



DEPARTMENT OF THE NAVY
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From: Chief of Naval Operations
Subj: NAVY INSTALLATION RESTORATION REQUIREMENTS AND PROCEDURES
Ref: (a) OPNAVINST 5090.1
(b) CNO ltr 5090 Ser 453/8U584044 of 28 Mar 88
Encl: (1) Department of the Navy CERCLA/SARA/IR Requirements
and Procedures

1. Since 1980, the Navy has been investigating and cleaning up past hazardous waste disposal sites on Navy installations. The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA), requires the Navy to comply with the act in the same manner and to the same extent as any nongovernmental entity. Chapter 11 of reference (a) assigns basic responsibilities within the Navy for compliance. Enclosure (1) provides detailed Navy requirements and procedures pertaining to the Navy's compliance program (The Installation Restoration Program) and assigns responsibilities for the effort. Please ensure dissemination to all your installations.

2. We have tasked the Naval Facilities Engineering Command (NAVFACENGCOM) to manage the fiscal and technical aspects of the IR program. However, it is imperative that the activities get involved early and remain involved throughout the entire process. Enclosure (1) tasks activities to take the lead on several critical procedural aspects of the program with support from NAVFACENGCOM. Close cooperation between the NAVFACENGCOM Engineering Field Divisions and your installations will be necessary to ensure success. The Installation Restoration program is funded centrally by the Department of Defense. Resource requirements to carry out installation responsibilities were addressed by reference (b).

3. Congressional and regulatory oversight of the Navy's Installation Restoration program will remain high. The Navy's goal is to remediate those past disposal sites in an expedient and cost-effective manner. Full and open cooperation with regulatory agencies and the public is required by the law and is essential to meeting the goal.

R. H. RICE, JR.
BY DIRECTION

Distribution
(See page 2)

RR-00014
1204-5-26-88

DEPARTMENT OF THE NAVY CERCLA/SARA/IR
REQUIREMENTS AND PROCEDURES

- Ref: (a) 40 CFR 300, National Oil and Hazardous Substances
Pollution Contingency Plan, 20 Nov 85 (50 FR 47912)
(b) CNO ltr Ser 451/8U394528 of 7 Aug 87
(c) CHINFO memo Ser OI-50 of 1 Jul 86

1. Legal Basis. The Superfund Amendments and Reauthorization Act of 1986 (SARA) amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and made it applicable to all federal agencies, including the Department of the Navy (DON). When addressing the cleanup of hazardous waste (HW) disposal sites, Section 120(a)(1) of CERCLA now requires each federal agency to comply with the Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity. The exceptions pertain to applicable time periods stated in the law for federal facilities and requirements relating to bonding, insurance or financial responsibility (CERCLA 120(a)(3)). The act further requires that applicable state laws concerning removal actions and remedial actions apply to federal facilities not listed on the national priorities list (CERCLA 120(a)(4)). The U.S. Environmental Protection Agency (EPA) regulations and procedures take precedence at National Priorities List (NPL) sites (see paragraph 3d), although state cleanup standards may apply.

2. EPA Program. EPA is responsible for implementing CERCLA by developing and enforcing appropriate regulations. Regulations issued for CERCLA compliance are found in reference (a), which is known as the National Contingency Plan (NCP). EPA is also issuing a series of policy memos and procedural guidance which provides detailed information on the remedial process. A compilation of these memos and guidance will form the Federal Facilities CERCLA Guidance Manual. The NCP sets forth the following general procedures for initiating and carrying out the remedial process at CERCLA sites:

- a. Site Discovery and Notification
- b. Preliminary Assessment/Site Inspection (PA/SI)
- c. National Priorities List (NPL) Ranking and Listing
- d. Remedial Investigation/Feasibility Study (RI/FS)
- e. Record of Decision (ROD)
- f. Remedial Design/Remedial Action (RD/RA)
- g. Operation and Maintenance (O&M)
- h. Long-Term Monitoring (LTM)

3. Department of the Navy (DON) Requirements and Procedures.

DON will conduct its response action in accordance with CERCLA, the NCP, and EPA's guidance. NAVFACENGCOCM will provide technical and fiscal assistance. Funding is provided by the Congress through the Defense Environmental Restoration Account, with program guidance provided by OASD(E) annually. This summary includes discussions of the following:

