1-30-00313

NYSDEC -NAVAIR (Naval Air Systems Command) Meeting- NWIRP Bethpage Friday May 25, 2007

1. NAVAIR,will update NYSDEC on the status of property transfer

* Public Sale being pursued by Navy
* Congressional discussion with Navy Secretariat on discontinued transfer to County
* Give NAVAIR perspective to NYSDEC that impact cleanup action
* Give Navy "corporate" structure, responsibilities, and directives; (i.e., which Navy)

2. Partnering Process: Navy will present their view, NYSDEC theirs. The meeting of the 25th will be to develop a list of topics to discuss at an ensuing "partnering" meeting.

3. The overall RCRA/CERCLA subjects are listed below. (NAVAIR) needs to understand how these relate. Sub-topics are based on specific parts or associated with various aspects of the proposed RCRA permit.Discussion of these topics form an agenda.)

A. Meaning of "Renewal" vs "Modification"

B. Physical boundaries of RCRA Permit and CERLA Requirements:

* Does this need to be in/attached to the Permit?
* Noting, within the Permit, of the non-applicability of the Permit to the "96 acres"
* How is old Plant 20 excluded?
* Applicability of the concept of contiguous
* Significance of including 1983 Part A application in the Permit. Does anybody have the original Part A?
* The efficacy of a Permit naming two physically and contractually unrelated entities, Navy and Northrop Grumman Corporation (NGC).
* Navy is not an owner of property on which NGC operates
* Is Navy "theoretically" responsible for action taken or not by NGC and vice versa?
* Dilemma of compliance/enforcement in general and compliance schedules in particular that this causes
* Navy is an operator on property Navy owns
* Process for separating Navy from NGC
* Application of Permit to future owners or lessees of current Navy property
* Current expectation is that Navy would remain an operator if property transferred to new owner
* Need coherent identification of responsible entities to allow property transfer and/or use
* Process for aligning Permit with new owner after property is sold/transferred by Navy

C. Post Remedial Care (Long Term Management)

* Is this associated with the "9 acres" under the Permit, will the site also remain as a listed Part 375 Inactive Hazardous Waste Site?
* How Statement of Basis was used in Permit revision process
* Permit SWMU/AOC acknowledgment of NGC RCRA approved cleanup of Bldg 3 soil
* Relationship of Fact Sheet to actual Permit coverage/requirements
* Clarification of how logic in fact sheet is reflected in permit
* Have previous Navy cleanup decisions been actually or tacitly incorporated in Permit
* Process for amending cleanup decisions.
* Process for actually submitting amended cleanup decisions under the Permit.
* Process of setting compliance schedules for any new or amended work under the Permit.

D. Relationship between Permit and "Navy CERCLA" RODs ("Decision Documents")

Relationship between Permit and Federal Facility State Remediation Agreement on groundwater
New York "Superfund" (Part 375) regulation of NGC and blending of "Navy CERCLA"
Can New York pay for a cleanup threatening HHE and then sue PRPs or must NY rely on consent orders?
Relationship to Navy of Permit's reference to negotiations for a compliance order with Permitee meaning NGC
Addition of and whether all potential SWMUs/AOCs were/are included in permit
What is being covered by Permit's SWMU table designation of South Recharge Basins and South Recharge Basins under Permit section on "Corrective Action Through Orders-on-Consent."
The extent to which this Permit covers groundwater.

E. NWIRP CERCLA Five Year Review

Remedy implementation
OU 1: Site 1, AOC 22, Site CERLA/RCRA Deed restrictions
OU 2: GM 38 Area
GM 75 Area
South Farmingdale Water District
New York Water Service
Massapequa Water District Out post Wells.
Review of the Long Term Monitoring Program

President
Executive Orders

Secretary of Defense — Attorney General

Deputy Assistant Secretary of Defense (Environmental Security)
DERP (DSMOA) guidance

Secretary of the Navy

Assistant Secretary of the Navy (Installations & Environment)

Office of General Counsel (ASN(I&E))

Deputy Assistant Secretary of the Navy (Installations and Facilities) and
Deputy Assistant Secretary of the Navy (Environment)
DONEPM

Office of General Counsel (Litigation Office)

Chief of Naval Operations
Office of Environment Safety and Health –N45
OPNAVINST

Naval Air Systems Command
Aircraft Procurement

NWIRP Bethpage

Divestiture

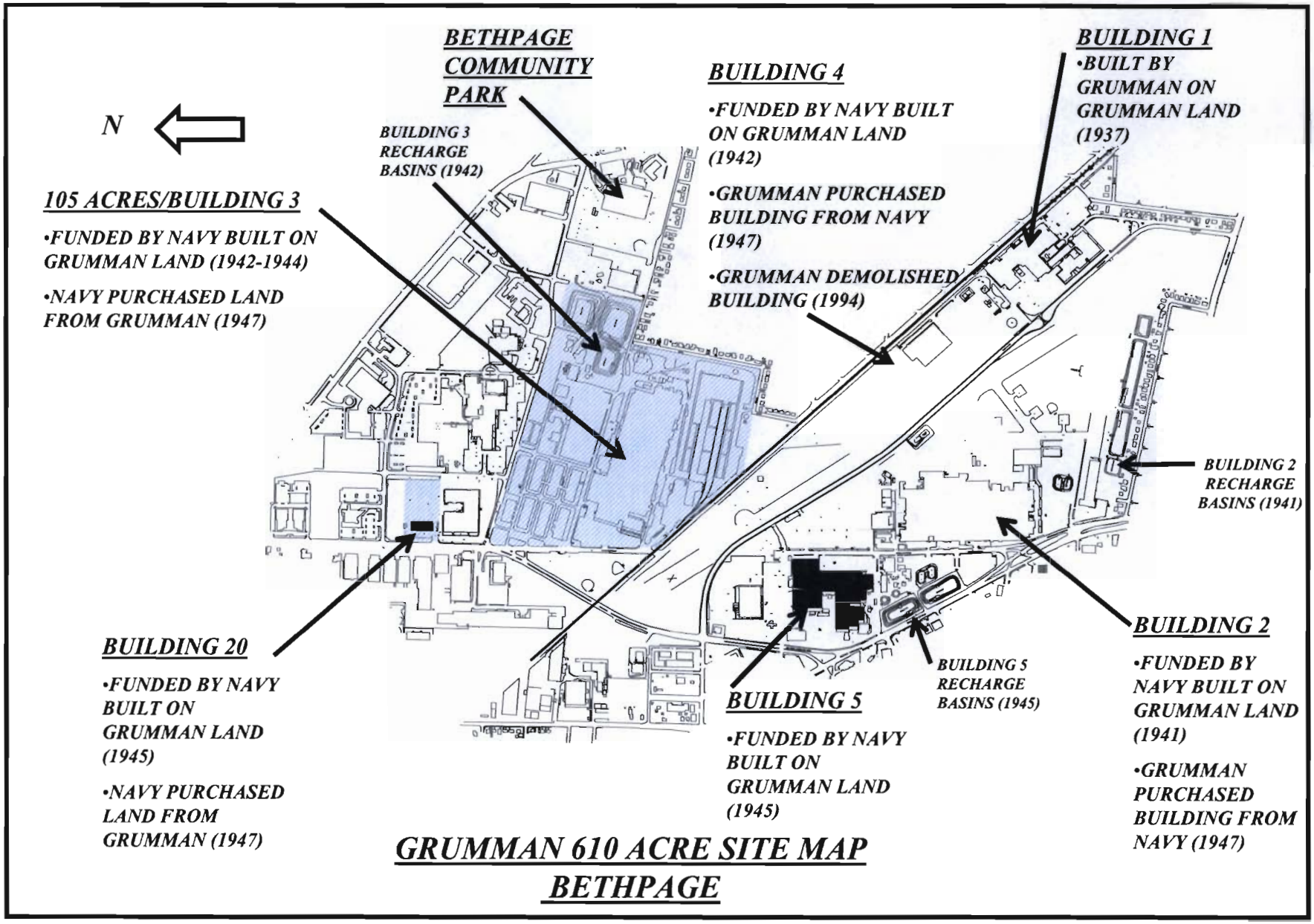
Naval Facilities Engineering Command
Engineering/Facilities/Environment Services

NAVFAC Atlantic

NAVFAC Mid Atlantic

Installation Restoration Program Operation

Environmental Restoration, Navy ($)



GRUMMAN 610 ACRE SITE MAP
BETHPAGE

Former NWIRP Bethpage, NY

(Plants 3 & 17 -"105 acre" site)

1.3 million s.f. under roof originally used to manufacturer parts of all Grumman aircraft. Production ended in 1995

Abandoned production building – Plant 3

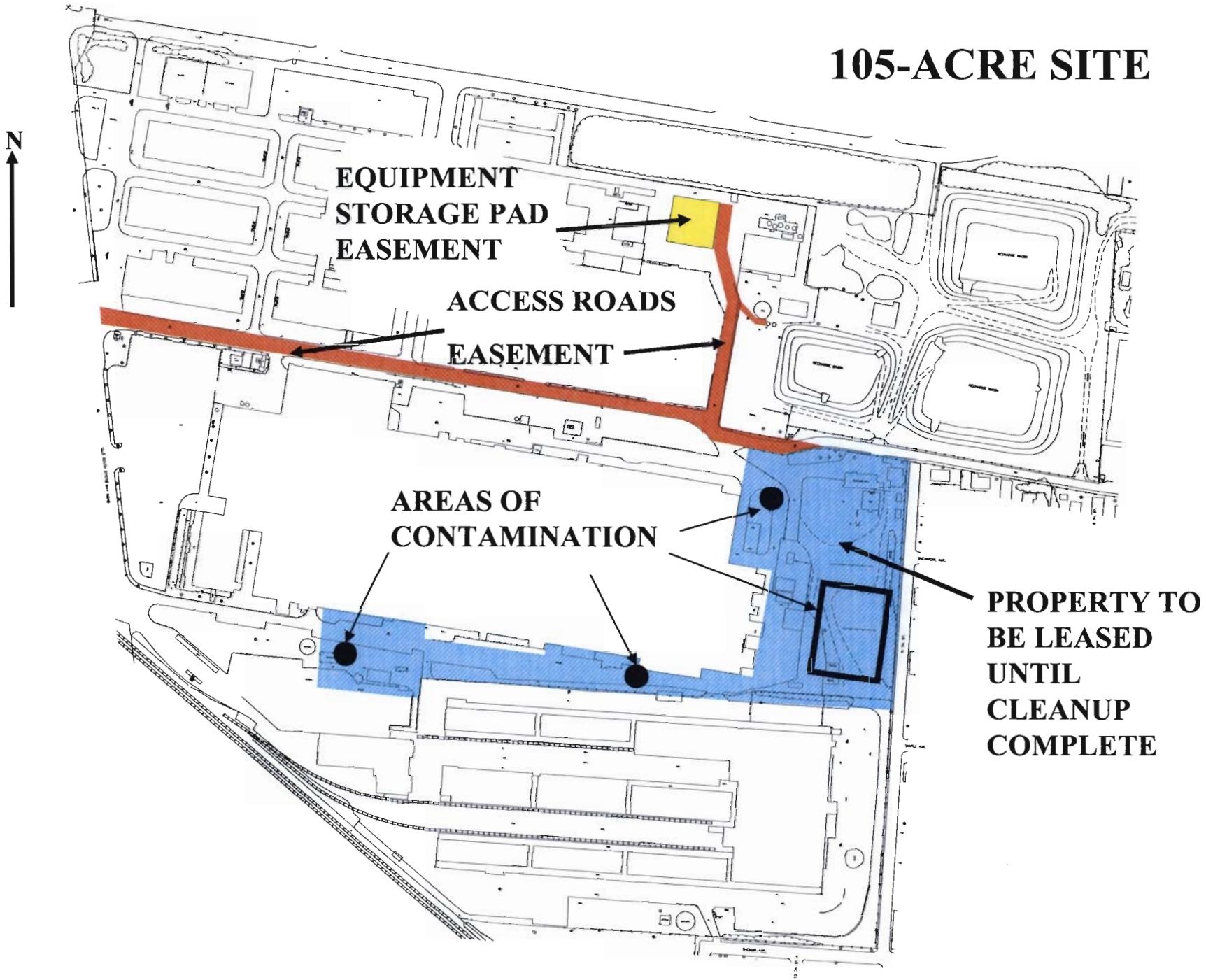
Property Boundary

Warehouses Plant 17

9 acres to be leased until cleanup complete

Village of Bethpage

105-ACRE SITE



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(INSTALLATIONS AND ENVIRONMENT)
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

28 January, 2002

MEMORANDUM FOR DIRECTOR, ENVIRONMENTAL, SAFETY &
OCCUPATIONAL HEALTH DIVISION (N45)
DIRECTOR, LAND USE AND MILITARY
CONSTRUCTION DIVISION (CMC-LF)

Subj: DEPARTMENT OF THE NAVY ENVIRONMENTAL POLICY MEMORANDUM 02-01; THIRD PARTY SITES AND AFFIRMATIVE CERCLA CLAIMS

Ref: (a) OPNAVINST 5090.1B, Chapter 15
(b) MCO 5090.2a, Chapter 10
(c) CNO letter of 17 March 1989; Policies and Responsibilities for Actions Involving Cleanup of Navy Generated Hazardous Waste (HW) at Off-Station Disposal Sites

This Environmental Policy Memorandum provides guidance on the management of: (1) third-party site claims brought against the Department of the Navy (DoN) under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA), and (2) affirmative claims that DoN can bring against parties who have contaminated DoN realty and caused DoN to incur response costs to deal with such contamination.

Third-Party Site Claims Management. For some time and at certain locations, DoN has been using solely its resources and authority to address DoN contamination at what are commonly called third-party sites, i.e., those sites where DoN has been accused of disposing of hazardous waste, where the property has never been owned or controlled by DoN and where a federal or state regulator or private party is demanding DoN involvement in, or reimbursement for, ongoing, past, or future cleanup activities. Recent events involving DoN, Department of Justice and the Environmental Protection Agency have caused us to review this approach. After consultation with the Navy Office of General Counsel and others, the policy at reference (c) is hereby rescinded and references (a) and (b) shall be amended to conform to this policy. Effective immediately:

- All current third-party site remediation efforts are to be reviewed by the cognizant Naval Facilities Engineering Command (NAVFAC) Engineering Field Division/Engineering Field Activity (EFD/EFA) environmental and legal personnel. Unless the expenses in question are incurred by U.S. EPA for which reimbursement is sought solely from DoN and/or other federal agencies by EPA, the cognizant EFD/EFA, through its Office of Counsel, shall notify the Navy Litigation Office (LITOFF) and provide pertinent information about the site.

LITOFF will review the material and take appropriate action. LITOFF shall have principle responsibility within DoN for all matters pertaining to DoN's alleged liability at the site. NAVFAC, through the EFD/EFAs, will provide support as needed. In so far as CERCLA 104(e), or other similar requests seeking information concerning possible DoN involvement at third party sites are received from regulatory agencies, such requests shall be responded to by the appropriate EFD/EFA having responsibility for the state in which the site at issue is located. A copy of any DoN response that indicates possible DoN involvement at a particular site shall be sent to LITOFF.

- In resolving DoN liability at third party sites, ER,N funding is not available to pay for the DoN share of a court judgment or compromise settlement. However, ER, N funding may be used for other expenses in connection with the resolution of DoN liability. Examples of such expenses include travel for DoN personnel to attend potentially responsible party meetings and pre-litigation case evaluation expenses (e.g., consulting experts, reproduction costs, potentially responsible party group administrative costs). ER, N is not to be used to fund "remediation expenses." Examples of "remediation expenses" include sampling, testing, removals (emergency and otherwise), remedial investigations, preliminary assessments, site investigations, feasibility studies, remedial design, remedial action, long-term monitoring, and long-term operations. "Remediation expenses" shall be provided through compromise settlements executed by the Department of Justice pursuant to their compromise settlement authority. DoN documents concurring in any compromise settlement shall acknowledge the exercise of the Department of Justice's authority and DoN's understanding that DoN's share of liability shall be paid from the judgment fund. Consistent with authority to agree with Department of Justice settlement agreements, the Associate General Counsel (Litigation) is authorized to concur in Department of Justice executed compromise settlement agreements resolving DoN liability for payment of response costs.

- Requests for deviation from this guidance shall be routed through the chain of command with endorsement and require written approval from DASN (E) prior to obligation of funds.

Affirmative Claims Management. There are two key scenarios where contamination of DoN property is caused by other than federal agencies. First, contamination caused by an entity which is allowed to operate on DoN property, and second, contamination of DoN property from sources outside DoN's property. In both scenarios, DoN's harm typically includes not only the costs to remediate the contamination in question, but also damage to natural resources for which DoN is trustee under either CERCLA or the Oil Pollution Act (OPA).

It is in DoN's interest to vigorously pursue these claims. Our immediate goal is to pursue these claims through CERCLA or contract compromise settlements, such as with Government Owned-Contractor Operated (GOCO) facilities, in lieu of litigation.

Whenever the possibility of a need for pursuing affirmative claims arises, DoN activities shall inform LITOFF as soon as possible. LITOFF will work closely with activities, major claimants and the Naval Facilities Engineering Command to determine which sites and situations warrant an affirmative claim. Once it is decided to go forward with an affirmative claim, NAVFAC, LITOFF, and major claimants, as necessary, will begin assembling the data and information needed to approach the potentially responsible party that contaminated our realty. LITOFF will have the lead on negotiating and pursuing these affirmative claims. NAVFAC EFD/EFAs and other major claimants will provide support as needed.

If such claims cannot be setiled by contract negotiations, or a CERCLA settlement in lieu of litigation, then DoN will determine if litigation is advisable. If a CERCLA compromise settlement is negotiated with the third party, or if litigation is determined to be an option, DoN must be represented by counsel from the Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice. The Department of Justice has approval procedures that must be followed whenever a federal agency wants to pursue affirmative litigation (or CERCLA compromise settlements in lieu thereof). Generally, the process involves making a written request of DOJ. The request will usually take the form of a briefing memorandum that sets forth the factual background and legal issues involved along with an explanation of why affirmative action is needed. Any statute of limitations issue or similar time sensitive restrictions on the ability to pursue the affirmative claim needs to be highlighted. The Assistant Attorney General for the Environment and Natural Resources Division, or the Environmental Enforcement Section Chief, must sanction the approval of the request.

LITOFF shall have principle responsibility within DoN for working with DOJ to resolve such claims whether through CERCLA compromise settlement or affirmative litigation. The Associate General Counsel (Litigation) must approve and sign the request/briefing memorandum to DOJ. NAVFAC and other major claimants will provide support as needed.

Donald R. Schregardus
Deputy Assistant Secretary of the Navy
(Environment)

DEPARTMENT OF THE NAVY
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(INSTALLATIONS AND ENVIRONMENT)
1000 NAVY PENTAGON
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FEB 27 2007

Mr. Thomas R. Suozzi
County Executive, County of Nassau
One West Street
Mineola, NY 11051-4820

Re: Naval Weapons Industrial Reserve Plant Bethpage (NWIRP) Property

Dear Mr. Suozzi:

United States Public Law 105-85 allows the Secretary of the Navy, at his discretion, to convey to Nassau County property that was formerly the NWIRP Bethpage. By my letter of April 7, 2005, we offered to Nassau County a deed to a 96 acre parcel of the 105 acre property still owned by the Navy. In that letter we advised that unless the deed was accepted within a specified time, the Navy would begin disposal by other means.

Despite the efforts of both parties to complete the transaction on the terms offered, it has not been possible to do so. Due to the passage of time and additional information that has become available during that time, it is not in the best interest of the Navy to continue to pursue this course of action, and I hereby withdraw the offer tendered by my earlier letter.

Scientific study has concluded that there is no practicable remedy that will render the 9 acre parcel free of contamination. This will necessitate an institutional control that requires post remedial care. The current Resource Conservation and Recovery Act (RCRA) Permit for the site recognizes the likelihood of post-remedial care. In approving the current Permit, New York State Department of Environmental Conservation stated that a renewed RCRA Permit is the legal instrument to address post-remedial activities. Accordingly, a RCRA Permit will continue to be associated with, at minimum, the 9 acres after conveyance.

