



Legal Requirements for Cleanups

Leading Change for Installation Excellence



Overview

- Cleanups
- Ranges and Military Munitions
- Public Participation
- Administrative Record
- Cost Recovery
- Post-ROD changes
- Land Use Controls
- Natural Resource Injuries



Cleanups

- Defense Environmental Restoration Program (DERP), 10 U.S.C. § 2700 *et seq.*
- Covers remedial action under CERCLA and corrective action under RCRA





CERCLA Cleanups

- Covers releases of (1) hazardous substances or (2) pollutants or contaminants which may present an imminent and substantial danger to the public health or welfare
- NPL
 - FFA
- Non-NPL
 - Army lead agent



CERCLA Cleanups

- Risk-based program
 - Carcinogenic - 10^{-4} to 10^{-6}
 - Non-carcinogenic - $HI > 1$
- No risk = no ARARs
- No Action RODs with LUCs





ARARs

- Applicable -- Those **substantive** requirements **promulgated** under federal or state environmental laws that **specifically address** a hazardous substance, remedial action, location at a CERCLA site.
- Relevant and Appropriate -- Those **substantive** requirements **promulgated** under federal or state environmental laws that, **while not “applicable”** to the hazardous substance, remedial action, location, at a CERCLA site, **address situations sufficiently similar** to those encountered at the CERCLA site that their use is well suited to the particular site.



ARARs

- Groundwater
 - MCLGs, MCLs, State Standards
 - California
- Surface Waters
 - SWQSs
- Soil





RCRA Cleanups

- Covers releases of hazardous wastes
 - Listed waste – 40 C.F.R. Part 261, Subpart D
 - Characteristic waste – 40 C.F.R. Part 261, Subpart B
- Corrective action authority
 - Run by EPA and 41 authorized states
 - Limited federal regulations
 - Risk-based, but ...



Cleanups (General)

- Status of FFAs
 - Air Force Policy
- EPA enforcement
 - “EPA Widens Enforcement Crackdown on Military Cleanup Efforts”
- Cleanups under SDWA
- Bar on cleanup reviews
 - Fort Sheridan



Ranges & Military Munitions

- Legal status of UXOs
 - CERCLA “pollutant or contaminant”
 - RCRA “hazardous waste” if managed
- MMRP
 - Addresses military munitions and munitions constituents
- MMRP RI/FS guidance
 - Draft version





Ranges & Military Munitions

- Efforts by regulators to address active ranges?
 - Camp Santiago, PR
 - Wappapello Training Site, MO





Public Participation

- Required by law and Army policy
- RAB should be the focal point
- Army retains final decision-making authority
- Re-engage if significant changes
- Consider Environmental Justice
- Document!



Administrative Record

- **Required by law and NCP**
- **Focal point for public participation**
- **Judicial review of remedy**
- **What it includes:**
 - **Final documents that form the basis for remedy selection**
 - **Documents supplied by public**



Cost Recovery

- **Program run by Environmental Law Division**
- **Coordinates with Department of Justice**
- **Identify PRPs for contribution**
- **Preference is for PRP to take response action**



Post-ROD Changes

- **Type of documentation necessary depends on type of change**
 - Memorandum
 - Explanation of Significant Differences
 - ROD Amendment

ACTION ALERT!
**Please send your
comment letter
today!**



Land Use Controls

- Uniform Environmental Covenants Act (UECA)
- Other state laws
 - Hawaii
- Deed Notice
- Base Master Plan





Natural Resource Injuries

- CERCLA
 - 42 U.S.C. § 9607(f)
 - Release of a hazardous substance
- CWA
 - 33 U.S.C. § 1321(f)(4) and (5))
 - Discharge of oil or hazardous substance to navigable waters





Natural Resource Injuries

- NRI
 - Adverse ecological effects
- Natural Resource Damages (NRD)
 - Money damages
- Lead agent vs. Trustee
- Army Policy
 - Integrate NRI into remedy selection



Conclusion

- **Basic tenants remain constant (relatively)**
- **Think about long-term implications of cleanup decisions**
- **Consult with your attorneys early in the process**

USAEC Briefing Template

