United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

MAY 1 2007

PEP - ENVIRONMENTAL COMPLIANCE MEMORANDUM NO. ECM07-2

To: Heads of Bureaus and Offices

From: Willie R. Taylor, Director
Office of Environmental Policy and Compliance

Subject: Statement of Principles for Collaborative Decision Making for Cleanup of Formerly Used Defense Sites on Federal Lands

The Office of Environmental Policy and Compliance (OEPC) is issuing this Environmental Compliance Memorandum (ECM) under the authority provided by 381 Departmental Manual Chapter 4.5B to convey instructions and guidance through the Environmental Memoranda Series. This ECM establishes the "Statement of Principles for Collaborative Decision Making for Cleanup of Formerly Used Defense Sites on Federal Lands" (Statement of Principles) as Departmental instructions and guidance. The Statement of Principles serves as a foundation for agreement on the rights, responsibilities, respective roles, and authorities of the Federal Land Management Agencies (FLMs) and the U.S. Army Corps of Engineering (Corps) for the investigation and cleanup of Formerly Used Defense Sites (FUDS) now under the management of FLMs. The Statement of Principles promotes consistency in the conduct of investigations and cleanups on FUDS to expedite response actions and avoid disputes.

The Corps worked with the Department of the Interior (DOI), and the Department of Agriculture to develop the Statement of Principles to improve federal coordination and decision-making at FUDS on federal lands. OEPC coordinated with the affected DOI bureaus and the Office of the Solicitor in negotiating this Statement of Principles. The Statement of Principles sets forth commitments made by the Corps and DOI for coordination and consensus-building during the planning and implementation of cleanups of FUDS. The Statement of Principles affirms that the Corps is responsible for conducting and funding response actions at FUDS on public lands. Under the Statement of Principles, the Corps and DOI will seek mutual agreement on site inventory, prioritization, and the conduct and performance of assessments. The Corps and DOI also will seek mutual agreement on significant cleanup decisions such as residual contaminant concentrations, final remedy, and future land use controls. If DOI and the Corps cannot reach agreement on significant cleanup decisions, the Statement of Principles provides a framework for dispute resolution. The Statement of Principles does not supersede or replace any existing agreements for cleanup of FUDS on property under the jurisdiction, custody, or control of DOI.

DOI bureaus should use this Statement of Principles as a foundation for agreement during negotiations with the Corps involving the management and cleanup of FUDS. Additional agreements between DOI bureaus and the Corps governing coordination at FUDS should be consistent with the Statement of Principles.

Attachment

STATEMENT OF PRINCIPLES
FOR COLLABORATIVE DECISION MAKING FOR
CLEANUP OF FORMERLY USED DEFENSE SITES ON FEDERAL LANDS

PREAMBLE

The Department of Defense (DoD) and Federal Land Management Agencies (FLMs)[1] desire to improve the coordination of their respective roles and authorities for the cleanup of Formerly Used Defense Sites (FUDS).[2] The Federal Environmental Work Group, established under the One Cleanup Program Initiative, has developed this Statement of Principles to increase the efficiency and effectiveness of FUDS cleanups affecting federal lands.

PURPOSE

- DoD and FLMs recognize that lands formerly used for military facilities and training often are now under the management of FLMs. These lands may have contamination[3] as a result of DoD activities or the activities of others. DoD and FLMs jointly acknowledge the need to identify and evaluate such lands and determine who is responsible for any contamination and/or response actions. The appropriate party or parties should address human health, to include explosives safety, and environmental concerns associated with these lands. DoD and FLMs also recognize a need to develop general principles and consensus approaches to the investigation and cleanup of such lands, consistent with existing law.

- DoD and FLMs acknowledge that, pursuant to the Defense Environmental Restoration Program (DERP), DoD is required to fund and conduct those response actions necessary to address contamination that resulted from DoD activities at FUDS. It is recognized that the FUDS program is only authorized to address contamination that is the result of DoD activities.

- DoD and FLMs intend that this Statement of Principles will lead to more efficient and effective cleanups of FUDS on federal lands.

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[1]The FLMs that are parties to this Statement of Principles include the Department of Agriculture (USDA), the Department of the Interior (DOI), and the National Aeronautics and Space Administration (NASA).

[2]FUDS properties are, in general, properties that were under DoD control and such control was transferred from DoD prior to 17 October 1986. Eligibility of a property for the FUDS Program, and DoD responsibilities associated with such a finding, are determined under the U.S. Army Corps of Engineers Engineering Regulation 200-3-1.

[3]For the purpose of this Statement of Principles, contamination includes military munitions where they are known or suspected to be present.