The Navy will now pursue disposal of the entirety of the remaining 105 acres as a consolidated transaction, using a deed for the 96 acres and a lease in furtherance of conveyance for the remaining 9 acres to be followed by a deed upon completion of required remedial actions. The Navy is asking the General Services Administration to move ahead with disposal along these lines, in accordance with normal excess property disposal procedures set forth in the Federal Property and

Administrative Services Act of 1949, as amended, and its implementing regulations. We believe this approach is the best way to get this property back into productive use as quickly as possible with valuable economic return to the community.

Sincerely,

Wayne Arny
Deputy Assistant Secretary
(Installations and Facilities)

interest in and to the property, including any improvements thereon, shall revert to the United States, and the United States shall have the right of immediate entry thereon.

(d) INTERIM LEASE.—(1) Until such time as the real property described in subsection (a) is conveyed by deed, the Secretary may lease the property, together with the improvements thereon, to the District.

(2) As consideration for the lease under this subsection, the District shall provide such security services for the property covered by the lease, and carry out such maintenance work with respect to the property, as the Secretary shall specify in the lease.

(e) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the District.

(f) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a), and the lease, if any, under subsection (d), as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2852. LAND CONVEYANCE, NAVAL WEAPONS INDUSTRIAL RESERVE PLANT NO. 464, OYSTER BAY, NEW YORK.

(a) CONVEYANCE AUTHORIZED.—(1) The Secretary of the Navy may convey, without consideration, to the County of Nassau, New York (in this section referred to as the "County"), all right, title, and interest of the United States in and to parcels of real property consisting of approximately 110 acres and comprising the Naval Weapons Industrial Reserve Plant No. 464, Oyster Bay, New York.

(2)(A) As part of the conveyance authorized in paragraph (1), the Secretary may convey to the County such improvements, equipment, fixtures, and other personal property (including special tooling equipment and special test equipment) located on the parcels as the Secretary determines to be not required by the Navy for other purposes.

(B) The Secretary may permit the County to review and inspect the improvements, equipment, fixtures, and other personal property located on the parcels for purposes of the conveyance authorized by this paragraph.

(b) CONDITION OF CONVEYANCE.—The conveyance of the parcels authorized in subsection (a) shall be subject to the condition that the County—

(1) use the parcels, directly or through an agreement with a public or private entity, for economic redevelopment purposes or such other public purposes as the County determines appropriate; or

(2) convey the parcels to an appropriate public or private entity for use for such purposes.

(c) REVERSION.—If, during the five-year period beginning on the date the Secretary makes the conveyance authorized under subsection (a), the Secretary determines that the conveyed real property is not being used for a purpose specified in subsection (b), all right, title, and interest in and to the property, including any improvements thereon, shall revert to the United States, and the United States shall have the right of immediate entry onto the property.

(d) INTERIM LEASE.—(1) Until such time as the real property described in subsection (a) is conveyed by deed, the Secretary may lease the property, together with improvements thereon, to the County.

(2) As consideration for the lease under this subsection, the County shall provide such security services and fire protection services for the property covered by the lease, and carry out such maintenance work with respect to the property, as the Secretary shall specify in the lease.

(e) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the County.

(f) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a), and the lease, if any, under subsection (d), as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2853. CORRECTION OF LEASE AUTHORITY, NAVAL AIR STATION, MERIDIAN, MISSISSIPPI.

(a) CORRECTION OF LESSEE.—Subsection (a) of section 2837 of the Military Construction Authorization Act for Fiscal Year 1997 (division B of Public Law 104–201; 110 Stat. 2798) is amended—

(1) by striking out "State of Mississippi (in this section referred to as the 'State')" and inserting in lieu thereof "County of Lauderdale, Mississippi (in this section referred to as the 'County')"; and

(2) by striking out "The State" and inserting in lieu thereof "The County".

(b) CONFORMING AMENDMENTS.—Subsections (b) and (c) of such section are amended by striking out "State" each place it appears and inserting in lieu thereof "County".

PART III—AIR FORCE CONVEYANCES

SEC. 2861. LAND TRANSFER, EGLIN AIR FORCE BASE, FLORIDA.

(a) TRANSFER.—The real property withdrawn by Executive Order 4525, dated October 1, 1826, which consists of approximately 440 acres of land at Cape San Blas, Gulf County, Florida, and any improvements thereon, is transferred from the administrative jurisdiction of the Secretary of Transportation to the administrative jurisdiction of the Secretary of the Air Force, without reimbursement. Executive Order 4525 is revoked, and the transferred real property shall be administered by the Secretary of the Air Force pursuant to the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) and such other laws as may be applicable to Federal real property.

(b) USE OF PROPERTY.—The real property transferred under subsection (a) may be used in conjunction with operations at Eglin Air Force Base, Florida.

(c) LEGAL DESCRIPTION.—The exact acreage and legal description of the real property to be transferred under subsection (a) shall be determined by a survey satisfactory to the Secretary of the Air Force. The cost of the survey shall be borne by the Secretary of the Air Force.

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980

(Enacted by Public Law 96-510, Dec. 11, 1980; 94 Stat. 2767, 42 U.S.C. 9601 et. seq., 26 U.S.C. 4611, 4612, 4661, 4662, 4671, 4672; Amended by PL 96-561, Dec. 22, 1980; PL 97-272, Sept. 30, 1982; PL 98-45, July 12, 1983; PL 98-80, Aug. 23, 1983; PL 98-369, July 18, 1984; PL 98-371, July 18, 1984; PL 98-396, Aug. 22, 1984; PL 99-499, Oct. 17, 1986; PL 99-509, Oct. 21, 1986; PL 100-202, Dec. 22, 1987; PL 100-647, Nov. 10, 1988; PL 100-707, Nov. 23, 1988; PL 101-144, Nov. 9, 1989; PL 101-221, Dec. 12, 1989; PL 101-239, Dec. 19, 1989; PL 101-380, Aug. 18, 1990; PL 101-508, Nov. 5, 1990; PL 101-584, Nov. 15, 1990; PL 102-426, Oct. 19, 1992; PL 102-484, Oct. 23, 1992; PL 102-531, Oct. 27, 1992; PL 103-429, Oct. 31, 1994; PL 104-106, Feb. 10, 1996; PL 104-201, Sept. 23, 1996; PL 104-208, Sept. 30, 1996)

[*Editor's note:* Title II of PL 96-510, The Hazardous Substances Response Revenue Act of 1980, is incorporated in this Act.

Title III of the Superfund Amendments and Reauthorization Act (PL 99-499) is published at 71:0401.]

TITLE I — HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION

§101 [42 USC 9601]

For purpose of this title —

[§101 amended by PL 99-499]

(1) The term "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(2) The term "Administrator" means the Administrator of the United States Environmental Protection Agency.

(3) The term "barrel" means forty-two United States gallons at sixty degrees Fahrenheit.

(4) The term "claim" means a demand in writing for a sum certain.

(5) The term "claimant" means any person who presents a claim for compensation under this Act.

(6) The term "damages" means damages for injury or loss of natural resources as set forth in section 107(a) or 111(b) of this Act.

(7) The term "drinking water supply" means any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act) or as drinking water by one or more individuals.

(8) The term "environment" means

(A) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson Fishery Conservation and Management Act of 1976, and

(B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

[§101(8) amended by PL 96-561]

(9) The term "facility" means

(A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or

(B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

(10) The term "federally permitted release" means

(A) discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act,

(B) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Federal Water Pollution Control Act and subject to a condition of such permit,

(C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems,

(D) discharges in compliance with a legally enforceable permit under section 404 of the Federal Water Pollution Control Act,

(E) releases in compliance with a legally enforceable final permit issued pursuant to section 3005(a) through (d) of the Solid Waste Disposal Act from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and

(1) If under the Act of August 24, 1935 (40 U.S.C. 270a–270d), commonly referred to as the "Miller Act", surety bonds are required for any direct Federal procurement of any response action contract and are not waived pursuant to the Act of April 29, 1941 (40 U.S.C. 270e–270f), they shall be issued in accordance with such Act of August 24, 1935.

[§119(g)(1) amended by PL 102-484]

(2) If under applicable Federal law surety bonds are required for any direct Federal procurement of any response action contract, no right of action shall accrue on the performance bond issued on such response action contract to or for the use of any person other than the obligee named in the bond.

(3) If under applicable Federal law surety bonds are required for any direct Federal procurement of any response action contract, unless otherwise provided for by the procuring agency in the bond, in the event of a default, the surety's liability on a performance bond shall be only for the cost of completion of the contract work in accordance with the plans and specifications less the balance of funds remaining to be paid under the contract, up to the penal sum of the bond. The surety shall in no event be liable on bonds to indemnify or compensate the obligee for loss or liability arising from personal injury or property damage whether or not caused by a breach of the bonded contract.

(4) Nothing in this subsection shall be construed as preempting, limiting, superseding, affecting, applying to, or modifying any State laws, regulations, requirements, rules, practices or procedures. Nothing in this subsection shall be construed as affecting, applying to, modifying, limiting, superseding, or preempting any rights, authorities, liabilities, demands, actions, causes of action, losses, judgments, claims, statutes of limitation, or obligations under Federal or State law, which do not arise on or under the bond.

(5) This subsection shall not apply to bonds executed before October 17, 1990, or after December 31, 1995.

[§119(g)(5) amended by PL 102-484]

§120 [42 USC 9620] Federal Facilities

[§120 added by PL 99-499]

(a) Application of Act to Federal Government.—

(1) In general. — Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under section 107 of this Act. Nothing in this section shall be construed to affect the liability of any person or entity under sections 106 and 107.

(2) Application of requirements to federal facilities. — All guidelines, rules, regulations, and criteria which are applicable to preliminary assessments carried out under this Act for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priorities List, or applicable to remedial actions at such facilities shall also be applicable to facilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the extent as such guidelines, rules, regulations, and criteria are applicable to other facilities. No department, agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this Act.

(3) Exceptions. — This subsection shall not apply to the extent otherwise provided in this section with respect to applicable time periods. This subsection shall also not apply to any requirements relating to bonding, insurance, or financial responsibility. Nothing in this Act shall be construed to require a State to comply with section 104(c)(3) in the case of a facility which is owned or operated by any department, agency, or instrumentality of the United States.

(4) State laws. — State laws concerning removal and remedial action, including State laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States or facilities that are the subject of a deferral under subsection (h)(3)(C) when such facilities are not included on the National Priorities List. The preceding sentence shall not apply to the extent a State law would apply any standard or requirement to such facilities which is more stringent than the standards and requirements applicable to facilities which are not owned or operated by any such department, agency, or instrumentality.

(b) Notice. — Each department, agency, and instrumentality of the United States shall add to the inventory of Federal agency hazardous waste facilities required to be submitted under section 3016 of the Solid Waste Disposal Act (in addition to the information required under section 3016(a)(3) of such Act) information on contamination from each facility owned or operated by the department, agency, or instrumentality if such contamination affects contiguous or adjacent property owned by the department, agency, or instrumentality or by any other person, including a description of the monitoring data obtained.

(c) Federal Agency Hazardous Waste Compliance Docket. — The Administrator shall establish a special Federal Agency Hazardous Waste Compliance Docket (hereinafter in this section referred to as the 'docket') which shall contain each of the following:

(1) All information submitted under section 3016 of the Solid Waste Disposal Act and subsection (b) of this section regarding any Federal facility and notice of each subsequent action taken under this Act with respect to the facility.

(2) Information submitted by each department, agency, or instrumentality of the United States under section 3005 or 3010 of such Act.

(3) Information submitted by the department, agency, or instrumentality under section 103 of this Act.

The docket shall be available for public inspection at reasonable times. Six months after establishment of the docket and every 6 months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the docket during the immediately preceding 6-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the docket. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the docket under this subsection.

(d) Assessment and Evaluation. — Not later than 18 months after the enactment of the Superfund Amendments and Reauthorization Act of 1986, the Administrator shall take steps to assure that a preliminary assessment is conducted for each facility on the docket. Following such preliminary assessment, the Administrator shall, where appropriate—

(1) evaluate such facilities in accordance with the criteria established in accordance with section 105 under the National Contingency Plan for determining priorities among releases; and

(2) include such facilities on the National Priorities List maintained under such plan if the facility meets such criteria. Such criteria shall be applied in the same manner as the criteria are applied to facilities which are owned or operated by other persons. Evaluation and listing under this subsection shall be completed not later than 30 months after such date of enactment. Upon the receipt of a petition from the Governor of any State, the Administrator shall make such an evaluation of any facility included in the docket.

(e) Required Action by Department. —

(1) RI/FS. — Not later than 6 months after the inclusion of any facility on the National Priorities List, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence a remedial investigation and feasibility study for such facility. In the case of any facility which is listed on such list before the date of the enactment of this section, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence such an investigation and study for such facility within one year after such date of enactment. The Administrator and appropriate State authorities shall publish a timetable and deadlines for expeditious completion of such investigation and study.

(2) Commencement of Remedial Action; Interagency Agreement. — The Administrator shall review the results of each investigation and study conducted as provided in paragraph (1). Within 180 days thereafter, the head of the department, agency, or instrumentality concerned shall enter into an interagency agreement with the Administrator for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. Substantial continuous physical onsite remedial action shall be commenced at each facility not later than 15 months after completion of the investigation and study. All such interagency agreements, including review of alternative remedial action plans and selection of remedial action, shall comply with the public participation requirements of section 117.

(3) Completion of Remedial Actions. —Remedial actions at facilities subject to interagency agreements under this section shall be completed as expeditiously as practicable. Each agency shall include in its annual budget submissions to the Congress a review of alternative agency funding which could be used to provide for the costs of remedial action. The budget submission shall also include a statement of the hazard posed by the facility to human health, welfare, and the environment and identify the specific consequences of failure to begin and complete remedial action.

(4) Contents of Agreement. — Each interagency agreement under this subsection shall include, but shall not be limited to, each of the following:

(A) A review of alternative remedial actions and selection of a remedial action by the head of the relevant department, agency, or instrumentality and the Administrator or, if unable to reach agreement on selection of a remedial action, selection by the Administrator.

(B) A schedule for the the completion of each such remedial action.

(C) Arrangements for long-term operation and maintenance of the facility.

(5) Annual Report. — Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to, each of the following items:

(A) A report on the progress in reaching interagency agreements under its section.

(B) The specific cost estimates and budgetary proposals involved in each interagency agreement.

(C) A brief summary of the public comments regarding each proposed interagency agreement.

(D) A description of the instances in which no agreement was reached.

(E) A report on progress in conducting investigations and studies under paragraph (1).

(F) A report on progress in conducting remedial actions.

(G) A report on progress in conducting remedial action at facilities which are not listed on the National Priorities List. With respect to instances in which no agreement was reached within the required time period, the department, agency, or instrumentality filing the report under this paragraph shall include in such report an explanation of the reasons why no agreement was reached. The annual report required by this paragraph shall also contain a detailed description on a State-by-State basis of the status of each facility subject to this section, including a description of the hazard presented by each facility, plans and schedules for initiating and completing response action, enforcement status (where appropriate), and an explanation of any postponements or failure to complete response action. Such reports shall also be submitted to the affected States.

(6) Settlements with other parties. — If the Administrator, in consultation with the head of the relevant department, agency, or instrumentality of the United States, determines that remedial investigations and feasibility studies or remedial action will be done properly at the Federal facility by another potentially responsible party within the deadlines provided in paragraphs (1), (2), and (3) of this subsection, the Administrator may enter into an agreement with such party under section 122 (relating to settlements). Following approval by the Attorney General of any such agreement relating to a remedial action, the agreement shall be entered in the appropriate United States district court as a consent decree under section 106 of this Act.

(f) State and Local Participation. — The Administrator and each department, agency, or instrumentality responsible for compliance with this section shall afford to relevant State and local officials the opportunity to participate in the planning and selection of the remedial action, including but not limited to the review of all applicable data as it becomes available and the development of studies, reports, and action plans. In the case of State officials, the opportunity to participate shall be provided in accordance with section 121.

(g) Transfer of Authorities. — Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be transferred, by executive order of the President or otherwise, to any other officer or employee of the United States or to any other person.

(h) Property Transferred by Federal Agencies. —

(1) Notice. — After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such in-

formation is available on the basis of a complete search of agency files.

(2) Form of notice; regulations. — Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after the enactment of this subsection but not later than 18 months after the date of such enactment, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

(3) Contents of certain deeds. —

[§120(h)(3) amended by PL 104-201]

(A) In general.--After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain —

(i) to the extent such information is available on the basis of a complete search of agency files —

(I) a notice of the type and quantity of such hazardous substances,

(II) notice of the time at which such storage, release, or disposal took place, and

(III) a description of the remedial action taken, if any;

(ii) a covenant warranting that—

(I) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer, and

(II) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States. The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such real property; and

(iii) The requirements of subparagraph (A)(ii) shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such real property.

(B) Covenant requirements.--For purposes of subparagraphs (A)(ii)(I) and (C)(iii), all remedial action described in such subparagraph has been taken if the construction and installation of an approved remedial design has been completed, and the remedy has been demonstrated to the Administrator to be operating properly and successfully. The carrying out of long-term pumping and treating, or operation and maintenance, after the remedy has been demonstrated to the Administrator to be operating properly and successfully does not preclude the transfer of the property.

The requirements of subparagraph (A)(ii) shall not apply in any case in which the person or entity to whom the real property is transferred is a potentially responsible party with respect to such property. The requirements of subparagraph (A)(ii) shall not apply in any case in which the transfer of the property occurs or has occurred by means of a lease, without regard to whether the lessee has agreed to purchase the property or whether the duration of the lease is longer than 55 years. In the case of a lease entered into after September 30, 1995, with respect to real property located at an installation approved for closure or realignment under a base closure law, the agency leasing the property, in consultation with the Administrator, shall determine before leasing the property that the property is suitable for lease, that the uses contemplated for the lease are consistent with protection of human health and the environment, and that there are adequate assurances that the United States will take all remedial action referred to in subparagraph (A)(ii)that has not been taken on the date of the lease.

(C) Deferral.–

(i) In general.--The Administrator, with the concurrence of the Governor of the State in which the facility is located (in the case of real property at a Federal facility that is listed on the National Priorities List), or the Governor of the State in which the facility is located (in the case of real property at a Federal facility not listed on the National Priorities List) may defer the requirement of subparagraph (A)(ii)(I) with respect to the property if the Administrator or the Governor, as the case may be, determines that the property is suitable for transfer, based on a finding that–

(I) the property is suitable for transfer for the use intended by the transferee, and the intended use is consistent with protection of human health and the environment;

(II) the deed or other agreement proposed to govern the transfer between the United States and the transferee of the property contains the assurances set forth in clause (ii);

(III) the Federal agency requesting deferral has provided notice, by publication in a newspaper of general circulation in the vicinity of the property, of the proposed transfer and of the opportunity for the public to submit, within a period of not less than 30 days after the date of the notice, written comments on the suitability of the property for transfer; and

(IV) the deferral and the transfer of the property will not substantially delay any necessary response action at the property.

(ii) Response action assurances.--With regard to a release or threatened release of a hazardous substance for which a Federal agency is potentially responsible under this section, the deed or other agreement proposed to govern the transfer shall contain assurances that--

(I) provide for any necessary restrictions on the use of the property to ensure the protection of human health and the environment;

(II) provide that there will be restrictions on use necessary to ensure that required remedial investigations, response action, and oversight activities will not be disrupted;

(III) provide that all necessary response action will be taken and identify the schedules for investigation and completion of all necessary response action as approved by the appropriate regulatory agency; and

(IV) provide that the Federal agency responsible for the property subject to transfer will submit a budget request to the Director of the Office of Management and Budget that adequately addresses schedules for investigation and completion of all necessary response action, subject to congressional authorizations and appropriations.

(iii) Warranty.--When all response action necessary to protect human health and the environment with respect to any substance remaining on the property on the date of transfer has been taken, the United States shall execute and deliver to the transferee an appropriate document containing a warranty that all such response action has been taken, and the making of the warranty shall be considered to satisfy the requirement of subparagraph (A)(ii)(I).

(iv) Federal responsibility.--A deferral under this subparagraph shall not increase, diminish, or affect in any manner any rights or obligations of a Federal agency (including any rights or obligations under sections 106, 107, and 120 existing prior to transfer) with respect to a property transferred under this subparagraph.

[§120(h)(3)(C) amended by PL 102-426; PL 104-106]

(4) Identification of uncontaminated property.—

(A) In the case of real property to which this paragraph applies (as set forth in subparagraph (E)), the head of the department, agency, or instrumentality of the United States with jurisdiction over the property shall identify the real property on which no hazardous substances and no petroleum products or their derivatives were stored for one year or more, 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 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 a minimum, of a review of each of the following sources of information concerning the current and previous uses of the real property:

(i) A detailed search of Federal Government records pertaining to the property.

