DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
Washington, D.C. 20314

ER 200-3-1

CEMP-D

Regulation
No. 200-3-1

10 May 2004

# Environmental Quality
# FORMERLY USED DEFENSE SITES (FUDS) PROGRAM POLICY

**1. Purpose**. This regulation provides specific policy and guidance for management and execution of the Formerly Used Defense Sites (FUDS) program.

**2. Applicability**. This Engineer Regulation (ER) applies to all U.S. Army Corps of Engineers (USACE) elements engaged in FUDS program activities.

**3. Distribution**. Approved for public release; distribution is unlimited.

**4. Reference**. See Appendix A.

**5. Terms and Abbreviations**. See the Glossary.

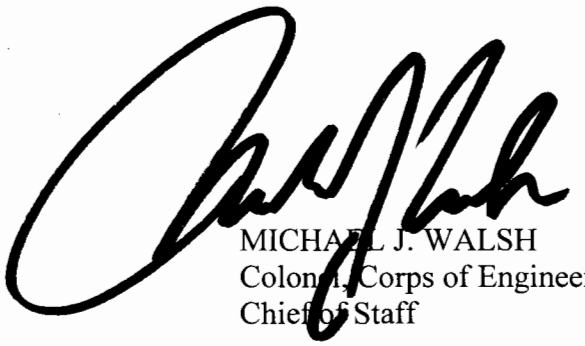
**6. Policy.** It is the policy of the USACE that the policies contained in this ER are the overarching USACE policy for management and execution of the FUDS program and takes precedence over previous USACE FUDS program policy and guidance.

**7. Discussion.** This regulation provides policy and guidance within USACE for the planning, programming, budgeting, execution, management, and reporting of all activities associated with FUDS properties and projects. FUDS are defined as real property that was under the jurisdiction of the Secretary[1] and owned by, leased by, or otherwise possessed by the United States (including governmental entities that are the legal predecessors of Department of Defense [DoD] or the Components) and those real properties where accountability rested with DoD but where the activities at the property were conducted by contractors (i.e., government-owned, contractor-operated [GOCO] properties) that were transferred from DoD control prior to 17 October 1986. The FUDS eligibility status of former DoD property is not affected by its being the current responsibility of another federal agency.

[1] The term "Secretary" means the Secretary of Defense and the Secretaries of each of the Military Departments, as well as the Secretaries of any predecessor departments or agencies of DoD.

**8. Responsibilities**. All HQ elements and Command echelons will, to the extent legally practicable, implement the policies contained in this regulation. See Chapter 2 for a detailed discussion of roles and responsibilities.

FOR THE COMMANDER:



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# Chapter 1
# Program Overview and Regulatory Context

## 1-1 Defense Environmental Restoration Program (DERP).

1-1.1 *Compliance with Statute and Policy.* The USACE must comply with the DERP statute (10 USC 2701 et seq.), the Comprehensive Environmental Response Compensation, and Liability Act (CERCLA, 42 USC § 9601 *et seq.*, Executive Orders (EOs) 12580 and 13016, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and all applicable DoD (e.g., *DoD Management Guidance for the DERP [28 September 2001]*) and Army policies in managing and executing the FUDS program. Because of the linkages between the DERP and CERCLA and the delegation of certain Presidential authorities under CERCLA to DoD, CERCLA is DoD's preferred framework for environmental restoration. Where a regulatory agency seeks to use another framework, USACE Districts shall:

1-1.1.1 Seek formal approval of the decision to follow a framework other than CERCLA (see paragraph 9-5.1).

1-1.1.2 Ensure that the actions undertaken also comply with all applicable CERCLA requirements, especially in the areas of the content of decision documents and the maintenance of an Administrative Record.

1-1.2 *Program Categories*. Consistent with the statutory program goals of the DERP, DoD has established three program categories to classify activities at FUDS properties and projects: installation restoration program, military munitions response program, and building demolition/debris removal program.

1-1.2.1 *Installation Restoration (IR) Program*. For the FUDS, the IR program includes the Hazardous, Toxic, and Radioactive Waste (HTRW) and Containerized HTRW (CON/HTRW) project categories. IR program category is defined as the conduct of response actions (i.e., the identification, investigation, and remedial actions, or a combination of removal and remedial actions) to address releases of:

1-1.2.1.1 Hazardous substances or pollutants and contaminants (as defined in the CERCLA).

