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From: Chief of Naval Operations (N45)
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Subj: POLICY FOR CONDUCTING FIVE-YEAR REVIEWS UNDER THE INSTALLATION RESTORATION PROGRAM

Ref: (a) Navy and Marine Corps Policy for Conducting Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Statutory Five-year Reviews, November 2001
(b) Navy and Marine Corps Installation Restoration Manual

Encl: (1) Navy and Marine Corps Policy for Conducting Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Statutory Five-year Reviews, April 2004

1. Enclosure (1) updates policy and guidance for conducting CERCLA five-year reviews conducted under the Installation Restoration (IR) Program. Implementation of this policy will ensure that the Navy/Marine Corps provide for consistent five-year reviews and five-year review reports that comport with the Environmental Protection Agency guidance.

2. The major changes in the policy are the addition of section 7, Report Documentation on Demonstrating Protectiveness, and modifying section 10, Review and Signature, and section 11, Funding. Section 7 addresses situations pertaining to reopening remedy selection decisions. Section 10 and 11 were modified to make it clearer who signs the five-year reviews and where the funding comes from to do the reviews.

3. This policy has been coordinated and concurred with by the Marine Corps.

4. This policy will be included in the next revision to reference (b). It will also be available on the N45 website (http://web.dandp.com/n45/index.html) under Environmental Restoration/Training, References.

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5. Questions or comments concerning this policy should be directed to Mr. Dave Olson, CNO N45C, 2511 Jefferson Davis Hwy, Arlington, VA 22202-3735, (703) 602-2571 (DSN 332-2571), david.l.olson@navy.mil.

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Navy/Marine Corps Policy for Conducting Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Statutory Five-year Reviews November 2001 [Revised May 2004]

Ref: (a) United States Environmental Protection Agency (EPA) Comprehensive Five-Year Review Guidance, June 2001, EPA 540-R-01-007, Office of Solid Waste and Emergency Response (OSWER) No. 9355.7-03B-P, §1.3.1

1. Statutory requirements:

a. The statutory requirement for five-year review was added to CERCLA as part of the Superfund Amendments and Reauthorization Act of 1986 (SARA). A five-year review is required when **both** of the following conditions are met, whether the site is on the National Priorities List (NPL) or not:

1) Upon completion of the remedial actions at a site, hazardous substances, pollutants, or contaminants will remain above levels that allow for unlimited use and unrestricted exposure. For example, if a site is restricted to industrial use because hazardous substances, pollutants, or contaminants remain above levels that allow for unlimited use and unrestricted exposure, five-year reviews must be conducted.

2) The Record of Decision (ROD) or Decision Document (DD) for the site was signed on or after October 17, 1986 (the effective date of SARA).

b. CERCLA §121(c), as amended, states:

If the President selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the site, the President shall review such remedial action no less often than each five-years after the initiation of such remedial action to assure that human health and the environment are being protected by the remedial action being implemented. In addition, if upon such review it is the judgment of the President that action is appropriate at such site in accordance with section [104] or [106], the President shall take or require such action. The President shall report to the Congress a list of facilities for which such review is required, the results of all such reviews, and any actions taken as a result of such reviews.

c. The National Contingency Plan (NCP), 42 U.S.C. § 9621(c), implementing regulations, 40 C.F.R. Part 300.430(f)(4)(ii), provide:

If a remedial action is selected that results in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and

unrestricted exposure, the lead agency shall review such action no less often than every five years after initiation of the selected remedial action.

d. Consistent with Executive Order 12580, the Secretary of Defense is responsible for ensuring that five-year reviews are conducted at all qualifying Department of Defense (DoD) cleanup sites. The Department of the Navy (DoN) is lead agency for conducting five-year reviews at Navy and Marine Corps installations.

2. Definitions:

a. For purpose of this policy, "site" means a location on an installation's property where a hazardous substance has been deposited, stored, disposed, or placed, or has otherwise come to be located where, upon completion of the remedial action, hazardous substances, pollutants, or contaminants will remain at the site above levels that allow for unlimited use and unrestricted exposure. This includes areas off the installation where contamination may have migrated. For purpose of this policy, "site" may also mean Operable Unit.

b. "Unlimited use" and "unrestricted exposure" mean that there are no restrictions on the use of the land.

3. Purpose of a five-year review:

a. The purpose of a five-year review is to evaluate the in-place remedy on site to verify that it remains protective of human health and the environment. The review is not to reconsider decisions made during the selection of the remedy, as specified in the ROD or DD, but to evaluate the implementation and performance of the selected remedy only.

b. The existing remedy will be modified if it is no longer protective of human health and the environment.