- o Background
- o Site Discovery and Notification
- o Federal Agency Hazardous Waste Compliance Docket
- o Preliminary Assessment/Site Inspection (PA/SI) and NPL listing
- o Coordination with Regulatory Agencies and the Public
- o Remedial Investigation/Feasibility Study (RI/FS)
- o Health Assessment
- o Record of Decision (ROD)
- o Interagency Agreement (IAG)/Federal Facility Agreement
- o Remedial Design/Remedial Action
- o Administrative Record/Retention of Records
- o Operation and Maintenance and Long-Term Monitoring
- o Citizen Suits

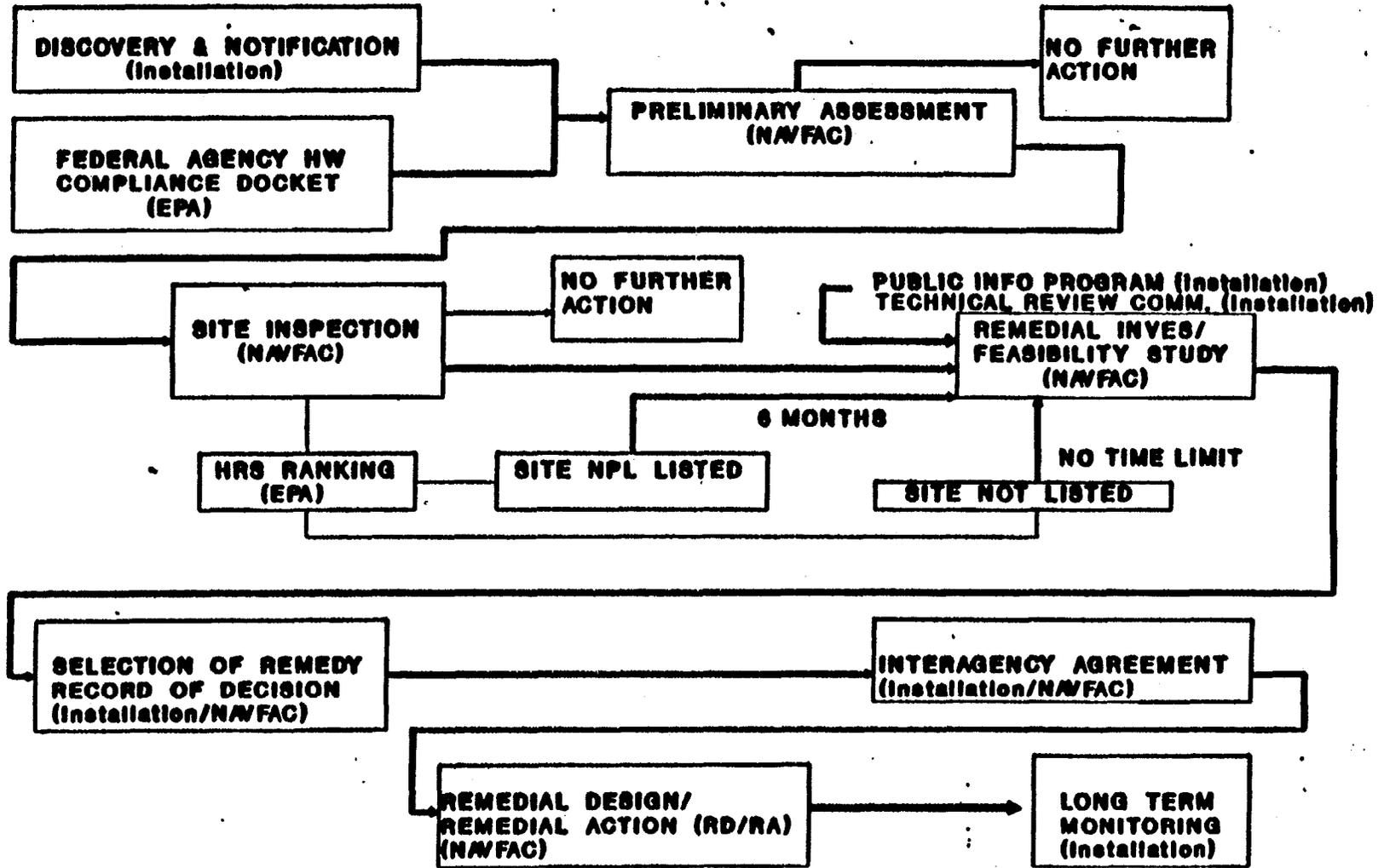
It is very important that the terms "facility", "sites", "installation", and "activity" are understood in this program. CERCLA 101(9) defines "facility" and discusses individual "sites" as "...any building, structure, installation, equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or any site where a hazardous substance has been deposited, stored, disposed of, placed, or otherwise come to be located." These two terms are used synonymously in this summary. In addition, the term "installation" is used to describe the Naval land that is subject to the legal requirements of CERCLA, the NCP, and DON policy. The term "activity" or "Naval activity" is synonymous with the term "installation" in this summary. Figure 3-1 illustrates the basic remedial action process and outlines responsibilities for the various steps. A key to the Superfund/SARA/IR acronyms is provided in appendix (1). These requirements will be cancelled upon inclusion in OPNAVINST 5090.1.