(ii) Recorded chain of title documents regarding the real property.

(iii) Aerial photographs that may reflect prior uses of the real property and that are reasonably obtainable through State or local government agencies.

(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.

(v) A physical inspection of property adjacent to the real property, to the extent permitted by owners or operators of such property.

(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 or its derivatives, including aviation fuel and motor oil, on the real property.

(vii) Interviews with current or former employees involved in operations on the real property.

Such identification shall also be based on sampling, if appropriate under the circumstances. The results of the identification shall be provided immediately to the Administrator and State and local government officials and made available to the public.

(B) The identification required under subparagraph (A) is not complete until concurrence in the results of the identification is obtained, in the case of real property that is part of a facility on the National Priorities List, from the Administrator, or, in the case of real property that is not part of a facility on the National Priorities List, from the appropriate State official. 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.

(C) (i) Except as provided in clauses (ii), (iii), and (iv), the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made at least 6 months before the termination of operations on the real property.

(ii) In the case of real property described in subparagraph (E)(i)(II) on which operations have been closed or realigned or scheduled for closure or realignment pursuant to a base closure law described in subparagraph (E)(ii)(I) or (E)(ii)(II) by the date of the enactment of the Community Environmental Response Facilitation Act, the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after such date of enactment.

(iii) In the case of real property described in subparagraph (E)(i)(II) on which operations are closed or realigned or become scheduled for closure or realignment pursuant to the base closure law described in subparagraph (E)(ii)(II) after the date of the enactment of the Community Environmental Response Facilitation Act, the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after the date by which a joint resolution disapproving the closure or realignment of the real property under section 2904(b) of such base closure law must be enacted, and such a joint resolution has not been enacted.

(iv) In the case of real property described in subparagraphs (E)(i)(II) on which operations are closed or realigned pursuant to a base closure law described in subparagraph (E)(ii)(III) or (E)(ii)(IV), the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after the date on which the real property is selected for closure or realignment pursuant to such a base closure law.

(D) In the case of the sale or other transfer of any parcel of real property identified under subparagraph (A), the deed entered into for the sale or transfer of such property by the United States to any other person or entity shall contain—

(i) 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

(ii) 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.

(E) (i) This paragraph applies to—

(I) real property owned by the United States and on which the United States plans to terminate Federal Government operations, other than real property described in subclause (II); and

(II) real property that is or has been used as a military installation and on which the United States plans to close or realign military operations pursuant to a base closure law.

(ii) For purposes of this paragraph, the term "base closure law" includes the following:

(I) Title II of the Defense Authorization Amendments and Base Closure and

Act (including corrective action requirements).

(j) National Security. —

(1) Site specific presidential orders. — The President may issue such orders regarding response actions at any specified site or facility of the Department of Energy or the Department of Defense as may be necessary to protect the national security interests of the United States at that site or facility. Such orders may include, where necessary to protect such interests, an exemption from any requirement contained in this title or under title III of the Superfund Amendments and Reauthorization Act of 1986 with respect to the site or facility concerned. The President shall notify the Congress within 30 days of the issuance of an order under this paragraph providing for any such exemption. Such notification shall include a statement of the reasons for the granting of the exemption. An exemption under this paragraph shall be for a specified period which may not exceed one year. Additional exemptions may be granted, each upon the President's issuance of a new order under this paragraph for the site or facility concerned. Each such additional exemption shall be for a specified period which may not exceed one year. It is the intention of the Congress that whenever an exemption is issued under this paragraph the response action shall proceed as expeditiously as practicable. The Congress shall be notified periodically of the progress of any response action with respect to which an exemption has been issued under this paragraph. No exemption shall be granted under this paragraph due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

(2) Classified information. — Notwithstanding any other provision of law, all requirements of the Atomic Energy Act and all Executive orders concerning the handling of restricted data and national security information, including 'need to know' requirements, shall be applicable to any grant of access to classified information under the provisions of this Act or under title III of the Superfund Amendments and Reauthorization Act of 1986.

[*Editor's note:* Section 120(b) of PL 99-499 provides:

(b) Limited Grandfather.— Section 120 of CERCLA shall not apply to any response action or remedial action for which a plan is under development by the Department of Energy on the date of enactment of this Act with respect to facilities —

(1) owned or operated by the United States and subject to the jurisdiction of such Department;

(2) located in St. Charles and St. Louis counties, Missouri, or the City of St. Louis, Missouri, and

(3) published in the National Priorities List.

In preparing such plans, the Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency.]

§121 [42 U.S.C. 9621] Cleanup Standards

[§121 added by PL 99-499]

(a) Selection of Remedial Action.—The President shall select appropriate remedial actions determined to be necessary to be carried out under section 104 or secured under section 106 which are in accordance with this section and, to the extent practicable, the national contingency plan, and which provide for cost-effective response. In evaluating the cost effectiveness of proposed alternative remedial actions, the President shall take into account the total short- and long-term costs of such actions, including the costs of operation and maintenance for the entire period during which such activities will be required.

(b) General Rules.—

(1) Remedial actions in which treatment which permanently and significantly reduces the volume, toxicity or mobility of the hazardous substances, pollutants, and contaminants is a principal element, are to be preferred over remedial actions not involving such treatment. The offsite transport and disposal of hazardous substances or contaminated materials without such treatment should be the least favored alternative remedial action where practicable treatment technologies are available. The President shall conduct an assessment of permanent solutions and alternative treatment technologies or resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant. In making such assessment, the President shall specifically address the long-term effectiveness of various alternatives. In assessing alternative remedial actions, the President shall, at a minimum, take into account:

(A) the long-term uncertainties associated with land disposal;

(B) the goals, objectives, and requirements of the Solid Waste Disposal Act;

(C) the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents;

(D) short- and long-term potential for adverse health effects from human exposure;

(E) long-term maintenance costs;

(F) the potential for future remedial action costs if the alternative remedial action in question were to fail; and

(G) the potential threat to human health and the environment associated with excavation, transportation, and redisposal, or containment.

The President shall select a remedial action that is protective of human health and the environment, that is cost effective, and that utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. If the President selects a remedial action not appropriate for a preference under this subsection, the President shall publish an explanation as to why a remedial action involving such reductions was not selected.

(2) The President may select an alternative remedial action meeting the objectives of this subsection whether or not such action has been achieved in practice at any other facility or site that has similar characteristics. In making such a selection, the President may take into account the degree of support for such remedial action by parties interested in such site.

(c) Review.—If the President selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the site, the President shall review such remedial action no less often than each 5 years after the initiation of such remedial action to assure that human health and the environment are being protected by the remedial action being implemented. In addition, if upon such

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Executive Order 12580--Superfund implementation

Source: The provisions of Executive Order 12580 of Jan. 23, 1987, appear at 52 FR 2923, 3 CFR, 1987 Comp., p. 193, unless otherwise noted.

By the authority vested in me as President of the United States of America by Section 115 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9615 *et seq.*) ("the Act"), and by Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

Section 1. *National Contingency Plan.* (a)(1) The National Contingency Plan ("the NCP"), shall provide for a National Response Team ("the NRT") composed of representatives of appropriate Federal departments and agencies for national planning and coordination of preparedness and response actions, and regional response teams as the regional counterpart to the NRT for planning and coordination of regional preparedness and response actions.

(2) The following agencies (in addition to other appropriate agencies) shall provide representatives to the National and Regional Response Teams to carry out their responsibilities under the NCP: Department of State, Department of Defense, Department of Justice, Department of the Interior, Department of Agriculture, Department of Commerce, Department of Labor, Department of Health and Human Services, Department of Transportation, Department of Energy, Environmental Protection Agency, Federal Emergency Management Agency, United States Coast Guard, and the Nuclear Regulatory Commission.

(3) Except for periods of activation because of a response action, the representative of the Environmental Protection Agency ("EPA") shall be the chairman and the representative of the United States Coast Guard shall be the vice chairman of the NRT and these agencies' representatives shall be co-chairs of the Regional Response Teams ("the RRTs"). When the NRT or an RRT is activated for a response action, the chairman shall be the EPA or United States Coast Guard representative, based on whether the release or threatened release occurs in the inland or coastal zone, unless otherwise agreed upon by the EPA and United States Coast Guard representatives.

(4) The RRTs may include representatives from State governments, local governments (as agreed upon by the States), and Indian tribal governments. Subject to the functions and authorities delegated to Executive departments and agencies in other sections of this Order, the NRT shall provide policy and program direction to the RRTs.

(b)(1) The responsibility for the revision of the NCP and all of the other functions vested in the President by Sections 105(a), (b), (c), and (g), 125, and 301(f) of the Act is delegated to the Administrator of the Environmental Protection Agency ("the Administrator").

(2) The function vested in the President by Section 118(p) of the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99-499) ("SARA") is delegated to the Administrator.

(c) In accord with Section 107(f)(2)(A) of the Act and Section 311(f)(5) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(f)(5)), the following shall be among those designated in the NCP as Federal trustees for natural resources:

(1) Secretary of Defense;

(2) Secretary of the Interior;

(3) Secretary of Agriculture;

(4) Secretary of Commerce;

(5) Secretary of Energy.

(d) Revisions to the NCP shall be made in consultation with members of the NRT prior to publication for notice and comment. Revisions shall also be made in consultation with the Director of the Federal Emergency Management Agency and the Nuclear Regulatory Commission in order to avoid inconsistent or duplicative requirements in the emergency planning responsibilities of those agencies.

(e) All revisions to the NCP, whether in proposed or final form, shall be subject to review and approval by the Director of the Office of Management and Budget ("OMB").

Sec. 2. *Response and Related Authorities.* (a) The functions vested in the President by the first sentence of Section 104(b)(1) of the Act relating to "illness, disease, or complaints thereof" are delegated to the Secretary of Health and Human Services who shall, in accord with Section 104(i) of the Act, perform those functions through the Public Health Service.

(b) The functions vested in the President by Sections 104(e)(7)(C), 113(k)(2), 119(c)(7), and 121(f)(1) of the Act, relating to promulgation of regulations and guidelines, are delegated to the Administrator, to be exercised in consultation with the NRT.

(c)(1) The functions vested in the President by Sections 104(a) and the second sentence of 126 (b) of the Act, to the extent they require permanent relocation of residents, businesses, and community facilities or temporary evacuation and housing of threatened individuals not otherwise provided for, are delegated to the Director of the Federal Emergency Management Agency.

(2) Subject to subsection (b) of this Section, the functions vested in the President by Sections 117(a) and (c), and 119 of the Act, to the extent such authority is needed to carry out the functions delegated under paragraph (1) of this subsection, are delegated to the Director of the Federal Emergency Management Agency.

(d) Subject to subsections (a), (b) and (c) of this Section, the functions vested in the President by Sections 104(a), (b) and (c)(4), 113(k), 117(a) and (c), 119, and 121 of the Act are delegated to the Secretaries of Defense and Energy, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of their departments, respectively, including vessels bare-boat chartered and operated. These functions must be exercised consistent with the requirements of Section 120 of the Act.

(e)(1) Subject to subsections (a), (b), (c), and (d) of this Section, the functions vested in the President by Sections 104(a), (b), and (c)(4), and 121 of the Act are delegated to the heads of Executive departments and agencies, with respect to remedial actions for releases or threatened releases which are not on the National Priorities List ("the NPL") and removal actions other than emergencies, where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and agencies, including vessels bare-boat chartered and operated. The Administrator shall define the term "emergency", solely for the purposes of this subsection, either by regulation or by a memorandum of understanding with the head of an Executive department or agency.

(2) Subject to subsections (b), (c), and (d) of this Section, the functions vested in the President by Sections 104(b)(2), 113(k), 117(a) and (c), and 119 of the Act are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and

agencies, including vessels bare-boat chartered and operated.

(f) Subject to subsections (a), (b), (c), (d), and (e) of this Section, the functions vested in the President by Sections 104(a), (b) and (c)(4), 113(k), 117(a) and (c), 119, and 121 of the Act are delegated to the Secretary of the Department in which the Coast Guard is operating ("the Coast Guard"), with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(g) Subject to subsections (a), (b), (c), (d), (e), and (f) of this Section, the functions vested in the President by Sections 101(24), 104(a), (b), (c)(4) and (c)(9), 113(k), 117(a) and (c), 119, 121, and 126(b) of the Act are delegated to the Administrator. The Administrator's authority under Section 119 of the Act is retroactive to the date of enactment of SARA.

(h) The functions vested in the President by Section 104(c)(3) of the Act are delegated to the Administrator, with respect to providing assurances for Indian tribes, to be exercised in consultation with the Secretary of the Interior.

(i) Subject to subsections (d), (e), (f), (g) and (h) of this Section, the functions vested in the President by Section 104(c) and (d) of the Act are delegated to the Coast Guard, the Secretary of Health and Human Services, the Director of the Federal Emergency Management Agency, and the Administrator in order to carry out the functions delegated to them by this Section.

(j)(1) The functions vested in the President by Section 104(e)(5)(A) are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of those departments and agencies, to be exercised with the concurrence of the Attorney General.

(2) Subject to subsection (b) of this Section and paragraph (1) of this subsection, the functions vested in the President by Section 104(e) are delegated to the heads of Executive departments and agencies in order to carry out their functions under this Order or the Act.

(k) The functions vested in the President by Section 104(f), (g), (h), (i)(11), and (j) of the Act are delegated to the heads of Executive departments and agencies in order to carry out the functions delegated to them by this Section. The exercise of authority under Section 104(h) of the Act shall be subject to the approval of the Administrator of the Office of Federal Procurement Policy.

Sec. 3. *Cleanup Schedules.* (a) The functions vested in the President by Sections 116(a) and the first two sentences of 105(d) of the Act are delegated to the heads of Executive departments and agencies with respect to facilities under the jurisdiction, custody or control of those departments and agencies.

(b) Subject to subsection (a) of this Section, the functions vested in the President by Sections 116 and 105(d) are delegated to the Administrator.

Sec. 4. *Enforcement.* (a) The functions vested in the President by Sections 109(d) and 122(e)(3)(A) of the Act, relating to development of regulations and guidelines, are delegated to the Administrator, to be exercised in consultation with the Attorney General.

(b)(1) Subject to subsection (a) of this Section, the functions vested in the President by Section 122 (except subsection (b)(1)) are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases not on the NPL where either the release is on or the sole source of the release is from any facility under the jurisdiction, custody or control of those Executive departments and agencies. These functions may be exercised only with the concurrence of the Attorney General.

(2) Subject to subsection (a) of this Section, the functions vested in the President by Section 109 of the Act, relating to violations of Section 122 of the Act, are delegated to the heads of Executive departments and agencies, with respect to releases or threatened releases not on the NPL where either the release is on or the sole source of the release is from any facility under the jurisdiction, custody or control of those Executive departments and agencies. These functions may be exercised only with the concurrence of the Attorney General.

(c)(1) Subject to subsection (a) and (b)(1) of this Section, the functions vested in the President by Sections 106(a) and 122 of the Act are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(2) Subject to subsection (a) and (b)(2) of this Section, the functions vested in the President by Section 109 of the Act, relating to violations of Sections 103 (a) and (b), and 122 of the Act, are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(d)(1) Subject to subsections (a), (b)(1), and (c)(1) of this Section, the functions vested in the President by Sections 106 and 122 of the Act are delegated to the Administrator.

(2) Subject to subsections (a), (b)(2), and (c)(2) of this Section, the functions vested in the President by Section 109 of the Act, relating to violations of Sections 103 and 122 of the Act, are delegated to the Administrator.

(e) Notwithstanding any other provision of this Order, the authority under Sections 104(e)(5)(A) and 106(a) of the Act to seek information, entry, inspection, samples, or response actions from Executive departments and agencies may be exercised only with the concurrence of the Attorney General.

Sec. 5. *Liability.* (a) The function vested in the President by Section 107(c)(1)(C) of the Act is delegated to the Secretary of Transportation.

(b) The functions vested in the President by Section 107(c)(3) of the Act are delegated to the Coast Guard with respect to any release or threatened release involving the coastal zone, Great Lakes waters, ports, and harbors.

(c) Subject to subsection (b) of this Section, the functions vested in the President by Section 107 (c)(3) of the Act are delegated to the Administrator.

(d) The functions vested in the President by Section 107(f)(1) of the Act are delegated to each of the Federal trustees for natural resources designated in the NCP for resources under their trusteeship.

(e) The functions vested in the President by Section 107(f)(2)(B) of the Act, to receive notification of the state natural resource trustee designations, are delegated to the Administrator.

Sec. 6. *Litigation.* (a) Notwithstanding any other provision of this Order, any representation pursuant to or under this Order in any judicial proceedings shall be by or through the Attorney General. The conduct and control of all litigation arising under the Act shall be the responsibility of the Attorney General.

(b) Notwithstanding any other provision of this Order, the authority under the Act to require the Attorney General to commence litigation is retained by the President.

(c) The functions vested in the President by Section 113(g) of the Act, to receive notification of a natural resource trustee's intent to file suit, are delegated to the heads of Executive departments and agencies with respect to response actions for which they have been delegated authority under Section 2 of this Order. The Administrator shall promulgate procedural regulations for providing such notification.

(d) The functions vested in the President by Sections 310 (d) and (e) of the Act, relating to promulgation of regulations, are delegated to the Administrator.

Sec. 7. *Financial Responsibility.* (a) The functions vested in the President by Section 107(k)(4)(B) of the Act are delegated to the Secretary of the Treasury. The Administrator will provide the Secretary with such technical information and assistance as the Administrator may have available.

(b)(1) The functions vested in the President by Section 108(a)(1) of the Act are delegated to the Coast Guard.

(2) Subject to Section 4(a) of this Order, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(a)(1) of the Act, are delegated to the Coast Guard.

(c)(1) The functions vested in the President by Section 108(b) of the Act are delegated to the Secretary of Transportation with respect to all transportation related facilities, including any pipeline, motor vehicle, rolling stock, or aircraft.

(2) Subject to Section 4(a) of this Order, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(a)(3) of the Act, are delegated to the Secretary of Transportation.

(3) Subject to Section 4(a) of this Order, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108(b) of the Act, are delegated to the Secretary of Transportation with respect to all transportation related facilities, including any pipeline, motor vehicle, rolling stock, or aircraft.

(d)(1) Subject to subsection (c)(1) of this Section, the functions vested in the President by Section 108 (a)(4) and (b) of the Act are delegated to the Administrator.

(2) Subject to Section 4(a) of this Order and subsection (c)(3) of this Section, the functions vested in the President by Section 109 of the Act, relating to violations of Section 108 (a)(4) and (b) of the Act, are delegated to the Administrator.

Sec. 8. *Employee Protection and Notice to Injured.* (a) The functions vested in the President by Section 110(e) of the Act are delegated to the Administrator.

(b) The functions vested in the President by Section 111(g) of the Act are delegated to the Secretaries of Defense and Energy with respect to releases from facilities or vessels under the jurisdiction, custody or control of their departments, respectively, including vessels bare-boat chartered and operated.

(c) Subject to subsection (b) of this Section, the functions vested in the President by Section 111 (g) of the Act are delegated to the Administrator.

Sec. 9. *Management of the Hazardous Substance Superfund and Claims.* (a) The functions vested in the President by Section 111(a) of the Act are delegated to the Administrator, subject to the provisions of this Section and other applicable provisions of this Order.

(b) The Administrator shall transfer to other agencies, from the Hazardous Substance Superfund out of sums appropriated, such amounts as the Administrator may determine necessary to carry out the purposes of the Act. These amounts shall be consistent with the President's Budget, within the total approved by the Congress, unless a revised amount is approved by OMB. Funds appropriated specifically for the Agency for Toxic Substances and Disease Registry ("ATSDR"), shall be directly transferred to ATSDR, consistent with fiscally responsible investment of trust fund money.

(c) The Administrator shall chair a budget task force composed of representatives of Executive departments and agencies having responsibilities under this Order or the Act. The Administrator

shall also, as part of the budget request for the Environmental Protection Agency, submit to OMB a budget for the Hazardous Substance Superfund which is based on recommended levels developed by the budget task force. The Administrator may prescribe reporting and other forms, procedures, and guidelines to be used by the agencies of the Task Force in preparing the budget request, consistent with budgetary reporting requirements issued by OMB. The Administrator shall prescribe forms to agency task force members for reporting the expenditure of funds on a site specific basis.

