

Contact Information

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OVERVIEW

- CERCLA/Restoration Developments
 - ICs/LUCs
 - Natural Resources
 - FFAs
- RCRA Developments
- CERCLA-RCRA Integration
- UXO/Military Munitions
- DERP Guidance (deferred)

Land Use Controls/Institutional Controls

- Institutional controls: “non-engineering measures designed to prevent or limit exposure to hazardous substances left in place at a site, or assure effectiveness of the chosen remedy.”
- 17 Jan 2001 DUSD(ES) “Policy on Land Use Controls Associated with Environmental Restoration Activities”
- 02 Mar 2001 Guidance on Land Use Control Agreements with Regulatory Agencies

EPA Policy/Guidance: LUCs

- OSWER 9200.1-23P, July 1999, “A Guide To Preparing Superfund Proposed Plans, Records of Decision, And Other Remedy Selection Decision Documents”
 - Summary of remedial alternatives: describe remedial components using ICs to supplement engineering controls by providing notice and/or restricting future activities
 - Evaluation of alternatives should discuss adequacy and reliability of Ics

EPA Policy/Guidance: RODs

- ICs: “non-engineering methods intended to affect human activities in such a way as to prevent or reduce exposure”
- Describe selected remedy in declaration to include IC components, and entities responsible for implementing and enforcing
- Describe each alternative including IC components, and entities responsible for implementing and maintaining

EPA Policy (cont'd)

- If selected remedy includes ICs, ROD must “describe the specific types of controls and the entity that will be responsible for implementing them and maintaining their effectiveness.” (p. 6-59)
- Bottom line: assess ICs as any other remedial component/alternative

Fallback: Institutional Control Implementation Plan (LUCIP)

- Comprehensive Implementation Strategy
- Responsible party for implementation and monitoring
- Procedures for above
- Level of detail commensurate with site risk
- Level of regulatory involvement and approval and mechanism to formalize varies [see template in March 2001 guidance]

5-Year Reviews

- Required whenever hazardous substances remain above levels that do not allow unrestricted use (NPL and non-NPL sites)
- Timeliness
- DoD has responsibility
- EPA assertions of authority

Natural Resources

- AF both a trustee and a responsible party
- 2 May 2000 DUSD(ES) “Interim Policy on Integration of Natural Resource Injury Responsibilities and Environmental Restoration Activities”
- Response action cleanup vs NR restoration
- MMR, former AFP 83 (South Valley)
- ER Funding issues

MISCELLANEOUS DEVELOPMENTS

- Permit exemption for response actions (42 USC 9621(e)(1))
- Fort Ord, CA case: No pre-remedial completion bar to judicial review
- Restoration Advisory Boards (RABs)
 - Technical review committee (TRC) substitute per 10 USC § 2705(c)-(g)
 - Litigation: Fort Ord; McClellan AFB?

FEDERAL FACILITY AGREEMENTS (FFAs)

- CERCLA 120(e) requirement for National Priorities List (NPL) Sites
- 10 Feb 99 DoD and EPA changes to 1988 Model FFA
- Recent FFAs (Hanscom, Langley, McGuire)
 - Navy & Army
 - EPA focus on enforceability
- Current status

RCRA DEVELOPMENTS

- EPA Penalty Authority
 - Federal Facility Compliance Act (FFCA 1992)
 - Underground Storage Tanks
 - 1997 EPA change of course & DoD/Service positions
 - OLC opinion: AF currently paying fines levied by EPA
 - AF seeking reconsideration

RCRA DEVELOPMENTS

- Reform Initiatives
 - Government Performance and Results Act (GPRA)
 - “RCRA Cleanup Reforms” (EPA 530-F-99-018, July 1999)
 - Corrective Action (CA) Program Focus
 - National Cleanup Goals for 1,712 RCRA facilities (127 DoD, 43 - 45 AF)

RCRA DEVELOPMENTS

- Interim success indicators
 - Control current human exposure
 - Control migration of contaminated groundwater
- Goal by 2005: 95% control of human exposure, 70% control of GW migration
- Misclassification of DoD facilities
 - Outdated data & little EPA coordination
 - Correct via EPA “Documentation of Environmental Indicators Determination”

CERCLA-RCRA INTEGRATION

- CERCLA (42 USC § 9620(a)(1) & (2)) and DERP (10 USC § 2701(a)(2) and (c)(1)) mandate to comply with CERCLA
- CERCLA § 120(i): RCRA CA obligations not impaired (all facilities)
- CERCLA § 120(a)(4): response actions shall comply with state response laws (non-NPL)

CERCLA-RCRA INTEGRATION

- 16 Apr 2001 SAF/MIQ Policy
 - Integration acknowledgement and mandate
 - CERCLA “umbrella” preference
 - May stay CERCLA and respond under other legal authority (42 USC § 9620(d)(2)(B))
 - Preference for formalized “agreement”

RANGES/MILITARY MUNITIONS

- DoD Explosives Safety Board (DDESB); 10 USC §§ 172 et. seq.
- DERP authority to correct “...other environmental damage” (10 USC § 2701(b)(2))
- Delegated Presidential response authority (42 USC § 9604 and EOs 12580, 13016)
- EPA & State overlapping authorities

RANGES/MILITARY MUNITIONS

- 7 Mar 2000 Guidance: “DoD and EPA Management Principles for Implementing Response Actions at Closed, Transferring and Transferred (CTT) Ranges”
- Proposed “range rule” was withdrawn
- Discussion starting now with EPA/ASTSWMO on new approach

RANGES/MILITARY MUNITIONS

- DoD Directive 4715.11 (17 Aug 1999):
“Environmental and Explosive Safety Management on [DoD] Active and Inactive Ranges Within the United States”
 - Procedures to assess environmental impact of munitions use
 - Respond to munitions constituent releases off-range if imminent and substantial threat
- Draft Directive in progress

RANGE RULE

- 19 Mar 1998 DepSec/DEF memo “Funding for Department of Defense (DoD) Range Rule Requirements”
 - Closed, Transferred, Transferring-- ER eligible
 - Active & inactive (“operational ranges”) - policy precludes ER funding
- Sustainable ranges subcommittee working on definition of “operational range” as part of new Directive