soil (1 to 16 ft below ground surface)										
Aluminum	43/43	6,200	26,000	mg/kg	20,717	1	7.73E+04	0	2.15E+06	0
Antimony	2/36	0.42	0.47	mg/kg	1.8	0	3.13E+01	0	9.34E+02	0
Arsenic	42/43	1.5	59	mg/kg	29	5	6.77E+00	38	7.25E+01	0
Barium	43/43	24	700	mg/kg	136	2	1.53E+04	0	3.99E+05	0
Beryllium	42/43	0.36	2.7	mg/kg	1.6	1	1.55E+02	0	4.48E+03	0
Cadmium	15/43	0.036	0.86	mg/kg	0.3	4	7.10E+01	0	2.24E+03	0
Calcium	39/43	36	44,000	mg/kg	--	--	--	--	--	--
Chromium	43/43	7.6	26	mg/kg	29	0	--	--	--	--
Cobalt	43/43	4.2	100	mg/kg	37	1	2.34E+01	4	6.86E+02	0
Copper	43/43	4.3	27	mg/kg	26	1	3.13E+03	0	9.34E+04	0
Iron	43/43	12,000	41,000	mg/kg	62,782	0	5.48E+04	0	1.64E+06	0
Lead	43/43	9.6	45	mg/kg	23	5	4.00E+02	0	8.00E+02	0
Magnesium	43/43	550	3,800	mg/kg	--	--	--	--	--	--
Manganese	43/43	37	2,700	mg/kg	1,491	1	1.82E+03	1	4.65E+04	0
Mercury	28/43	0.0073	0.071	mg/kg	0.052	2	2.35E+01	0	7.00E+02	0
Molybdenum	21/37	0.22	1.4	mg/kg	--	--	--	--	--	--
Nickel	43/43	6.2	38	mg/kg	50	0	1.54E+03	0	4.26E+04	0
Potassium	6/6	210	1,700	mg/kg	--	--	--	--	--	--
Selenium	30/43	0.13	1.1	mg/kg	0.6	13	3.91E+02	0	1.17E+04	0
Sodium	30/43	50	250	mg/kg	--	--	--	--	--	--
Thallium	37/43	0.11	0.32	mg/kg	0.4	0	7.82E-01	0	2.34E+01	0
Total Uranium	51/51	0.38	3.5	mg/kg	4.7	0	2.34E+02	0	6.79E+03	0
Vanadium	43/43	18	61	mg/kg	58	1	3.93E+02	0	1.15E+04	0
Zinc	43/43	16	140	mg/kg	117	1	2.35E+04	0	7.01E+05	0

Table 6. Historical Soil Data Summary for Parcel 2 East of Perimeter Road (Continued)

Parameter	Detection Frequency	Minimum Detection	Maximum Detection	Units	Background Value	Number of Exceedances above Background	Residential Screening Value ¹	Number of Exceedances above Residential Value	Industrial Screening Value ¹	Number of Exceedances above Industrial Value
Subsurface Soil (1 to 16 ft below ground surface) (continued)										
1,2-Dimethylbenzene	1/40	0.0011	0.0011	mg/kg	--	--	--	--	--	--
Acenaphthene	1/44	0.058	0.058	mg/kg	--	--	2.39E+02	0	3.68E+02	0
Acetone	3/46	0.0064	0.088	mg/kg	--	--	6.30E+04	0	1.14E+05	0
Anthracene	1/44	0.14	0.14	mg/kg	--	--	2.39E+02	0	3.68E+02	0
Benz(a)anthracene	1/44	0.27	0.27	mg/kg	--	--	1.13E+00	0	6.54E+01	0
Benzene	1/46	0.00053	0.00053	mg/kg	--	--	1.53E+01	0	7.17E+01	0
Benzenemethanol	5/44	0.01	0.06	mg/kg	--	--	--	--	--	--
Benzo(a)pyrene	1/44	0.22	0.22	mg/kg	--	--	1.13E+00	0	6.54E+01	0
Benzo(b)fluoranthene	1/44	0.4	0.4	mg/kg	--	--	1.13E+00	0	6.54E+01	0
Benzo(ghi)perylene	1/44	0.15	0.15	mg/kg	--	--	2.39E+02	0	3.68E+02	0
Bis(2-ethylhexyl)phthalate	8/44	0.028	0.2	mg/kg	--	--	3.88E+02	0	4.67E+03	0
Carbazole	1/38	0.099	0.099	mg/kg	--	--	--	--	--	--
Chrysene	1/44	0.27	0.27	mg/kg	--	--	1.13E+00	0	6.54E+01	0
cis-1,2-Dichloroethene	1/46	0.00056	0.00056	mg/kg	--	--	1.56E+02	0	2.37E+03	0
Dibenzofuran	1/44	0.045	0.045	mg/kg	--	--	7.82E+01	0	1.71E+02	0
Di-n-octylphthalate	2/44	0.041	0.1	mg/kg	--	--	--	--	--	--
Ethylbenzene	1/46	0.00075	0.00075	mg/kg	--	--	7.67E+01	0	3.58E+02	0
Fluoranthene	3/44	0.013	0.76	mg/kg	--	--	2.39E+02	0	3.68E+02	0
Fluorene	1/44	0.062	0.062	mg/kg	--	--	2.39E+02	0	3.68E+02	0
Indeno(1,2,3-cd)pyrene	1/44	0.12	0.12	mg/kg	--	--	1.13E+00	0	6.54E+01	0
M + P Xylene	2/46	0.00099	0.0036	mg/kg	--	--	2.60E+02	0	2.60E+02	0
Methylene chloride	5/46	0.00067	0.0015	mg/kg	--	--	3.75E+02	0	3.32E+03	0
Phenanthrene	3/44	0.0068	0.66	mg/kg	--	--	2.39E+02	0	3.68E+02	0
Phenol	18/44	0.023	0.053	mg/kg	--	--	--	--	--	--
Pyrene	6/44	0.0093	0.59	mg/kg	--	--	2.39E+02	0	3.68E+02	0
Tetrachloroethene	1/46	0.0022	0.0022	mg/kg	--	--	1.04E+02	0	1.66E+02	0
Toluene	2/46	0.0011	0.0038	mg/kg	--	--	8.18E+02	0	8.18E+02	0
Total Xylene	2/40	0.00099	0.0047	mg/kg	--	--	--	--	--	--

Table 6. Historical Soil Data Summary for Parcel 2 East of Perimeter Road (Continued)

Parameter	Detection Frequency	Minimum Detection	Maximum Detection	Units	Background Value	Number of Exceedances above Background	Residential Screening Value ¹	Number of Exceedances above Residential Value	Industrial Screening Value ¹	Number of Exceedances above Industrial Value
Subsurface Soil (1 to 16 ft below ground surface) (continued)										
Alpha activity	37/44	2.14	11.6	pCi/g	--	--	--	--	--	--
Beta activity	24/44	1.47	13.5	pCi/g	--	--	--	--	--	--
Technetium-99	1/59	0.2	0.2	pCi/g	--	--	1.14E+03	0	1.70E+04	0
Thorium-228	38/38	0.783	1.73	pCi/g	1.9	0	--	--	--	--
Thorium-230	38/38	0.656	1.57	pCi/g	1.7	0	--	--	--	--
Thorium-232	38/38	0.805	1.69	pCi/g	1.9	0	--	--	--	--
Uranium-233/234	46/46	0.547	1.09	pCi/g	1.6	0	5.83E+01	0	5.69E+02	0
Uranium-235	31/46	0.0237	0.0762	pCi/g	0.12	0	1.94E+00	0	7.51E+00	0
Uranium-238	46/46	0.512	1.06	pCi/g	1.6	0	8.13E+00	0	3.52E+01	0

Note:

¹Based on minimum of either the cancer risk (ELCR = 1×10^{-5}) or hazard index (HI = 1)

ELCR = excess lifetime cancer risk

HI = hazard index

Table 7. Historical Soil Data Summary for Parcel 2 West of Perimeter Road

Parameter	Detection Frequency	Minimum Detection	Maximum Detection	Units	Background Value	Number of Exceedances above Background	Residential Screening Value ¹	Number of Exceedances above Residential Value	Industrial Screening Value ¹	Number of Exceedances above Industrial Value
Surface Soil (0 to 1 ft below ground surface)										
Total Uranium	3/3	2.19	12.9	mg/kg	4.1	2	2.34E+02	0	6.79E+03	0
Anthracene	1/2	0.00158	0.00158	mg/kg	--	--	2.39E+02	0	3.68E+02	0
Benz(a)anthracene	1/2	0.00923	0.00923	mg/kg	--	--	1.13E+00	0	6.54E+01	0
Benzo(a)pyrene	1/2	0.00922	0.00922	mg/kg	--	--	1.13E+00	0	6.54E+01	0
Benzo(b)fluoranthene	1/2	0.0168	0.0168	mg/kg	--	--	1.13E+00	0	6.54E+01	0
Benzo(ghi)perylene	1/2	0.00787	0.00787	mg/kg	--	--	2.39E+02	0	3.68E+02	0
Benzo(k)fluoranthene	1/2	0.00629	0.00629	mg/kg	--	--	1.13E+00	0	6.54E+01	0
Chrysene	1/2	0.00955	0.00955	mg/kg	--	--	1.13E+00	0	6.54E+01	0
Dibenz(a,h)anthracene	1/2	0.00172	0.00172	mg/kg	--	--	1.13E+00	0	6.54E+01	0
Fluoranthene	1/2	0.0174	0.0174	mg/kg	--	--	2.39E+02	0	3.68E+02	0
Indeno(1,2,3-cd)pyrene	1/2	0.00733	0.00733	mg/kg	--	--	1.13E+00	0	6.54E+01	0
Phenanthrene	1/2	0.00729	0.00729	mg/kg	--	--	2.39E+02	0	3.68E+02	0
Pyrene	1/2	0.015	0.015	mg/kg	--	--	2.39E+02	0	3.68E+02	0
Actinium-228	4/4	1.59	1.84	pCi/g	--	--	--	--	--	--
Americium-241	1/4	0.53	0.53	pCi/g	--	--	2.31E+01	0	1.12E+02	0
Bismuth-212	4/4	1.43	2.25	pCi/g	--	--	--	--	--	--
Bismuth-214	4/4	0.85	1.16	pCi/g	--	--	--	--	--	--
Cesium-137	4/4	0.084	0.54	pCi/g	--	--	--	--	--	--
Cobalt-57	2/3	0.053	0.304	pCi/g	--	--	--	--	--	--
Lead-212	4/4	1.37	1.59	pCi/g	--	--	--	--	--	--
Lead-214	4/4	1.01	1.3	pCi/g	--	--	--	--	--	--
Potassium-40	4/4	24.2	36.5	pCi/g	--	--	--	--	--	--
Protactinium-234	2/4	16.3	20.4	pCi/g	--	--	--	--	--	--
Radium-226	4/4	4.71	431	pCi/g	--	--	--	--	--	--
Technetium-99	0/3	--	--	pCi/g	--	--	1.14E+03	--	1.70E+04	--
Thorium-234	4/4	2.06	24.7	pCi/g	--	--	--	--	--	--
Uranium-233/234	7/7	0.729	630	pCi/g	1.3	6	5.83E+01	3	5.69E+02	1
Uranium-235	1/1	0.0459	0.0459	pCi/g	0.1	0	1.94E+00	--	7.51E+00	--
Uranium-235/236	6/6	0.163	25	pCi/g	0.1	6	1.94E+00	3	7.51E+00	1
Uranium-238	7/7	0.728	18.6	pCi/g	1.4	6	8.13E+00	2	3.52E+01	0

Table 7. Historical Soil Data Summary for Parcel 2 West of Perimeter Road (Continued)

Parameter	Detection Frequency	Minimum Detection	Maximum Detection	Units	Background Value	Number of Exceedances above Background	Residential Screening Value ¹	Number of Exceedances above Residential Value	Industrial Screening Value ¹	Number of Exceedances above Industrial Value
Subsurface Soil (1 to 16 ft below ground surface)										
Aluminum	3/3	11,000	13,000	mg/kg	20,717	0	7.73E+04	0	2.15E+06	0
Antimony	1/2	0.38	0.44	mg/kg	1.8	0	3.13E+01	0	9.34E+02	0
Arsenic	3/3	12	18	mg/kg	29	0	6.77E+00	3	7.25E+01	0
Barium	3/3	64	83	mg/kg	136	0	1.53E+04	0	3.99E+05	0
Beryllium	3/3	0.63	1	mg/kg	1.6	0	1.55E+02	0	4.48E+03	0
Cadmium	3/3	0.086	1.5	mg/kg	0.3	1	7.10E+01	0	2.24E+03	0
Calcium	2/3	1,600	1,800	mg/kg	--	--	--	--	--	--
Chromium	3/3	10	17	mg/kg	29	0	--	--	--	--
Cobalt	3/3	11	16	mg/kg	37	0	2.34E+01	0	6.86E+02	0
Copper	3/3	13	18	mg/kg	26	0	3.13E+03	0	9.34E+04	0
Fluoride	1/1	6	6	mg/kg	--	--	--	--	--	--
Iron	3/3	23,000	54,000	mg/kg	62,782	0	5.48E+04	0	1.64E+06	0
Lead	3/3	12	19	mg/kg	23	0	4.00E+02	0	8.00E+02	0
Magnesium	3/3	1,800	3,000	mg/kg	--	--	--	--	--	--
Manganese	3/3	290	680	mg/kg	1,491	0	1.82E+03	0	4.65E+04	0
Mercury	2/3	0.015	0.025	mg/kg	0.052	0	2.35E+01	0	7.00E+02	0
Molybdenum	2/2	2	2	mg/kg	--	--	--	--	--	--
Nickel	3/3	17	25	mg/kg	50	0	1.54E+03	0	4.26E+04	0
Potassium	1/1	1,600	1,600	mg/kg	--	--	--	--	--	--
Selenium	2/3	0.25	0.27	mg/kg	0.6	0	3.91E+02	0	1.17E+04	0
Silver	1/3	14	14	mg/kg	7	1	3.91E+02	0	1.17E+04	0
Sodium	2/3	58	180	mg/kg	--	--	--	--	--	--
Thallium	2/3	0.24	0.24	mg/kg	0.4	0	7.82E-01	0	2.34E+01	0
Total Uranium	4/4	0.75	3	mg/kg	4.7	0	2.34E+02	0	6.79E+03	0
Vanadium	3/3	26	54	mg/kg	58	0	3.93E+02	0	1.15E+04	0
Zinc	3/3	41	71	mg/kg	117	0	2.35E+04	0	7.01E+05	0
Acetone	4/4	0.0056	0.018	mg/kg	--	--	6.30E+04	0	1.14E+05	0
Benzenemethanol	2/2	0.026	0.032	mg/kg	--	--	--	--	--	--
Phenol	2/2	0.021	0.023	mg/kg	--	--	--	--	--	--
Pyrene	1/2	0.012	0.012	mg/kg	--	--	2.39E+02	0	3.68E+02	0

Table 7. Historical Soil Data Summary for Parcel 2 West of Perimeter Road (Continued)