(d) The Administrator and each department and agency head to whom funds are provided pursuant to this Section, with respect to funds provided to them, are authorized in accordance with Section 111(f) of the Act to designate Federal officials who may obligate such funds.

(e) The functions vested in the President by Section 112 of the Act are delegated to the Administrator for all claims presented pursuant to Section 111 of the Act.

(f) The functions vested in the President by Section 111(o) of the Act are delegated to the Administrator.

(g) The functions vested in the President by Section 117(e) of the Act are delegated to the Administrator, to be exercised in consultation with the Attorney General.

(h) The functions vested in the President by Section 123 of the Act are delegated to the Administrator.

(i) Funds from the Hazardous Substance Superfund may be used, at the discretion of the Administrator or the Coast Guard, to pay for removal actions for releases or threatened releases from facilities or vessels under the jurisdiction, custody or control of Executive departments and agencies but must be reimbursed to the Hazardous Substance Superfund by such Executive department or agency.

Sec. 10. *Federal Facilities.* (a) When necessary, prior to selection of a remedial action by the Administrator under Section 120(e)(4)(A) of the Act, Executive agencies shall have the opportunity to present their views to the Administrator after using the procedures under Section 1-6 of Executive Order No. 12088 of October 13, 1978, or any other mutually acceptable process. Notwithstanding subsection 1-602 of Executive Order No. 12088, the Director of the Office of Management and Budget shall facilitate resolution of any issues.

(b) [Deleted]

[Sec. 10(b) amends Executive Order 12088of Oct. 13, 1978, Chapter 40. The amendment has been incorporated into that order.]

Sec. 11. *General Provisions.* (a) The function vested in the President by Section 101(37) of the Act is delegated to the Administrator.

(b)(1) The function vested in the President by Section 105(f) of the Act, relating to reporting on minority participation in contracts, is delegated to the Administrator.

(2) Subject to paragraph 1 of this subsection, the functions vested in the President by Section 105(f) of the Act are delegated to the heads of Executive departments and agencies in order to carry out the functions delegated to them by this Order. Each Executive department and agency shall provide to the Administrator any requested information on minority contracting for inclusion in the Section 105(f) annual report.

(c) The functions vested in the President by Section 126(c) of the Act are delegated to the Administrator, to be exercised in consultation with the Secretary of the Interior.

(d) The functions vested in the President by Section 301(c) of the Act are delegated to the Secretary of the Interior.

(e) Each agency shall have authority to issue such regulations as may be necessary to carry out

the functions delegated to them by this Order.

(f) The performance of any function under this Order shall be done in consultation with interested Federal departments and agencies represented on the NRT, as well as with any other interested Federal agency.

(g) The following functions vested in the President by the Act which have been delegated or assigned by this Order may be redelegated to the head of any Executive department or agency with his consent: functions set forth in Sections 2 (except subsection (b)), 3, 4(b), 4(c), 4(d), 5 (b), 5(c), and 8(c) of this Order.

(h) Executive Order No. 12316 of August 14, 1981, is revoked.

CHAPTER 1

ENVIRONMENTAL POLICY, ORGANIZATION AND FUNDING

1-1 Scope

1-1.1 Manual. This manual provides Navy policy, identifies key statutory and regulatory requirements, and assigns responsibility for management of Navy programs for:

a. Cleanup of waste disposal sites

b. Compliance with current laws and regulations for the protection of the environment, natural resources, and cultural and historic resources

c. Conservation of natural resources

d. Pollution prevention

e. Technology.

These programs are listed neither in order of importance nor priority. Within the Department of Defense (DOD), these five program areas are referred to as C^3P^2+T.

1-1.2 Coordination. This manual has been coordinated with the Commandant of the Marine Corps, but does not apply to Marine Corps activities.

1-1.3 Applicability. The policies and procedures in this manual apply to shore activities within the United States, territories, commonwealths, and possessions. The policies in chapter 19 apply to ship operations worldwide. Other policies and procedures in this manual, including those regarding the National Environmental Policy Act (NEPA), are applicable to ships and Navy operations only within the territorial seas of the U.S. unless expressly stated otherwise. Navy policy for overseas shore activities is provided in chapter 18. This instruction describes the internal management of the Navy's environmental program, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the Department of the Navy (DON), its officers, employees, or any person.

1-1.4 Precedence. This instruction is the primary guidance for Navy policies and procedures for managing environmental and natural resource programs, and any apparent conflict between this instruction and other Navy instructions, manuals and similar directives on environmental and natural resource programs will be resolved in favor of this instruction. This instruction is consistent with all applicable statutes, Executive Orders (E.O.s), DOD directives and DON instructions, and readers will so construe it.

1-1.5 References. References are:

a. SECNAV INSTRUCTION 5510.30A, Department of the Navy Personnel Security Manual; (NOTAL)

b. SECNAV INSTRUCTION 5510.36, Department of the Navy Information Security Program (ISP) Regulation; (NOTAL)

c. OPNAVINST 5430.48D, Office of the Chief of Naval Operations (OPNAV) Organization Manual; (NOTAL)

1-2 Policy

1-2.1 General Requirements

a. The Chief of Naval Operations (CNO) has defined the environmental vision of the Navy: "Navy recognized as an environmental leader while effectively executing naval operations." The Navy's ability to accomplish its mission requires daily operations in the land, sea, and air environment. The Navy is committed to operating in a

manner compatible with the environment. National defense and environmental protection are, and must be, compatible goals. The chain of command must provide leadership and personal commitment to ensure that all Navy personnel develop and exhibit an environmental protection ethic. Thus, an important part of the mission of the Navy is to prevent pollution, protect the environment, and protect natural, historic, and cultural resources.

b. All Navy personnel (civilian and military), tenants, and contractors working for the Navy shall comply with all applicable Federal, State, local, and internal environmental policies, regulations, and requirements. Navy personnel shall obtain all necessary Federal, State, and local environmental permits for construction and operation of facilities and comply with permit terms and conditions. When, in the interest of national defense and/or a particular mission, a Navy command considers that compliance with an applicable requirement is impractical or inappropriate due to security considerations or impact on the military mission, the issue shall be referred to the Deputy Chief of Naval Operations (DCNO (Logistics), CNO (N4)), via the chain of command. Presidential exceptions may be available under some statutes, but Navy policy is to achieve and maintain compliance with applicable laws and regulations. Activities shall seek compliance waivers only as a last resort, and CNO (N4) will not grant waivers if he or she considers compliance to be practicable. Commands seeking waivers must comply with environmental requirements while the request is pending.

1-2.2 Pollution Prevention. The preferred method of environmental protection is to eliminate or control, to the maximum extent feasible, the pollutant source per E.O. 12856. All Navy activities shall identify means and methods for the elimination or minimization of pollutants and, where possible, incorporate them at the earliest stages of planning, design, and procurement of facilities, ships, aircraft, weapon systems, equipment, and material. Commands shall strive to eliminate or minimize use of hazardous materials (HM) and generation of hazardous waste (HW). chapter 3 describes these programs in detail.

1-2.3 Statutory Requirements. Federal agencies may have to comply with the requirements of a law either because Congress has waived sovereign immunity and made Federal agencies subject to its provisions or because the President has directed by E.O. that agencies of the Executive Branch comply with certain laws or portions of laws as a matter of policy. Most major environmental statutes contain waivers of sovereign immunity that require Federal agencies to comply with Federal, State and local environmental laws and provide for enforcement of Federal, State, and local substantive, procedural, and administrative requirements. Because the application of sovereign immunity waivers varies somewhat with specific situations, personnel should seek the advice of appropriate Navy legal counsel. Requirements for the payment of fees, fines, or taxes are discussed in paragraph 1-4.3.

1-2.4 Executive Requirements. E.O. 12088 requires the head of each Federal agency to comply with "applicable pollution control standards" defined as "the same substantive, procedural, and other requirements that would apply to a private person." It also requires Federal agencies to cooperate with the Environmental Protection Agency (EPA), State, and local environmental regulatory officials. Other E.O.s specific to each subject are referenced in subject chapters and in appendix A.

1-2.5 Information Security. Representatives of Federal, State, and local agencies, exercising their regulatory authorities under environmental laws and regulations, periodically visit Navy shore activities. Activities shall properly enforce Navy regulations and Federal statutes governing the control and protection of classified and sensitive unclassified information but shall not interfere with the legitimate regulatory purpose of these visits. Activities shall follow these guidelines:

a. Only personnel with appropriate security clearances or access authorizations shall be permitted access to classified information, and then only upon a determination by the cognizant Navy official that a need-to-know exists to fulfill a legitimate regulatory purpose. In keeping with the need-to-know principle, such access shall be limited to classified information required to resolve the matter at hand. When permitting access, activities shall negotiate arrangements under references (a) and (b) to assure continued protection of the information by the regulatory personnel.

b. Navy commands handle a considerable amount of sensitive unclassified information controlled under Navy security regulations, Federal Export Control regulations, and other government-wide requirements. While security clearances or access authorizations are not required for access to this information, a need-to-know determination shall be made as described above for classified information, and only U.S. citizens may be permitted access in most cases. The holder of the information shall ensure that the recipient understands and complies with applicable security regulations governing dissemination and protection of the information before permitting access.

c. Access to certain categories of classified and sensitive unclassified information requires special authority. Specifically, access to classified or unclassified naval nuclear propulsion information or to the propulsion plant spaces of nuclear powered ships requires the specific approval of the Director of Naval Nuclear Propulsion Program CNO (N00N).

d. Because access to classified and sensitive unclassified information by regulatory personnel creates administrative burdens for both the Navy and the regulator, as described above, Navy commands are encouraged to satisfy the needs of regulatory personnel using information which is publicly releasable.

Subordinate commands shall ensure that these guidelines are reflected in instructions which they issue covering this area.

Chapter 19 discusses information security regarding ships.

1-2.6 GOCO Facilities. Navy offices or activities sponsoring government-owned-contrac-tor-operated (GOCO) facilities shall exercise oversight through the facility's lease or management contracts to ensure that the operating contractor complies with applicable environmental regulations.

1-2.6.1 Facility Use Operations. Officially assigned major claimants for a GOCO plant shall exercise oversight through the facility's use or management contracts to ensure that the plant complies with environmental regulations. When a GOCO plant has no operating contractor or lessee, the major claimant for the GOCO plant shall comply with the requirements of this instruction. Officially assigned major claimant(s) for a leased property shall ensure that lease contract terms and conditions place full responsibility for environmental compliance on the lessee, and shall exercise appropriate oversight of the leased property to ensure lessee compliance with environmental regulations.

1-2.6.2 Operations, Facility Use, or Lease Agreements. These agreements shall require operation of all facilities and equipment under applicable substantive and procedural environmental requirements. Contractors shall obtain all necessary permits and sign the permits as operators unless otherwise directed by contract. Contractors shall advise the Navy of any permit, its conditions, and provide periodic compliance status reports as required by the managing Navy office. Each major claimant for assigned GOCO plants, non-excess GOCO plants, and non-excess military installations, and each Navy sponsor of a GOCO facility shall sign as owner for all environmental permits which each respective operating contractor or lessee of such assigned plant or facility is required to have per environmental regulations and laws. The

landlord command shall develop a schedule and document periodic review of the environmental compliance of its lease and license holders.

1-2.6.3 Facilities Leased or Rented by the Navy. Facility use contracts, rental agreements or leases shall require the owner of facilities leased or rented by the Navy to be responsible for ensuring that the facilities comply with all applicable environmental requirements. The Navy activity renting/leasing the facility shall operate all facilities and equipment under all applicable substantive and procedural environmental requirements, obtain all necessary permits, and sign as operator, unless otherwise directed by contract.

1-2.7 Real Estate Purchase. The purchasing activity shall conduct a pre-purchase environmental survey and a property transaction audit that includes a Preliminary Assessment (PA) for potential hazardous waste contaminated sites. If the seller did a PA, then the purchasing activity shall review documents for accuracy to determine the need for an on-site survey.

1-2.8 Regional/Community Programs. The Navy supports the participation of its employees and officers in regional and community programs to prevent pollution, address waste management issues, and to protect natural and cultural resources. Such participation may include advisory functions or planning of pollution control facilities where Navy shore activities can contribute to the subject to be addressed by that facility. When beneficial and authorized, the Navy may participate in funding of regional/community pollution control and solid waste management solutions. Before committing to participation, employees and commands shall seek the advice of Navy counsel.

R) **1-2.9 Reporting Noncompliance.** Immediately upon discovery of a failure to comply, or a potential failure to comply with environmental requirements, a Navy employee shall report it to the responsible command. If the responsible command is unknown, the noncompliance shall be reported up the individual's chain of command until the responsible official is determined. If reprisal is of concern to the reporting individual, he or she may submit reports via the Navy Hotline, (800) 522-3451. Naval personnel shall report Notices of Violation (NOVs), Notices of Noncompliance (NONs), warning letters, warning notices, citizen suit notices, consent orders, or any other written or oral notice of deficiencies of Federal, State, interstate, or local environmental control laws or regulations per the procedures of appendix B. If necessary, personnel should seek assistance from the major claimant, the servicing Engineering Field Division (EFD), or the cognizant Regional Environmental Coordinator (REC). Navy policy is to promptly correct any areas not in compliance with applicable requirements. Such prompt attention is the best defense to possible criminal charges or individual penalties.

1-2.10 Facility Inspections. Navy shore facility commanders shall allow entry at reasonable times to Federal or State/local environmental regulators or representatives, upon presentation of proper credentials and subject to information security requirements of paragraph 1-2.5. to examine or copy records, inspect monitoring equipment, inspect work being performed in regard to environmental/regulatory compliance, or sample any wastes or substances which they have the authority to regulate. Further, such inspections shall comply with information and facility security requirements set forth in references (a) and (b) and paragraph 1-2.5. Activities shall notify the major claimant and the REC of all regulatory inspections and may request cognizant Naval Facilities Engineering Command (COMNAVFACENGCOM) organization or REC assistance at such inspections. Chapter 19 provides policy for inspections aboard ship.

1-2.11 Fleet/Shore Facility Relationship. When naval vessels or aircraft are present at a shore facility, commanding officers and personnel assigned to such vessels or aircraft shall comply with the host command's environmental protection policies developed under this instruction.

Compliance with local environmental requirements often requires specialized knowledge, expertise, or capability that afloat units may lack. To the maximum extent possible, shore commands and RECs shall provide to afloat units, upon request, such assistance as may be necessary to ensure environmental compliance by afloat units.

1-2.12 Consistency. Environmental regulations have increased exponentially in recent years. The regulations of a variety of Federal, State, regional and local agencies apply to Navy shore activities. Requirements and interpretations vary widely. To ensure consistent responses to various agencies and to avoid adverse precedents, all commands shall coordinate permit conditions, demands for payment of Navy funds, compliance agreements, settlements, negotiations and responses to NOVs from environmental agencies with their major claimant and REC. appendix B contains instructions for the processing of NOVs and associated chain of command responsibilities. Commands shall send all interpretations or agreements likely to set precedents to CNO (N45) immediately, via the chain of command, with copies to the REC and COMNAVFACENGCOM or applicable EFD or Engineering Field Activity (EFA).

1-2.13 Delegation. Navy personnel shall cooperate fully with Federal, State, and local officials and attempt to reach agreement on environmental compliance matters at the lowest level possible, keeping in mind the coordination requirements outlined above.

1-2.14 Host/Tenant Agreements. Commanding officers/officers in charge of host activities are responsible for all aspects of environmental, natural resources and cultural resource compliance on their bases. Commands cannot delegate this responsibility. All Navy hosts and tenants shall develop agreements, or include in existing agreements, roles and responsibilities with respect to environmental compliance. Such agreements shall include pollution prevention, environmental compliance evaluations (see chapter 20), NEPA documentation (see chapter 2), contact with regulatory agencies, payment of fines/fees, permit signatures/duties, HW management, emergency planning and community right-to-know implementation, training, corrective and/or response actions, etc. Where appropriate, commands shall establish environmental compliance boards consisting of host and tenant management personnel. Commands may delegate authority for portions of environmental program management to senior managers consistent with "by direction" signature authority. Host commands may delegate authority to tenant commands, but overall responsibility shall remain with the host commanding officer.

1-2.15 Release of Information. Applicable law and information security requirements govern release of activity specific data and information to agencies outside the Navy. Persons outside the Navy shall forward requests for information to an activity for action by the commanding officer of the activity or cognizant major claimant.

1-2.16 Radioactive Material. Use and management of radioactive material shall comply with applicable rules, regulations, and requirements of the Department of Energy (DOE), Nuclear Regulatory Commission (NRC), Department of Transportation (DOT), and EPA, and shall comply with the Naval Nuclear Propulsion Program for matters pertaining to nuclear propulsion. Commands shall coordinate any matters affecting or involving naval nuclear propulsion plants or nuclear support facilities or their associated radioactivity with CNO (N00N). CNO (N00N) shall coordinate such matters as appropriate with the cognizant REC.

1-2.17 Environmental and Natural Resources Training (R

a. All naval commands afloat and ashore, shall provide adequate education and training to naval personnel to ensure they understand their role within the Navy's program and to enable them to comply with applicable Federal, State and local environmental laws and regulations. Commanders shall provide Navy personnel with environmental

b. Plan, program, budget and allocate sufficient resources to fund environmental compliance requirements at their activities.

c. Issue guidance to activities regarding planning, programming, and budgeting of environmental requirements and execution of environmental programs and projects.

d. Ensure activities, including GOCOs, submit all environmental compliance requirements to major claimants as soon as such requirements are foreseen.

D)

e. Support CNO (N4) as program assessment sponsor by providing detailed information in support of program baseline assessments as requested.

f. Provide input on RDT&E requirements via the DON Strategic Environmental Quality RDT&E program, and direct the implementation of innovative solutions to environmental compliance, cost, and liability issues.

g. Review draft legislation and regulations and provide CNO (N45) with timely comments and assessments on the impact of draft legislation or regulations on their activities.

1-5.16 Commanding officers (COs) of shore activities shall

a. Comply with applicable substantive and procedural Federal, State, and local environmental laws and regulations and continuously strive for improvements in all areas of pollution prevention.

b. Cooperate with Federal, State, and local environmental regulatory officials.

c. Comply with the policies in this manual.

d. Coordinate environmental and natural resources matters (especially enforcement actions, agreements and permit conditions) with RECs, NAVFACENGCOM EFDs and EFAs, and major claimants.

e. Submit nominations for the Secretary of the Navy Environmental Quality and Natural Resources Awards, as appropriate.

f. Integrate environmental compliance requirements into all levels of activity management through the application of program management procedures (including oversight, inspection, and identification) and by requesting sufficient resources to support environmental and natural resources programs.

g. If CO of a host activity, apply for all Federal, State, and local permits, where appropriate, and coordinate permit conditions with all affected tenant commands. Include responsibilities for environmental and natural resources program, permits, fees and fines in all host/tenant agreements. In those States or regions where environmental regulatory agencies allow tenant commands to submit and hold their own environmental permits, COs of host commands may delegate authority to sign and hold permits to COs of tenant commands.

h. Along with COs and officers in charge (OICs) of tenant activities, comply with the policies of this manual and with written environmental and natural resources requirements established by the host commanding officer. Federal, State and local laws allocate responsibilities that intra-Navy agreements and command relationships cannot alter. Accordingly, COs and OICs of tenant activities shall coordinate all contacts with regulatory officials through the host activity.

i. Plan, program, budget, and allocate funds for environmental protection costs.

1-5.17 Commander, Military Sealift Command (MSC) shall:

and natural resources training appropriate to their position or employment. At minimum, personnel must attain a general awareness of Navy environmental and natural resources policies, as well as an awareness of the effects that their actions can have on the environment (see chapter 24).

b. Commands shall ensure that counsel assigned to provide advice on environmental law issues comply with the training recommendations, including continuing legal education, established jointly by the General Counsel of the Navy (OGC) and the Judge Advocate General (NAVY JAG). Individuals should complete this initial training en route where possible. Commands shall also ensure that counsel assigned to provide advice on environmental law issues have access to reference material that complies with the joint recommendations of the OGC and NAVY JAG.

R) **1-2.18 Representation of Federal Employees** If a legal entity or individual brings action against an employee or service member in a civil lawsuit, consult with the command counsel immediately to initiate the steps to obtain U.S. Department of Justice (DOJ) representation. DOJ determines availability of DOJ representation after favorable chain of command endorsement. Members and employees should direct any further question regarding representation to the command counsel.

