



DEPARTMENT OF THE ARMY  
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MEMORANDUM THRU ~~DIRECTOR OF THE ARMY STAFF~~ *12 Jul 02*  
FOR ASSISTANT CHIEF OF STAFF FOR INSTALLATION MANAGEMENT

SUBJECT: Army Interim Policy for Integrating Natural Resource Injury Responsibilities and Environmental Response Activities

This memorandum forwards the enclosed subject policy for implementation by all Army activities involved in Army Active Sites, Base Realignment and Closure, or Formerly Used Defense Sites environmental restoration programs. The policy supplements and implements the Office of the Secretary of Defense Natural Resource Injury policy memorandum of May 2, 2000.

The policy requires the Army to consider and, if applicable, eliminate or reduce the potential for Natural Resource Injury (NRI) as part of the site assessment, investigation, remedy selection, and implementation processes for cleanup actions. The policy is intended to ensure that the Army carries out its Lead Agent responsibilities in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the National Contingency Plan, the Defense Environmental Restoration Program, and Army Regulation 200-1.

NRI is a measurable adverse change in the chemical or physical quality or viability of a natural resource caused by the release or threatened release of a CERCLA hazardous substance. The policy prohibits the use of environmental restoration funds to compensate parties impacted by NRI or for projects that serve merely as environmental enhancements. This office is responsible for the policy's oversight and implementation, and the ACSIM is the policy's executing agent.

Request that your office develop more detailed procedural guidance for implementation of the policy. The guidance should be coordinated with this office prior to dissemination. Because this policy is considered interim, request you review the policy within the first year of applicability and make recommendations for changes or improvement.

*Ray J. Fatz*  
Raymond J. Fatz

Deputy Assistant Secretary of the Army  
(Environment, Safety and Occupational Health)  
OASA(I&E)

Enclosure

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*Encl 1*

## ARMY INTERIM POLICY FOR INTEGRATING NATURAL RESOURCE INJURY RESPONSIBILITIES AND ENVIRONMENTAL RESPONSE ACTIVITIES

**I. PURPOSE:** This policy implements and supplements the *Department of Defense Interim Policy on Integration of Natural Resource Injury Responsibilities and Environmental Restoration Activities* (DoD Policy), 2 May 2000, and supplements Army Regulation 200-1 (AR 200-1) *Environmental Protection and Enhancement* (1997). This interim policy is intended to ensure that the Army carries out its lead agent responsibilities in accordance with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)(42 U.S.C. 9601, et seq.), the National Contingency Plan (40 CFR Part 300), the Defense Environmental Restoration Program (DERP)(10 U.S.C. Section 2701, et seq.), and AR 200-1. This policy further establishes Army roles and responsibilities for meeting the directives, goals, and objectives of the DoD policy.

**II. DEFINITIONS:** Definitions of all key terms used in this policy and guidance are provided in the attached Glossary.

**III. APPLICABILITY:** This policy applies to response actions for which the Army serves as the lead agent (see Glossary) under the Defense Environmental Restoration Program (DERP). Specifically, this policy applies to actions taken to address releases of hazardous substances (see Glossary) pursuant to CERCLA and/or RCRA Corrective Action under the Installation Restoration Program (IRP), the Base Realignment and Closure (BRAC) cleanup program, and the Formerly Used Defense Sites (FUDS) cleanup program.

- A. This policy is limited to consideration of, and if appropriate, response to potential natural resource injuries (NRI) (see Glossary) through compliance with, CERCLA, the NCP, DERP, and AR 200-1.<sup>1</sup>
- B. This policy does not address the Army's role as a Natural Resource Trustee (NRT) (see Glossary) for purposes of assessing natural resource damages at sites under Army custody, management, or control following remediation. The Army is a NRT at active Army installations and pre-transfer (e.g., BRAC) sites.
- C. Because the Army is not a NRT at sites no longer – or never– under Army custody, management, or control, the provisions of this policy and guidance addressing the Army's NRT responsibilities do not apply at FUDS or Army post-transfer sites.