1-1.2.1.2 Petroleum, oil, or lubricants (POL). Under the *DoD Management Guidance for the DERP*, funding appropriated to the Environmental Restoration (ER)-FUDS account may be used to remediate releases of petroleum where the release poses an imminent and substantial endangerment to the public health or welfare or to the environment [10 USC 2701(b)(2)].

1-1.2.1.3 DoD-unique materials.

1-1.2.1.4 Hazardous wastes or hazardous waste constituents.

1-1.2.1.5 Low-level radioactive materials or low-level radioactive wastes.

1-1.2.1.6 Explosive compounds released to soil, surface water, sediments, or groundwater as a result of ammunition or explosives production or manufacturing at ammunition plants.

1-1.2.2 *Military Munitions Response Program (MMRP).* The MMRP category is defined as response actions (i.e., the identification, investigation, and remedial actions, or a combination of removal and remedial actions) to address Munitions and Explosives of Concern (MEC) or Munitions Constituents (MC). This includes the removal of foreign military munitions if it is incidental to the response addressing DoD military munitions at a FUDS property.

1-1.2.3 *Building Demolition and Debris Removal (BD/DR) Program.* This program category is defined as the demolition and removal of unsafe buildings and structures at FUDS properties that were owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary of Defense and transferred to state, local governments, or Native Corporations of Alaska. See Chapter 3 for exclusions.

1-1.3 *FUDS Project Definition.* Within this Program, USACE has defined a FUDS Project as a unique name given to an area of an eligible FUDS property containing one or more releases or threatened releases of a similar response nature, treated as a discrete entity or consolidated grouping for response purposes. This may include buildings, structures, impoundments, landfills, storage containers, or other areas where hazardous substance are or have come to be located, including FUDS eligible unsafe buildings or debris. Response actions at FUDS projects fall under the Installation Restoration (HTRW and CON/HTRW), Military Munitions Response Program (MEC and MC), or Building Demolition/Debris Removal (BD/DR) program categories. An eligible FUDS property may have more than one project.

1-1.4 *FUDS Program Goals and Objectives*.

1-1.4.1 The DoD Goals for the DERP, established for the FUDS program in the DoD Financial Management Regulation (FMR), require USACE to develop an execution strategy that includes the following.

1-1.4.1.1 Reducing risk to human health and the environment through implementation of effective, legally compliant, and cost-effective response actions.

1-1.4.1.2 Having final remedies in place and completing response actions.

1-1.4.1.3 Requiring certain percentages of FUDS projects (see definition of FUDS Project in the preceding paragraph and in Chapter 3) in the program to progress to specific stages of the response process by specific dates (i.e., milestones).

1-1.4.2 The objective of the BD/DR program is to protect human health and safety by demolishing and removing unsafe buildings, structures, and debris resulting from past DoD operations.

1-1.4.3 HTRW aspects of projects will be evaluated using the DoD Relative Risk Site Evaluation (RRSE) method to assign a relative priority for action. These priorities will be used to measure the progress of response actions at HTRW projects toward the DoD Performance Goals for DERP as established in the DoD FMR. For projects under the MMRP category, MC will be evaluated using the RRSE and MEC will be evaluated using the Risk Assessment Code (RAC) methods to determine a relative priority for response actions until the successor prioritization model for MMRP projects is released. Program goals for the MMRP are evolving and have not been published in the FMR. Interim goals are for all Preliminary Assessments to be completed by 2007 and Site Inspections to be completed by 2010. Although there are no program goals for BD/DR projects, funding for this category is programmed during the Program Objective Memorandum (POM) development to ensure progress is made in reducing the safety risk in this category. Similarly, minimal funding is programmed in the POM to continue execution of response actions at Containerized Hazardous, Toxic, and Radioactive Waste (CON/HTRW) projects. See Chapter 6 for further details. Restoration activities for HTRW projects will clean up to a lower relative risk category, or have remedial systems in place, for:

1-1.4.3.1 50 and 100 percent of high relative risk projects by the end of Fiscal Year (FY) 2002 and FY 2007, respectively (or within 3 years for any newly identified high relative risk projects).

