

MINNESOTA POLLUTION CONTROL AGENCY  
Ground Water and Solid Waste Division

Agenda Item Control Sheet

Agenda # 3

MEETING DATE: March 26, 1991

APPEARANCE REQUESTED - YES: CP  NO:  SCHEDULED TIME: 3:40 pm

PREPARED BY: Mark Lahtinen JJE MSL DATE MAILED: March 21, 1991

TITLE: Request For Approval Of A Federal Facility Agreement Between The U.S. Navy, U.S. Environmental Protection Agency And The Minnesota Pollution Control Agency Regarding Contamination At The Naval Industrial Reserve Ordnance Plant Located In Fridley, Anoka County.

LOCATION: Fridley Anoka  
CITY COUNTY

TYPE OF ACTION: Federal Facilities Agreement (Consent Order)

RECOMMENDED ACTION: Approval

ISSUE STATEMENT: Minnesota Pollution Control Agency (MPCA) staff has reached agreement on the terms of a Federal Facility Agreement (FFA) with the U.S. Navy and U.S. Environmental Protection Agency (EPA) for investigation and cleanup of sources on the Naval Industrial Reserve Ordnance Plant (NIROP). The proposed FFA is the result of negotiations that began one year ago with the U.S. Navy and EPA, and provides for a comprehensive investigation and cleanup of all contamination resulting from NIROP operations. The remedial action, which will be carried out by the Navy under the FFA, includes a cleanup of the contaminated soil at NIROP. The contaminated soil is a continuing source of ground water contamination. The cleanup of the contaminated ground water on and off of NIROP will also be overseen under this Agreement and is already the subject of a Record of Decision (ROD) signed by the MPCA Commissioner, EPA and Navy on September 28, 1990. As part of the FFA, the Navy will reimburse the state for a portion of its past costs. Other oversight expenses may be paid under a Defense and State Memorandum of Agreement currently being negotiated with the Department of Defense. The FFA provides the MPCA with a meaningful role in the review, approval, and enforcement of investigative and cleanup actions. The MPCA staff believes that this FFA provides an enforceable approach for the cleanup of the NIROP contamination and should be approved.

ATTACHMENTS:

1. Federal Facilities Agreement
2. 42 U.S.C. § 9620 (the federal facilities provision of CERCLA)

MINNESOTA POLLUTION CONTROL AGENCY  
Ground Water and Solid Waste Division  
Site Response Section

Request For Approval Of A Federal Facility Agreement  
Between The U.S. Navy, U.S. Environmental Protection Agency  
And The Minnesota Pollution Control Agency  
Regarding Contamination At The Naval Industrial Reserve Ordnance Plant  
Located In Fridley, Anoka County

March 26, 1991

ISSUE STATEMENT

Minnesota Pollution Control Agency (MPCA) staff has reached agreement on the terms of a Federal Facility Agreement (FFA) with the U.S. Navy and U.S. Environmental Protection Agency (EPA) for investigation and cleanup of sources on the Naval Industrial Reserve Ordnance Plant (NIROP). The proposed FFA is the result of negotiations that began one year ago with the U.S. Navy and EPA, and provides for a comprehensive investigation and cleanup of all contamination resulting from NIROP operations. The remedial action, which will be carried out by the Navy under the FFA, includes a cleanup of the contaminated soil at NIROP. The contaminated soil is a continuing source of ground water contamination. The cleanup of the contaminated ground water on and off of NIROP will also be overseen under this Agreement and is already the subject of a Record of Decision (ROD) signed by the Commissioner, EPA and Navy on September 28, 1990. As part of the FFA, the Navy will reimburse the state for a portion of its past costs. Other oversight expenses may be paid under a Defense and State Memorandum of Agreement currently being negotiated with the Department of Defense. The FFA provides the MPCA with a meaningful role in the review, approval, and enforcement of investigative and cleanup actions. The MPCA staff believes that this FFA provides an enforceable approach for the cleanup of the NIROP contamination and should be approved.

