



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
WASHINGTON, D.C. 20380-0001

IN REPLY REFER TO

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15 JUL 1988

From: Commandant of the Marine Corps

Subj: INSTALLATION RESTORATION (IR) REQUIREMENTS AND PROCEDURES

Ref: (a) MCO P11000.8B

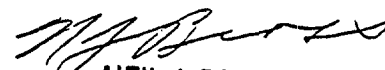
Encl: (1) CERCLA/SARA/IR Requirements and Procedures

1. Since 1980, the Department of the Navy has been investigating and cleaning up past hazardous waste disposal sites on Navy and Marine Corps installations. The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act, requires compliance by Federal Agencies in the same manner and to the same extent as any non-governmental entity. Chapter 4 of the reference assigns basic responsibilities within the Marine Corps for compliance. The enclosure provides detailed requirements and procedures pertaining to the Department of the Navy's compliance program (the Installation Restoration Program) and assigns responsibilities for the effort.

2. The Naval Facilities Engineering Command (NAVFACENGCOM) has been tasked to manage the fiscal and technical aspects of the IR program for the installation commander. However, it is imperative that installation personnel get involved early and remain involved throughout the entire process. Enclosure (1) tasks installations to take the lead on several critical procedural aspects of the program with support from NAVFACENGCOM. Close cooperation between the NAVFACENGCOM Engineering Field Divisions and your installation will be necessary to ensure success. The IR program is funded centrally by the Department of Defense. Resources to carry out installation responsibilities will be provided through the Defense Environmental Restoration Account which is administered by NAVFACENGCOM.

3. Congressional and regulatory oversight of the IR program will remain high. Our goal is to clean up past disposal sites in an expedient and cost-effective manner. Full and open cooperation with regulatory agencies and the public is encouraged.

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CERCLA/SARA INSTALLATION RESTORATION (IR) REQUIREMENTS AND PROCEDURES

Ref: (a) 40 CFR 300, National Oil and Hazardous Substances
Pollution Contingency Plan, 20 Nov 85 (50 FR 47912)

1. Legal Basis. The Superfund Amendments and Reauthorization Act of 1986 (SARA) amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and made it applicable to all federal agencies. When addressing the cleanup of hazardous waste (HW) disposal sites, Section 120 (a) (1) of CERCLA requires each federal agency to comply with the Act in the same manner and to the same extent, both procedurally and substantively, as any non-governmental entity. The only exceptions pertain to applicable time periods stated in the law for federal facilities and requirements relating to bonding, insurance, or financial responsibility (CERCLA 120(a) (3)). The act further requires that applicable state laws concerning removal actions and remedial actions apply to federal facilities (CERCLA 120(a) (4)). The U.S. Environmental Protection Agency (EPA) regulations and procedures take precedence at National Priorities List (NPL) sites (see paragraph 3d), although state cleanup standards may apply.

2. EPA Program. EPA is responsible for implementing CERCLA by developing and enforcing appropriate regulations. Regulations issued for CERCLA compliance are found in the reference, which is known as the National Contingency Plan (NCP). EPA is also issuing a series of policy memos and procedural guidance which provides detailed information on the remedial process. A compilation of these memos and guidance will form the Federal Facilities CERCLA Guidance Manual. The NCP sets forth the following general procedures for initiating and carrying out the remedial process at CERCLA sites:

- a. Site Discovery and Notification
- b. Preliminary Assessment/Site Inspection (PA/SI)
- c. National Priorities List (NPL) Ranking and Listing
- d. Remedial Investigation/Feasibility Study (RI/FS)
- e. Record of Decision (ROD)
- f. Remedial Design/Remedial Action (RD/RA)
- g. Operation and Maintenance (O&M)
- h. Long-Term Monitoring (LTM)

3. Requirements and Procedures. Response actions will be conducted in accordance with CERCLA, the NCP, and EPA's guidance. NAVFACENCOM through its Engineering Field Divisions (EFDs), provides technical and fiscal assistance. Funding is provided by the Congress through

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the Defense Environmental Restoration Account (DERA), with program guidance provided by the Office of the Assistant Secretary of Defense (OASD) (E) annually. This summary includes discussions of the following:

