

Chapter 6

Program Procedures

The Army DERP was implemented to address the Army's cleanup responsibilities consistent with CERCLA/SARA, the NCP and as applicable, RCRA corrective action requirements. This section provides additional details on several program procedures required under the Army DERP.

6.1 DECISION DOCUMENTS (DD)

The term "Decision Document" encompasses Records of Decision and Action Memoranda remedies and removals, and Statements of Basis for RCRA corrective actions. Installations will maintain all DDs in the installation Administrative Record and their permanent environmental files and provide copies to USAEC.

6.1.1 CERCLA Remedial Records of Decision (ROD)/DDs

Under the CERCLA/NCP Remedial Action process at both NPL and non-NPL sites, a remedy must be selected and documented in a ROD or DD following receipt of the Proposed Plan, public comments, and consultation with the regulators. The ROD or DD serves as certification that the Army selected the remedy pursuant to CERCLA Section 104 and following the process in CERCLA Section 120 and the NCP Section 300.430. All RODs must explain how the NCP's nine evaluation criteria¹ were used to select a remedy.² All facts, analyses of facts, and site-specific policy determinations considered in implementing a remedy should be documented in a ROD in an appropriate level of detail.³ A ROD describes the site and types of contamination at issue, outlining the risks being addressed. The Feasibility Study alternatives are summarized with a discussion of why the selected alternative was chosen. A ROD explains why the remedy is protective of human health and the environment and how it attains the applicable or relevant and appropriate requirements (ARARs) of other selected federal and state laws.⁴ There should also be a description of how the technical aspects of the remedy will

¹ The nine NCP criteria are: overall protection of human health and the environment; compliance with applicable or relevant and appropriate requirements; long-term effectiveness and permanence; reduction of toxicity, mobility, or volume through treatment; short-term effectiveness; implementability; cost; state acceptance; and community acceptance. These criteria and a brief explanation of their scope can be found in 40 Code of Federal Regulations 300.430(e)(9) and (f)(1). These criteria are based on the requirements in CERCLA section 121 (42 U.S.C. 9621). For a further explanation of the 9 NCP criteria, see 55 Federal Register at 8719 (March 8, 1990).

² 40 CFR 300.430(f)(5)(i).

³ 40 CFR 300.430(f)(5)(i). See also 55 FR at 8731 (March 8, 1990), for a general description concerning decision documentation.

⁴ 40 CFR 300.430(f)(ii)(A) and (B).

address the specific site contaminants and whether five-year reviews are needed.⁵ A ROD should also show how the remedy is cost-effective proportional to its protectiveness.⁶

A ROD should contain the following nine parts:

1. Site Conditions and Background
2. Current and Potential Future Land/Water Use
3. Site Risks
4. Remedial Action Objectives⁷
5. Description and Comparative Analysis of Alternatives⁸
6. Description, Cost and Outcome of Selected Remedy
7. Statutory Determinations (ARARs & Periodic Review)⁹
8. Responsiveness Summary (i.e., summary of responses/significant comments)¹⁰
9. Declaration of Remedy & Signature

Pursuant to NCP §300.430 (f)(6), after the Army signs the ROD, the Army must:

- ◆ Publish a notice of the availability of the ROD in a major local newspaper of general circulation (the USEPA) will publish the notice in the Federal Register).
- ◆ Make the ROD available for public inspection and copying at the information repositories located on or near the facility before the commencement of any remedial action.

Per CERCLA §120 (e)(2), the remedial action must commence within 15 months of signing the ROD.

A signed ROD may be re-evaluated, if appropriate, at any point during the remedial action process (i.e., during remedial design, before or after operations are in place, when the selected remedy is found to be ineffective, more stringent cleanup standards are promulgated, or if recently developed technology may better meet cleanup goals). If, after re-evaluation, the selected remedy significantly changes, the Army will prepare an explanation of significant differences (ESD).¹¹ The

⁵ 40 CFR 300.430(f)(5)(ii)(E) and 300.430(f)(iii)(C).

⁶ 40 CFR 300.430(f)(5)(ii)(D).

⁷ 40 CFR 300.430(f)(5)(iii)(A).

⁸ 40 CFR 300.430(f)(5)(ii).

⁹ 40 CFR 300.430(f)(5)(ii) identifies the statutory requirements of CERCLA section 121 (42 U.S.C. 9621).

