

FISH AND WILDLIFE SERVICE
POLLUTION CONTROL

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10.1 What is the purpose of this chapter? This chapter provides guidance for compliance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended.

10.2 What is the scope of this chapter? This chapter covers CERCLA site cleanups for both the National Priorities List (NPL) sites and non-NPL sites. Projects funded through the Refuge Cleanup Fund are typically non-NPL cleanups.

10.3 What are the authorities for this chapter?

A. Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (CERCLA) as amended (42 U.S.C. 9601 *et seq.*).

B. Executive Order 12580, Superfund Implementation, January 23, 1987; as amended by Executive Order 12777, October 18, 1991, and Executive Order 13016, August 28, 1996.

C. Environmental Protection Agency (EPA), Identification and Listing of Hazardous Waste (40 CFR 261).

D. EPA, National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300).

E. EPA, Designation, Reportable Quantities, and Notification (40 CFR 302).

10.4 What terms do you need to know to understand in this chapter?

A. Docket. The Docket is the Federal Agency Hazardous Waste Compliance Docket. It contains certain information about Federal facilities managing hazardous waste or from which hazardous substances have been or may be released. The Docket contains all Federal facility information submitted under Sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA) and Section 103 of CERCLA. Sites included on the Docket are called "Docket sites." See 560 FW 5 for more information.

B. Hazard Ranking System (HRS). The HRS is a system that EPA uses for evaluating the relative potential of hazardous substance releases to cause health, safety problems, ecological, or environmental damage. EPA uses the HRS to determine priorities among the various releases or threatened releases of hazardous substances throughout the Nation and whether or not to include them on the NPL. Sites are listed on the NPL when they receive a score of greater than 28.5.

C. Hazardous Substance. A group of substances defined as hazardous under CERCLA section 101(14). The group includes:

(1) Substances designated in section 311(b)(2)(A) of the Clean Water Act (CWA);

(2) Elements, compounds, mixtures, solutions, or substances designated in section 102 of CERCLA;

(3) Hazardous wastes having the characteristics identified under or listed in section 3001 of the Solid Waste Disposal Act (but not including any waste for which Congress has suspended its regulation);

(4) Toxic pollutants listed under section 307(a) of the CWA;

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(5) Hazardous air pollutants listed in section 112 of the Clean Air Act; and

(6) Imminently hazardous chemical substances or mixtures that the Administrator of EPA has taken action on under section 7 of the Toxic Substance Control Act.

(7) The term 'hazardous substance' does not include petroleum, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel.

D. National Contingency Plan (NCP). The National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300) is required by Section 105 of CERCLA and Section 311(d) of the CWA. It provides guidance on the organizational structure and procedures for preparing for and responding to releases of hazardous substances, pollutants, and contaminants under CERCLA and discharges of oil under the CWA. The NCP:

(1) Applies to all CERCLA response actions, both NPL and non-NPL sites.

(2) Establishes the responsibilities of the various organizations (e.g., National Response Teams, Regional Response Teams) that take part in responses to releases, and describes how the members of these organizations (e.g., On-Scene Coordinators, Remedial Project Managers) coordinate with each other.

(3) Describes methods and criteria for determining the appropriate extent of response.

(4) Describes the procedures to follow in performing cleanups, remedial actions, and removals.

(5) Requires the lead agency to allow community involvement and to prepare an administrative record to support its actions.

E. National Priorities List (NPL). The NPL is EPA's list of sites and comprises the most serious uncontrolled hazardous substance releases in the United States identified for long-term remedial evaluation and response under CERCLA. The list is primarily based on the HRS score a site receives.

F. Remedy or Remedial Action. Remedial actions are those actions consistent with permanent cleanup taken instead of, or in addition to, removal action in the event of a release or threatened release of a hazardous substance into the environment. Remedial actions prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to public health or welfare or the environment.

G. Removal Action. Removal actions are generally completed within 1 year and at a cost of no more than \$2 million and should contribute to the efficient performance of any anticipated long-term remedial action. Removal actions:

(1) Are taken to clean up or remove released hazardous substances from the environment.

(2) Are used in the event of the threat of release of hazardous substances into the environment.

(3) Include monitoring, assessing, and evaluating the release or threat of release of hazardous substances.

(4) Include the disposal of removed material.

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(5) Involve the taking of other actions that may be necessary to abate, prevent, minimize, stabilize, mitigate, or eliminate the threat to public health or welfare or to the environment, which may otherwise result from a release or threat of release.

