



U.S. Department of Energy
U.S. Environmental Protection Agency



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MEMORANDUM

SUBJECT: Policy on Decommissioning Department of Energy
Facilities Under CERCLA

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TO: See Addressees

The attached policy establishes the approach agreed upon by the Environmental Protection Agency (EPA) and the Department of Energy (DOE) for decommissioning surplus DOE facilities consistent with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This policy is the result of a joint effort by EPA and DOE to develop an approach to decommissioning that ensures protection of worker and public health and the environment, that is consistent with CERCLA, that provides for stakeholder involvement, and that achieves risk reduction without unnecessary delay.

Consistent with the jointly issued "Guidance on Accelerating CERCLA Environmental Restoration at Federal Facilities" (August 22, 1994), this decommissioning policy encourages streamlined decisionmaking. This policy builds on the goal of that guidance to "develop decisions that appropriately address the reduction of risk to human health and the environment as expeditiously as the law allows.

The policy establishes that decommissioning activities will be conducted as non-time critical removal actions, unless the

circumstances at the facility make it inappropriate. Use of non-time critical removals for conducting decommissioning activities effectively integrates EPA oversight responsibility, DOE lead agency responsibility, and state and stakeholder participation.

So that EPA can fulfill its responsibilities to ensure compliance with CERCLA requirements, including remedy selection at NPL facilities, DOE Operations Offices will consult with EPA Regions and share information as determined by the DOE Operations Office and affected EPA Region. Decommissioning projects will retain sufficient flexibility to tailor activities to meet specific site needs and achieve risk reduction and environmental restoration expeditiously.

This policy and any internal procedures adopted for its implementation are intended exclusively for employees of the U.S. Environmental Protection Agency, for employees of the U.S. Department of Energy, and for DOE contractors. This guidance does not constitute rulemaking by EPA and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. EPA may take action at variance with this guidance or its internal implementing procedures.

Addressees:

United States Environmental Protection Agency
Waste Management Division Directors, Regions I-X
Federal Facility Leadership Council Regions I-X
Regional Counsels, Regions I-X
Federal Facilities Coordinators, Regions I-X

United States Department of Energy
Environmental Restoration Office Directors
Assistant Managers for Environmental Management,
DOE Operations Offices

**POLICY ON DECOMMISSIONING OF DEPARTMENT OF ENERGY FACILITIES
UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE,
COMPENSATION, AND LIABILITY ACT (CERCLA)**

PURPOSE

This Policy establishes the approach agreed upon by the Department of Energy (DOE) and Environmental Protection Agency (EPA) for the conduct of decommissioning projects¹ consistent with CERCLA requirements. This Policy creates a framework for the conduct of decommissioning of DOE facilities and provides guidance to EPA Regions and DOE Operations Offices on the use of CERCLA response authority to decommission such facilities. The principal objectives of this Policy are to ensure that decommissioning activities are protective of worker and public health and the environment, consistent with CERCLA and, where applicable, the Resource Conservation and Recovery Act (RCRA), ensure stakeholder involvement, and achieve risk reduction without unnecessary delay.

This Policy builds on the foundation established in the recent EPA/DOE/DOD "Guidance on Accelerating CERCLA Environmental Restoration at Federal Facilities" (August 22, 1994). Specifically, this Policy represents the next step in realizing the goal of that guidance to "develop decisions that appropriately address the reduction of risk to human health and the environment as expeditiously as the law allows." To achieve that end, this Policy endorses the use of removal action authority to conduct decommissioning, although DOE and EPA recognize that removal action will not necessarily be the final response action needed at a facility subject to decommissioning.

The DOE Office of Environmental Management (EM), and EPA Federal Facilities Restoration and Reuse Office (FFRRO) and Federal Facilities Enforcement Office (FFEO) have developed this approach for applying CERCLA authority to decommissioning activities to encourage streamlined decisionmaking in decommissioning activities.

¹ For purposes of this Policy, decommissioning includes those activities that take place after a facility has been deactivated and placed in an ongoing surveillance and maintenance program. Decommissioning can include decontamination and dismantlement. Decontamination encompasses the removal or reduction of radioactive or hazardous contamination from facilities. Dismantlement involves the disassembly or demolition, and removal, of any structure, system, or component and the interim or long-term disposal of waste materials in compliance with applicable requirements.

