

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

Planning and Due Diligence for Real Property Transfer

PPPO-3463195
Revision 0
March 2016



Revision Change Log

Revision	Section	Description	Date
0	All	Initial development	JAN 2016

Prepared by:

PPPO Program Support
Specialist (Procedure Owner): Richard R Bonczek Date: 4/7/2016
Richard Bonczek

Approved by:

Acting PPPO Manager: Robert E. Edwards III Date: 4/7/2016
Robert E. Edwards, III

TABLE OF CONTENTS

1.0	POLICY	1
2.0	SCOPE	1
3.0	APPLICABILITY	1
4.0	REQUIREMENTS AND REFERENCES	1
5.0	DEFINITIONS	4
6.0	RESPONSIBILITIES	5
7.0	GENERAL INFORMATION	9
8.0	PROCEDURES	9

1.0 POLICY

"10 Code of Federal Regulations (CFR) Section 770 ("10 CFR 770") is the process established by the Department of Energy (DOE) to transfer excess, unneeded, unutilized or underutilized real property at defense nuclear facilities for purposes of economic development.¹ Non-economic development transfers (e.g., conservation/recreation/historic preservation/mitigation) are also covered by this procedure. The purpose of this procedure is to establish the roles and responsibilities for Portsmouth/Paducah Project Office (PPPO) and site personnel in the development of certain components of the required documentation and analysis to facilitate the transfer of real property by DOE. PPPO will facilitate the completion of required activities by other DOE organizations, (e.g., DOE-Headquarters (DOE-HQ), Environmental Management Consolidated Business Center (EMCBC) and others) that are needed to enable PPPO to transfer real property.

2.0 SCOPE

The scope of the procedure is to establish the methods for the PPPO-led aspects of the transfer of property for economic and non-economic development purposes. All property transfers at PPPO sites seek to attain the EM mission objective of footprint reduction.

3.0 APPLICABILITY

This procedure applies to the PPPO and site processes, planning in coordination with the Certified Realty Specialists (CRSs) at EMCBC, development of environmental due diligence documentation and performance of environmental and related reviews. This procedure applies to both coordination with persons or entities who request that real property be made available for transfer, or who submit proposals for property that DOE has made available for transfer for economic development purposes pursuant to procedures in 10 CFR770, *Transfer of Real Property at Defense Nuclear Facilities for Economic Development*. This procedure also establishes the site and PPPO methods for non-economic development transfers.

Pursuant to 42 U.S.C. 2201(g), Section 161(g) of the *Atomic Energy Act (AEA)*, the AEA (and by operation of subsequent statutes, its successor agencies) is authorized to acquire, purchase, lease, and hold real and personal property, including patents, as agent of and on behalf of the United States, subject to the provisions of 42 U.S.C. Section 2224, Section 174, *Development and Control of Atomic Energy*, and to sell, lease, grant, and dispose of such real and personal property as provided in this Act.

4.0 REQUIREMENTS AND REFERENCES

¹ In Section 3158 of the National Defense Authorization Act for Fiscal Year 1998, Congress directed DOE to prescribe regulations specifically for the transfer by sale or lease of real property at defense nuclear facilities for purposes of permitting economic development (42 U.S.C. 7274q(a)(1)) to dispose of unneeded real property at DOE's defense nuclear facilities for economic development.

4.1 Requirements

10 *Code of Federal Regulations* Part 1021, Department of Energy National Environmental Policy Act Implementing Regulations

42 *U.S.C.* 9601 et. seq., Comprehensive Environmental Response, Compensation, and Liability Act of 1980

DOE Order 458.1 Change 3 (or latest revision), Radiation Protection of the Public and the Environment

4.2 References

10 *Code of Federal Regulations* 770, Transfer of Real Property at Defense Nuclear Facilities for Economic Development, Interim final rule, 65 *FR* 10685-10691, *Federal Register*, Tuesday, February 29, 2000

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

42 *U.S.C.* 2201(g), Atomic Energy Act of 1954, Section 161(g)

DOE 2015, DOE G -430.1-8, *Asset Revitalization Guide for Asset Management and Reuse*, Office of Environmental Management, July 16

DOE 2011, *Real Property Asset Management*, DOE Order 430.1B, Chg. 2, U.S. Department of Energy, Office of Management, Washington, D.C., April 25

