UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Transmittal of "Interim Guidance for EPA's Base Realignment and Closure (BRAC) Program"

FROM: James E. Woolford, Director
Federal Facilities Restoration and Reuse Office (FFRRO)

TO: Superfund Division Directors (Regions I – X)
RCRA Division Directors (Regions I – X)
Regional Counsel (Regions I – X)

This memorandum transmits interim guidance for EPA's Base Realignment and Closure (BRAC) Program. This guidance supersedes "EPA's Guidance for Implementing the Fast Track Cleanup Program at Closing or Realigning Bases" (February 1996).

Pursuant to Congressional mandate, hundreds of Department of Defense (DoD) military bases have undergone realignment or complete closure. Base realignments and closures were approved in five different rounds: 1988 (BRAC I), 1991 (BRAC II), 1993 (BRAC III), 1995 (BRAC IV), and 2005 (BRAC V). EPA has a role at BRAC installations where investigation and environmental response to releases of hazardous substances, pollutants or contaminants is needed and property will be transferred outside the federal government.

The purpose of this interim guidance is to provide direction to Regional Federal Facility Programs on responding to installations that will close, realign or experience net growth in personnel and/or functions as a result of BRAC V actions. The guidance also addresses EPA's continuing role at BRAC I – IV installations.

If you have questions about this guidance, please contact Tracey Seymour on my staff at (703) 603-8712 or seymour.tracey@epa.gov.

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Interim Guidance for EPA's Base Realignment and Closure (BRAC) Program

Federal Facilities Restoration and Reuse Office
Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency

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1 BACKGROUND

Pursuant to Congressional mandate, numerous Department of Defense (DoD) military bases have undergone realignment or complete closure. Base realignments and closures were approved to occur in five different rounds: 1988 (BRAC I), 1991 (BRAC II), 1993 (BRAC III), 1995 (BRAC IV), and 2005 (BRAC V). EPA has a role at BRAC installations where environmental response to releases of contamination is needed and contaminated property will be transferred outside the federal government.

BRAC I - IV (former Fast Track Cleanup Program)

To address the installations closed and realigned in BRAC I-IV, a five-part program to mitigate economic dislocation and speed economic recovery of communities near military bases scheduled for realignment or closure was announced by President Clinton on July 2, 1993. Rapid redevelopment and job creation were the top goals of this community reinvestment program, commonly referred to as the "Five Point Plan." The program called for the Federal Government to give priority to local economic redevelopment, provide transition and redevelopment assistance to workers and communities, put cleanup on a fast-track, provide transition coordinators at major bases scheduled for closure or substantial realignment, and allocate more funds for economic development planning grants.

The "Fast Track Cleanup Program" was an essential component of the President's Five Point Plan. The United States Environmental Protection Agency (EPA), the Department of Defense, and the states were charged with creating a working partnership to implement the Fast Track Cleanup Program with the objectives of "quickly identifying clean parcels for early reuse, selecting for appropriate leasing parcels where cleanup is underway and hastening cleanup." A list of BRAC installations which were designated as Fast Track locations can be found in Appendix B. While the Fast Track Cleanup Program no longer exists in name, the principles, relationships, and framework established are still ongoing at many BRAC I-IV installations.

BRAC V

The selection of installations for the most recent round of closures and realignments became final on November 9, 2005. The 2005 BRAC (BRAC V) is the largest, most joint-service-oriented round ever attempted, and affects more than 800 installations spanning active, National Guard, and Reserve components. With ten years between the 2005 BRAC and BRAC IV, several significant differences exist concerning implementation of the BRAC V round based on the experiences of BRAC I-IV.

Many of the bases to be realigned or closed under BRAC V have ongoing environmental response programs in place, and as a result a substantial portion of the required assessment and characterization of the environmental condition of these properties is in process or completed. Many facilities also have environmental remedies in place at contaminated sites. In addition, BRAC V calls for significant growth at some installations already surrounded by communities and development, a challenge DoD has not previously encountered to this magnitude when implementing prior BRAC actions. At BRAC National Priorities List (NPL) sites, and particularly those where accommodating for growth may affect, or be affected by, environmental conditions at the installation, and for certain actions at non-NPL BRAC sites, EPA has statutorily required responsibilities.[1] In addition, EPA may be requested to assist DoD, the receiving entity, and the community.

Turning Bases into Great Places--New Life for Closed Military Facilities

EPA's Federal Facilities Restoration and Reuse Office (FFRRO) teamed up with EPA's Smart Growth offices at Headquarters and EPA Region 1 in drafting the guidebook, *Turning Bases into Great Places – New Life for Closed Military Facilities*, to help communities facing base closure develop redevelopment plans. This guidebook may also be a helpful tool as communities and DoD find ways to accommodate the substantial growth expected at many installations as a result of the 2005 round of BRAC.

This guidebook is intended to help communities incorporate smart growth principles into their redevelopment plans in order to:

- create vibrant neighborhoods;
- bring amenities to residents and the surrounding neighborhoods;
- provide a balanced mix of jobs and housing; and
- capitalize on historic, cultural, and natural assets.

The guidebook can be found at http://www.epa.gov/smartgrowth/military

2 PURPOSE AND SCOPE

This guidance supersedes "EPA's Guidance for Implementing the Fast Track Cleanup Program at Closing or Realigning Bases" (February 1996). This document provides guidance for EPA support at installations identified in the five rounds of BRAC. EPA's role at BRAC I-IV installations, as addressed in this document, applies to bases previously **identified by DoD and EPA as Fast Track Cleanup locations** (see Appendix B). Fast Track Cleanup locations are

[1] For example, at NPL BRAC installations EPA is to provide concurrence on uncontaminated parcel determinations, NEPA review and comment, early transfer approval, approval of operating properly and successfully (OPS) determinations, and consultation on leases, among other activities. At non-NPL BRAC installations, some of the activities EPA is responsible for include cleanup oversight in non-authorized RCRA states, NEPA review and comment, consultation on leases, and OPS determinations.

locations closed or realigned under the Base Closure and Realignment Act of 1988 (P.L 100-526) (BRAC I) or the Defense Base Closure and Realignment Act of 1990 (P.L 101-510) (BRAC II, III, and IV) where there is environmental contamination, **that may or may not be on the National Priorities List (NPL)**, and where property will be available for transfer at these locations. In addition to statutory and regulatory requirements to be fulfilled by EPA, DoD and EPA have entered into a Memorandum of Understanding (MOU) (see Appendix E) that further defines EPA's role and responsibilities at BRAC I – IV installations.

At BRAC V bases, EPA will conduct its statutory obligations at bases listed on the NPL, and, at certain non-NPL bases, where EPA has a regulatory role. In addition, EPA regions may be requested to perform activities by states, tribes, local governments, the Military Services or others at certain facilities where EPA has no formal regulator role. Given EPA's resource constraints, each region has to examine those requests individually and determine whether it can positively respond. EPA will fulfill statutory responsibilities related to contaminated federal property transfers as they apply to both properties listed on the NPL, and where applied to those not listed on the NPL.

Because of changes in DoD policy and implementation between BRAC I - IV and BRAC V, this guidance separately addresses EPA's role and responsibilities for each group of installations. Please note that EPA's established role at BRAC I-IV facilities through the former Fast Track Cleanup Program may create expectations regarding EPA's role at non-NPL BRAC sites which may not be realized at BRAC V installations.

This guidance:

- Reiterates EPA's role and responsibilities at BRAC I-IV installations;
- Addresses EPA roles and responsibilities at BRAC V installations;
- Establishes accountability for resources provided to EPA by DoD under the BRAC I-IV Memorandum of Understanding (MOU);
- Establishes guidelines for coordination and interaction with DoD and state counterparts, Restoration Advisory Boards, (RABs), and Local Redevelopment Authorities (LRAs), at all BRAC installations; and
- Addresses methods for accelerating cleanups and property transfer, including performance based contracting, cleanup privatization and early transfers.

This document provides guidance to EPA Regions on how EPA intends to exercise its discretion in implementing the statutory and regulatory provisions that concern BRAC installations. The guidance is designed to implement national policy on these issues. The statutory provisions and EPA regulations described in this document contain legally binding requirements. This document does not substitute for those provisions or regulations, nor is it a regulation itself. Thus, it does not impose legally binding requirements on EPA, States, or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA decision makers retain the discretion to adopt approaches on a case-by-case basis that differ from this guidance where appropriate. Any decisions regarding a particular facility will be made based on the statute and regulations. This guidance is a living document and may be revised periodically without notice.

For specific guidance referenced throughout this document, the website address for each can be found in Appendix D.

3 Overview of Federal Statutes, Regulations, and other authorities

This guidance will discuss environmental cleanup, property transfer, leasing, and environmental review requirements established by a number of federal statutes and regulations, including but not limited to the following:

- **Base Closure and Realignment Acts**: Provide for closing and realigning of military installations based on revised force structure needs. Selection of bases have occurred in 1988 (BRAC I), 1991 (BRAC II), 1993 (BRAC III), 1995 (BRAC IV), and 2005 (BRAC V).

  The Acts allow for the establishment of Local Redevelopment Authorities (LRAs) at BRAC installations and outlines DoD, LRA, and other parties' responsibilities in the BRAC process. The Act was amended in 2003 to require DoD to *seek* fair market value for specific forms of property conveyance, including economic development conveyances (EDCs), negotiated sales, public sales, sales under Section 2905(e) of the Act, and conveyances to a depository institution. This amendment applies to all BRAC property (Rounds I-V) remaining in DoD's property inventory at the time the amendment was authorized.

- **Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)**: Authorizes response actions at federal facilities where hazardous substances, pollutants, or contaminants have been released and present a threat to public health and the environment. DoD is responsible for the restoration of all facilities that it has owned or operated where there have been releases from its operations into the environment, as well as those facilities where hazardous substances from its operations have come to be located. CERCLA section 120(h) contains provisions that establish requirements for the transfer or lease of federally owned property based on storage, disposal, or known release of hazardous substances. All contracts for transfer or lease must include notice of this storage, disposal or release. Except as noted below, CERCLA section 120(h)(3) requires that transfers of federal real property by deed must also include: a) a covenant by the United States that all remedial action necessary to protect human health and the environment has been taken prior to transfer, b) a covenant by the United States to undertake any further remedial action found to be necessary after transfer, and c) a clause granting access to the transferred property in case remedial action or corrective action is found to be necessary after transfer.

  For parcels requiring remediation, CERCLA section 120(h) (3) (B) provides for transfer by deed at the point where the successful operation of an approved remedy has been demonstrated to EPA, unless an "early transfer" occurs under CERCLA section 120(h) (3) (C). CERCLA section 120(h) (3) (C) allows for the transfer of property from the federal government prior to the completion of cleanup activities as long as specific

requirements are met. CERCLA 120(h) (4) provides for the identification of uncontaminated parcels with regulatory concurrence. (See Appendix F for the full text of CERCLA Section 120)

- **Reporting Hazardous Substance Activity When Selling or Transferring Federal Real Property (40 CFR Part 373):** Whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property (including public benefit conveyances, economic development conveyances, etc.) which is owned by the Federal government and where any hazardous substance was stored for one year or more, known to have been released, or disposed of, a notice of the type and quantity of the hazardous substance and notice of the time at which the storage, release or disposal took place, to the extent the information is available, must be included in the contract or agreement for transfer. (See Appendix G for the full text of 40 CFR Part 373)

- **National Contingency Plan (NCP)**: The National Oil and Hazardous Substances Pollution Contingency Plan, more commonly called the National Contingency Plan or the NCP, is the federal government's regulation for carrying out CERCLA response actions and serves as the blueprint for responding to both oil spills and hazardous substance, pollutant or contaminant releases. The National Contingency Plan is the result of our country's efforts to develop a national response capability and promote overall coordination among the hierarchy of responders and contingency plans.

  The NCP applies to releases into the environment of hazardous substances, and pollutants or contaminants which may present an imminent and substantial danger to public health or welfare of the United States. At BRAC bases, DoD, as the "lead agency" for cleanup under CERCLA (as established by Executive Order 12580), is required to follow the NCP when conducting CERCLA response actions.

- **Community Environmental Response Facilitation Act (CERFA):** CERFA amended CERCLA section 120 in an effort to facilitate base closure and reuse; however, it also affected a broad range of federal real property transfers. CERFA, which amended CERCLA to include section 120(h) (4), requires the Federal government to identify "uncontaminated parcels" at: 1) all real property owned by the United States and on which the United States plans to terminate Federal Government operations, or 2) 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. While the mandated timeline for uncontaminated parcel determinations has expired for BRAC I-IV installations, the obligation to obtain EPA and/or State concurrence continues beyond those dates. For BRAC V installations, uncontaminated parcel determinations and regulatory concurrence are to be completed by no later than May 9, 2007. (See section 7.2 for additional information on uncontaminated parcel determinations)

  For parcels requiring remediation, CERFA clarifies CERCLA section 120(h)(3) to allow transfer by deed at the point when the successful operation of an approved remedy has

been demonstrated to EPA, unless an early transfer occurs under CERCLA section 120(h)(3)(C).

- **Defense Environmental Restoration Act (DERA)**: DERA established the Defense Environmental Restoration Program (DERP) (10 U.S.C. 2701). DERP activities are to be carried out subject to, and in a manner consistent with, CERCLA section 120. The Act, enacted in 1986 as part of the Superfund Amendments, also requires for the program to be implemented in consultation with EPA. Goals of the DERP program include:

    - The identification, investigation, research and development, and cleanup of contamination from hazardous substances, pollutants, and contaminants.
    - Correction of other environmental damage (such as detection and disposal of unexploded ordnance) which creates an imminent and substantial endangerment to the public health or welfare or to the environment.
    - Demolition and removal of unsafe buildings and structures, including buildings and structures of the Department of Defense at sites formerly used by or under the jurisdiction of the Secretary.

- **Resource Conservation and Recovery Act (RCRA):** Closing installations may be subject to facility-wide corrective action under the Hazardous and Solid Waste Amendments (HSWA) as well as to closure of RCRA regulated units in compliance with 40 CFR Parts 264 and 265. In those states that do not have authorized Corrective Action programs under HSWA, EPA is responsible for the oversight and enforcement of corrective action by the owner/operator of the facility. Transfer of parcels of land which remain subject to the RCRA/HSWA permit due to ongoing corrective actions (early transfers) or regulated units will require the new property owner to be either a holder or co-holder of the permit (See 40 CFR 270.40).