1-1.4.3.2 100 percent of medium risk projects by FY 2011.

1-1.4.3.3 100 percent of low relative risk projects by FY 2020.

1-1.5 *Army Environmental Cleanup Strategy and Strategic Plan.* The Army Environmental Cleanup Strategy provides a roadmap that guides the Army in attaining its environmental cleanup vision. The primary purpose of this strategy is to identify common objectives, thus creating consistency and accountability across the Army's Cleanup Program. The strategy defines the Army's cleanup vision, identifies uniform cleanup program objectives, describes the various Army cleanup program areas, provides a mission statement for each program area, and briefly describes cleanup resource and cleanup strategy management. The *Army Environmental Cleanup Strategic Plan* provides a framework for implementing the *Army Environmental Cleanup Strategy* (AECS) and identifies specific objectives, targets, success indicators, reporting mechanisms, and management review processes for each of the cleanup program areas. FUDS program is a component of the AECS. The *Army Environmental Cleanup Strategic Plan* contains specific objectives, targets, and success indicators applicable to FUDS.

1-1.6 *Funding Eligibility*. The following subparagraphs discuss the eligibility criteria for a response to be conducted with funds requested for environmental restoration purposes that were appropriated to the Environmental Restoration-FUDS (ER-FUDS) account. Use of ER-

FUDS funding is limited to eligible activities in accordance with the *DoD Management Guidance for the DERP*.[1]

1-1.6.1 Activities under the IR program category, which includes FUDS HTRW and CON/HTRW project categories, are conducted with those funds requested for environmental restoration purposes and appropriated to the ER-FUDS account. Where a requirement exists to demolish a building or structure in order to execute a response action under the Installation Restoration program category, this demolition would be executed as part of the Installation Restoration response action and would be subject to the landowner's consent. For response actions under the IR program category, the following apply:

1-1.6.1.1 The property or project meets ER-FUDS funding eligibility criteria (see Chapter 3).

1-1.6.1.2 The release occurred prior to 17 October 1986.

1-1.6.1.3 The property was transferred from DoD's control prior to 17 October 1986.

1-1.6.2 Activities under the MMRP category are conducted with those funds requested for environmental restoration purposes and appropriated to the ER-FUDS account. Where a requirement exists to demolish a building or structure in order to execute a response action under the MMRP category, this demolition would be executed as part of the MMRP response action and would be subject to the landowner's consent. For response actions under the MMRP category, the following apply:

1-1.6.2.1 The property or project meets ER-FUDS funding eligibility criteria (see Chapter 3).

1-1.6.2.2 The release occurred prior to 17 October 1986.

1-1.6.2.3 The property was transferred from DoD's control prior to 17 October 1986.

1-1.6.3 Activities under the BD/DR program category are conducted with those funds requested for environmental restoration purposes and appropriated to the ER-FUDS account where these activities address unsafe buildings or structures where the following apply:

1-1.6.3.1 The property or project meets other ER-FUDS funding eligibility criteria.

1-1.6.3.2 The unsafe condition was present when the property was transferred from DoD control.

1-1.6.3.3 No subsequent owner of the property has made beneficial use of the building or structure.

[1] DERP funds may be used to pay for reasonable expenses incurred by residents who are relocated during FUDS response actions. See Appendix G for detailed discussion of relocation expenses.

1-1.6.3.4 The property was transferred from DoD's control prior to 17 October 1986.

## 1-2 Regulatory Context.

1-2.1 *CERCLA, as amended by the Superfund Amendments and Reauthorization Act (SARA).* Per the *DoD Management Guidance for the DERP,* activities under the FUDS program must be conducted in accordance with the provisions of CERCLA §120 (42 USC §9620). As such, these actions are conducted in accordance with the delegation of certain Presidential authorities under CERCLA (delegated via Executive Order [EO] 12580, Superfund Implementation [23 January 1986]), and the *National Oil and Hazardous Substances Pollution Contingency Plan* (NCP) (40 Code of Federal Regulations [CFR] Part 300). Under CERCLA, other Federal and state laws may be Applicable or Relevant and Appropriate Requirements (ARARs). See Chapter 4 for a detailed discussion of ARARs. The Project Management district at all FUDS will provide notice and opportunity for comment to the U.S. Environmental Protection Agency (EPA) and the appropriate state and local officials as provided in 10 USC 2705 (a) and (b). The Department of Army extended this to include tribal authorities where they are the lead regulator. Pursuant to EO 12580, DoD is the lead agency at FUDS properties when executing a DoD response action associated with DoD hazards.