¹⁰ 40 CFR 300.430(f)(5)(iii)(B). See also U.S. EPA, Solid Waste and Emergency Response, *Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents*, EPA540-R-98-031 (July 1999).

¹¹ 40 C.F.R. § 300.435(c)(2)(i).

ESD would be coordinated with the appropriate regulators and provided to the public for review.¹² For fundamental remedy changes, the Army will have to modify or amend the ROD before the changes can be implemented (see Section 6.1.4).

6.1.2 Removal Action Memoranda/DD

An Action Memorandum serves as the primary decision document substantiating the need for a removal response, identifying the proposed action, and explaining the rationale for the removal.¹³ There are, however, three types of removal actions: emergency, time-critical, and non-time critical. While the NCP does not explicitly categorize Removal Actions into these categories, USEPA uses these terms in implementation guidance.¹⁴ In emergency or time-critical situations, it may be necessary to initiate action prior to the preparation of an Action Memorandum.¹⁵ Thus, documentation consistent with this guidance to the extent practicable may occur after the removal action for emergency or time critical removals.

For non-time critical removals, or where time permits prior to time-critical removals, the Action Memorandum should contain the following six parts:

1. Purpose
2. Site Conditions and Background
3. Threats to Public Health or Welfare or the Environment
4. Proposed Action(s) and Estimated Cost (including identified ARARs)
5. Recommendation
6. Signature

The Site Conditions and Background should include a site description and other actions to date. The NCP at 40 CFR 300.415(b) requires a determination that there is a threat to public health or welfare or the environment based on eight factors.¹⁶ Thus, the Action Memorandum documents why removal (as opposed to

¹² 40 C.F.R. §§ 300.435(c)(2)(i)(A), (B)(ii).

¹³ See OSWER Dir. 9360.3-01, *Superfund Removal Procedures Action Memorandum Guidance* (Dec. 1990).

¹⁴ For example, EPA Publication 9360.0-32, *Guidance on Conducting Non-Time-Critical Remedial Actions Under CERCLA*, 1993, states that: EPA has categorized removal actions in three ways: emergency, time-critical, and non-time critical, based on the type of situation, the urgency and threat of the release or potential release, and the subsequent time frame in which the action must be initiated. Emergency and time-critical removal actions respond to releases requiring action within 6 months. Non-time-critical removal actions respond to releases requiring action that can start later than 6 months after the determination that a response is necessary.

¹⁵ See OSWER Dir. 9360.3-01, *Superfund Removal Procedures Action Memorandum Guidance*, at page 5 (Dec 1990).

¹⁶ The eight factors are:

- (i) Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants
- (ii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

remedial) action is appropriate.¹⁷ The Action Memorandum also describes the proposed action and estimated costs, including how the removal action, to the extent practicable, contributes to the efficient performance of any anticipated long-term remedial action (NCP at 40 CFR 300.415(c)). This section also discusses ARARs, which are to be attained to the extent practicable considering the exigencies of the situation. Non-time critical removals should also refer to the Engineering Evaluation/Cost Analysis (EE/CA) and discuss the alternative actions considered.

6.1.3 Corrective Action Statements of Basis (SB)/DD

A Statement of Basis or similar state designated document serves as the primary DD substantiating the need for a RCRA corrective remedial action with evaluation of the proposed remedy and other alternatives based on risk-based selection criteria. The regulator should prepare a SB when corrective action is implemented through either a permit or an enforcement order¹⁸. A SB is a remedial selection document similar in purpose to a CERCLA ROD. Because the SB is issued by a regulator, a Corrective Measures Study can serve as the DD for Army staffing purposes.¹⁹

Although state specific requirements may vary somewhat, a DD/SB should contain the following seven parts:

1. Purpose
2. Site Risk and Background

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- (iii) Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;
 - (iv) High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate;
 - (v) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released
 - (vi) Threat of fire or explosion;
 - (vii) The availability of other appropriate federal or state response mechanisms to respond to the release, and
 - (viii) Other situations or factors that may pose threats to public health or welfare or the environment.

¹⁷ See U.S. EPA, Office of Enforcement and Compliance Assurance, *Use of Non-Time-Critical Removal Authority in Superfund Response Action*, February 14, 2000.