DOE 1996. *Background Concentrations and Human Health Risk-based Screening Criteria for Metals in Soil at the Paducah Gaseous Diffusion Plant*, DOE/OR/07-1417&D2, U.S. Department of Energy, Paducah, KY, March

DOE 1997. *Background Levels of Selected Radionuclides and Metals in Geologic Media at the Paducah Gaseous Diffusion Plant*, DOE/OR/07-1586&D2, U.S. Department of Energy, Paducah, KY, June

DOE 2006, *Control and Release of Property*, Environment Safety and Health Bulletin, DOE/EH-0697, 2006-05, July. Bulletin

DOE 2011. *Radiation Protection of the Public and the Environment*, DOE Order 458.1, Chg. 2, U.S. Department of Energy, Office of Health, Safety and Security, Washington, D.C., June 6

DOE 2015a. *Methods for Conducting Risk Assessments and Risk Evaluations at the Paducah Gaseous Diffusion Plant, Volume 1, Human Health*, DOE/LX/07-0107&D2/R6/V1, U.S. Department of Energy, Paducah, KY, July

DOE 2015b. *Methods for Conducting Human Health Risk Assessments and Risk Evaluations at the Portsmouth Gaseous Diffusion Plant*, DOE/PPPO/03-0127&D8 DRAFT, U.S. Department of Energy, Piketon, OH, October

DOE 2015c. *Methods for Conducting Risk Assessments and Risk Evaluations at the Paducah Gaseous Diffusion Plant, Volume 2, Ecological*, DOE/LX/07-0107&D2/R1/V2, U.S. Department of Energy, Paducah, KY, May

DOE 2015d. *Methods for Conducting Ecological Risk Assessments and Ecological Risk Evaluations at the Portsmouth Gaseous Diffusion Plant, Piketon, Ohio*, DOE/PPPO/03-0215&D2, U.S. Department of Energy, March

DOE 2016, *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*, February

Environmental Protection Agency (EPA) 1989. *Risk Assessment Guidance for Superfund, Vol. 1: Human Health Evaluation Manual (Part A)*, EPA/540/1-89/002, U.S. Environmental Protection Agency, Washington, D.C.

EPA 1997. *Military Base Closures: Revised Guidance on EPA Concurrence in the Identification of Uncontaminated Parcels under CERCLA 120(h)(4)*, U.S. Environmental Protection Agency, Washington, D.C., March

EPA 1998, *Federal Facility Agreement for the Paducah Gaseous Diffusion Plant*, US Environmental Protection Agency, Atlanta, GA, February 13

EPA 2000. *Guidance for the Data Quality Objectives Process*, EPA/600/R-96/055, U.S. Environmental Protection Agency, Office of Environmental Information, Washington, D.C., August

EPA 2002. *Multi-Agency Radiation Survey and Site Investigation Manual*, Nuclear Regulatory Commission NUREG-1575 Rev. 1, U.S. Environmental Protection Agency EPA 402-R-97-016 Rev. 1, and Department of Energy DOE EH-0624 Rev. 1, August

EPA 2007. *Memorandum: Distribution of Superfund Preliminary Remediation Goals for Radionuclides in Buildings (BPRG) Electronic Calculator*, Office of Solid Waste and Emergency Response, No. 9355.0-114, U.S. Environmental Protection Agency, August

EPA 2009. *Multi-Agency Radiation Survey and Assessment of Materials and Equipment Manual*, Nuclear Regulatory Commission NUREG-1575 Supp. 1, U.S. Environmental Protection Agency EPA 402-R-09-001, and Department of Energy DOE HS-0004, January

Ohio EPA, 2012, *The April 13, 2010 Directors Final Findings and Orders for Removal Action and Remedial Investigation and Feasibility Study and Remedial Design and Remedial Action, Including the July 16 2012 modification thereto*, Ohio Environmental Protection Agency, Columbus OH, July 16 (hereafter referred to as the DFF&O)

5.0 DEFINITIONS

- 5.1 Appropriate for Economic Development:** Real property identified by DOE that may be used 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.
- 5.2 Authorized Limits:** Standards that govern the releases of personal and real property. They are radionuclide concentrations or activity levels approved by DOE to permit the release of property from DOE control, consistent with DOE's radiation protection framework and standards for workers, the general public, and the environment. (For specific information on Authorized Limits development and implementation, see DOE Order 458.1.).
- 5.3 Available Real Property:** 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, 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.
- 5.4 Certified Realty Specialist (CRS):** A DOE professional authorized to review and approve realty actions. Realty Specialists provide guidance and assistance to the field in the entire range of real property activities.
- 5.5 Community Reuse Organization (CRO):** 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.
- 5.6 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.
- 5.7 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 Portsmouth and Paducah 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.