1-2.1.1 *National Priority List (NPL) Properties.* EPA may evaluate former defense properties for possible inclusion on the NPL using the Hazard Ranking System (HRS). Listing on the NPL triggers the remedial requirements of the *National Contingency Plan* (NCP), 40 CFR Part 300. At FUDS properties on the NPL where USACE undertakes lead agency response actions on behalf of DoD, USACE will execute such response actions in accordance with the interagency agreement (IAG) between Department of Army (DA) and the EPA. For additional information on the development of an IAG, refer to the *DoD Management Guidance for the DERP,* sections 11.2.5 and 11.2.6, and consult with the Office of Counsel. These agreements establish the legal and administrative framework for environmental response actions conducted by USACE. The state or states in which the property is located may be party to the interagency agreement. EPA generally is the lead regulator for NPL projects.

1-2.1.2 *Non-NPL Properties.* For FUDS properties not included on the NPL, the DERP statute [10 USC 2701 (a)(2)] requires that response actions addressing DoD hazardous substances, pollutants, and contaminants be conducted in accordance with CERCLA (42 USC 9620). States or tribes are generally the lead regulator for environmental investigations and responses at non-NPL FUDS. In certain circumstances, EPA may serve as lead regulator when the state or tribe requests that EPA assume the lead or when EPA chooses to exert its lead regulator role. In cases where a non-NPL FUDS is on or affecting tribal land, the lead regulator role generally falls to the affected tribe. In instances where EPA exerts or assumes lead regulatory agency authority, the specific roles and responsibilities of the agencies involved should be discussed and decided upon by the tribe, state, and EPA, in accordance with relevant trust agreements and regulations. DoD maintains lead agency authority at non-NPL FUDS, coordinates project activities with the lead regulatory agency, and provides notice and opportunity for comment to the EPA and appropriate state, tribal, and local authorities.

1-2.2 *The Resource Conservation Recovery Act (RCRA) Corrective Action Process.* RCRA Corrective Action can be triggered by either submitting a RCRA Part A or Part B permit application, or both, or by the issuance of a compliance order under RCRA. As DoD does not own FUDS properties, any RCRA corrective action associated with a RCRA permit would be the responsibility of the owner. However, EPA or the state may undertake enforcement actions at FUDS properties under RCRA. Upon receiving notice of such action, Project Managers (PMs) should contact their Office of Counsel.

1-2.3 *National Environmental Policy Act (NEPA) (42 USC 4321-4370d).* Consistent with Department of Justice (DOJ) memorandum opinion and *DoD Management Guidance for the DERP*, compliance with NEPA's procedural requirements is not necessary when undertaking a response action that complies with CERCLA and the NCP. The overall NEPA mandate for a fully informed and well-considered decision will be achieved through adherence to the DERP, CERCLA, and the NCP.

**1-3 FUDS Program Safety and Occupational Health.** USACE elements responsible for FUDS program execution responsibilities will ensure that safety and health professionals are actively involved in the planning and execution of FUDS activities and in developing policies and programs that affect the safety and health of personnel. Safety and health protection is the foundation for the successful management of all phases of FUDS response actions. USACE requires preparation of activity hazard analyses, safety and health programs, accident prevention plans, and site safety and health plans for response actions at FUDS projects. These programs and plans are applicable to USACE and contractor personnel working on all phases of a FUDS response action. At a minimum, USACE will comply with:

1-3.1 Department of the Army (DA) Safety and Health Regulations.

1-3.2 EM 385-1-1.

1-3.3 ER 385-1-92.

1-3.4 ER 385-1-95.

## Chapter 2
## Organizational Responsibility

**2-1 Authorities**. The FUDS Charter designated the Army as the Executive Agent on behalf of DoD charged with meeting all applicable environmental restoration requirements at FUDS, regardless of which DoD component previously owned or used the property. The Secretary of the Army further delegated the program management and execution responsibility for FUDS to the USACE. A schematic of the organizational structure for FUDS is shown in Figure 2-1. Responsibilities of major organizations involved in FUDS program activities are described in the following paragraphs.