Parameter	Detection Frequency	Minimum Detection	Maximum Detection	Units	Background Value	Number of Exceedances above Background	Residential Screening Value ¹	Number of Exceedances above Residential Value	Industrial Screening Value ¹	Number of Exceedances above Industrial Value
Subsurface Soil (1 to 16 ft below ground surface) (continued)										
Alpha activity	2/3	4.79	7.18	pCi/g	--	--	--	--	--	--
Plutonium-239/240	2/2	0.0335	0.045	pCi/g	--	--	3.78E+01	0	2.48E+02	0
Technetium-99	0/3	--	--	pCi/g	--	--	1.14E+03	0	1.70E+04	0
Thorium-228	2/2	1.01	1.11	pCi/g	1.9	0	--	--	--	--
Thorium-230	2/2	1.1	1.23	pCi/g	1.7	0	--	--	--	--
Thorium-232	2/2	0.914	1.06	pCi/g	1.9	0	--	--	--	--
Uranium-233/234	3/3	0.749	1.22	pCi/g	1.6	0	5.83E+01	0	5.69E+02	0
Uranium-235	3/3	0.0393	0.0564	pCi/g	0.12	0	1.94E+00	0	7.51E+00	0
Uranium-238	3/3	0.984	1.08	pCi/g	1.6	0	8.13E+00	0	3.52E+01	0

Note:

¹Based on minimum of either the cancer risk (ELCR = 1×10^{-5}) or hazard index (HI = 1)

ELCR = excess lifetime cancer risk

HI = hazard index

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Table 8. Background Range for Arsenic, Cobalt, and Manganese

Constituent	Horizon (ft bgs)	Parcel 2 Data Range (mg/kg) ¹	Background Study Maximum (mg/kg)	Ohio Soils Data Range (mg/kg)
Arsenic	1 to 16	1.5 to 59	93	5.72 to 56
Cobalt	1 to 16	4.2 to 100	77.5	6.42 to 53.6
Manganese	1 to 16	37 to 2,700	9,005	459 to 2,012

¹Data represents range in corresponding horizons.

bgs = below ground surface

Laboratory data (Table 5) from two HPGe locations in the portion of Parcel 2 west of Perimeter Road indicate that uranium concentrations are elevated. While uranium concentrations above background are present in this area, the total uranium of 12.9 mg/kg is below the risk level for total uranium from the PORTS human health risk methods document (this value, adjusted to an ELCR of 1×10^{-5} and an HI of 1.0, is 234 mg/kg for a residential scenario and 3,830 for an outdoor worker scenario). The Authorized Limits for PORTS are 329 pCi/g for uranium-234, 3 pCi/g for uranium-235, and 16 pCi/g for uranium-238 (for uranium-238, all short-lived decay products of a principal radionuclide down to, but not including, the next principal radionuclide or the final nonradioactive nuclide in the chain is considered). As noted by the maximum values in Table 3, uranium-233/234, uranium-235/236, and uranium-238 exceed the Authorized Limits on a point-by-point basis in a few sample locations west of Perimeter Road.

Table 9. Laboratory Data from Samples Collected at HPGe Measurement Locations in Parcel 2

Location	Constituent	Units	Result	Detection Limit
AC108-1HPGE-021	Total Uranium	mg/kg	5.95	0.1
AC108-1HPGE-021	Uranium-233/234	pCi/g	4.31	0.0388
AC108-1HPGE-021	Uranium-235/236	pCi/g	0.206	0.0388
AC108-1HPGE-021	Uranium-238	pCi/g	1.97	0.0321
AC108-1HPGE-026	Total Uranium	mg/kg	12	0.1
AC108-1HPGE-026	Uranium-233/234	pCi/g	74	0.217
AC108-1HPGE-026	Uranium-235/236	pCi/g	3.06	0.0658
AC108-1HPGE-026	Uranium-238	pCi/g	3.56	0.201
AC108-1HPGE-026 (duplicate)	Total Uranium	mg/kg	12.9	0.1
AC108-1HPGE-026 (duplicate)	Uranium-233/234	pCi/g	71.8	0.054
AC108-1HPGE-026 (duplicate)	Uranium-235/236	pCi/g	2.75	0.0311
AC108-1HPGE-026 (duplicate)	Uranium-238	pCi/g	3.91	0.0311

Identified data gaps are provided in Table 6.

Table 10. Parcel 2 Data Gaps

Data Gap No.	Identified Data Gap	Rationale
1	Visual walkover survey	Verification of any visual anomalies existing in Parcel 2
2	Radiological scoping survey	Determine if areas with elevated radioactivity are present within portions of Parcel 2 east of Perimeter Road
3	Surface soil characterization adequacy	Verification of uncontaminated status of parcel. Complete characterization for Parcel 2 area for PORTS-related COPCs, especially the 0-to-1-ft-below-ground-surface depth interval. (Historical soil data do not fully characterize the Parcel 2 area for PORTS site-wide COPCs; therefore, additional samples are needed for the 0-to-1-ft bgs interval for a broader list of COPCs and also in the southern portion of the parcel where no data exist). Additional data are needed from the area west of Perimeter Road where elevated uranium concentrations have been previously detected to demonstrate it meets the due diligence requirements of CERCLA 120(h)(4).
4	Surface water data from historic-era ponds	Verification of uncontaminated status of surface water on Parcel 2. Obtain surface water data (no historical surface water data exist for Parcel 2)

bgs = below ground surface
 CERCLA = Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended

COPC = chemical of potential concern
 PORTS = Portsmouth Gaseous Diffusion Plant

Analytic Approach to Address Data Gaps

To address the data gaps identified above, additional information on Parcel 2 is needed. Types of measurements/data include the following:

- Radiological scoping measurements (e.g., sodium iodide detector measurements; HPGe measurements)
- Analytical data for all COPCs identified in the SAP from fixed-base laboratories.

The parameters of interest for this project include the following:

- Visual walkover anomalies
- Areas of potential contamination based on an evaluation of historical data
- Real-time measurements (e.g., measurements from radiological scoping surveys using sodium iodide detectors or HPGe detectors)
- Individual analytical results for all COPCs from fixed-base laboratories.

The action levels include the following:

- For the visual walkover survey/physical inspection, identified anomalies will be based on areas of staining, mounding, depressions, debris (e.g., concrete, metal), areas of disturbance (indications of possible anthropogenic activity), lack of vegetation or distressed vegetation, and evidence of infrastructure that could be a potential source of contamination. Also, during the visual walkover survey, surface water features (e.g., perennial streams or ponds) may be identified for sampling, particularly if there are no historical data related to the surface water features.
- For evaluation of the historical data set, potential contamination will be based on screening historical data against PORTS background soil values and risk-based concentrations for the residential scenario (i.e., concentrations calculated at an ELCR of 1×10^{-5} and HI of 1.0 for residential use). The evaluation of all historical data will be used to further define COPCs for the parcel and determine spatial data gaps that warrant further evaluation under the current project, but only historical data collected from 2006 through present will be used in a quantitative manner (use of historical data from 2006 through present in this manner is consistent with the Deferred Units RFI/CMS Report [DOE 2017e]).
- For the radiological scoping survey, the action level (for HPGe measurements) will be defined as the Authorized Limit for uranium-238(+D). The area with the highest gamma activity, as determined by the sodium iodide detector survey, for each 10,000-m² area will be identified as a location for HPGe measurement.
- For analytical results from physical grab samples (for soil/sediment and surface water), the action levels will be the SSLs and surface water screening levels identified in DQO Step 3. For soil data, screening values also include those derived with the RESRAD computer code (Version 7.2) in the Parcel 1 EBS to ensure the public does not receive greater than 25 mrem/year of dose through all exposure pathways, including groundwater.

6. DQO STEP 6 – SPECIFY THE PERFORMANCE OR ACCEPTANCE CRITERIA

The sixth step in the DQO process typically chooses the null hypothesis, examines the consequences of making an incorrect decision, specifies the range of values where consequences are minor (the gray region), and assigns values that reflect tolerable probability for potential decision errors. However, because the area will be evaluated with a scoping survey, a probability-based sampling design (for the collection of physical soil samples) is not required and a judgmental design will be used to evaluate the areas with the greatest potential for contamination. If results indicate these areas meet the criteria, no further evaluation is required.

Within a reasonable degree of certainty, the sampling design must be able to obtain data that will be able to do the following:

- Detect areas of radionuclide and/or chemical contamination
- Detect SSL exceedances in analytical results for each physical sample.

A null hypothesis is developed in order to demonstrate compliance of data with the constraints imposed by the decision rules and to establish the parameters against which soil unit confirmation decisions can be made. The null hypothesis typically represents the baseline condition and is defined in terms of the

decision error that has the most adverse potential consequences. For [area], which is presumed to be non-impacted and uncontaminated, the null hypothesis is stated as:

H_0 : [area] is eligible for transfer under CERCLA 120(h)(4) and is protective per DOE Order 458.1.

The alternative hypothesis is:

H_a : [area] is not eligible for transfer under CERCLA 120(h)(4) or is not protective per DOE Order 458.1.

The null hypothesis will hold if the radiological survey and laboratory data show all results are below the SSLs or Authorized Limits.

The null hypothesis will be rejected if there is confirmed contamination that requires response or corrective action, based upon evaluation of analytical data. In such case, the contaminated areas may be removed from the property being evaluated so the remaining uncontaminated property is eligible for transfer per CERCLA 120(h)(4), or other DOE actions may be considered.

For uncertainties associated with this project, possible decision errors should be identified and their consequences evaluated. The two types of decision errors of interest are termed Type I (α) and Type II (β). A false rejection decision error, or a Type I error, occurs when you reject the null hypothesis when it is actually true (i.e., conclude the survey unit does not meet the criteria for property transfer, when actually, it does meet the release criteria). This error would result in unnecessary added costs due to potential additional data collection and evaluation of media. A false acceptance decision error, or a Type II error, occurs when you fail to reject the null hypothesis when it is actually false (i.e., conclude the survey unit meets the criteria for property transfer, when in reality, it does not meet the criteria). This situation could result in an increased risk to human health and the environment. Based on how the null hypothesis is set up (i.e., the parcel is eligible for transfer), the Type II error is the more severe decision error, and therefore, criteria placed on an acceptable value of beta (β) would be more stringent than for alpha (α).

If additional data need to be collected, the following performance criteria will be used to minimize uncertainty?

During this project, field and lab quality assurance/quality control (QA/QC) samples will be used to evaluate data quality (the appropriate number of QC samples will be documented in a SAP);

Real-time data (sodium iodide and HPGe) will be collected and reported at analytical support level (ASL) A for sodium iodide and ASL E for HPGe. If specialized QA/QC requirements are needed, they will be defined in the analytical statement of work and in the applicable SAP. The SAP will specify the ASLs for all methods to be implemented in the field.

Laboratory analytical results will receive 100 percent verification and 100 percent validation. Data validation of laboratory results will be 80 percent at validation support level (VSL) B and 20 percent at VSL D, and field validation will be conducted for sampling documentation. Requirements for each support level will be documented.

The acceptance criteria for sampling and data collection activities will be documented. Site data collection will be performed consistent with quality standards to minimize data uncertainty. Following completion of data validation, a data QA will be performed in accordance with the contractor procedures.

7. DQO STEP 7 – DEVELOP THE PLAN FOR OBTAINING DATA

The goal of DQO Step 7 is to develop a resource-effective design for collecting and measuring environmental samples, or for generating other types of information needed to address the problem (only required if additional sampling is required to fill data gaps). The following is an example from the PORTS Parcel 2 DQOs.

Minimum Number of Samples Required

Because the Parcel 2 property is presumed to be non-impacted (per DOE Order 458.1) and uncontaminated (no-to-very-low potential for contaminant concentrations or residual radioactivity to exceed the media cleanup standard values), no physical sampling is required except for biased or judgmental sampling. Based on the data gaps presented in DQO step 5, a visual walkover survey and radiological scoping survey (using both sodium iodide and HPGe detectors) will be performed at a minimum. The radiological scoping survey coverage will be 100 percent for infrastructure, 100 percent for anomalies identified during the visual walkover survey, 100 percent for identified areas that have been backfilled or disturbed (unless the area is wooded), and 20 percent for open areas. The survey of the open areas will be based on a transect pattern that will be specified in the SAP. For wooded areas where a drive-over unit cannot traverse a closely spaced scan path, serpentine traverses through the wooded areas will be used (there is no specified scan coverage for wooded areas and no plans to remove vegetation to facilitate the survey).

Biased physical samples (a judgmental sample design) will be used as needed to evaluate areas with the greatest potential for contamination (based on anomalies identified during the visual walkover survey, results of the radiological scoping survey, and/or historical data/information). Random physical samples will also be collected as described under DQO Steps 3 and 5 to ensure an adequate sample density. These samples will be submitted to a fixed-base laboratory for analyses of PORTS-related COPCs to be defined in the SAP.

The approximately 12 acres of Parcel 2 located west of Perimeter Road has some areas with elevated uranium based on historical radiological surveys and analytical data. The historical survey results and analytical data will be used to subdivide the 12 acres west of Perimeter Road into characterization units. The area will consist of two smaller characterization units where most of the elevated measurements occurred within the larger 12-acre area.

Because there is a mix of analytes, some present in background and some not present in background, the nonparametric Sign test will be used to determine the minimum number of samples to be collected in the impacted survey units west of Perimeter Road (historical samples may be used in lieu of new samples if they are of sufficient quality and in reasonable locations relative to the area of the survey unit). The minimum number of samples for the nonparametric Sign test has been determined using values of 0.15 for α and 0.05 for β (as noted previously, because the null hypothesis assumes the parcel is acceptable for property transfer, the Type II error is considered more severe and a more stringent value of 0.05 is used). A relative shift of between 1 and 3 is used if insufficient data exist to calculate the actual standard deviation and site-specific relative shift. Using the nonparametric Sign test approach, 10 samples corresponds to a relative shift ranging from 2 to 3 (assumes a low to moderate contaminant concentration variability) using 0.15 Type I and 0.05 Type II errors. Judgmental sample locations will

also be selected based on the historical review (some of the judgmental samples will be collected from the 3-to-5-ft-below-ground-surface interval to evaluate potential contamination at depth.

Data Collection Approach

Based on existing process knowledge (primarily from the description of current conditions reports and the Quadrants I and II RFI reports) and historical data, the Parcel 2 area has no-to-very-low potential, for contaminant concentrations or residual radioactivity to exceed the media cleanup standards. The area will be primarily assessed by visual walkover surveys and radiological scoping surveys to satisfy data gaps 1 and 2 from DQO Step 5. Biased sampling will be conducted when observation indicates the area may be impacted (visual anomaly or radiological survey anomaly) and the presumption of no contamination may not be valid.

To begin, a visual walkover survey or assessment is conducted (an initial field reconnaissance may be completed to support development of the SAP). The goal for the visual walkover survey is 100 percent coverage. A visual walkover inspection is conducted to systematically inspect the area to identify and map any observed features. The walkover assessment focuses on identifying any anthropogenic or anomalous features, delineating the boundaries of the features, and determining if biased sampling is warranted. While traversing the soil units, the walkover assessment team will take note of any unusual or anthropogenic features (i.e., the identification of anomalies) and select locations for subsequent detailed radiological scoping surveys and/or physical soil sampling. Anomaly locations will be surveyed with a global positioning system instrument and recorded in a logbook. During the walkover assessment, sediment accumulation areas related to surface water runoff may be identified for biased sampling by the assessment teams. (Sediment accumulation areas are those areas where overland flow and surface drainage gradients decrease and sediment may accumulate; these areas will generally be low-lying areas that would tend to accumulate surface water runoff and any associated sediments. The condition of the soils/sediments in these areas would be representative of the upstream conditions, and if elevated levels of contamination are found, they would be indicative of a source of contamination in the watershed.) Also, surface water features (e.g., perennial streams or ponds) may be identified for sampling, particularly if there are no historical data related to the surface water features based on data gap 4 from DQO Step 5.