Deactivation is the process of placing a facility in a safe and stable condition that is protective of workers, the public, and the environment until decommissioning is completed. As the bridge between operations and decommissioning, deactivation can accomplish operations-like activities such as final process runs, and also decontamination activities aimed at placing the facility in a safe and stable condition.

BACKGROUND

Executive Order 12580 "Superfund Implementation" delegates from the President to the Secretary of Energy certain CERCLA response authorities for facilities under DOE jurisdiction, custody, or control. The EPA/DOE/DOD "Guidance on Accelerating CERCLA Environmental Restoration at Federal Facilities" (August 22, 1994) reaffirms this point, stating that "federal agencies, other than EPA, have jurisdiction for carrying out most response actions at federal facility sites. As EPA is not the lead agency at such sites, its role is different from that at other Superfund sites." Consistent with Executive Order 12580, the National Contingency Plan (NCP) designates DOE as the lead agency for responding to releases on, or where the sole source of the release is from, a facility under DOE's jurisdiction, custody, or control. As lead agency, DOE is authorized to conduct removal action, remedial action, and any other response measures consistent with the NCP. The exercise of such response authority must be in accordance with the requirements of section 120 of CERCLA. For facilities that are listed on the National Priorities List (NPL), section 120 of CERCLA requires DOE and EPA to enter into an Interagency Agreement (IAG), which establishes requirements for remedial action at the facility. Therefore, the roles and authority of DOE and EPA will be defined, in part, by the terms of such agreement. For non-NPL facilities, DOE may take response action subject to CERCLA, the NCP, and other applicable requirements.

DOE will utilize CERCLA response authority whenever a hazardous substance is released, or there is a substantial threat of release, into the environment, and response is necessary to protect public health, welfare, or the environment. DOE Order 5400.4 requires DOE to respond to any release or substantial threat of a release of a hazardous substance into the environment in a manner consistent with CERCLA and the NCP, regardless of whether or not the release or threatened release is from a site listed on the NPL.

The definition of "environment" includes all natural media under U.S. jurisdiction. CERCLA does not generally address releases which are entirely within buildings because the presence of hazardous substances within a building does not constitute a release of such substances into the environment. Hazardous substances within a building, however, may pose a substantial threat of a release that may require a CERCLA response. Determining whether a threat of a release is substantial will depend on the specific circumstances present at a facility.

Under the authority delegated by Executive Order 12580, DOE is responsible for evaluating site conditions to determine if conditions or anticipated activities at facilities subject to decommissioning pose a substantial threat of release. So that EPA can fulfill its

responsibilities to ensure compliance with CERCLA requirements, including remedy selection,² at NPL facilities. DOE Operations Offices will consult with EPA Regions and share information as determined by the DOE Operations Office and affected EPA Region. In the event EPA disagrees with DOE's determination as to the presence of a release or substantial threat of release, EPA and DOE should make every effort to resolve the dispute in a manner satisfactory to both parties. If resolution is not possible and EPA determines that a threat of release is substantial, then under section 106 of CERCLA, with the concurrence of the Attorney General, EPA may order DOE to take appropriate action. EPA may also issue a CERCLA section 106 order to any other party, including past or present DOE contractors, that is liable under CERCLA section 107. EPA may further exercise any authority that is provided under an applicable IAG to "stop work" until EPA concerns are satisfactorily addressed. RCRA Authorities may also be available to EPA. Specifically, these authorities may address waste management, corrective action, and closure requirements that may be established or enforced through regulations, permits, orders, or agreements.

SCOPE AND APPLICABILITY

This Policy applies to all decommissioning projects to be conducted by DOE. Decommissioning projects that have selected the removal alternative as of the date this Policy is adopted are not subject to this Policy. Such projects are encouraged, however, to proceed in a manner consistent with this Policy to the maximum extent practicable.

Decommissioning of facilities that are subject to the requirements of an interagency agreement (IAG) in effect on the date this Policy is adopted will be conducted in accordance with such requirements. When existing IAGs are renegotiated or amended, or new agreements are adopted, any requirements applicable to decommissioning activities should be in accordance with this Policy.

