OFFICE OF THE
DEPUTY UNDER
SECRETARY OF
DEFENSE
(ENVIRONMENTAL
SECURITY)

National Priorities List Reform

A More Flexible Approach for Federal Facilities

Over the past several years, there have been changes to the Environmental Protection Agency's (EPA's) policies concerning the listing of properties on and deletion of listed sites from the National Priorities List (NPL). One of the most important changes for DoD allows for the deletion of portions of NPL sites. Formerly, an entire facility had to be cleaned up before it could be deleted from the NPL. Another policy change allows DoD to clean up parcels using statutory authorities other than the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), although DoD's preference is to use CERCLA. These changes provide Federal facilities with more flexible options for both transfer and cleanup.

Recent NPL Policy Changes:

November 1, 1995
NPL Partial Deletion Policy (60 FR 55466)

November 24, 1997
NPL Deferral Policy (62 FR 62523)
NPL Deletion Policy (62 FR 62523)

BOX 1

CERCLA, originally enacted in 1980, required EPA to establish criteria for listing national priorities among the known or threatened hazardous substance releases throughout the United States. CERCLA requires EPA to revise annually the list of the nation's most contaminated properties, known as the NPL. Because there may be a stigma that attaches to NPL-listed property which affects the ability of a local community to develop or reuse such property, EPA has undertaken several initiatives regarding the NPL listing and deletion processes.

NPL Partial Deletion Policy

On November 1, 1995, in support of the President's Five Point Plan for closing or realigning military bases, EPA announced a change in the Agency's NPL deletion policy (60 FR 55466). This change allowed for the deletion of discrete parcels on NPL facilities from the list if these parcels could meet the criteria for entire site deletion, as provided in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR Part 300). Previously, EPA had interpreted an NPL "site" to include the entire facility, thus, prohibiting deletion of any part of a facility until all contaminated parcels had been remediated or no further CERCLA response action was deemed appropriate.

EPA Definitions

Deletion — Act of removing a site or a parcel on a site from the NPL because cleanup is complete or because another cleanup authority can be used to remediate the site or parcel, making further CERCLA action unnecessary.

Deferral — Decision not to list or continue listing a site on the NPL, even if the site is otherwise eligible, and to allow other statutory authority to replace CERCLA response authority for handling remediation of the site.

BOX 2

EPA recognized that while total cleanup of an entire installation may take many years, many parcels at a facility may have been cleaned up earlier or may never have been contaminated and are available for productive use. The policy is designed to promote more rapid redevelopment of NPL properties and to communicate the completion of successful partial cleanups to interested purchasers.

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Abstract
Over the past several years, there have been changes to the Environmental Protection Agency's (EPA's) policies concerning the listing of properties on and deletion of listed sites from the National Priorities List (NPL). One of the most important changes for DoD allows for the deletion portions of NPL sites. Formerly, an entire facility had to be cleaned up before it could be deleted from the NPL. Another policy change allows DoD to clean up parcels using statutory authorities other than the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), although DoD's preference is to use CERCLA. These changes provide Federal facilities with more flexible options for both transfer and cleanup.

Subject Terms

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EPA may delete portions of facilities from the NPL when no further response is required (i.e., response actions have been implemented, cleanup levels achieved, and the release of hazardous substances no longer poses a significant threat to public health and welfare or the environment) (40 CFR §300.425(e)). A portion of a site may be a defined geographic unit of the facility, perhaps as small as a residential unit, or may be a specific medium at the facility, such as groundwater, depending on the nature or extent of the release. Whenever there is a significant release from an entire site or portion of a site deleted from the NPL, the site or portion of the site may be restored to the NPL without going through the listing process.

Sample Outline of NOID for Partial Deletion
(see 61 FR 16068, April 11, 1996)

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Partial Site Deletion

Appendix
A. Deletion Docket
B. Site Coordinate Boundaries

BOX 3

If an installation wishes to have a portion of a facility deleted from the NPL, it must petition EPA to do so. As part of EPA's Deletion Process, EPA is required to publish a Notice of Intent to Delete (NOID) and request public comment on the proposed deletion. On April 30, 1996, EPA provided guidance on its partial deletion policy (OERR Directive 9320.2-11) and established the information required to complete a NOID. The first successful partial deletion NOID was published in the April 11, 1996, *Federal Register* (61 FR 16068). This NOID should be used as an example of the information required to petition EPA for a partial deletion and of the form to be followed. Through January 31, 1998, there have been nine partial deletions from the NPL; none of these were Federal facilities. EPA's guidance does not provide specific partial deletion procedures because the procedures for partial deletion are the same as those for total site deletion (40 CFR §300.425(e)).

NPL Deferral/Deletion Policy for Federal Facilities

An amendment to CERCLA §120(d) in the National Defense Authorization Act of 1997 (Section 330), gave EPA the discretion to consider non-CERCLA cleanup authorities when making a listing determination for Federal facilities. Previously (as stated in 54 FR 10520), EPA did not consider whether a Federal facility was subject to the Resource Conservation and Recovery Act (RCRA) or another cleanup authority, such as the Toxic Substance Control Act (TSCA), when making a decision on the facility's eligibility for the NPL.

On November 24, 1997, EPA published an interim final policy entitled, "The National Priorities List for Uncontrolled Hazardous Waste Sites: Listing and Deletion Policy for Federal Facilities." This policy would allow Federal sites not yet on the NPL to be deferred from listing, if currently being addressed under another statutory regime, and would permit the deletion of sites already on the NPL if these sites were to be addressed under another cleanup authority. The policy was designed to free CERCLA oversight resources and avoid possible duplication of effort.

EPA's interim final policy provides that a Federal facility should satisfy the following three criteria to be eligible for deferral:

- The CERCLA site is currently being addressed by RCRA Subtitle C corrective action authorities under an existing enforceable order or permit containing corrective action provisions
- The response under RCRA is progressing adequately
- The state and community support deferral of the NPL listing.

The interim policy also provides for the deletion of Federal facilities from the NPL before cleanup is complete if the facility is being, or will be, adequately addressed by the RCRA corrective action program, and provided that certain criteria are met. One key criterion for making this decision is that the deletion cannot disrupt the ongoing cleanup activities.

Although DoD views the interim policy as beneficial in promoting more equitable treatment of Federal facilities, it has several concerns and is currently working with EPA to address them. While the policy encompasses both sites on the NPL and sites not yet listed, DoD notes that the expressed Congressional intent of Section 330 of the National Defense Authorization Act of 1997 was to apply this provision only to facilities that are not already on the NPL. Therefore, the provision should not be retroactively applied to sites currently on the NPL. EPA's position is that the policy itself provides sufficient authority for retroactive application, because EPA is not relying solely on Section 330. DoD also believes that in crafting Section 330 Congress intended for the Federal agency to be involved in making the deferral decision. In addition, while the EPA policy limits deferral to instances in which RCRA authority would be used in place of CERCLA, DoD understands the statutory language to allow for deferral to other cleanup authorities, such as TSCA. DoD has also recommended to EPA that the interim policy could be improved by addressing the specific CERCLA responsibilities that would remain after deferral occurs.

This and other documents on the BRAC Environmental Program are available at: *http://www.dtic.mil/envirodod/brac/*

We welcome and invite your comments on this fact sheet, as we seek ways to improve the information provided. Please send comments to the following address:

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