For this project, the requirement for radiological scoping survey scan coverage will be 100 percent for infrastructure, 100 percent for anomalies identified during the visual walkover survey, 100 percent for identified areas that have backfilled or disturbed (unless the area is wooded), and 20 percent for open areas. To facilitate the radiological scoping, the open areas of the parcel will be subdivided into polygons or cells with an area of 10,000 m² each (the polygons/cells will be defined in the SAP). For wooded areas where a drive-over unit cannot traverse a closely spaced scan path, serpentine traverses through the wooded areas will be used.

To satisfy data gap 3 from DQO Step 5, biased physical samples from identified anomalies (this includes anomalies determined from the visual walkover survey and areas of elevated radioactivity based on the radiological survey) will be collected and analyzed for area-specific COPCs using fixed-base laboratory analytical methods. Grab samples from surface water features, where they exist, may be collected if warranted. Additionally, random samples will be collected in areas where no anomalies have been identified and sampled in order to provide for better coverage of data. A field change notice will be processed to document the sample locations.

For the approximately 12 acres of Parcel 2 located west of Perimeter Road, the historical survey results and analytical data will be used to subdivide the area into characterization units for further evaluation per Decision Rule 7 in Table 7. As noted above, the nonparametric Sign test will be used to determine the minimum number of samples to be collected in each of the characterization units (historical samples may

be used in lieu of new samples if they are of sufficient quality and in reasonable locations relative to the area of the survey unit). For the nonparametric Sign test, 10 samples corresponds to a relative shift ranging from 2 to 3 (low to moderate contaminant concentration variability expected) using 0.15 Type I and 0.05 Type II errors (Table 10). Ten samples will be located within each of the two smaller characterization units using a systematic (e.g., triangular) grid and randomly located within the larger unit. Judgmental sample locations may also be selected based on the historical review (some judgmental samples will be collected from the 3-to-5-ft-below-ground-surface interval to evaluate potential contamination at depth).

Table 11. Number of Samples Based on a Nonparametric Sign Test

Type I error (α)	Type II error (β)	Relative Shift^a	N (rounded up)	N+20%^b
0.15	0.05	1	16	20
0.15	0.05	2	8	10
0.15	0.05	3	8	10

Notes:

^aRelative shift is defined as Δ/σ , where Δ is the difference between the action level and the lower bound of the gray region, and σ is the standard deviation of the potential contaminant distribution. Relative shift should be between 1 and 3 and if variability is low the relative shift will be closer to 3.

^bIt is often recommended to add 20 percent to ensure that the desired power is achieved with the statistical test and to account for uncertainties in the estimated values of the measurement variabilities and allow for lost or unusable data; VSP adds the 20 percent automatically.

N = number of samples

VSP = Visual Sample Plan™

8. REFERENCES

DOE 2003, *Notation on Ownership Record for Notification to Potential Owners/Users of Groundwater Restrictions at the Portsmouth Gaseous Diffusion Plant, Ohio*, U.S. Department of Energy, Oak Ridge, TN, September.

DOE 2017a, *Notice of Activity and Use Restriction to Potential Owners/Users of the Portsmouth Gaseous Diffusion Plant, Ohio*, U.S. Department of Energy, Cincinnati, OH, July.

DOE 2017b, *Authorized Limits Request for U.S. Department of Energy-Owned Property for Industrial Landuse Area Outside the Limited Area at the Portsmouth Gaseous Diffusion Plant, Piketon, Ohio*, DOE/PPPO/03-4363489-17, Rev. 0 (draft), U.S. Department of Energy, Lexington, KY, August.

DOE 2017c, *Environmental Baseline Survey Report for the Title Transfer of Parcel 1 at the Portsmouth Gaseous Diffusion Plant, Piketon, Ohio*, DOE/PPPO/03-0744&D2, U.S. Department of Energy, Piketon, OH, August.

DOE 2017d, *Methods for Conducting Human Health Risk Assessments and Risk Evaluations at the Portsmouth Gaseous Diffusion Plant, Piketon, Ohio*, DOE/PPPO/03-0127&D9, U.S. Department of Energy, Piketon, OH, September.

DOE 2017e, *Deferred Units Resource Conservation and Recovery Act Facility Investigation/ Corrective Measures Study Report at the Portsmouth Gaseous Diffusion Plant, Piketon, Ohio*, DOE/PPPO/03-0772&D1, U.S. Department of Energy, Piketon, OH, September.

DOE 2016, *Comprehensive Final Screening Levels for the Deferred Units RCRA Facility Investigation/ Corrective Measures Study Work Plan at the Portsmouth Gaseous Diffusion Plant, Piketon, Ohio*, DOE/PPPO/03-0736&D1, U.S. Department of Energy, Piketon, OH, April.

DOE 2015a, *Final Soil Background Report for the Portsmouth Gaseous Diffusion Plant, Piketon, Ohio*, DOE/PPPO/03-0667&D1, U.S. Department of Energy, Piketon, OH, April.

DOE 2015b, *Deferred Units Resource Conservation and Recovery Act Facility Investigation/ Corrective Measures Study Work Plan at the Portsmouth Gaseous Diffusion Plant, Piketon, Ohio*, DOE/PPPO/03-0252&D3, U.S. Department of Energy, Piketon, OH, March.

DOE 2014, *Sample Analysis Data Quality Assurance Project Plan (SADQ) at the Portsmouth Gaseous Diffusion Plant, Piketon, Ohio*, DOE/PPPO/03-0278&D2, U.S. Department of Energy, Piketon, OH, February.

DOE 2021, *Derived Concentration Technical Standard*, DOE-STD-1196-2021, U.S. Department of Energy, Washington, D.C.

DOE, U.S. Nuclear Regulatory Commission, U.S. Environmental Protection Agency, and U.S. Department of Defense 2000, *Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM), Revision 1*, U.S. Department of Energy, U.S. Nuclear Regulatory Commission, U.S. Environmental Protection Agency, and U.S. Department of Defense, DOEIEH-0624, Rev. I, NUREG-1575, EPA 402-R-97-016, August.

APPENDIX G – TRANSFER PACKAGE: STATUS OF TRANSFER PACKAGE CONTENTS

1. Memorandum from the PPPO Manager to the Director for Infrastructure Management and Disposition Policy (EM-4.1) transmitting the property transfer package for review and concurrence by EM-10, GC-1, CF-1, MA-1 and CI-1.
2. Business Case for the Proposed Title Transfer of the Property.
3. Draft Final Quitclaim Deed for the Property.
4. Memorandum for the Secretary of Energy from EM-1. ACTION: Sign Letters Transmitting Notification to Congressional Committees of the Department’s Plan to Transfer the Property
5. Letters to the Congressional Appropriations Committees, undated (8)
6. Letters to the Congressional Armed Services Committees, undated (8)
7. Notice to the Appropriations Committees and the Armed Services Committee of the Intent to Transfer Real Property that does not follow the standard Federal process (undated)ⁱ
8. Notice to the Armed Services Committees of the Intent to Transfer Real Property (undated)
9. Environmental Baseline Survey Report, including Risk Screen (if applicable), for the Title Transfer of the Property
10. Approval by the EPA Regional Administrator (Region 4 for PAD and the OEPA for PORTS) that DOE has demonstrated that the property proposed for transfer is suitable for transfer as uncontaminated.
11. Independent Verification, pursuant to DOE O 458.1
12. Memorandum for the PPPO Manager from EM-1 regarding indemnification determination for the proposed transfer of a land parcel (undated draft)ⁱⁱ
13. Proposals and revisions from the requesting organization; PPPO responses
14. Provide evidence of the completion of the National Environmental Policy Act (NEPA) review in the letter from the PPPO Manager to EM-10 (see item 1), as appropriate. For application of a CX, the date the determination was made and the CX(s) applied. For an EA, the name, date, and document number of an approved EA and Finding of No Significant Impact (FONSI). For an Environmental Impact Statement (EIS), the name, date, and document number of a completed Final EIS and a draft Record of Decision (which will be made final by EM-1 in the decision-making process for the land transfer). If review under NEPA is not complete, provide a strategy and schedule for completing the review.

ⁱⁱ Note that if indemnification is not agreed to, the contents of the transfer package will need to be revisited to identify necessary changes before revision and resubmitted.

Site Name: _____

Transfer Parcel ID: _____

Current as of: _____

Status of Transfer Package Contents

DOE Must Develop	DOE Must Receive	Purpose	Resp. Party	Date Completed
Potential Excess Property Declaration		Declaration that the property may be excess to DOE's needs and may be considered appropriate for transfer.		
	Land Transfer Proposal from Requesting Organization			
	Revised Land Transfer Proposal from Requesting Organization	<i>(if applicable)</i>		
PPPO Responses to Requesting Organization				
	Memo developed for PPPO from EM-1 regarding indemnification determination for Property Transfer			
Memo from PPPO Manager to Director for Infrastructure Management and Disposition Policy (EM-4.1)		Transmitting of property transfer package for review and concurrence by EM-4.1, GC-1, CF-1, MA-1, and CI-1. (Entitled: <i>Transmittal of Transfer Documentation for Transfer of Parcel at (Site)</i>)		
CERCLA 120(h) Environmental Baseline Survey Report <i>(includes HH Risk Screen, as needed)</i>	Concurrence of Clean Parcel Determination EBS only	For title transfer of property		
Independent Verification Report		Completes DOE O 458.1 requirements for real property transfer		
Property Excess Declaration		Declaration that the property is excess to DOE's needs and appropriate for transfer.		
Quitclaim Deed		Supporting title transfer/lease of property		
Business Case		Supporting title transfer of property		
	Metes and Bounds Survey	Finalize dimensions of property to be transferred. Determine acreage.		
	Appraisal Evaluation / Market Analysis	Provide market analysis of value of property		
Letters to Congressional Appropriation Committees - eight (8) letters		Of intent to transfer real property		
Notice to Congressional Appropriations Committees and Armed Services Committees		For real property sale or transfer		
Letters to Congressional Armed Forces Committees - eight (8) letters		Of intent to transfer real property (10 CFR 770 property transfer)		
Evidence of completion of NEPA review in letter from PPPO Manager to EM-10, <i>as appropriate</i>	Documentation of completed NEPA review, as appropriate: Either signed Categorical Exclusion (CX) determination, signed FONSI <i>(if EA required)</i> , or NEPA ROD <i>(if EIS required)</i> .	To determine the potential for significant environmental impacts		

Note: Items are "Complete" when final document is placed in the Transfer Library at <G: Property Transfer/*Parcel ID*>

U.S. Department of Energy
 Portsmouth/Paducah Project Office
 PPPO-3329827, Rev. 5

Letters to Congressional Appropriation Committees - eight (8) letters		Of intent to transfer real property	G. Simonton	COMPLETED 10/5/21 SEND 6/23/22 Approval 8/22/22	Tab #4
Notice to Congressional Appropriations Committee and Armed Services Committees		For real property sale or transfer	G. Simonton	Final 10/5/21 with placeholders SEND 6/23/22 Approval 8/22/22	Tab #6
Letters to Congressional Armed Forces Committees - eight (8) letters		Of intent to transfer real property (10 CFR 770 property transfer)	G. Simonton	COMPLETED 10/5/21 SEND 6/23/22 Approval 8/22/22	Tab #5
Evidence of completion of NEPA review in letter from PPPO Manager to EM-10, as appropriate	Documentation of completed NEPA review, as appropriate: Either signed Categorical Exclusion (CX) determination, signed FONSI (if EA required), or NEPA ROD (if EIS required).	To determine the potential for significant environmental impacts	K. Wiehle C. Zvonar	COMPLETED 10/5/21	

Note: Items are “Complete” when final document is placed in the Transfer Library at <G: Property Transfer/.../Parcel 2>

APPENDIX H – BUSINESS CASE TEMPLATE

BUSINESS CASE FOR THE PROPOSED TITLE TRANSFER OF LAND PARCEL _____ AT THE _____

I. Background

Site Location, History, Current Status and Future Plans

Briefly discuss where the property is located, how many acres the overall site is, and its major mission over time. Discuss its EM program involvement, clean-up activities to date, the history of any requests for the real property, and the type of transfer that is contemplated. Note how the end state is consistent or is accommodated by the proposed future use. Include a graphic that shows the overall site. Also, towards the end of the writing, include each PPPO site's transfer strategy approach and a figure to illustrate it. If the site has a strategy that is active and not solely graphic, describe that as well and status it.

II. Description of the Real Property Proposed for Transfer

Describe the property, noting its size, shape, configuration, and adjacency. Note its past use. Include an aerial photo of the real property. Where a low altitude aerial photo exists at an oblique angle, be sure to use it and label former use landmarks on the site. Describe past and present uses of the property.

III. Legal and Regulatory Framework for the Proposed Transfer

Note any transfer requests or expressions of interest for any and all of the transfer property. Note the authority or process recommended for use for the transfer (10 *CFR* 770, GSA, DOE).

Summarize the steps taken/process followed for the due diligence for the property as discussed in the EBS report. Also discuss the various DOE O 458.1 activities and status. If the DOE O 458.1 process is being completed in parallel with the HQ review, that can be noted in the business case.

Note the status of the NEPA review – if it is complete, note the date of review and completion of the documentation. If it is in process, describe the details and the strategy for completion prior to signing the deed.

IV. Business Case

Intended Use and Duration of Use of the Real Property

Discuss the plans for the property based on a request for the transfer. Note the planned land use and how it is/may be consistent with what is posited in the NEPA decision or CX limits.

Description of Economic Development that Would be Furthered by the Transfer

This is the section of the business case that requires feedback and input from the transferee and may require back and forth discussions. Their proposal, which is a component of the DOE business case, needs to discuss their contribution to the local market. What stimulus does it offer for the local and regional markets? What niche does it fill?

The Consideration Offered and Financial Requirements and/or Benefits

Discuss the value of the property based on what is known of its condition. Discuss any PILT (Payments in Lieu of Taxes) adjustments that would result from the transfer. Describe any costs that the potential transferee might have to face, in particular with infrastructure installation or removal and reconfiguration. Note any positive attributes that the potential transferee has already brought to the site or area/region. If the transferee has assisted DOE in providing rationale for not removing certain infrastructure because it can be used by a transferee, and what value it has. Identify any cost savings to DOE from the transfer. This is maximized with transfers when buildings are involved (and D&D costs can be avoided), but there may be some EM cost avoidance when the property is land.

Close the section with a discussion of 10 *CFR* 770 and how it provides for transfers at less than fair market value and why this transfer warrants a less than fair market value arrangement.

Information Supporting the Economic Viability of the Proposed Development

Describe how the transfer proposal is part of a larger whole vision. Note how the proposed transferee is in an ideal position to take advantage of other existing areas.

