



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

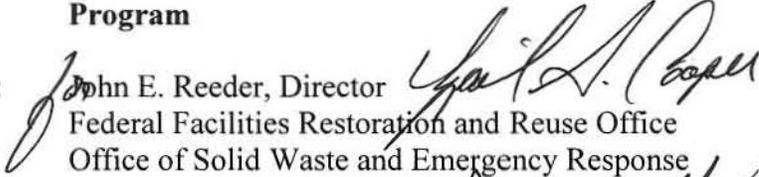
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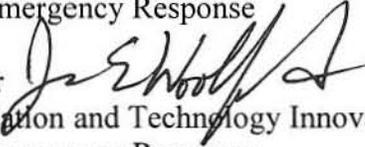
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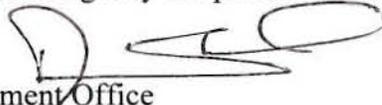
OSWER Directive
9200.3-60

MEMORANDUM

Subject: **Recommendations for EPA Regional Offices on Preliminary Assessments and Site Inspections for the Department of Defense Military Munitions Response Program**

From: John E. Reeder, Director 
Federal Facilities Restoration and Reuse Office
Office of Solid Waste and Emergency Response

James E. Woolford, Director 
Office of Superfund Remediation and Technology Innovation
Office of Solid Waste and Emergency Response

David J. Kling, Director 
Federal Facilities Enforcement Office
Office of Enforcement and Compliance Assurance

To: Superfund Division Directors, Regions 1-10
Regional Counsel, Regions 1-10

Background

As part of the National Defense Authorization Act for FY 2002 (PL 107-107), Congress established a subaccount to receive appropriations to address cleanup of munitions¹ and directed the Department of Defense (DoD) to develop an inventory and a prioritization method for

¹The MMRP was created by DoD in 2001 to implement § 311 of the FY 2002 Defense Authorization Act, codified at 10 U.S.C. §2710(b), which requires that DoD:

- Establish and maintain an inventory of non-operational ranges that contain or are suspected to contain munitions;
- Identify, characterize, track and report data on munitions sites and response actions;
- Promulgate a rule formalizing a sequencing process to prioritize site cleanup and site-specific cost estimates to complete the response; and
- Program and budget for munitions response actions.

§ 311 also required DoD to consider among the criteria in applying its sequencing process, which DoD called the prioritization protocol, is whether a response action has been or is being undertaken at a defense site under the Formerly Used Defense Sites (FUDS) program or other program.

response actions at defense sites that are known or suspected to contain the following: munitions and explosives of concern (MEC), which includes unexploded ordnance (UXO), discarded military munitions (DMM), and explosive soils; munitions constituents (MC); and non-stockpile chemical warfare materiel (CWM).² In response, DoD created the Military Munitions Response Program (MMRP) to use the funding Congress set aside for munitions cleanup in the FY 2002 DoD Authorization legislation. The MMRP Site Inventory is updated annually in the Defense Programs Annual Report to Congress.

The FY 2008 Defense Environmental Programs Annual Report to Congress indicates that there are 3,674 Munitions Response Sites (MRS) in the MMRP Site Inventory. The list of MRS, by state and by DoD Component, is posted at <http://deparc.xservices.com/do/mmrp>. The website does not contain schedule information for implementation of MMRP Preliminary Assessments (PA) and Site Inspection (SI) activities. The DoD has generally provided programmatic level cost and schedule information by fiscal year projections, rather than site specific detailed information. The U.S. Army Corps of Engineers Formerly Used Defense Sites (FUDS) MMRP does make MRS-specific schedules available to regulators and stakeholders by request on its Engineering Knowledge On-line (EKO) website. As part of EPA's new Integrated Cleanup Initiative (ICI), a review the site the assessment process is being conducted to identify potential areas to improvement the process and ensure high quality assessments. The Federal Facilities Restoration and Reuse Office (FFRRO), as part of the ICI effort, will continue to work with DoD to track progress of MMRP PAs and SIs, the transition to MRSPP sequencing activities, and the overall adequacy of MMRP PA and SI reports to be consistent with PAs and SIs carried out by EPA under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA).