1-2.18.1 Payment of Attorney Fees and Judgments. DOJ representation will be free of charge to the employee or service member. If a court finds the employee or service member personally liable, the employee or service member will be responsible for paying any judgment or penalty from personal funds, regardless of whether DOJ provided representation. There are no specific provisions for reimbursing an employee or service member for judgments incurred.

A) **1-2.19 Environmental Considerations During Celebrations/Events.** Large-scale celebrations/events held aboard naval ships or shore facilities may adversely affect the environment if not planned carefully. Event organizers must consider factors such as solid waste source generation and reduction and wastewater collection and treatment when planning change of command ceremonies, commissioning and de-commissioning ceremonies, deployment homecoming celebrations, and other events that involve large gatherings of personnel and civilian guests.

1-2.19.1 Use of Balloons During Celebrations/Events. Helium-filled balloons travel significant distances from point of release and can harm marine mammals and other aquatic life if they deflate over water. Navy activities will not release helium-filled balloons during celebrations and other events regardless of distance from any coastline. (A

1-3 Organization

1-3.1 Area Environmental Coordinators (AECs). AECs are responsible for coordination of environmental issues within their designated EPA region. (See appendix C for the list of EPA regions.) AECs shall appoint RECs and Navy On-Scene Coordinators (NOSCs) within the AEC's area of responsibility (AOR). The Navy AECs are:

CINCLANTFLT:	EPA Regions I, II, III and IV
CNET:	EPA Regions V and VI
COMNAVRESFOR:	EPA Regions VII and VIII
CINCPACFLT:	EPA Regions IX and X

1-3.1.1 DOD Regional Environmental Coordination. The Department of Navy has been designated as the DOD Executive Agent (EA) for the regional environmental coordination in EPA regions I, III, and IX, and therefore serves as the DOD REC in these regions.

1-3.2 Navy On-Scene Coordinator (NOSC). The NOSC is the Navy official pre-designated to coordinate Navy oil and hazardous substances (OHS) pollution contingency planning and direct Navy OHS pollution response efforts in a pre-assigned area. Shoreside NOSCs are normally RECs pre-designated by the AECs (see chapter 10). CINCPACFLT, CINCLANTFLT and CINCUSNAVEUR will pre-designate fleet NOSCs for assigned ocean areas. The NOSC is the Federal On-Scene Coordinator (OSC) for Navy hazardous substance (HS) releases. The NOSC shall act as the Qualified Individual (QI) and incident commander for spills outside areas assigned to Facility Incident Commanders (FICs), and as incident commander for spills beyond the capability of a FIC.

1-3.3 RECs. RECs serve as the senior Navy officer in a local region to coordinate environmental matters and public affairs. AECs designate RECs, and may designate them as NOSCs for spill response as discussed in chapters 10 and 19.

1-3.4 Naval Environmental Protection Support Service (NEPSS). The NEPSS includes offices in various commands designated to provide environmental technical, legal, data management, and information exchange support to Navy and Marine Corps organizations. The NEPSS consists of the following:

a. COMNAVFACENGCOM is the NEPSS manager.

b. COMNAVFACENGCOM, its subordinate EFD/EFAs and the Naval Facilities Engineering Service Center (NFESC) provide expertise in environmental engineering and legal support, coordinate NEPSS actions, provide NEPSS Navy-wide data collection, and manage NEPSS specialty offices.

c. Specialty offices include

(1) Ordnance Environmental Support Office (OESO) at the Naval Surface Warfare Center, Indian Head, MD, Division provides Navy-wide support relative to specialty chemical, ord nance, munitions, and ordnance activity environmental protection.

(2) Aircraft Environmental Support Office (AESO) at the Naval Aviation Depot, North Island, CA provides Navy-wide support relative to aircraft and aircraft facility environmental protection.

(3) Ships Environmental Support Office (SESO) at the Naval Surface Warfare Center, Carderock Division, Annapolis, MD, Detachment provides Navy-wide support relative to ships environmental protection.

(4) Marine Environmental Support Office (MESO) at the Naval Command, Control and Ocean Surveillance Center Research, Development, Test and Evaluation (RDT&E) Division, San Diego, CA, provides Navy-wide support relative to aquatic environmental protection.

1-3.5 Disputes. Activities having unresolved differences of opinion between themselves and/or with the REC relative to environmental policy issues, including new permit conditions, negotiating positions, payment of new fees, novel provisions in compliance agreements, etc. shall consult cognizant major claimants for resolution. If necessary, they shall take such issues to CNO (N45) through the cognizant major claimant. Activities shall refer legal questions, including interpretations of laws, regulations, permits, compliance agreements and similar legal documents to counsel for the REC for determination consistent with Article 0327 of Navy Regulations, 1990.

1-3.6 Environmental Quality and Natural Resources Conservation Awards. The Navy recognizes outstanding environmental protection or natural resources conservation achievements by Navy individuals and organizations. Secretary of (R

the Navy (SECNAV) and the CNO annually present awards to installations, ships, and individuals for outstanding leadership and programs, innovation in problem solving, and exemplary approaches to incorporating environmental protection and natural resource concerns into training and day-to-day operations. The SECNAV and CNO awards are the basis for nomination for annual DOD awards. Details of awards and nomination requirements are located in appendix D. DOD publishes its requirements annually which may supercede appendix D.

1-4 Funding

R) **1-4.1.1 Environmental Program Requirements (EPR):** All activities shall enter Navy environmental costs, no matter how funded, into the EPR system. The following requirements are applicable to costs associated with shore compliance, conservation and pollution prevention. Major claimants shall ensure their subordinate commands identify all environmental costs in the EPR system, and shall implement a reporting system that best meets their needs while satisfying reporting requirements.

R) **1-4.1.1.1** All major claimants shall maintain an environmental database to support planning, programming, budgeting and reporting of the environmental program requirements of this instruction. Technical assistance is available from NAVFACENGCOM, its EFDs or EFAs.

1-4.1.1.2 Major claimants shall review environmental program elements in-house or with assistance from the NAVFACENGCOM, EFD or EFA. Major claimants must review program elements for technical adequacy, regulatory requirements, and adequacy of the cost estimate.

R) **1-4.1.1.3** Major claimants shall forward approved environmental program elements from their consolidated claimant database to CNO (N45). Claimants may use NAVFACENGCOM, EFDs, EFAs or other support on a reimbursable basis to manage their environmental program database.

D)

1.4.2 Federal Anti-Deficiency Act. This Act provides that no Federal official or employee may obligate the government for the expenditure of funds unless Congress has authorized and appropriated funds for that purpose.

1-4.3 Fees and Taxes. As a rule, Federal facilities are subject to reasonable service charges or fees related to the administration of environmental enforcement programs imposed by Federal, State, and local agencies. Service charges related to the discharge of effluent into bodies of water, the discharge of air emissions into the atmosphere, underground storage tanks (USTs), and the storage, treatment, transportation, and disposal of solid waste are among the types of charges that may be billed to an installation. However, Congress has generally not provided for the payment of taxes by Federal installations and activities. It is therefore important to distinguish between those charges that are fees and those that, although not called taxes, have the character of taxes. Activities must make this distinction before payments are made. Disbursing authorities shall consult with command or REC counsel when an agency first presents a fee or service charge. Final determinations regarding the legality of new fees shall be formulated in consultation with DOJ at the headquarters level in appropriate cases.

1-4.3.1 In general, a command will examine charges presented as fees or for services to determine whether:

a. The charge in question is imposed on all regulated entities without discriminating against Federal agencies; or

b. The charge fairly approximates the cost to the State or local authority of making the services available: or

c. The charge does not generate revenues over and above the cost of the relevant programs it supports.

Negative answers to any of these inquiries suggest that the charge is a tax rather than a fee or service charge, thus obliging the U.S. to determine whether to contest it. Commands should refer questions about these charges to command counsel or REC counsel.

Installations and activities questioning a charge shall make clear to the authority demanding payment that delay for review is not a reflection of Navy resistance to regulatory action, but is necessary because of legal issues that require resolution before payment may be made lawfully.

If a regulatory agency refuses to issue an environmental permit to an activity because the activity has not paid an assessment pending legal review, the activity shall immediately notify CNO (N45) via the chain of command, and their REC.

1-4.3.2 Citations and Fines. Commands shall report immediately any citation by a regulatory agency for an alleged violation of any substantive or administrative requirement or any attempt to levy a fine against a Navy facility. Commands shall process the citation by the procedures of appendix B.

1-4.4 Economic Analysis. When practical and appropriate, commands shall analyze the economic consequences before deciding among options for complying with environmental requirements. For example, it may be more efficient to contract out or transfer operations rather than fund pollution control projects. In other cases, it may be more economical to replace equipment as opposed to retrofitting to meet requirements. Long term pollution prevention options take precedence over short term controls wherever practical.

R) **1-4.5 EPA Compliance Requirements Categories.** Office of Management and Budget (OMB) and EPA require all Federal agencies to classify shoreside compliance projects (other than environmental restoration) into four categories:

a. Class 0 projects are those necessary to (A
cover the administrative, personnel and other costs associated with managing environmental programs that are necessary to meet applicable compliance requirements or which are in direct support of the military mission. Recurring class 0 costs consist of manpower; training; supplies; hazardous waste disposal; operating recycling activities; permit; fees; testing; and monitoring/sampling and analysis; reporting; record keeping; and compliance self assessments.

b. Class I projects are those necessary to (R
correct situations which are currently out of compliance with established regulatory deadlines. This class also includes projects necessary to correct situations not currently out of compliance but susceptible to noncompliance if projects remain not implemented within the current program year. This class includes overseas projects necessary to alleviate the human health threats, threats to ongoing operations or necessary to comply with applicable treaties and agreements.

c. Class II projects are those in which facilities will be out of compliance at a specific, impending published deadline if action is not taken. If not accomplished by the deadline, projects become Class I.

d. Class III projects are those needed to meet DOD, Assistant SECNAV (Installations & Environment) (ASN (I&E)), CNO and/or claimant goals related to environmental protection, pollution prevention, cost effectiveness, environmental quality, or enhancement initiatives. Law does not mandate these projects, but their accomplishment demonstrates Federal leadership and goodwill.

1-4.6 Budgeting for Environmental Compliance. Shore activities and afloat commands shall report Annual Environmental budget requirements on Assistant Secretary of the Navy (Financial Management and Comptroller (ASN(FM&C)) Exhibit PB-28, per (ASN(FM&C)) guidance.

1-4.6.1 Funding Base Operations. The cost of environmental, natural resources and cultural resources compliance shall be part of each activity's operating budget. Activities shall program, budget, and execute compliance requirements in the same manner as other traditional base support costs. Activities are encouraged to charge those commands which use facility services for the full cost of the service as it relates to assuring legally mandated environmental compliance for day-to-day work.

R) **1-4.7 Weapon Systems and Platforms.** The Navy funds alterations to existing Navy ships, aircraft or weapon systems and platforms for the purpose of meeting environmental compliance requirements in the Fleet Modernization Program (FMP) or Engineering Change Proposal (ECP) program, and also uses funds programmed by the applicable CNO resource sponsors. The appropriate hardware systems command budgets for special studies, equipment, and research, development, test and evaluation (RDT&E) for new environmental compliance requirements.

1-4.8 Limit on Use of Environmental Funds. Naval activities shall use funds allocated for environmental and natural resources protection *only* for those purposes, consistent with applicable (ASN(FM&C)) regulations.

1-5 Responsibilities

1-5.1 DCNO (Logistics, CNO (N4)) or designee shall:

a. Monitor proposed Federal environmental legislation, Federal regulations and proposed rules, and coordinate Navy impact analyses, and ensure articulation of Navy positions and concerns in conjunction with the Navy Office of Legislative Affairs (OLA) and ASN (I&E).

b. Establish and regularly update policy, direct, and monitor progress of the Navy environmental and natural resources programs.

c. Coordinate environmental policy and program matters with ASN (I&E), the Deputy Under Secretary of Defense (Environmental Security) (DUSD (ES)), other services, the EPA, and other Federal agencies.

d. Coordinate review and issuance of NEPA documents and documents prepared under E.O. 12114.

e. Serve as the CNO's assessment sponsor for the environmental and natural resources programs, and as the CNO's resource sponsor for shore activity environmental and natural resources protection requirements.

f. Coordinate with resource sponsors, CNO (N8), (ASN(FM&C)), Fiscal Management Bureau (FMB) and OMB in the reconciliation of environmental compliance requirements vs. budgeted resources.

1-5.2 The Director of Naval Nuclear Propulsion Program, CNO (N00N) shall fulfill all responsibilities prescribed in E.O. 12344 and implement Navy instructions for all matters pertaining to naval nuclear propulsion, including all radiological aspects of naval nuclear propulsion, oversight of radiological environmental compliance and monitoring, and involvement, where needed, in other environmental compliance and monitoring matters that affect naval nuclear propulsion.

1-5.3 Resource sponsors shall

a. Ensure environmental compliance by establishing requirements and providing resources, consistent with their missions and functions as assigned in reference (c).

b. Provide sufficient resources to major claimants for environmental compliance requirements at Navy activities.

c. Provide sufficient resources to major claimants for RDT&E, procurement of equipment,

installation, and alterations of weapons systems and platforms to ensure compliance with environmental requirements.

1-5.4 Chief of Information (CHINFO) shall

a. Provide guidelines for the release of information involving environmental and natural resources matters.

b. Provide guidance on the conduct of public affairs matters and public hearings required by environmental laws or regulations.

c. Establish and implement a program to gather and publicize Navy environmental program accomplishments.

1-5.5 Area Environmental Coordinators shall

a. Appoint a flag level Navy officer to serve as the Navy REC in each of the 10 EPA regions. Should the AEC chose to appoint more than one REC within an EPA region, the AEC must designate one REC to serve as the Navy's lead REC in the region.

b. In regions where the Navy is designated as the DOD EA for regional environmental coordination, assign Navy EA responsibilities to the lead REC.

c. Provide a semi-annual report to CNO (N45) regarding implementation of DOD policy in regions for which the Navy has been designated EA for Environmental Security.

d. Appoint NOSCs as required.

1-5.6 Regional Environmental Coordinators *shall*

a. Coordinate public affairs and community relations in the region with respect to environmental matters, and serve as the Navy point of contact for public and media inquiries when appropriate for matters of regional scope.

b. Ensure consistent positions, agreements, permit conditions, and responses to regulatory agencies within the region, coordinating closely with affected shore activities, major claimants and COMNAVFACENGCOM EFD/EFAs. Coordinate with other military service RECs on issues that affect regional DOD activities as a whole. Where activities are taking inconsistent positions on similar environmental issues, the REC shall assist in reconciling the positions and developing a single Navy position within the region. If differences remain unresolved among affected shore activities, major claimants, or other military service RECs, the REC shall elevate the issue to CNO (N45) via the chain of command for resolution as discussed in paragraph 1-3.5.

c. Serve as the primary Navy interface with regional Federal and State regulatory agencies. RECs may designate activities within their region to serve as the primary interface with individual State and/or local regulatory agencies.

d. Coordinate exchange of environmental information among Navy shore activities in the region, including the distribution of State, local, and regional laws, rules, and regulations. Hold meetings and/or conferences, as necessary, for regional commands on environmental compliance issues.

e. Monitor environmental compliance at activities within their region.

f. Develop regional plans of action for specific environmental initiatives in coordination with commanding officers of Navy shore activities in the region and major claimants. Coordinate regional training initiatives among Navy activities and with other Federal, State, and local agencies to promote efficient use of training resources.

g. Review the NOSC spill contingency plans to ensure the NOSC clearly outlines responsibilities and provides procedures consistent with policies of the REC in cases where the REC is not

the NOSC for spill response. See chapter 10 for more detail on contingency planning.

h. Provide assistance to facilities in dealing with regulatory agencies as requested.

i. Act as the liaison between visiting foreign warships, environmental regulatory personnel, and port services on environmental requirements during ship visits. See paragraph 19-14.9.e.

j. Ensure that agreed upon Navy positions and concerns are articulated to State lawmakers and Federal, State, and local regulatory officials within their region by appropriate Navy officials.

k. Review and evaluate proposed State environmental legislation and regulations for potential impact on Navy operations, and keep appropriate major claimants and shore activities informed on the status of State legislative and regulatory proposals.

l. Refrain from entering into any compliance commitment or agreement for which it is not the permit holder; nor shall the REC sign any memorandum of understanding or similar document, if unresolved differences remain with any affected shore activities or commands.

m. Execute Navy EA responsibilities for DOD environmental coordination if designated by the cognizant AEC. Coordinate all DOD regional environmental issues via the chain of command.

1-5.7 COMNAVFACENGCOM shall:

D)

a. Provide environmental program management information as requested by naval activities and commands.

R) b. Plan, program, budget and provide overall coordination and management for the Environmental Restoration, Navy (ER, N) Account and the NEPSS program.

c. Provide environmental engineering, environmental compliance, and contracting assistance to naval activities and commands upon request.

d. Prepare analyses of relevant operational, legal, and technical issues raised by proposed State environmental legislation as requested by the RECs,.

e. Designate, in each EFD and specialty office, a single point of contact for major claimants and RECs. (D

f. Perform designated tasks under the DON Strategic Environmental Quality RDT&E program.

1-5.8 Commander, Naval Sea Systems Command (COMNAVSEASYSCOM) shall:

a. Endorse annual actions and levels of effort of the SESO and OESO to ensure these offices focus on key Navy environmental problems within their specialty area.

b. Manage the shipboard, ordnance and munitions environmental protection RDT&E program.

c. Maintain OHS pollution response equipment and expertise for Navy offshore and salvage related OHS spills or releases through the Supervisor of Salvage (SUPSALV).

1-5.9 Commander, Naval Air Systems Command (COMNAVAIRSYSCOM) shall:

a. Endorse annual actions and levels of effort of the AESO to ensure this office focuses on key Navy environmental problems within its specialty area.

b. Manage the naval aviation advanced development environmental protection RDT&E program.

1-5.10 Commander, Naval Space and Warfare Systems Command (COMNAVSPA-

WARSYSCOM) shall endorse annual actions and levels of effort of MESO to ensure this office is focused on key Navy environmental problems within its specialty area.

1-5.11 Chief, Bureau of Medicine and Surgery (CHBUMED) shall

a. Determine, validate, and establish health-related criteria and standards that are not available through Federal, State, or local laws or regulations.

b. Provide assistance to activities, offices, and commands concerning the health aspects of pollution sources or pollution control equipment, including development of medical monitoring programs.

c. Provide industrial hygiene and medical expertise to activities during spill events and other environmental emergencies via Navy hospitals and clinics, Navy Environmental Preventive Medicine Units, Navy Disease Vector Ecology Control Centers, and the Navy Environmental Health Center.

d. Coordinate with the Agency for Toxic Substances and Disease Registry (ATSDR) for the timely completion of public health assessments for National Priorities List (NPL) sites, toxicological profiles on any specific contaminants, health education, health consultations, and other activities provided in the DOD/ATSDR Annual Plan of Work.

1-5.12 Chief of Naval Education and Training (CNET) shall

a. Ensure effective training programs on environmental compliance and natural resources management exist throughout the Navy.

b. Update as required, budget for and implement the Navy Environmental and Natural Resources Program Training Plan.

1-5.13 Commander, Naval Legal Service Command shall:

a. Review recommended training and reference resource standards for counsel providing legal advice on environmental law issues, in consultation with the OGC .

b. Develop, budget for and conduct training courses sufficient to meet recommended training levels for Navy military and civilian attorneys providing legal advice on environmental law issues.

1-5.14 NAVY JAG and OGC attorneys shall provide advice and counsel on

a. Interpretation of environmental laws and regulations and their effect on the operation of the Navy.

b. Responses to NOVs or similar assertions of non-compliance and to demands for payment of Navy funds from any environmental agency.

c. Provisions in contracts or agreements with respect to environmental matters.

JAG and GC attorneys within the chain of command are a command's primary legal resource. Counsel assigned to RECs, Naval Legal Service Offices, Public Works Centers and EFDs are available to provide additional legal support upon request. Counsel with environmental law expertise are also on the staffs of the major claimants. The litigation office of the OGC provides environmental litigation support. Finally, environmental legal advice is available from the Office of the Assistant General Counsel (Installations and Environment) (OAGC (I&E)).