Ongoing Mission of Defense Nuclear Facility and Use Restrictions Made Necessary by Specific Security, Safety, and Environmental Requirements

Describe the site's past use and its present mission. Describe any restrictions on the uses that are governed by contamination or adjacency or preference.

V. Other Considerations

Specific Statement of Indemnification against Claims, if Any

Note whether or not the transferee has requested indemnification and if the request will be part of the Transfer Package. Uncontaminated parcels will not in and of themselves be deemed suitable for indemnification as they have been demonstrated not to be contaminated. Indemnification for clean parcels results from the uncertainty associated with adjacent clean-up work

VI. Recommendation

State why you think the proposed transfer is in the best interest of the Government.

APPENDIX I – EXAMPLE DOE RESPONSE LETTER TO REQUESTING ORGANIZATION
OR INDIVIDUAL

The example provided in this appendix is subject to change. When using the provided example, ensure that the information in the correspondence is up to date.

Example DOE Response Letters to Requesting Organization



Department of Energy

Portsmouth/Paducah Project Office
1017 Majestic Drive, Suite 200
Lexington, Kentucky 40513
(859) 219-4000

MAY 19 2016

Mr. Stephen Shepherd
Executive Director
Southern Ohio Diversification Initiative
P.O. Box 517
Piketon, Ohio 45661

PPPO-01-3502159-16

Dear Mr. Shepherd:

10 CFR 770 PROPOSAL FOR THE TRANSFER OF ~ 97 ACRES OF LAND AT THE PORTSMOUTH GASEOUS DIFFUSION PLANT

This letter acknowledges the receipt of the Southern Ohio Diversification Initiative (SODI) Title 10, Code of Federal Regulations, Part 770 proposal dated March 16, 2016 for the transfer of ~ 97 acres of land at the U.S. Department of Energy (DOE) Portsmouth site for economic development purposes.

DOE Portsmouth/Paducah Project Office (PPPO) is currently reviewing the proposal. After the review is complete, DOE PPPO will contact you with further reaction to the proposal received.

Additionally, DOE PPPO recognizes that SODI's proposal requests that the property be made available through a lease until such time as a transfer can be completed. DOE PPPO is considering SODI's request to pursue a lease and DOE PPPO will be in contact with you soon with a response to that element of the proposal.

The property proposed for transfer will be disposed using DOE's direct disposition authority provided for under Section 161(g) of the Atomic Energy Act of 1954. The request for transfer without consideration, and with indemnification, will be evaluated as part of our due diligence process. DOE PPPO will contact you once a determination has been reached.

Before actual title transfer can occur, DOE PPPO must comply with several statutes and requirements including the National Environmental Policy Act and the Comprehensive Environmental Response, Compensation and Liability Act. DOE PPPO is actively engaged in the preparation of the analyses and documentation to meet these and other requirements.

We look forward to working with you on the development of the transfer documents for this property.

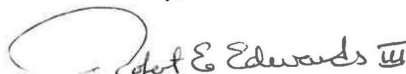
Mr. Shepherd

-2-

PPPO-01-3502159-16

If you have any questions or need additional information, please contact Richard Bonczek of my staff at (859) 219-4051.

Sincerely,



Robert E. Edwards, III
Acting Manager
Portsmouth/Paducah Project Office

cc:

Mark.Gilbertson@em.doe.gov, EM-10/FORS
Vince.Adams@lex.doe.gov, PPPO/PORTS
Joel.Bradburne@lex.doe.gov, PPPO/PORTS
Rich.Bonczek@lex.doe.gov, PPPO/LEX
Matthew.Reardon@emcbc.doe.gov, EMCBC
Greg.Simonton@lex.doe.gov, PPPO/PORTS
Kristi.Wiehle@lex.doe.gov, PPPO/PORTS
ETS.Support@lex.doe.gov



Department of Energy

Portsmouth/Paducah Project Office
1017 Majestic Drive, Suite 200
Lexington, Kentucky 40513
(859) 219-4000

MAY 18 2015

Mr. Steven Shepherd
Executive Director
Southern Ohio Diversification Initiative
P. O. Box 517
Piketon, OH 45661

PPPO-03-2631644-15

Dear Mr. Shepherd:

U.S. DEPARTMENT OF ENERGY RESPONSE TO THE SOUTHERN OHIO DIVERSIFICATION INITIATIVE REQUEST FOR REAL PROPERTY AT THE PORTSMOUTH GASEOUS DIFFUSION PLANT

Reference: Letter from S. Shepherd to W. Murphie, "Proposals for the Lease and Title Transfer of Real Property at the Portsmouth Gaseous Diffusion Plant," dated August 27, 2014

Thank you for your interest in the transfer of real property located at the U.S. Department of Energy (DOE) Portsmouth Gaseous Diffusion Plant (PORTS) to the Southern Ohio Diversification Initiative (SODI).

At this time the property has not been identified as available pursuant to 10 CFR Part 770, Transfer of Real Property at Defense Nuclear Facilities for Economic Development. DOE is actively engaged in planning the environmental due diligence and any other reviews that are necessary to evaluate the requested property so that we can provide information on its physical condition, environmental, health and safety status and any restrictions or terms of transfer. We will notify you as soon as the reviews have been completed and DOE has determined whether the property is available for lease/transfer.

Once we have completed our reviews to determine if the property is available, and we have notified you of the results, we will anticipate your formal proposal for lease/transfer. Contingent upon the determination, DOE would be willing to lease the property as an interim step to a transfer. We can work with you to assist you in the development of your proposal by providing site information, maps, and similar materials and information. The proposal requirements are found in 10 CFR 770.7. Please pay particular attention to the aspects of the proposal related to the economic development that would be furthered by the transfer, and the economic viability of the proposed development, found in 10 CFR 770.7 (a)(1)(iii) and (iv), respectively. Specificity in those matters will assist in the best interest of the Government determination that is made prior to deciding whether or not to proceed with a transfer agreement (770.7(b)).

Mr. Shepherd

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PPPO-03-2631644-15

Thank you again for your request and interest in real property at PORTS. Reducing the DOE Environmental Management (EM) program footprint through steps such as property transfer is a key measurement of EM success. The future use of DOE property for economic development by the private sector is clearly in keeping with the views of PORTS stakeholders. SODI's role in that future use vision is critical to its success.

If you have any questions or need additional information, please contact Greg Simonton at (740) 897-3737.

Sincerely,



William E. Murphie
Manager
Portsmouth/Paducah Project Office

cc:

Robert.Edwards@lex.doe.gov, PPPO/LEX
Vince.Adams@lex.doe.gov, PPPO/PORTS
Joel.Bradburne@lex.doe.gov, PPPO/PORTS
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APPENDIX J - EXAMPLE TRANSMITTAL LETTERS TO USE AS TEMPLATES FOR THE TRANSFER PACKAGE TO DOE HQ

When the completed transfer package is submitted to DOE-HQ for review (see Appendix I for transfer package contents) it is accompanied by a number of letters and notifications. Example transmittal letters for use as templates for an uncontaminated parcel (“clean parcel”) are included in this appendix. The documents are the means to request HQ review and action, and for initiating the required Congressional notification periods. For more recent examples, contact the EM-HQ liaison.

- Transmittal of the Completed Transfer Package from the program office to HQ
- The Action Memorandum to the Secretary from the Lead Program Secretarial Officer requesting transmittal of the transfer package to the Congressional committees
- Letters to the House and Senate Appropriations Committees
- Letters to the House and Senate Armed Services Committees
- Official Notice to the Appropriations and Armed Services Committees
- Indemnification Determination to PPPO from the Lead Program Secretarial Officer.

The examples provided in this appendix are subject to change. When using the provided examples, ensure that the information in the correspondence is up to date.

DOE F 1325 3
(3/02)

United States Government

Department of Energy
Portsmouth/Paducah Project Office

memorandum

NOV 08 2017

DATE:

REPLY TO
ATTN OF: PPPO: Bonczek

PPPO-03-4536661-18

SUBJECT: **TRANSMITTAL OF TRANSFER DOCUMENTATION FOR PARCEL 1 AT THE
PORTSMOUTH GASEOUS DIFFUSION PLANT, PIKETON, OHIO**

TO: Barton Barnhart, Director, Infrastructure Management and Disposition Policy, EM-4.1

The purpose of this memorandum is to formally transmit for your review and concurrence the final proposal to transfer Parcel 1 at the Portsmouth Gaseous Diffusion Plant (PORTS), at no cost, to the Southern Ohio Diversification Initiative (SODI), the Community Reuse Organization for PORTS. This transmittal memorandum also serves as the required formal notification of the final disposal of this property in accordance with Re-delegation Order No. 00-011.01-08 dated November 26, 2013.

Copies of the following documents accompany this memorandum:

- Tab 1. Business Case for the Proposed Title Transfer of Parcel 1 at the Portsmouth Gaseous Diffusion Plant, Piketon, Ohio (September 2017);
- Tab 2. Draft Quitclaim Deed for Parcel 1 (October 2017);
- Tab 3. Draft Memorandum for the Secretary from James M. Owendoff, ACTION: Sign Letters Transmitting Notification to Congressional Committees of the Department's Plan to Transfer Parcel 1 to the Southern Ohio Diversification Initiative at No Cost and With Indemnification (undated);
- Tab 4. Letters to the Congressional Appropriations Committees (undated);
- Tab 5. Letters to the Congressional Armed Services Committees (undated);
- Tab 6. Notice to the Appropriations Committee and the Committee on Armed Services (undated);
- Tab 7. Draft Memorandum for Robert E. Edwards III from Rick Perry, Approval of Proposed Transfer of Parcel 1 at the Portsmouth Gaseous Diffusion Plant, Piketon, Ohio (undated);
- Tab 8. Final Environmental Baseline Survey Report for the Title Transfer of Parcel 1 at the Portsmouth Gaseous Diffusion Plant, Piketon, Ohio, DOE/PPPO/03-0744&D3 August 2017;
- Tab 9. Concurrence with the Parcel 1 Environmental Baseline Survey Report Clean Parcel Determination by the Ohio Environmental Protection Agency (September 2017);
- Tab 10. Independent Verification Survey Report for Real Property Contained Within Parcel 1 Area at the Portsmouth Gaseous Diffusion Plant, Piketon, Ohio, pursuant to DOE Order 458.1; and
- Tab 11. Final Proposal for the Transfer of Real Property at the Portsmouth Gaseous Diffusion Plant, from the Southern Ohio Diversification Initiative; PPPO response.

Beginning in 2014, DOE and SODI began discussions about the potential transfer of excess

Mr. Barnhart

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PPPO-03-4536661-18

property. Parcel 1 consists of 80 acres and is located on the southeast side of PORTS. The property has been screened within DOE by the Environmental Management Consolidated Business Center (EMCBC) Real Estate Contracting Officer (RECO) and has been determined to be excess.

The request to make property available was submitted in accordance with Title 10 Code of Federal Regulations, Part 770, *Transfer of Real Property at Defense Nuclear Facilities for Economic Development*.

PPPO developed an Environmental Baseline Survey (EBS) Report for Parcel 1, pursuant to Section 120(h)(4) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended. The results of the EBS enabled DOE to identify approximately 80 acres of land that is uncontaminated and is suitable for transfer for industrial/commercial uses. The Parcel 1 EBS Clean Parcel Determination has been reviewed and was concurred upon by the Ohio Environmental Protection Agency on September 6, 2017.

The transfer of Parcel 1 has also been evaluated pursuant to the requirements of Department of Energy (DOE) Order 458.1, "Radiation Protection of the Public and the Environment," and may be released in accordance with the requirements of Section 4.k(3)(b) of DOE Order 458.1.

Additionally, the proposed uses of Parcel 1 proposed by SODI are consistent with the future uses for the PORTS site assessed in the Final Environmental Assessment "Conveyance of Real Property at the Portsmouth Gaseous Diffusion Plant in Pike County, Ohio," DOE/EA-1856 (DOE 2017). This environmental assessment, developed pursuant to the National Environmental Policy Act (NEPA), resulted in a Finding of No Significant Impact for a range of uses, up to and including light industrial/general commercial to heavy industrial, as well as combined mixed uses.

This transfer package has received concurrences from the Portsmouth/Paducah Project Office Assistant Chief Counsel and from the EMCBC RECO. Parcel 1 has been screened within DOE by the RECO and has been determined to be excess.

After your review and concurrence of this package, the Secretary will be asked (via the attached Action Memorandum) to forward notification to the appropriate Congressional committees for a period of 60 days. The Action Memo also asks the Secretary to sign the memorandum authorizing the transfer of the ownership of the land with indemnification. Following the Congressional notification period and receipt of the Secretary's approval to transfer by the Office of Environmental Management, the EMCBC RECO will execute the Quitclaim Deed.

We appreciate your prompt attention to this important matter. If you have any questions regarding the attached information or the title transfer, please contact Richard Bonczek, PPPO Reuse Lead at (859) 219-4051.



Robert E. Edwards, III
Manager
Portsmouth/Paducah Project Office

Mr. Barnhart

3

PPPO-03-4536661-18

Attachments:

1. Business Case for the Proposed Title Transfer of Parcel 1 at PORTS
2. Draft Quitclaim Deed for Parcel 1
3. Draft Action Memorandum for the Secretary from James M. Owendoff
4. Letters to the Congressional Appropriations Committees
5. Letters to the Congressional Armed Services Committees
6. Notice to the Appropriations Committee and the Committee on Armed Services
7. Draft Memorandum for Robert E. Edwards III from Rick Perry, Approval of Proposed Transfer of Parcel 1 at PORTS
8. Environmental Baseline Survey Report
9. Concurrence with the Parcel 1 Environmental Baseline Survey Report by the Ohio Environmental Protection Agency
10. Independent Verification, pursuant to DOE Order 458.1
11. Final Proposal from the Southern Ohio Diversification Initiative and PPPO response

cc w/attachments:

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sunil.patel@hq.doe.gov, EM-4.11

cc w/o attachments:

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Department of Energy
Washington, DC 20585

MEMORANDUM FOR RICK PERRY
SECRETARY OF ENERGY

THROUGH: PAUL M. DABBAR
UNDER SECRETARY
FOR SCIENCE

FROM: JAMES M. OWENDOFF
PRINCIPAL DEPUTY ASSISTANT SECRETARY
FOR ENVIRONMENTAL MANAGEMENT

SUBJECT: ACTION: Sign Letters Transmitting Notification to Congressional
Committees of the Department's Plan to Transfer Parcel 1 at No Cost and
with Indemnification to the Southern Ohio Diversification Initiative

ISSUE: Whether the Department of Energy (DOE) should transfer Parcel 1, which consists of approximately 80 acres of vacant land at the Portsmouth Gaseous Diffusion Plant (PORTS), to the Southern Ohio Diversification Initiative (SODI), at no cost, and with indemnification. SODI's final proposal was provided to the Portsmouth/Paducah Project Office on August 9, 2017, and it supersedes the SODI proposals provided in 2014 and 2016.

BACKGROUND: PORTS is an Environmental Management (EM) site. EM is performing cleanup and decontamination and decommissioning to attain an industrial end-state. "Parcel 1" consists of approximately 80 acres and is located on the southeast side of PORTS. The Environmental Management Consolidated Business Center (EMCBC) Real Estate Contracting Officer, in coordination with the DOE Portsmouth/Paducah Project Office has ensured that no other DOE sites need this property and it has been determined to be excess. A recent independent appraisal of the Property identified a market value of approximately \$80,000.