- **National Environmental Policy Act (NEPA):** Although the decision to close or realign installations is not subject to NEPA, DoD is required to follow NEPA requirements during the process of property disposal and during the process of relocating functions from one installation to another. NEPA requires DoD (or any federal agency) to consult with and obtain the comments of other federal agencies that have jurisdiction by law or special expertise with respect to any environmental impact involved with the action. Under Section 309 of the Clean Air Act, EPA must review, and comment in writing on, the environmental impact of major federal actions that will have significant environmental impacts; if the Administrator determines that an action is unsatisfactory from the standpoint of public health or welfare or environmental quality, EPA must refer the matter to the Council of Environmental Quality (CEQ).

- **Toxic Substances and Control Act (TSCA)**: TSCA is the primary federal statute regulating the use of certain chemicals and substances, including asbestos, PCBs, radon and lead. Federal facilities have regulatory responsibilities under TSCA, including complying with regulations governing the proper handling, use, storage and disposal of certain substances and maintaining records. Most TSCA authorities are non-delegable, and EPA remains the principal regulatory authority under this statute.

- **Small Business Liability Relief and Brownfields Revitalization Act**: The Small Business Liability Relief and Brownfields Revitalization Act was signed by the President in January 2002, and provided amendments to CERCLA. The amendments changed some of the provisions in CERCLA section 107 regarding Superfund liability. The amendments allow parties to purchase a contaminated property with the knowledge that the property is contaminated, and not be held liable for the known contamination if certain statutory requirements are met. Most notably for BRAC properties, the amendments may provide bona fide prospective purchaser (BFPP) liability protections for qualified transferees of BRAC property (or other government property) if certain statutory requirements are met. In addition, the amendments include a definition of a brownfields site that specifically excludes property under the jurisdiction or control of the federal government, and establishes a grant program for eligible entities to assess and cleanup properties that meet the definition of a brownfields site.

- **Other Federal authorities**: Other federal authorities, such as the Safe Drinking Water Act (SDWA) and the Clean Water Act (CWA), may also apply at BRAC installations in either the cleanup or transfer of these properties.

Non-federal authorities at BRAC installations

States often have independent authorities, regulations, and cleanup standards that may affect cleanup at BRAC installations, including laws that are similar to CERCLA. In general, CERCLA section 120(a) (4) provides that state laws concerning removal and remedial action shall apply at federal facilities that are not listed on the NPL. In addition, section 121(d) of CERCLA requires that remedial actions undertaken at a federal facility attain a level of cleanup that meets Federal applicable or relevant and appropriate requirements (ARARs). Such cleanups must meet state ARARs when state ARARs are more stringent than Federal laws, and identified by the State in a timely manner. The statute also allows ARARs to be waived in limited circumstances.

In addition, RCRA corrective action authorities may be carried out by authorized states, and those states are responsible for issuing permits under RCRA.

4 Working with others in the BRAC process

DoD and the Military Services

EPA has established a collaborative working relationship with the Department of Defense (DoD) and the Military Services while maintaining it's regulatory and enforcement responsibilities. EPA Regional Remedial Project Managers (RPMs) should continue to work in a cooperative manner with their DoD counterparts in implementing BRAC actions. The EPA Federal Facilities Restoration and Reuse Office (FFRRO) will continue to work with its counterparts at DoD and the Military Services, and offer assistance where the EPA is able to do so, to ensure that environmental cleanup is consistent with the reasonably anticipated future use of BRAC property so it remains protective of human health and the environment.

States

States often have an integral and significant role in the cleanup and transfer of BRAC property. At many sites, they will be the lead environmental regulator for several or all environmental activities. Existing EPA relationships with state counterparts at particular installations may be heightened due to BRAC. EPA RPMs and regional management should continue to work in a constructive manner with states. FFRRO will continue to work with the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), the Environmental Council of States (ECOS), the National Association of Attorneys General (NAAG), the National Governors Association (NGA), and other state organizations, as well as individual states on an as needed basis, to ensure that cleanup and property transfer at BRAC installations occurs appropriately and expeditiously.

Tribal Nations

Many Tribal nations have distinct roles in cleanups of federal facilities under treaties and other arrangements with the U.S. government. The Office of Solid Waste and Emergency Response (OSWER) Superfund Federal Facilities Response Program works with tribes on a government-to-government basis consistent with the federal trust responsibility to federally-recognized tribes. Base closures often can lead to land transfers to tribes, and under such circumstances the land may be held in trust by the Department of the Interior's Bureau of Indian Affairs. Affected tribes may have opportunities for economic development or land transfer, as well as access to archeological sites or other cultural resources.

There are several programs available to assist tribal nations throughout the BRAC cleanup process. One such program is the Technical Outreach Services for Native American Communities (TOSNAC) program, which provides technical assistance to Native Americans dealing with hazardous substance issues. This program is national in scope and is currently coordinated through the Haskell Environmental Research Studies Center at Haskell Indian Nations University. It provides first contact, needs assessment, initial support, and long-term technical support arrangements by regional TOSC programs and other resources, as necessary. Additional information can be found at the following Web site:
http://bridge.ecn.purdue.edu/~tosnac/

Other Federal Agencies

Other federal agencies and departments have significant roles and responsibilities throughout the BRAC process. Where EPA will most likely be involved with the other federal agencies is where property will be transferred either to another federal agency ("fed-to-fed transfers") or where the other federal agencies sponsor a public benefit conveyance (PBC). In public benefit conveyance situations, EPA will abide by the terms set forth in the 1997 Memorandum of Agreement between the Departments of Education, Health and Human Services, Interior, and Transportation, and the Department of Defense and the Departments of Army, Navy, and Air Force regarding responsibility for releases of hazardous substances, pollutants or contaminants on real property transferred through a public benefit conveyance. (Please see section 7.6.1 for

EPA's role in fed-to-fed real property transfers.) Where EPA regions are approached by another federal agency for assistance in a BRAC-related transaction, the EPA region will evaluate its ability to assist based on the availability of resources.

Local Redevelopment Authorities

Local Redevelopment Authorities (LRAs) are authorized by the Base Closure and Realignment Act.[2] Their primary purpose is to prepare a redevelopment plan for property that will be leaving the Department of Defense and incorporate that property back into the local community. By statute, when considering the future use of the property, the LRA must take into consideration the economic effect of the closure or realignment of the installation and how the community can best recover. While there is no official role for the LRA in the cleanup process, it is highly recommended that the LRA be cognizant and aware of the environmental condition of the property as it begins to plan reuse alternatives. EPA's Regional offices and FFRRO are expected to assist LRAs when requested. The more the LRA is aware of the environmental condition of property as it develops future redevelopment plans, the more appropriate reuses and cleanup activities can be incorporated into the redevelopment plans for BRAC sites.

Local Governments

Local governments may be part of the LRA. In some cases, a local government office(s) may be designated as the LRA. Local governments often regulate zoning and planning, enforce adherence to building, fire, plumbing, and electrical codes, and in general could have an impact on how BRAC properties are reused by the community.

EPA Regional program offices, working with DoD as the lead response agency at BRAC installations (per Executive Order (E.O.) 12580 and the NCP), have likely established working relationships with the local governments proximate to a given BRAC installation that is listed on the NPL. Where a local government official approaches an EPA regional office to participate in the cleanup process at a BRAC installation, that office should discuss and define precisely what the local government desires and whether these needs are being met through already established mechanisms, such as Local Redevelopment Authorities (LRAs) and Restoration Advisory Boards (RABs).

Where existing mechanisms will not suffice, regional program offices should work with DoD and the local government(s) to identify means to facilitate local government involvement. Where a local government not in the vicinity of the BRAC facility approaches EPA and/or DoD seeking additional involvement, the EPA regional program should review the request in coordination with DoD and make a determination whether to grant the request.

If a local government requests participation outside of existing structures, EPA Regions, in collaboration with the local officials and DoD, should identify precisely what materials are needed and provide them in a timely fashion. As appropriate, local government officials should also be afforded the opportunity to participate in briefings, discussions or other exchanges of information to facilitate their understanding of the remedial process and decisions.

[2] *Public Law 101-510, as amended by the National Defense Authorization Act of FY 2003, Section 2905*

Local Community Members

EPA RPMs (in consultation with community involvement personnel), regional management and Headquarters should oversee and assist DoD in meeting the community relations requirements under CERCLA, and EPA's **Early and Meaningful Community Involvement Guidance**. The principal function of CERCLA community relations efforts is to provide a fair and open process for community involvement throughout the decision making process at both NPL and non-NPL sites. This process reflects the fact that EPA and DoD are accountable, not only for the cleanup decisions, but for ensuring that public input is solicited and that responses are considered in a meaningful way.

At BRAC installations, community concerns often extend beyond the cleanup program, and focus on how the cleanup may affect the potential reuse of the property and local economic recovery. EPA should assist DoD in helping community members understand the environmental condition of the property and the actions the government is taking to address contamination.

Restoration Advisory Boards (RABs) have been established at most of the BRAC I-IV bases as well as active installations which are to be closed or realigned under BRAC V. RABs are formed in accordance with 10 U.S.C. 2705(d), the **DoD/EPA Restoration Advisory Board (RAB) Implementation Guidelines of 1994**, and the DoD RAB Rule (when finalized). A RAB is a stakeholder forum that includes community members and advises DoD on cleanup actions. EPA RPMs attend RAB meetings as a representative of the U.S. EPA for NPL sites and/or BRAC sites where EPA is involved in the cleanup. It is expected that this role for EPA RPMs will continue as long as EPA is involved in the cleanup at the installation or until such time the RAB may be adjourned or disbanded.

Environmental Justice Communities

In November, 2005, EPA's Administrator restated the EPA's commitment to Environmental Justice (EJ), which generally seeks the fair treatment and meaningful involvement of all people while conducting the EPA's work. To accomplish environmental justice goals, RPMs should work with their federal facilities partners to implement Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations."

RPMs should consider the practices listed in EPA's **Early and Meaningful Community Involvement Guidance**, as well as the information in EPA's Community Involvement Handbook and Community Involvement Toolkit, to both monitor and support their federal facility partners when identifying disproportionably-impacted communities and implementing a public participation program that meets the specific needs of these communities.

RPMs should consult with their EPA Community Involvement Coordinator (or if a CIC is not assigned to the site, the Community Involvement Manager) and the Region's environmental justice coordinator. EPA RPMs should encourage the Military Services to meet the intent of EPA's **Public Involvement Policy**, in particular Element 6: "Review and use input and provide feedback to the public." Additional guidance to support environmental justice may be developed

by FFRRO in response to the National Environmental Justice Advisory Council's report on improving stakeholder involvement at federal facilities.

5 EPA's Role at BRAC I – IV Installations

As mentioned earlier, cleanup at BRAC I – IV installations was addressed through the Fast Track Cleanup Program under President Clinton's Five Point Plan. The following identifies EPA's continuing responsibilities at BRAC I – IV Fast Track locations. **Please also see Appendix A for more detailed information regarding Regional Management Responsibilities, Regional Project Manager Responsibilities, and Accountability for BRAC I – IV Resources.**

5.1 *BRAC Cleanup Teams (BCTs)*

Environmental experts from EPA, DoD, and the applicable State[3], working as a BRAC Cleanup Team (BCT), have been assigned to BRAC I – IV bases. EPA's goal remains to place decision making authority at the lowest practical level. Where possible, EPA RPMs should be empowered to make decisions to expedite the cleanup and property transfer process. The teams have conducted "bottom-up" reviews of the environmental conditions of the base (i.e., environmental baseline surveys), with the objective of accelerating cleanup while integrating base reuse priorities.

EPA's Regional representative on the BCT is the Remedial Project Manager (RPM). The RPM designated for each BRAC I-IV cleanup location is expected to have the substantive responsibilities and implementation authorities for EPA's technical assistance, guidance, and oversight of environmental cleanup programs related to the transfer of the installation's real property. The RPM should have experience and grade commensurate with the senior-level responsibilities of the position.

The EPA RPM should be supported by a team of EPA experts that will work at BRAC I-IV locations, depending upon the needs at a particular location at a given time. The EPA support team typically will include experts in such areas as hydrogeology, health risk assessment and toxicology, ecological risk assessment, engineering, community relations, field work support (sampling and site assessment), and clean parcel identification. Administrative, management, NEPA, and legal support also may be necessary to address regulatory complexities and policy issues.

The EPA RPM and the support team should be empowered to make decisions locally to the maximum extent possible. EPA has delegated BRAC related authorities to the Regional Administrators (RAs), i.e., delegation 14-39, "Concurrence on Identification of Uncontaminated Federal Real Property," and 14-40, "Evaluation of Approved Remedial Design". The RAs have in turn re-delegated the authorities to lower levels within their organizations. **Should the need arise, the EPA RPM and support team are empowered to raise issues immediately to**

[3] In some cases the state may choose to not participate in the BCT or the RAB. This does not change EPA's participation under the BCT framework. However, EPA cannot replace the State if it is the lead regulator for the installation cleanup. EPA should continue to work with the State, as necessary, to facilitate cleanup and property transfer.

senior EPA Regional or Headquarters (FFRRO) management for resolution as appropriate. When elevating an issue to Headquarters, the regions should work through their FFRRO regional coordinator.

Traditionally the Military Service's representative on the BCT has been either physically present at the installation to see day-to-day activities, or located relatively nearby. However, this is changing as fewer DoD Base Environmental Coordinators (BECs) are physically present onsite due to Service management and organization changes, and where DoD has privatized the cleanup at a facility using performance based contracting. When presented with this situation, the EPA RPM should maintain communication with the DoD BEC, and, as a member of the BCT, try to work through issues that may arise where a BEC is not onsite. In instances where a performance based contractor is conducting the cleanup activities and the BEC is no longer onsite, EPA RPMs should consider OSWER's guidance, "**Performance Based Contracting by Other Federal Agencies at Federal Facilities**," (OSWER Guidance 9272.0-21) in evaluating how to best approach this situation.

5.2 *Management Framework for BRAC I – IV Installations*

Beginning in FY 1994, DoD provided EPA, via an interagency funding agreement, with reimbursable resources to support EPA's Fast Track Cleanup Program activities. For FY 2006, EPA's BRAC program has 75.5 reimbursable full time equivalents (FTE) to support EPA work at 73 BRAC I - IV installations. An interagency funding agreement has continued for specified BRAC I - IV installations through Memorandums of Understanding (MOU) between DoD and EPA. The MOU in place for fiscal years 2006 through 2008 provides DoD resources for EPA support at selected BRAC I - IV installations only (excludes BRAC V installations).

In FY 2006, the majority (96%) of EPA's BRAC I – IV reimbursable FTE are allocated to the Regions. EPA uses BRAC funding for EPA personnel that participate on BCTs as either the EPA designated team member or as technical experts and support personnel that assist the teams. BRAC funds can be used for contractor support by EPA only if the Military Service approves the use of funds for that purpose. Regions should work with FFRRO if BRAC funding is required for contractor support at BRAC installations.