3a. Background. The Department of the Navy, like private industry, conducts a number of industrial processing and manufacturing operations which utilize industrial chemicals. Although in the past, wastes from our operations were disposed of by the commonly accepted practices of the times, we, as a nation, have found that such practice may have resulted in significant risks to public health and the environment. With the passage of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), the DON embarked on a program to identify, investigate, and cleanup past hazardous waste disposal sites. This program was called the Navy Assessment and Control of Installation Pollutants (NACIP) program.

The NACIP program, while closely paralleling the EPA Superfund program, was not procedurally the same. The DON determined that approximately 100 installations needed to have an Initial Assessment Study (IAS) done to determine through record searches, interviews, aerial maps, etc., if potential hazardous waste (HW) disposal sites existed on the installation. Over 100 IASs were done by the Naval Energy and Environmental Support Activity (NEESA) between 1980 and 1986 and over 1200 sites were identified. IASs were comparable to a Preliminary Assessment/Site Inspection (PA/SI) under EPA's program. During the IAS, all sites were run through a Navy developed rating model and approximately 700 sites were recommended for further investigation through a Confirmation Study (CS). The CS was to verify and characterize contamination at the sites and was comparable to EPA's Remedial Investigation/Feasibility Study (RI/FS). NAVFACENCOM had over 80 CSs underway on October 17, 1986 when the Superfund Amendments and Reauthorization Act (SARA) was passed by Congress. SARA required federal facilities to comply with all procedural and substantive requirements of CERCLA. Therefore, DON adopted the EPA/Superfund terminology and procedures and dropped those of NACIP. We currently call this effort the Installation Restoration Program (IRP). NAVFACENCOM is modifying existing CS contracts to include the EPA requirements. The remainder of this guidance discusses DON implementation of the current program under guidelines established by CERCLA/SARA.

3b. Site Discovery and Notification. An installation Commanding Officer (CO) must immediately notify the National Response Center (NRC) as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance, in excess of a reportable quantity, from his facility (CERCLA 103). Although the installation CO may delegate spill notification duties, he is still ultimately responsible to ensure proper and prompt notification. A 'release' is defined in CERCLA 101(22). The hazardous substances and their reportable quantities are listed at 40 CFR 302. CERCLA makes no distinction between current or past releases under the reporting requirement. The requirement goes into effect as soon as the person in charge has knowledge of the release upon discovery. This means that the installation must give prompt notice of such

REMEDIAL ACTION



information to the National Response Center, similar to the telephone calls and/or short messages which installations now give to the NRC concerning spills. OPNAVINST 5090.1 provides information and format for reporting. It is imperative that a follow-up confirming letter be sent to the appropriate agency in addition to the verbal telephone notice. If an owner or operator (installation commanding officer) fails to immediately notify the appropriate agency as soon as there is knowledge of such release or submits any information which he/she knows to be false or misleading, he/she can be subject to fine or imprisonment upon conviction (CERCLA 103(b)).

Under the Installation Restoration Program, notification of a potential release is accomplished when the installation Commanding Officer forwards a Preliminary Assessment/Site Inspection (PA/SI) report (see paragraph (3d)) to EPA and State regulatory agencies. Usually, until a PA/SI is accomplished, the installation has no knowledge of a release. If, however, the installation discovers a release, and that release has not previously been reported in an IAS or PA/SI, then the CO should report it immediately to the appropriate agency. The NAVFACENCOM EFD should then be requested to investigate the problem. If an installation, in reviewing its records, discovers information that a potential disposal site exists that was not previously investigated, then the installation should report this information to the Engineering Field Division for further review. It need not be reported to the NRC at this time since it is only a potential site.

