

APPENDIX F

Regulation Summary

Understanding the regulations and laws that affect the Installation Restoration Program (IRP) is necessary to effect installation restoration and efficiently implement the IRP. The following capsules of regulations pertinent to the IRP are provided as brief summaries for the reader's edification.

CERCLA

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) 42 USC 9601

CERCLA, commonly referred to as Superfund, gave Federal agencies authority to respond to the release or the substantial threat of release of hazardous substances into the environment. It also extends to situations where pollutants and contaminants present imminent and substantial danger to public health or welfare. CERCLA authorized the establishment of a trust fund to be used in the cleanup and mitigation of emergency and long-term hazardous waste problems for non-DOD entities.

CERCLA/SARA requires that other Federal laws and more stringent state laws and regulations be considered when conducting response actions. Examples of laws which might be applied as Applicable and Relevant or Appropriate Requirements (ARARs) are Resource Conservation and Recovery Act (RCRA), The Toxic Substances Control Act (TSCA), and the Safe Drinking Water Act (SDWA).

SARA

Superfund Amendments and Reauthorization Act of 1986 (SARA)

Funding and authority under CERCLA extended only to 30 September 1985. SARA was passed as Public Law 99-499 on 17 October 1986 to reauthorize the fund and to amend the authorities and requirements of CERCLA and other associated laws. Congress extended the authorization of CERCLA in 1990 to 30 September 1994 since the program was far from being complete. SARA is divided into five major titles. Titles I and III are the most directly related to the IRP and the Defense Environmental Restoration Program (DERP). CERCLA is currently up for reauthorization.

- Title I - Response and Liability. The DERP and the IR Program are subject to the provisions of Section 120 under this Title. Congress established special funding, the Defense Environmental Restoration Account (DERA), to pay for the cost of DOD responses to hazardous waste sites.
- Title III - Established the Environmental Planning and Community Right to Know Act of 1986. Though this Title does not directly apply to Federal agencies, DOD policy is to comply with its provisions to the extent practicable within the constraints of national security and other considerations.

Under this Title, installations are required to:

- upgrade their Spill Prevention, Control, and Countermeasures (SPCC) Plans;
- train personnel in hazardous substance spill response; and
- notify local emergency response planners of the existence of hazardous substances on their facility.

CERFA

Community Environmental Response Facilitation Act of 1992 (CERFA)

This law amends CERCLA, and requires that the Federal Government identify real property on each facility which is not contaminated, and that offers the greatest opportunity for expedited reuse and redevelopment by the community. The identified parcels of real property must be either free from hazardous substances and petroleum products, or the remediation of contamination by those substances should be expedited to facilitate transfer to the public.

Parcels of real property free from contamination are those on which no hazardous substances and no petroleum products, aviation fuel, motor oil, or their derivatives were stored for over a year or parcels on which there are no known releases or disposals of the above substances.

In order to identify a parcel suitable for reuse, an investigation should consist of:

- A detailed search of Federal government records pertaining to the property
- Aerial photographs that could reflect prior uses of the property
- A recorded chain of title documents regarding the property
- A visual and physical inspection of the property adjacent to the real property
- Government records (Federal, State and local) of each adjacent facility where there has been a release of any hazardous substance, oil, or any petroleum product or derivative
- Interviews with current or former employees involved in operations on the property and
- Sampling, if appropriate

The law states that the findings must be concurred with by the EPA Administrator if a National Priorities List (NPL) site, or if non-NPL, then the appropriate State Official.

State concurrence is required for real property not on the NPL, whether BRAC or non-BRAC. State concurrence is considered to be obtained if, within 90 days after receiving a request from the federal agency, the State Official has not acted (by either agreeing or declining to agree) on the request for concurrence.

BRAC facilities must identify parcels and receive concurrence from the respective regulatory agency within 18 months after being designated a BRAC activity.

Non-BRAC facilities must identify parcels and receive concurrence from the respective regulatory agency at least six months before the cessation of operations on the property.

When the property is transferred, the government will still be responsible for any remediation or corrective action or any response action found to be necessary after the transfer date at a given property. Therefore, if the government has to carry out a response action or corrective action on adjoining property, a clause allowing access to the property must be added to the deed.

Long term monitoring (operations and maintenance, pump and treat operations) will not prevent the transfer of property, as long as all remedial action has been taken and 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.

NCP

National Oil and Hazardous Substances Contingency Plan (NCP) 40 CFR Part 300

The NCP is the basic regulation that implements the statutory requirements of CERCLA and Section 311 of the Clean Water Act (CWA). DON must comply with this regulation as law.

The NCP “provides the organizational structure and procedures for preparing for and responding to discharges of oil and release of hazardous substances, pollutants, and contaminants.” It also establishes initial response action and notification procedures for the release of a reportable quantity of a hazardous substance.