SITE IDENTIFICATION, SCREENING, AND PRIORITIZATION

- DoD and FLMs recognize that it is important to have a common understanding of sites potentially contaminated as a result of DoD and others' activities. It is also important for the Parties to share plans for ongoing and future cleanup actions.

- DoD and FLMs acknowledge the need for each FLM to participate in the identification, screening, and prioritization of FUDS on lands under the respective FLM's management. DoD and each FLM agree to meet at least annually for this purpose.

- DoD and FLMs agree to reconcile their respective inventories of FUDS. Inventories will be revised and updated annually, or as needed.

- Where there is evidence of contamination at a site, the Parties should agree on whether that site requires further assessment. The Parties should also agree on the nature and extent of such assessment.

- DoD and FLMs agree to coordinate on the conduct and performance of site assessment work for which DoD is responsible on lands under FLM management. Likewise, if an FLM plans to conduct any activity that may affect DoD activities at such lands, it agrees to consult with DoD prior to taking action.

LAND USE PLANNING AND CLEANUP DECISIONS

- Federal land management statutes establish the general purposes for which certain federal lands are to be administered. FLM land and resource management plans are developed and implemented in accordance with statutory and regulatory requirements, including compliance with the National Environmental Policy Act (NEPA), and generally specify the range of reasonably anticipated and appropriate future land uses.

- FLMs should consider areas of known contamination in the development and implementation of land and resource management plans to avoid unacceptable exposures to such contamination. At the same time, in planning the response, DoD should consider the conservation and natural resource uses of the land, and the FLMs' trust obligations and statutory responsibilities.

- FLMs agree to provide DoD an opportunity for meaningful consultation, review, and comment on plans for the siting of new facilities or the conduct of new activities at FUDS on federal lands. The Parties acknowledge that it may be appropriate to limit reasonably anticipated and appropriate future land uses in some circumstances or in some areas of the site, where, for example, cost, safety, and/or technical infeasibility limit the ability of DoD to conduct a response

and thereby may require the imposition of land use controls.[4]

- FLMs will invite DoD, and DoD is encouraged, to participate in the development of the reasonably anticipated and appropriate future land uses on properties impacted by FUDS to ensure that the FLMs are fully aware of prior DoD operations, knowledgeable of any potential DoD response activities, and informed on how these response activities may affect land use options. This interaction will also ensure that DoD is fully aware of the current and anticipated future land uses, and informed of the FLMs' management and stewardship responsibilities for the land and resources.

- DoD shall conduct response actions to allow reasonably anticipated and appropriate future land uses over as much of the site as possible.

- DoD and FLMs acknowledge that there should be joint DoD-FLM acceptance of response actions planned at FUDS on federal lands. To effectuate this goal, and consistent with the Comprehensive Environmental Response, Compensation and Liability Act and the National Oil and Hazardous Substances Pollution Contingency Plan, DoD and FLMs shall identify and mutually agree upon applicable or relevant and appropriate requirements (ARARs) and other advisories, criteria, or guidance to be considered (TBCs) during the response.

- Land use controls can impose substantial costs on FLMs, and also inhibit or preclude certain uses entirely. Consequently, before a remedy is selected that involves significant continuing obligations, DoD and the FLM should seek mutual agreement concerning these requirements and responsibilities (including enforcement, monitoring, maintenance, reporting, and funding) for continuing obligations.

- DoD and FLMs shall seek mutual agreement on significant cleanup decisions, including, but not limited to, cleanup levels, the selected remedy, and any future land use controls. To facilitate such mutual agreement, DoD shall provide to the FLMs an opportunity for meaningful consultation, review, and comment on significant cleanup decisions. Where DoD and the FLM are unable to reach mutual agreement on significant cleanup decisions, DoD and the FLM will engage in dispute resolution.

OPERATION AND MAINTENANCE AND POST-REMOVAL SITE CONTROL

- After a remedy is implemented, there may be continuing operation and maintenance (O&M), post-removal site controls, land use controls with a

[4]Land use controls are any type of physical, legal or administrative mechanism that restricts use of, or limits access to, real property to prevent or reduce risks to human health and the environment.

significant maintenance component, or other requirements needed to maintain the protectiveness of the remedy. DoD and FLMs agree to conduct periodic reviews to consider the continuing effectiveness of the remedy, remedy optimization, and new technologies. Requirements and responsibilities, including requirements for periodic reviews, should be clearly set forth and assigned in a written agreement such as a Memorandum of Understanding (MOU) or an inter-agency agreement. Where DoD and the FLM are unable to reach mutual agreement on O&M and post-removal site control, DoD and the FLM will engage in dispute resolution.

SITE CLOSE-OUT

- DoD and FLMs should agree when no further response action is required at FUDS on federal land and when additional response actions are warranted. Where DoD and the FLM are unable to reach mutual agreement on site close-out or on necessary additional response actions, DoD and the FLM will engage in dispute resolution.