¹⁸ See OSWER Dir 9902.6, *Guidance of RCRA Corrective Action Decision Documents: The Statement of Basis Final Decision and Response to Comments*, (Feb 1991). Note that remedy selection and/or site closeout status should eventually be identified in the permit provisions concerning RCRA corrective action or if a corrective action order is updated.

¹⁹ If a Corrective Measures Study (CMS) is used as the Decision Document for Army staffing purposes, the SB does not need to be restaffed unless there are significant differences between the CMS and the SB.

3. Proposed Remedy and Scope of Corrective Action
4. Summary of Alternatives
5. Evaluation of the Proposed Remedy and Alternatives
6. Public Participation if a RAB exists or permit conditions require
7. Declaration and Signature

The Site Risk and Background should include a site description of the contaminated media, the contaminants of concern, exposure pathways, the potential exposed population, and the level of risk to human health and the environment. The EPA's guidance on corrective action established a two-phased evaluation for remedy selection sufficient to meet first threshold then balancing criteria in order to identify the remedy that provides the best relative combination of attributes. A DD/SB should also describe how the scope of the proposed remedy fits into the overall IRP strategy and effectively balances treatment with exposure control for reasonably anticipated reuse.²⁰

6.1.4 DD STAFFING AND APPROVAL PROCEDURES

The review and approval procedures for DDs are contained in the DASA(ESOH) Memorandum, 7 Aug 2003, subject: Policies for Staffing and Approving Decision Documents (Appendix G).

6.2 NON-SIGNIFICANT (OR MINOR) POST-ROD CHANGES: MEMO TO THE SITE FILE. ANY NON-SIGNIFICANT OR RECORDS MANAGEMENT

Installations must collect and retain environmental restoration records in accordance with all applicable statutes and regulations, and the record must meet USEPA guidelines. Environmental restoration records will be collected as they are generated or received in the course of the decision-making process.

6.2.1 Administrative Record

²⁰ See for use as guidance U.S. EPA Proposed Rule for *Corrective Action for Releases from Solid Waste Management Units at Hazardous Waste Management Facilities*, 61 Federal Register 19431. (May 1, 1996). Threshold criteria: Remedies must (1) be protective of human health and the environment; (2) attain media cleanup standards; (3) control the source(s) of releases so as to reduce or eliminate, to the extent practicable, further releases of hazardous waste that might pose threats to human health and the environment; and (4) comply with applicable standards for waste management. Balancing criteria: For choosing among alternatives that meet the threshold criteria: (1) long-term reliability and effectiveness; (2) reduction of toxicity, mobility, or volume of wastes; (3) short-term effectiveness, (4) implementability, and (5) cost.

Installations shall establish an Administrative Record that contains the documents that form the basis for the selection of IRP and MMRP response actions. The installation shall compile and maintain the Administrative Record in accordance with CERCLA and 40 CFR §300, Subpart I and USEPA guidance.

The Administrative Record serves two purposes. First, the Administrative Record acts as a vehicle for public participation in selecting a response action. Second, judicial review of any issue concerning the adequacy of any response action is limited to the contents of the Administrative Record. Under this provision of CERCLA, the Administrative Record is the sole source of documentation that can be used by a party challenging a response action. It is also the sole source of documents available for the defense of a response action by an installation. It is critical that the installation take care in compiling the Administrative Record. If the installation fails to compile a complete and accurate Administrative Record, it may significantly impact DoD's ability to defend, and the court's ability to review, a challenged decision. A permanent record of the data gathered to characterize a site and a clear audit trail of pertinent data analysis and resulting decisions and actions are required.

The Administrative Record shall include, but is not limited to including:

- ◆ Documents and materials containing information that may form a basis for the Army's selection of a response action.
- ◆ Documents and materials available to the installation at the time the decision was made.
- ◆ Documents and materials that were considered by or relied upon by the installation for decision making.
- ◆ Documents and materials that were available to the installation at the time of a decision, even if the decision maker did not specifically consider those documents.
- ◆ Privileged and non-privileged confidential documents and materials.
- ◆ Documents received, published, or made available to the public as required by CERCLA for removal or remedial site assessments or actions.

6.2.2 Military Munitions Response Program (MMRP) Documentation

For MMRP category responses, installations shall have a permanent record of the data gathered to characterize a site and a clear audit trail of pertinent data analysis and resulting decisions and actions. To the maximum extent practicable, the permanent record shall include sensor data that is digitally recorded and geo-referenced. The ACSIM shall approve exceptions where digitally recording and