

12.06-12/04/91-00069



DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY ARMAMENT, MUNITIONS AND CHEMICAL COMMAND
ROCK ISLAND, ILLINOIS 61299-6000



REPLY TO
ATTENTION OF

AMSMC-SR (415-10a)

4 DEC 1991

MEMORANDUM FOR Commander, Atlantic Division, Naval Facilities
Engineering Command, ATTN: 1822(L. Boucher),
Norfolk, VA 23511-6287

SUBJECT: Chemical Surety Material Removed From a Dump Site

- 1. Reference: Letter, LANTNAVFACENCOM, 19 Nov 91, SAB.
- 2. Relative to paragraph 3 of the original letter:
 - a. Paragraph 3a. Yes these are accurate statements.

(1) If DOD intent is to do site characterization in an area that has CSM, then all of the planning; i.e. recovery, transportation, emergency response, public/political notification, permitting for storage and movement, etc., must be approved and in place prior to start of work. This situation is different than a finding by unsuspecting excavation crew which finds CSM by accident in the public domain.

(2) Department of the Army to date, has not ruled on whether CSM which was buried, as an accepted means of disposal, must also be considered hazardous waste. Redstone Arsenal environmentalists have declared some suspect CSM items as hazardous waste. When the declaration was made, USATEU personnel could only package the CSM but could not transport it or take it to a CSM storage site because hazardous waste regulation requires that hazardous waste material being moved/stored must be characterized.

b. Paragraph 3b. The document which provides that EOD removes items is AR 75-14, Interservice Responsibilities for Explosive Ordnance Disposal, 25 Sep 73. The USATEU has EOD and other assets to deal with chemicals so they are usually the ones to respond.

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c. Paragraph 3c. Yes, IAW AR 50-6 and AR 190-59, CSM can be stored. However, the proper storage conditions are expensive to establish and maintain. They are (in general):

1. Lighted storage area.
2. 24 hour guards, with backup guards.
3. Double fence.
4. Locked storage area.

d. Paragraph 3d. Chemical surety material per se is not a hazardous waste. The only munition that has been declared by the Army as hazardous waste are M55 Rockets. Items found in the ground have also been declared to be hazardous waste at one Army site (Redstone Arsenal see 2.a.(2) above).

e. Paragraph 3e. The regulated storage issue is still under consideration. As superfund time-lines such as the Navy's at MCB Camp Lejeune occur, this will force a resolution.

f. Paragraph 3f. Recently the Army decided to establish a program manager for demilitarization for other than chemical stockpile munitions; i.e., "ash and trash". Exactly how this group will operate has yet to be determined. The Navy situation with an EPA deadline is the same as has been experienced by:

- | | | |
|-------------------|----------------------------|---|
| 1. Ogden, UT | Ogden Depot | DERA site |
| 2. Virgin Islands | Water Island | Formerly Used
Defense Site
(FUDS) |
| 3. Mead, NB | Nebraska
Ordnance Depot | FUDS |

3. The U.S. Army Corps of Engineers, Huntsville Division has been dealing with the EPA on a site by site basis since their mission is oversight of FUDS. U.S. Army Toxic and Hazardous Materials Agency has also been dealing with this issue; example, Ogden, UT.

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4. The attached recent letter from Region III of the EPA suggests a frank discussion between the Army and EPA of the problem and solutions is needed.

5. The point of contact for this action is the undersigned or Mrs. Betty Peterson, AMSMC-SR, DSN 793-3193/4744.

FOR THE COMMANDER:



CALVIN T. WOODARD
Major, CM
Surety Officer

Encl

CF:
AMSMC-DM



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

NOV 08 1991

Commander,
U. S. Army Armament Munitions and Chemical Command
Rock Island, IL 61299-6000

Dear Sirs:

In anticipation of the promulgation of Subpart K to the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), and as a follow-up to the United States Environmental Protection Agency's ("EPA") letter to the Secretary of Defense, attached, EPA Region III is contacting federal agencies, federal facilities and other federal entities ("federal parties") in order to inform those federal parties of their responsibilities regarding consultation with EPA. This letter is in respect to response actions undertaken by federal parties under the auspices of their authorities pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA").

In EPA Region III, the Office of Superfund in the Hazardous Waste Management Division has the responsibility for implementation of EPA authorities under CERCLA, and the NCP. Specifically, Region III's Superfund Removal Branch has the responsibility of performing CERCLA Emergency, Time Critical and Non-Time Critical Removal activities. As you may be aware, EPA's Region III encompasses five states, Pennsylvania, Maryland, Delaware, Virginia and West Virginia, and the District of Columbia.

Pursuant to Executive Order 12580, the Army has been delegated response authority "with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of their departments". In addition, the NCP, CERCLA and Section 211 of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 96-510 ("SARA") (the Defense Environmental Restoration Program (DERP)), require EPA consultation at all federal facility CERCLA responses.

In an attempt to improve the lines of communication between your agency and EPA, this letter outlines those instances during federal facility response activities where EPA contact is required. Included in each "bullet" is the applicable legal citation.