I. Background

The U.S. Navy's (Navy) Naval Industrial Reserve Ordnance Plant (NIROP) is situated on 82.6 acres in Fridley, Minnesota and has been operated since 1941 (A map showing the location of NIROP is in Attachment C of the Federal Facilities Agreement (FFA) Attachment 1). The NIROP portion of the plant is government owned and operated by a contractor, FMC Corporation (FMC). FMC also owns the southern part of the plant which is also considered a hazardous waste site separate from NIROP and is being cleaned up under a Consent Order between FMC

and Minnesota Pollution Control Agency (MPCA). Advanced naval weapons systems are designed and manufactured at NIROP and FMC. Operations at NIROP have included the storage and disposal of hazardous substances at the facility. An anonymous hotline tip in November 1980, led to the MPCA first becoming involved in the NIROP site and the adjacent FMC site.

In October 1982, at the request of the MPCA staff, the Navy initiated a review of historical data, aerial photographs, personnel interviews and field inspections to identify possible hazardous wastes disposal areas. The results of the Navy's review were submitted to the MPCA in June 1983.

The Navy began a ground water monitoring program at NIROP in 1983. The results indicated that the alluvial aquifer and Prairie du Chien-Jordan aquifer in the vicinity of NIROP were contaminated with solvents, primarily trichloroethylene (TCE). Subsequent analyses, including the 1988 Remedial Investigation (RI) Report, and more recent sampling have continued to show the contamination.

Some of the suspected sources of the soil contamination were excavated and investigated by the Navy from 1983 to 1984. Approximately 1,200 cubic yards of contaminated soil and 43 drums were removed and disposed of off-site in a U.S. Environmental Protection Agency (EPA) approved hazardous waste landfill.

On May 22, 1984, the MPCA issued a Request for Response Action (RFRA) to the Navy and FMC for the completion of a RI, Feasibility Study (FS) and Remedial Action Plan to remedy the Site contamination. The Navy was reluctant at first to comply with the RFRA, maintaining that it was not subject to MPCA authority because of the sovereign immunity of the United States.

FMC entered into an Administrative Order/Interim Response Order By Consent (First FMC Order) with the EPA and MPCA on June 8, 1983, under which FMC excavated approximately 38,600 cubic yards of contaminated soil and placed it in

an on-site double lined vault with leachate collection and leak detection. The first FMC Order also required FMC to conduct a RI/FS and propose response action alternatives for the ground water contamination. The MPCA terminated this Order on October 27, 1987, and the vault is currently covered under a Resource Conservation and Recovery Act (RCRA) permit.

Following the RI/FS, the MPCA and FMC entered into a second Consent Order on October 28, 1986. This Order governed FMC's conduct of the ground water remedial action. FMC installed ground water pump out wells and has been pumping out ground water since December 1987, and has thus far pumped over 160 million gallons of water and has removed over 3,000 pounds of total volatile organic compounds including TCE.

The Navy began its NIROP RI/FS in earnest in June 1986. The final RI/FS reports and addendums were submitted by August 1988. The RI/FS indicated continuing ground water contamination from the NIROP site. The MPCA staff and the EPA staff reviewed the RI/FS reports and agreed on the recommended remedial alternative for ground water. The remedy is a ground water pump out system with discharge initially to the sanitary sewer followed by the installation of an on-site water treatment system with a discharge to the Mississippi River after about one year of operation. The MPCA staff, EPA and Navy concluded their agreement on the ground water remedy by signing a Record of Decision (ROD) on September 28, 1990. The installation of the ground water pump out wells is currently underway.

The RI/FS and subsequent sampling have indicated soil contamination that will continue to be a source of ground water contamination. The September 28, 1990, ROD only covers the ground water contamination and does not address any soil contamination. During the latter stages of the RI/FS, EPA began to become more involved with the NIROP site. When NIROP was finally listed on the

National Priorities List (NPL) on November 21, 1989, (it had been proposed by the MPCA staff in 1986) EPA and the Navy were required by the 1986 federal facility amendments to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to follow the Superfund cleanup process specified in 42 U.S.C. § 9620(e). Both federal agencies sought the MPCA's participation in a three-party agreement to address the remaining cleanup of the Site. Once the ROD became final on September 28, 1990, EPA and the Navy came under the 180-day deadline in 42 U.S.C. § 9620(e)(2) for execution of an agreement to govern completion of remedial actions for NIROP. That deadline falls on March 27, 1991, and the Commissioner has scheduled a Special Board Meeting on the proposed NIROP FFA in consideration of the federal parties' deadline.

Negotiations on the FFA began in March 1990, and were concluded in early March 1991. The attached FFA is the culmination of these negotiations and represents a comprehensive approach to addressing all remaining contamination found at and from NIROP.