- Background
- Site Discovery and Notification
- Federal Agency Hazardous Waste Compliance Docket
- Preliminary Assessment/Site Inspection (PA/SI) and NPL listing
- Coordination with Regulatory Agencies and the Public
- Remedial Investigation/Feasibility Study (RI/FS)
- Health Assessment
- Record of Decision (ROD)
- Interagency Agreement (IAG)/Federal Facility Agreement
- Remedial Design/Remedial Action
- Administrative Record/Retention of Records
- Operation and Maintenance and Long-Term Monitoring
- Citizen Suits

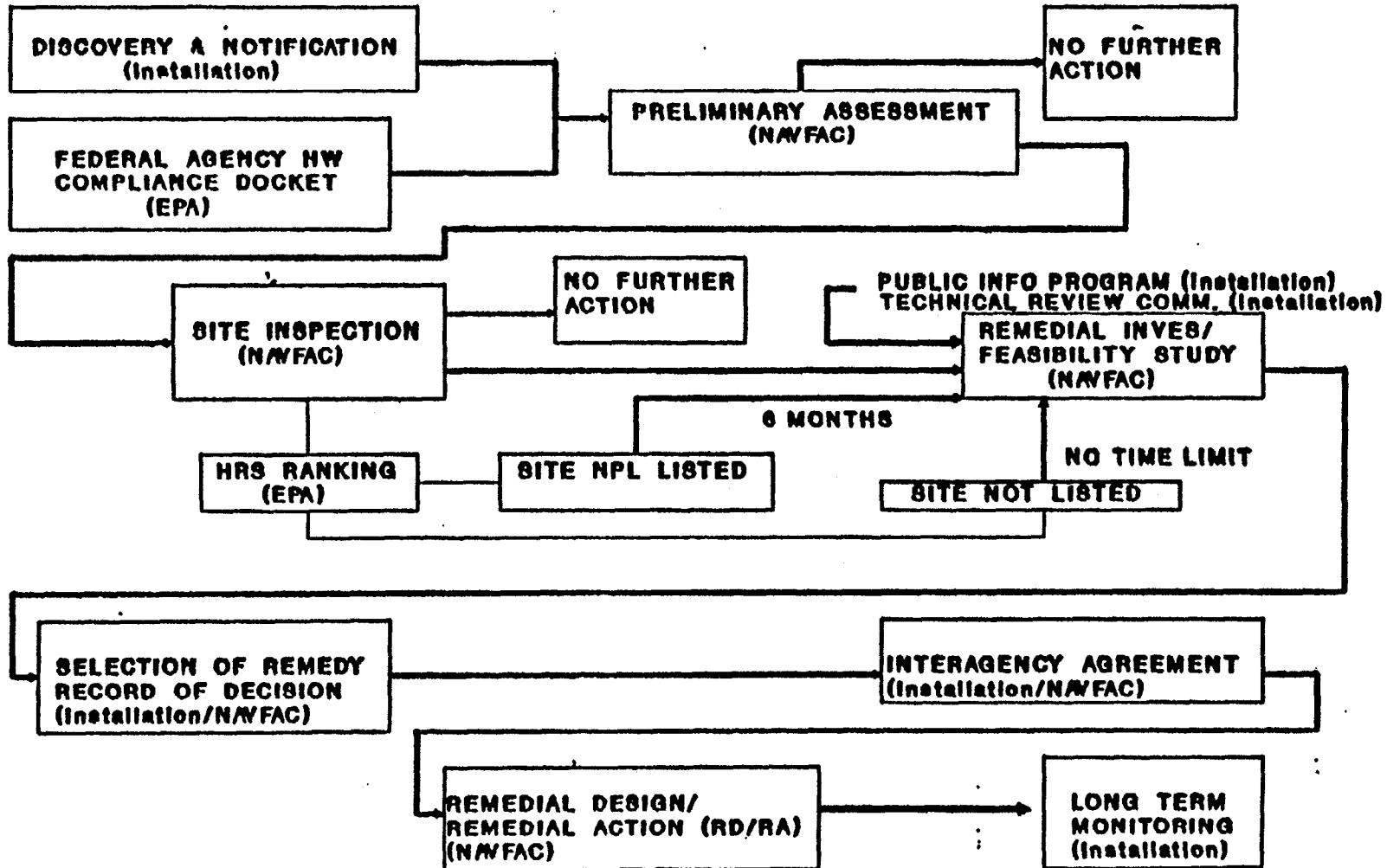
It is very important that the terms "facility", "sites", "installation", and "activity" are understood in this program. CERCLA 101 (9) defines "facility" and discusses individual "sites" as any building, structure, installation, equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or any site where a hazardous substance has been deposited, stored, disposed of, placed, or otherwise come to be located. Therefore, these two terms are carefully used in this summary. In addition, the term "installation" is used to describe the Marine Corps land that is subject to the legal requirements of CERCLA, the NCP, and to the policy contained herein. The term "activity" or Marine Corps activity" is synonymous with the term "installation" in this summary.

