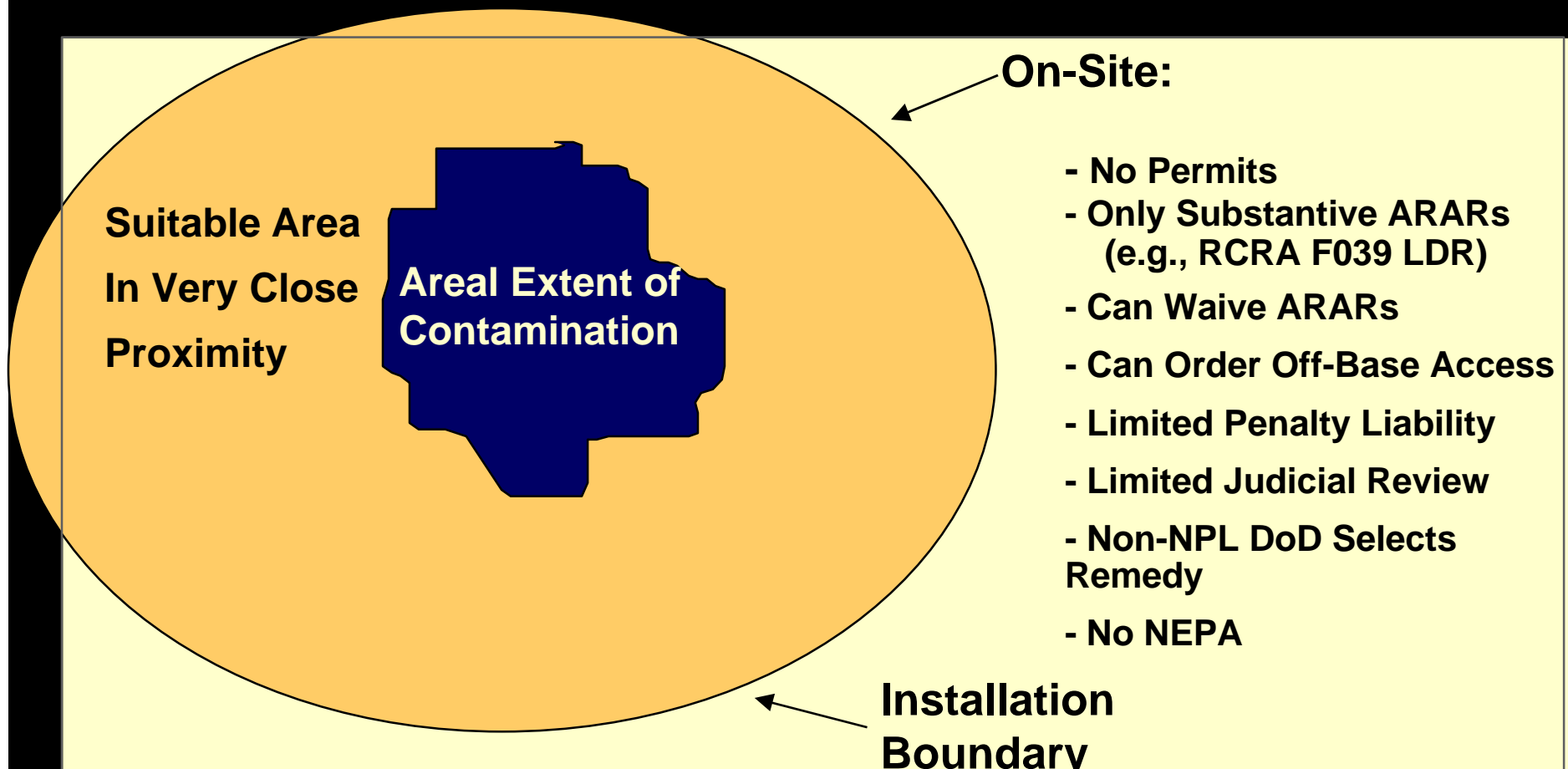


Property Transfer: BRAC and Non-BRAC

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Property Transfer: BRAC and Non-BRAC

Under what circumstances will DoD return to conduct further cleanup after property has been transferred?

- CERCLA Section 120
- P.L. 102-484 Section 330
- New DoD policy

Who is Covered?

- CERCLA Section 120 (CERCLA releases) covers conveyance of all property, BRAC and non-BRAC (in fee or leases)
- P.L. 102-484 Section 330 (personal injury and property damage, including economic loss) covers BRAC property being conveyed (in fee or leases)

What Do They Mean?

- Subject to interpretation
- A new area with little guidance
- See Louisville Lite model indemnification language for insight

Best Way to Meet Obligations?

- CERCLA Section 120 - *transferring agency or DOJ*
- P.L. 102-484 Section 330 - *DOJ*
- Federal transferees do not get protections provided by these covenants

CERCLA Property Transfers

- CERCLA Section 120(h)(4):
 - Clean transfers
- CERCLA Section 120(h)(3)(A):
 - Transfer where cleanup is “operating properly and successfully”
- CERCLA Section 120(h)(3)(C):
 - Early transfers
- CERCLA Section 120(h)(3)(B):
 - Transfer to PRP for cleanup

Industrial Waste Disposal

- Who pays for disposal of discarded infrastructure:
 - Carpets, curtains, old calendars, pizza boxes?
 - Asbestos, lead-based paint, light bulbs?
 - “Industrial quality” soil that can stay on-site?
- Answers: transferee -- these are NOT “environmental conditions”
- Transfer Golden Rule: As Is, Where Is, What Is?

LRA and BRAC

- Independent testing should be limited to allowing “due diligence” examinations
- Transferee’s desires in terms of future land use (and associated cleanup levels), according to the Base Reuse Implementation Manual, will be accommodated to the maximum extent possible -- but there will NOT be complete deference

For Information On Land Use Controls (BRAC & Non-BRAC):

- DoD and EPA policy letters
- Albany, GA
- Jacksonville, FL
- Yuma, AZ
- CMECC, CA
- EPA Region IV proposal

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