In fulfilling budgetary obligations to DoD and others regarding site and non-site specific BRAC charges, the Office of the Chief Financial Officer (OCFO) Cincinnati Finance Center provides support to EPA's BRAC program. EPA utilizes site-specific charging to track resource utilization directly to actual sites and site work. EPA also tracks non-site work that is performed to support the BRAC I – IV program. Accounting for EPA use of DoD's BRAC funds is required by the nature of BRAC appropriations and the BRAC legislation. EPA's Office of the Chief Financial Officer, Office of Financial Services, and Cincinnati Finance Center invoices DoD on actual program expenditures incurred by EPA.

As the signatory and executing agent for the reimbursable agreement with DoD, the Assistant Administrator for OSWER will rely on Regional Administrators/Deputy Regional Administrators, and, as the primary focus of the EPA BRAC resources, the Regional Superfund (Regions 1-5, 7-10) or RCRA (Region 6) Division Directors (or equivalent) to ensure

reimbursable costs are accurate and appropriate. FFRRO will periodically run financial reports and ask the Regional Waste Management Division Directors (or equivalent) to verify the data. The payroll verification process will consist of:

- Certifying those individuals charging to BRAC are authorized to do so;
- Verifying the charges in the financial system are correct;
- Providing a detailed explanation stating the type of work that was performed by individuals charging to the non-site category; and
- Submitting a written statement to FFRRO's Director, explaining the course of action planned for correcting any incorrect charges (memo must be signed by the Waste Division Director (or equivalent)).

Please see Appendix A for additional responsibilities related to BRAC I – IV resource accountability.

5.3 *BRAC Quarterly Reports*

EPA regions are required to provide to FFRRO regular program activity reports (called BRAC Quarterly Reports) every three months that describe the progress of work at all BRAC I-IV installations which are receiving resources from DoD and/or EPA has an active role at the installation. The format and information required in these reports is specified in the October 2005 MOU negotiated between EPA and DoD (see Appendix E). These reports are generated by the EPA Regional BCT personnel and are provided by EPA Headquarters to DoD/OSD and each of the Military Services.

5.4 *Future work at BRAC I-IV sites*

EPA has been working at many BRAC I-IV sites for more than ten years at the time this guidance was written. Cleanup and property transfer work has been completed at some installations and is nearly complete at many other installations. As work comes to a close, especially at BRAC I-IV installations where DoD no longer provides resources, regional RPMs assigned to these installations will need to be reassigned where needed within the region. Regions should gauge their annual authorized FTE allocation from DoD, and, when appropriate, begin to plan for the loss of FTE funding from DoD.

6 EPA's Role at BRAC V Installations

Because DoD will be altering its approach at BRAC V installations from what has been used at BRAC I – IV installations, this section addresses EPA's role and expectations at BRAC V installations. Two major paradigm shifts between these two groups of BRAC installations are the creation of BRAC Cleanup Teams (BCTs) and the resource framework used to support EPA activities at BRAC V installations.

6.1 *BRAC Cleanup Teams (BCTs) at BRAC V installations*

DoD has stated it will not be instituting a program similar to the BRAC I-IV "Fast Track Cleanup Program" for BRAC V installations. A central tenant to the Fast Track Cleanup Program was creation of BRAC Cleanup Teams. While BCTs in name will not be formed as they were, EPA RPMs already work actively with their DoD and State counterparts at NPL BRAC V facilities. This relationship should continue and be furthered as these informal cleanup teams work to address cleanup and property transfer issues that arise from the implementation of BRAC V actions. However, unlike the BCT concept formed for BRAC I – IV installations, dedicated EPA support personnel (e.g., hydro-geologist, risk assessors, etc.) will not be in place for BRAC V sites. In addition, an RPM may be able to dedicate the attention in the same manner as at the prior BRAC I-IV bases.

6.2 *Resource Framework*

EPA fully supports DoD's efforts to accelerate the cleanup and property transfer process for BRAC installations in order to mitigate the economic effects of BRAC actions to the local community. As stated in the EPA FY 2007 Budget Request to Congress, EPA expects the DoD to provide resources to help facilitate our involvement at BRAC V installations, much like it does for BRAC I – IV installations. However, at the time this interim guidance was drafted, no arrangement has been put in place to provide additional resources to meet the increased demands on EPA. Until additional resources are made available, EPA Regions should continue to work at BRAC V installations within their existing budgets. This means that Regional programs may not be able to respond to certain request or delays may occur in responding to the requests.

Military Services have indicated they may be willing to enter into site-specific reimbursable agreements at particular NPL locations. Where the Region feels it will need additional resources to address BRAC activities at a site in a timely and efficient manner, Regions should define their workload as precisely as possible and work with FFRRO to approach the affected Military Service. Regions should identify resource needs in addition to resources currently allocated to the facility. Should no agreement be reached with the Military Service, the Regional Superfund or Waste Division Director and FFRRO's Office Director should jointly inform the OSWER Assistant Administrator of the situation and determine how to proceed.

EPA's priority for the Superfund Federal Facilities Response Program is to address cleanup at NPL installations (regardless of BRAC status) and fulfill statutory requirements related to property transfer and BRAC requirements (e.g., uncontaminated parcel determinations, NPL early transfers). EPA's oversight and activities at non-BRAC NPL installations should not be minimized or delayed due to NPL BRAC V installation requirements in the Region.

The EPA's priority for BRAC V are the installations listed on the NPL, however EPA may be requested to provide assistance at non-NPL BRAC V installations. Where there are not sufficient resources available to address the request, these situations should be handled in the same manner as described for NPL sites above. Of course, Regions should meet their statutory obligations at non-NPL bases.

6.3 *DoD Policy and Guidance*

DoD issued the "**Base Redevelopment and Realignment Manual**" (BRRM) for implementing BRAC V actions and remaining incomplete BRAC I – IV actions on March 1, 2006. This manual supersedes the 1997 Base Reuse Implementation Manual (BRIM).

The BRRM is primarily for DoD personnel who are responsible for implementing BRAC actions. The Manual incorporates DoD's requirement to seek fair market value for certain property conveyance methods, discusses how DoD envisions early transfer and cleanup privatization to occur, and defines expectations regarding regulator involvement in the cleanup and property transfer process at BRAC installations. EPA RPMs should be aware of this Manual and familiarize themselves with the processes DoD will be undergoing to implement BRAC actions and conduct cleanup and property transfer.

7 EPA Responsibilities for Cleanup and Property Transfer at BRAC Installations (Rounds I – V)

Listed below are areas where EPA RPMs typically will have a role as BRAC actions are implemented. While many of the activities discussed below have been completed for BRAC I – IV installations, this section outlines where and in what manner EPA may be involved for **all** BRAC installations.

7.1 *Environmental Condition of Property (ECP) Reports*

DoD guidance states that the Military Services should prepare Environmental Condition of Property (ECP) Reports to evaluate the condition of BRAC property.[4] DoD's BRRM indicates that the ECP will be provided to EPA as information only. ECPs are not the same as the Environmental Baseline Surveys (EBSs) prepared at most BRAC I – IV installations. EPA RPMs and support personnel should review ECP reports to ensure their completeness. Where ECPs are submitted to support uncontaminated parcel determinations (see next section), Regions should review the reports to ensure they are sufficient pursuant to the criteria in CERCLA 120(h)(4). As needed, the Region should provide comments to DoD on the basis and findings of the reports in an effort to make them as complete and accurate as possible for the public. EPA has no statutory or regulatory obligations regarding ECPs.

7.2 *Uncontaminated Parcel Determinations*

Uncontaminated parcel determinations required by CERCLA section 120(h)(4) for BRAC V installations on the NPL must be made, and concurred on by EPA, no later than 9 months after submittal to the base transition coordinator for a specific use proposed for all or a portion of the real property of the installation, or 18 months after the date of approval of base closure recommendations. The latter would be no later than May 9, 2007. The requirement to identify the uncontaminated parcels and receive regulator concurrence on the determination they are

[4] DoD Base Redevelopment and Realignment Manual (BRRM), March 1, 2006, page 100.

uncontaminated exists regardless of whether the Military Service has provided the determination by the May 9, 2007 date.

Uncontaminated parcels generally involve land "on which no hazardous substances and no petroleum products or their derivatives were known to have been released or disposed of."[5] The statute requires the review of specified sources of information by the Military Service, and current DoD guidance directs the Military Service to forward a "Request for Identification of Uncontaminated Property" to the appropriate regulator pursuant to the criteria in CERCLA Section 120(h)(4).[6] The Military Services may also submit an ECP report to support this identification and determination. The statute provides that EPA must concur on DoD's determinations at properties listed on the NPL. Regions should follow the March 27, 1997 EPA guidance entitled, "**Military Base Closures: Revised Guidance on EPA Concurrence in the Identification of Uncontaminated Parcels under CERCLA Section 120(h)(4)**" when reviewing uncontaminated parcel determinations for BRAC installations and supporting documentation. The guidance discusses EPA's concurrence role for parcels identified as uncontaminated where a de minimis quantity of hazardous substances or petroleum products has been stored, released or disposed of, but there is no indication that the activity associated with the storage, release, or disposal has resulted in a threat to human health or the environment (e.g., oil stains in parking lots).

Regions have been delegated the authority to make these determinations by section 14-39 of the EPA Delegations Manual. As required by the Delegation, Regions must notify the Director of the Federal Facilities Restoration and Reuse Office after exercising this authority. Uncontaminated parcel determinations should be recorded in the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) Database as well to ensure correct reporting as part of OSWER's Land Revitalization measures.[7]

7.3 *Remedy Decisions at BRAC Installations*

Cleanups conducted under CERCLA at BRAC installations should meet the requirements of the statute and the NCP. The identification of a preferred alternative and final selection of a remedy is derived from consideration of nine evaluation criteria in three major steps, as described in the NCP (Sec. 300.430(f)(1)(ii)(E)), as well as appropriate Superfund policy and guidance. For installations listed on the NPL, regardless of BRAC status, EPA jointly selects remedies that address releases of hazardous substances, pollutants or contaminants. In cases where EPA disagrees with the remedy proposed by DoD for BRAC NPL sites, EPA has the authority to select the remedy. Particularly with respect to properties leaving federal ownership, custody, or control, EPA regions should carefully consider the Directive, "**Land Use in the CERCLA Remedy Selection Process**" (OSWER Directive No. 9355.7-04 May 1995) when analyzing the appropriateness of remedy decisions. As stated in the Directive, it is EPA policy that reasonably anticipated future land uses (RAFLUs) be considered as part of the process for selecting response actions at a site, and that possible changes to anticipated land uses should be evaluated, when appropriate, throughout the cleanup process. Other federal agencies carrying out response

[5] CERCLA Section 120(h)(4)(A)
[6] DoD Base Redevelopment and Realignment Manual (BRRM), March 1, 2006, page 105.
[7] *See the 2006/2007 Superfund Program Implementation Manual (SPIM), page D-16*

actions pursuant to CERCLA (and their respective statutory authorities) should do so in the same manner and to the same extent as any non-governmental entity.

For BRAC installations, EPA expects that for facilities on the NPL reasonably anticipated future land use should be developed based on input from the LRA and other stakeholders. While past land uses may inform this determination, they are not the only factor that should be considered. The LRA's redevelopment plan for the property, if it is available at the time remedy decisions are being made, may provide useful information and if appropriate, should be considered in making remedy decisions. If a final redevelopment plan is not available, it may be appropriate to seek input from the LRA and other stakeholders as to the types of uses they are considering for the property. The Region has a responsibility to advise the LRA and other stakeholders that in some situations the anticipated future property use may not be compatible with the type and amount of contamination left by the response action.

Where a LRA redevelopment plan is not available and minimal input is received from the LRA and/or community regarding anticipated future use of property, the disposal decision from the DoD's NEPA analysis should be considered in evaluating the RAFLU for BRAC installations. While using this may conflict in some situations with DoD's policy preference that cleanup decisions be based on current use of the property, regions should work with their counterparts in the Military Services, and the state regulators, to carefully evaluate the RAFLU in the remedy decision making process.[8] An integral part of achieving the Superfund program's mission of protection of human health and the environment is ensuring that sites are cleaned up to be protective for their use in the future.

7.3.1 Reopening Remedy Decisions

Many BRAC V installations have cleanup activities completed due to ongoing environmental programs at these installations over the past 25 years. Many installations already have their remedies decided and either fully constructed or in process, and some facilities have been deleted or had parcels deleted (i.e., partial deletions) from the NPL. However, the context in which these response action decisions were made was as an active military installation that was expected to continue in perpetuity as a military installation. The BRAC action changes that context for facilities that are closing or that may have excess property through realignments. This may mean that assumptions regarding reasonably anticipated future land use (RAFLU) may no longer be valid and that RAFLU may need to be reexamined.

Considering the possibility for different future land uses due to BRAC actions that may not be compatible with existing remedies at NPL BRAC sites, regions should examine proposed property transfers to ensure protection of human health and the environment. Generally, the Military Service and transferee or LRA should negotiate terms to address this situation. In some instances, a contract (e.g., an Environmental Services Cooperative Agreement) may govern relative roles and responsibilities conducting additional response work that may be needed.

[8] DoD policy preference for uses associated with remedy selection can be found in the DoD Base Redevelopment and Realignment Manual (BRRM), March 1, 2006, page 103-104.

Given the role of the LRA in the BRAC process, its redevelopment plan should receive strong consideration by EPA. The Agency will also consider input from other stakeholders regarding the future use of BRAC property. However, the LRA's or stakeholders final redevelopment plans may not align with a parcel's current use. Where institutional controls and/or additional response work is required at NPL sites, EPA regions should evaluate whether a note to the file, an Explanation of Significant Difference (ESD) or a ROD Amendment is needed (see OSWER's "**Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents**"). EPA's **Strategy to Ensure Institutional Control Implementation at Superfund Sites** provides guidance for evaluating the implementation of past institutional controls decisions, undertaking corrective measures, and the administrative steps that may be used to select and/or document changes to the selected remedy. In addition, where institutional controls are in place or will be put in place, Regions should consult the Draft Guidance "**Institutional Controls: A Guide to Implementing, Monitoring and Enforcing Institutional Controls at Superfund, Brownfields, Federal Facility, UST and RCRA Corrective Action Cleanups**" (February 19, 2003) and the **Federal Facilities Land Use Control ROD Checklist (IC Checklist)** to determine if those ICs are adequate to protect human health and the environment at a BRAC installation after it has been transferred.