Figure 3-1 illustrates the basic remedial action process and outlines responsibilities for the various steps. A key to the Superfund/SARA/IR acronyms is provided in appendix (1).

a. Background. The Marine Corps, like private industry, conducts a number of industrial processing and manufacturing operations which utilize industrial chemicals. Although in the past, wastes from our operations were disposed of by the commonly accepted practices of the times, we, as a nation, have found that such practice may have resulted in significant risks to public health and the environment. With the passage of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), the Department of the Navy embarked on a program to identify, investigate, and clean up past hazardous waste disposal sites. This program called the Navy Assessment and Control of Installation Pollutants (NACIP) program was implemented at Marine Corps activities.

The NACIP program, while closely paralleling the EPA Superfund program, was not procedurally the same. CNO and CMC determined

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that approximately 100 installations should have an Initial Assessment Study (IAS) to determine through record searches, interviews, aerial maps, etc., if potential hazardous waste (HW) disposal sites existed on the installation. Over 100 IASs were done by the Naval Energy and Environmental Support Activity (NEESA) between 1980 and 1986 and over 1200 sites were identified. IASs were comparable to a Preliminary Assessment/Site Inspection (PA/SI) under EPA's program. During the IAS, all sites were run through a rating model and approximately 700 sites were recommended for further investigation through a Confirmation Study (CS). The CS was to verify and characterize contamination at the sites and was comparable to EPA's Remedial Investigation/Feasibility Study (RI/FS). The Department of the Navy had over 80 CSs underway on October 17, 1986, when the Superfund Amendments and Reauthorization Act (SARA) was passed by Congress. SARA required that Federal Agencies comply with all procedural and substantive requirements of CERCLA. Therefore, the Department of the Navy adopted the EPA/Superfund terminology and procedures in lieu of those of NACIP. This effort is referred to as the Installation Restoration Program (IRP). NAVFACENGCOM is modifying existing CS contracts to include the EPA requirements. The remainder of this guidance discusses implementation of the IR program.

b. Site Discovery and Notification. An installation commander must immediately notify the National Response Center (NRC) as soon as there is knowledge of any release (other than a federally permitted release) of a hazardous substance, in excess of a reportable quantity, from the facility (CERCLA 103). Although notification duties may be delegated, the installation commander is still ultimately responsible to ensure proper and prompt notification. A "release" is specifically defined in CERCLA 101(22). The hazardous substances and their reportable quantities are listed at 40 CFR 302. CERCLA makes no distinction between current or past releases under the reporting requirement. The requirement goes into effect upon discovery; i.e. as soon as the person in charge has knowledge of the release. This means that the installation must give prompt notice of such information to the National Response Center, similar to the telephone calls and/or short messages which installations now give to the NRC concerning spills. MCO P11000.8B provides information and format for reporting. It is imperative that a follow-up confirming letter be sent to the appropriate agency in addition to the verbal telephone notice. An owner or operator who fails to immediately notify the appropriate agency as soon as there is knowledge of such release or submits any information which is known to be false or misleading, can be prosecuted and fined or imprisoned upon conviction (CERCLA 103(b)).

Under the Installation Restoration Program, notification of potential release is accomplished when the installation commander forwards a Preliminary Assessment/Site Inspection (PA/SI) report (see paragraph (3d)) to EPA and State regulatory agencies. Usually,

until a PA/SI is accomplished, the installation commander has no knowledge of a release. If, however, the installation discovers a release, and that release has not previously been reported in an IAS or PA/SI, then the installation commander must report it immediately to the appropriate agency. The NAVFACENGCOM EFD should then be requested to investigate the problem. If an installation, in reviewing its records, discovers information that a potential disposal site exists that was not previously investigated, then the installation should report this information to the Engineering Field Division for further review. It need not be reported to the NRC at this time since it is only a potential site.

c. Federal Agency Hazardous Waste Compliance Docket. Congress wanted to ensure that federal agencies accomplished preliminary assessments (PAs) at certain installations. They required EPA to establish a Federal Agency Hazardous Waste Compliance Docket. The docket lists those federal facilities that submitted under the following notification, reporting, and permitting sections of RCRA and CERCLA:

(1) Resource Conservation and Recovery Act (RCRA) Section 3016, Biennial Inventory of Federal Hazardous Waste Facilities.