DISPUTE RESOLUTION

- Each agency agrees to give substantial deference to each other's mission, recognizing their respective expertise and the need to coordinate to ensure protection of public health and safety and the environment.

- DoD and FLMs agree that disputes should be resolved informally whenever possible. Disputes should be resolved at the lowest level possible, with elevation to successively higher levels as necessary.

- If disputes cannot be settled informally, then formal dispute resolution is appropriate, including procedures outlined in applicable Executive Orders. Where more than one agency has decision-making authority, the agencies recognize that no one agency can unilaterally make final determinations.

SAVINGS CLAUSE

- This Statement of Principles does not affect federal, state, or tribal regulatory or enforcement powers or authority concerning hazardous waste, hazardous substances, pollutants or contaminants, including imminent and substantial endangerment authorities; nor does it expand or constrict the waiver of sovereign immunity by the United States contained in any environmental statute. This Statement is not intended to, and does not, create any right, benefit, or trust obligation, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

GENERAL AUTHORITIES

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 et seq.

- Defense Environmental Restoration Program (DERP), 10 U.S.C. §§ 2701 et seq.

- For National Forest System lands: National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 et seq.; Endangered Species Act (ESA), 16 U.S.C. §§ 1531 et seq.; National Forest Management Act, 16 U.S.C. §§ 1601-1614; Multiple-Use Sustained-Yield Act, 16 U.S.C. §§ 528-531; and Organic Administration Act, 16 U.S.C. §§ 473-475, 477-482, 551.

- For Department of the Interior (DOI) managed lands: NEPA; ESA; Federal Land Policy and Management Act, 43 U.S.C. §§ 1701 et seq.; National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C. §§ 668dd et seq.; and National Park Service Organic Act, 16 U.S.C. §§ 1131-1136.

- Other potentially applicable environmental laws (e.g., Solid Waste Disposal Act , 42 U.S.C. §§ 6901 et seq.; Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq.; Clean Air Act, 42 U.S.C. §§ 7401 et seq.; Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; Toxic Substances Control Act, 15 U.S.C. §§ 2610 et seq.; National Historic Preservation Act, 16 U.S.C. §§ 470-470x-6; Archaeological Resources Protection Act, 16 U.S.C. §§ 470aa-470mm; Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3000-3013; Native American Religious Freedom Act, 42 U.S.C. §§ 1996-1996a; Coastal Zone Management Act, 16 U.S.C. §§ 1451-1465; Wilderness Act, 16 U.S.C. §§ 1131-1136; Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-667; Migratory Bird Treaty Act, 16 U.S.C. §§ 703–713; and Marine Mammal Protection Act, 16 U.S.C. §§ 1361-1407).

- Executive Orders 12580 and 13016 (Superfund Implementation), 12088 (Federal Compliance with Pollution Control Standards), 12146 (Management of Federal Legal Resources), 13007 (Indian Sacred Sites), and 13175 (Consultation and Coordination with Indian Tribal Governments).

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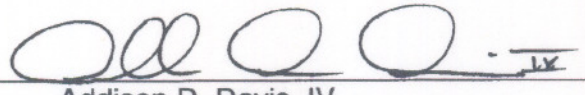
DEPARTMENT OF THE ARMY



17 JAN 06

Addison D. Davis, IV
Deputy Assistant Secretary of the Army
Environment, Safety and Occupational Health
OASA (I&E)

Date

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DEPARTMENT OF THE INTERIOR

R. Thomas Weimer — 1/10/07

R. Thomas Weimer
Assistant Secretary for Policy, Management and Budget — Date

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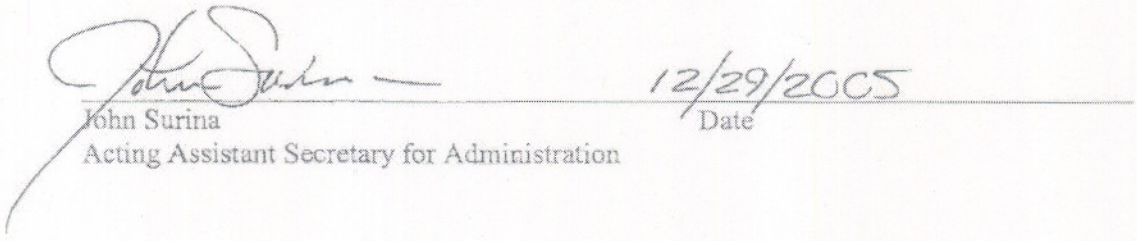
DEPARTMENT OF AGRICULTURE



12/29/2005

John Surina
Acting Assistant Secretary for Administration

Date