Where additional response work is needed, a Military Service may elect to perform it or negotiate with the transferee to conduct it. Where additional response actions will be conducted by the transferee at an NPL site, EPA may enter into an enforceable agreement (e.g., Administrative Order on Consent) with the transferee. However, the transferee does not replace DoD as a responsible party for the contamination, and as long as certain conditions are met, may not be considered a potentially responsible party (see section 7.10). Within a Region's available resources they should work with any transferee who is willing to conduct additional cleanup for facilities based on anticipated future use of the property. This may mean that a region will need to seek resources from either DoD and/or the transferee to cover oversight costs and other site work beyond the Region's appropriated resources. Additional work and documentation may involve ROD Amendments or ESDs to implement different cleanup requirements from those already undertaken by the Military Service. Where such a situation does arise, the Region must immediately notify their regional coordinator in FFRRO.

7.4 *Requests for Early Transfer of Contaminated Property*

In order to conduct an early transfer of property, DoD must request a deferral of the covenant required by CERCLA section 120(h)(3)(A)(ii)(I) ensuring that all remedial action necessary has been completed prior to transfer by the federal government. For NPL installations, EPA and the Governor of the State must approve such requests (at non-NPL property only the Governor is required to approve a covenant deferral request (CDR)).

Regions should follow "**EPA Guidance on the Transfer of Federal Property by Deed Before All Necessary Remedial Action Has Been Taken Pursuant to CERCLA Section 120(h)(3) – (Early Transfer Authority Guidance)**" when reviewing covenant deferral requests from other

federal agencies. Where institutional controls are or will be required as part of the early transfer, Regions should also consult the "**Institutional Controls and Transfer of Real Property under CERCLA Section 120(h) (3) (A), (B) or (C) Guidance.**" DoD often transmits the information used by EPA to review and approve an early transfer through a Finding of Suitability for Early Transfer (FOSET). EPA's guidance discusses the requirements found in CERCLA 120(h) (3) (C) and how they are related to EPA approval of the FOSET and deferral of the covenant. Every effort should be made to review these requests in a timely and efficient manner due to the multiple parties and agreements that are often involved in such situations.

The delegation of authority to Regions for approving covenant deferral requests can be found at section 14-41 of the EPA Delegations Manual. Per this delegation, FFRRO must be notified ***prior*** to exercising this authority, at the time the Federal agency requesting deferral provides notice of the proposed transfer as required by CERCLA section 120(h)(3)(C)(i)(III). Written notification to FFRRO from the appropriate Regional Program Division Director is required prior to exercising this authority, as is a copy of the approval letter sent to the requesting Federal agency after the authority is exercised.

7.4.1 Early Transfers, Cleanup, and Privatization

Where early transfers occur, response action remains to be completed. There are typically two scenarios which can result when an early transfer is requested. In the first scenario, the deed to the property is provided to a new owner; however the Military Service responsible for the cleanup will continue to conduct the cleanup until it is completed. Regions should try to ensure that the cleanup will not be delayed due to transfer of the property to a third party, and that the transferee's use of the property will be consistent with any remedies and/or controls implemented at the site at the time of transfer.

Another possible scenario when property transfer occurs prior to cleanup completion is the transferee takes the deed to the property and also agrees to complete cleanup activities. This is commonly referred to as "privatization."

At the time of this guidance, EPA has participated at several NPL installations in DoD's efforts to privatize cleanup[9]. However, none of these attempts has been successfully completed. As learned from attempts to date, there are several issues that come up in privatization negotiations. These are discussed more fully below.

Federal Facility Agreements (FFAs): At NPL installations, FFAs may need to be revised to reflect the arrangement between the transferee and the Military Service for that portion of the cleanup which will be undertaken by the transferee. However, FFAs should contain a "comeback" clause if the transferee fails to perform adequately, under which the Military Service would come back and continue the cleanup. Regions should work with the Office of Enforcement and Compliance Assurance (OECA) Federal Facilities Enforcement Office

[9] BRAC I – IV installations listed on the NPL where privatization efforts have been attempted to date are: South Weymouth Naval Air Station (Region 1); Alameda Naval Air Station (Region 9); McClellan Air Force Base (Region 9); Fort Ord (Region 9).

(FFEO), the OECA Office of Site Remediation and Enforcement (OSRE), and FFRRO regarding these and other potential FFA changes.

In addition, Services will reexamine the properties and may discover previously unknown sites, or identify sites it did not address previously under an FFA. Regions should evaluate these sites for inclusion in an FFA. EPA's policy preference is to include such sites in the FFA.

RCRA Corrective Action Permits and/or Orders: In some cases, there may be a RCRA permit or order issued for the facility by the state or EPA. In early transfer scenarios, the new owner(s) of the property may need to agree to sign on to the permit and/or corrective action order for ongoing corrective action. There have been some examples where a Military Service has sought to terminate a permit and have EPA (or a State) issue new permit(s) or order(s) to transferees.[10] Regions will need to evaluate the best approach (e.g., permit modification, new administrative order) given the situation at the facility and resource requirements for the various alternatives.

In addition, Services will reexamine the properties and may discover previously unknown sites, or identify sites it did not address previously under a permit/order. Regions should evaluate these sites for inclusion in the permit/order. EPA's policy preference is to include such sites in the permit/order.

Cleanup Agreements with Non-Liable Third Parties: Where a third party who is not a PRP for the site is willing to conduct the cleanup on behalf of the Military Service, EPA has considered using an enforceable agreement (e.g., Administrative Order on Consent (AOC)) between EPA and the party conducting the cleanup. The cleanup agreement should ensure that response action will not be delayed as a result of the transfer.

Financial Assurance: At most Superfund non-federal sites, responsible parties who enter into RD/RA Consent Decrees (CDs) with EPA normally are required by the terms of the CD to provide adequate financial assurance for completion of the cleanup at the time they enter into the CD. In a privatization scenario, the third party taking over responsibility for the cleanup is not necessarily a responsible party as defined by CERCLA, and may not be entering into a CD. However, in appropriate circumstances EPA may enter into an enforceable agreement with the party conducting the work, which is most likely to be in the form of an AOC. As part of the enforceable agreement, the third party should still provide adequate financial mechanisms to protect work continuity and assure completion of the

[10] The Naval Activity Puerto Rico (NAPR), formerly Naval Station Roosevelt Roads, facility was directed to be closed by the 2004 Defense Appropriations Act in accordance with procedures contained in the Defense Base Closure and Realignment Act of 1990. The facility is a not listed on the NPL, but had a RCRA Permit for storage of hazardous waste in six container units. EPA is working with the Navy to develop a RCRA 7003 Consent Order to be signed by the Navy addressing the entire facility, including corrective action sites. The RCRA Consent Order will include language to terminate the RCRA Permit upon the effective date of the Order, as well as terminate the Navy's obligations under the Order for portions of the facility sold/acquired by other entities, provided the acquirer enters into an Order with EPA.

work[11]. CERCLA section 120(h)(3)(C) requires that the covenant deferral request submitted by the Military Service contain an assurance that DoD will seek adequate funding to assure cleanup of the early transfer parcel and a finding that cleanup will not be unreasonably delayed by the deferral and transfer.

Regions should work with FFRRO, FFEO, and OSRE on what constitutes adequate financial assurance for a non-federal entity conducting a cleanup at a federal facility pursuant to a BRAC transfer. Regions also should work with the Military Service in these situations, as the landholding agency is to provide assurances that the transferee who will be performing any response action has "the financial capacity to execute environmental cleanup activity requirements that are known or can reasonably be anticipated based on current information available."[12]

7.5 *Post-Construction Completion Requirements*

7.5.1 Five-Year Reviews

Pursuant to CERCLA section 121, where hazardous substances, pollutants, or contaminants have been left in place reviews are to be conducted at least once every five years to ensure that implemented CERCLA remedies remain protective of human health and the environment. Regions should follow the "**Comprehensive Five-Year Review Guidance**" (OSWER 9355.7-03B-P, EPA 540-R-01-007 June 2001) which addresses Federal Facility Five-Year Reviews. For NPL sites, DoD should provide its draft Five-Year Review to the Region for review and comment. In the comments on the draft Five-Year Review, Regions should inform the Military Service whether they believe the remedy is still protective of human health and the environment. The Military Service is responsible for taking appropriate action to address situations where a remedy is no longer protective. This may include the Military Service entering into an agreement with the transferee to address the situation.

7.5.2 Operation and Maintenance (O&M)

The NCP, 40 CFR§300.435(f)(1), generally describes O&M as the measures "initiated after the remedy has achieved the remedial action objectives and remediation goals in the ROD (Record of Decision), and is determined to be operational and functional, except for ground-or surface-water restoration actions covered under 40 CFR§300.435(f)(4)."

Remedies requiring O&M may include, but are not limited to, actions that typically require five-year reviews (e.g., landfill caps; gas collection systems; and ground-water containment). O&M measures also may include requirements for maintaining institutional

[11] In many cases, the Environmental Services Cooperative Agreement (ESCA) entered into between the third party and the Military Service may serve as an adequate financial assurance mechanism. See EPA's Early Transfer Guidance for additional examples of acceptable forms of the demonstration of financial capacity.
[12] See EPA Guidance on the Transfer of Federal Property by Deed Before All Necessary Remedial Action Has Been Taken Pursuant to CERCLA 120(h)(3) – (Early Transfer Authority Guidance), Section IV.8

controls. O&M activities often provide an opportunity for remedies to be optimized to increase their efficiencies and reduce long-term costs.

At all facilities (including BRAC) where DoD is responsible for the remedial action taken to address releases into the environment of hazardous substances, pollutants or contaminants, DoD is ultimately responsible for O&M activities being performed. EPA responsibilities during O&M generally include ensuring reports are submitted, reviewing reports for required elements, reviewing data (sampling, performance, discharge, etc.), performing inspections, and helping the Military Service fulfill five-year review requirements.

7.5.3 OPS Determinations

CERFA amended CERCLA 120(h) (3) to clarify when all remedial action is deemed to have been taken. Specifically, the amendment added language stating that all necessary actions have been taken,

> "if the construction and installation of an approved remedial design has been completed and the remedy has been demonstrated to the [EPA] Administrator to be operating properly and successfully."

A federal agency may provide the required deed covenant that all remedial action necessary to protect human health and the environment with respect to any hazardous substance remaining on the property has been taken before the date of the transfer once a remedial action has been completely constructed and installed, but before the cleanup objectives have been met, provided that the federal agency can demonstrate to the Administrator that the remedial action is "operating properly and successfully" (OPS). OPS demonstrations are required for most federal deed transfers of real property (i.e., NPL and non-NPL) that have been contaminated with hazardous substances which exceed the threshold requirements in the regulations at 40 CFR Part 373. The determination that an action is operating properly and successfully has been left largely to the discretion of the Administrator. Regions should refer to EPA's "**Guidance for Evaluation of Federal Agency Demonstrations that Remedial Actions are Operating Properly and Successfully Under CERCLA Section 120(h)(3)"** (August 1996) and the **"Institutional Controls and Transfer of Real Property under CERCLA Section 120(h)(3)(A), (B) or (C)**" for specific guidance on evaluating OPS demonstrations.

The Administrator's authority for evaluating these demonstrations has been delegated to EPA's Regional offices (see "Evaluation of Approved Remedial Design," Delegation 14-40). Each Regional office has designated an official with the authority to approve such demonstrations in support of the federal agency's Section 120(h) (3) covenants. Delegation 14-40 requires Regional Administrators or their delegates to notify the Assistant Administrator for Solid Waste and Emergency Response or his/her designee *after* exercising this authority. Regions should contact the Director of the Federal Facilities Restoration and Reuse Office with these notifications.

7.6 *Reviewing Findings of Suitability to Transfer (FOSTs)*

EPA expects to retain an active role in the review and approval of DoD's findings of suitability to transfer property. For transfers of uncontaminated parcels at NPL sites, EPA concurrence is required on the determination that such property is uncontaminated (per CERCLA section 120(h)(4)). For transfers under CERCLA 120(h) (3) where the Military Service finds that either: 1) no action is required, or 2) response action is complete, EPA should review the draft FOST from the Military Service and provide comments on its findings. EPA Regions should consult the "**Institutional Controls and Transfer of Real Property under CERCLA Section 120(h) (3) (A), (B) or (C) Guidance**" when reviewing FOSTs for the transfer of federal property under CERCLA 120(h) (3) (A) that require institutional controls. EPA comments, if unresolved, should be attached to the FOST as unresolved comments. Where the response action is not complete, the covenant can only be given if EPA accepts the demonstration that remedies are operating properly and successfully. (See section 7.5.3 for information on OPS demonstrations)

7.6.1 Fed-to-Fed Transfers

Typically, EPA has no explicit authority to review transfer documentation when the property will be transferred from one federal agency to another, regardless of the status of cleanup. It is largely up to the two federal agencies involved in the transaction to come to agreement on who will take responsibility for any remaining cleanup work which remains to be completed. Absent an agreement between the parties to allocate responsibility for the contamination, EPA believes that, in accordance with the basic tenant behind CERCLA that the entity which caused the pollution should be responsible for addressing it, the landholding agency which owned the property at the time it was contaminated, or whose activities resulted in such contamination, remains responsible for the contamination. Although uncommon, fed-to-fed transfers can and do occur where other federal agencies not originally responsible for the contamination expressly agree to take on that responsibility.

EPA regional programs may become involved in fed-to-fed transfers when the transfer will affect a signed FFA or an existing permit/order. The Region will need to work with each federal agency involved in the transaction to update, or possibly re-negotiate, FFAs or the permit/order. Regions should work with the Federal Facilities Enforcement Office (FFEO) when such situations arise.

7.7 *Reviewing Findings of Suitability to Lease (FOSLs)*

CERCLA 120(h)(3)(B) requires that for all leases entered into after September 30, 1995 at military installations approved for closure or realignment under a base closure law, the Military Service leasing the property shall consult with the Administrator of EPA before leasing the property. The consultation should address whether: 1) the property is suitable for lease, 2) the uses contemplated for the lease are consistent with protection of human health and the environment, and 3) there are adequate assurances that the United States will take all remedial action that has not been taken on the date of the lease.

EPA and the Department of Defense (DoD) have agreed that the May 18, 1996, DoD policy memorandum, subject: Fast Track Cleanup at Closing Installations, contains recommended procedures and responsibilities for determining the environmental suitability for leasing property made available as a result of BRAC I - IV, and this policy should apply to BRAC V installations until such policy is revised or updated. The recommended procedures in that guidance calls for regulatory agency participation in DoD's EBS (or ECP) and FOSL development and conclusions. The procedures should apply to all leasing of property at closing or realigning bases, regardless of whether the property is part of an NPL site.