To implement the strategies of the NCP, the Plan established the National Response Team (NRT) which consists of representatives from numerous Federal agencies. The position of On-Scene Coordinator (OSC) was established by the NCP. The OSC has responsibilities during spill response and cleanup. The OSC also makes notifications and develops their area’s regional contingency plan.

RCRA

Resource Conservation and Recovery Act of 1976 (RCRA) 42 USC 6901

Congress enacted the Resource Conservation and Recovery Act of 1976 (RCRA) as an amendment to the Solid Waste Disposal Act (SWDA). It was amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). RCRA is the first comprehensive federal effort to deal with safe disposal of all types of hazardous wastes, and provides for “cradle to grave” tracking of hazardous wastes. RCRA requirements apply to those who generate, handle, transport, treat, store or dispose of hazardous waste. Various forms are used to document the chain of custody for hazardous wastes.

Permits are required for treatment, storage or disposal. Clean up of contamination (corrective action) from past as well as present operations may be a prerequisite to issuance of a permit. The 1984 amendments prohibit continued land disposal of untreated wastes.

Requirements for underground storage tanks (USTs) are also contained in RCRA. Owners and operators are required to register tanks, provide secondary containment, monitor tank integrity, and cleanup contamination from their tanks.

HSWA

Hazardous and Solid Waste Amendments of 1984 (HSWA) (PL 98-616)

RCRA was established to address the proper handling, tracking, storage, transportation, and disposal of hazardous wastes. It is applicable to all generators, transporters, storers, and disposers of hazardous wastes. “Cradle to grave” tracking under RCRA provides a means of ensuring safety for the public and the environment.

Corrective action authority under RCRA is intended to provide the Environmental Protection Agency (EPA), or the State which has primacy, with the ability to control all types of environmental pollution.

This is accomplished by exercising the following statutes:

- Section 3004(u) which requires corrective action be included as a permit condition for releases of hazardous wastes at a treatment, storage, or disposal facility at the time of original application or renewal.
- Section 3008(h) which requires that corrective action is a precondition to obtaining a permit. (The waiver of sovereign immunity subjects the Federal Government to permitting requirements).

CWA

Clean Water Act (CWA) of 1967 as amended by the Federal Water Pollution Control Act of 1972

This is the major legislation aimed at restoring and maintaining the quality of the nation’s waters. The CWA originally established the NCP under Section 311 to permit the U.S. Coast Guard and EPA to clean up spills of oils and other hazardous substances when they were released into the navigable waters of the United States.

CAA

Clean Air Act of 1970 (CAA) as amended by the Clean Air Act Amendments of 1990 (PL 101-549)

The CAA requirements must be implemented as part of the IR Program in cases where response actions include the release of contaminants to the air.

The purpose of Clean Air Act is “to protect and enhance the quality of the Nation’s air resources so as to promote public health and welfare and the productive capacity of its population...” The CAA requires EPA to set binding National Ambient Air Quality Standards (NAAQS), which define how clean the air must be. Standards have been set for six primary pollutants: carbon monoxide, lead, ozone, nitrogen dioxide, sulfur dioxide, and total suspended particulates. EPA also has developed New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP) and standards for mobile sources. Hazardous air pollutants are: asbestos, arsenic, benzene, beryllium, mercury, radionuclides, vinyl chloride and coke oven emissions.

Air quality standards are achieved by the states through State Implementation Plans (SIPs), which define how they will meet air quality standards. The plans specify emission limits and compliance schedules for pollution sources. SIPs are tailored to the needs of the different air quality control regions. A region not meeting air standards is said to be a ‘non-attainment area,’ and regulations for the area will generally place stricter requirements on sources of air pollution.

Navy installations are subject to federal, state and local air pollution control requirements. Permits are required to construct and to operate ‘major’ air pollution sources. Civil fines may be assessed by local air pollution control districts.

NEPA

National Environmental Policy Act (NEPA), 42 USC 4321

The National Environmental Policy Act (NEPA), was signed into law on 1 January 1970. The primary requirement of NEPA is for Federal agencies to consider the environmental impacts of proposed actions in their decision-making process.

According to Department of the Navy regulations revised in August 1990, the action proponent will determine the level or amount of NEPA documentation required. Major actions significantly affecting the environment require preparation of an Environmental Impact Statement (EIS). Actions for which impacts are not known or which may not be significant require an Environmental Assessment (EA). Notices in the federal register are required for EISs and EAs. NEPA requirements apply to all decisions, not just military construction.

If IRP actions follow the NCP and fulfill public participation requirements, then IRP is deemed to have complied with NEPA, and there is no need for separate documentation.

Agency decisions under NEPA are subject to review by the courts.

EXECUTIVE ORDERS

Executive Order (E.O.) 12088 (13 October 1978) and 12580 (23 January 1987)

These two Executive Orders require Federal agencies to clean up their facilities with regard to the environment. E.O. 12088 requires Federal compliance with applicable pollution control standards. E.O. 12580 delegated the President’s authority under CERCLA and SARA to various Federal agencies, including DOD.#