CERCLA RESPONSE ACTION TO DECOMMISSION FACILITIES

The NCP recognizes DOE as lead agency for the purpose of determining whether response action is necessary to protect health, welfare, or the environment, and what type of response is most appropriate under the circumstances presented by the site. Response action may be taken when DOE determines that the action will prevent, minimize, stabilize, or eliminate a risk to health or the environment. When DOE determines that CERCLA removal action is necessary, DOE is authorized to evaluate, select, and implement the removal action that DOE determines is most appropriate to address potential risks posed by the release or threat of release. The selection and implementation of such response should comply with the

² EPA remedy selection authority is established by section 120(e) of CERCLA. Section 120(e) provides that, absent agreement between EPA and the affected Federal agency, EPA shall select remedial actions at NPL facilities from alternatives developed through the remedial investigation/feasibility study (RI/FS) process. DOE lead agency authority for removal actions must be coordinated with any anticipated remedial action to ensure an orderly transition from removal to remedial activity is achieved where applicable.

requirements of CERCLA, the NCP, and other applicable authorities. EPA has responsibility to oversee compliance with these requirements.

Although the full range of CERCLA response actions may be applicable to decommissioning activities, non-time critical removal actions should be used for decommissioning, consistent with this Policy. The alternative approaches available to conduct decommissioning projects typically are clear and very limited. This often will eliminate the need for the more thorough analysis of alternatives required for remedial actions. Non-time critical removal action requirements provide greater flexibility to develop decommissioning plans that are appropriate for the circumstances presented. Statutory time and dollar limits on removal action do not apply to removal action conducted by DOE, which increases the scope of projects that may be addressed by DOE removal action. Most importantly, non-time critical removal actions usually will provide benefits to worker safety, public health, and the environment more rapidly and cost-effectively than remedial actions. For these reasons, DOE may exercise removal action authority to conduct decommissioning whenever such action is authorized by CERCLA, the NCP, and Executive Order 12580. To ensure an adequate regulatory role in the removal planning and decision process, EPA Regions are encouraged to communicate with DOE Operations Offices concerning the level of consultation EPA believes is appropriate for specific decommissioning projects. Such an approach will provide greater assurances that the removal action will be consistent with CERCLA requirements and any subsequent remedial action that may be necessary.

DOE Operations Offices will determine that removal action is appropriate for a particular project before proceeding. The scope of activities that qualify removal actions under CERCLA includes site security or control precautions to reduce access or migration, stabilization of structures or buildings, consolidation or removal of substances or structures, and any other actions deemed necessary by the lead agency. Any activity that reduces risks or potential risks in a relatively short time-frame and can be identified as appropriate with a relatively limited amount of analysis of alternatives may be taken under removal action authority. CERCLA requires that removal actions should, to the extent practicable, contribute to the efficient performance of any long term remedial action conducted at the site.

DOE Decommissioning Program

The DOE Decommissioning Program will conduct decommissioning activities in compliance with applicable requirements of CERCLA and the NCP. The decision to conduct decommissioning may be based on any change in the facility's condition that may trigger a need to respond to protect health or the environment, or any other factor that leads DOE to determine that decommissioning of the facility is appropriate. DOE will conduct a removal site evaluation as directed by the NCP to assess site conditions and determine whether a release or substantial threat of release exists at the facility. At any facility for which DOE conducts a removal site evaluation, DOE will consult with EPA and will provide, as requested, EPA with such information necessary for EPA to review such evaluation. At any facility where DOE determines that a release or substantial threat of release has not occurred,

DOE will consult with EPA and provide any information necessary for EPA to evaluate such determination.

Both DOE Operations Offices and EPA Regions must take a good faith approach to assessing potential decommissioning projects. Unless the circumstances at the facility make it inappropriate, decommissioning activities will be conducted as non-time critical removal actions. Non-time critical removal actions generally will provide the most appropriate level of analysis, oversight, public participation, and flexibility to conduct decommissioning in a cost-effective manner that fully protects health and the environment. Using non-time critical removal action authority will enable DOE to exercise the flexibility provided in the NCP to reduce risks and achieve results without unnecessary expenditure or delay.

Compliance with Applicable Requirements Permits, Agreements, and Orders

Decommissioning activities must comply with all applicable requirements established by any existing IAGs, Federal Facility Agreements (FFAs), Site Treatment Plans required under the Federal Facility Compliance Act, permits and orders issued pursuant to authorized State or Federal programs, and other applicable requirements. Decommissioning activities should comply with relevant and appropriate standards to the extent practicable, as provided by the NCP, and as necessary to contribute to the efficient performance of any long term remedial action.