(2) RCRA Section 3005, Permits for Treatment, Storage, and Disposal of Hazardous Wastes.

(3) RCRA Section 3010, Notification of Hazardous Waste Generation, Transport, Treatment, Storage, or Disposal Activities.

(4) CERCLA Section 103, Notice of Hazardous Substance Release.

The docket also lists any installation which has reported a release of a hazardous substance, applied for a RCRA Part A or Part B permit, or submitted NACIP or IR information to EPA.

EPA published the initial docket in the Federal Register on 12 February 1988. A preliminary assessment must be accomplished (See paragraph (3d)) for each facility on the docket (Section 120(d)). These are being conducted by NAVFACENGCOM for Navy/Marine Corps installations. The installation commander is required to forward them to EPA.

EPA must make the docket information available for public inspection at reasonable times, and establish a program to provide this information to the public (CERCLA 120(c)(3)). EPA has established repositories of docket information at their regional offices. In conjunction with the installations, NAVFACENGCOM should review and upgrade the repository information

and ensure that all sites are being addressed. EPA will not remove sites from the docket but it will indicate "No further action required" or other status, as appropriate.

d. Preliminary Assessment/Site Inspection (PA/SI) and NPL Listing. After site discovery and notification by an installation or after an installation has been listed in the Federal Agency HW Compliance Docket, NAVFACENGCOM will ensure that a Preliminary Assessment is conducted, and where appropriate, a follow-on site inspection is done. A PA is developed from readily available existing information and includes (1) identification of the source and nature of the release, (2) evaluation of the magnitude of the potential threat, and (3) evaluation of factors necessary to determine if immediate removal is necessary. The PA determines if additional investigation of the site is required. The PA is forwarded to EPA and state regulatory agencies by the installation commander. If additional investigation is required, actual samples are collected and analyzed in a Site Inspection (SI) by NAVFACENGCOM. At the conclusion of the SI, the total PA/SI package is sent to EPA and state regulatory agencies by the installation commander.

Information from the PA/SI is used for scoring hazardous waste sites. Using a Hazard Ranking System (HRS), EPA must score hazardous waste sites based upon their potential to affect human health, welfare, and the environment. The HRS is a means of applying uniform technical judgement regarding the potential hazards presented by a facility relative to other facilities. It does not address the feasibility, desirability, or degree of cleanup required. Hazardous waste sites receiving the highest scores (i.e, having the highest potential for affecting human health, welfare, and the environment) are put on the National Priorities List (NPL) (40 CFR 300, appendix B). A site is proposed for the NPL if the site score is 28.5 or higher. Sites on the NPL will receive the highest priority within the IR program.

e. Coordination with Regulatory Agencies and the Public. At this point in the IR program, initial investigation of a number of sites has been accomplished. Unlike other Department of the Navy programs, CERCLA and EPA guidance require that regulatory agencies and the public be informed of these results and other studies/investigations as they occur. Therefore, the following actions are required:

(1) Comment by EPA, State and Local Authorities. The installation commander must ensure that EPA and appropriate state and local officials have adequate opportunity to review and comment on assessments/studies and proposals for response/remedial actions (SARA 211). Although assessments, studies, and recommendations for remedial actions are normally conducted for the installation by NAVFACENGCOM, the installation commander remains the person ultimately responsible for ensuring compliance with this section by forwarding documents to regulatory agencies. ←

(2) Technical Review Committee (TRC). The installation commander must establish a Technical Review Committee to review and comment on IR actions and proposed actions, whenever possible and practical. The function of the TRC is to maintain a dialogue with technically knowledgeable individuals to help ensure that all environmental concerns with the studies and ultimate cleanup recommendations have been addressed during the remedial process. Invitations for participation must be sent to the EFD, the EPA, and appropriate state and local authorities, including a public representative of the community involved (SARA 211). Generally, this will require that a technical review committee be formed at each installation with IR sites. Committee membership will facilitate other aspects of the IR process, such as regulatory involvement and public participation. NAVFACENCOM EFDs should be consulted for assistance with the TRC.