The Munitions Response Site Prioritization Protocol (MRSPP) was developed as the basis for assigning relative priorities for funding subsequent munitions response actions. DoD published the MRSPP as a final rule on October 5, 2005.³ The priority assigned to each MRS is based on an evaluation of hazards posed by MEC, MC, or CWM. Only one of these three areas requires evaluation for a site to be initially scored under the MRSPP and the others would be marked "pending." The rule states that DoD will consider economic, programmatic, and stakeholder concerns when sequencing a site for response actions. DoD plans to apply the prioritization protocol to all sites listed in the MMRP Site Inventory and use it as the basis for DoD's national MMRP risk management strategy.⁴

Discussion

DoD is undertaking CERCLA PA and SI activities for MRSs included in the MMRP Site Inventory. The results of these PA and SI efforts should be useful to DoD for purposes of scoring sites and assigning relative priorities for response actions pursuant to the MRSPP. DoD completed all MMRP PA reports by the end of FY 2007 and has the programmatic goal of completion of all MMRP SI reports by the end of FY 2010.

² 32 CFR Part 139 (October 5, 2005).

³ *Ibid.*

⁴ Defense Environmental Network and Information eXchange (DENIX). Military Munitions Response Program Protocol Progress. <http://www.denix.osd.mil/>

In general, the PA and SI guidelines developed by DoD are intended to follow EPA's CERCLA guidance on conducting PAs and SIs⁵ at all MMRP sites, whether they are private FUDS or federal facilities.⁶ Site-specific instances have been reported where MRS Work Plans and execution of PA and SI work has not consistently followed EPA or State expectations or requirements. Potential issues have arisen regarding contaminant characterization activities in affected media for the purposes of scoring by CERCLA's Hazard Ranking System (HRS), as well as determinations by EPA or State Site Assessors on No Defense Action Indicated (NDAI), No Further Response Action Planned (NOFA), or additional response actions are required. EPA is working with DoD at the headquarters level to resolve site specific issues and national trends concerning DoD MMRP efforts.

Considerations For Regions When Interacting With DoD on MMRP Site Inventory

1. Federal Facilities Docket Sites:

EPA is required to establish the Federal Agency Hazardous Waste Compliance Docket ("Docket") under Section 120(c) of CERCLA. The Docket contains certain information Federal facilities are required to report to EPA under Sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA) and Section 103 of CERCLA; these sections require Federal agencies to report certain hazardous substance or waste activity to EPA. The Federal facilities subject to this requirement may include those sites currently owned or operated by a Federal agency, including Federally owned or operated FUDS, that manage hazardous waste, or from which a reportable quantity of hazardous substances have been released.⁷ Additionally, it should be noted that these requirements also apply to munitions and explosives of concern (MEC) that are determined by Federal or state regulatory agencies to constitute hazardous wastes under RCRA. The Docket provides a mechanism to make this information available to the public.⁸ The Federal facilities on the Docket are then evaluated through the HRS process to determine if they are eligible for possible inclusion on the NPL. Depending on the assessment, the site may then be placed on the NPL.

Accordingly, consistent with CERCLA section 120(c), a federally owned and/or operated MMRP site that is identified through the CERCLA discovery and notification process should be included on the Docket.⁹ Thereafter, that Federal facility should conduct and submit an adequate

⁵ 1991, 1992, 2005 EPA guidance on PA and SI

⁶ CERCLA/SARA Sec. 120(a)(2) states: "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."

⁷ Facilities on the Docket also may have areas where pollutants or contaminants have been or may be released.

⁸ U.S. EPA, OSWER, FFRRO. Docket Reference Manual: Federal Agency Hazardous Waste Compliance Docket, Interim Final, Washington, D.C., March 9, 2007, 1.1 Docket Background, p. 1-1.

⁹ U.S. EPA, OSWER, FFRRO. Docket Reference Manual: Federal Agency Hazardous Waste Compliance Docket, Interim Final, Washington, D.C., March 9, 2007.

PA and, when warranted, SI, to EPA so that EPA can perform an HRS evaluation.¹⁰ Based on past experience, the PA/SI results may demonstrate that many of these sites do not warrant HRS evaluation. Many of the MMRP PAs and SIs EPA has reviewed so far, however, have not provided sufficient information to perform preliminary HRS evaluations since their scope is limited to MEC, MC, and CWM and they do not include a full analysis of whether there has been a release of other hazardous substances or hazardous waste constituents to the environment.