<sup>1</sup> Consideration of potential NRI pursuant to this policy is not intended to and does not constitute a "determination of injury" or an admission of liability for compensable natural resource damages (NRD – see Glossary).

- D. This policy does not apply at third-party sites or FUDS, where no Army-initiated response action is contemplated. The Army should, as a potentially responsible party (PRP), participate in the remedy selection process at such sites by reviewing site plans and reports, and encourage consideration and selection of remedies that minimize potential NRI.

**IV. POLICY:** Pursuant to its responsibility as the Lead Agent, the Army will consider potential NRI as it responds to releases of CERCLA hazardous substances in accordance with the directives and procedures set forth below.

- A. The Army will notify NRTs where there is the potential for NRI resulting from a release, or a response to a release, of a CERCLA hazardous substance for which the Army has lead agent responsibility. The Army will also notify appropriate Army natural resource professionals (see Glossary).
- B. The Army will coordinate studies, investigations, and planning related to both future and on-going remedial actions with NRTs at sites where there is the potential for NRI resulting from a release, or a response to a release, of a CERCLA hazardous substance for which the Army has lead agent responsibility. The Army will also coordinate this information with appropriate Army natural resource professionals.
- C. During the cleanup process, the Army shall consider NRI information along with all other relevant factors outlined in the NCP's nine remedy selection criteria – or similar RCRA corrective action guidance – when selecting the remedy. The Army will review available site plans and reports and evaluate the potential for adverse natural resource injuries as part of the site investigation, remedy selection and implementation process. After assessing environmental documentation, Army may determine that the release of a CERCLA hazardous substance could have a significant and measurable impact upon a natural resource. Such evidence of NRI should be considered by the responsible agency official as part of the remedy selection process. Whenever practicable and otherwise consistent with the remedy selection process specified by the National Contingency Plan, the Army should select a response action that will result in the least amount of residual NRI once the response action is complete.
- D. The Army is encouraged to evaluate actions that may be taken during execution of a site remedy to reduce or eliminate potential NRI.
- E. The Army will not use environmental restoration funds to: (i) compensate Trustees or parties impacted by the injury by providing direct compensation (e.g., payment of monetary damages) or indirect compensation (e.g., performing restoration activities that have the principal effect of compensating Trustees or parties impacted by the injury); or (ii) compensate NRTs for

coordination pursuant to CERCLA, Section 104(b)(2); or (iii) provide for projects that would serve only as environmental enhancements.

- F. The Army shall not assess NRD through the CERCLA response process. Formal injury determinations that are undertaken to assess compensable damages will only be conducted, if appropriate, subsequent to the selection and implementation of the remedy.

#### V. POLICY IMPLEMENTATION RESPONSIBILITIES

- A. **Deputy Assistant Secretary for Environment Safety and Occupational Health (DASA (ESOH)).** DASA (ESOH) is responsible for acting as the Army Natural Resource Trustee. In addition, as the proponent of this policy, DASA (ESOH) is responsible for its oversight and implementation, as well as issuance of waivers.
- B. **Assistant Chief of Staff for Installation Management (ACSIM).** The ACSIM, through the Director of Environmental Programs (DEP) – with the assistance of the Commander, US Army Environmental Center (AEC) regarding active and BRAC installations, and HQ USACE regarding FUDS – is responsible for executing this policy and providing necessary technical guidance.
- C. **Army Major Commands (MACOMs).** MACOMs – or agencies assuming MACOM responsibility after implementation of the Transformation of Installation Management initiative – are responsible for ensuring that this policy is distributed to and implemented at installations under their command or at sites for which they bear responsibility as the CERCLA lead agent (e.g., FUDS). MACOMs – or agencies assuming MACOM responsibility after implementation of the Transformation of Installation Management initiative – will also provide Army natural resource professional support where such capabilities are lacking at installations or at sites for which they bear responsibility as the CERCLA lead agent.
- D. **Installation Commanders (ICs), BRAC Environmental Coordinators (BECs), Remedial Program Managers (RPMs) and FUDS Program Managers (PMs).** ICs, BECs, RPMs and PMs, as Responsible Agency officials, are responsible for implementing this policy as they respond to releases at sites for which they have lead agent responsibility on behalf of the Army.