(3) Public Information Program. It is essential that an active public information program be implemented at the installation level for all IR sites and that a formal written Community Relations Plan be prepared by each installation that has a site listed on the National Priorities List. The installation shall initiate and continue the public information program throughout the life of the IR program at the installation. Area coordinators and EFDs should be kept informed of all public affairs actions taken by the installation.

f. Remedial Investigation/Feasibility Study (RI/FS). Sites identified in the PA/SI as potential threats to human health or the environment, receive a comprehensive investigation called an RI/FS. All contaminants and their migration pathways are defined, potential risks to public health and the environment are assessed, and a comprehensive, quantitative risk assessment is carried out. The RI serves as the mechanism for collecting data for site and waste characterization to evaluate the performance and cost of the treatment technologies and support the design of selected remedies. The FS serves as the mechanism for the development, screening, and detailed evaluation of potential alternatives. The purpose is to evaluate the threat to public health before remedial actions, to develop cleanup performance goals, and to compare the health risks of the cleanup alternatives. Although many criteria are to be used in selecting remedial actions, protection of public health and the environment is paramount (CERCLA 121(d)). Activities should assist NAVFACENCOM and the RI/FS contractor to obtain complete and accurate information so that the risk assessment results are representative. The Remedial Action alternatives are evaluated in terms of effectiveness and cost. It is Department of the Navy policy to conduct an RI/FS at both NPL sites and non-NPL sites in accordance with EPA guidelines. The RI/FS will be conducted by NAVFACENCOM. SARA requires an RI/FS be commenced within six months of a site being listed on the NPL. The RI/FS is considered to be commenced when a notice is provided to the appropriate regional EPA office that a contract to conduct the RI/FS has been awarded. RI/FS's at non-NPL sites will be expedited also.

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g. Health Assessment. The Agency for Toxic Substances and Disease Registry (ATSDR) must perform a health assessment for each facility proposed for the NPL (CERCLA 104 (i) (6)). We expect ATSDR to do this using available information from our IR studies and from site visits. ATSDR must complete a health assessment before the completion of the RI/FS to the maximum extent possible. Marine Corps personnel should cooperate with ATSDR by providing requested information. The results of ATSDR's analysis should be used in the RI/FS as appropriate.

h. Record of Decision (ROD). The installation commander must prepare a ROD to document the decision-making process whenever a remedial action or no action alternative is selected at both NPL and non-NPL sites. Normally, the NAVFACENGCOM EFD will prepare a ROD at the conclusion of an RI/FS. The EFD Commander will forward the recommended ROD to the installation commander. The installation commander must carefully review the proposed ROD and the administrative record (paragraph 3k). If the commander concurs, then he/she should sign it. If he disagrees or has questions on the ROD, the installation commander should discuss and resolve the question with the EFD. A reasonable opportunity for public review and comment must be provided before adoption of any plan for remedial action. The ROD should have a public review and any significant comments, criticisms, and new data submitted by the public should be responded to and be made available to the public before commencement of any remedial action. For NPL sites, the ROD is forwarded to EPA for concurrence. If agreement is not reached on selection of a remedial action for NPL sites with EPA, then selection is by EPA (CERCLA 120(e)). The Department of the Navy has final decision authority for non-NPL sites, as long as all "applicable, relevant, and appropriate" federal and state standards are taken into account. However, if State Superfund laws exist, they must be complied with per CERCLA 120(a) (4).

i. Interagency Agreement (IAG)/Federal Facility Agreement.

(1) No Marine Corps installation has yet entered into an IAG. Until this Headquarters establishes an experience base and is able to provide definitive instruction (including boiler plate clauses for relationships with EPA and state authorities) commanders should exercise caution in making commitments for specific cleanup actions and should seek guidance in each case.

(2) Within 180 days after EPA review of each RI/FS for an NPL site, federal agencies must enter into an IAG with EPA for the expeditious completion of all necessary remedial action (CERCLA 120(e) (2)). Each IAG must include:

(a) A review of alternative remedial actions and selection of a remedial action by the federal agency and EPA.

(b) A schedule for completion of each remedial action.

(c) Arrangements for long-term operation and maintenance of the facility.