3c. Federal Agency Hazardous Waste Compliance Docket.

Congress wanted to ensure that federal agencies accomplished preliminary assessments (PAs) at certain installations. They required EPA to establish a Federal Agency Hazardous Waste Compliance Docket. The docket lists those federal facilities that submitted:

- a. Resource Conservation and Recovery Act (RCRA) Section 3016, Biennial Inventory of Federal Hazardous Waste Facilities.
- b. RCRA Section 3005, Permits for Treatment, Storage, and Disposal of Hazardous Wastes.
- c. RCRA Section 3010, Notification of Hazardous Waste Generation, Transport, Treatment, Storage, or Disposal Activities.
- d. CERCLA Section 103, Notice of Hazardous Substance Release.

The docket also lists any installation which has reported a release of a hazardous substance, applied for a RCRA Part A or Part B permit, or submitted NACIP or IR information to EPA.

EPA published the initial docket in the Federal Register on 12 February 1988 and it will be updated periodically. The DON must accomplish a preliminary assessment (See paragraph (3d)) for each facility on the docket (Section 120(d)). EPA must make the docket information available for public inspection at reasonable times, and establish a program to provide this information to the public (CERCLA 120(c)(3)). EPA has established repositories of docket information at their regional offices. In conjunction with the installations, NAVFACENGCOCOM should review and upgrade the repository information and ensure that all sites are being addressed. EPA will not remove sites from the docket but it will indicate 'No further action required' or other status, as appropriate.

3d. Preliminary Assessment/Site Inspection (PA/SI) and NPL Listing. After site discovery and notification by an installation or after an installation has been listed in the Federal Agency HW Compliance Docket, NAVFACENGCOCOM will ensure that Preliminary Assessment is conducted, and where appropriate, a follow-on site inspection is done. A PA is developed from readily available existing information and includes (1) identification of the source and nature of the release, (2) evaluation of the magnitude of the potential threat, and (3) evaluation of factors necessary to determine if immediate removal is necessary. The PA determines if additional investigation of the site is required. The PA is forwarded to EPA and state regulatory agencies by the installation Commanding Officer. If additional investigation is required, actual samples are collected and analyzed in a Site Inspection (SI) by NAVFACENGCOCOM. At the conclusion of the SI, the total PA/SI package is sent to EPA and state regulatory agencies by the installation Commanding Officer.

Information from the PA/SI are used for scoring hazardous waste sites. Using a Hazard Ranking System (HRS), EPA must score hazardous waste sites by their potential to affect human health, welfare, and the environment. The HRS is a means of applying uniform technical judgement regarding the potential hazards presented by a facility relative to other facilities. It does not address the feasibility, desirability or degree of cleanup required. Hazardous waste sites receiving the highest scores (i.e., having the highest potential for affecting human health, welfare, and the environment) are put on the National Priorities List (NPL) (40 CFR 300, appendix B). At the current time, a site is proposed for the NPL if the site score is 28.5 or higher. Sites on the NPL will receive the highest priority within the IR program.

3e. Coordination with Regulatory Agencies and the Public. At this point in the IR program, initial investigation of a number of sites has been accomplished. CERCLA and EPA guidance requires that regulatory agencies and the public be

informed of these results and other studies/investigations as they occur. Therefore, the following actions are required:

(1) Comment by EPA, State and Local Authorities. The installation CO must ensure that EPA and appropriate state and local officials have adequate opportunity to review and comment on assessments/studies and proposals for response/remedial actions (SARA 211). Although assessments, studies and recommendations for remedial actions are normally conducted for the installation by NAVFACENCOM, the installation CO remains ultimately responsible for ensuring compliance with this section by forwarding documents to regulatory agencies.

(2) Technical Review Committee. The installation CO must establish a Technical Review Committee to review and comment on IR actions and proposed actions, whenever possible and practical. The function of the TRC is to maintain a dialogue with technically knowledgeable individuals to help ensure that all environmental concerns with the studies and ultimate cleanup recommendations have been addressed during the remedial process. Invitations for participation should be sent to the EFD, the federal EPA, and appropriate state and local authorities, including a public representative of the community involved (SARA 211). Generally, this will require that a technical review committee be formed at each installation with IR sites. Committee membership will facilitate other aspects of the IR process, such as regulatory involvement and public participation. NAVFACENCOM EFDs will actively assist the installations with the TRC.