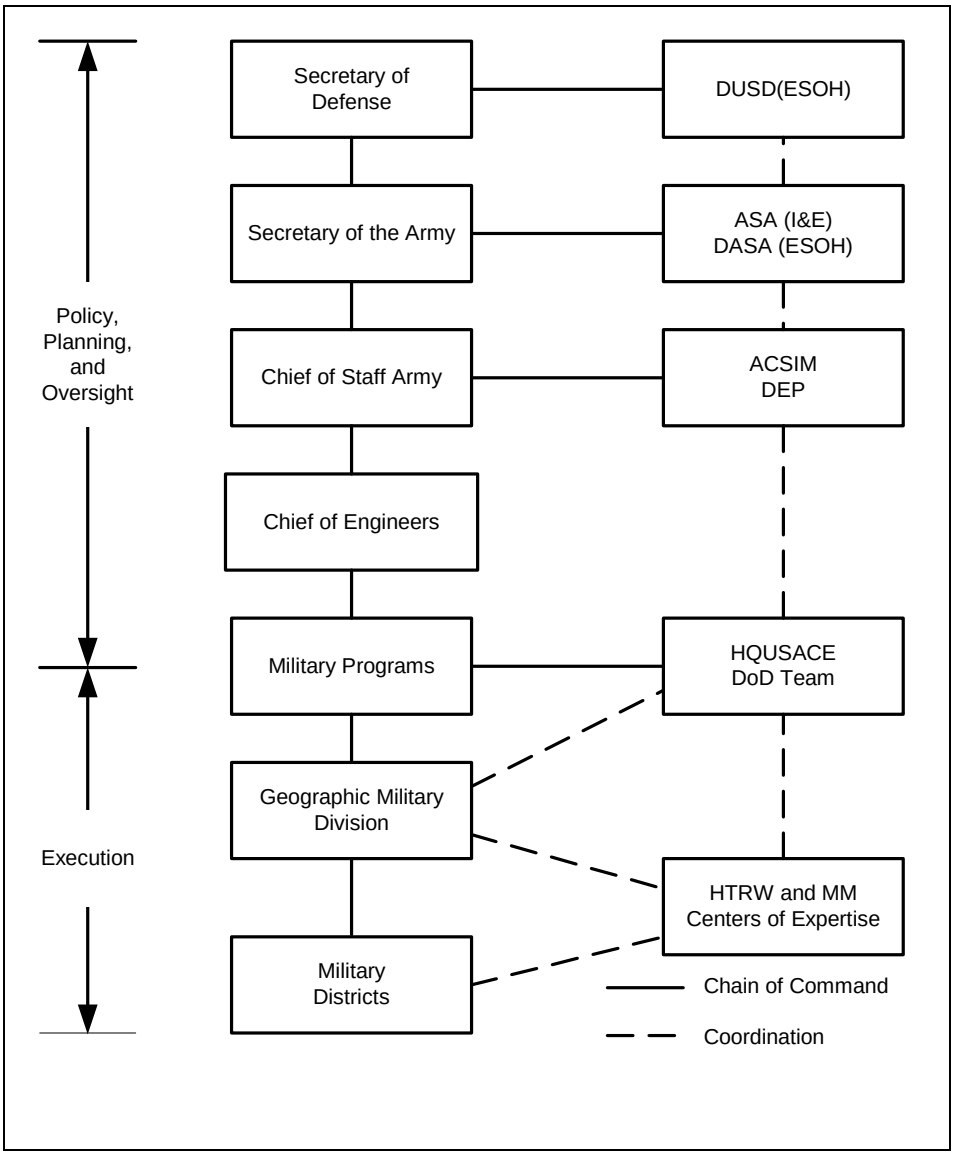



**Figure 2-1. Schematic of the Organizational Structure for the FUDS Program.**

## 2-2 Responsibilities.

2-2.1 *Department of Defense*. For action on behalf of the Office of the Secretary of Defense (OSD), the Assistant Deputy Undersecretary of Defense (Environment, Safety, and Occupational Health) [ADUSD(ESOH)] is responsible for:

2-2.1.1 Establishing overall policy for the FUDS program.

