§ 11.90 What documentation must the authorized official prepare after completing the assessment?

(a) At the conclusion of an assessment, the authorized official must prepare a Report of Assessment that consists of the Preassessment Screen Determination, the Assessment Plan, and the information specified in paragraphs (b) and (c) of this section as applicable.

(b) When the authorized official has used a type A procedure, the Report of Assessment must include the information specified in subpart D.

(c) When the authorized official has used type B procedures, the Report of Assessment must include all documentation supporting the determinations required in the Injury Determination phase, the Quantification phase, and the Damage Determination phase, and specifically including the test results of any and all methodologies performed in these phases. The preliminary estimate of damages shall be included in the Report of Assessment. The Restoration and Compensation Determination Plan, along with comments received during the public review of that Plan and responses to those comments, shall also be included in the Report of Assessment.

§ 11.91 How does the authorized official seek recovery of the assessed damages from the potentially responsible party?

(a) At the conclusion of the assessment, the authorized official must present to the potentially responsible party a demand in writing for the damages determined in accordance with this part and the reasonable cost of the assessment. [See §11.92(b) to determine how the authorized official must adjust damages if he or she plans to place recovered funds in a non-interest-bearing account.] The authorized official must deliver the demand in a manner that establishes the date of receipt. The demand shall adequately identify the Federal or State agency or Indian tribe asserting the claim, the general location and description of the injured resource, the type of discharge or release determined to have resulted in the injuries, and the damages sought from that party.

(b) Report of assessment. The demand letter shall include the Report of Assessment as an attachment.

(c) Rebuttable presumption. When performed by a Federal or State official in accordance with this part, the natural resource damage assessment and the resulting Damage Determination supported by a complete administrative record of the assessment including the Report of Assessment as described in §11.90 of this part shall have the force and effect of a rebuttable presumption on behalf of any Federal or State claimant in any judicial or adjudicatory administrative proceeding under CERCLA, or section 311 of the CWA.

(d) Potentially responsible party response. The authorized official should allow at least 60 days from receipt of the demand by the potentially responsible party, with reasonable extensions granted as appropriate, for the potentially responsible party to acknowledge and respond to the demand, prior to filing suit. In cases governed by section 113(g) of CERCLA, the authorized official may include a notice of intent to file suit and must allow at least 60 days from receipt of the demand by the potentially responsible party, with reasonable extensions granted as appropriate, for the potentially responsible party to acknowledge and respond to the demand, prior to filing suit.

§ 11.92 Post-assessment phase—restoration account.

(a) Disposition of recoveries. (1) All sums (damage claim and assessment costs) recovered pursuant to section 107(f) of CERCLA or sections 311(f)(4) and (5) of the CWA by the Federal government acting as trustee shall be retained by the trustee, without further
appropriation, in a separate account in the U.S. Treasury.

(2) All sums (damage claim and assessment costs) recovered pursuant to section 107(f) of CERCLA, or sections 311(f)(4) and (5) of the CWA by a State government acting as trustee shall either:

(i) Be placed in a separate account in the State treasury; or

(ii) Be placed by the responsible party or parties in an interest bearing account payable in trust to the State agency acting as trustee.

(3) All sums (damage claim and assessment costs) recovered pursuant to section 107(f) of CERCLA or sections 311(f)(4) and (5) of the CWA by an Indian tribe shall either:

(i) Be placed in an account in the tribal treasury; or

(ii) Be placed by the responsible party or parties in an interest bearing account payable in trust to the Indian tribe.

(b) Adjustments. (1) In establishing the account pursuant to paragraph (a) of this section, the calculation of the expected present value of the damage amount should be adjusted, as appropriate, whenever monies are to be placed in a non-interest bearing account. This adjustment should correct for the anticipated effects of inflation over the time estimated to complete expenditures for the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(2) In order to make the adjustment in paragraph (b)(1) of this section, the authorized official should adjust the damage amount by the rate payable on notes or bonds issued by the United States Treasury with a maturity date that approximates the length of time estimated to complete expenditures for the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(c) Payments from the account. Monies that constitute the damage claim amount shall be paid out of the account established pursuant to paragraph (a) of this section only for those actions described in the Restoration Plan required by §11.93 of this part.

resource injuries as those identified in each of the subpart D assessment procedures that were the basis of the awards. 