## II. Discussion

The MPCA staff, Navy, and EPA have negotiated the terms of a FFA for the NIROP site which is Attachment 1 to this Board Item. The proposed FFA package consists of the FFA and Attachments A through E. The major features of the FFA and Attachments are described below.

### A. Remediation of NIROP Contamination

The FFA addresses all remaining contamination at NIROP, including: investigation of NIROP soils; evaluation, selection, and implementation of interim and final remedies; and future monitoring to assure effective implementation of the remedies.

Attachments A-E are integral and enforceable parts of the FFA. The Attachments outline in detail the specific technical requirements that the U.S. Navy must complete in order to assure a comprehensive solution to the remaining NIROP contamination. The Attachments include:

- ° Attachment A - Guidelines for Remedial Investigation and Feasibility Study
- ° Attachment B - Guidelines for Remedial Design and Remedial Action
- ° Attachment C - NIROP site maps showing NIROP, FMC and general ground water flow direction
- ° Attachment D - Letter from the Governor saying MPCA is acting on behalf of other Minnesota Executive Agencies
- ° Attachment E - NIROP Ground Water Record of Decision and Responsiveness Summary

The Navy must complete a Remedial Investigation to detect all remaining sources of contamination within the boundaries of NIROP. Initial phases of the soil investigation have already begun. Completion of the RI is scheduled for the end of 1992.

Using the information contained in the Navy RI, the Navy will prepare a FS to evaluate different alternative remedies for the cleanup of NIROP. The public will have the opportunity to review and comment upon the proposed remedial alternatives developed by the Navy. Following public comment, the Navy will submit its proposed remedial action alternative(s) to the MPCA and EPA for their review and approval.

The final remedy for NIROP will be proposed by the Navy and also subject to EPA and MPCA review and approval. Any dispute over remedy selection will ultimately be resolved by the EPA Administrator. The Navy will then design, and submit for MPCA and EPA review and approval, a detailed plan to implement the selected remedy, including appropriate timetables and schedules. The Navy will then implement the remedy according to the design and schedule approved by the agencies.

In addition, the Navy may seek approval for interim remedial measures prior to final remedy selection.

B. MPCA Involvement in Selection of the Remedy

A major concern of the MPCA staff was that the FFA must assure a meaningful state role in the development and implementation of the NIROP remedies. The MPCA staff believes that the FFA provides significantly more authority over the Navy than it might otherwise have obtained in the absence of the Agreement. The MPCA has joint approval authority with EPA over all submittals by the Navy and full access to the dispute resolution process. In sum, the FFA contemplated that EPA and the MPCA will work closely together in overseeing the implementation of the NIROP cleanup, while preserving state authority in a manner consistent with CERCLA.

C. Recovery of Expenses

The Navy agrees in the FFA to reimburse the MPCA, subject to Federal accounting procedures, for its response costs prior to October 17, 1986, the date the Superfund Amendments and Reauthorization Act (SARA) was enacted. The pre-SARA MPCA expenses are approximately \$27,000. The MPCA expenses through 1990 total over \$100,000, including the above pre-SARA expenses. MPCA staff has formally requested reimbursement from the Navy on February 17, 1987; March 31, 1989; June 29, 1989; May 15, 1990; and March 14, 1991.

The MPCA staff is currently negotiating a Defense State Memorandum of Agreement (DSMOA) under which the MPCA would be reimbursed for past and future MPCA NIROP expenses, based on a percentage of actual cleanup costs, as well as expenses for other federal facilities in the state. On June 16, 1990, the MPCA Board authorized the MPCA Commissioner, at his discretion, to request the Attorney General to commence litigation to recover MPCA expenses from the Navy, FMC or the U.S. Department of Defense. It is hoped that there will be a

successful conclusion to the DSMOA negotiations and no need for litigation. The FFA preserves the right to sue for the unreimbursed expenses if negotiations are not successful.

D. Deadlines

The FFA requires a RI for the soils operable unit to be submitted by December 15, 1992; a FS by October 15, 1993; and a Record of Decision by December 1994. The deadlines are enforceable by the MPCA, as well as by a citizen suit. After the soils ROD, additional deadlines will be developed for the soils remedy. These deadlines will be enforceable in the same manner.