Under Section 161g. of the Atomic Energy Act of 1954, DOE is authorized to transfer property at less than fair market value. Under Section 3158 of the National Defense Authorization Act for Fiscal Year 1998, as amended, (Public Law 105-85; 50 U.S.C. 2811), and Title 10, Code of Federal Regulations (CFR), Part 770, *Transfer of Real Property at Defense Nuclear Facilities for Economic Development*. DOE is also authorized to indemnify the recipient against any claim for injury to person or property that results from the release or threatened release of a hazardous substance, pollutant, or contaminant as a result of prior Departmental activities at the defense nuclear facility on which the real property is located.

Since 2001, when the uranium enrichment mission ended at PORTS, Departmental and DOE-related downsizing has resulted in significant job losses in the Southern Ohio region. The unemployment rate within the site's four-county Region of Influence (ROI) is among the highest in Ohio. The PORTS Site Office has engaged extensively with stakeholders and the local

communities throughout the four-county ROI to gather their input regarding site reuse. The community expressed a strong preference for site reuse in a manner that will attract and retain jobs and grow the local economy.

By targeting the future use in coordination with the end-state of industrial, and potentially salvaging select infrastructure for transfer to either the private sector or the local municipalities (i.e. the Village of Piketon and/or Pike County), DOE is reducing EM expenses associated with operations and maintenance and is also reducing the EM program footprint. In addition, transferring property for industrial use provides a catalyst for job creation and provides a taxable real property asset for the community.

DOE PORTS prepared an Environmental Baseline Survey (EBS) Report, pursuant to Title 42 U.S. Code, Subsection 9620(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, to support the transfer of Parcel 1. The Director of the Ohio Environmental Protection Agency, who is the designated state official for Ohio in matters regarding real property transfers from PORTS, concurred with the identification of Parcel 1 as uncontaminated property pursuant to CERCLA Section 120(h)(4)(B) on September 6, 2017. Concurrence indicates that the property is suitable for transfer for industrial use as is intended by the transferee, and that industrial use is consistent with protection of human health and the environment.

SODI has requested indemnification against claims based on the release or threatened release of hazardous substances or pollutants resulting from DOE activities. The request of indemnification is based on the historical use of PORTS as a uranium processing facility with known releases of chemical and radionuclide contaminants to buildings, soil, groundwater, and sediments. While it has been determined, pursuant to the concurrence of the State of Ohio, that the property is uncontaminated and is suitable for transfer for industrial use, the property is located within an active cleanup site. Parcel 1 is in close proximity to highly contaminated process buildings and their process piping and other related infrastructure that will be demolished, and is also in proximity to associated contaminated groundwater plumes and soils.

We believe that it is appropriate that the Department grant SODI indemnification against claims based on the release or threatened release of hazardous substances, pollutants, or contaminants resulting from Departmental activities. This indemnification would be provided pursuant to the authority of 10 CFR Part 770. As such, the provision of indemnification has been specifically included as Exhibit F of the Quitclaim Deed associated with the proposed transfer, and the Under Secretary for Science has authorized the provision of indemnification.

Under the requirements of 50 U.S.C. 2811, DOE may not transfer the property until 30 days have elapsed after notification to the congressional defense committees. Under House Report 107-112, accompanying the Energy and Water Development Appropriations Bill, 2002, the Department has been requested to notify the congressional appropriations committees at least 60 days in advance of any proposed sale or transfer of land that does not follow standard Federal practices for property sales (i.e. use of DOE specific authorities and not General Services Administration authorities). Accordingly, DOE intends to sign the transfer document no sooner

than 30 days after this notification, and possibly sooner than 60 days, if the appropriations committees advise DOE that they have no objections.

On March 27, 2017 President Trump issued a memorandum on “The White House Office of American Innovation.” The memorandum provides that administration officials are to make recommendations to the President that will “spur job creation” and innovation. Transferring excess DOE property for economic development at sites that are being downsized, such as PORTS, will support the Administration’s goal of creating more jobs in America.

SENSITIVITIES: Armed Services Committee majority staff have inquired about previous land transfers at this site and whether DOE or a DOE contractor intend to use, lease, or build anything on the parcel in question after the date of the transfer. DOE has previously advised that the Department has no intention of leasing the property in the future, and that DOE does not intend to do anything with the parcel, after the date of transfer. DOE has also advised that since the property will be under the control of the local Community Reuse Organization, DOE cannot speak definitively regarding any potential use or involvement by a DOE contractor at a future date.

POLICY IMPACTS: None

RECOMMENDATION: That you approve the transfer and that you also sign the attached letters transmitting notification to Congress in anticipation of EMCBC signing a Quitclaim Deed transferring ownership of the land.

APPROVE: _____ DISAPPROVE: _____ NEEDS DISCUSSION: _____ DATE: _____

CONCURRENCES: Congressional & Intergovernmental Affairs
General Counsel
Management
Chief Financial Officer

Attachments



The Secretary of Energy
Washington, D.C. 20585

The Honorable Thad Cochran
Chairman, Committee on Appropriations
U.S. Senate
Washington, DC 20510

Dear Mr. Chairman:

The purpose of this letter is to notify you of the Department of Energy's (DOE) intent to transfer ownership of real property at no cost for economic development purposes in Piketon, Ohio. This transfer, described in detail in the enclosure to this letter, will convey ownership of Parcel 1 (hereafter referred to as "the Property") to the Southern Ohio Diversification Initiative (SODI), the Community Reuse Organization for the Portsmouth Gaseous Diffusion Plant site. Parcel 1 is approximately 80 acres in size.

Transfer of the Property supports SODI's plans to establish a private sector business and industrial park. Transfer of the Property will reduce the DOE Office of Environmental Management operational footprint and the expenses associated with surveillance and maintenance of the unneeded land. A recent market survey of the Property identified a market value of approximately \$80,000.

This notification is being made to the congressional appropriations committees as requested by U.S. House Report 107-112, accompanying the Energy and Water Development Appropriations Bill, 2002. The transfer documents will include a provision that provides for DOE indemnification of the transferee against claims based on the release or threatened release of hazardous substances, pollutants, or contaminants resulting from prior DOE activities. This notification of DOE's intent to transfer property is also being made to the congressional defense committees pursuant to the indemnification statute, Title 50, U.S. Code (U.S.C.) 2811 (Section 3158 of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, as amended).

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The Honorable Thad Cochran

2

Pursuant to Title 42, U.S.C. 9620(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Portsmouth/Paducah Project Office developed an Environmental Baseline Survey Report that resulted in an Uncontaminated Parcel determination. The State of Ohio responded, “the State of Ohio concurs with DOE pursuant to 120(h), and finds that Parcel 1 is and will be in a condition that is protective of human health and the environment.”

If you have further questions, please contact Mr. Joseph Levin, Associate Director for External Coordination, Office of the Chief Financial Officer, at (202) 586-3098.

Sincerely,

Rick Perry

Enclosure

DRAFT



The Secretary of Energy
Washington, D.C. 20585

The Honorable Patrick Leahy
Vice Chairman, Committee on Appropriations
U.S. Senate
Washington, DC 20510

Dear Senator Leahy:

The purpose of this letter is to notify you of the Department of Energy's (DOE) intent to transfer ownership of real property at no cost for economic development purposes in Piketon, Ohio. This transfer, described in detail in the enclosure to this letter, will convey ownership of Parcel 1 (hereafter referred to as "the Property") to the Southern Ohio Diversification Initiative (SODI), the Community Reuse Organization for the Portsmouth Gaseous Diffusion Plant site. Parcel 1 is approximately 80 acres in size.

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This notification is being made to the congressional appropriations committees as requested by U.S. House Report 107-112, accompanying the Energy and Water Development Appropriations Bill, 2002. The transfer documents will include a provision that provides for DOE indemnification of the transferee against claims based on the release or threatened release of hazardous substances, pollutants, or contaminants resulting from prior DOE activities. This notification of DOE's intent to transfer property is also being made to the congressional defense committees pursuant to the indemnification statute, Title 50, U.S. Code (U.S.C.) 2811 (Section 3158 of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, as amended).

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The Honorable Patrick Leahy

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If you have further questions, please contact Mr. Joseph Levin, Associate Director for External Coordination, Office of the Chief Financial Officer, at (202) 586-3098.

Sincerely,

Rick Perry

Enclosure



The Secretary of Energy
Washington, D.C. 20585

The Honorable Lamar Alexander
Chairman, Subcommittee on Energy
and Water Development
Committee on Appropriations
U.S. Senate
Washington, DC 20510

Dear Mr. Chairman:

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The Honorable Lamar Alexander

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If you have further questions, please contact Mr. Joseph Levin, Associate Director for External Coordination, Office of the Chief Financial Officer, at (202) 586-3098.

Sincerely,

Rick Perry

Enclosure



The Secretary of Energy
Washington, D.C. 20585

The Honorable Dianne Feinstein
Ranking Member, Subcommittee on Energy
and Water Development
Committee on Appropriations
U.S. Senate
Washington, DC 20510

Dear Senator Feinstein:

The purpose of this letter is to notify you of the Department of Energy's (DOE) intent to transfer ownership of real property at no cost for economic development purposes in Piketon, Ohio. This transfer, described in detail in the enclosure to this letter, will convey ownership of Parcel 1 (hereafter referred to as "the Property") to the Southern Ohio Diversification Initiative (SODI), the Community Reuse Organization for the Portsmouth Gaseous Diffusion Plant site. Parcel 1 is approximately 80 acres in size.

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The Honorable Dianne Feinstein

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If you have further questions, please contact Mr. Joseph Levin, Associate Director for External Coordination, Office of the Chief Financial Officer, at (202) 586-3098.

Sincerely,

Rick Perry

Enclosure



The Secretary of Energy
Washington, D.C. 20585

The Honorable Rodney P. Frelinghuysen
Chairman, Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The purpose of this letter is to notify you of the Department of Energy's (DOE) intent to transfer ownership of real property at no cost for economic development purposes in Piketon, Ohio. This transfer, described in detail in the enclosure to this letter, will convey ownership of Parcel 1 (hereafter referred to as "the Property") to the Southern Ohio Diversification Initiative (SODI), the Community Reuse Organization for the Portsmouth Gaseous Diffusion Plant site. Parcel 1 is approximately 80 acres in size.

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The Honorable Rodney P. Frelinghuysen 2

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Sincerely,

Rick Perry

Enclosure



The Secretary of Energy
Washington, D.C. 20585

The Honorable Nita M. Lowey
Ranking Member, Committee on Appropriations
U. S. House of Representatives
Washington, DC 20515

Dear Representative Lowey:

The purpose of this letter is to notify you of the Department of Energy's (DOE) intent to transfer ownership of real property at no cost for economic development purposes in Piketon, Ohio. This transfer, described in detail in the enclosure to this letter, will convey ownership of Parcel 1 (hereafter referred to as "the Property") to the Southern Ohio Diversification Initiative (SODI), the Community Reuse Organization for the Portsmouth Gaseous Diffusion Plant site. Parcel 1 is approximately 80 acres in size.

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The Honorable Nita M. Lowey

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If you have further questions, please contact Mr. Joseph Levin, Associate Director for External Coordination, Office of the Chief Financial Officer, at (202) 586-3098.

Sincerely,

Rick Perry

Enclosure



The Secretary of Energy
Washington, D.C. 20585

The Honorable Michael K. Simpson
Chairman, Subcommittee on Energy and
Water Development and Related Agencies
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The purpose of this letter is to notify you of the Department of Energy's (DOE) intent to transfer ownership of real property at no cost for economic development purposes in Piketon, Ohio. This transfer, described in detail in the enclosure to this letter, will convey ownership of Parcel 1 (hereafter referred to as "the Property") to the Southern Ohio Diversification Initiative (SODI), the Community Reuse Organization for the Portsmouth Gaseous Diffusion site. Parcel 1 is approximately 80 acres in size.

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The Honorable Michael K. Simpson

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Sincerely,

Rick Perry

Enclosure



The Secretary of Energy
Washington, D.C. 20585

The Honorable Marcy Kaptur
Ranking Member, Subcommittee on Energy and
Water Development and Related Agencies
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

Dear Congresswoman Kaptur:

The purpose of this letter is to notify you of the Department of Energy's (DOE) intent to transfer ownership of real property at no cost for economic development purposes in Piketon, Ohio. This transfer, described in detail in the enclosure to this letter, will convey ownership of Parcel 1 (hereafter referred to as "the Property") to the Southern Ohio Diversification Initiative (SODI), the Community Reuse Organization for the Portsmouth Gaseous Diffusion Plant site. Parcel 1 is approximately 80 acres in size.

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The Honorable Marcy Kaptur

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Sincerely,

Rick Perry

Enclosure

APPROPRIATIONS COMMITTEES DISTRIBUTION LIST

The Honorable Thad Cochran
Chairman, Committee on Appropriations
United States Senate
Washington, DC 20510

The Honorable Patrick Leahy
Vice Chairman, Committee on Appropriations
United States Senate
Washington, DC 20510

The Honorable Lamar Alexander
Chairman, Subcommittee on Energy
and Water Development
Committee on Appropriations
United States Senate
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member, Subcommittee on Energy
and Water Development
Committee on Appropriations
United States Senate
Washington, DC 20510

The Honorable Rodney P. Frelinghuysen
Chairman, Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

The Honorable Nita M. Lowey
Ranking Member, Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

The Honorable Michael K. Simpson
Chairman, Subcommittee on Energy and
Water Development, and Related Agencies
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

The Honorable Marcy Kaptur
Ranking Member, Subcommittee on Energy and
Water Development, and Related Agencies
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515



The Secretary of Energy
Washington, D.C. 20585

The Honorable Mac Thornberry
Chairman, Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

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The Honorable Mac Thornberry

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If you have further questions, please contact Mr. Marty Dannenfelser, Deputy Assistant Secretary for House Affairs, Office of Congressional and Intergovernmental Affairs, at (202) 586-5450.

Sincerely,

Rick Perry

Enclosure



The Secretary of Energy
Washington, D.C. 20585

The Honorable Adam Smith
Ranking Member,
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Smith:

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The Honorable Adam Smith

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If you have further questions, please contact Mr. Marty Dannenfelser, Deputy Assistant Secretary for House Affairs, Office of Congressional and Intergovernmental Affairs, at (202) 586-5450.

Sincerely,

Rick Perry

Enclosure



The Secretary of Energy
Washington, D.C. 20585

The Honorable John McCain
Chairman, Armed Services Committee
U. S. Senate
Washington, DC 20510

Dear Mr. Chairman:

The purpose of this letter is to notify you of the Department of Energy's (DOE) intent to transfer ownership of real property at no cost for economic development purposes in Piketon, Ohio. This transfer, described in detail in the enclosure to this letter, will convey ownership of Parcel 1 (hereafter referred to as "the Property") to the Southern Ohio Diversification Initiative (SODI), the Community Reuse Organization for the Portsmouth Gaseous Diffusion Plant site. Parcel 1 is approximately 80 acres in size.