10.5 What are the program requirements for CERCLA compliance? Following are the general requirements for CERCLA compliance. See section 10.9 for information about who in the Service is responsible for these requirements.

A. CERCLA Section 103 requires notification to the National Response Center of all hazardous substance releases (other than a federally permitted release) in a quantity equal to or exceeding the reportable quantity (RQ). See section 10.7 for more details on spill reporting.

B. CERCLA Section 117 requires that, before any plan for remedial action is adopted, a public notice be published and the public be given a reasonable opportunity for involvement.

C. CERCLA Section 120(a) provides that each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of Government) is subject to CERCLA requirements.

D. CERCLA Section 120(c) requires that EPA establish and maintain a special Federal Agency Hazardous Waste Compliance Docket. 560 FW 5 describes in detail the Docket and provides procedural guidance for listing, investigating, cleaning up, and reporting the status of Service facilities on the Docket.

E. CERCLA Section 120(d) requires the timely completion of a preliminary assessment for each site on the Docket and, when required by the HRS, inclusion of the facility on the NPL.

F. CERCLA Section 120(e) establishes the timeframe for starting the Remedial Investigation/Feasibility Study (RI/FS) for a federally owned site added to the NPL and requires an interagency agreement for each such site between EPA and the Federal agency that owns it.

G. CERCLA Section 120(f) requires us to give State and local officials the opportunity to participate in planning and selecting the remedial action. Their participation includes, but is not limited to, the review of all applicable data as it becomes available and the development of studies, reports, and action plans.

H. CERCLA Section 120(h) describes the requirements the Service must follow whenever we enter into a contract for the sale or other transfer of real property that is owned by the United States.

I. CERCLA Section 121 establishes the statutory requirements for cleanup actions.

10.6 What types of spill releases are evaluated under CERCLA authority? The NCP defines spills as any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. This includes abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant. For the purposes of the NCP, release also means the threat of a release. The NCP excludes the following from the definition of a release:

A. Any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons;

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B. Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

C. Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act, or, for the purposes of section 104 of this title or any other response action, any release of source byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and,

D. Normal application of fertilizer.

10.7 What are the reporting requirements for spill releases?

A. 40 CFR 302.6 requires notification to the National Response Center (1-800-424-8802) of any release (other than a federally permitted release or application of a pesticide) of a hazardous substance in a quantity equal to or exceeding the reportable quantity (RQ) in any 24-hour period. In the event of such a release, the facility managers will notify the National Response Center and the Regional or California/Nevada Operations (CNO) office as described in section 10.9, and, if required, will notify the Individual State Environmental Compliance offices. Failure to notify will be subject to all of the sanctions, including criminal penalties, set forth in section 103 of the Act.

B. Reportable quantities for hazardous substances are listed in the column titled "Final RQ" in 40 CFR Table 302.4, or in Appendix B to Table 302.4. The RQ's in Table 302.4 are in units of pounds based on chemical toxicity, while the RQ's in Appendix B to Table 302.4 are in units of curies based on the radiation hazard. In all cases, the RQ applies to the hazardous substance itself, not merely to the toxic contaminant. Whenever the RQ's in Table 302.4 and Appendix B are in conflict, the lowest RQ will apply. Unlisted hazardous substances designated by 40 CFR 302.4(b) have the RQ of 100 pounds, except for those unlisted hazardous wastes that exhibit extraction procedure (EP) toxicity identified in 40 CFR 261.24. Field stations can obtain copies or consult with Regional/CNO Compliance Coordinators or the Division of Engineering for tables on reportable quantities.

10.8. Who is lead agency when there is a release of a hazardous substance?

A. When a release is on, or the sole source of a release is from any facility or vessel under the jurisdiction, custody, or control of a Federal agency other than EPA, the U.S. Coast Guard, Department of Defense, or Department of Energy, then that agency will be the lead agency for remedial actions and removal actions other than emergencies.

B. The Federal agency maintains its lead agency responsibilities regardless of which agency selects the remedy.

C. The lead Federal agency provides the On-Scene Coordinator (OSC) and/or Remedial Project Manager (RPM) to plan and implement response actions under the NCP.

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10.9 Who is responsible for CERCLA site investigation and cleanup for the Service?