III. Conclusion

The proposed FFA is the result of months of intensive negotiations by MPCA and Attorney General staff, EPA, and Navy. The FFA provides an enforceable mechanism for state participation in the development, selection, and implementation of the remedy for NIROP. The MPCA staff believes that the prompt development and implementation of a remedy in accordance with a schedule set by the state and EPA under this FFA is the most appropriate means for protecting the public health and the environment of Minnesota with regard to the NIROP site.

IV. Recommendations

The MPCA staff recommends that the MPCA Board approve the attached FFA for the purpose of developing and implementing remedial actions for the remaining contamination at NIROP by adopting the suggested staff resolution.

SUGGESTED STAFF RESOLUTION

WHEREAS, in issuing a Request for Response Action to the U.S. Navy and FMC on May 22, 1984, the Minnesota Pollution Control Agency determined that the U.S. Navy was responsible for the release of hazardous substances from the Naval Industrial Reserve Ordnance Plant site;

WHEREAS, the factual basis upon which the Minnesota Pollution Control Agency's determination was made is set forth in the Request for Response Action listed above; and

WHEREAS, the state, the U.S. Navy, and the U.S. Environmental Protection Agency have negotiated a Federal Facility Agreement under Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act 42 U.S.C. § 9620, which will provide an enforceable means to implement a remedy for the Naval Industrial Reserve Ordnance Plant contamination;

NOW THEREFORE, BE IT RESOLVED, that the Minnesota Pollution Control Agency approves and adopts the Federal Facility Agreement with the U.S. Navy and the U.S. Environmental Protection Agency, which provides for the development and implementation of a remedy for the remaining contamination caused by the Naval Industrial Reserve Ordnance Plant in Fridley, Minnesota.

BE IT FURTHER RESOLVED, that in approving and adopting the Federal Facility Agreement the Minnesota Pollution Control Agency adopts the jurisdictional determinations and factual findings set forth in Sections VI and VII of the Federal Facility Agreement and the factual determinations and reasoning of the Minnesota Pollution Control Agency staff's memorandum dated March 26, 1991, which accompanies the Minnesota Pollution Control Agency staff's recommendations to the Minnesota Pollution Control Agency Board.

BE IT FURTHER RESOLVED, that the Commissioner and Minnesota Pollution Control Agency Board Chairman are hereby authorized to execute the Federal Facility Agreement on behalf of the Minnesota Pollution Control Agency.

Attachment 2

ENVIRONMENTAL RESPONSE, ETC.

42 § 9620  
CERCLA § 120

person, public or nonprofit private entity, conducting a field demonstration pursuant to section 11021(b) of this title; and

(2) Recipients of grants (including subgrants) under section 126 for the training and education of workers who are or may be engaged in activities related to hazardous waste removal, containment, or emergency response under this chapter; and

(3) Any person who is retained or hired by a person described in subparagraph (A) to provide services relating to a response action.

**Insurance**  
The term "insurance" means liability insurance that is fair and reasonably priced, as determined by the President, and which is made available at the time the contractor enters into the response contract to provide response action.

**Selection**  
Response action contractors and subcontractors for program management, construction management, architectural and engineering, surveying and related services shall be selected in accordance with title IX of the Federal Property and Administrative Services Act of 1949 [40 U.S.C.A. § 101 et seq.]. The Federal selection procedures shall apply to appropriate contracts negotiated by Federal governmental agencies involved in carrying out this chapter. Such procedures shall be followed by response action contractors and subcontractors.

(96-510, Title I, § 119, as added Oct. 17, 1986, 99-499, Title I, § 119, 100 Stat. 1662, and amended 100-202, § 101(f) [Title II], Dec. 22, 1987, 101 Stat. 133.)

**References in Text**

Section 126, referred to in subsec. (e)(2)(A)(iii), probably means section 126 of Pub.L. 99-499, Title I, Oct. 17, 1986, 100 Stat. 1690, as set out as a note under section 655 of Title 29, Labor.

**Library References**

42 U.S.C. and Environment § 18, 25.7(23).  
42 U.S.C. and Environment §§ 54 et seq., 113 et seq.

**120. Federal facilities [CERCLA § 120]**

Application of chapter to Federal Government facilities in general

Each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of government) shall be subject to, and comply with, this chapter in the same manner and to the same extent, both procedurally and substantively, as any nongov-

ernmental entity, including liability under section 9607 of this title. Nothing in this section shall be construed to affect the liability of any person or entity under sections 9606 and 9607 of this title.