1-5.15 Major claimants shall

a. Ensure that subordinate commands adhere to the policies in this manual and comply with applicable environmental requirements.

a. Ensure that MSC-owned vessels and MSC-chartered vessels, as public vessels, comply with the policies and procedures of this manual.

b. Include applicable environmental requirements of this manual in all charters, contracts, and leases for vessels.

1-5.18 COs and masters of naval vessels shall:

a. Adhere to the policies of this manual, including chapters 3 and 19 on pollution prevention and afloat environmental compliance.

b. Comply with written environmental directives of host shore facilities and cooperate with host's designated environmental management staff to ensure compliance with applicable Federal, State, and local requirements.

c. Ensure proper maintenance and operation of shipboard environmental protection systems to conform with applicable Federal, State, and local regulations.

d. Ensure proper training of ship's personnel whose actions could adversely affect the environment. Ensure they attend appropriate schools, and are fully aware of appropriate documentation.

e. Report to the chain of command any conditions or systems/equipment malfunctions or personnel errors that could result or have resulted in unlawful emissions or discharge.

f. Carry out the detailed responsibilities listed in paragraph 19-14.10 of this manual.

CHAPTER 15

INSTALLATION RESTORATION

15-1 Scope

This chapter discusses the Navy's Installation Restoration (IR) Program, including requirements, procedures, and responsibilities. The purpose of the IR Program is to identify, investigate and clean up or control releases of hazardous substances (HS) from past waste disposal operations and hazardous material (HM) spills at Navy activities.

The IR Program provides for compliance with the procedural and substantive requirements of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, commonly referred to as Superfund), as amended by the Superfund Amendments and Reauthorization Act (SARA), as well as regulations issued under these acts or by State law. Although the IR Program is primarily intended to clean up past releases of HS, it may address the cleanup of past releases of any pollutant and/or contaminant that endangers public health, welfare or the environment, including petroleum, oil, and lubricant products. Cleanup of past contamination from underground storage tanks (USTs) and corrective action for past contamination at Resource Conservation and Recovery Act (RCRA) sites may be part of the IR Program.

This chapter provides guidance on the investigation and cleanup of past hazardous waste disposal activities located within Navy installations, sites that have been contaminated by the migration of HS from Navy installations, and non-government-owned sites that have been contaminated by the disposal of Navy-generated waste and other HS for which the Navy is a potentially responsible party (PRP). In general, past hazardous waste disposal activities are those that occurred prior to October, 1986 when SARA was enacted.

The IR Program is limited to the United States, its territories and possessions, and does not apply in foreign countries.

DOD has provided additional specific guidance for cleanup at Base Realignment and Closure (BRAC) installations, in the DOD BRAC Cleanup Plan Guidebook of Fall 1995 (NOTAL) and by Deputy Under Secretary of Defense (Environmental Security) memorandum of 18 May 1996 (NOTAL).

This chapter implements two Executive Orders (E.O.s):

a. E.O. 12088 of 13 October 1978, Federal Compliance with Pollution Control Standards, requires each Executive Agency to comply with applicable pollution control standards. Compliance with applicable pollution control standards means conforming to the same substantive, procedural, and other requirements that would apply to a private person.

b. E.O. 12580, Superfund Implementation, reference (a), delegates the President's authority under CERCLA and SARA to various Federal agencies, including DOD.

15-1.1 References. The Navy/Marine Corps Installation Restoration Manual of February 1997 provides detailed guidance on the execution of the IR Program at Navy installations. Other references are:

a. E.O. 12580 of 23 Jan 1987; 52 FR 2923, Delegation of Presidential CERCLA Authority to Certain Federal Departments and Agencies;

b. 40 CFR 302, EPA Designation, Reportable Quantities and Notification Requirements for Hazardous Substances Under CERCLA;

c. 40 CFR 300, National Oil and Hazardous Substances Pollution Contingency Plan (NCP) The NCP provides the organizational structure and procedures for responding to discharges of oil and releases of HS, pollutants, and contaminants. This regulation guides the CERCLA program;

d. *CNO ltr of 9 February 1994, Establish*ment of Restoration Advisory Boards (RABs); (NOTAL);

A) e. DON Environmental Policy Memorandum 98-04 of 29 Apr 98, Implementation Guidance For Technical Assistance For Public Participation (TAPP) For Community Members of Restoration Advisory Boards (RABs) And Technical Review Committees (TRCs) (NOTAL);

f. 29 CFR 1910.120, Occupational Safety and Health Administration (OSHA) Regulations on Hazardous Waste Operations and Emergency Response;

g. 40 CFR 373, EPA Regulations for Real Property Transactions under CERCLA;

h. Department of the Navy Environmental Policy Memorandum 95-04, Guidance for Environmental Restoration Program at Active Bases, of 26 Oct 95 (NOTAL);

i. Under Secretary of Defense Memorandum of 27 Feb 98, Policy Concerning Cost-Recovery/Cost Sharing Activities Under the Defense Environmental Restoration Program (DERP) (NOTAL).

15-2 Legislation

15-1.2 Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). CERCLA authorizes Federal action to respond to the release, or substantial threat of release, into the environment of HS, pollutants, or contaminants that may present an imminent and substantial danger to public health or welfare. CERCLA's emphasis is on the cleaning up of old/-inactive HS sites and does not include spills of petroleum, oil and lubricants, although the Navy IR Program does include these contaminants.

15-2.2 Superfund Amendments and Reauthorization Act of 1986 (SARA). Congress passed SARA as Public Law 99-499 on 17 October 1986 to amend the authorities and requirements of CERCLA and associated laws. The SARA provisions of primary importance to the IR program are CERCLA section 120, that addresses response actions at Federal facilities, and section 211, that codifies the Defense Environmental Restoration Program (DERP) into law.

15-2.3 Community Environmental Response Facilitation Act of 1992 (CERFA). Congress created CERFA to expedite reuse and redevelopment of Federal facilities that are closing. It amends CERCLA section 120(h) by adding subsection (4) which requires the Federal government to identify excess real property at bases being closed where no HS or petroleum was stored, released, or disposed.

15-2.4 Resource Conservation and Recovery Act (RCRA) as amended by the Hazardous and Solid Waste Amendments (HSWA). RCRA establishes a national strategy for the management of current solid waste and Hazardous Waste (HW) operations. RCRA requires corrective action for releases of HW and hazardous constituents at facilities that manage HW. COMNAVFACENGCOM may take corrective action for past contamination of RCRA solid waste management units under the IR Program.(See 15-3.2)

15-2.5 State Laws. Many States have laws that are analogous to CERCLA. Although CERCLA does not enable delegation of the Superfund program to the States, under CERCLA section 120-(a)(4), State laws concerning removal, remedial action, and enforcement apply to Federal facilities not listed on the National Priorities List (NPL). State laws must be consistent with CERCLA in

order to apply to Federal facilities under section 120(a)(4). To be consistent, State laws must: set out a comprehensive scheme for remedial enforcement; establish health-based standards through an objective process such as applicable or relevant and appropriate requirements; include cost effectiveness as an element; and be free of discriminatory application to Federal facilities.

15-3 Terms and Definitions

15-3.1 Defense Environmental Restoration Account (DERA)/ Environmental Restoration, Navy (ER,N). Section 211 of SARA established DERA to pay the cost of DOD responses to clean up HS sites. Funds from DERA were transferred to the services for uses consistent with the Defense Environmental Restoration Program (DERP). The ER,N account was established by DON in 1996 to support DOD's decision to devolve the DERA to the services in the FY1997 execution year and thereafter.

R) **15-3.2 Discharge.** For purposes of the NCP, discharge, as defined by section 311(a)(2) of the Clean Water Act (CWA), includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of oil, not covered by a permit under section 402 of the CWA. For purposes of the NCP, discharge also means threat of discharge.

15-3.3 Environment. The environment, as defined under CERCLA section 101(8), includes the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson Fishery Conservation and Management Act; and any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

15-3.4 Facility. As defined under CERCLA section 101(9), any building, structure, installation, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or any site or area where a HS has been deposited, stored, disposed of, placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

15-3.5 Federal Facility Agreement (FFA). A negotiated legal agreement between the Navy and the EPA governing the CERCLA and RCRA administrative process for cleanup at NPL sites. The provisions of these agreements are factors in setting project execution priorities through risk management, and are tools for formalizing commitments making selection of remedial action less adversarial. States may participate in the FFA at their discretion.

15-3.6 Federal Facility State Remediation Agreement (FFSRA). A negotiated non-regulatory legal agreement governing the CERCLA and RCRA administrative process for cleanup at certain non-NPL sites. As with FFAs, provisions of FFSRAs are factors in setting project execution priorities through risk management, and are also tools for formalizing commitments making selection of remedial action less adversarial.

15-3.7 Five-Year Review. If an installation (A selects a remedial action resulting in hazardous substances, pollutants, or contaminants remaining at the site above levels allowing unlimited use and unrestricted exposure, it must review that remedy not less often than every 5 years thereafter. Five-year reviews continue after response complete (RC) as long as contamination remains at the site above levels that allow for unlimited use and unrestricted exposure. (See 15-3.27.)

R) **15-3.8 Hazardous Substance.** For purposes of the IR Program, HS is as defined in CERCLA section 101(14) and designated under reference (b). This includes materials that, because of its quantity, concentration, or physical, chemical or infectious characteristics, may pose a substantial hazard to human health or the environment when released or spilled.

15-3.9 Imminent Threat. A threat posed by a site greater than applicable human health or environmental criteria before implementation of an effective remedial action or an operable unit thereof.

15-3.10 Installation. The real property owned, formerly owned, or leased by the Navy, including a main base and any associated contiguous real properties identified by the same real property number.

R) **15-3.11 Interim Remedial Action (IRA) An** IRA is a near-term action taken to address releases of HS that require expedited response. IRAs are often the first response to a release or threatened release and include Emergency, Time Critical and Non-Time Critical Removal Actions.

15-3.12 Lead Agency. The agency that provides the on-scene coordinator (OSC)/remedial project manager (RPM). The OSC/RPM is the person responsible for planning and implementing response action under the NCP. As delegated by E.O. 12580, the Department of the Navy is always the lead agency for response actions on Navy and Marine Corps real property.

15-3.13 Long Term Management (LTMgt). LTMgt is the period of site management (maintenance, monitoring, record keeping, Five-year reviews, etc.) initiated after the remedial action objectives have been met. COMNAVFACENGCOM can only program LTMgt for sites that have achieved RC.

15-3.14 National Priorities List (NPL). The EPA's list of the nation's highest priority sites that need to be cleaned up. The EPA bases this list on a site's threat to the public health, welfare, or the environment using the Hazard Ranking System (HRS). Sites receiving scores above 28.5 (and having the highest potential for affecting public health, welfare, and the environment) are put on the NPL.

15-3.15 No Further Response Action Planned (NFRAP). This term designates sites that do not warrant further action in the site evaluation process. The primary criterion for NFRAP is a determination that the site does not pose a significant threat to public health or the environment. An installation can make an NFRAP decision at several points in the IR process, but must document the reasons for the decision. If future information reveals the need for additional remedial activities, the installation may reverse this decision.

15-3.16 Operable Unit (OU). A discrete action that comprises an incremental step toward comprehensively addressing site problems. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of a release, or pathway of exposure. The EFD/A can divide the cleanup of a site into a number of operable units, depending on the complexity of the problems associated with the site. Operable units may address geographical portions of a site, specific site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of a site.

15-3.17 Pollutant. As defined by section 101(33) of CERCLA, pollutant includes, but is not limited to, any element, substance, compound or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism either directly from the environment or indirectly by ingestion through food chains, will or

may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformation, in such organisms or their offspring. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under section 101(14) (A) through (F) of CERCLA, nor does it include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas). For purposes of the National Contingency Plan (NCP), the term pollutant or contaminant means any pollutant or contaminant that may present an imminent and substantial danger to public health or welfare.

15-3.18 Preliminary Assessment (PA). The NCP defines a PA as a "...review of existing information and an off-site reconnaissance, if appropriate, to determine if a release may require additional investigation or action. A PA may include an on-site reconnaissance if appropriate.

A) **15-3.19 Public Health Assessment.** A public health assessment is the evaluation of data and information on the release of hazardous substances into the environment in order to assess any current or future impact on public health, develop health advisories or other recommendations, and identify studies or actions needed to evaluate and mitigate or prevent human health effects.

A) **15-3.20 Record of Decision (ROD)** ROD is the official term used by CERCLA and the NCP for the documentation of a final remedial response action decision at an NPL site. It describes the remedy selection process and the remedy method selected. The installation commanding officer must sign the ROD before initiation of remedial action. The term "Decision Document" for a non-NPL site is similar to a ROD for an NPL site.

15-3.21 Release. As defined by section 101(22) of CERCLA, release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any HS or pollutant or contaminant), but excludes any release that results in exposure to persons solely within a workplace, or with respect to a claim that such persons may assert against the employer of such persons, emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; release of source, byproduct, or special nuclear material from a nuclear incident or any processing site, under conditions specified in CERCLA, and the normal application of fertilizer. For purposes of the NCP, release also means threat of release.

15-3.22 Remedial Action (RA). Actions consistent with permanent remedy taken instead of, or in addition to, removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. RA covers two periods of activity at the site:

15-3.22.1 Remedial Action Construction (RA-C). (R RA-C is the period during which the EFD/A puts the final remedy in place. RA-Cs may include final remedies such as a soil removal or landfill cap, in which case the site would be considered Response Complete (RC) at the end of the RA-C phase. Alternatively, RA-C may be the construction of a pump and treat system that will have to operate for an extended period before the remedial objectives are met. In the latter case, once construction of the system is complete, the site can be considered a Remedy in Place (RIP). RA-C is a subset of RA and the term is not in the NCP.

15-3.22.2 Remedial Action Operations (RA-O). RA-O (formerly Long Term Operation (LTO)) is that period of Operation and Maintenance (O&M) required after the Remedial Action Construction (RAC) is completed (Remedy in Place (RIP)) but the remedial action objectives have not yet been met (RC has not been achieved). Monitoring programs on a site during the RA-O phase are part of the RA-O. They are not Long Term Management (LTMgt).

15-3.23 Remedial Investigation/ Feasibility Study (RI/FS). The RI/FS is an extensive technical study conducted to determine the nature and extent of the threat presented by a release and, where appropriate, to evaluate proposed remedies. The FS serves as the mechanism for the development, screening, and detailed evaluation of potential remedial alternatives.

15.3.24 Remedy in Place (RIP). RIP is that point in time when Remedial Action Construction (RAC) of a system is complete, all testing has been accomplished, and the remedy will function properly but the remedial objectives have not been met. This term applies only when there is a period of Remedial Action Operations (RAO) following Remedial Action Construction (RAC).

15-3.25 Removal Action. A removal action (also known as an Interim Remedial action (IRA)) is a near-term action taken to address releases of HS that require expedited response. Removal actions are often the first response to a release or threatened release.

15-3.26 Reportable Quantity (RQ). The quantity of an HS that must be reported if released. CERCLA section 102 requires EPA to establish and revise a list of HS and their associated reportable quantities. Reference (b) contains this list.

15-3.27 Response Complete (RC). A site achieves RC when it meets the remedial action objectives. This is a Navy determination with regulatory concurrence where a cleanup agreement (FFA for NPL sites, FFSRA for some non-NPL sites) requires it.

15-3.28 Restoration Advisory Board (RAB). A group established to serve as a focal point for the exchange of cleanup information between an installation and the local community. Navy policy is to establish a RAB at every installation with an IR program, including at bases subject to closure under base closure law. Members of the RAB include the Navy, EPA officials, appropriate State and local authorities, Federal and State natural resources trustees, and representatives of the affected community.

15-3.29 Site. A location on or off an installation's property where HS has been deposited, stored, disposed, or placed, or has otherwise come to be located, due to installation activities before October 1986, the date Congress enacted SARA. Such areas may include multiple sources and may include the area between sources. One should not confuse this with the EPA practice of listing an entire installation on the NPL. An NPL installation will generally have several discrete sites. (R

15-3.30 Site Closeout. This is the final step for IR sites. A site reaches Site Closeout when no further response actions under the IR Program are appropriate or anticipated and the regulatory agencies concur. For NPL sites, this step will include following the proper procedure for deletion from the NPL according to the NCP. Actual NPL site closeout date is the day the deletion appears in the Federal Register. Only under unusual circumstances will a site that has been closed out be reopened.

15-3.31 Site Inspection (SI). An SI is an on-site inspection to determine whether there is a release or potential release and the nature of the associated threats.

15-3.32 Solid Waste Management Unit (SWMU). For the purposes of RCRA corrective action, any unit in which an installation has placed

wastes at any time, regardless of whether the unit was designed to accept solid waste or HW. Such units could include old landfills, wastewater treatment tanks and leaking process or waste collection sewers.

15-3.33 Stakeholder. Interested parties including individual residents who live on or near the installation; representatives of citizen, environmental, and public interest groups whose members live in the vicinity of the installation; workers involved or affected by installation operations; elected and appointed local government officials and representatives of Federal and State regulatory agencies. This chapter uses the term stakeholder in the context of RABs.

15-3.34 Technical Review Committee (TRC). SARA (211) requires an installation to establish a TRC to facilitate community involvement in the review and comment on technical aspects of response actions and proposed actions with respect to releases or threatened releases at Navy installations. Members of the TRC include the Navy, EPA officials, appropriate State and local authorities, Federal and State natural resources trustees, and representatives of the community. Navy policy is to convert all TRCs to RABs.

15-3.35 Uncontrolled Hazardous Waste Site. An area identified as such by a governmental body, whether Federal, State, local or other, where an accumulation of HS creates a threat to the health and safety of individuals or the environment or both. Examples of uncontrolled HW sites include, but are not limited to, surface impoundments, landfills, dumps, and tank or drum farms. This definition does not cover normal operations at treatment, storage and disposal (TSD) sites.

15-4 Requirements

R) **15-4.1 The Installation Restoration Process.** An installation can cleanup a site where hazardous wastes have been improperly disposed of, technically, under either the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA). However, the President has charged the Navy by E.O.12580, section 2d, to perform such cleanups under CERCLA, using EPA regulations and guidance. Therefore, the Navy should conduct hazardous waste site cleanup activities using the CERCLA authority. On occasion, a Federal or State regulator may insist on cleaning a given hazardous waste site by using the regulator's authority under RCRA. When they make such requests, Navy installations should attempt to incorporate the regulator's substantive requirements to the maximum extent possible within the Navy's CERCLA program, and attempt to arrive at compromises that respect both parties' claims of authority. Cleanup agreements, that attempt to spell out how the parties will interact with each other, may be an appropriate vehicle to achieve these necessary compromises.