A. The Chief, Division of Engineering (DEN) is responsible for:

- (1) Managing and maintaining a consolidated list of all Service cleanup projects.
- (2) Representing the Service on the Department of the Interior (DOI) Central Hazmat Technical Review Committee for CERCLA cleanup projects.
- (3) Assigning a DEN representative to the Refuge Cleanup Technical Review Committee.
- (4) Assigning a DEN representative to serve as the Service's Docket Coordinator. The Docket Coordinator is the primary point of contact for DOI and EPA on issues involving the Docket and CERCLA cleanup sites.
- (5) Assigning a DEN representative to serve as the Environmental Cleanup Liability (ECL) Coordinator. The ECL Coordinator is the primary point of contact for DOI on entries into the ECL database.
- (6) Providing guidance and technical assistance to the Regions/CNO on compliance with CERCLA requirements.

B. The Chief, Division of Environmental Quality is responsible for administering the Service pollution incident reporting program.

C. The Chief, Division of Safety and Health is responsible for providing assistance to Regional/CNO safety managers for health and safety issues related to CERCLA.

D. Regional Directors and the California/Nevada Operations Office (CNO) Manager are responsible for ensuring that the Region/CNO:

- (1) Fully implements CERCLA requirements.
- (2) Provides appropriate training for its OSCs, RPMs, and other response personnel to carry out their responsibilities under the NCP.
- (3) Assigns qualified personnel to act as OSCs and RPMs.
- (4) Ensures that CERCLA funding requirements are included in the annual budget.

E. Regional/CNO Engineers, in conjunction with the **Regional/CNO Environmental Contaminants Coordinators** are responsible for:

- (1) Coordinating all cleanup actions with the appropriate programmatic managers, supervisors, and staff.
- (2) Investigating and determining site status of cleanup projects on Service lands.
- (3) Requesting funds for site cleanup.

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(4) Developing and implementing actions intended to effectively minimize health risks and environmental damage as required by CERCLA.

(5) Providing training to support qualified personnel to serve as OSCs and RPMs.

(6) Providing technical assistance to Regional/CNO field stations on CERCLA issues.

F. On-scene Coordinators and Remedial Project Managers are responsible for:

(1) Both OSCs and RPMs are responsible for managing the cleanup of releases of hazardous substances, pollutants, or contaminants, when the release is on, or the sole source of the release is from our facilities.

(2) OSCs are responsible for removal actions. They coordinate, direct, and review the work of other agencies, responsible parties, and contractors to assure compliance with the NCP, decision document, consent decree, administrative order, and lead-agency approved plans for the response.

(3) RPMs coordinate, direct, and review the work of other agencies, responsible parties, and contractors to assure compliance with the NCP, Record of Decision (ROD), consent decree, administrative order, and lead agency-approved plans applicable to the response.

(4) Based on the reports of other agencies, responsible parties, and contractors, the RPM recommends action for decisions by lead agency officials. The RPM's period of responsibility begins prior to initiation of the RI/FS and continues through design and remedial action and the CERCLA cost recovery activity. The OSC and RPM ensure orderly transition of responsibilities from one to the other.

(5) RPMs conduct public meetings and provide an administrative record for the public.

(6) RPMs participate in all decision-making processes necessary to ensure compliance with the NCP, including, as appropriate, agreements between EPA or other Federal agencies and the State.

G. Regional/CNO Safety Managers assist with developing an occupational safety and health program for response action worker safety. They help to ensure that we meet the following requirements:

(1) For all response actions taken under the NCP, the lead agency makes available an occupational safety and health plan, which is consistent with 29 CFR 1910.120.

(2) Contracts for a response action under the NCP should contain assurances that the contractor at the response site must comply with this program and with any applicable provisions of the Occupational Safety and Health Act of 1970 and state laws.

H. Facility Managers: Following are the responsibilities of managers of refuges, hatcheries, and other field stations, as well as any location where the Service occupies space:

(1) Facility managers are responsible for immediately notifying the National Response Center (1-800-424-8802), the Regional/CNO Environmental Compliance Coordinator, and the Regional/CNO Spill Response Coordinator in the event of a reportable hazardous material spill. They may also be required to notify the State Environmental Agency, depending on the law of the State. If a facility manager is uncertain whether or not a release or spill constitutes a responsible release, the facility manager must immediately receive

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guidance from the Regional/CNO Environmental Compliance Coordinator, or the Regional/CNO Spill Response Coordinator. If Regional/CNO contacts are not available, contact the Division of Engineering, Branch of Environmental Compliance in Arlington, Virginia.

(2) Under no circumstances will facility managers begin remedial action to mitigate hazardous material spills or initiate site investigations of suspected CERCLA locations before notifying appropriate sources or receiving authorization to begin.


DIRECTOR

Date: February 22, 2006