**(2) Application or requirements to Federal facilities**

All guidelines, rules, regulations, and criteria which are applicable to preliminary assessments carried out under this chapter for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priorities List, or applicable to remedial actions at such facilities shall also be applicable to facilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the extent as such guidelines, rules, regulations, and criteria are applicable to other facilities. No department, agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this chapter.

**(3) Exceptions**

This subsection shall not apply to the extent otherwise provided in this section with respect to applicable time periods. This subsection shall also not apply to any requirements relating to bonding, insurance, or financial responsibility. Nothing in this chapter shall be construed to require a State to comply with section 9604(c)(3) of this title in the case of a facility which is owned or operated by any department, agency, or instrumentality of the United States.

**(4) State laws**

State laws concerning removal and remedial action, including State laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States when such facilities are not included on the National Priorities List. The preceding sentence shall not apply to the extent a State law would apply any standard or requirement to such facilities which is more stringent than the standards and requirements applicable to facilities which are not owned or operated by any such department, agency, or instrumentality.

**(b) Notice**

Each department, agency, and instrumentality of the United States shall add to the inventory of

Federal agency hazardous waste facilities required to be submitted under section 3016 of the Solid Waste Disposal Act [42 U.S.C.A. § 6937] (in addition to the information required under section 3016(a)(3) of such Act) [42 U.S.C.A. § 6937(a)(3)] information on contamination from each facility owned or operated by the department, agency, or instrumentality if such contamination affects contiguous or adjacent property owned by the department, agency, or instrumentality or by any other person, including a description of the monitoring data obtained.

(c) Federal Agency Hazardous Waste Compliance Docket

The Administrator shall establish a special Federal Agency Hazardous Waste Compliance Docket (hereinafter in this section referred to as the "docket") which shall contain each of the following:

(1) All information submitted under section 3016 of the Solid Waste Disposal Act [42 U.S.C.A. § 6937] and subsection (b) of this section regarding any Federal facility and notice of each subsequent action taken under this chapter with respect to the facility.

(2) Information submitted by each department, agency, or instrumentality of the United States under section 3005 or 3010 of such Act [42 U.S.C.A. § 6925 or 6930].

(3) Information submitted by the department, agency, or instrumentality under section 9603 of this title.

The docket shall be available for public inspection at reasonable times. Six months after establishment of the docket and every 6 months thereafter, the Administrator shall publish in the Federal Register a list of the Federal facilities which have been included in the docket during the immediately preceding 6-month period. Such publication shall also indicate where in the appropriate regional office of the Environmental Protection Agency additional information may be obtained with respect to any facility on the docket. The Administrator shall establish a program to provide information to the public with respect to facilities which are included in the docket under this subsection.

(d) Assessment and evaluation

Not later than 18 months after October 17, 1986, the Administrator shall take steps to assure that a preliminary assessment is conducted for each facility on the docket. Following such preliminary assessment, the Administrator shall, where appropriate—

(1) evaluate such facilities in accordance with the criteria established in accordance with section 9605 of this title under the National Contingency Plan for determining priorities among releases; and

(2) include such facilities on the National Priorities List maintained under such plan if the facility meets such criteria.

Such criteria shall be applied in the same manner as the criteria are applied to facilities which are owned or operated by other persons. Evaluation and listing under this subsection shall be completed not later than 30 months after October 17, 1986. Upon the receipt of a petition from the Governor of any State, the Administrator shall make such an evaluation of any facility included in the docket.

(e) Required action by department

(1) RI/FS

Not later than 6 months after the inclusion of any facility on the National Priorities List, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence a remedial investigation and feasibility study for such facility. In the case of any facility which is listed on such list before October 17, 1986, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence such an investigation and study for such facility within one year after October 17, 1986. The Administrator and appropriate State authorities shall publish a timetable and deadlines for expeditious completion of such investigation and study.

(2) Commencement of remedial action; interagency agreement

The Administrator shall review the results of each investigation and study conducted as provided in paragraph (1). Within 180 days thereafter the head of the department, agency, or instrumentality concerned shall enter into an interagency agreement with the Administrator for the expeditious completion by such department, agency, or instrumentality of all necessary remedial action at such facility. Substantial continuous physical site remedial action shall be commenced at each facility not later than 15 months after completion of the investigation and study. All such interagency agreements, including review of alternative remedial action plans and selection of remedial action, shall comply with the public participation requirements of section 9617 of this

**(3) Completion of remedial actions**

Remedial actions at facilities subject to interagency agreements under this section shall be completed as expeditiously as practicable. Each agency shall include in its annual budget submissions to the Congress a review of alternative agency funding which could be used to provide for the costs of remedial action. The budget submission shall also include a statement of the hazard posed by the facility to human health, welfare, and the environment and identify the specific consequences of failure to begin and complete remedial action.