Transfer of the Property supports SODI's plans to establish a private sector business and industrial park. Transfer of the Property will reduce the DOE Office of Environmental Management operational footprint and the expenses associated with surveillance and maintenance of the unneeded land. A recent market survey of the Property identified a market value of approximately \$80,000.

This notification is being made to the congressional appropriations committees as requested by U.S. House Report 107-112, accompanying the Energy and Water Development Appropriations Bill, 2002. The transfer documents will include a provision that provides for DOE indemnification of the transferee against claims based on the release or threatened release of hazardous substances, pollutants, or contaminants resulting from prior DOE activities. This notification of DOE's intent to transfer property is also being made to the congressional defense committees pursuant to the indemnification statute, Title 50, U.S. Code (U.S.C.) 2811 (Section 3158 of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, as amended).

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Sincerely,

Rick Perry

Enclosure



The Secretary of Energy
Washington, D.C. 20585

The Honorable Jack Reed
Ranking Member,
Committee on Armed Services
U. S. Senate
Washington, DC 20510

Dear Senator Reed:

The purpose of this letter is to notify you of the Department of Energy's (DOE) intent to transfer ownership of real property at no cost for economic development purposes in Piketon, Ohio. This transfer, described in detail in the enclosure to this letter, will convey ownership of Parcel 1 (hereafter referred to as "the Property") to the Southern Ohio Diversification Initiative (SODI), the Community Reuse Organization for the Portsmouth Gaseous Diffusion Plant site. Parcel 1 is approximately 80 acres in size.

Transfer of the Property supports SODI's plans to establish a private sector business and industrial park. Transfer of the Property will reduce the DOE Office of Environmental Management operational footprint and the expenses associated with surveillance and maintenance of the unneeded land. A recent market survey of the Property identified a market value of approximately \$80,000.

This notification is being made to the congressional appropriations committees as requested by U.S. House Report 107-112, accompanying the Energy and Water Development Appropriations Bill, 2002. The transfer documents will include a provision that provides for DOE indemnification of the transferee against claims based on the release or threatened release of hazardous substances, pollutants, or contaminants resulting from prior DOE activities. This notification of DOE's intent to transfer property is also being made to the congressional defense committees pursuant to the indemnification statute, Title 50, U.S. Code (U.S.C.) 2811 (Section 3158 of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, as amended).

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The Honorable Jack Reed

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Sincerely,

Rick Perry

Enclosure



The Secretary of Energy
Washington, D.C. 20585

The Honorable Deb Fischer
Chairwoman, Subcommittee on Strategic Forces
U. S. Senate
Washington, DC 20510

Dear Chairwoman:

The purpose of this letter is to notify you of the Department of Energy's (DOE) intent to transfer ownership of real property at no cost for economic development purposes in Piketon, Ohio. This transfer, described in detail in the enclosure to this letter, will convey ownership of Parcel 1 (hereafter referred to as "the Property") to the Southern Ohio Diversification Initiative (SODI), the Community Reuse Organization for the Portsmouth Gaseous Diffusion Plant site. Parcel 1 is approximately 80 acres in size.

Transfer of the Property supports SODI's plans to establish a private sector business and industrial park. Transfer of the Property will reduce the DOE Office of Environmental Management operational footprint and the expenses associated with surveillance and maintenance of the unneeded land. A recent market survey of the Property identified a market value of approximately \$80,000.

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Sincerely,

Rick Perry

Enclosure



The Secretary of Energy
Washington, D.C. 20585

The Honorable Joe Donnelly
Ranking Member,
Subcommittee on Strategic Forces
U.S. Senate
Washington, DC 20510

Dear Senator Donnelly:

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Transfer of the Property supports SODI's plans to establish a private sector business and industrial park. Transfer of the Property will reduce the DOE Office of Environmental Management operational footprint and the expenses associated with surveillance and maintenance of the unneeded land. A recent market survey of the Property identified a market value of approximately \$80,000.

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Sincerely,

Rick Perry

Enclosure



The Secretary of Energy
Washington, D.C. 20585

The Honorable Mike Rogers
Chairman, Subcommittee on Strategic Forces
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The purpose of this letter is to notify you of the Department of Energy's (DOE) intent to transfer ownership of real property at no cost for economic development purposes in Piketon, Ohio. This transfer, described in detail in the enclosure to this letter, will convey ownership of Parcel 1 (hereafter referred to as "the Property") to the Southern Ohio Diversification Initiative (SODI), the Community Reuse Organization for the Portsmouth Gaseous Diffusion Plant site. Parcel 1 is approximately 80 acres in size.

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This notification is being made to the congressional appropriations committees as requested by U.S. House Report 107-112, accompanying the Energy and Water Development Appropriations Bill, 2002. The transfer documents will include a provision that provides for DOE indemnification of the transferee against claims based on the release or threatened release of hazardous substances, pollutants, or contaminants resulting from prior DOE activities. This notification of DOE's intent to transfer property is also being made to the congressional defense committees pursuant to the indemnification statute, Title 50, U.S. Code (U.S.C.) 2811 (Section 3158 of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105-85, as amended).

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If you have further questions, please contact Mr. Marty Dannenfelser, Deputy Assistant Secretary for House Affairs, Office of Congressional and Intergovernmental Affairs, at (202) 586-5450.

Sincerely,

Rick Perry

Enclosure



The Secretary of Energy
Washington, D.C. 20585

The Honorable Jim Cooper
Ranking Member,
Subcommittee on Strategic Forces
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Cooper:

The purpose of this letter is to notify you of the Department of Energy's (DOE) intent to transfer ownership of real property at no cost for economic development purposes in Piketon, Ohio. This transfer, described in detail in the enclosure to this letter, will convey ownership of Parcel 1 (hereafter referred to as "the Property") to the Southern Ohio Diversification Initiative (SODI), the Community Reuse Organization for the Portsmouth Gaseous Diffusion Plant site. Parcel 1 is approximately 80 acres in size.

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If you have further questions, please contact Mr. Marty Dannenfelser, Deputy Assistant Secretary for House Affairs, Office of Congressional and Intergovernmental Affairs, at (202) 586-5450.

Sincerely,

Rick Perry

Enclosure

ARMED SERVICES COMMITTEES DISTRIBUTION LIST

The Honorable Mac Thornberry
Chairman, Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Adam Smith
Ranking Member,
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

The Honorable John McCain
Chairman, Committee on Armed Services
U.S. Senate
Washington, DC 20510

The Honorable Jack Reed
Ranking Member,
Committee on Armed Services
U. S. Senate
Washington, DC 20510

The Honorable Deb Fischer
Chairwoman, Subcommittee on Strategic Forces
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Ranking Member,
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Chairman, Subcommittee on Strategic Forces
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Jim Cooper
Ranking Member,
Subcommittee on Strategic Forces
U.S House of Representatives
Washington, DC 20515

U. S. HOUSE OF REPRESENTATIVES AND U.S SENATE

NOTICE TO THE COMMITTEE ON APPROPRIATIONS
of a Property Transfer

Notice Provided Pursuant to House Report 107-112,
Accompanying the Energy and Water Development Appropriations Bill, 2002

NOTICE TO THE COMMITTEE ON ARMED SERVICES
As Directed by Section 3158 of the
National Defense Authorization Act for Fiscal Year 1998

**INTENTION OF THE DEPARTMENT OF ENERGY TO TRANSFER REAL
PROPERTY PURSUANT TO SECTION 161g, OF THE ATOMIC ENERGY ACT
OF 1954, AND TO GRANT INDEMNIFICATION UNDER SECTION 3158 OF
THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1998**

The U.S. Department of Energy (DOE) proposes to transfer ownership of DOE property at the Portsmouth Gaseous Diffusion Plant (PORTS) located on the DOE PORTS reservation in the State of Ohio. The property is referred to as Parcel 1 and consists of approximately 80 acres. A recent market survey identified a market value of approximately \$80,000.

This proposed property transfer will promote economic development for the Southern Ohio region. The future use of PORTS is as a private-sector industrial park and is consistent with the cleanup end state of industrial. DOE's authority for the transfer is Section 161g. of the Atomic Energy Act of 1954 [Title 42, U.S. Code (U.S.C.) 2201(g)]. Section 161g. authorizes DOE to "sell, lease, grant and dispose of" properties associated with Atomic Energy Act activities. The proposed no-cost transfer would be made to the Southern Ohio Diversification Initiative (SODI).

As the intended transfer of property is being made under DOE's authority in the Atomic Energy Act of 1954, DOE is providing this notice as requested by House Report 107-112 for the Energy and Water Development Appropriations Bill, 2002. That Report requests that DOE notify the Appropriations Committees at least 60 days in advance of any proposed sale of land that does not follow the standard Federal practices for property sales.

In addition, SODI has requested that the transfer document contain the indemnification authorized by section 3158 of the National Defense Authorization Act for Fiscal Year 1998 (hereinafter referred to as "Section 3158"), as amended, now codified at Title 50 U.S.C. 2811. DOE promulgated regulations, which appear at Title 10 Code of Federal Regulations (CFR) Part 770, for selling or leasing real property at "DOE defense nuclear facilities for the purpose of permitting the economic development of the property." Further, the statute authorizes indemnification of certain transferees "against any claim for injury to person or property that results from the release or threatened release of a

hazardous substance or pollutant or contaminant as a result of DOE activities at the defense nuclear facility on which the real property is located.”

This transfer falls within the scope of Section 3158, as amended, and Title 10 CFR Part 770. The purpose of the transfer is to permit economic development of the property. DOE has determined that indemnification is essential for the purpose of facilitating reuse and redevelopment of this property. Therefore, DOE intends to include in the transfer document a provision that will provide indemnification for the transferee.

Under U.S.C. 2811, DOE may not transfer the property until 30 days have elapsed after notice to the Congressional Defense Committees. Under House Report 107-112, DOE has been requested to notify the Congressional Appropriations Committees at least 60 days in advance of any proposed sale or transfer of land. Accordingly, DOE intends to sign the transfer document no sooner than 30 days after this notification, and possibly sooner than 60 days, if the Congressional Appropriations Committees advise DOE that they have no objections.

MEMORANDUM FOR ROBERT E. EDWARDS III
MANAGER
PORTSMOUTH/PADUCAH PROJECT OFFICE

FROM: PAUL M. DABBAR
UNDER SECRETARY FOR SCIENCE

SUBJECT: Indemnification Determination for Proposed Transfer of Parcel
1 Land Area to the Southern Ohio Diversification Initiative at
the Portsmouth Gaseous Diffusion Plant, Piketon, Ohio

The Office of Environmental Management has reviewed the proposed transfer of Parcel 1 at the Portsmouth Gaseous Diffusion Plant (PORTS), Piketon, Ohio, to the Southern Ohio Diversification Initiative (SODI), a community reuse organization. In its transfer proposal, SODI requested indemnification against claims based on the release or threatened release of hazardous substances, pollutants, or contaminants resulting from former Department of Energy activities in and around the Portsmouth site. For the reasons listed below in response to your memorandum of November 8, 2017, on transmittal of transfer documentation for Parcel 1, I authorize indemnification of SODI.

The request for indemnification is based on the historical use of PORTS for the enrichment of uranium and the known release of chemical and radionuclide contaminants to environmental media from PORTS operations. As a result of the uranium enrichment operations that began in the 1950s and continued until shutdown in 2001, contamination of buildings, soils, sediments, and groundwater has occurred on the site. DOE is performing cleanup activities as well as building decontamination and decommissioning to address these releases pursuant to regulatory requirements.

While it has been determined pursuant to the concurrence by the State of Ohio that the property is uncontaminated and is suitable for industrial use, the property is located within an active cleanup site. Parcel 1 is in close proximity to highly contaminated process buildings and their process piping and other related infrastructure that will be demolished, and is also in proximity to associated contaminated groundwater plumes and soils. Hence, I have determined that it is essential for the purpose of facilitating economic development of the property that the Department provide indemnification to the transferee. As such, I am granting said indemnification as provided under the authority of 50 U.S.C. 2811 and 10 CFR Part 770. This is predicated on the inclusion of Exhibit F, "Indemnification" in the Quitclaim Deed between DOE and SODI.

If you have any questions, please contact Mr. Barton Barnhart, Director, Office of Infrastructure Management and Disposition Policy, at (202) 586-1090.

cc: Ingrid Kolb, MA-1
Scott Whiteford, MA-50
Theodore Garrish, CI-1
Martin Dannenfelser, Jr., CI-20
Patricia Temple, CI-30
Eric Fygi, GC-2
Matthew Urie, GC-51
Susan Beard, GC-56
Alison Doone, CF-2
Albert Park, CF-10
Joseph Levine, CF-30
Jeffrey Grimes, EMCBC
Mark Gilbertson, EM-4
Barton Barnhart, EM-4.1

APPENDIX K – ENVIRONMENTAL BASELINE SURVEY REPORT INTERVIEW FORM

Environmental Baseline Survey Report (EBS) Interview Form
<p>The purpose of an EBS conducted under CERCLA 120(h) is to identify and document the environmental conditions of property proposed for transfer. The information obtained is used in an Environmental Baseline Survey report that is sent for regulatory review and ultimately acceptance. A final EBS is used to support the review of the proposed transfer by DOE HQ and is part of the “transfer package” that provides information on a property proposed for transfer. The EBS is also provided to the lessee or new owner for informational purposes.</p> <p>The objective of this questionnaire is to be able to “determine or discover the obviousness of the presence or likely presence of a release or threatened release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, on the real property.” Part of the research done to make that determination is, per CERCLA 120(h)(4)(A)(vii) “interviews with current or former employees familiar with operations on the property” (proposed for transfer). In addition, interviews will also be conducted with others familiar with the operations or conditions of the property proposed for transfer. Although not all properties being evaluated for transfer will be determined to be uncontaminated, the questionnaire will be useful for environmental due diligence purposes for all types of transfers. This interview form will be provided to each individual subject to the interview, whether conducted individually or in a group.</p> <p><i>You are being interviewed/asked to complete the form because you are a current or former employee familiar with operations on the property proposed for transfer or someone familiar with the operations on or conditions of the property proposed for transfer. A figure showing the property proposed for transfer is attached to this questionnaire.</i></p>
Property Proposed for Transfer:
1. Name:
2. Work Phone Number:
3. Your involvement with the property proposed for transfer:
4. Is your involvement past or present?
5. During what years were you involved with the property proposed for transfer?
Questions about prior releases on the property proposed for transfer
6(a). During your involvement with the property, did you become aware of any prior releases of hazardous substances or petroleum products (including aviation fuel and motor oil) that occurred on the property?
6(b). If no, please indicate no. If yes, please proceed to the next question.