2. NPL Sites:

In some situations, an MRS that is within the boundaries of an NPL site may not be currently included in the list of areas of concern, facility inventory, or other description of sites to be addressed under a federal facilities agreement (FFA) or other document providing for regulatory oversight (e.g., RCRA §7003 order). The MRS should be added to the FFA (or other oversight document) as soon as practicable together with an enforceable schedule of milestones, including primary and secondary documents. To resolve any disagreements that arise over adding the MRS, Regions should use the tools provided by the applicable FFA, including the Dispute Resolution process. The Regions should report these instances to FFRRO along with an analysis of potential impacts to construction completion targets. In addition, Regions need to consult with FFRRO and the Federal Facilities Enforcement Office (FFEO) when adding MMRP sites to an FFA, and when MMRP sites are projected to affect construction completion targets. Neither Congress' enactment of the subaccount within DERP providing funds to address munitions, nor DoD's administrative creation of its MMRP to spend that money, exempts DoD from or alters CERCLA section 120 requirements. That includes the requirement for an FFA for any cleanup at a federal facility on the NPL. DERP and the MMRP provisions apply to funding; they do not affect DoD's responsibility to comply with section 120 when carrying out a CERCLA cleanup that involves munitions. DERP and MMRP funding provisions can be accommodated within the framework of a CERCLA §120 FFA.

3. Non-NPL Sites:

At these sites, the Region should follow the recommendations for NPL sites where EPA is a signatory to an existing oversight agreement (e.g., RCRA §7003 order or Safe Drinking Water Act (SDWA) §1431), or has been requested by another federal or state entity to provide oversight assistance where DoD is the lead agency.

If a State, Tribe or Federal Land Manager requests EPA assistance in the oversight of MMRP Site Inventory activities, Regional personnel should consider the site-specific conditions when determining whether assistance is appropriate. The following situations describe circumstances where it may be appropriate for EPA to provide assistance:

a. DoD Recommendation for No Further Action (NOFA) or No DoD Action Indicated (NDAI)

As discussed above, the PA and SI efforts for the MMRP Site Inventory are focused on specific MEC, MC, and CWM parameters. As a result, it is anticipated that many PA and SI

¹⁰ Ibid., p. A-5 to A-6

reports may not contain sufficient information to meet EPA's information needs for purposes of HRS evaluation. It is important that Regions be provided the opportunity to review all draft NOFA, NDAI and other no action recommendations to determine if there is adequate information to support these determinations and ensure that the requirements under CERCLA 120 are met. It is recommended that any existing information from other site characterization efforts, such as PA and SI efforts associated with the Federal Facilities Docket be evaluated in conjunction with these reviews.

b. DoD Removal Action

EPA Regions may make recommendations to DoD for high priority removal actions based on information received from the public and other government agencies. It is expected that these recommendations and subsequent follow-on actions will be coordinated through the Region or Regional Emergency Response Teams, as appropriate.

c. DoD Recommendation to Proceed to Remedial Investigation/Feasibility Study (RI/FS)

In general, it may not be necessary for EPA Regional personnel to review all recommendations to proceed to RI/FS. However, when a site scores 1, 2, or 3 under the MRSPP, it may be appropriate for a Region to consider if a removal action is needed as a first step in the CERCLA response process.

4. Resources for Document Review

No additional resources are projected for the review of MRSPP PA/SIs. Where Regions have the flexibility to accommodate DoD requests for review within existing budget constraints, we recommend that the Region accommodate DoD's request. In the event that a DoD component is not providing timely notice to Regions on status or schedule projections for activities and does not provide adequate time for reviews, we recommend the Regions not concur with DoD's recommendations at the site and contact FFRRO for follow up with the DoD Component at the headquarters level.

5. Additional Enforcement Considerations

Regions should consider if and when EPA's enforcement authorities are appropriate to help protect communities and accelerate the pace of cleanup, consistent with the Administrator's stated priorities and other Agency direction. These include authorities in RCRA, CERCLA, and the Safe Drinking Water Act (SDWA). The SDWA gives the Agency unilateral administrative penalty authority to enforce Emergency Orders against Federal facilities. An example where the SDWA could be used for enforcement would be a site where uncontrolled contaminated groundwater threatens drinking water supplies or offsite populations. If necessary, Regions should determine whether the SDWA applies to contamination on both NPL and non-NPL sites, including contamination by chemicals or hazardous substances such as may be found in munitions constituents.

Please contact Doug Maddox (703-603-0087) of FFRRO for further information or question regarding this memorandum and Bill Frank (202 564-2584) in FFEO for questions regarding enforcement issues concerning MRS.

cc: Barnes Johnson
Elizabeth Southerland
Gail A. Cooper
Mary Kay Lynch
John Michaud
Charles Openchowski
Doug Maddox
Bill Frank