- 5.8 Environmental Baseline Survey (EBS) Report:** The document prepared on the research and analysis of the CERCLA 120(h) report prepared for the property proposed for transfer.
- 5.9 Environmental Due Diligence:** The action of conducting thorough and systematic research into the history of a place, 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 identified in CERCLA 120(h).
- 5.10 Historical Site Assessment (HSA):** A term used for a process that occurs under 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.
- 5.11 Property transfer:** The process of disposing of real property.
- 5.12 Real property:** All interest in land, together with the improvements, structures, fixtures located on the land (usually including prefabricated moveable structures), and associated appurtenances under the control of any federal agency.
- 5.13 Reuse:** The use of a property after transfer/disposal. As used in the protocol, it is assumed that the reuse will occur by non-federal parties.

6.0 RESPONSIBILITIES

6.1 PPPO Manager

- 6.1.1 Ensures that property transfer responsibilities are conducted in accordance with applicable laws, regulations, protocols and procedures.

6.2 Site Reuse Lead

- 6.2.1. In coordination with the Site Lead and the CRS (as needed), assesses real property utilization/mission need and identifies land areas that are appropriate for economic development and/or footprint reduction for planning purposes and for use with the Ten Year Site Plan.
- 6.2.2 Coordinates with the local CRO or others to facilitate opportunities for economic development or other types of site reuse. Examples include organizing site visits, providing site documentation and facilitating communication with DOE site management.
- 6.2.3 After evaluation of a real property request, provide information on the real

property to those who request it. This may include providing information on the environmental and other evaluations that may still be needed to determine if the real property is available for transfer.

- 6.2.4 For economic development proposals, in coordination with the PPPO Reuse Lead and the Site Lead, reviews proposals (from CROs or other interested parties) including making any needed inquiries about the proposal, obtaining additional information as needed.
- 6.2.5 For economic development proposals, reviews the proposal materials to determine if indemnification was requested. Transfers conducted by DOE pursuant to 10 CFR 770 provide for indemnification under certain circumstances. Indemnification must be requested at the proposal stage.
- 6.2.6 Notifies the Site Lead and PPPO Reuse Lead if indemnification has not been requested so that the PPPO Reuse Lead will verify and document the requester's intent regarding indemnification (per 6.2.5, above).
- 6.2.7 In coordination with the Site Lead and the PPPO Reuse Lead, reviews economic development proposals to make a recommendation on whether or not to proceed with the 10 CFR 770 transfer process. If the decision is made to proceed with the transfer process, develops the supporting justification and recommendation/"business case" and forwards same to the PPPO Manager.
- 6.2.8 If the 10 CFR 770 proposal requests a less than fair market value (<FMV) or no consideration (no cost) transfer, PPPO, in coordination with the site and CBC evaluates the proposal in light of the valuation determined by the CRS and determines if the proposal is sufficient to warrant a <FMV/no cost transfer. A conveyance at <FMV may be done if it, in the DOE's judgment, furthers the public policy objectives of the laws governing the downsizing of defense nuclear facilities.

6.3 PPPO Health Physicist

- 6.3.1 Ensures that a Historical Site Assessment (HSA) is conducted for facilities and/or areas to:
 - Identify potential, likely, or known sources of potential contamination resulting from radioactive material use or storage
 - Identify areas as Impacted or Non-Impacted in accordance with assessment protocol as outlined in the MARSSIM
 - Identify specific data gaps for Impacted Areas
 - Provide information useful for designing subsequent radiological characterization surveys of Impacted Areas.
- 6.3.2 Upon request by the PPPO Reuse Lead, ensures that an Independent

Verification (as called for by DOE Order 458.1) is performed to ensure that control and release of property is consistent with DOE requirements, approved Authorized Limits, and procedures.