4. Five-year review "trigger":

a. In keeping with the requirements of CERCLA §121(c) and the NCP, initiation of the selected remedial action that will result in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure after the remedial action is complete is the "trigger" that starts the five-year review clock. For most Navy/Marine Corps sites, this "trigger" is the onsite mobilization for commencement of the remedial action-construction (RA-C) phase.

b. The first site on an installation that triggers the five-year review clock triggers the five-year review clock for the

entire installation, or that portion of the installation addressed under CERCLA RODs or DDs.

c. Where the selected remedy will result in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure but will not require a RA-C phase, such as monitored natural attenuation using existing wells or a remedy only implementing institutional controls, the remedy start date is the ROD or DD signature date and therefore is also the trigger for the five-year review clock.

d. Neither the implementation of an interim remedial action nor a removal action at a site shall trigger the requirement to prepare five-year reviews reports. Only the implementation of a final remedial action pursuant to a CERCLA ROD or DD, as discussed above, shall trigger the five-year review requirements.

5. Five-year review due dates:

a. The five-year review and report for a site are to be completed and signed within five years of the trigger date for that site. Subsequent five-year reviews should be signed no later than five-years after the signature date of the previous five-year review reports.

b. EPA has a Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) database, which tracks the status of five-year reviews, and they periodically ask for verification of the status of Navy installations. To assist the field in tracking five-year review dates, there is a field in Normalization of Data (NORM) that allows management to track these dates. Dates for this NORM field must be entered and updated on a regular basis.

6. Five-Year Review Report:

The results of the five-year review are presented in a five-year review report.

a. The five-year review report should:

1) clearly state whether the remedy is or is expected to be protective,

2) document any deficiencies identified during the review, and

3) recommend specific actions to ensure that a remedy will be or will continue to be protective.

b. Where necessary, five-year review reports should include descriptions of follow-up actions needed to achieve, or to continue to ensure, protectiveness. Along with these

recommendations, the report should list a timetable for performing the actions and the parties responsible for implementation.

c. If it is determined that cleanup levels or remedial action objectives cannot be achieved through the remedial action, the recommendations may suggest the type of decision process (e.g., ROD or DD, ROD or DD Amendment, Explanation of Significant Differences (ESD)) needed to evaluate or make changes to the remedy, cleanup levels, or remedial action objectives. Implementation of these recommendations should be accomplished after the five-year review report is finalized. These recommendations should in no way delay the completion of this five-year review report by the date required under Section 5, above.

d. For sites that are still in the remedial action-operations (RA-O) phase (pre-Response Complete (RC)) where evaluation and optimization of the remedial action operations are performed routinely, most information for the five-year review should be readily available.

7. Report documentation on demonstrating protectiveness:

a. Where a site has a remedial action that is still in the Remedial Action-Construction (RA-C) phase or the Remedial Action-Operations (RA-O) phase, a five-year review should confirm that immediate threats have been addressed and that the remedy will be protective when complete.

b. Where a site is in the Long Term Management (LTMgt) phase, the five-year review should confirm whether the selected remedy remains protective.

c. For remedies in-place, the Navy will not reopen remedy selection decisions contained in RODs or DDs unless a new or modified requirement calls into question the protectiveness of the in-place remedy. The remedy will only be modified to attain a new Applicable or Relevant and Appropriate Requirement (ARAR) if, (1) the new requirement is actually an ARAR and (2) the Navy finds that it is appropriate and necessary to ensure that the remedy is protective of human health and the environment. In conducting a five-year review, the effect of a newly promulgated or modified standard on the protectiveness of the remedy originally selected in the ROD or DD should be determined.

d. When the five-year review indicates that the remedy is not performing as designed, the report should recommend actions to improve performance.

e. If risks have been evaluated qualitatively to determine a remedy, which is still protective of human health and the environment, then it is not necessary to perform a quantitative risk evaluation as part of the five-year review.

f. If a DD or ROD has been signed at an installation where the State or EPA was the lead regulator prior to or after State or EPA participation, and the remedy is still protective, then it should be so indicated in the five-year review report.

8. NPL status:

Reference (a) states that EPA will delete an installation from the NPL when deletion criteria have been satisfied and that an installation will not be kept on the NPL solely because it is subject to five-year reviews. If the installation has been deleted or is in the process of being deleted, the five-year review report should address the status of any deletion action.