APPENDIX I TO PART 11—METHODS FOR ESTIMATING THE AREAS OF GROUND WATER AND SURFACE WATER EXPOSURE DURING THE PREASSESSMENT SCREEN

This appendix provides methods for estimating, as required in §11.25 of this part, the areas where exposure of ground water or surface water resources may have occurred or are likely to occur. These methods may be used in the absence of more complete information on the ground water or surface water resources.

Ground Water

The longitudinal path length (LPL) factors in table 1 are to be applied in estimating the area potentially exposed downstream of the known limit of exposure or of the boundary of the site. Estimates of lateral path width (LPW) are to be used when the LPW exceeds the width of the plume as determined from available data, or when the width of the plume at the boundary of the site is estimated as less than the LPW. In the absence of data to the contrary, the largest values of LPL and LPW consistent with the geohydrologic data available shall be used to make the estimates required in the preassessment screen. An example computation using the LPL and LPW factors follows table 1.

**Table 1—Factors for Estimation of Areas Potentially Exposed Via the Ground Water Pathway**

<table>
<thead>
<tr>
<th>Aquifer type</th>
<th>Hyd. conductivity/porosity factor (miles/year)</th>
<th>Hyd. gradient estimate (feet/mile)</th>
<th>Time since release began (in years)</th>
<th>Longitudinal path length (in feet)</th>
<th>Lateral path width (in feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sand</td>
<td>6000</td>
<td>x</td>
<td>x</td>
<td>1</td>
<td>LPL=0.2LPL</td>
</tr>
<tr>
<td>Sand+silt</td>
<td>600</td>
<td>x</td>
<td>x</td>
<td>1</td>
<td>LPL=0.3LPL</td>
</tr>
<tr>
<td>Gravel</td>
<td>10</td>
<td>x</td>
<td>x</td>
<td>1</td>
<td>LPL=0.4LPL</td>
</tr>
<tr>
<td>Sandstone</td>
<td>0.01</td>
<td>x</td>
<td>x</td>
<td>1</td>
<td>LPL=0.8LPL</td>
</tr>
<tr>
<td>Shale</td>
<td>0.01</td>
<td>x</td>
<td>x</td>
<td>1</td>
<td>LPL=0.8LPL</td>
</tr>
<tr>
<td>Karst Limestone or Dolomite</td>
<td>3×10^-6</td>
<td>x</td>
<td>x</td>
<td>1</td>
<td>LPL=0.8LPL</td>
</tr>
<tr>
<td>Limestone or Dolomite</td>
<td>0.01</td>
<td>x</td>
<td>x</td>
<td>1</td>
<td>LPL=0.8LPL</td>
</tr>
<tr>
<td>Fractured Crystalline Rocks</td>
<td>0.3</td>
<td>x</td>
<td>x</td>
<td>1</td>
<td>LPL=0.8LPL</td>
</tr>
<tr>
<td>Dense Crystalline Rocks</td>
<td>1×10^-3</td>
<td>x</td>
<td>x</td>
<td>1</td>
<td>LPL=0.8LPL</td>
</tr>
</tbody>
</table>

**Example of Computation for Estimating the Area Potentially Exposed Via Ground Water Pathway**

A release of hazardous substances occurs from a facility located in a glacial valley. Available data indicate the release may have occurred intermittently over a period of almost 1 year, although only one well about 300 feet downgradient of the facility boundary had detectable quantities of contaminants. The contaminated well is screened in the water table aquifer composed of gravelly sands. The facility boundary nearest the contaminated well is almost 3,000 feet in length, but a review of available data determined the release is probably localized along a 500-foot section of the boundary where a stream leaves the facility. Available water table data indicate hydraulic gradients in the valley range from 0.005 feet/mile up to 0.25 feet/mile near pumping wells. No pumping wells are known to be located near the release, and a mean hydraulic gradient of 0.1 feet/mile is estimated in the vicinity of the release site. Using the gravel factor from table 1, the LPL and LPW are estimated:

- 6000×0.1×1=600 feet (LPL)
- 600×0.2=120 feet (LPW).

Since the estimated LPW (120 feet) is less than the plume width (500 feet) determined from other available data, the greater number is used to compute the area potentially exposed:

1. 600 feet×500 feet=300,000 square feet (about 6.9 acres).
2. 300 feet×500 feet=150,000 square feet (about 3.5 acres).

The total area potentially exposed is the sum of (1) and (2): 6.9+3.5=10.4 acres.

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