- For all releases of hazardous substances the Army must notify the National Response Center - 40 CFR Section 300.405(b).

Encl 1

• For each CERCLA action where EPA has not been previously notified, including the commencement of any studies, notice must be provided to EPA - CERCLA Section 120(c)(1), Section 211 of SARA.

• For each removal action considered, the Army should perform a removal site evaluation following the procedures in 40 CFR Section 300.410. As a result of that removal evaluation the Army must determine if the criteria for a removal action pursuant to 40 CFR Section 300.415(b)(2) have been met. At that time EPA must be given an opportunity for review and comment. - Section 211 of SARA, 40 CFR Section 300.410, 40 CFR Section 300.415.

• EPA must be consulted on all removal actions. The Army may be relieved of its obligation to consult with EPA if the action is an emergency removal action (those actions where a release requires that response actions begin on-site within hours) and consultation with EPA is impracticable. As soon as possible thereafter, the Army must inform EPA of the removal action - Section 211 of SARA, CERCLA Section 120(c).

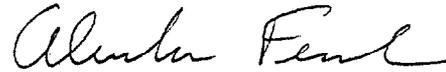
Region III is aware that in this present climate of heightened environmental concern, the amount of response activities, including removal activities, conducted by federal agencies has dramatically increased. By their nature removal activities proceed at a faster pace and oftentimes involve the remediation and/or removal of large quantities of waste. EPA Region III is concerned that the Region remain informed about all removal actions conducted within the Region. Notification to EPA of the above category of responses will help accomplish this goal.

Region III's point of contact regarding removal actions at federal facilities is:

Mr. Terry A Stilman
On-Scene Coordinator
Removal Branch
U.S. EPA Region III
841 Chestnut Building
Philadelphia, PA 19107

Working together, EPA and the Army can help ensure that all removals in Region III are done in accordance with all applicable laws. If you have any question or concerns please feel free to contact me or Terry Stilman of my staff at (215) 597-6686. Thank you in advance for your cooperation in this important matter.

Sincerely,



Abraham Ferdas, Associate Director
Superfund Office
Hazardous Waste Management Division

cc: Rick Newsome, Assisstant for Environmental Restoration
Department of the Army



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

OCT 18 1991

OFFICE OF ENFORCEMENT

Thomas Baca
Deputy Assistant Secretary of Defense (Environment)
OASD (P&L)
Washington, D.C. 20301-8000

Re: Department of Defense (DoD) Consultation with EPA

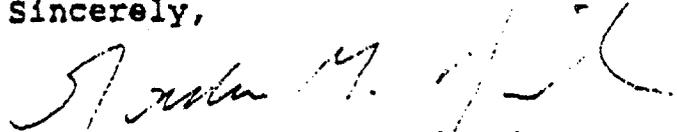
Dear Mr. Baca:

Recently, concerns have been raised within EPA regarding the number of removals DoD may be conducting without prior consultation with EPA. EPA is well aware that the number of response activities, including removal activities, conducted by the DoD has increased dramatically. It is encouraging to see the number of response actions being undertaken in an effort to improve the environment. EPA supports DoD's conducting removal actions where appropriate. Working together, EPA and DoD can help ensure that all removals are done in accordance with applicable laws.

In an attempt to enhance the lines of communication between DoD and EPA and to achieve better cleanups, I have attached to this letter a copy of EPA guidance dated February 28, 1989 entitled "Notice of Environmental Restoration Activities at Department of Defense Facilities." You may be well aware of this document, but I am bringing it to your attention in order to stress how important coordination is to EPA. Based on past experience, I believe that DoD deems coordination to be just as important. Based on this belief, I request that we meet in the near future to discuss coordination of removal actions.

Should you have any concerns or questions, please call me at (202) 260-9801. Thank you in advance for cooperation in this important matter.

Sincerely,



Gordon M. Davidson, Director
Office of Federal Facilities Enforcement

Enclosure

cc: Edward E. Reich
Scott Fulton
William White
Bruce Diamond
Waste Management Division Directors, Regions I-X
Federal Facilities Coordinators, Regions I-X
Lisa Lubick
Lewis D. Walker
Jacqueline Schafer
Gary Vest



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

FEB 28 1989

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Notice of Environmental Restoration Activities at
Department of Defense Facilities

FROM: Christopher Grundler, Director
Federal Facilities Hazardous Waste Compliance Office

TO: Superfund Enforcement Branch Chiefs
Regions I-X

Regional Counsel Hazardous Waste Branch Chiefs
Regions I-X

The purpose of this memo is to draw your attention to the notice provision of Section 211 of the Superfund Amendments and Reauthorization Act of 1986. Section 211 describes the Secretary of Defense's responsibilities under the Department of Defense's (DOD) Environmental Restoration Program. In particular, Section 2705 outlines the Secretary of Defense's responsibility to provide notice and opportunity to comment to EPA and the states on proposals for response activities at Federal facilities to address releases or threatened releases of hazardous substances at a Federal facility.

