



DEPARTMENT OF THE NAVY
CHIEF OF NAVAL OPERATIONS
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From: Chief of Naval Operations
To: Distribution

Subj: DEPARTMENT OF THE NAVY (DON) POLICY ON AVAILABILITY OF ENVIRONMENTAL RESTORATION, NAVY (ER,N) FUNDING FOR RESPONSE ACTIONS

Ref: (a) Management Guidance for the Defense Environmental Restoration Program (DERP) of Mar 1988
(b) OPNAVINST 5090.1
(c) Navy/Marine Corps Installation Restoration Manual

1. There have been an increasing number of questions from the field regarding the ER,N eligibility of certain DON cleanup sites. This letter reiterates and clarifies the DON ER,N eligibility policy.

2. The ER,N eligibility of a cleanup site, whether conducted under CERCLA or RCRA authority, is based on the date that the contaminating action at the site ceased permanently. The cutoff date is 17 October 1986, the date that the Superfund Amendments and Reauthorization Act (SARA) became law, and established the Defense Environmental Restoration Program (10 USC Sec. 2701, et seq.) and the fenced funding source, Defense Environmental Restoration Account (DERA). DERA was devolved to the services in 1996 at which time the ER,N account was established.

3. ER,N is available to address past contamination in accordance with reference (a). For purposes of DON ER,N projects, past contamination is defined as that resulting from the release, deposition, storage, disposal, or placement of hazardous substances, pollutants or contaminants, that is attributable to an installation action at a site that ceased before 17 October 1986. For this letter, "action" means a function or operation that occurred at a base or installation. Contamination from a release from an installation action at a site that continued after that date, regardless of the period of time over which the contamination occurred, will generally not be eligible for ER,N funding with the exception of Underground Storage Tank (UST) remediation. UST contamination is ER,N eligible if it was discovered during initial integrity testing

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conducted prior to 22 December 1993. UST contamination discovered after this date is not ER,N eligible and must be claimant/installation funded.

4. All sites currently in the ER,N program are "grandfathered" as ER,N eligible, regardless of the date of the contaminating actions. For all "new" sites identified by new DON studies, regulatory documents, etc. subsequent to this clarification, it will have to be clearly shown and documented that the contamination is attributable to installation actions at the site that ceased permanently prior to 17 October 1986, before those sites will be considered eligible for ER,N funding. Such proof could be based on oral interviews with base staff, EPA EPIC photo studies, written spill/disposal reports, etc. NAVFACENCOM, through its Engineering Field Divisions/ Activities, has the authority to determine when a site has met this "grandfathered" status as well as the overarching issue of whether the installation action at the site in question ceased permanently before 17 October 1986.

5. This policy supports inclusion of a site into the Installation Restoration Program where we do not have definitive information that the release occurred after 17 October 1986. Such a decision should be documented with sufficient explanation of the reasoning that lead to that decision.

6. This clarified policy will be included in the next updates to references (b) and (c).

7. My point of contact for this matter is Mr. Geoffrey D. Cullison, N453D, at (703) 602-5329 or e-mail, cullison.geoffrey@hq.navy.mil.


WILLIAM G. MATTHEIS
By direction

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