9. Resource Conservation and Recovery Act (RCRA) response:

Five-year reviews are not required if cleanup of a site is addressed under RCRA corrective action. In cases where both RCRA and CERCLA authorities are used to address different sites on an installation, a five-year review is only required for those portions of the installation being addressed under CERCLA that meet the criteria for five-year reviews. When a RCRA action is included as a portion of a CERCLA ROD or DD, the RCRA action should be included in the five-year review.

10. Review and Signature:

Pursuant to the delegations of authority in sections 2(d) and 11(g) of Executive Order 12580, and DoD Instruction 4715.7 of 22 April 1996, Department of the Navy (DON) is the approval authority for CERCLA five-year reviews conducted at sites under its jurisdiction, custody or control.

a. Five-year reviews should be submitted to the appropriate regulators for their review and comment. The Navy shall address substantive comments and finalize the five-year report by the date specified under Section 5, above.

b. For active installations, five-year reviews will be signed by the installation Commanding Officer/Commanding General, or their designated representative.

c. For closed bases still under the control of the Navy, five-year reviews will be signed by the Commanding Officer of the supporting Engineering Field Division/Activity (EFD/A), or their designated representative.

11. Funding:

a. At active Navy and Marine Corps installations, five-year reviews will be funded with ER,N funds to include the long term management (LTMgt) phase up until five years after the last site on the installation achieves RC.
(note: LTMgt includes items such as periodic sampling and monitoring, maintenance of wells and other mechanical systems,

landfill cap inspection and maintenance, maintaining fencing and signs associated with Land use Controls (LUCs), preparation of five-year reviews, and any required follow-up to remedy failures. LTMgt does not include installation management functions such as periodic inspection of LUCs, updating master plans to reflect LUCs, mowing of grass, etc.)

b. Five-year reviews will be funded with installation funds five years after the last site on the installation achieves RC.

c. At closed installations under Base Realignment And Closure (BRAC), BRAC funds will be used to accomplish the five-year reviews prior to property transfer. Five-year reviews should be one of the issues discussed prior to any formal transfer of the property. In some cases, the responsibility will be transferred to the new owner and in others the Navy may keep the responsibility.

d. At installations being closed outside BRAC, ER,N funds will continue to be used to accomplish the five-year reviews prior to property transfer. Five-year reviews should be one of the issues discussed prior to any formal transfer of the property. In some cases, the responsibility will be transferred to the new owner and in others the Navy may keep the responsibility.

12. Keeping the community informed:

a. Because the five-year review addresses the status and protectiveness of a remedy, it should be used to communicate this information to the community. If the Restoration Advisory Board (RAB) is still active at the installation, preparation for and conduct of the five-year review should be an agenda item at appropriate RAB meetings. If the RAB is inactive or has disbanded, the installation shall determine the most effective approach to informing the community. At a minimum, community involvement activities during the five-year review should include notifying the community that the five-year review will be conducted, notifying the community that the five-year review has been completed, and providing the results of the review in the local site information repository.

b. The installation Public Affairs Officer can recommend appropriate methods of communication (e.g., public notices, fact sheets) for notifying the public.

c. Upon completion of the five-year review and five-year review report, a brief summary of the report should be made available to the stakeholders. The summary should include a short description of the remedial action, any deficiencies, recommendations and follow-up actions that are directly related to protectiveness of the remedy, and the determination(s) of whether the remedy is or is expected to be protective of human health and the environment. The summary should also provide the location of the site information repository and/or where a copy of the complete report can be obtained, and provide the date of

the next five-year review or notify the community when five-year reviews will no longer be necessary.

d. Five year reviews are not Administrative Record material and are not to be included therein. However, the RPM should ensure that the signed five-year review report is placed in the information repository, as well as in the Site File document. The Site File document is the file for the installation where all supporting documentation for the Administrative Record is placed.

13. Discontinuing five-year reviews:

a. There is no statutory provision for the discontinuation of statutory reviews. However, EPA acknowledges in reference (a) that five-year reviews are no longer needed when no hazardous substances, pollutants, or contaminants remain on site above levels that allow for unlimited use and unrestricted exposure, reference (a), paragraph 1.2.4.

b. When a site meets the conditions that allow unlimited use and unrestricted exposure from past contaminants, the Navy Remedial Project Manager (RPM) shall determine the appropriate documentation to present these findings and discontinue future 5-year reviews. These findings may be presented in a Remedial Action Completion Report (RACR) or RACR Addendum/Amendment, Site Closeout Document or Final 5-year review report, which should be made available for public review.