OFFICE OF THE UNDER SECRETARY OF DEFENSE

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ACQUISITION AND
TECHNOLOGY

APR. 14 2000

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY (ENVIRONMENT, SAFETY AND OCCUPATIONAL HEALTH)
DEPUTY ASSISTANT SECRETARY OF THE NAVY (ENVIRONMENT AND SAFETY)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (ENVIRONMENT, SAFETY AND OCCUPATIONAL HEALTH)
DIRECTOR, DEFENSE LOGISTICS AGENCY

SUBJECT: Interim Policy on Integration of Natural Resource Injury Responsibilities and Environmental Restoration Activities

Under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, the Department of Defense ("DoD") Components ("Components") are "trustees" on behalf of the public for natural resources they manage or control.[1] The purpose of this memorandum is to establish an interim policy on the Components' responsibilities to address Natural Resource Injury ("NRI") at sites administered by the Components where they are both a natural resource trustee ("Trustee") and – as a potentially responsible party ("PRP") – the lead response agency for environmental restoration ("response" or "cleanup") actions.[2],[3]

I. Policy

It is DoD policy that the Components identify NRI and, whenever practicable, redress it as part of the site assessment, investigation, and remedy selection and implementation processes for cleanup actions.[4] Consistent with § 104(b)(2) of CERCLA, the Components shall seek to coordinate these actions with other Trustees at the site, which may include other Federal entities, States and Tribes. The Components should begin such coordination early in the site assessment, investigation, and remedy selection process, so as to assess and

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[1] DoD has delegated its authorities as CERCLA natural resource trustee to the Component heads, with authority to redelegate as appropriate. (DoDI 4715.7 ("Environmental Restoration Program").

[2] *See, e.g.*, 42 U.S.C. §§ 9607(f) and 9607(a)(4)(C), Executive Order 12580, 33 U.S.C. §§ 1321(f) and 2706, 40 CFR Part 300, Subpart G, Executive Order 12777, and DoDI 4715.3. The Components also may have responsibilities for NRI under other authorities.

[3] This policy covers sites at which the Component is an "owner" or "operator" under CERCLA. It is not applicable to sites at which the Component is solely a generator of hazardous substances, *e.g.*, "third-party" sites, or to sites at which a Component entity conducts response actions although it is not a Trustee, *e.g.*, formerly used Defense sites. DoD will consider issuing related guidance in connection with those sites in the future.

[4] Components determine what is "practicable" based on factors including cost and cost-effectiveness, Component ERA fund availability, risk prioritization, and technical and engineering feasibility.

address NRI caused by releases of CERCLA hazardous substances, minimize NRI during cleanup of such hazardous substances, and avoid delays in completing cleanup. This policy is not intended to state or imply that other Trustees have a decision-making role in choosing or implementing remedies. This policy applies to all types of cleanup of CERCLA hazardous substances conducted under CERCLA, the Resource Conservation and Recovery Act, and the Defense Environmental Restoration Program.[5]

The objectives of this policy are several: to promote earlier and more complete consideration of the risks to natural resources associated with past activities and cleanup alternatives; to ensure that Components exercise their statutory Trustee authorities to address NRI on behalf of the public; to lower the total life-cycle costs of the Components' remediation programs; and to reduce the potential for response cost recovery or natural resource damage claims against the Components.

II. Natural Resource "Injury" versus Natural Resource "Damages"

It is important to distinguish between Natural Resource *Injury*, the subject of this interim policy, and Natural Resource *Damages*. Natural Resource Damages are commonly determined through the use of a Natural Resource Damage Assessment ("NRDA"), and are a subject outside the scope of this document. Natural Resource Injury refers to harm, more specifically a measurable adverse change in the chemical or physical quality or viability of a natural resource caused by the release or threatened release of a hazardous substance. Natural Resource Damages, on the other hand, refer to, among other things, the compensation which may be sought by Natural Resource Trustees for injury to natural resources, including in some cases compensation for economic losses claimed to have been incurred as a result of losing "services" provided by an injured natural resource, *e.g.*, drinking water in the case of a groundwater aquifer injured by a release of hazardous substances. This policy authorizes Components to investigate NRI in the course of conducting ecological risk assessments, which are normally done as part of the Remedial Investigation/Feasibility Study ("RI/FS") for cleanup projects, and to address NRI as part of the response action.

III. Role of the Ecological Risk Assessment in Integrating NRI and Cleanup Activities

The Components often conduct an Ecological Risk Assessment ("ERA") as part of the RI/FS phase of the cleanup process.[6] An ERA evaluates the likelihood that a release of hazardous substances may cause adverse ecological effects. The ERA process, among other things: describes the sources and distribution of harmful contaminants; identifies sensitive organisms or populations; characterizes potential exposure pathways; and estimates the intensity and extent of exposures at a site.

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[5] However, this policy is not intended to require re-opening of response action decisions already reached.

[6] See, *e.g.*, 63 Fed. Reg. 26846 (14 May 1998).

While an ecological risk assessment and a natural resource damage assessment (which is performed, if at all, only after remedy selection) are intended to address different concerns, both examine NRI. In individual cases, it may be cost efficient and increase the utility of ERAs to collect additional appropriate information regarding NRI during the ERA process. Components are encouraged to explore these possibilities with the other natural resource trustees during design of the ERA.

Components should consider the resulting information in two ways when selecting alternative response actions: first, to ascertain which response alternative may best redress NRI caused by past practices, and second, to determine whether implementation of a response alternative will itself cause additional NRI. Taking both considerations into account, whenever practicable and otherwise consistent with the remedy selection process specified by the National Contingecy Plan, the Components should select a response action that will result in the least amount of residual NRI once the response action is complete.

IV. Conforming Guidance

Components may issue supplemental policy and implementation guidance consistent with this policy. Such guidance must first be reviewed by this office. My point of contact for this policy is Ms. Patricia Ferrebee at (703) 695-6107,

Sherri W. Goodman
Deputy Under Secretary of Defense
(Environmental Security)