(3) Public Information Program. Reference (b) reiterated CHINFO guidance, reference (c), that a proactive public information program be implemented at the installation level for all IR sites and that a formal written Community Relations Plan be prepared by each installation that has a site listed on the National Priorities List. The installation shall initiate and continue with the public information program throughout the life of the IR program at the installation. Area coordinators and EFDs will be kept informed of all public affairs actions taken by the installation.

3f. Remedial Investigation/Feasibility Study (RI/FS). Sites identified in the PA/SI as potential threats to human health or the environment, receive a comprehensive investigation called an RI/FS. The RI/FS will be conducted by NAVFACENCOM. All contaminants and their migration pathway are defined, potential risks to public health and the environment are assessed, and a comprehensive, quantitative risk assessment is carried out. The RI serves as the mechanism for collecting data for site and waste characterization to evaluate the performance and cost of the treatment technologies and support the design of selected remedies. The FS serves as the mechanism for the development, screening, and detailed evaluation of potential remedial alternatives. The purpose is to evaluate the threat to public health before remedial actions, to develop cleanup

Performance goals, and to compare the health risks of the cleanup alternatives. Although many criteria are to be used in selecting remedial actions, protection of public health and the environment is paramount (CERCLA 121(d)). Activities will assist NAVFACENGCOCM and the RI/FS contractor to obtain complete and accurate information so that the risk assessment results are based on best information available. The Remedial Action alternatives are evaluated in terms of effectiveness and cost. It is DON policy to conduct an RI/FS at both NPL sites and non-NPL sites in accordance with EPA guidelines. CERCLA requires an RI/FS be commenced within six months of site being listed on the NPL. The RI/FS is considered to be commenced when a notice is provided to the appropriate regional EPA office that a contract to conduct the RI/FS has been awarded. RI/FSs at non-NPL sites will be accomplished as expeditiously as possible in accordance with DOD priorities.

3g. Health Assessment. The Agency for Toxic Substances and Disease Registry (ATSDR) must perform a health assessment for each facility proposed for the NPL (CERCLA 104 (i) (6)). We expect ATSDR to do this using available information from our IR studies and from site visits. To the maximum extent possible ATSDR must complete a health assessment before the completion of the RI/FS. Installations should cooperate with ATSDR by providing requested information. The results of ATSDR's analysis should be used in the RI/FS as appropriate.

3h. Record of Decision (ROD). A ROD must be prepared to document the decision-making process whenever a remedial action or no action alternative is selected at both NPL and non-NPL sites. The NAVFACENGCOCM EFD will prepare a ROD at the conclusion of an RI/FS and provide it to the installation CO. The installation CO must carefully review the proposed ROD and the administrative record (paragraph 3k). If the CO concurs, then he/she should sign it. If the CO disagrees or has questions on the ROD, he/she should discuss and resolve the questions with the EFD. The Navy must provide reasonable opportunity for public review and comment before adoption of any plan for remedial action. The ROD should have a public review and any significant comments, criticisms, and new data submitted by the public should be responded to by the installation and be made available to the public before commencement of any remedial action. For NPL sites, the ROD is forwarded to the EPA region for concurrence. If we are unable to reach agreement on selection of a remedial action for NPL sites with EPA, then selection is by EPA (CERCLA 120(e)). As the lead agency on DON installations under Executive Order 12580, the DON has final decision authority for non-NPL sites, as long as all "applicable, relevant and appropriate" federal and state standards were taken into account. However, if State Superfund laws exist, they must be complied with per CERCLA 120(a)(4).

3i. Interagency Agreement (IAG)/Federal Facility Agreement. Within 180 days after EPA review of each RI/FS for

RR - 00014
1204 - 5 - 26 - 88

an NPL site, federal agencies must enter into an IAG with EPA for the expeditious completion of all necessary remedial action (CERCLA 120(e)(2)). Each IAG must include:

- a. A review of alternative remedial actions and selection of a remedial action by the DON and EPA.
- b. A schedule for completion of each remedial action.
- c. Arrangements for long-term operation and maintenance of the facility.

The IAG will be signed by the installation Commanding Officer. Although the IAG is not required until six months after the completion of an RI/FS, it is desirable to have an agreement early in the RI/FS stage. If an appropriate agreement can be worked out with EPA, this is acceptable. The cognizant EFD should review the IAG prior to signature to ensure schedules are reasonable.