6(c). What prior releases of hazardous substances or petroleum products (including aviation fuel and motor oil) were you informed of?	
6(d). Approximately where on the property did the prior releases occur? (please mark information on the map of the proposed property provided with the questionnaire).	
6(e). Who should we contact to find out about the prior releases that occurred on the property? Please provide a name and phone number, if possible.	
Questions about releases during your involvement with the property proposed for transfer	
7(a). During your involvement with the property, are you aware of any releases of hazardous substances or petroleum products (including aviation fuel and motor oil) that occurred on the property?	
7(b). If no, please indicate no, if yes, please proceed to the next question.	
7(c). Describe the release or releases that occurred that you are aware of. Note the date or dates of the releases(s) with as much specificity as you can (month/date/year, if known). Provide as much detail as possible including copies of Plant Shift Superintendent (PSS) logs if available/applicable. Indicate on a map the approximate location of the release.	
Questions about response actions during (or after) your involvement with the property proposed for transfer	
8(a). Are you aware of any follow-up response action that was taken on the property?	
8(b). If no, please indicate no. If yes, please proceed to the next question.	
8(c). Provide any details that you have about the response to the release including copies of reports, or titles of reports, on the response actions.	
8(d). Are there other individuals that should be contacted to potentially provide additional information about the release and/or the response to the release?	
8(e). If no, please indicate no. If yes, please provide the names and phone numbers of the people to be contacted so more information may be sought.	
Name:	Phone number:
Name:	Phone number:
Additional Comments:	

APPENDIX L – EXAMPLE ENVIRONMENTAL BASELINE SURVEY OUTLINE

**ENVIRONMENTAL BASELINE SURVEY
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Upon completion of Appendix A to the Example EBS, the signed certification from the EMCBC Certified Realty Specialist will be inserted here.

APPENDIX M – PPPO PROPERTY TRANSFER COMMUNICATION PLAN

PPPO Property Transfer Communication Plan

1. PURPOSE

The PPPO intends to proactively communicate information regarding property transfers with their regulators and stakeholders. This PPPO Property Transfer Communication Plan identifies specific requirements for communication for the PPPO, and PORTS and PAD.

2. APPLICABILITY

This plan is applicable to DOE personnel who manage or are involved in the PPPO land transfer process.

3. RESPONSIBILITIES

3.1. PPPO Land Transfer Program Manager interfaces with PPPO Management, provides direction in identifying the communication requirements for property transfer actions, and facilitates the development and implementation of effective strategies for communication for property transfer actions.

3.2. PORTS and PAD Public Affairs Specialists are responsible for reviewing the organizational unit's public participation plan, conducting the applicable public participation requirements for the proposed property transfer action, and for ensuring that the public participation requirements are properly implemented and documented

4. IMPLEMENTATION

4.1. Effective communication with regulators and stakeholders is accomplished in accordance with the requirements and process identified in the PPPO *Protocol for the Environmental Regulatory Processes for the Transfer of Real Property at the U.S. Department of Energy Portsmouth and Paducah Sites* (PPPO Protocol). The PPPO Protocol presents the requirements and recommendations for effective communication with the regulators and stakeholders regarding property transfer actions.

4.2. In coordination with the PPPO Land Transfer Program Manager and PPPO Public Affairs, the PORTS and PAD Public Affairs Specialists implement regulator and stakeholder communications based on the following objectives:

4.2.1. Objectives. Objectives of inviting public participation include:

4.2.1.1. Stimulate an early response to the proposed property transfer from the regulators and potentially affected stakeholders.

4.2.1.2. Avoid late discovery of controversy arising from lack of stakeholder acceptance.

4.2.1.3. Identify stakeholders who choose to be involved during the property transfer planning process, and ensure that all comments are considered.

4.2.2. The PORTS and PAD Public Affairs Specialists shall observe the following requirements for affording public involvement for property transfer actions:

4.2.2.1. Notify the regulators and stakeholders of DOE's intent to transfer excess property.

4.2.2.2. Make available copies of relevant documentation at the PPPO Environmental Information Centers (EIC).

- 4.2.2.3. Provide a fact sheet or other materials if a public meeting(s) is/are held.
- 4.2.2.4. Develop supporting materials, as needed.

4.2.3. Toolbox Items. PPPO Land Transfer personnel, in conjunction with PPPO Public Affairs staff, may use a combination of the following techniques or materials to communicate information related to land transfer:

- 4.2.3.1. Media – Media outlets may be contacted or provided with information.
 - 4.2.3.1.1. Interviews
 - 4.2.3.1.2. Press Releases
 - 4.2.3.1.3. Event Coverage
- 4.2.3.2. Site Tours – Official site tours may be arranged, as necessary, to provide information and clarification.
- 4.2.3.3. Public Meetings – Public meetings may be held on specific land transfers or information may be disseminated through DOE’s Site Specific Advisory Boards or Citizens Advisory Boards. By request, presentations to specific public groups may be made.
- 4.2.3.4. Supporting Materials – The following material may be developed to support land transfer and public affairs communication:
 - 4.2.3.4.1. Fact Sheets
 - 4.2.3.4.2. Presentations
 - 4.2.3.4.3. Media Packets
 - 4.2.3.4.4. Questions and Answers
 - 4.2.3.4.5. Talking Notes
 - 4.2.3.4.6. Other information, as necessary

4.2.4. Timeline – Once a property is identified as a transfer or sale, an individual communications plan/timeline will be developed by PPPO land transfer, in coordination with PPPO public affairs staff. An example timeline is provided below as a template:

Communications Timeline:

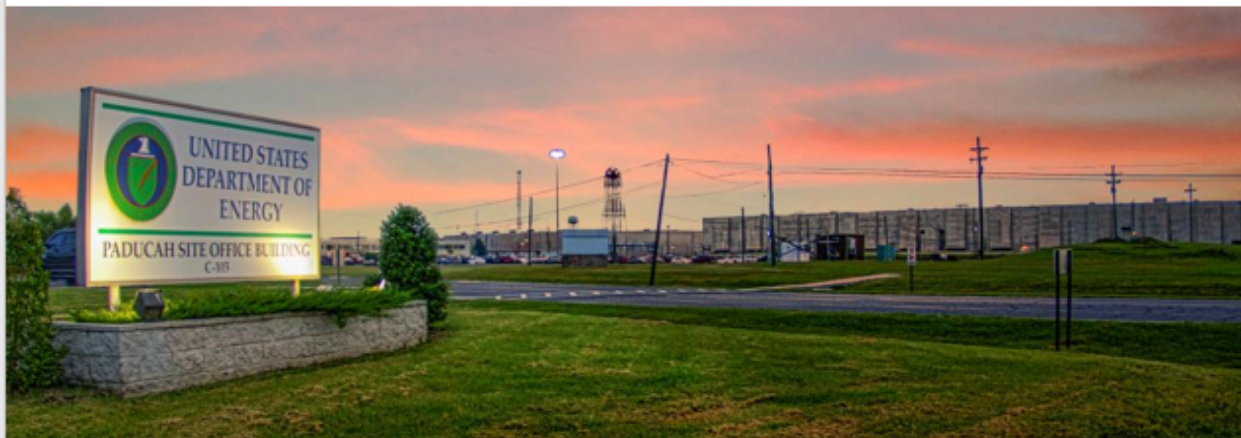
Stakeholder	Coordinator	Release Plan	Date/Time
OMB notification	EM	EM call/e-mail OMB	Advance notification 60 minutes
Congressional notifications	CI-1	CI call/e-mail Congressional offices	Advance notification 60 minutes
KY Governor’s Office	CI-1	CI call/e-mail KY Governor’s office	Advance notification 60 minutes
Appropriations Committees Notifications	CFO	CFO call appropriations committees	Advance notification 60 minutes
Notify Local Stakeholders	PPPO	DOE Paducah Site Lead call McCracken County Judge, Paducah City Mayor, Paducah Economic Development CEO, and Paducah Chamber of Commerce President	Advance notification 60 minutes

Media Notifications	PPPO	EM NewsFlash	At time of public announcement
Media notifications	PPPO / Contractors	HQ email news release, post to Energy.gov, and cross-post (tag) to PPPO website. Contractor e-mail news release to media and stakeholder distribution lists.	At time of public announcement

Attachment to Appendix M: Curriculum for Presentation for Land Transfer



Nov 2018



DOE PADUCAH SITE LAND TRANSFER of UNCONTAMINATED PROPERTY

DOE plans to transfer excess real property to reduce the footprint of the Paducah Site and return property to public use. The first properties considered for transfer will be those which are determined not to be impacted by historical releases of hazardous substances.

The transfer process will comply with regulations that guide the transfer of federally-owned, real property at defense nuclear facilities for the purpose of beneficial reuse. These real property transfers will comply with relevant environmental regulatory requirements.

Real property that is eligible for transfer will be evaluated through an environmental due diligence process that includes review of relevant records, property walk downs and examination of historical photography of the property, in addition to interviews with people knowledgeable about the use of the real property and the areas adjacent to it. This process will result in the development of a document entitled an "Environmental Baseline Survey," which will demonstrate that the property is eligible for transfer as uncontaminated property. This document and its conclusions will be submitted to appropriate regulatory authorities for review and concurrence.

Real property under consideration for transfer will also undergo an independent verification by qualified professionals to ensure that the property is suitable for release from DOE control from a radiological perspective.

All real property transfers will be approved by DOE Headquarters and subject to Congressional review.

Transferred real property may be used for conservation, recreational, and/or industrial uses. As part of the transfer process, DOE will obtain and review proposals from the public identifying their proposed use(s) of the property.

DOE is developing a Land Transfer Plan to target at least 500 acres for a potentially near-term transfer.

Criteria for Preferred Parcels

- **Transfer is not expected to interfere with known DOE missions**
- **Transfer is located outside of the DOE industrial fenced area**
- **Transfer has no indication of release or disposal of hazardous substances**

APPENDIX N – EXAMPLE DOE-HQ PRESENTATION OUTLINE FOR LAND TRANSFER

- Background Information on Land Parcel to be Transferred, and the Request from the Public
- Description of Land Parcel Proposed for Transfer
- Photographs of Land Parcel Proposed for Transfer, including areas of interest (e.g., utilities present, sensitive environmental areas, other non-transferable entities such as DOE-owned groundwater wells, etc.)
- Environmental Due Diligence Report (EBS) for the Parcel Proposed for Transfer
- Deed Restrictions to be Addressed upon Transfer of the Land Parcel
- Additional Planned and Anticipated Future Land Transfers at the Site

APPENDIX O – ADDITIONAL REQUIREMENTS FOR TRANSFERS OF PROPERTY WITH BUILDINGS/STRUCTURES

If uncontaminated property proposed for transfer includes buildings and/or other structures, those buildings/structures are also subject to environmental due diligence similar to that described above in this protocol. As with the due diligence for land, the additional due diligence process for buildings will align with that presented above for land and will be similarly documented in the EBS. In addition to the due diligence requirements under CERCLA 120 and DOE O 458.1, there are disclosure requirements associated with property transfer that should also be included in EBS documentation to facilitate transfer.

Notification and warranty obligations imposed by CERCLA Section 120(h) necessitate that federal real property transfers, including property with buildings, require an environmental due diligence review¹¹. As with other real property, the environmental due diligence review of property with buildings establishes the conditions of property proposed for transfer and documents these conditions in an EBS (DOE 2005). As with land, Appendix B contains a crosswalk of the requirements of CERCLA 120(h)(4) and where they are found in an EBS. Appendix C contains additional detail, which includes a crosswalk of the requirements of CERCLA 120(h)(4) and a narrative on where and how they are addressed in an EBS. Examples of due diligence activities for uncontaminated property include a title search to determine prior ownership history, a property description, a review of aerial and other photographs, interviews with people familiar with the property and activities that took place on it, and visual and physical inspections of the property, including buildings or structures located on the property.

To facilitate the transfer of property with buildings, additional disclosures may be needed in the EBS. The suggested outline/table-of-contents for an EBS for uncontaminated property is included in Appendix L. The objective of the due diligence effort is to be able to determine if the real property, including buildings within its boundaries, are eligible for transfer as uncontaminated and this determination is accepted by regulators and DOE Headquarters.

1. CERCLA 120(h)(4) REVIEWS

1.1 UNCONTAMINATED PROPERTY

CERCLA Section 120(h)(4) addresses uncontaminated property transfer, also known as a Clean Parcel Determination (CPD) transfer. These requirements also apply to land with buildings / structures proposed for transfer as clean. The requirements of CERCLA 120(h)(4) and where they are found in an EBS are included in a crosswalk found in Appendix C. An uncontaminated parcel is one about which one is able to state one of two conclusions:

- That no hazardous substances and no petroleum products or their derivatives were known to have been released or disposed of, pursuant to CERCLA 120(h)(4), *or*
- There is no indication that the release or disposal of hazardous substances or petroleum products has resulted in an environmental condition that poses a threat to human health or the environment, pursuant to U.S. Environmental Protection Agency (EPA) *Military Base Closures: Revised*

¹¹CERCLA 120(h) requires that research be conducted to identify spills, releases, and storage of hazardous substances. Both CERCLA and 40 *CFR* 373 require that the findings of such research be included in the notification (in the case of title transfers, this will take place in the deed for title transfer). This notification is included in the Environmental Baseline Survey report.

*Guidance on EPA Concurrence in the Identification of Uncontaminated Parcels under CERCLA 120(h)(4) (EPA 1997)*¹².

This 1997 EPA guidance was issued to assist EPA in meeting its obligation under CERCLA 120(h)(4). The guidance states: “EPA is concerned with both protecting human health and the environment and achieving Congress' goal of expeditiously transferring uncontaminated real property to communities for economic redevelopment. Interpreting CERCLA Section 120(h)(4) to allow the expeditious transfer of parcels where there is no indication that the release or disposal of hazardous substances or petroleum products poses a threat to human health or the environment would aid Congress' intent by increasing the amount of real property which would be available for expedited reuse and redevelopment.”

When pursuing an uncontaminated determination for a CPD, evidence must be provided that constituents present in site media are below action levels; which can include background levels, maximum contaminant levels, authorized limits, and risk-based criteria (including both human health and ecological risk). In addition, depending upon the nature of the constituent, concentrations shall also be compared to vapor intrusion action levels (EPA 2015) that require more attention to evaluate the potential for migration into buildings. In addition, a CPD can be made for real property with buildings if other site media meet the requirements of a CPD and if the building meets authorized limits, background, and/or risk-based criteria.

By the completion of the EBS, the building must meet the free-release criteria under DOE O 458.1. In addition, although the detected presence of other (chemical) constituents in a building/structure do not necessarily constitute a release to the environment, they may need to be removed to facilitate building transfer. The PPPO prefers to use existing data for the CPD; however, additional sampling may be needed if the existing data are not sufficient in extent and/or quality to demonstrate a CPD.

1.1.1 Additional Building-Related Considerations

In addition to extending a CPD determination to buildings (or other structures) on the property, other disclosure and/or testing associated with building transfer may be required to be disclosed by state entities or may facilitate the transfer of a property. The goal of an EBS is to ensure that information needed to support property transfer is collected as early in the process as possible. Thus, the EBS may be extended to pre-emptively address other requirements, as follows.

1.1.1.1 Possible State and Local Disclosure Considerations

Transfer of property with buildings in Ohio and Kentucky may be facilitated by disclosures of what is known about the property, such as:

- Type of water supply,
- Type of sewer system,
- Condition of roof,
- History of water intrusion,

¹² While the 1997 EPA Guidance was developed in support of Department of Defense Base Realignment and Closure (BRAC) activities, DOE evaluated the applicability of this guidance to other federal facilities. The research determined that it is the only guidance issued by EPA on the identification of uncontaminated property where releases have occurred but no threat to human health or the environment is posed. The guidance is also listed by EPA on their "Property Transfer at Federal Facilities - Policy and Guidances" website, indicating the broad federal facility applicability.