7.8 *National Environmental Policy Act (NEPA)*

DoD is required to follow NEPA requirements during the process of property disposal and during the process of relocating functions from one installation to another. Under Section 309 of the Clean Air Act, among other things EPA is required to review and publicly comment on the environmental impacts of major federal actions that are the subject of Environmental Impact Statements (EISs). If EPA determines that the action is unsatisfactory from the standpoint of public health or welfare or environmental quality, it is required by Section 309 to refer the matter to the Council on Environmental Quality (CEQ).

The NEPA Process

There are three levels of analysis depending on whether and how an action may affect the environment. These three levels include: categorical exclusion determination; preparation of an environmental assessment/finding of no significant impact (EA/FONSI); and preparation of an environmental impact statement (EIS).

At the first level, an action may be categorically excluded from a detailed environmental analysis if the lead agency has previously defined that action as part of a category of actions which would not individually or cumulatively have a significant effect on the environment. A number of agencies have developed lists of actions which are normally categorically excluded from environmental evaluation under their NEPA regulations. Procedures by other federal agencies or departments establishing categorical exclusions must provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

At the second level of analysis, a federal agency prepares a written environmental assessment (EA) to determine whether or not a federal action would significantly affect the environment. If the answer is no, the agency issues a finding of no significant impact (FONSI). The FONSI may address measures which an agency will take to reduce (mitigate) potentially significant impacts to below the significance threshold. EPA also must include brief discussions on: 1) the need for the proposal; 2) alternatives as required by NEPA section 102(2) (E); 3) the environmental effects of the proposed action and alternatives; and 4) a listing of agencies and persons consulted.

If the EA determines that the environmental consequences of a proposed federal action may be significant, an EIS is prepared. An EIS is a more detailed evaluation of the proposed action and alternatives. The public, other federal agencies and outside parties are given opportunities to

provide input into the preparation of an EIS and then comment on the draft EIS when it is completed.

If a federal agency anticipates that an action may significantly impact the environment, a federal agency may choose to prepare an EIS without having to first prepare an EA.

After a final EIS is prepared and at the time of its decision, a federal agency will prepare a public record of its decision addressing how the findings of the EIS, including consideration of alternatives, were incorporated into the agency's decision-making process.

EPA will in some cases be a cooperating agency in the preparation of NEPA documents where EPA has a special expertise with respect to an environmental issue or has jurisdiction by law. A cooperating agency assists the lead agency by participating in the NEPA process at the earliest possible time; by participating in the scoping process; by assuming, at the request of the lead agency, responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise; and in making available staff support at the lead agency's request to enhance the lead agency's interdisciplinary capabilities.

Regional NEPA representatives should be brought into all BRAC-related NEPA issues as early as possible. Regional representatives should be aware that DoD NEPA analysis will be conducted according to the following regulations of the host Military Departments:

- Department of the Air Force – 32 CFR Part 989
- Department of the Army – 32 CFR Part 651 (Army Regulations 200-2)
- Department of the Navy – 32 CFR Part 775
- Defense Logistics Agency (DLA) – DLA Regulation 1000.22

7.9 *RCRA & CERCLA Integration*

Many NPL installations subject to CERCLA authority also are covered by RCRA permits and/or orders. EPA is committed to the principle of parity between the RCRA Corrective Action and CERCLA program and to the idea that the programs should, generally, yield similar remedies in similar circumstances. EPA's September 1996 **Policy on Coordinating RCRA and CERCLA Activities**, and EPA's December 21, 2005 memorandum, **Improving RCRA/CERCLA Coordination at Federal Facilities**, are especially relevant where delays in cleanup and property transfer at BRAC installations can negatively affect a community's ability to economically recover from the implementation of a BRAC action.

The facility and the EPA Region or authorized State should agree early on an exit strategy in the cleanup process that allows a facility, where appropriate, to be released from the RCRA permit once the cleanup is completed. In addition, if a final remedy will be selected that will leave

some contamination in place; any issues about how this might affect property transfer after corrective action is complete should also be addressed up front in the planning process.[13]

There are several approaches that may be available to reduce inconsistency and duplication of effort by program implementers. For example, deferral from one program to another is often the most efficient and desirable way to address overlapping requirements. Another way to coordinate RCRA and CERCLA might be for one program to accept the decisions made under the authority of the other program. This is what was envisioned by the RCRA/CERCLA integration clause in the model EPA/DoD Federal Facility Agreement (FFA) for NPL facilities.[14] EPA Regions are encouraged, along with State environmental programs and federal agencies, to periodically review existing RCRA requirements, permits and corrective action orders or CERCLA IAG/FFA requirements or other federal response actions under CERCLA but not in an IAG/FFA. The goal of such a review is to identify opportunities for integrating cleanup activities and regulatory requirements to ensure the activities proceed as expeditiously and efficiently as possible.

7.10 *Post-Transfer Liability Issues for the Transferee*

Transferees of federal property often have concerns regarding their liability at former government facilities. These concerns have been most prevalent at BRAC installations due to the nature of BRAC and the transfer of over 450,000 acres of BRAC I – IV property to date. EPA's policy entitled, "**EPA's Policy Towards Landowners of Former Federal Property**" seeks to assure transferees that EPA generally will not consider them liable (with certain exceptions) for contamination that is the result of DoD, or any federal agency, activities on that property.

Due to the additional CERCLA liability protections available to certain purchasers of contaminated property provided through the 2002 Brownfields amendments, an addendum is being added to the policy mentioned above. The addendum will address how transferees can qualify for protection from CERCLA liability as bona fide prospective purchasers (BFPPs). To obtain liability protection, BFPPs must meet the statutory requirements established for this protection. Transferees should be made aware that these requirements include conducting all appropriate inquiries (AAI) in compliance with the final regulations promulgated by EPA (40 CFR Part 312) prior to acquiring the property.

Any potential liability protections provided to transferees through covenants received for property transferred from the United States under CERCLA Sections 120(h)(3) or 120(h)(4) and the indemnity provided in Section 330 of Public Law 102-484, as amended by Public Law 103-160, are not changed given the passage of the 2002 Brownfields amendments. The Brownfields amendments added a potentially useful liability relief provision that may give protection to transferees of federal property to facilitate the transfer of that property.

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[13] See EPA Rule 40 CFR Parts 264, 265, 270, and 271 Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post-Closure Permit Requirement; Closure Process

[14] For example, the cleanup actions for a CERCLA operable unit that physically encompasses a RCRA regulated unit could be structured to provide for concurrent compliance with CERCLA and RCRA closure and post-closure requirements.

If transferees of BRAC property are hesitant or concerned about their potential liability, please share EPA's policy with them.

7.11 *CERCLIS Reporting*

As at other federal facility NPL sites, Regions are expected to maintain planning and accomplishment data for all BRAC sites in the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) Database. Regions should pay particular attention to data related to property disposal and reuse. This includes, but is not limited to, entering OPS determinations, acreage related to FOSTs, FOSLs, and FOSETs, and the protectiveness statements of five year reviews. Please reference the Superfund Program Implementation Manual (SPIM) for a complete list of the EPA data requirements that apply at BRAC sites.

APPENDIX A: EPA Responsibilities Related to BRAC I –IV Installations

Regional Management responsibilities to support BRAC I-IV activities may include:

- Identifying the RPM and other members of the support team and notifying OSWER of those individual's names and addresses, as well as any changes
- Delegating to the lowest practical level, authority and responsibility for the review and approval of all environmental restoration activities, including those related to the transfer of real property within a BRAC Cleanup Plan (BCP)
- Ensuring that all RPMs are adequately trained to execute their responsibilities
- Assisting DoD in meeting CERCLA community relations requirements and EPA guidance (OSWER Directive 9230.0-99) for early and meaningful community involvement
- Applying the joint DoD/EPA guidelines (and DoD RAB Rule, when finalized) for establishing and operating RABs. The guidelines emphasize the need for the RAB to be representative of all community interests. Special care should be taken to consider community diversity and environmental justice.
- Ensuring that resources (e.g., technical, legal and community involvement) are available to the RPM and developing a means for ensuring that resources allocated are being used only for Fast Track Cleanup locations
- Providing regular reporting to OSWER, including timely elevation of issues of national importance
- Assisting FFRRO and DoD, where requested, in developing national policies and guidance

Specific RPM responsibilities (with EPA support team assistance as appropriate) for successfully facilitating and expediting cleanup and property transfer at BRAC I – IV installations may include the following:

- Providing assistance to DoD, and to the states, in implementing all environmental cleanup programs related to closure in an expeditious and cost effective manner in accordance with the BCP
- Supporting up-front planning and scoping
- In conjunction with the other members of the BCT, conducting a "bottom-up" review of the environmental programs and developing and updating the BCP, as appropriate
- Scoping and reviewing documents, such as the sampling and analysis plan, baseline risk assessment, the Remedial Investigation/Feasibility Study, proposed plan, record of decision, remedial design, remedial action plan, study and sampling data
- Determine appropriate cleanup and abatement actions jointly with DoD and state BCT members
- Supporting the NEPA review process, where appropriate
- Assisting DoD in meeting CERCLA community relations requirements and EPA guidance (OSWER Directive 9230.0-99) for early and meaningful community involvement.
- Participating as the EPA representative on the Restoration Advisory Board, reviewing environmental matters and the impact that contamination and cleanup may have on property reuse

- Coordinating and exchanging cleanup and reuse information, in conjunction with the BCT members, with the Local Redevelopment Authority (through the Base Transition Coordinator, where appropriate)
- Evaluating and providing timely recommendations and guidance to EPA Regional management to expedite approval/concurrence regarding:
    1. DoD proposals for changes to existing cleanup agreements, orders, and other environmental procedures to achieve timely and cost effective cleanup
    2. Proposed Plans and Records of Decision for cleanup actions under CERCLA
    3. Decision documents for corrective actions related to cleanup under applicable state laws, regulations and programs
    4. RCRA corrective action selections and preparation of statement of Basis/Final Decision and Response to Comments Summary
    5. Covenant deferral requests, where the Military Service is requesting the transfer of property prior to the completion of all response action (early transfers)
- Working with DoD and the State participants on the BCT to collectively formulate, review, and update components of:
    1. The installation's Environmental Baseline Survey (or Environmental Condition of Property (ECP) Report)
    2. Uncontaminated parcel determinations under CERFA, and
    3. Finding of Suitability to Lease and Finding of Suitability to Transfer to accelerate revitalization through reuse
- Reviewing construction requested by lessee with the BCT and ensuring that such construction will not interfere with the environmental cleanup program
- Reviewing demonstration by DoD that remedy is operating properly and successfully

The above list is not exhaustive, nor does the order indicate any kind of ranking or priority.

Accountability for Resources

The following information is provided to all EPA personnel involved with EPA BRAC program administration, to ensure appropriate use and management of the DoD reimbursable resources.

1. **BRAC I – IV Activities:** BRAC I - IV activities include those detailed in this guidance and the current MOU, such as: accelerating the identification of uncontaminated parcels under CERFA; development of BRAC Cleanup Plans; promoting community involvement in cleanup decision-making; preparing and reviewing site documents; studying and sampling field data; NEPA review and analysis; assisting DoD or states with cleanup issues; support activities related to the performance of the EPA personnel participating in BRAC I – IV cleanup, etc. BRAC activities are outlined in the joint EPA/DoD Memorandum of Understanding (MOU) signed on October 5, 2005, and, subsequent memorandums and guidance related to EPA BRAC resources.

2. **Reimbursable FTE:** To ensure the Superfund Federal Facilities Response Program does not exceed its reimbursable FTE ceiling, changes to installation-specific FTE levels must first be approved by FFRRO. Regional FTE requirements are re-evaluated annually, and all unfunded reimbursable FTEs are returned to Headquarters. Other key points:

- BRAC reimbursable FTE must be used **only** for EPA staff and related cost associated with BRAC activities at designated BRAC I - IV installations, unless the Military Service approves otherwise (e.g., privatization). A list of the 107 installations originally designated as "Fast Track" (FT) can be found in Appendix B.
- The current MOU (signed October 2005) provides the flexibility of shifting resources from within ones own budget, but prior approval from headquarters is required and the overall Military Service FTE level must remain unchanged.

3. **Financial Accountability:** As the signatory and executing agent for the reimbursable agreement with DoD, the Assistant Administrator for OSWER will rely on Regional Administrators/Deputy Regional Administrators, and, as the primary focus of the EPA BRAC resources, the Regional Superfund (Regions 1-5, 7-10) or RCRA (Region 6) Division Directors (or equivalent) to ensure reimbursable costs are accurate and appropriate. FFRRO will periodically run financial reports and ask the Regional Waste Management Division Directors (or equivalent) to verify the data. The payroll verification process will consist of:

   - Certifying those individuals charging to BRAC are authorized to do so;
   - Verifying the charges in the financial system are correct;
   - Providing a detailed explanation stating the type of work that was performed by individuals charging to the non-site category; and
   - Submitting a written statement to FFRRO's Director, explaining the course of action planned for correcting any incorrect charges (memo must be signed by the Waste Division Director (or equivalent)).

4. **Monitoring BRAC Resources:** FFRRO's approval is required on all reprogramming documents submitted to the Office of Budget for approval. The EPA's Financial Data Warehouse has proven to be a useful tool along with other financial systems for quickly monitoring how BRAC resources are being utilized.

5. **BRAC Program Elements (PE):** Over the years, various program elements have been assigned to the BRAC I - IV program. The following program codes are needed for pulling historic data:

   - RS4Y9A (BRAC I funding - expired);
   - RS5Y9A (BRAC II funding - expired);
   - RP9Y9A (BRAC III funding - expired);
   - RY6Y9A (BRAC IV site funding - expired), and RS6Y9A (non-site funding - expired);
   - 50109DB4 (BRAC IV site funding - expired), and 50109DBN (BRAC IV non-site funding - expired);
   - 302D41CB4 (BRAC IV site funding – established in FY 2004), and 302D41 (BRAC IV non-site funding – established in FY 2004).

6. **Charging to BRAC Site and Non-Site Accounts Appropriately:** Personnel expenses, travel, and other program costs should be accurately recorded and, where appropriate, site-specific charging should be done. BRAC site-specific charging should be used to fund

personnel costs, travel, training, site related equipment, protective clothing, and assistance at a designated BRAC I – IV installation. BRAC non-site specific charging should be used for general BRAC program costs associated with administrative support and equipment, and may include telephones, computers, and other equipment necessary to support the BCTs. EPA and DoD senior management made a commitment to minimize overhead costs in the overall BRAC cleanup program; therefore, cost to the non-site category should be applied judiciously.