**(4) Contents of agreement**

Each interagency agreement under this subsection shall include, but shall not be limited to, each of the following:

(A) A review of alternative remedial actions and selection of a remedial action by the head of the relevant department, agency, or instrumentality and the Administrator or, if unable to reach agreement on selection of a remedial action, selection by the Administrator.

(B) A schedule for the completion of each such remedial action.

(C) Arrangements for long-term operation and maintenance of the facility.

**(5) Annual report**

Each department, agency, or instrumentality responsible for compliance with this section shall furnish an annual report to the Congress concerning its progress in implementing the requirements of this section. Such reports shall include, but shall not be limited to, each of the following items:

(A) A report on the progress in reaching interagency agreements under this section.

(B) The specific cost estimates and budgetary proposals involved in each interagency agreement.

(C) A brief summary of the public comments regarding each proposed interagency agreement.

(D) A description of the instances in which no agreement was reached.

(E) A report on progress in conducting investigations and studies under paragraph (1).

(F) A report on progress in conducting remedial actions.

(G) A report on progress in conducting remedial action at facilities which are not listed on the National Priorities List.

With respect to instances in which no agreement was reached within the required time period, the department, agency, or instrumentality filing the report under this paragraph shall include in such report an explanation of the reasons why no agreement was reached. The annual report required by this paragraph shall also contain a detailed description on a State-by-State basis of the status of each facility subject to this section, including a description of the hazard presented by each facility, plans and schedules for initiating and completing response action, enforcement status (where appropriate), and an explanation of any postponements or failure to complete response action. Such reports shall also be submitted to the affected States.

**(6) Settlements with other parties**

If the Administrator, in consultation with the head of the relevant department, agency, or instrumentality of the United States, determines that remedial investigations and feasibility studies or remedial action will be done properly at the Federal facility by another potentially responsible party within the deadlines provided in paragraphs (1), (2), and (3) of this subsection, the Administrator may enter into an agreement with such party under section 9622 of this title (relating to settlements). Following approval by the Attorney General of any such agreement relating to a remedial action, the agreement shall be entered in the appropriate United States district court as a consent decree under section 9606 of this title.

**(f) State and local participation**

The Administrator and each department, agency, or instrumentality responsible for compliance with this section shall afford to relevant State and local officials the opportunity to participate in the planning and selection of the remedial action, including but not limited to the review of all applicable data as it becomes available and the development of studies, reports, and action plans. In the case of State officials, the opportunity to participate shall be provided in accordance with section 9621 of this title.

**(g) Transfer of authorities**

Except for authorities which are delegated by the Administrator to an officer or employee of the Environmental Protection Agency, no authority vested in the Administrator under this section may be

transferred, by executive order of the President or otherwise, to any other officer or employee of the United States or to any other person.

(h) Property transferred by Federal agencies

(1) Notice

After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

(2) Form of notice; regulations

Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after October 17, 1986, but not later than 18 months after October 17, 1986, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

(3) Contents of certain deeds

After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain—

(A) to the extent such information is available on the basis of a complete search of agency files—

(i) a notice of the type and quantity of such hazardous substances,

(ii) notice of the time at which such storage, release, or disposal took place, and

(iii) a description of the remedial action taken, if any, and

(B) a covenant warranting that—

(i) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer, and

(ii) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States.

The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such real property.

(i) Obligations under Solid Waste Disposal Act

Nothing in this section shall affect or impair the obligation of any department, agency, or instrumentality of the United States to comply with any requirement of the Solid Waste Disposal Act [42 U.S.C.A. § 6901 et seq.] (including corrective action requirements).