The IAG will be signed by the installation commander. Although the IAG is not required until six months after the completion of an RI/FS, it is desirable to have an agreement early in the RI/FS stage. Such agreements should be reviewed by the cognizant EFD for both technical and legal aspects. No such agreement should be signed by an installation commander unless it has been reviewed by the Office of General Counsel, Assistant General Counsel (Environmental Law). Such review shall be accomplished via the normal chain of command.

j. Remedial Design/Remedial Action. After the Record of Decision has been completed, Remedial Design and Remedial Action should be commenced. For NPL sites, "substantial continuous physical onsite remedial action" must commence not later than 15 months after completion of the RI/FS (CERCLA 120 (e)). This means actual full-scale drilling, excavation, or construction, not merely contract award or groundbreaking. Remedial actions should be completed as expeditiously as possible, whether at NPL or non-NPL sites.

k. Administrative Record /Retention of Records. An administrative record must be established for all IR sites. This forms the basis for the installation commander's selection of a response action. The administrative record must be made available to the public at or near the facility at issue (CERCLA 113(K)). In any judicial action under CERCLA, a court will look to the administrative record to determine whether the agency's decision in selecting a response action was properly made. Unless the objecting party can demonstrate that the decision was not based on an adequate record, was "arbitrary and capricious," or otherwise not in accordance with law (CERCLA 113 (j)), the decision will be upheld. NAVFAC EFDs will establish and maintain the administrative record and send copies/updates to the installation, state, and EPA. Installation commanders must ensure that they send any new or additional information, such as correspondence with regulatory agencies and the public, to the EFD for possible addition to the administrative record. Installations must ensure that the administrative record is available to the public. An up to date duplicate of each item in the official EFD file must therefore be maintained at the installation.

CERCLA 103(d) requires that any person who must notify of known, suspected, or likely releases under Section 103(c) of CERCLA must also retain records of the facility and the hazardous substance release for 50 years after the Act was enacted (1980 + 50 = 2030) or for 50 years after the record was established, whichever is later. The records include information on the location, title, and condition of the facility and the identity, characteristics, quantity, origin, or condition (including containerization and previous treatment) of any hazardous substances contained or deposited on the facility. It is unlawful to destroy, mutilate, conceal, or falsify such records. EPA is authorized to promulgate rules and regulations with respect to the records which should be retained, but has not done

so to date. Pending any such guidance, each installation should retain the appropriate records for at least the statutory time period or apply to EPA for appropriate waivers. Costs for maintaining these records will come from installation operating funds.

1. Operation and Maintenance and Long-Term Monitoring.

Defense Environmental Restoration Account (DERA) funds are available for remedial actions, including planning, design, construction, operation, and maintenance. DERA will pay for project capital costs and the first two years of O&M expenses for long-term monitoring systems. Activities must budget and pay for necessary monitoring after two years. This would give sufficient time for the installation to program for the O&MMC costs. The two year period begins with the next available programming cycle after a decision to perform no further remedial action.

m. Citizen Suits. CERCLA allows any citizen to sue any person or government agency "...who is alleged to be in violation of any standard, regulation, condition, requirement, or order which becomes effective pursuant to this Act (including any provision of an agreement under section 120, relating to federal facilities)" (CERCLA 310). This allows private citizens to ensure that the Department of the Navy as an organization and/or its military and civilian employees as individuals are in compliance with CERCLA and with the terms of interagency agreements. In order to sue a federal agency under these provisions, a citizen must give a notice of violation to the President, the State in which the violation occurs, and the Agency. If diligent actions are taken within 60 days after receiving a notice of violation to comply with a CERCLA requirement, then the lawsuit can be prevented. To avoid lawsuits and potential court orders, Marine Corps installations (with NAVFACENCOM support) must comply with CERCLA and the terms of interagency agreements. Installation commanders and their staffs should be alert to any correspondence from citizens and citizen groups which purports to be a notice of violation and would commence the 60 day time limitation. The installation and EFD legal counsel should be consulted immediately if a citizen suit letter is received by the installation.

KEY TO SUPERFUND/SARA/IR ACRONYMS

ATSDR Agency for Toxic Substances and Disease Registry
CERCLA Comprehensive Environmental Response,
Compensation, and Liability Act, as amended
CFR Code of Federal Regulations
DERA Defense Environmental Restoration Account
DERP Department of Defense Environmental Restoration
Program
EPA U.S. Environmental Protection Agency
FR Federal Register
IAG Interagency Agreement
IR Installation Restoration
NACIP Navy Assessment and Control of Installation
Pollutants
NCP National Contingency Plan
NPL National Priorities List
NRC National Response Center
PA/SI Preliminary Assessment/Site Inspection
RCRA Resource Conservation and Recovery Act
RD/RA Remedial Design/Remedial Action
RI/FS Remedial Investigation/Feasibility Study
ROD Record of Decision
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