- No more than 30% of a Region's BRAC allowance can be used for non-site specific use without receiving prior approval from FFRRO. For Regions with more than 10 reimbursable FTE, the expectation is that this percentage will be considerably less given economies of scale.
- Personnel, travel, equipment and other expenses should be charged directly to the site-specific accounts established for these installations. (For example, if a computer is purchased specifically for an EPA staff person assigned to one or two installations exclusively, then the costs of that computer should be charged to the installation-specific accounts in an appropriate proportional manner.)
- This procedure should also be applied for other costs such as annual and sick leave, training, etc. supervisors, attorneys and technical experts that work at numerous bases should make every effort to account for their time based on the specific installations they are working with. (For example, an attorney that spends three hours one day reviewing documents related to site "XYZ" should charge those three hours to the installation-specific "XYZ" account on his or her time sheet.)
- It is recognized that EPA personnel also work on non-site specific activities that provide benefits to the BRAC I – IV accelerated cleanup program. (For example, a Regional representative who responds to EPA Headquarters' requests to review DoD guidance documents or is working on a crosscutting issue that concerns a dozen or more installations, should charge his or her time to the non-site account.)
- Where a Military Service provides extra FTE for site work, e.g. privatization, the expectation is that 100% of those FTE go towards the site.

7. **Enforcement Actions:** BRAC resources cannot be used to fund enforcement actions. Modifying permits, existing orders, or Federal Facility Agreements (FFAs) to accommodate reuse is not considered an "enforcement action" for the purposes of this guidance.

8. **Contractor Support:** BRAC resources cannot be used to fund contractor support, unless the work is supporting DoD's privatization effort, and DoD has granted the EPA permission to use the funds for such an action. Language regarding contractor support was inserted into the current EPA/DoD MOU (signed October 5, 2005), which eliminates the need for separate Regional privatization agreements.

9. **Billing Statements:** Cincinnati Finance will provide, at a minimum, quarterly billing statements to DoD. The financial reports must comply with the financial management requirements provided to EPA by the Army in order to maintain accountability of funds.

Regions should review their financial records quarterly to ensure the data HQ provides to DoD is current.

APPENDIX B: BRAC I – IV Sites Designated as "Fast Track" Locations

Please note that these locations reflect EPA participation through the life of the program, and does not reflect current EPA participation at all of these locations.

REGION 1

Site Name	NPL Status	BRAC Round
Loring Air Force Base	Final	2
Fort Devens	Final	2
Materials Technology Laboratory (USARMY)	Final	1
South Weymouth Naval Air Station	Final	4
Pease Air Force Base	Final	1
Davisville Naval Construction Battalion Center	Final	2
Army Engine Plant/Stratford	Non-NPL	4

REGION 2

Site Name	NPL Status	BRAC Round
Fort Dix (Landfill Site)	Final	4
Griffiss Air Force Base (11 AREAS)	Final	3
Plattsburgh Air Force Base	Final	3
Seneca Army Depot	Final	4
Fort Monmouth #1	Non-NPL	3
Military Ocean Terminal (Landfill)	Non-NPL	4
US Naval Air Warfare Center/Trenton	Non-NPL	3
Fort Totten	Non-NPL	4
Naval Station NY	Non-NPL	1
Fort Buchanan	Non-NPL	4

REGION 3

Site Name	NPL Status	BRAC Round
Fort George G. Meade	Final	1
Letterkenny Army Depot (PDO AREA)	Final	4
Letterkenny Army Depot (SE AREA)	Final	4
Naval Air Development Center (8 WASTE AREAS)	Final	2
US Army – Fort Ritchie	Non-NPL	4
USN Naval Surface Warfare Center-White Oak	Non-NPL	4
Defense Personnel Support	Non-NPL	3
USN Philadelphia Naval Shipyard	Non-NPL	2
Suffolk Naval Communication Area Master-Driver	Non-NPL	3
USA Cameron Station	Non-NPL	1
USA Fort Pickett	Non-NPL	4
USA Vint Hill Farms Station	Non-NPL	3
USA Woodbridge Research Facility	Non-NPL	2

REGION 4

Site Name	NPL Status	BRAC Round
Homestead Air Force Base	Final	3
USN Air Station Cecil Field	Final	3
Memphis Defense Depot (DLA)	Final	4
USA Fort McClellan Army Garrison	Non-NPL	4
USN Orlando Training Center	Non-NPL	1
USA Lexington Blue Grass Depot Activity	Non-NPL	1
USN Naval Ord.	Non-NPL	4
Naval Shipyard – Charleston	Non-NPL	3
USAF Myrtle Beach AFB	Non-NPL	2
USN Naval Air Station Memphis	Non-NPL	3

REGION 5

Site Name	NPL Status	BRAC Round
Chanute Air Force Base	Proposed	1
Savanna Army Depot Activity	Final	4
Wurtsmith Air Force Base	Proposed	2
Rickenbacker Air National Guard (USAF)	Proposed	2
O'Hare Air Reserve Facilities	Non-NPL	3
US Army Fort Sheridan	Non-NPL	1
US Navy Glenview Naval Air Station	Non-NPL	3
US Army Jefferson Proving Ground	Non-NPL	1
US Army Soldier Support Center	Non-NPL	2
US Navy Avionics Center	Non-NPL	4
USAF Grissom AFB Alert Facility	Non-NPL	2
US Air Force K I Sawyer AFB	Non-NPL	3
US Army Tank Automotive Command	Non-NPL	4
Newark Air Force Base	Non-NPL	3
US DoD Defense Electronics Supply Center	Non-NPL	3

REGION 6

Site Name	NPL Status	BRAC Round
Eaker Air Force Base	Non-NPL	2
Fort Chaffee	Non-NPL	4
England Air Force Base	Non-NPL	2
Fort Wingate Depot Activity	Non-NPL	1
Bergstrom Air Force Base	Non-NPL	2
Carswell Air Force Base	Non-NPL	2
Dallas Naval Air Station	Non-NPL	3
Kelly Air Force Base	Non-NPL	4
Red River Army Depot	Non-NPL	4
Reese Air Force Base	Non-NPL	4

REGION 7

Site Name	NPL Status	BRAC Round
Richards Gebaur Air Force Base	Non-NPL	2

REGION 8

Site Name	NPL Status	BRAC Round
Ogden Defense Depot (DLA)	Final	4
Tooele Army Depot (NORTH AREA)	Final	3
Fitzsimons Army Medical Center	Non-NPL	4
Lowry Air Force Base	Non-NPL	2
Pueblo Chemical Depot	Non-NPL	1

REGION 9

Site Name	NPL Status	BRAC Round
Williams Air Force Base	Final	2
Alameda Naval Air Station	Final	3
Castle Air Force Base (6 AREAS)	Final	2
El Toro Marine Corps Air Station	Final	3
Fort Ord	Final	2
George Air Force Base	Final	1
March Air Force Base	Final	3
Mather Air Force Base (AC&W DISPOSAL SITE)	Final	1
McClellan Air Force Base (Ground Water Contamination)	Final	4
Moffett Naval Air Station	Final	2
Norton Air Force Base (Landfill #2)	Final	1
Sacramento Army Depot	Final	2
Treasure Island Naval Station-Hunters Point Annex	Final	2
Federal Correctional Institute Lompoc	Non-NPL	4
Fleet Industrial Supply Center Oakland	Non-NPL	4
Hamilton AFB	Non-NPL	1
Long Beach Naval Station	Non-NPL	2
Mare Island Naval Shipyard	Non-NPL	3
Naval Shipyard Long Beach	Non-NPL	4
Oakland Army Base Warehouse Area	Non-NPL	4
Oakland Naval Regional Medical Center	Non-NPL	3
Presidio of San Francisco	Non-NPL	1
Salton Sea Test Base	Non-NPL	1
San Diego Naval Training Center	Non-NPL	3
Sierra Army Depot	Non-NPL	4
Treasure Island Naval Station	Non-NPL	3
Tustin Marine Corps Air Station	Non-NPL	2
Naval Air Station Agana	Non-NPL	3
Naval Facility Guam	Non-NPL	4
Barbers Point Naval Air Station	Non-NPL	3
Midway Island Naval Air Station	Non-NPL	3

REGION 10

Site Name	NPL Status	BRAC Round
Adak Naval Air Station	Final	4
Umatilla Army Depot (Lagoons)	Final	1
US Army Fort Greely	Non-NPL	4
Camp Bonneville BRAC Site	Non-NPL	4
US Navy Puget Sound Naval Station Sandpoint	Non-NPL	2

APPENDIX C: BRAC V Installations Listed on the NPL

A complete list of installations affected by BRAC V actions can be found in the 2005 Defense Base Closure and Realignment Commission Final Report to the President, Volume 2, Index by State, at http://www.brac.gov/finalreport.asp

BRAC Action Definitions

In the 2005 round of BRAC, many installations were impacted by multiple actions. The chart below reflects the overall results of those actions on the installation.

Closure: *Installation will be closed;* ***Realign:*** *Net Decrease in functions and personnel at the installation;* ***Gain:*** *Net increase in functions and personnel at the installation*

REGION 1

Site Name	BRAC Action
Brunswick Naval Air Station	Closure
Malony U.S. Army Reserve Center (on Fort Devens)	Closure
Natick Soldier Systems Center (Natick Laboratory Army Research, Development and Engineering Center)	Realign
New London Submarine Base	Realign
Otis Air National Guard Base	Realign
Hanscom Field/Hanscom AFB	Gain
Naval Station Newport	Gain
Pease Air Force Base	Gain

REGION 2

Site Name	BRAC Action
Naval Air Engineering Center – Lakehurst	Realign
Naval Weapons Station Earle	Realign
Fort Dix	Gain
McGuire AFB	Gain
Picatinny Arsenal	Gain

REGION 3

Site Name	BRAC Action
Willow Grove Naval Air Station	Closure
Fort Eustis	Realign
Indian Head Naval Surface Warfare Center	Realign
Naval Surface Warfare Center – Dahlgreen	Realign
Naval Weapons Station – Yorktown	Realign
Navy Ships Parts Control Center – Mechanicsburg	Realign
Washington Navy Yard	Realign
Aberdeen Proving Ground	Gain
Andrews AFB	Gain
Defense General Supply Center (DLA) - Richmond	Gain
Dover AFB	Gain
Fort Meade	Gain
Langley AFB	Gain
Letterkenny Army Depot	Gain
Naval Amphibious Base – Little Creek	Gain
Naval Station Norfolk	Gain
Norfolk Naval Shipyard	Gain
Patuxent River Naval Air Station	Gain
Quantico Marine Corps Base	Gain
Tobyhanna Army Depot	Gain

REGION 4

Site Name	BRAC Action
Camp Lejeune	Realign
Cherry Point Marine Corps Air Station	Realign
Pensacola NAS	Realign
Redstone Arsenal	Realign
Tyndall AFB	Realign
Anniston Army Depot	Gain
Homestead Air Reserve Station	Gain
Jacksonville NAS	Gain
Marine Corps Logistics Base – Albany	Gain
Robins AFB	Gain

REGION 5

Site Name	BRAC Action
Rickenbacker Air National Guard	Gain
Wright-Patterson AFB	Gain

REGION 6

Site Name	BRAC Action
Lone Star Army Ammunition Plant	Closure
Tinker AFB	Gain

REGION 7

Site Name	BRAC Action
Fort Riley	Gain

REGION 8

Site Name	BRAC Action
Hill AFB	Realign
Tooele Depot	Gain

REGION 9

Site Name	BRAC Action
Concord Naval Weapons Station	Realign
Riverbank Army Ammunition Plant	Closure
Andersen AFB	Realign
Barstow Marine Corps Logistics Base	Realign
Camp Pendleton Marine Corps Base	Realign
Edwards AFB	Realign
Luke AFB	Realign
March Air Reserve Base	Realign
Pearl Harbor Naval Station	Realign
Moffett Field Air Force Reserve Center	Gain
Yuma Marine Corps Air Station	Gain

REGION 10

Site Name	BRAC Action
Umatilla Army Depot	Closure
Bangor Naval Submarine Base	Realign
Eielson AFB	Realign
Elmendorf AFB	Realign
Fairchild AFB	Realign
Fort Richardson	Realign
Fort Wainwright	Realign
McChord AFB	Realign
Mountain Home AFB	Realign
Fort Lewis	Gain
Naval Air Station, Whidbey Island	Gain

APPENDIX D: Selected EPA and DoD Policy and Guidance Documents for BRAC Installations

EPA Delegations

Delegation 14-39, Concurrence on Identification of Uncontaminated Federal Real Property
http://intranet.epa.gov/rmpolicy/ads/dm/14-39.htm

Delegation 14-40, Evaluation of Approved Remedial Design
http://intranet.epa.gov/rmpolicy/ads/dm/14-40.htm

Delegation 14-41, Deferral of the CERCLA Section 120(h)(3) (A)(ii)(I) Covenant Requirement for Parcels of Real Property at Federal Facilities Listed on the National Priorities List (NPL)
http://intranet.epa.gov/rmpolicy/ads/dm/14-41.htm

EPA Property Transfer Policies and Regulations

Military Base Closures: Revised Guidance on EPA Concurrence in the Identification of Uncontaminated Parcels under CERCLA Section 120(h) (4) (March 1997)
http://www.epa.gov/swerffrr/documents/97cerfa.htm

EPA's Policy Towards Landowners of Former Federal Property (June 1997)
http://www.epa.gov/swerffrr/documents/613memo.htm

Guidance for Evaluation of Federal Agency Demonstrations that Remedial Actions are Operating Properly and Successfully Under CERCLA Section 120(h)(3)" (August 1996)
http://www.epa.gov/swerffrr/documents/896mm.htm#oper

EPA Guidance on the Transfer of Federal Property by Deed Before All Necessary Remedial Action Has Been Taken Pursuant to CERCLA Section 120(h)(3) -- (Early Transfer Authority Guidance)
http://www.epa.gov/fedfac/documents/hkfin.htm

Institutional Controls and Transfer of Real Property under CERCLA Section 120(h) (3) (A), (B) or (C) Guidance
http://www.epa.gov/fedfac/documents/fi-icops_106.htm

Reporting Hazardous Substance Activity When Selling or Transferring Federal Real Property (40 CFR Part 373)
http://www.access.gpo.gov/nara/cfr/waisidx_02/40cfr373_02.html

EPA's Final All Appropriate Inquiries Rule (40 CFR Part 312)
http://www.epa.gov/brownfields/aai/aai_final_rule.pdf