(j) National security

(1) Site specific Presidential orders

The President may issue such orders regarding response actions at any specified site or facility of the Department of Energy or the Department of Defense as may be necessary to protect the national security interests of the United States at that site or facility. Such orders may include, where necessary to protect such interests, an exemption from any requirement contained in this subchapter or under title III of the Superfund Amendments and Reauthorization Act of 1986 [42 U.S.C.A. § 11021 et seq.] with respect to the site or facility concerned. The President shall notify the Congress within 30 days of the issuance of an order under this paragraph providing for any such exemption. Such notification shall include a statement of the reasons for the granting of the exemption. An exemption under this paragraph shall be for a specified period which may not exceed one year. Additional exemptions may be granted, each upon the President's issuance of a new order under this paragraph for the site or facility concerned. Each such additional exemption shall be for a specified period which may not exceed one year. It is the intention of the Congress that whenever an exemption is issued under this paragraph the response action shall proceed as expeditiously as practicable. The Congress shall be notified periodically of the progress of any response action with respect to which an exemption has been issued under this paragraph.

no exemption shall be granted under this paragraph due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

#### (2) Classified information

Notwithstanding any other provision of law, all requirements of the Atomic Energy Act [42 U.S.C.A. § 2011 et seq.] and all Executive orders concerning the handling of restricted data and national security information, including "need to know" requirements, shall be applicable to any grant of access to classified information under the provisions of this chapter or under title III of the Superfund Amendments and Reauthorization Act of 1986 [42 U.S.C.A. § 11021 et seq.] (Pub.L. 96-510, Title I, § 120, as added Oct. 17, 1986, Pub.L. 99-499, Title I, § 120(a), 100 Stat. 1666.)

#### Limited Grandfather Application

Section 120(b) of Pub.L. 99-499 Title I, Oct. 17, 1986, 100 Stat. 1671, provided that: "Section 120 of CERCLA [this section] shall not apply to any response action or remedial action for which a plan is under development by the Department of Energy on the date of enactment of this Act [October 17, 1986] with respect to facilities—

- (1) owned or operated by the United States and subject to the jurisdiction of such Department;
- (2) located in St. Charles and St. Louis counties, Missouri, or the city of St. Louis, Missouri, and
- (3) published in the National Priorities List.

In preparing such plans, the Secretary of Energy shall consult with the Administrator of the Environmental Protection Agency."

#### Library References

Health and Environment ⇐25.5(6.5).  
C.J.S. Health and Environment § 91 et seq.

### § 9621. Cleanup standards [CERCLA § 121]

#### (a) Selection of remedial action

The President shall select appropriate remedial actions determined to be necessary to be carried out under section 9604 or secured under section 9606 of this title which are in accordance with this section and, to the extent practicable, the national contingency plan, and which provide for cost-effective response. In evaluating the cost effectiveness of proposed alternative remedial actions, the President shall take into account the total short- and long-term costs of such actions, including the costs of operation and maintenance for the entire period during which such activities will be required.

#### (b) General rules

(1) Remedial actions in which treatment which permanently and significantly reduces the volume,

toxicity or mobility of the hazardous substances, pollutants, and contaminants is a principal element, are to be preferred over remedial actions not involving such treatment. The offsite transport and disposal of hazardous substances or contaminated materials without such treatment should be the least favored alternative remedial action where practicable treatment technologies are available. The President shall conduct an assessment of permanent solutions and alternative treatment technologies or resource recovery technologies that, in whole or in part, will result in a permanent and significant decrease in the toxicity, mobility, or volume of the hazardous substance, pollutant, or contaminant. In making such assessment, the President shall specifically address the long-term effectiveness of various alternatives. In assessing alternative remedial actions, the President shall, at a minimum, take into account:

(A) the long-term uncertainties associated with land disposal;

(B) the goals, objectives, and requirements of the Solid Waste Disposal Act [42 U.S.C.A. § 6901 et seq.];

(C) the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents;

(D) short- and long-term potential for adverse health effects from human exposure;

(E) long-term maintenance costs;

(F) the potential for future remedial action costs if the alternative remedial action in question were to fail; and

(G) the potential threat to human health and the environment associated with excavation, transportation, and redispersion, or containment.

The President shall select a remedial action that is protective of human health and the environment, that is cost effective, and that utilizes permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. If the President selects a remedial action not appropriate for a preference under this subsection, the President shall publish an explanation as to why a remedial action involving such reductions was not selected.

(2) The President may select an alternative remedial action meeting the objectives of this subsection whether or not such action has been achieved in practice at any other facility or site that has similar characteristics. In making such a selection, the President may take into account the degree of sup-