In particular, States authorized by EPA to implement and enforce State hazardous waste programs in lieu of RCRA may have authority under such programs to enforce requirements applicable to decommissioning activities. These requirements include waste management, corrective action, and closure requirements which may be established or enforced through regulations, permits, orders, or agreements. The degree to which State hazardous waste and other requirements may affect decommissioning projects will depend on a number of site-specific factors including the scope of State authorization, and whether the facility to be decommissioned is included within a RCRA-permitted facility or is otherwise subject to RCRA requirements. EPA and DOE intend to work with authorized States to coordinate RCRA and CERCLA authorities to the maximum extent practicable in order to prevent unnecessary duplication or delay in decommissioning projects subject to both authorities.

EPA Involvement

DOE lead agency responsibilities for determining whether response action is warranted, and what type of response is appropriate, must be coordinated with EPA oversight

and remedy selection authority³ for facilities included in sites listed on the NPL. Clarifying the integration of DOE and EPA responsibilities at facilities included within a site listed on the NPL and subject to decommissioning is essential to achieving streamlined, effective response action that fully protects human health and the environment. To achieve coordinated integration with respect to decommissioning, this Policy establishes guidelines for defining the appropriate level of EPA consultation and stakeholder participation.

EPA involvement with DOE decommissioning activities on NPL sites will depend on the complexity and potential risk to health and the environment posed by the facility to be decommissioned. EPA involvement should focus on key documents and decision points in the removal action process. The NCP requires EPA approval of sampling and analysis plans developed in accordance with section 300.415(b)(4) of the NCP. EPA involvement may be appropriate with respect to other steps in the removal process.

The extent of EPA involvement will be determined by the EPA Region and DOE Operations Office responsible for the facility, based on the circumstances presented by each facility. Factors to be considered in determining EPA involvement in decommissioning projects include complexity, severity of potential risks, duration, cost, and appropriateness of applying EPA resources to the project. Where no IAG exists for the site, or where an existing IAG does not address decommissioning in general, or specific facilities appropriate for decommissioning in particular, the DOE Operations Office and EPA Region should identify the steps in the removal action process where EPA involvement can be most effective. In particular, EPA involvement should ensure that decommissioning activities comply with applicable requirements, that protection of health and the environment is achieved, and that decommissioning is consistent with ongoing or subsequent remedial actions at the site.

Stakeholder Involvement

Decommissioning activities will be conducted in full compliance with the community relations and public participation requirements established by CERCLA, the NCP, and DOE policies. The nature and scope of these stakeholder involvement requirements will depend on the type of removal action taken. All non-time critical removal actions will comply with the public participation requirements applicable to such actions outlined in the NCP. Where applicable, a formal community relations plan (CRP) will be prepared, specifying the community relations activities to be conducted during the removal. The CRP will be prepared prior to completion of the analysis of removal alternatives. In addition, stakeholders will be provided notice and an opportunity to submit comments on the analysis of removal alternatives. Written responses to public comments will be prepared.

³ As described in footnote 2, EPA remedy selection authority applies to selection of remedial actions at NPL facilities from alternatives developed through the remedial investigation/feasibility study (RI/FS) process. Removal actions selected by DOE must be consistent with any longer term remedial activity anticipated at the site.

DOE will establish an Administrative Record as provided by CERCLA section 113 and the NCP for non-time critical removals. The Administrative Record will include the results of the removal site evaluation and other factual information and analyses upon which the decision to conduct response action was based. As additional information is developed that forms the basis for selection of the response action, such information will be included in the Administrative Record. The Administrative Record will be accessible to the public, consistent with the requirements of the NCP. Public comments, and DOE's response, will be included in the Administrative Record.

CONCLUSION

Use of non-time critical removals for conducting decommissioning activities effectively integrates DOE lead agency responsibility, EPA oversight responsibility, and stakeholder participation. The DOE Decommissioning Program will utilize DOE expertise in devising and implementing appropriate solutions to decommissioning projects. Effective EPA oversight and stakeholder participation will be provided in compliance with applicable requirements. Decommissioning projects will retain sufficient flexibility to tailor activities to meet specific site needs, and achieve risk reduction and restoration expeditiously.

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