EPA Cleanup and Post-Construction Completion Policies

Land Use in the CERCLA Remedy Selection Process (OSWER Directive No. 9355.7-04 May 1995)
http://www.epa.gov/superfund/resources/landuse.pdf

Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents
http://www.epa.gov/superfund/resources/remedy/rods/index.htm

Strategy to Ensure Institutional Control Implementation at Superfund Sites (September 2004)
http://www.epa.gov/superfund/action/ic/icstrategy.pdf

Federal Facilities Land Use Control ROD Checklist (IC Checklist) (June 2005)
http://www.epa.gov/fedfac/documents/icchecklist.pdf

Superfund Program Implementation Manual, Appendix D
http://www.epa.gov/superfund/action/process/spim06/pdfs/appd1.pdf

OSWER Guidance 9272.0-21: Performance Based Contracting by Other Federal Agencies at Federal Facilities (March 30, 2006)

Coordination between RCRA Corrective Action and Closure and CERCLA Site Activities (September 1996)
http://www.epa.gov/swerffrr/documents/924memo.htm

Improving RCRA/CERCLA Coordination at Federal Facilities (December 21, 2005)
http://www.epa.gov/fedfac/pdf/oswerdir9272_0-22.pdf

Comprehensive Five Year Review Guidance (OSWER 9355.7-03B-P, EPA 540-R-01-007 June 2001)
http://www.epa.gov/superfund/resources/5year/index.htm

EPA BRAC Policies and Related Documents

Base Realignment and Closure Memorandum of Understanding (FY2006-2008)
http://www.epa.gov/fedfac/pdf/brac_mou.pdf

EPA's Guidance for Implementing the Fast Track Cleanup Program at Closing or Realigning Bases (February 1996)
http://www.epa.gov/swerffrr/documents/epa296.htm

Turning Bases into Great Places – New Life for Closed Military Facilities
http://www.epa.gov/smartgrowth/military

EPA Community Involvement Policies

DoD and EPA Restoration Advisory Board (RAB) Implementation Guidelines (1994)
http://www.epa.gov/swerffrr/documents/rab.htm
https://www.denix.osd.mil/denix/Public/Library/Cleanup/CleanupOfc/Documents/BRAC/finalrab.html

Early and Meaningful Community Involvement Guidance (OSWER 9320.0-99)
http://www.epa.gov/superfund/resources/early.pdf

EPA's Public Involvement Policy
http://www.epa.gov/publicinvolvement/public/index.htm

DoD Policies, Guidance, and Regulations

DoD Base Redevelopment and Realignment Manual (BRRM) (March 1, 2006)
http://www.oea.gov

DoD Policy on the Environmental Review Process to Reach a Finding of Suitability to Lease (FOSL) (May 1996)
https://www.denix.osd.mil/denix/Public/Library/Cleanup/CleanupOfc/Documents/BRAC/brac_fosl.html

DoD's Fast Track to FOST: A Guide to Determining if Property is Environmentally Suitable for Transfer
https://www.denix.osd.mil/denix/Public/Library/Cleanup/CleanupOfc/Documents/BRAC/fostfast_index.html

DoD Policy on the Implementation of the Community Environmental Response Facilitation Act (CERFA) (May 1996)
https://www.denix.osd.mil/denix/Public/Library/Cleanup/CleanupOfc/Documents/BRAC/brac_cerfa.html

DoD Guidance on Accelerating the NEPA Analysis Process for Base Disposal Decisions
https://www.denix.osd.mil/denix/Public/Library/Cleanup/CleanupOfc/Documents/BRAC/brac_nepa.html

Memorandum of Agreement between the Departments of Education, Health and Human Services, Interior, and Transportation, and the Department of Defense and the Departments of Army, Navy, and Air Force (May 22, 1997)
http://www.epa.gov/swerffrr/documents/public_benefit_transfers.htm

Department of the Air Force NEPA Regulations (32 CFR Part 989)
http://www.access.gpo.gov/nara/cfr/waisidx_02/32cfr989_02.html

Department of the Army NEPA Regulations (32 CFR Part 651, Army Regulations 200-2)
http://www.access.gpo.gov/nara/cfr/waisidx_02/32cfr651_02.html

Department of the Navy NEPA Regulations (32 CFR Part 775)
http://www.access.gpo.gov/nara/cfr/waisidx_02/32cfr775_02.html

Defense Logistics Agency (DLA) NEPA Regulations (DLA Regulation 1000.22)
http://www.dlaps.hq.dla.mil/dlar/r1000.22.htm

APPENDIX E: FY 2006-2008 Memorandum of Understanding (MOU) for BRAC I – IV Installations

MEMORANDUM OF UNDERSTANDING BETWEEN THE US ENVIRONMENTAL PROTECTION AGENCY AND THE US DEPARTMENT OF DEFENSE

Subject: Support for Department of Defense (DoD) Cleanup Implementation for Base Realignment and Closure (BRAC) Installations Rounds I - IV

1. Purpose: The purpose of this Memorandum of Understanding (MOU) is to establish responsibilities and funding for the US Environmental Protection Agency's (EPA's) assistance and support in accelerating environmental restoration and cleanup decisions in support of reuse at selected Department of Defense (DoD) Base Realignment and Closure (BRAC) installations. Funds provided though this MOU shall not be used to support EPA enforcement actions at a BRAC installation. The EPA and DoD enter into this MOU pursuant to the Economy Act, Section 2905(a) (l) (E) of the Defense Base Closure and Realignment Act of 1990, which states that DoD may reimburse other Federal agencies for assistance in the base closure process, and 10 U.S.C. § 2667(f) which requires an MOU to establish procedures for DoD consultation with EPA on environmental suitability for leasing BRAC property pursuant to that subsection.

2. Scope: As the lead agency for environmental restoration at DoD installations, DoD requires EPA assistance to expedite a number of activities related to Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) response actions, including work to support community involvement, facilitate property transfer, implement remedies as soon as practicable, and maintain remedies that protect human health and the environment. The DoD Components (hereinafter Components) conduct environmental restoration to protect human health and the environment at BRAC installations in concert with efforts supporting economic revitalization of surrounding communities. The DoD will make funds available annually to EPA for the types of activities described above at selected 1988, 1991, 1993, and 1995 BRAC installations (BRAC Rounds I – IV). This MOU also satisfies the requirement in 10 U.S.C. § 2667(f) for DoD consultation with EPA on environmental suitability for leasing property made available by the 1988, 1991, 1993, and 1995 BRAC rounds. The scope of this MOU includes environmental restoration activities in support of reuse at BRAC installations under statutes, regulations, and other authorities including, but not limited to, the following:

- The Base Realignment and Closure Acts (1988 and 1990).
- The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986.
- The Resource Conservation and Recovery Act (RCRA).
- The Community Environmental Response Facilitation Act (CERFA).

3. EPA Responsibilities: In support of the DoD and its BRAC environmental restoration and reuse efforts, EPA will provide necessary resources, as appropriate, to accelerate environmental

restoration activities, maintain remedies that protect human health and the environment, support public participation, and facilitate property transfer at selected BRAC installations. The EPA will make resources readily available for actions such as, but not limited to, streamlining decision-making, performing concurrent document review, participating in face-to-face meetings with other BRAC Cleanup Team (BCT) members, and providing technical assistance to DoD by making the greatest use of environmental restoration tools and promoting innovative practices. Such actions will typically be conducted by the EPA Remedial Project Manager (RPM) assigned to the installation. The EPA RPM will be supported by EPA technical experts such as community relations coordinators, hydrologists, risk assessors, and toxicologists. The EPA RPM will represent EPA on the BCT and coordinate the EPA team that works across the installation to support the BRAC process, depending on the needs at the installation at a given time. Through close coordination and discussion throughout the BRAC process, EPA and DoD are looking for opportunities to streamline documents, decision making, and response actions. Areas in which the EPA RPM and support team will work closely with DoD to support cleanup and property transfer acceleration include, but are not limited to:

- Supporting up-front planning and scoping.
- Providing assistance to DoD, and to the states, in implementing all environmental cleanup programs related to closure in an expeditious and cost effective manner in accordance with the BRAC Cleanup Plan (BCP) and applicable laws and regulations.
- Assisting in the preparation of and jointly reviewing documents related to environmental restoration or that support the lease or transfer of property within the timeframe agreed by the BCT to support DoD real property leasing or transfer actions. Examples of such documents are: the sampling and analysis plan, baseline risk assessment, the Remedial Investigation/Feasibility Study, proposed plan, record of decision, remedial design, remedial action plan, study and sampling data, Finding of Suitability to Transfer (FOST), Finding of Suitability to Lease (FOSL), Finding of Suitability for Early Transfer (FOSET), and Operating Properly and Successfully (OPS) determinations.
- Assisting with updating existing BCPs, participating in the development of the annual BCP abstract, and assisting with the development of the final, close out BCP.
- Participating, in conjunction with the BCT members, on the community's Restoration Advisory Board (RAB), reviewing environmental matters, as well as coordinating and exchanging cleanup and reuse information with the Local Redevelopment Authority.
- Participating in the identification of clean parcels under the CERFA, if DoD deems any additional CERFA identification beneficial to property transfer and reuse.
- Supporting and facilitating restoration privatization efforts.

4. Program Funding: The DoD shall make resources available annually to EPA to help expedite environmental restoration and property transfer at selected BRAC installations. The full-time equivalent (FTE) and funding ceilings will be agreed to by DoD and EPA on or about July 15, prior to the start of the fiscal year (FY). Nothing in this MOU shall be interpreted to require an obligation or payment in violation of the provisions of the Anti-Deficiency Act (31 U.S.C. § 1341) or Purpose Statute (31 U.S.C. § 1301(a)) or affect EPA's obligation to meet its statutory and regulatory responsibilities.

a. To determine the appropriate number of FTEs funded by DoD, EPA will provide DoD, on or about each February 15, EPA's annual FTE/funding estimates for the upcoming

two FYs following the current FY for each supported BRAC installation. The annual EPA request shall include the makeup (e.g., payroll, travel) and basis (e.g., GS-13-09 grade level) of the per FTE cost for the upcoming two FYs. FTE estimates are to be based on anticipated workload at a given installation. Prior to providing DoD with these estimates, EPA will develop its estimates through its Regions, coordinating anticipated FTE needs with the supported installation. Any differences or unresolved FTE issues will be highlighted in EPA's annual request to DoD. The DoD will evaluate the EPA funding request and provide a written FTE and funding ceiling for the upcoming FY and a planning estimate for the subsequent FY (i.e., current FY + 2) on or about July 31 of each year. In DoD's review and evaluation of EPA's request, Components will consult with EPA Regions on changes to EPA's request which may have an impact on future EPA FTE requirements. Major issues regarding projected FTE levels will be highlighted at the Spring DoD-EPA Management Review (See Section 7).

b. EPA will provide DoD on or about July 1 of each year, EPA's projection of unexpended balance, expenditure rate, and carryover of funds into the upcoming FY. DoD will use this information to determine the DoD funding to be transferred via a Military Interdepartmental Purchase Requisition (MIPR) to EPA during the upcoming FY. DoD will inform EPA on or about July 31 of the resource level EPA can expect to receive during the upcoming FY.

c. If, during the term of this MOU, it is determined that DoD is not legally able to pay for some or all of the costs DoD currently pays for, then such payment shall be discontinued. DoD will make its best effort to provide EPA with a 45 day written notification of this action. In the absence of funding from DoD, EPA is under no obligation to conduct the actions described in this MOU that will no longer be funded by DoD. Once related internal EPA billings have cleared, the remaining BRAC funds will be returned to DoD.

d. The annual funding, as approved by the Assistant Deputy Under Secretary of Defense (Environment, Safety and Occupational Health) (ADUSD (ESOH)) based on the EPA's request, shall be provided to EPA in semi-annual segments through the issuance of MIPRs by the Department of the Army (Army). The Army is DoD's lead for transferring and managing funding pursuant to this MOU. The Army will make its best effort to transfer the first half of the BRAC resources to EPA within 30 days of the Army's receipt of funds and obligation authority. The Army will make its best effort to transfer the final distribution of BRAC resources to EPA on or about April 15 of each year. Funds are to be used for EPA personnel, and may be used for contractor support for EPA personnel if authorized by the affected DoD Component.

e. The following provision is intended to provide Components and EPA Regions the flexibility to use available resources from one installation to satisfy emerging requirements at another BRAC installation. To accelerate environmental restoration in support of reuse at supported BRAC installations, EPA may reallocate funds from one installation to another installation if:

- the DoD installation managers and EPA remedial project managers agree to the reallocation,
- the installation from which the funds are reallocated will not suffer delays in cleanup progress or property transfer,
- the funds are being moved among installations within a DoD Component and there is no change to the total FTE level (or contractor support) for the Component,
- the EPA Regions receive approval from the Federal Facilities Restoration and Reuse Office (FFRRO) before any changes are permitted, and
- FFRRO submits a written justification (hardcopy or electronic) for the installation-specific changes to the respective Component within fifteen days of approving such action.
- The Component will provide a written (hardcopy or electronic) acknowledgement to EPA's FFRRO and a copy to the Army (as the DoD manager of funds) within 10 days of receiving the reallocation notification.

5. Consultation for Environmental Suitability for Leasing Property: The May 18, 1996, DoD policy memorandum, subject: Fast Track Cleanup at Closing Installations, contains the procedures and responsibilities for determining the environmental suitability for leasing property made available as a result of BRAC Rounds I - IV. DoD and EPA agree the guidance in the May 18, 1996, policy memorandum adequately describes the procedures for consultation with EPA on determining the environmental suitability for leasing of BRAC properties by Components as required by 10 U.S.C. § 2667(f).

6. Reporting:

a. The EPA will provide, at a minimum, quarterly billing statements by installation and funds received, expended, and remaining by funding document. The financial reports must comply with the financial management requirements provided to EPA by the Army in order to maintain accountability of funds. In the event that the financial reports are not deemed sufficient, EPA and the Army will work together to meet the requirements. The EPA will send these reports to the Army (specific office will be designated by the Army in funding documents) with a copy to the ADUSD (ESOH).

b. The EPA will provide quarterly program progress and review reports to DoD via a searchable database of a design agreed to by DoD and EPA prior to implementation, or in electronic form until the database design is finalized. These reports will be provided no later than 45 days after the end of each quarter. These reports will include regional summaries and installation specific reports (Attachment A). An EPA Headquarters mid-year and end-of-year summary report will also be provided (Attachment B). DoD expects that EPA's quarterly reports will include, at a minimum, the following: updates on activities planned in the BRAC Cleanup Plan Abstract; any significant issues, to include a discussion of schedule delays or other issues impeding progress at installations; and any other pertinent information of which BRAC managers should be made aware. Expenditure reports will be provided to the Army under separate cover. EPA will

provide to each Component, reports tailored to the DoD Component and a complete copy of the report to the ADUSD (ESOH).