**VI. ASSISTANCE:** For BRAC and active sites, restoration personnel are encouraged to submit questions regarding this policy (including issues concerning NRI and NRD) or requests for assistance in its implementation through appropriate channels to the US Army Environmental Center (AEC). At FUDS and/or third party sites, restoration personnel are encouraged to submit questions and requests for assistance through

appropriate channels to HQ USACE. When necessary, USAEC or HQ USACE will forward issues to the Assistant Chief of Staff for Installation Management (ACSIM) where they will either be resolved or forwarded to the Secretariat for resolution.

25 Jun 02  
Final

## GLOSSARY

The following definitions apply to key terms used in this policy.

- **Natural Resource Professional:** an individual with an undergraduate or graduate degree in natural resource management sciences or environmental sciences (e.g., agronomists, conservationists, wildlife biologists, ecologists, ecological risk assessors), and/or who has responsibility for supporting Army natural resource management responsibilities. Such individuals may be Department of the Army civilian employees, contractors, or other individuals providing natural resource management support through interagency agreements, cooperative agreements, or similar arrangements.
- **CERCLA Hazardous Substance:** any substance defined as a hazardous substance in 42 U.S.C 9601(14) and set forth at 40 CFR Part 302, particularly Table 302.4.
- **Lead Agent:** the individual who is responsible for carrying out the Army's duties as the CERCLA lead agent for a response under DERP.
- **Natural Resource:** all land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, any State or local government, any foreign government, any Indian tribe, or if such resources are subject to a trust restriction on alienation, any member of an Indian tribe. This definition is used specifically for this NRI policy instead of the definition for "natural resource" in Army Regulation 200-3 *Natural Resources – Land, Forest and Wildlife Management*, Glossary, p. 32.
- **Natural Resource Damages:** the liability – either in money damages or other forms of compensation – assessed by a Natural Resource Trustee in the adjudication or settlement of a legal claim regarding NRI (a damage claim includes both compensation for injuries and the administrative costs incurred by Trustees). A Trustee cannot initiate a legal claim for Natural Resource Damages until after a CERCLA cleanup is completed, or, if appropriate, after remedy selection. See CERCLA, Section 113(g)(1). Further, NRD can only be used by a Trustee to restore, replace, or acquire the equivalent of natural resources injured by the release of a CERCLA hazardous substance, where such release occurred after December 11, 1980. See CERCLA, Section 107(f), 42 U.S.C. §9607(f). Finally, NRD involves a claim against the United States which must be paid from the Judgment Fund rather than directly from agency appropriations.
- **Natural Resource Damages Assessment:** the process by which Trustees: determine, after remedy selection, whether the release of a CERCLA hazardous substance has resulted in NRI; quantify the level of injury and resultant loss of

services; and assess a monetary value for the Trustee to repair, replace, or acquire the equivalent of the injured natural resource. See CERCLA, Section 113(g)(1).

- **Natural Resource Injury:** a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource, resulting either directly or indirectly from exposure to the release of a CERCLA hazardous substance or as a result of the response to such a release.
- **Natural Resource Trustee:** any Federal agency designated in the NCP in Section 300.600 as having Natural Resource Trustee responsibilities pursuant to CERCLA, Section 107(f)(2)(A); any State agency designated by the Governor of each State pursuant to CERCLA, Section 107(f)(2)(B); or a Federally-recognized Indian tribe pursuant to CERCLA, Section 126. The Army is a Natural Resource Trustee for land and natural resources under its jurisdiction, management, and control. The Army is not a Trustee at FUDS, Army post-transfer sites, or third-party sites because these properties are no longer – or were never – under DoD jurisdiction, management, and/or control. In addition to providing valuable input into development and selection of remedies, Trustees are authorized to assess NRDs and bring claims against PRPs.