15-4.1.1 The CERCLA Process. The following general procedures are set forth under the NCP for initiating and carrying out the remedial process under the IR Program. (The IR Manual discusses requirements for these procedures in detail):

a. *Site discovery and notification*

b. Preliminary Assessment (PA)

c. Site Inspection (SI)

d. Hazard Ranking System (HRS)

e. Remedial Investigation/Feasibility Study (RI/FS)

f. Record of Decision (ROD)

g. Remedial Design/Remedial Action (RD/-RA)

CERCLA PROCESS

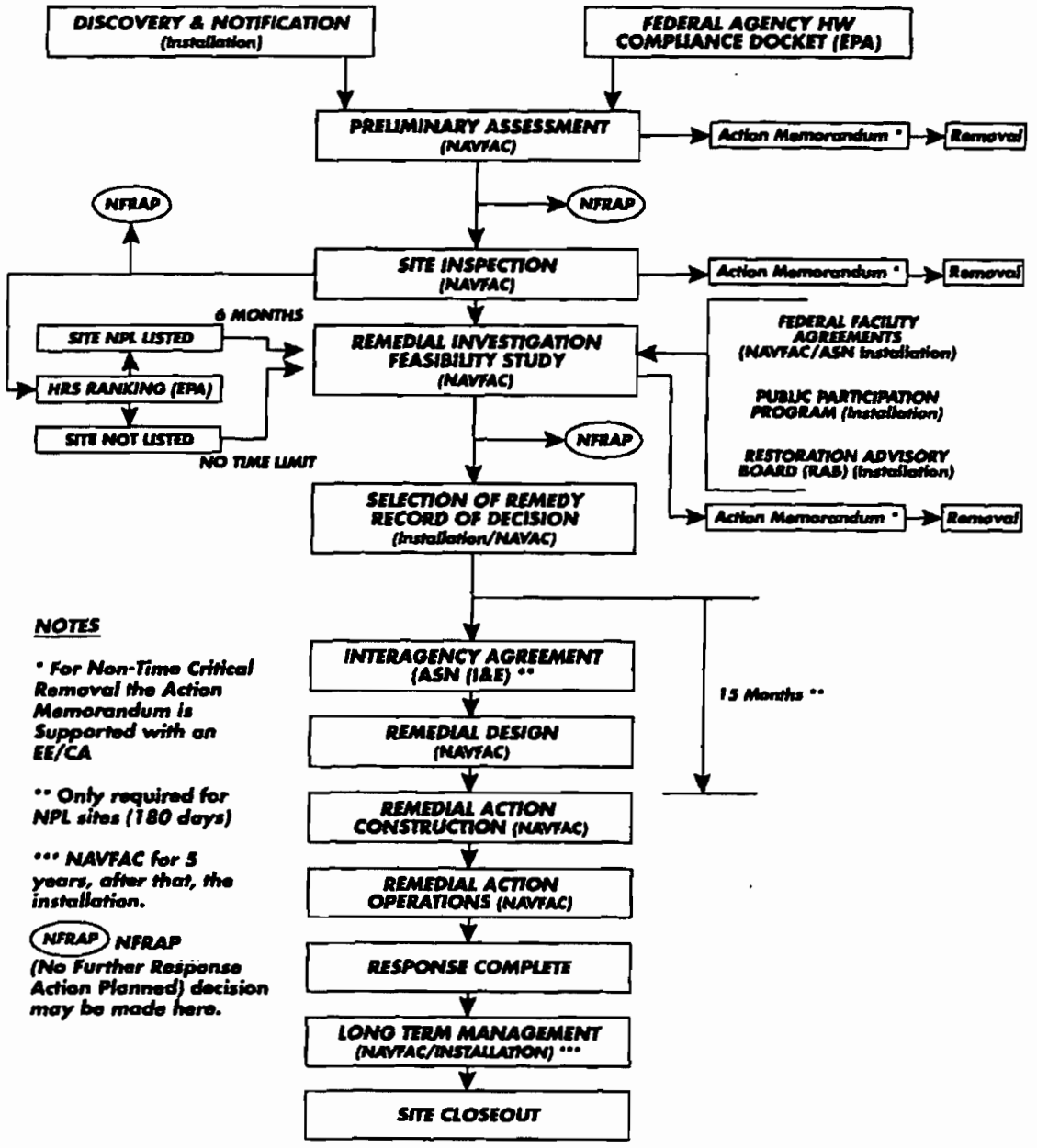

Figure 15-1

h. Remedial Action Operation (RAO)

i. Long-term management (LTMgt)

j. Site Closeout (NFRAP or De-listing).

EPA and appropriate State and local officials and the public must have opportunity to review and comment on assessments/studies and proposals for removal/remedial actions. In addition, installations on the NPL negotiate Federal Facility Agreements (FFAs) with State and Federal regulators early in the study process. (See 15-5.11). Also, see figure 15.1 which outlines the IR Program.

R) **15-4.1.2 Knowledge of a Release.** An installation must report any release or threatened release of a hazardous substance to EPA, the State, and appropriate local authorities. Installations must also report releases, or threatened releases, to the chain of command and the Regional Environmental Coordinator (REC) using the reporting format contained in Appendix I. In addition, if the release exceeds the reportable quantity (RQ) as defined under CERCLA, the installation must also notify the National Response Center (NRC) immediately at 1-800-424-8802 or 202-267-2675. If notification of the NRC is not practical, the installation should notify the regional EPA-designated OSC or the Coast Guard.

R) **15-4.1.3 Federal Agency Hazardous Waste Compliance Docket.** CERCLA requires that EPA maintain a Federal Agency Hazardous Waste Compliance Docket that contains information regarding Federal facilities that manage HS or from which HS may be or have been released. A State governor may petition EPA to add a facility to the docket. The docket lists all installations that have submitted IR information to EPA.

15-4.1.4 Administrative Record. The NCP requires the establishment of an administrative record for all CERCLA sites, (reference (c)). The lead agency must establish an administrative record and make it available to the public at the start of the remedial investigation for remedial actions, and at the time of engineering evaluation/cost analysis for removal actions.

15-4.1.5 Public Participation. The function of public participation activities is to inform the community of planned and ongoing activities, give it an opportunity to comment on and provide input to technical decisions, and allow it to address environmental concerns as early as possible during the remedial process. Navy policy requires opportunities for public participation to begin at initiation of the IR process and continue through cleanup. SARA, section 211, requires that whenever possible and practical, a Technical Review Committee (TRC) will be established for the purpose of enhancing community participation in the review and comment on actions and proposed actions respecting releases or threatened releases at the installation. To expand public involvement beyond that required by section 211, Navy policy, reference (d), is to convert all TRCs to RABs including those at bases subject to closure under base closure law. The provision of Technical Assistance for Public Participation (TAPP) funding may enhance the effectiveness of RABs. Department of the Navy guidance on TAPP is provided at reference (e).

15-4.1.6 Protection of Health and Safety. Response actions under the NCP must comply with the provisions for the protection of the health and safety of workers engaged in HW operations found in reference (f). These provisions include requirements for: developing a site health and safety plan; establishing site access control; enforcing standard operating safety procedures; implementing medical surveillance procedures; providing for environmental and personnel monitoring; providing appropriate personal protective equipment (PPE); and establishing emergency procedures. The IR Manual provides detailed requirements for the protection of worker health and safety and proper personnel training.

R) **15-4.1.7 Public Health Assessment.** The Agency for Toxic Substances and Disease Registry (ATSDR) must perform a public health assessment for each facility listed or proposed for inclusion on the NPL. ATSDR will perform the assessment using available information from IR studies and from site visits. To the maximum extent possible, ATSDR will attempt to complete a public health assessment before the completion of the RI/FS.

15-4.1.8 *Record of Decision (ROD)/Decision Document.* The purpose of a ROD, or decision document is to document the selection of a site-specific remedy. To be consistent with the NCP, the selected remedy must be protective of human health and the environment, attain all State and Federal applicable or relevant and appropriate requirements for that site, be cost-effective, and use permanent treatment technologies or resource recovery technologies to the maximum extent practicable.

As required under CERCLA, section 117(b), an installation must publish notice of the final ROD and make it available to the public in the administrative record before adopting any plan for remedial action. The ROD must document any significant changes from the proposed plan and respond to all comments, written and oral, received during the comment period. The commanding officer of the installation signs the ROD after closure of the public comment period and after addressing all significant comments or issues. The commanding officer signs a decision document for non-NPL sites. At non-NPL sites, an installation follows all procedures for the ROD except that EPA's signature is not required.

15-4.1.9 Interagency Agreement (IAG)/ Federal Facility Agreement (FFA). CERCLA 120(e), requires Federal agencies to enter into an IAG with EPA within 180 days after completion of each RI/FS for an NPL site. The IAG addresses the expeditious completion of all necessary remedial actions. To expedite the cleanup process, DON policy requires entering into an FFA with EPA, and the State where possible, soon after an installation is listed on the NPL. The purpose of an FFA is to define the procedural framework and schedule for developing, implementing, and monitoring response actions at the site earlier than does an IAG. An FFA becomes an IAG for an operable unit or site cleanup at an installation once the ROD is signed and new schedules are negotiated for the actual Remedial Action (RA). The law does not require an FFA. However, DOD and Navy policy requires them unless they are not advantageous to the Navy. (D

15-4.1.10 Remedial Design Or Remedial Action (RD/RA). After the commanding officer signs the ROD, the EFD/A will initiate the RD/RA for the selected remedy. The RD converts the conceptual design for the selected remedy into a final design for implementation. The RA commences after completion of the RD with the award of a contract to construct or implement the selected alternative. For NPL sites at Federal activities, CERCLA §120(e)(2) requires that substantial continuous physical on-site remedial action will commence not later than 15 months after completion of the RI/FS. (See figure 15.1.) (R

15-4.1.11 Site Closeout. The EFD/A should conduct a site closeout when no further response actions under the IR Program are appropriate for the site and when site cleanup confirms that no significant threat to public health or the environment exists. Wherever possible, an installation should seek EPA and State concurrence.

a. NPL Site Closeout. The NCP, reference (c), part 425(e), states that the EPA may delete a site or recategorize it on the NPL where no further response is appropriate. The EPA, in consultation with the State, will determine whether the installation has met the requirements, and if it has, will prepare a notice of intent to delete. The EPA will obtain State concurrence with the deletion notice before making the notice available to the public. The EPA will also make the final deletion (R

package available to the public, which will contain the response to public comments received.

A Federal installation must close out all sites within it for de-listing from the NPL.

b. Non-NPL Site Closeout. For non-NPL sites, the installation must notify EPA and the State that it has completed appropriate response actions and no further response action is appropriate. The installation will designate the site (or sites) as NFRAP, placing supporting documentation in the information repository, and will notify the public of these actions.

A) **15-4.1.12 Five-year review.** Five-year reviews are required where a selected remedial action results in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure. The clock for when the first 5-year review is due for a site starts running with initiation of the selected remedial action for that site.

15-4.1.12Real Property Transactions and Management. As Navy installations are closed and realigned, IR Program efforts must continue. COMNAVFACENGCOM shall identify IR Program requirements and complete them in accordance with CERCLA, SARA, CERFA and the NCP. Congress has established guidelines for funding the necessary investigations and cleanups and has similarly established a specific fund account for IR Program work at BRAC installations.

Reference (g) requires, per CERCLA section 120(h)(1), that all Federal agencies entering into a contract for the sale or other transfer of real property include a notice that identifies whether HS were stored on the property for 1 year or more, or were released or disposed of on the property. This notice must identify the type and quantity of such HS and the time at which such storage, release, or disposal took place.

CERFA expanded CERCLA section 120(h) to require that, before termination of Federal activities on any real property owned by the government and subject to base closure, the head of the agency with jurisdiction over the property must identify the real property on which no HS and no petroleum products or their derivatives were stored for 1 year or more, known to have been released, or disposed of. An installation will identify uncontaminated property based on an investigation of the real property. It must obtain concurrence with the identification from EPA for NPL sites. For non-NPL sites, an installation must provide the State 60 days for review and comment. If the installation receives no comments, it may deem concurrence.

For bases subject to closure or realignment under a base closure law, the CERFA identification must be made, and concurrence must be obtained, within either: 18 months of the CERFA enactment (October 19, 1992); 18 months of the date by which a joint resolution disapproving the closure or realignment must be enacted and such a joint resolution has not been enacted; or 18 months of the date on which the real property is selected for closure or realignment.

15-4.1.13Retention of Records. CERCLA section 103(d)(2) requires that any person responsible for providing notification of known, suspected, or likely releases should also retain records of the facility and the HS release for 50 years. The records include information on the location, title, and condition of the facility and the identity, characteristics, quantity, origin, or condition (including containerization and previous treatment) of any HS contained or deposited on the facility. It is unlawful to destroy, mutilate, conceal, or falsify such records. It is possible, under some circumstances, to obtain a waiver from these requirements by applying to EPA.

15-4.2.1 The RCRA Process. RCRA section 3004(u) requires installations seeking or renewing a permit for a Treatment, Storage or Disposal Facility to take corrective action for past releases

of HW or constituents from any SWMU at the facility. Permits issued by EPA or a State with RCRA authority will contain schedules of compliance for such correction (where it issues a permit before an installation can complete corrective action).

Additional RCRA corrective action requirements include:

a. Section 3004(v), requires corrective action be taken for releases of HW that have migrated beyond the facility's border

b. Section 3008(h), permits EPA to issue an order requiring corrective action to address releases of HW (constituents omitted), whether or not from a SWMU, at facilities authorized to operate under interim status.

The following general procedures are set forth under the Corrective Action (CA) provisions of RCRA. The IR Manual discusses requirements for these procedures in further detail:

a. RCRA Facility Assessment (RFA). The RFA is similar to the CERCLA PA/SI.

b. Interim Measures. Interim Measures are similar to Removal Actions under CERCLA.

c. RCRA Facility Inspection (RFI). The RFI is similar to the CERCLA RI.

d. Corrective Measures Study (CMS). The CMS is similar to the CERCLA FS.

e. Remedy Selection. Remedy Selection under RCRA is essentially the same as Remedy Selection under CERCLA.

f. Corrective Measures Implementation (CMI). The CMI is similar to RD/RA under CERCLA.

An installation must give State and local officials and the public opportunity to review and comment on assessments/studies and proposals for removal/remedial actions. In addition, the installation may negotiate Federal Facility Site Remediation Agreements (FFSRAs) with State regulators early in the study installation restoration process.

15-5 Navy Policy

15-5.1 General. CERCLA is the preferred process for conducting the installation restoration program. An installation shall comply with all applicable requirements of CERCLA/SARA in carrying out actions under the Navy IR program. All terminology used by the Navy IR Program shall be consistent with that used in CERCLA/SARA and RCRA/HSWA. Installations shall accomplish all IR response actions per the NCP, following EPA guidance in determining reasonable interpretation and application of the regulations. The Navy shall not adopt any guidelines or rules inconsistent with EPA's guidelines and rules. The Navy strives to clean up sites with higher risk before those with lower risk. The Navy should continually remind regulators and the public of this concept, especially when funding is constrained.

Congress provides funding through ER,N. It is DON policy to use ER,N as the exclusive source of funding for environmental restoration at active installations. Per reference (h), other types of funding are not authorized instead of, or to supplement, ER,N funds except where the work is within the scope of MILCON or O&MN funded construction projects as discussed in subsection 15-5.19. The Navy shall maintain an open and continuous dialogue with regulatory agencies and the public on all IR activities. The Navy shall use the Defense/State Memorandum of Agreement (DSMOA) process to provide funds to State regulatory agencies for oversight costs. (R

ER,N funds can be used for RCRA corrective action as described above for past releases of HW at permitted facilities, or facilities seeking permits

if these are the same types of releases covered by the IR program.

COMCOMNAVFACENGCOM is the DON agent for executing the ER,N funded IRP with program oversight by CNO N45. COMNAVFACENGCOM has delegated the day-to-day operation of the IRP to the COMNAVFACENGCOM Engineering Field Divisions/Activities (EFD/EFA).

R) **15-5.2 Emergency Response.** Under CERCLA section 104, E.O. 12580 and the NCP, the Navy has the authority to respond to "emergency" situations (i.e., those circumstances that may immediately endanger human life, health or the environment) where the release or threatened release is on, or the sole source of the release is from, a Navy facility. If an IR site appears to be causing an emergency situation, the Navy is responsible for taking appropriate action to protect the public and the environment from the threat. The responsibility for responding to emergency situations at IR sites belongs to COMNAVFACENGCOM through the geographical EFD/EFA using ER,N funds.

15-5.3 HRS. Following completion of a PA/SI, the cognizant COMNAVFACENGCOM EFD/EFA shall prepare a package that includes available information necessary for HRS scoring, and the installation shall forward the package to the EPA.

R) **15-5.4 No Further Response Action Planned (NFRAP).** The Navy should not expend resources on sites that pose little or no threat to humans or the environment. An installation can make "no further action" decisions at several points within the remedial process, but must base this on a defensible and properly documented "assessment of risk to human health and the environment." The Navy may apply this procedure at both NPL and non-NPL installations to describe those locations where it determines that no further action is required, based upon appropriate investigation. COMCOMNAVFACENGCOM or its designee shall prepare NFRAP decision documents for signature by the installation commander. Upon signature, the installation shall forward the NFRAP decision documentation to appropriate regulatory agencies for information and/or concurrence. Remedial project managers shall be alert to identify opportunities for NFRAP decisions.

15-5.5 Administrative Record. CERCLA section 113(k) requires the establishment of an administrative record which will form the basis for the remedy selection. The administrative record shall be initiated as soon as the SI shows that the program will move into the RI/FS phase. The cognizant COMNAVFACENGCOM EFD/EFA shall establish and maintain the administrative record using ER,N funds and in close coordination with the installation. COMNAVFACENGCOM shall provide copies of the Administrative Record to the installation, State, and EPA as appropriate. Installations shall ensure that a copy of the administrative record is available in an information repository. The repository shall be available to the public at or near the site and notice of the availability is part of the record. The Administrative Record is the basis for actions taken by the Navy and any future legal action concerning the site.

The administrative record is a CERCLA requirement and is not required where an installation conducts cleanup actions under RCRA corrective action authority.

15-5.6 Public Participation. Navy public participation requirements, described in detail in the Navy/Marine Corps IR Manual, are more comprehensive than the NCP. Installations, with assistance from the cognizant COMNAVFACENGCOM EFD/EFA, are responsible for implementing proactive public information programs that shall include formal Community Relations Plans (CRPs) for all IR sites, whether or not the installations are on the NPL. In addition, the installation shall appoint a contact or spokesperson for community relations activities who shall be responsible for receiving all

inquiries and releasing information concerning the installation's restoration program.

R) **15-5.7 Restoration Advisory Board (RAB).** DON policy is to have a RAB at all installations with ER,N funded cleanup programs, regardless of the cleanup authority (CERCLA or RCRA) under which the cleanup is taking place. By increasing the diversity and number of community representatives, establishing a Community Co-Chair, and opening the meetings to the public, the RABs shall ensure that all stakeholders have an increased opportunity to actively participate in the timely review of installation restoration documents and plans and to present various points of view for careful consideration. At base closure installations, RABs serve to help facilitate accelerated cleanup and property transfer. RABs shall not make decisions on environmental restoration activities as a group, but shall provide information, suggestions, and community input for use by the Navy in making decisions on actions and proposed actions concerning releases or threatened releases. The Navy does not intend that Federal Advisory Committee Act (FACA) requirements shall apply. RABs shall not take the place of community outreach and participation activities required by law, regulation or policy. The installation must still meet all community relations requirements. The installation shall be responsible for implementing the RAB. Installations should schedule meetings in facilities convenient for public attendance. Installations may adjourn the RAB in consultation with the community when there is no longer any need for it, i.e., when the IRP at the installation is either complete or all remedies are in-place and operating properly, or, if there is no longer sufficient, sustained community interest in the RAB. The installation should use ER,N funding for RAB support. Reference (d) provides DON RAB policy.

A) **15-5.8 Technical Review Team (TRC).** The DERP mandated that whenever possible and practical, all installations with IR programs form TRCs. A subsequent revision permitted the formation of RABs instead of TRCs. DON policy converted all TRCs to RABs.

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15-5.9 Health and Safety. The NAVFAC-ENGCOM RPM and installation restoration coordinator shall be responsible for ensuring that the requirements for protecting site worker health and safety are being enforced.

15-5.10 Public Health Assessment. The Navy Environmental Health Center (NAVENVIR-HLTHCEN) shall coordinate with ATSDR concerning public health assessments. NAVENVIRHLTHCEN shall ensure that ATSDR is aware of new NPL listings and coordinate any ATSDR visits to installations with the installation and cognizant NAVFAC-ENGCOM EFD/EFA. NAVENVIRHLTHCEN shall review public health assessments performed by ATSDR.

(R

15-5.11 Federal Facility Agreements (FFAs) under CERCLA Section 120. The Navy shall enter into FFAs at its NPL sites as early as possible after identifying the requirement for a RI/FS. These agreements have high priority and function to establish roles and responsibilities and improve communications between all parties by allowing EPA and the State to review all work in support of remedy selection. FFAs also establish the procedural framework and establish schedules for the parties involved. FFAs at NPL sites shall outline the working relationship between the States, EPA, and the Navy. COMNAVFACENGCOM is responsible for negotiating all FFAs on behalf of and in close coordination with the installation. In developing the Navy's negotiating position, COMNAVFACENGCOM shall seek the input of the installation, the cognizant major claimant(s), the Regional Environmental Coordinator (REC), and CNO (N45). After coordination, FFAs shall be forwarded with appropriate endorsements via the Chain of Command and CNO (N45) to the Deputy Assistant Secretary of the Navy (Environment and Safety) (DASN (E&S)) for signature.

15-5.12 ROD/Decision Document. The cognizant COMNAVFACENGCOM EFD/EFA shall prepare a ROD/decision document at the conclusion of a RI/FS and provide the ROD/decision document and a recommendation of action to the installation CO with a copy to the major claimants. The installation CO shall carefully review the proposed ROD/decision document and administrative record. If the CO concurs with the proposed ROD/decision document, then he/she shall sign it. If the CO disagrees or has questions on the ROD/decision document, he/she shall present the issues to the cognizant COMNAVFACENGCOM EFD/EFA and the major claimant for discussion and resolution.