- Structural integrity (including fire or smoke damage),
- Wood destroying insects,
- Mechanical systems presence/condition/issues,
- Presence in the floodplain,
- Historical drainage or erosion issues,
- Historical zoning/code violations,
- Historical boundary disputes/encroachments,
- Other known material defects,
- Presence of utilities/easements,
- Presence of USTs/ASTs, water wells/monitoring wells, and
- Legal issues, code violations, considered a historic property.

In addition, disclosures of the presence of hazardous materials may facilitate transfer, including:

- Lead-based Paint,
- Asbestos,
- Urea-formaldehyde foam insulation,
- Mold,
- Radon, and
- Contamination associated with methamphetamine manufacture.

Typically, to transfer as uncontaminated, a building should have hazardous materials removed (or removed to below target levels [e.g., radon, friable asbestos, etc.]) before preparation of the EBS such that the EBS can document the building as uncontaminated.

1.1.1.2 Issues Addressed at Oak Ridge Building K-1652 (Fire Station):

In advance of transfer of the former K-1652 fire station at Oak Ridge, an EBS was prepared that addressed:

- Asbestos containing materials,
- Fluorescent lighting ballasts (PCBs),
- Lead-based paint,
- Transformers (PCBs),
- USTs,
- ASTs,
- Sewer system components (i.e., oil/water separator),
- Furnishings, and
- Sub-slab vapor (NOTE: No groundwater results were cited).

In addition, the EBS identified required land use restrictions, as follows:

- No groundwater use,
- Property use must comply with all applicable regulations,
- Excavation/penetration permit required before excavation,
- Industrial use only,
- No disturbance below 10' bgs, and
- Vapor intrusion potential was evaluated in other ROD.

1.1.2 Additional Steps for Uncontaminated Property Transfers Using the 1997 EPA Guidance

For parcels using the 1997 EPA guidance, where there has been some release or disposal of hazardous substances or petroleum products, but where there is no indication that the release or disposal poses a threat to human health or the environment, some level of risk evaluation may be needed. For parcels with buildings or structures, an additional evaluation of these buildings/structures may need to be performed to support transfer of an uncontaminated land parcel.

2. DOE ORDER 458.1

DOE O 458.1 applies to PORTS and PAD because these are sites with a history of radiological activities (DOE 2014a). DOE O 458.1 requires the establishment of approved authorized limits and independent verification of the radiological condition of a property before it can be released from DOE control. DOE O 458.1 calls for a systematic approach to evaluating the property and determining if it has been impacted by DOE operations. Process and historical information are reviewed as a part of the determination. DOE, with the EPA and Nuclear Regulatory Commission, developed the *Multi Agency Radiological Survey and Site Investigation Manual (MARSSIM, EPA 2002)* that is a part of the process used by DOE to release property. MARSSIM classifies areas into the following:

- Class 1 areas, prior to remediation, are impacted areas with concentrations of residual radioactivity that exceed the respective DCGL (Derived Concentration Guideline Level).
- Class 2 areas are impacted areas where concentrations of residual activity that exceed the DCGL are not expected.
- Class 3 areas are impacted areas that have a low probability of containing areas with residual radioactivity.
- Non-impacted areas are those with no reasonable potential for residual contamination from site operations.

Properties proposed for transfer as uncontaminated under CERCLA 120 (h)(4) that include buildings, must be areas that are ultimately demonstrated to have concentrations of residual activity that are below the respective DCGLs at the time of transfer.

PPPO has authorized limits implementation documents (DOE 2018b for PORTS and DOE 2014c for PAD) to be followed to complete DOE O 458.1 requirements, including the independent verification process necessary for transfer of real property with buildings. The methods specified in each site's implementation of DOE O 458.1 requirements will be used to address the transfer of real property. Completion of all aspects of the DOE O 458.1 requirements that pertain to property transfer will occur as part of the DOE-HQ review process. Free release of personal property happens outside of this protocol using methods specified in each site's implementation of DOE O 458.1.

2.1 AUTHORIZED LIMITS

Authorized Limits, as defined in DOE O 458.1, Attachment 2 (Definitions), govern the release of real property and are radionuclide concentrations or activity levels that are approved by DOE to permit the release of property from DOE control, consistent with DOE's radiation protection framework (DOE

2014b). An Authorized Limit is a limit on the concentration or quantity of residual radioactive material on the surfaces or within property that has been derived consistent with DOE directives including the As Low As Reasonably Achievable (ALARA) process requirements. An Authorized Limit must state any restrictions or conditions on the future use of real property and must be approved in accordance with DOE O 458.1, Section 4.k(6). Authorized Limits have been established for PORTS (DOE 2018) and PAD (DOE 2012).

Information sufficient to meet the requirements for the demonstration of protection of human health and the environment will be included in the EBS (and/or its appendices) and the IVR. PPPO will use the information in the EBS and the IVR, to demonstrate that requirements in DOE O 458.1 are met. This will eliminate duplication of effort and maximize utilization of resources. (It should be noted that DOE O 458.1 is a DOE requirement; approval by outside parties is not required and should not be requested or implied that it is being requested. A copy of the IVR will be provided to regulators upon request.)

2.1.1. Authorized Limits Implementation Plan

An Authorized Limits Implementation Plan for meeting the requirements for the release and clearance of real property per DOE O 458.1, Section 4.k.(6) et seq. is needed to transfer real property. An Authorized Limits Implementation Plan has been established for PORTS (DOE 2018b) and PAD (DOE 2014c).

2.1.2. Authorized Limits Communication Plan

Appropriate public involvement and notification are components of Authorized Limits development. The development and use of an Authorized Limits Communication Plan will assist the sites in their communications within DOE and to various stakeholder groups and individuals. Communication of the purpose of the Authorized Limits, their regulatory basis, the radionuclides addressed by the Authorized Limits, and how they were derived, proposed, reviewed, and approved within DOE are anticipated to warrant explanation to various audiences throughout the real property transfer process, as well as an explanation of how Authorized Limits are applied to property transfer. An Authorized Limits Communication Plan has been established for PORTS (DOE 2018c) and PAD (DOE 2014e).

2.2. HISTORICAL SITE ASSESSMENT

Historical Site Assessments (HSAs) are conducted to address facilities and areas that had operations involving radioactive materials (DOE O 458.1, Section 4.k.(5)). The purpose of the HSA is to (1) identify potential, likely, or known sources of radioactive material and radioactive contamination based on existing or derived information; (2) identify sites that need further action as opposed to those posing no threat to human health; (3) provide an assessment for the likelihood of contaminant migration; (4) provide information useful to scoping and characterization surveys; and (5) provide initial classification of the site or survey unit as impacted or non-impacted in accordance with the assessment protocol as outlined in MARSSIM. As a part of the HSA, documents are gathered from various sources and are reviewed and evaluated to extract information on the radiological history of the real property proposed for transfer. Documents to be reviewed may include permits, licenses, storage records, waste manifests, authorizations, inventory records, surveys, drawings, and floor or other plans. Visual inspections and interviews, when possible, are also conducted as a part of the assessment, which is documented for the real property proposed for release from DOE control via transfer. A crosswalk of the requirements for the HSA with the contents of the EBS is found in Appendix D. Upon completion, the EBS becomes the HSA for the proposed property transfer.

2.3 OTHER REQUIREMENTS THAT APPLY TO BUILDINGS

Transfer of real property with buildings may require additional disclosure beyond that required under CERCLA 120(h)(4). These disclosures (e.g., lead-based paint, radon, vapor intrusion, etc.) shall be included in an EBS to address state and local requirements or to otherwise facilitate property transfer. In addition, buildings/structures must also be evaluated for compliance with Section 106 of the National Historic Preservation Act.

2.3.1 Radon

Per DOE 458.1, Section 4.f.(4), there is a limit on radon (including background) in buildings that are being released from DOE control. The text is as follows:

f. Airborne Radioactive Effluents. Radiological activities must be conducted in a manner such that the release of radioactive material to the atmosphere will:

...

(4) Not cause the radon-220 and radon-222 decay product concentration, including background, to exceed 0.03 WL (Working Level) in buildings that are being released from DOE control. Further, a reasonable effort must be made to meet a 0.02WL generic guideline for annual average radon-220 and radon-222 decay product concentration, including background, in such buildings;

Thus, the presence of radon in buildings to be transferred from DOE control must be evaluated to comply with DOE O 458.1, and may be needed to meet state or local requirements. In areas where radon is common, additional limits on future buildings may be needed (e.g., new buildings to be constructed with radon mitigation systems).

2.3.2 Vapor Intrusion

If there are constituents present in parcel media that are volatile enough to potentially pose a risk to human health by vapor intrusion into buildings, a vapor intrusion study, developed consistent with regulatory guidance, may be needed. Screening of the potential for vapor intrusion may be performed using the EPA Vapor Intrusion Screening Level calculator.

2.4 FINAL STATUS SURVEY AND INDEPENDENT VERIFICATION

Consistent with MARSSIM, a Final Status Survey is conducted using a graded approach. The purpose of the survey is to determine whether the property meets release criteria and DQOs, and is therefore ready for the Independent Verification Review. DOE O 458.1, Section 4.(k).8 also includes the requirement that radiological monitoring or surveys performed in support of clearance of property must:

- Use methodologies sufficient to meet measurement objectives such as those in the *Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM)*, the *Multi-Agency Radiation Survey and Assessment of Materials and Equipment Manual (MARSAME)* or other methodologies approved by DOE;
- Meet Measurement Quality Objectives;
- Use DOE-approved sampling and analysis techniques, if applicable; and

- Include an evaluation of non-uniformly distributed residual radioactive material, if applicable.

DOE O 458.1 also requires independent verification to ensure that control and release of property is consistent with DOE requirements, approved authorized limits, and procedures. Independent verification is integrated into the planning of each proposed property transfer and is performed independent of the PPPO Property Transfer Program and Project Teams. Independent verification activities for the release of real property must, at a minimum, include review of the radiological characterization report or data but, as appropriate, may include independent surveys or sample analysis to verify compliance. An Independent Verification Plan is required for each transfer. For PPPO, the Independent Verification Plan will be performed by a contractor that is independent of the DOE contractors conducting activities to support transfers.

The Independent Verification Plan will describe the tasks needed to prepare an Independent Verification Report. The Independent Verification Report will include a description of the area to be transferred and the activities completed as part of the independent verification. The Independent Verification Report, after completing any necessary factual accuracy reviews, will be included in the parcel transfer package. The Independent Verification Report will include a statement indicating if the parcel to be transferred meets the requirements in DOE O 458.1.

2.5 REQUIRED REVIEWS FOR DOE-HQ APPROVAL OF DOE O 458.1 DOCUMENTATION

Approval of DOE O 458.1 information prepared for real property transfer is obtained from the Assistant Secretary of Environmental Management, who has delegated the approval authority to the Deputy Assistant Secretary for Site Restoration.

3. EBS REPORT CONTENTS FOR UNCONTAMINATED PROPERTY

Documentation prepared to support PPPO title transfers under CERCLA Section 120(h) and the implementing regulations found at 40 *CFR* 373 includes an EBS that fulfills the CERCLA Section 120(h) requirements and details the condition of the real property proposed for transfer, including buildings / structures present therein and limitations on future use. Preparation of this report includes the review of government records, title documents, and aerial photographs, visual inspections of the property and adjacent properties, and interviews with current and former employees to identify any areas on the property where hazardous substances and petroleum products were stored for one year or more, known to have been released to the environment, or disposed. The report also summarizes the results of the characterization effort (and/or review of existing data) conducted to support title transfer. PPPO will coordinate with the CRS to ensure timely response, in particular with matters pertaining to title search and certification of 40 *CFR* 373-related information.

CERCLA 120(h)(4) specifies the information needed to be able to identify uncontaminated property. As noted earlier, the crosswalk found in Appendix B includes the information needs from CERCLA 120(h)(4) and where they are found in an EBS; and Appendix C includes the content narrative along with the requirements and crosswalk. Templates for the transmittal letters to the regulatory approval authorities for the draft and final EBSs are included in Appendix E. The interview form is found in Appendix K. The presence of constituents interior to buildings/structures are not considered to have been released to the environment; however, these constituents may need to be removed to facilitate property transfer of these structures.

3.1 DATA REQUIREMENTS FOR UNCONTAMINATED PROPERTY TRANSFERS

Data requirements for uncontaminated property transfers with uncontaminated buildings are specified in the Data Quality Objectives (DQOs) for PPPO, described in Appendix F. These DQOs are qualitative and quantitative statements that clarify the study objective, identify the appropriate type of data to collect (if any), determine the appropriate conditions for collecting the data, and specify limits on decision errors (EPA 2006). These DQOs define the performance criteria that limit the probabilities of making decision errors by considering the purpose of collecting the data, defining the appropriate type of data needed, and specifying tolerable probabilities of making decision errors. The DQOs for the PPPO property transfer projects have been designed to meet the data requirements included in CERCLA 120(h)(4), setting the requirements for use of available data considered in the EBS. If additional data collection is required, project-specific DQOs, consistent with DQOs in Appendix F, may need to be developed. The DQOs for PORTS and PAD are found in Appendix F. Additional building-specific DQOs are not required under CERCLA 120; rather, disclosure of site conditions to meet local/state requirements and facilitate property transfer will support the CERCLA 120 process. The EBS will include an evaluation of the data against the DQOs and assess whether the data are usable for their intended purpose; e.g., are the data representative of the media sampled, do the data support the hypothesis for which they are being used, and are the data sufficient to support the EBS conclusions that there is no evidence of a release.

4. OBTAINING ENVIRONMENTAL REGULATORY CONCURRENCE OF THE DOE DETERMINATION OF UNCONTAMINATED PROPERTY

Concurrence with the determination of uncontaminated property (including uncontaminated property with buildings) follows DOE's completion of the requirements of the CERCLA 120(h)(4) review process for the identification of uncontaminated property. Regulatory requirements are specified in CERCLA 120(h)(4)(B) and note that for transfers stating that the property is uncontaminated, the identification as an uncontaminated parcel is not complete until the concurrence of the appropriate regulatory authority has been obtained.

PORTS and PAD have different regulatory environments associated with their cleanup. Early involvement of the regulatory agencies in the DQO development process will expedite the regulatory concurrence process.

PORTS is regulated by the State of Ohio (i.e., the Ohio Environmental Protection Agency). PORTS is not an NPL site. PAD is a CERCLA site which is listed on the NPL and regulated by a combination of the EPA (Region 4) and the Commonwealth of Kentucky. For non-NPL sites, like PORTS, EPA Region 5 has declined to review/concur with the EBS. Thus, once OEPA has concurred or indicated that no further action is required, DOE can self-certify the EBS.

The CERCLA 120(h) statute goes on to say, "In the case of concurrence which is required from a State official, the concurrence is deemed to be obtained if, within 90 days after receiving a request for the concurrence, the State official has not acted (by either concurring or declining to concur) on the request for concurrence." There is not a similar time period that applies to EPA concurrence or non-concurrence. As explained above, the DOE-HQ approvals required for demonstration of compliance with DOE O 458.1 will occur as a part of the DOE-HQ review of the EBS and Independent Verification Report.

A determination of the suitability to transfer personal property is outside the scope of this protocol but the process has been established for both PAD and PORTS.