6.4 Site Lead

- 6.4.1 In coordination with the Site Reuse Lead and the CRS (as needed), assesses real property utilization/mission need and identifies land areas that are appropriate for economic development and/or footprint reduction for planning purposes and for use with the Ten Year Site Plan.
- 6.4.2 Coordinates with appropriate technical staff to develop a figure/plan that shows the proposed integration of the transfer process with site cleanup (e.g. Near-term, Middle-term and Longer-term/post deactivation and decommissioning).

6.5 PPPO Reuse Lead

- 6.5.1 Ensures that the information developed by the Site Lead and Site Reuse Lead regarding real property appropriate for economic development and/or footprint reduction is considered in the development of the Ten Year Site Plan.
- 6.5.2 Ensures that an Independent Verification (as called for by DOE Order 458.1) is funded and performed to ensure that control and release of property is consistent with DOE requirements, approved Authorized Limits, and procedures.
- 6.5.3 In coordination with the Site Lead submits the completed CERCLA 120(h) documentation to the regulatory agencies and/or appropriate state officials involved in the transfer to obtain review and concurrence or approval as applicable.
- 6.5.4 Upon concurrence or approval of the CERCLA 120(h) EBS and in coordination with the CRS, communicates the availability of real property to the CRO, community, or others who may be interested or have requested such property.
- 6.5.5 In conjunction with the EMCBC CRS and others as specified by the PPPO Manager, reviews the proposal, and communicates with the potential transferee as to whether or not the transfer is in the best interest of the Government and if so, would obtain EMCBC CRS support to proceed with the development of the transfer agreement.
- 6.5.6 For economic development transfers, writes to the property requester to inform them that indemnification is available (if applicable) and that it needs to be requested in writing. Requests that the proposal be modified to request indemnification (if it is available and they wish to seek it) or that they

correspond by letter to the DOE Manager and indicate that they are not seeking indemnification.

- 6.5.7 Transmits the completed transfer package (including the draft deed prepared by the EMCBC CRS, completed environmental due diligence materials and supporting information, business case, and necessary correspondence for signature by the Secretary) to the Lead Program Secretarial Officer (EM-1) for review and forwarding for required Congressional notification.
- 6.5.8 Obtains review and approval of the completed transfer package from DOE-HQ Environmental Management (EM), General Counsel and other DOE-HQ organizations as required.
- 6.5.9 In coordination with the DOE-HQ EM liaison, obtains Secretarial signature on Congressional notification transmittals that serves as HQ support and approval of the transfer.
- 6.5.10 Maintains the PPPO Transfer Protocol.

6.6 National Environmental Protection Agency (NEPA) Coordinator

- 6.6.1 Ensures completion of site-wide NEPA documentation for reuse, as appropriate.
- 6.6.2 Supports the Site Reuse Lead in gathering information on the transferees proposed activities to enable screening them against the site-wide NEPA documentation, or the categorical exclusions available for transfers per 10 CFR 1021.
- 6.6.3 In coordination with the Site Reuse Lead, gain sufficient information from the CRO and their potential tenant, or others (such as for non-economic development transfers), to enable screening the proposed transferee's activities for NEPA purposes. The proposed activities would be screened against the Site's transfer NEPA documentation (the site-specific Environmental Assessment (EA) for transfer) or available NEPA categorical exclusions for transfer.
- 6.6.4 Ensures completion of the review of the requester's proposed activities by the necessary site organizations prior to operation by the requester/proposer (after the deed is executed).

6.7 Environmental Protection Specialist

- 6.7.1 Ensures completion of an environmental due diligence review including an Environmental Baseline Survey, to determine if the property in question is eligible for transfer and if any deed restrictions are necessary.

- 6.7.2 Supports the Site Reuse Lead in coordinating with the CRO and their potential tenant, or others such as for a non-economic development transfer, for a specific parcel, prior to site occupancy, to identify their proposed activities and operations and to identify their operational needs post-transfer.
- 6.7.3 Ensures that DFF&O or Federal Facility Agreement (FFA) requirements for pre and post-transfer notification of the regulators of the transfer (including leases) of real property are completed.