3j. Remedial Design/Remedial Action. After the Record of Decision has been completed, Remedial Design and Remedial Action should be commenced. For NPL sites, federal activities must commence 'substantial continuous physical onsite remedial action' not later than 15 months after completion of the RI/FS (CERCLA 120(e)). This means actual full-scale drilling, excavation, or construction, not merely contract award or groundbreaking. Remedial actions should be completed as expeditiously as possible, whether at NPL or non-NPL sites.

3k. Administrative Record/Retention of Records. Federal facilities must establish an administrative record for all IR sites. This forms the basis for the installation CO's selection of a response action. The administrative record must be made available to the public at or near the facility at issue (CERCLA 113(k)). In any judicial action under CERCLA, a court will look to the administrative record to determine whether the Navy's decision in selecting a response action was properly made. Unless the objecting party can demonstrate that the decision was not based on an adequate record, was 'arbitrary and capricious,' or otherwise not in accordance with law (CERCLA 113(j)) the decision will be upheld. NAVFAC EFDs will establish and maintain the administrative record and send copies/updates to the installation, state, and EPA. Installation COs must ensure that they send any new or additional information, such as correspondence with regulatory agencies and the public, to the EFD for possible addition to the administrative record. Installations must ensure that the administrative record is available to the public.

CERCLA 103(d) requires that any person who must notify of known, suspected, or likely releases under Section 103(c) of CERCLA must also retain records of the facility and the hazardous substance release for 50 years after the Act was enacted (2030) or for 50 years after the record was established.

whichever is later. The records include information on the location, title, and condition of the facility and the identify, characteristics, quantity, origin, or condition (including containerization and previous treatment) of any hazardous substances contained or deposited on the facility. It is unlawful to destroy, mutilate, conceal, or falsify such records. EPA is authorized to promulgate rules and regulations with respect to the records which should be retained, but has not done so to date. Pending any such guidance, each installation should retain the appropriate records for at least the statutory time period or apply to EPA for appropriate waivers. Costs for maintaining these records will come from installation operating funds.

31. Operation and Maintenance and Long-Term

Monitoring. The Defense Environmental Restoration Account (DERA) funds are available for remedial actions, including planning, design, construction, operation and maintenance. DERA may pay for project capital costs and the first two years of O&M expenses for long-term monitoring systems. Installations must budget and pay for necessary monitoring after two years. This DOD policy is based upon the concept that this should give sufficient time for installations to program for the O&MN costs. The two year period begins after the decision to perform no further remedial action.

3m. Citizen Suits.

CERCLA allows any citizen to sue any person or government agency "...who is alleged to be in violation of any standard, regulation, condition, requirement, or order which becomes effective pursuant to this Act (including any provision of an agreement under section 120, relating to Federal facilities)" (CERCLA 310). This allows private citizens to ensure that the DON as an organization and/or its employees as individuals are in compliance with CERCLA and with the terms of interagency agreements. In order to sue under these provisions, a citizen must give a notice of violation to the President, the State in which the violation occurs, and the DON. If the DON acts within 60 days after receiving a notice of violation to comply with the CERCLA requirement in question, the lawsuit becomes groundless and will probably be dismissed. To avoid lawsuits and potential court orders, the installations (with NAVFACENGCOM support) must comply with CERCLA and with the terms of interagency agreements. The installation CO and his staff should be alert to correspondence from citizens and citizen groups which purports to be a notice of violation and would commence the 60 day time limitation. The installation JAG and EFD legal counsel should be consulted immediately if a citizen suit letter is written to the installation.

RR-00014
1204-5-26-88

Key to Superfund/SARA/IR acronyms

ATSDR	Agency for Toxic Substances and Disease Registry
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act, as amended
CFR	Code of Federal Regulations
DERA	Defense Environmental Restoration Account
DERP	Department of Defense Environmental Restoration Program
EPA	U.S. Environmental Protection Agency
FR	Federal Register
IAG	Interagency Agreement
IR	Installation Restoration
NACIP	Navy Assessment and Control of Installation Pollutants
NCP	National Contingency Plan
NPL	National Priorities List
NRC	National Response Center
PA/SI	Preliminary Assessment/Site Inspection
RCRA	Resource Conservation and Recovery Act
RD/RA	Remedial Design/Remedial Action
RI/FS	Remedial Investigation/Feasibility Study
ROD	Record of Decision
SARA	Superfund Amendments and Reauthorization Act of 1986