For NPL sites, the installation forwards the ROD to the EPA regional office for concurrence. Although neither a ROD nor an IAG is required under CERCLA at non-NPL sites, State remediation laws may contain requirements for decision documentation. Where such requirements apply, the cognizant COMNAVFACENGCOM EFD/EFA shall prepare a decision document for submittal by the installation. If the State remediation law contains no specific requirements for decision documentation, the cognizant COMNAVFACENGCOM EFD/EFA shall prepare a decision document that contains the elements of a ROD. If the installation CO concurs with the decision document, he/she shall sign and forward the decision document to EPA and the State.

15-5.13 IAGs. At the completion of an RI/FS at an NPL site, the law requires signing the IAG. The previously negotiated FFA shall become an IAG upon incorporation of the statutory requirements after the ROD. There is no IAG requirement for a No Action ROD.

15-5.14 RD/RA. The RPM shall oversee coordination of the RD/RA with the installation, EPA, the State, and local officials; maintain the administrative record; participate in community relations; and ensure overall quality assurance/quality control. The Navy Resident Officer in Charge of Construction (ROICC) shall manage construction for the RA and shall ensure that the RA meets all specifications and is constructed in a manner that protects human health, welfare, and the environment.

15-5.15 LTMgt. Where HS, pollutants, or contaminants remain on a site after RC, and as required by the decision document, planning for and conduct of LTMgt is the responsibility of the cognizant COMNAVFACENGCOM EFD/EFA using ER,N funds for a period of five years after RC. The purpose of LTMgt is to ensure the site or the OU remains protective of human health and the environment. During the first two years of this five-year period, the cognizant NAVFAC-ENGCOM EFD/EFA will develop and implement a maintenance, monitoring, and management plan (LTMgt Plan). The NAVFAC-ENGCOM EFD/EFA will provide the LTMgt Plan and cost data to the installation to allow the commanding officer to budget in a timely manner for funds required to continue the LTMgt after the first five year period, if needed. The LTMgt Plan will include requirements for five-year reviews after turnover of IRP responsibilities to the installation commanding officer. (R

15-5.16 Five-year review. COMNAVFAC-ENGCOM conducts Five-Year Reviews using ER,N funds. (A

Although LTMgt responsibility for a site devolves to the installation five years after RC, in general, five-year review responsibility for the whole installation will remain with NAVFAC using ER,N funds until five years after the LAST site at the installation achieves RC. The installation becomes responsible for conducting and funding five-year reviews using installation O&MN funds commencing five years after the last site achieves RC .

Within the five-year span following final site RC, COMNAVFACENGCOM will include the schedule and cost estimates for conducting

subsequent five-year reviews in the maintenance, monitoring and management plan (LTMgt Plan) provided to the installation commanding officer.

A) **15-5.17 Remedy Optimization.** NAVFAC-ENGCOM is responsible for identifying and implementing remedy optimizations during the RA-O phase and for the first five years after RC, using ER,N funds. Once the commanding officer becomes responsible for the LTMgt, the installation must use O&MN funds for opportunities to reduce remaining costs.

15-5.18 Fines and Penalties. The installation shall not pay fines and penalties assessed concerning environmental restoration work that is currently ER,N funded or planned for future ER,N funding, out of installation operating accounts. Upon receipt of a notice of violation or non-compliance that proposes to assess a fine or penalty relating to work that is ER,N-eligible, and thus under the cognizance of the Naval Facilities Engineering Command (NAVFACENGCOM), the installation shall immediately forward the notice to the cognizant COMNAVFACENGCOM EFD/ EFA for action. Installations shall pay fines and penalties related to ongoing hazardous waste operations (actions that are not eligible for ER,N funding) from the installation's operating account. See Appendix B for additional information pertaining to the reporting of all notices of violation.

Where the Navy agrees to pay any fines and penalties arising under ER,N funded work, the Navy will submit these fines/penalties to Congress for authorization in the first available budget window. This is the case for ER,N work conducted under either CERCLA or RCRA. The funding source (i.e. ER,N) drives the notification requirement, not the particular law under which the work is performed.

R) **15-5.19 Construction Projects on Contaminated Sites.** Installations shall make every effort to avoid construction projects on contaminated sites. However, there may be times during planning for a project, or after it starts, when an installation discovers contamination. In such instances, the following applies:

a. If an installation discovers contamination during the planning stage, it may investigate to determine if the site can be cleaned up following IR procedures using ER,N funds. However, the site investigation/clean up must compete with other IR sites based on risk management. In most cases, this will take several years and the site may not be available in time for the project.

b. If an installation discovers contamination during construction, it can carry out the site investigation/cleanup using ER,N funds. However, the site will compete with other IR sites based on risk management. If IR funding is not available in time to meet the construction schedule, the installation must use project funds to investigate/clean up the site. If neither IR nor project funding is available in time to meet the construction schedule, the installation must stop the project altogether or re-site it. An installation does not have an option to pay for any DERP eligible work with installation O&MN funds except to accomplish DERP eligible work within the scope of an O&MN funded construction project. (D

15-5.20 Contamination on Navy property scheduled for non-BRAC disposal: Installations shall clean up contamination on Navy property scheduled for non-BRAC disposal using ER,N funds following the normal ER,N prioritization process of worst-first/risk management. ER,N-funded cleanup activities will not be accelerated solely to accommodate the claimant's property disposal schedule. (D

15-5.21 Navy as Potentially Responsible Party (PRP). Historically, the Navy has contracted with private companies to transport and dispose of HW generated at its installations. Many of the disposal sites selected by contractors are themselves threatening/contaminating the environment and

need to be cleaned up. Upon receipt of formal notice from the EPA, State or local authorities that a Navy installation is involved in a site as a PRP, the installation shall notify, by message, its chain of command, the REC, COMCOMNAVFACENGCOM, cognizant COMNAVFACENGCOM EFD/A, Judge Advocate General, Office of Assistant General Counsel (Installation and Environment) (OAGC (I&E)), Office of General Counsel (Litigation Office) (OGC (Litigation Office)) and CNO (N45). The message shall describe the salient points of the notice. Simultaneously, the installation will mail a copy of the notice and other appropriate documents to the same addressees. Cognizant COMNAVFACENGCOM activities shall take the lead role in negotiating with EPA, the U.S. Attorney's Office, and the PRP Steering Committee. Cognizant COMNAVFACENGCOM EFD/EFA personnel shall cooperate with the other parties involved in the site response and provide requested information regarding the Navy's HW sent to that site. COMNAVFACENGCOM shall report semiannually to CNO on the status of Navy involvement in off-station CERCLA sites. The cognizant COMNAVFACENGCOM EFD/EFA shall keep the REC apprised of site status.

R) **15-5.22 Formerly Used Defense Sites (FUDS).** The Army Corps of Engineers is responsible for the FUDS Program. The Navy's responsibility for FUDS sites that were formerly Navy sites is informational only. Should local interest arise, naval activities should pass questions regarding the status of FUDS sites to appropriate Corps of Engineers officials. In special circumstances, the Corps can grant authority for the Navy to address FUDS located on property formerly owned or operated by the Navy.

15-5.23 Real Property Transactions and Management. The cognizant COMNAVFACENGCOM EFD/EFA shall consider the IR Program before real property transactions and as part of all land management decisions.

15-5.23.1 Acquisition. The Navy does not acquire known contaminated property without careful consideration of the cleanup liability involved. The Navy should acquire contaminated property only in cases of the most critical operational necessity, and only with CNO approval to ensure insertion of incurred cleanup liabilities into the IRP. (R

a. From Federal Agencies. Although DOD policy requires that a Component acquiring known contaminated real property will normally assume the responsibility for managing restoration actions at the property, Navy policy is to try to negotiate a transfer agreement that leaves the funding and management of restoration actions of the property with the transferring Component. In either case, transfer agreements must clearly assign continuing responsibility for cleanup after the transfer. Where Navy assumes the funding and management of restoration activities, the transferring Component is responsible for providing the Navy with all reports and a history of restoration actions taken prior to the transfer of the property and for transferring the cleanup funding as planned for the property in the Future Years Defense Program (FYDP). The Navy will not accept property from a non-DOD Federal agency unless the agency certifies it has met the requirements of CERCLA section 120(h) and provides supporting reports and documentation. (R

b. From Private Parties. Acquisition of contaminated property from private parties is not encouraged. Where such acquisition is operationally necessary, the acquiring installation should negotiate cleanup costs as an offset to the purchase price. The acquiring installation must carefully balance operational requirement for the property against any cleanup liability that will come with it.

15-5.23.2 Lease/Transfer/Disposal. An Environmental Baseline Survey (EBS) shall be prepared for all leases, easements and transfers of Navy real property. Where appropriate, an EBS should be prepared for other actions involving the

use of real property, e.g., licenses, depending on such factors as proposed use, the term of the use, and the presence of any contaminants on the property

A Finding of Suitability for Transfer (FOST) or Lease (FOSL) shall be prepared for each EBS. The Commander/Commanding Officer of the geographical COMNAVFACENGCOM EFD/ EFA shall execute the FOST or FOSL.

In the preparation of an EBS and the associated FOST/FOSL, an installation shall consult with Federal, State, and local regulators as necessary and appropriate, e.g., EPA where parcel involved is part of an NPL site.

15-5.24 National Environmental Policy Act (NEPA). IR Program actions that follow the NCP and fulfill public participation requirements are deemed to have complied with NEPA.

15-5.25 Government-Owned/Contractor-Operated (GOCO) Plants. The Navy's liability and responsibility for cleanup of sites at GOCO facilities flows from its status as "owner" of the facility. Past and present contractors share this liability since they are "operators" or "generators" at these facilities. Absent special contractual provisions to the contrary, Navy policy shall be to require GOCO contractors to pay for all cleanup costs associated with their operation of Navy facilities.

Navy actions to fulfill its CERCLA responsibilities shall be consistent with its contractual requirements with the GOCO contractor. Failure to coordinate may result in a claim by the operating contractor under a Navy contract or loss of potential claims by the Navy against the operator.

The following policy applies to implementation of the IR program at GOCOs:

a. A PA/SI shall be done by COMNAVFACENGCOM at Navy GOCOs using ER,N funds. COMNAVFACENGCOM shall coordinate with the corresponding Echelon 2 Command before starting the study.

b. Once the EFD/A has completed the PA/SI, it should provide the results to the Echelon 2 Command, via the installation, for action. If the PA/SI recommends additional follow-up work, the Echelon 2 Command shall immediately initiate and document discussions with the contractor pertaining to contractor responsibility for and participation in any cleanup efforts. It is Navy policy, reference (i), to identify, investigate and pursue cost-recovery/cost-sharing activities from DOD contractors or other parties that contribute to environmental contamination at DOD sites. Since the contractor may be liable for the cleanup, the Echelon 2 command shall offer the contractor the opportunity to conduct any follow-up studies. To ensure that any work done by the contractor is consistent with the requirements of CERCLA, the NCP and the IR Program, COMCOMNAVFACENGCOM or its designee shall serve as the Echelon 2 Command's technical representative and shall review and approve all phases of the work, including submittals.

c. If the contractor declines to perform the follow-up studies, the Echelon 2 Command shall document that response and request COMNAVFACENGCOM to conduct the work under the IR Program. COMNAVFACENGCOM shall use ER,N funds and identify all costs associated with the follow-up studies for cost sharing or future cost-recovery actions, if such action is appropriate.

d. Navy commands shall follow similar scenarios as described above for any RD/RAs, including removal actions and interim RAs. The Navy shall pursue Cost-sharing/cost-recovery actions against the contractor where appropriate.

e. All actions (i.e., studies and cleanups) done at GOCOs on Navy property shall be consistent with CERCLA and the NCP. Administrative records and CRPs shall be prepared at all the

GOCOs. RABs are recommended but not mandatory unless an installation is using ER,N funding to conduct the studies and cleanup. If EPA places a GOCO on the NPL, all timetables associated with CERCLA section 120 apply and the Navy shall conform. COMCOMNAVFAC-ENGCOM shall handle negotiations concerning necessary FFAs.

15-5.26 State Laws. Navy policy is to comply with all State laws that are consistent with the CERCLA, SARA and the NCP. In States with a mini-superfund law, installations may find it advantageous to negotiate a Federal Facility/State Remediation Agreement (FFSRA) for non-NPL sites, which spells out the responsibilities of each party to the cleanup. When cleaning up sites under the RCRA corrective action program, the Navy will follow laws and regulations for States that have received primacy.

15-5.27 Coordination with Other Environmental Regulations. Although CERCLA section 121(e) exempts IR Program actions occurring entirely on-site that are consistent with CERCLA section 121 from obtaining Federal, State, or local permits, interagency coordination is often required to ensure consistency with applicable or relevant and appropriate requirements (ARARs) or other environmental laws. RPMs shall solicit early involvement of other Navy specialists including natural and cultural resources personnel to ensure identification and completion of the Endangered Species Act, section 7 consultations, National Historic Preservation Act, section 106 consultations, and related requirements. These requirements may occur at any phase of an IR Program investigation including PA/SI, RI/FS, removal action, interim action, or RA.

15-5.28 Training. SARA requires HW site training. The government issued requirements in reference (f). An installation must train all Navy and contractor employees working on-site exposed to HS, health hazards or safety hazards, and the supervisors and management personnel responsible for the site, meeting the requirements summarized below, before they are permitted to engage in cleanup operations.

a. All employees exposed to HS, health hazards, or safety hazards shall have 40 hours of off-site instruction and 3 days of field experience. Training shall be as practical as possible and include hands-on use of equipment and exercises designed to demonstrate and practice classroom instruction.

b. Installations shall train on-site management and supervisors of personnel engaged in HM operations equal to the above, plus eight additional hours on managing such operations.

c. Installations shall train trainers at a level higher than, and including, the subject matter they are teaching.

d. Installations shall provide employees and managers with eight hours of refresher training annually.

The Navy/Marine Corps IR Manual provides additional details of required and recommended IR training for staff and visitors to IR sites.

15-6 Responsibilities

15-6.1 Echelon 2 Commands/Major Claimants shall:

a. Ensure that subordinate installations identify and forward IR Program requirements to CNO. (R

b. Pass program information and guidance to their installations.

c. Ensure that subordinate installations coordinate base cleanup planning, programming, budgeting, and execution with their cognizant COMNAVFACENGCOM EFD/EFA.

d. Ensure that subordinate installations fulfill their responsibilities under the Navy IR Program and appoint an IR coordinator.

e. Ensure that installations with sites meet public participation and other legal requirements.

f. Ensure that installation budgets reflect resource requirements to support the IR Program, especially any LTMgt requirements *five years after* RC.

g. Ensure that subordinate commands review all facility siting proposals against the requirements of the IRP, especially where an IRP decision document has identified or put in place land-use restrictions.

A) h. Obtain CNO approval before acquiring known contaminated property from another DOD Component or other federal agency.

15-6.2 COMCOMNAVFACENGCOM shall:

a. Execute the IR Program for CNO.

R) b. Update the IR database semi-annually.

c. Ensure cognizant COMNAVFACENGCOM EFDs/EFAs coordinate overall IR Program with installation commanders.

d. Provide program and technical support as directed by CNO; also provide site specific technical, progress, and budgeting information to satisfy program reporting requirements.

e. Develop and support ER,N resource requests and manage funds allocated for program execution.

f. Resolve issues and problems associated with conduct of the IR Program, and raise the issues to CNO where necessary.

g. Perform IR studies and RA projects and prepare NFRAP documentation by contract, in-house effort, or combination.

h. Identify and train RPMs.

i. Consistent with coordination requirements of paragraph 15-5.12, negotiate FFAs and State remediation agreements on behalf of and in close coordination with Navy installations. *Forward draft final proposed FFAs and State* agreements to CNO for review and submission to Office of Deputy Assistant Secretary of the Navy (Environment and Safety) (DASN (E&S)) for signature. When substantial changes to model language or policy are contemplated, these should be referred to *OAGC (I&E) and CNO (N45)* as early as possible after they are identified. (R

j. Participate in remediation planning meetings with other PRPs and agencies, forward proposed remediation agreements to CNO and OGC (Litigation Office) for review and comment, sign and administer the agreements and disseminate information to all interested parties at all stages of the process.

k. Represent the Navy in matters relating to the assessment of fines and/or penalties associated with IR program.

l. Develop and perform site-specific projects to assess and control contamination in conjunction with installations.

m. Ensure that IR work plans and ecological risk assessments are reviewed by health and safety and natural resources professionals familiar with the site.

n. Track project progress to meet schedule requirements.

o. Coordinate, at all stages, with installation COs and regulatory agencies before initiating projects and through project completion and the first five years of LTMgt.

A)

p. Support the installation in fulfilling public participation responsibilities as requested, including RAB and CRP actions, and installation specific Community Relations Plans (CRP).

q. Support installations in fulfilling their RAB and CRP responsibilities.

r. Prepare the ROD and/or decision document and forward to the installation CO with a *recommended alternative*.

s. Maintain administrative record files and distribute copies as required.

t. Prepare project plans, reports, and contract documents; coordinate review and comments; and distribute final documents to the appropriate installation and Echelon 2 Command.

u. Provide technical and financial oversight during project performance.

v. Provide IR study results to planning, real estate and natural resources personnel and work with acquisition project managers to ensure that HS site conditions are taken into account by other Navy programs and projects before irreversible decisions are made.

w. Validate installation facility planning proposals against IRP site installation or land-use restrictions.

15-6.3 BUMED shall:

a. Coordinate with ATSDR concerning ATSDR's legally mandated health-related activities, including public health assessments, public health consultations, health surveys and investigations, toxicology databases, emergency response and health education.

b. Review public health assessments, consultations, surveys, and DOD-specific toxicological profiles.

c. Provide health/medical evaluation of risk assessments and other IR and BRAC cleanup program documents including work plans, sampling plans, remedial investigation documents, feasibility study documents, quality assurance plans, and health and safety plans as requested by COMNAVFACENGCOM EFDs/EFAs.

d. Provide technical support for risk communications and other health related training courses.

e. Conduct risk assessments as required.

f. Provide assistance in developing *applicable, relevant and appropriate requirements* (ARARs) for IR and BRAC cleanup program activities.

g. Assist COMNAVFACENGCOM and installations to prepare for public meetings and respond to community concerns regarding program health and safety.

15-6.4 Commanding officers of shore activities shall:

a. Notify Federal, State and local officials and the chain of command upon discovery of a *release*.

b. Meet all applicable statutory and regulatory requirements including, but not limited to, safety and health, training (for installation personnel), and natural resources during site assessment and response actions.

c. Provide necessary review and comment on IR plans of action, reports, etc. to the cognizant COMNAVFACENGCOM EFD/EFA.

d. Forward, or authorize cognizant COMNAVFACENGCOM EFD/EFA to forward, all final primary documents to the EPA and State regulatory agencies prior to deadlines in either FFAs or State agreements/orders.

e. Be responsible for any required O&M funding and support for long-term monitoring and operation and maintenance of sites commencing five years after the site has reached RC.

f. Fund ER,N eligible work with ER,N funds only, since installations are specifically forbidden to use installation O&M funds to perform work that is eligible for ER,N funding.

g. Provide an IR coordinator and logistic support for IR projects at their installation.

h. Establish and conduct periodic meetings of the RAB for IR Program sites.

i. Provide information as required for updating project exhibits to cognizant COMNAVFACENGCOM EFDs/EFAs for IR Program studies and RAs (i.e., studies, RAs, salaries, support costs).

j. Provide information as required for updating project exhibits to cognizant Echelon 2 for IR Program salaries, support, travel and training costs.

k. Prepare and implement a public participation program, including a CRP, for IR Program sites.

l. In conjunction with the cognizant COMNAVFACENGCOM EFD/EFA, select the remedy and sign the decision documents for all IR Program sites.

m. Participate in negotiations of FFAs and State agreements.

n. Notify appropriate commands of any EPA or State notice of PRP action, and support PRP response.

o. Consider IR Program site conditions or land-use restrictions before land use planning, development, or operation, especially for Military Construction (MILCON) and special project development. Incorporate IR program review into the shore facilities planning process.

p. Place appropriate information in the information repository(s).

q. Inform the public of the availability of Navy funding for Technical Assistance for Public Participation (TAPP). (A