7.0 GENERAL INFORMATION

- 7.1 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, but other transfers may be accomplished using the Atomic Energy Act using Section 161(g). In either case, coordination with the EMCBC CRS is needed.
- 7.2 Pursuant to 10 CFR 770.8, transfer at less than fair market value is also available for economic development transfers if considerable infrastructure improvements are needed to make it 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.
- 7.5 If a non-10 CFR 770 process transfer is pursued (such as for a public benefit or conservation/preservation purposes), the environmental due diligence tasks are the same as those for the 770 process. Coordination with the CRS at the EMCBC is needed for all real property transfers, regardless of the process followed.
- 7.6 It should be noted that CERCLA 120(h) and 10 CFR 770 address the transfer of real property and are not intended for use with personal property that is not attached to or associated with real property or easements.
- 7.7 Any site document developed in support of property transfer must be appropriately marked.

8.0 PROCEDURES

- 8.1 On a periodic basis and in coordination with the EMCBC CRS for utilization information, assess real property utilization/mission need and identify land areas that are appropriate for economic development and/or footprint reduction in consideration of when they may be available (e.g., near-term, middle-term and longer-term/post decontamination and demolition).
- 8.2 Complete the environmental due diligence as required by CERCLA 120(h).

- 8.3** Conduct an HSA for facilities and/or areas to:
- Identify potential, likely, or known sources of potential radiological contamination resulting from radioactive material use or storage
 - Identify areas as Impacted or Non-Impacted in accordance with assessment protocol as outlined in the MARSSIM
 - Identify specific data gaps for Impacted Areas
 - Provide information useful for designing subsequent radiological characterization surveys of Impacted Areas.
- 8.4** Perform an Independent Verification (as called for by DOE Order 458.1) to ensure that control and release of property is consistent with DOE requirements, approved Authorized Limits, and procedures.
- 8.5** Complete site-wide NEPA documentation, as applicable.
- 8.6** After review by the Site Lead, PPPO Legal and their designated subject matter experts, submit the completed CERCLA 120(h) documentation for approval or concurrence by the regulatory agencies and/or appropriate state officials involved in the transfer.
- 8.7** Ensure that any necessary pre-transfer notifications are made to the applicable regulators in a timely manner pursuant to the requirements of the DFF&O or FFA.
- 8.8** Upon approval or concurrence by the regulatory agencies and/or appropriate state official, and in coordination with the CRS, communicates the availability of real property to the CRO, community, or others who may be interested or have requested such property.
- 8.9** After evaluation of a request for information on real property in response to a proposal for available property, or a request to make property available, provide information on the property to those who request it.
- 8.10** Review economic development proposals against the requirements of 10 CFR 770.7 including making any needed inquiries about the proposal, obtaining additional information as needed. For proposals other than for economic development, consult with the CRS to obtain realty input on the development of a transfer strategy.
- 8.11** Review economic development proposals to make a determination on whether or not to proceed with the transfer process including developing the recommendation/“business case” that supports proceeding with the transfer process.

Note: If the proposal requests a less than fair market value (<FMV) or no consideration (no cost) transfer, PPPO, in coordination with the site and EMCBC, will evaluate the proposal in light of the valuation determined by the CRS and determine if the proposal is sufficient to warrant a <FMV/no cost

transfer. A conveyance at <FMV may be done if it, in the DOE's judgment, furthers the public policy objectives of the laws governing the downsizing of defense nuclear facilities.

- 8.12** Screen the transferee's proposed activities against the site-wide NEPA documentation
- 8.13** Capture proposal information as provided by the Site Reuse Lead identifying the proposed activities and operations and screen the information against the site-wide NEPA document or NEPA regulations, as applicable.
- 8.14** In coordination with EMCBC CRS, develop, assemble and transmit to DOE HQ all of the materials for the draft transfer agreement including completion of the recommendation/"business case", development of the draft deed, and all required correspondence and materials needed for the transfer package
- 8.15** Obtain review and approval from HQ EM, General Counsel, and others as needed.
- 8.16** Obtain Secretarial signature on Congressional notification transmittals that serves as HQ support and approval of the transfer (pending the completion of the required Congressional notification).
- 8.17** Once the Congressional notification period has ended, finalize and execute the deed and ensure that the deed is recorded with the Register of Deeds in the county where the real property transferred is located.
- 8.18** Ensure that any post-transfer notification requirements are made (such as may be called for in site regulatory documents such as the DFF&O or FFA).