BACKGROUND

During the EPA workshop on CERCLA Section 120 Federal Facility Agreements held in September 1988, there was a great deal of discussion on the use of removal authorities at Federal facilities. Specifically, many Regions wanted to know how these activities should be incorporated into the overall remediation plan for a Federal facility since Executive Order 12580 delegates the authority to conduct on-site non-emergency removal actions to the Federal agencies. [The responsibility to conduct on-site emergency removal actions has only been delegated to the Department of Defense and the Department of Energy (DOE)].

The Regions expressed concern about cases where Federal agencies were not notifying EPA of removal actions before or at the time they were taken. Since removal activities can have a significant impact on the overall facility clean-up plan, the Regions wanted to know how EPA could compel Federal agencies to coordinate the removal actions with EPA prior to implementation to assure consistency with the final remedial action.

STATUTORY REQUIREMENT FOR NOTIFICATION AND CONSULTATION

Subsection 2705(a) of Section 211 of SARA requires the Secretary of Defense to notify EPA and appropriate State and local authorities of each of the following situations:

- (1) The discovery of releases or threatened releases of hazardous substances at the facility.
- (2) The extent of the threat to public health and the environment which may be associated with any such release or threatened release.
- (3) Proposals made by the Secretary to carry out response actions with respect to any such release or threatened release.
- (4) The initiation of any response action with respect to such release or threatened release and the commencement of each distinct phase of such activities.

In addition, subsection 2705(b)(1) requires that the Secretary of Defense ensure that EPA and State and local authorities have an adequate opportunity to comment on release notices under (1) and (2) listed above. Pursuant to subsection 2705(b)(2), EPA and the states must have adequate opportunity for timely review and comment on proposals for all response actions referred to in (3) and (4) above and before undertaking any activity or action referred to in (4). The opportunity for review and comment is required unless the action is an emergency removal taken because of imminent and substantial endangerment to human health or the environment and consultation would be impractical. We construe this to mean time-critical emergency response actions.

It is important to note that Section 2705 applies to non-NPL as well as NPL sites. It also applies to all response actions, though only removal actions are highlighted in this memorandum. Regions and states may use this authority to review and comment on response actions being taken at non or pre-NPL (i.e., in the NPL scoring pipeline) facilities that EPA or the states consider significant.

INCORPORATION INTO FFAS

In conclusion, Section 2705 makes it clear that EPA has a statutory basis for requiring review of proposed removal actions prior to implementation of these actions at DoD facilities. Although EPA Headquarters has no plans to negotiate model language for removal actions with DoD, Regions should include removal

provisions in Federal Facility Agreements. The actual language for the removal provision can be worked out in the context of site-specific negotiations.

To clarify the EPA and state oversight role for removal actions at Federal facilities, some Regions are including a special provision on removal actions in site-specific Federal Facility Agreements. (See Attachments 1 and 2).

REMOVAL ACTIONS AT NON-DOD FACILITIES

As Section 2705 of SARA was written specifically for DOD, EPA and the states have a narrower legal basis for seeking a role in the review process for non-emergency removals at non-DOD facilities. CERCLA Section 120(c) requires that information submitted under Section 3016 of RCRA be supplemented by "notice of each subsequent action taken under this Act with respect to the facility." Although this authority requires Federal agencies to give notice of activities, it does not give EPA the authority to intervene to prevent an inappropriate response.

The best argument for EPA and the states to use for carving out a role for the regulators in the review process of non-emergency removals at non-DOD facilities is that of consistency. It can be argued that all proposed actions at a NPL facility must be reviewed by EPA and the state to ensure consistency with the final remedial action.

CONTACTS

If you have any questions or comments, please feel free to call me at FTS-475-9801 or contact your regional coordinator in the Federal Facilities Hazardous Waste Compliance Office.

Attachments

cc: CERCLA Federal Facility Contacts
Ivy Main, OGC
Lee Herwig, OFA

ROUTING AND TRANSMITTAL SLIP

Date
14 Nov 91

TO: (Name, office symbol, room number, building, Agency/Post)	Initials	Date
1. AMSMC-GS		
2. AMSMC-CS <i>WGC</i>	<i>KENNARD G. KARR</i> Colonel, GS Chief of Staff	<i>18 NOV 91</i>
3. AMSMC-DCGPR		18 NOV 1991
4. AMSMC-CG		
5.		

Betty
Where best to file/hold?
Col.

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

SUBJECT: U.S. EPA Guidance

2 Copies

Info: GC
DI
DPO
SR

DO NOT use this form as a RECORD of approvals, concurrences, disposal clearances, and similar actions

FROM: (Name, org, symbol, Agency/Post) GREGORY S. MILLER Major, GS Secretary of the General Staff	Room No.—Bldg. Phone No. DSN 793-5621
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5041-102

GPO : 1987 O - 170-636

OPTIONAL FORM 41 (Rev. 7-76)
Prescribed by GSA
FPMR (41 CFR) 101-11.206

ADDRESSES

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