7. BRAC Management Review Process: It is the intent of DoD and EPA to work together effectively and efficiently to perform their respective duties relating to the cleanup and reuse of BRAC properties. DoD and EPA will conduct joint management reviews to evaluate progress and support provided under this MOU. To this end, Biennial Management Review meetings will be held during which DoD and EPA representatives will discuss approaches to improving the program. In preparation for, and as part of the meetings, DoD and EPA will work together to determine the focus and agendas of the Management Reviews, perform the analyses described below, and develop options for improving the program. Specifically, the Management Review execution process is:

a. Spring Management Review.--DoD and EPA will analyze the data collected, as discussed in Section 7.a.(1) and (2), and present the issues, analyses, and recommended options for improving the program, including performance objectives and interim milestones. Management Review participants will discuss the data and issues and recommend options. DoD and EPA will report on progress made during the Fall Management Review.

(1) Data collected prior to the Spring Management Review— Prior to the Spring Management Review, DoD and EPA will review the progress made in expediting environmental restoration and property transfer activities and streamlining environmental restoration decisions at the installations. Specifically, DoD and EPA will evaluate data, primarily from DoD's Restoration Management Information System (RMIS) (unless otherwise specified), on the progress made at BRAC installations during the previous FY, including the following metrics:

- Sites completing investigation phase: Number remaining for completion/planned in the FY/completed in the FY,
- Sites reaching remedy in place (RIP): Number remaining for completion/planned in FY/completed in FY,
- Sites reaching response complete (RC): Number remaining for completion/planned in FY/completed in FY,
- Number and reasons for re-opened sites in investigation or cleanup,
- Installation last RIP,
- Operating Properly and Successfully Determinations[*] Number completed in FY. Updated in FY, as needed.
- Number Finding of Suitability to Transfer (FOST) completed in FY:[**] Updated in FY, as needed.
- Number Finding of Suitability to Lease (FOSL) completed in FY:[**]

[*] - RMIS does not collect information pertaining to OPS determinations. EPA would provide this information.
[**] RMIS does not collect information pertaining to FOSTs, FOSLs, or FOSETs. DoD would obtain this information from other sources.

Updated in FY, as needed.

- Number Finding of Suitability for Early Transfer (FOSET) completed in FY:[**]Updated in FY, as needed.
- Acres made available for lease or transfer in FY by NPL status.[**]

The purpose of this data review is to determine which installations should be requested to provide more information about their progress and barriers to greater progress. In addition to the RMIS data specified above, EPA BRAC Quarterly Reports (see section 6b), and other data as mutually agreed upon will be used to evaluate the progress made, including EPA's support under this MOU. DoD and EPA recognize that the metrics may need to be refined based on further review and evaluation. Adjustments to the BRAC metrics will be made with mutual agreement by DoD and EPA.

(2) Installation Appraisals Completed prior to Spring Management Review.--The data collected under Section 7.a. will be analyzed to ascertain which installations did not meet projected goals. Based on this review, DoD and EPA Headquarters will request that EPA RPMs and Base Environmental Coordinators (BECs) at bases that did not meet the planned goals complete an Installation Appraisal (see Attachment C). The purpose of the Appraisal is to ascertain the barriers that are preventing greater progress. EPA Headquarters and DoD will review this information in addition to the data collected in Section 7.a. to ascertain what assistance should be provided to these RPMs and BECs so that greater progress can be made. If the Installation Appraisal needs to be refined based on implementation and further review, it will be done with the mutual agreement of both organizations.

b. Fall Management Review: Focus on key issues and new approaches — DoD and EPA will determine three to five key issues to focus on during the Fall Management Review, as well as successes and lessons learned from the implementation of new approaches to cleanup and transfer. The key issues and lessons learned will be based on the information in the quarterly reports, EPA and DoD areas of interest, RMIS data, the Spring Management Review, as well as other mutually agreed upon sources. Also, there may be an update on installations that did not meet the previous year's goals, or discussion of potential recommendations for program improvements at installations that indicate that they are going to have difficulty meeting end-of-year goals (see Section 7.a.). Prior to the Fall Management Review, DoD and EPA will research and analyze data from installations that have raised these issues. During the Management Review, DoD and EPA will present the comprehensive findings and discuss recommended options for proceeding. Management Review participants will discuss and recommend a path forward. DoD and EPA will report progress during the subsequent Spring Management Review.

8. Program duration and termination: This agreement expires September 30, 2008, but may be extended upon the agreement of the signatories to this MOU. Either DoD or EPA may make modifications to this MOU upon the mutual agreement of the signatories; however, modifications shall be made in writing. The MOU will remain unchanged absent a concurring response. Conflicts arising between the signatories on the requirements or interpretation of this MOU shall be resolved administratively between the agencies. Absent agreement, dispute resolution shall be in accordance with procedures for resolving disputes between Federal agencies.

/s/
Thomas P. Dunne
Deputy Assistant Administrator
Office of Solid Waste and Emergency Response
US Environmental Protection Agency

Date: 9/29/05

/s/
Alex A. Beehler
Assistant Deputy Under Secretary of Defense (Environment, Safety, and Occupational Health)
Department of Defense
Date: 9/26/05

/s/
Betty Utterback
Chief, Grants Operations Branch
Grants Administration Division
Office of Administration and Resources Management
US Environmental Protection Agency
Date: 10/05/05

Attachment A – Regional and Installation Specific Reports

Part I

REGIONAL SUMMARY

1. Hot Issues
   - Issues for HQs EPA and/or HQs DoD's attention
   - Include Congressional or High Profile Items

2. Other Regional Issues
   - Successes/achievements
   - Region-wide issues

3. Points of Contact
   - EPA point(s) of contact (HQs and Region)

Part II

INSTALLATION SUMMARY

1. Installation Name and Contact Information:
    - DoD/EPA/State BCT member contact information.

2. Significant Issues:*
    a. Congressional.
    b. High profile items.
    c. Delays in Environmental Restoration Actions.**

3. Issues Impacting Reuse/Transfer.

4. Staffing/Funding Issues:
    - Staffing and funding issues at the installation affecting EPA, State, and Component

* Note if item is for information or for headquarters/management attention.

** Include if any site will not meet projections and any re-opened site, reasons, and fixes to get back on track.

Attachment B – BRAC National Summary

BRAC Summary

EPA Term	DoD Term	Planned Current FY	Accomplished Current FY	Total Planned		Total Accomplished		Actions Planned for # Sites in FY + 1*
				FY 2006 Data	Current Data	FY 2006 Data	Current Data	
Decision Documents	Decision Documents	#	#	#	#	#	#	# for # sites
RA/CMI Starts	Remedial Action-Construction (RA-C)	#	#	#	#	#	#	# for # sites
RA/CMI Completions	Response Complete (RC)	#	#	#	#	#	#	# for # sites
Site Construction Completion**	Last RIP	#	#	#	#	#	#	# for # sites
FOST/FOSL/CDR-FOSET (Parcels & Acres)	FOST/FOSL/CDR-FOSET (Parcels & Acres)	N/A	#	N/A	N/A	#	#	N/A
OPS Determination	OPS Determination	N/A	#	N/A	N/A	#	#	N/A
Active RAB	Active RAB	N/A	#	N/A	N/A	#	#	N/A

Data Source: CERCLIS (pull date)

* The first number is the number of actions planned to occur. The second number is the number of sites covered by those actions. For example, 19/6 means there are 19 actions covering a total of 6 sites.

** If there is a number, please list the names of the sites here:

Attachment C
Installation Appraisal

The BRAC Program Installation Appraisal will be used to inform senior leadership on potential causes for delays in cleanup and reuse of BRAC property *at those installations that do not meet planned goals*. The Installation Appraisal will be administered at the base level, capturing performance data from both EPA RPMs and their DoD counterparts (BECs) at each base. The Installation Appraisal contains basic questions aimed at characterizing base-specific issues, budget/funding dynamics, and the level of coordination amongst stakeholders. The data will also help DoD evaluate barriers to progress at installations, and assist DoD in evaluating EPA support. DoD and EPA may also develop specific questions tailored to situations at individual installations.

INSTALLATION APPRAISAL FORM

INSTALLATION NAME:
PROJECT MANAGER NAME/ORGANIZATION:

QUESTION	**ANSWER** *(circle one)*	Description
1. **What were the milestones/accomplishments/activities during the past 12 months?**		
2. **Did any significant issue or challenge arise over the last 12 months? If so, please describe the issue or challenge.**	Y / N	
3. **If any significant issues or challenges arose, how were they addressed?**		
4. Was the funding level adequate for this site over the past 12 months? (Y/N) If "no", please describe.	Y / N	
5. Would additional funding have accelerated cleanup over the past 12 months? If so, how?	Y / N	
6. Did all BCT participants attend BCT meetings as scheduled over the past year?	Y / N/NA	
7. Did BCT members each have an opportunity to provide input on the BRAC Cleanup Plan abstract prior to submittal?	Y / N/ NA	
8. Can any project delays be attributed to any party's participation on the BCT?	Y / N	
9. **Has EPA provided technical assistance in the past 12 months? If so, please describe.**	Y / N	
10. **Did EPA's technical assistance help solve/mitigate a problem or address a potential issue in the past 12 months? If so, please describe.**	Y / N	
11. Were documents prepared and reviewed in a timely manner, e.g. in accordance with agreed upon deadlines?	**Y / N**	
12. **Are there any variables, outside the control or influence of the BCT, which have impeded progress at the installation?**	Y/N	

APPENDIX F

Comprehensive Environmental Response Compensation, and Liability Act (42 U.S.C. 9620) - Section 120, Federal Facilities - Application of Act to Federal Government

SEC. 120 (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 non governmental 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 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. --

(1) IN GENERAL. -- 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 --

(A) 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

(B) include such facilities on the National Priorities List maintained under such plan if the facility meets such criteria.

(2) APPLICATION CRITERIA. --

(A) IN GENERAL. -- Subject to subparagraph (B), the criteria referred to in paragraph (1) shall be applied to facilities that are owned or operated by persons other than the United States.

(B) RESPONSE UNDER OTHER LAW. -- It shall be an appropriate factor to be taken into consideration for the purposes of section 105(a) (8) (A) that the head of the department, agency, or instrumentality that owns or operates a facility has arranged with the Administrator or appropriate State authorities to respond appropriately, under authority of a law other than this Act, to release or threatened release of a hazardous substance.

(3) COMPLETION. -- Evaluation and listing under this subsection shall be completed in accordance with a reasonable schedule established by the Administrator.

(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 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 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 this 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 information 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. --

(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) a clause granting the United States access to the property in any case in which remedial action or corrective action is found to be necessary after the date of such transfer.

(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 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 of 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 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 9606, 9607, and this section existing prior to transfer) with respect to a property transferred under this paragraph.

(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 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 Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(II) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(III) Section 2687 of title 10, United States Code.

(IV) Any provision of law authorizing the closure or realignment of a military installation enacted on or after the date of enactment of the Community Environmental Response Facilitation Act.

(F) Nothing in this paragraph shall affect, preclude, or otherwise impair the termination of Federal Government operations on real property owned by the United States.

(5) NOTIFICATION OF STATES REGARDING CERTAIN LEASES. -- In the case of real property owned by the United States, on which any hazardous substance or any petroleum product or its derivatives (including aviation fuel and motor oil) was stored for one year or more, known to have been released, or disposed of, and on which the United States plans to terminate Federal Government operations, the head of the department, agency, or instrumentality of the United States with jurisdiction over the property shall notify the State in which the property is located of any lease entered into by the United States that will encumber the property beyond the date of termination of operations on the property. Such notification shall be made before entering into the lease and shall include the length of the lease, the name of person to whom the property is leased, and a description of the uses that will be allowed under the lease of the property and buildings and other structures on the property.

(i) OBLIGATIONS UNDER SOLID WASTE DISPOSAL ACT. -- Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal 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.

APPENDIX G

Reporting Hazardous Substance Activity When Selling or Transferring Federal Real Property (40 CFR Part 373)

Authority: 42 U.S.C. 9620.

Source: 55 FR 14212, Apr. 16, 1990, unless otherwise noted.

7.11.1.1.1 § 373.1 General requirements.

7.11.1.1.2 After the last day of the six-month period beginning on April 16, 1990, 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 at 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 must 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 information is available on the basis of a complete search of agency files.

7.11.1.1.3 § 373.2 Applicability.

(a) Except as otherwise provided in this section, the notice required by 40 CFR 373.1 applies whenever 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.

(b) The notice required by 40 CFR 373.1 for the storage for one year or more of hazardous substances applies only when hazardous substances are or have been stored in quantities greater than or equal to 1000 kilograms or the hazardous substance's CERCLA reportable quantity found at 40 CFR 302.4, whichever is greater. Hazardous substances that are also listed under 40 CFR 261.30 as acutely hazardous wastes, and that are stored for one year or more, are subject to the notice requirement when stored in quantities greater than or equal to one kilogram.

(c) The notice required by 40 CFR 373.1 for the known release of hazardous substances applies only when hazardous substances are or have been released in quantities greater than or equal to the substance's CERCLA reportable quantity found at 40 CFR 302.4.

7.11.1.1.4 § 373.3 Content of notice.

The notice required by 40 CFR 373.1 must contain the following information:

(a) The name of the hazardous substance; the Chemical Abstracts Services Registry Number (CASRN) where applicable; the regulatory synonym for the hazardous substance, as listed in 40 CFR 302.4, where applicable; the RCRA hazardous waste number specified in 40 CFR 261.30, where applicable; the quantity in kilograms and pounds of the hazardous substance that has been stored for one year or more, or known to have been released, or disposed of, on the property, and the date(s) that such storage, release, or disposal took place.

(b) The following statement, prominently displayed: “The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or “Superfund”) 42 U.S.C. section 9620(h).”

7.11.1.1.5 ***§ 373.4 Definitions.***

For the purposes of implementing this regulation, the following definitions apply:

(a) *Hazardous substances* means that group of substances defined as hazardous under CERCLA 101(14), and that appear at 40 CFR 302.4.

(b) *Storage* means the holding of hazardous substances for a temporary period, at the end of which the hazardous substance is either used, neutralized, disposed of, or stored elsewhere.

(c) *Release* is defined as specified by CERCLA 101(22).

(d) *Disposal* means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous substance into or on any land or water so that such hazardous substance or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.