2-2.1.2 Providing oversight of the FUDS program, including development and defense of the ER-FUDS account. This office ensures the current and outyear budgets support the Defense goals and other program objectives and targets.

2-2.1.3 Conducting periodic program reviews of the FUDS program.

2-2.1.4 Directing changes to the FUDS program as necessary.

2-2.2 *Department of the Army*.

2-2.2.1 *Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health [DASA(ESOH)]*. The DASA(ESOH), under the direction of the Assistant Secretary of the Army for Installations and Environment [ASA(I&E)], is responsible for:

2-2.2.1.1 Executing, as the executive Agent, the duties and responsibilities of the FUDS program.

2-2.2.1.2 Establishing policy, direction, and priorities for the FUDS program.

2-2.2.1.3 Providing oversight, and conducting periodic program reviews of the FUDS program, and, as the result of these reviews, providing guidance for program development of the upcoming annual workplan and the Future Years Defense Plan (FYDP).

2-2.2.1.4 Approving and submitting to the OSD financial management documents, including the Program Objective Memorandum (POM), Budget Estimate Submission (BES), President's Budget (PRESBUD), and Environmental Liabilities Reports (ELR) that support the ER-FUDS account.

2-2.2.1.5 Approving the FUDS program annual workplan.

2-2.2.1.6 Providing policy guidance for outreach programs designed to improve coordination and relationships with stakeholders.

2-2.2.1.7 Approving Decision Documents (DD) for FUDS projects of interest to the Army Secretariat.

2-2.2.1.8 Coordinating with the OSD and other Military Services on issues concerning the FUDS program.

2-2.2.2 *Assistant Chief of Staff for Installation Management (ACSIM).* The Director of Environmental Programs (DEP), within the Office of the ACSIM, is responsible for:

2-2.2.2.1 Exercising primary Army staff responsibility to oversee, direct, and coordinate the FUDS program.

2-2.2.2.2 Developing implementation guidance and instructions for execution of environmental response actions under the FUDS consistent with the overall Army program.

2-2.2.2.3 Participating in periodic program reviews of the FUDS program, including the review of the Program Management Plan and making recommendations to DASA(ESOH) on guidance for program development of the upcoming annual workplan and FYDP.

2-2.2.2.4 Providing financial management guidance to Headquarters (HQ) USACE, and reviewing and making recommendations to DASA(ESOH) on financial management documents in support of the ER-FUDS account to achieve the Defense goals and other program objectives and targets.

2-2.2.2.5 Reviewing and approving DDs for FUDS projects forwarded for ACSIM approval.

2-2.2.2.6 Reviewing and endorsing development of HQUSACE procedures to conduct independent technical review of FUDS projects.

2-2.2.2.7 Developing procedures for the FUDS outreach programs in coordination with HQUSACE.

2-2.2.2.8 Reviewing and commenting or providing proposed responses to administrative issues, such as proposed legislative language and draft audit reports, when requested by DASA(ESOH).

2-2.2.2.9 Preparing, as required, draft responses concerning inquiries on FUDS properties from stakeholders and Congress for signature by DASA(ESOH).

2-2.3 *U.S. Army Corps of Engineers (USACE).* Table 2-1 indicates the functional responsibilities at each level of USACE. The discussions that follow provide narrative descriptions of the activities associated with each functional responsibility.

2-2.3.1 *Headquarters, USACE*. Acting on behalf of the Chief of Engineers, the Directorate of Military Programs (CEMP) at HQUSACE is responsible for overall FUDS program management and execution. Within CEMP, the HQUSACE DoD Team (CEMP-DE)

carries out all assigned FUDS responsibilities. More specifically, the HQUSACE DoD Team responsibilities include the following.

2-2.3.1.1 *USACE Policy Formulation (HQUSACE).*

- Issue all regulations and guidance pertaining to FUDS program management and execution. Provide consultation on all policy matters.
- Provide, through the Office of Chief Counsel, guidance and consultation on all legal matters, including questions of regulatory/statutory authority or requirements.
- Issue instructions containing program goals and objectives, fiscal guidance, and the program prioritization process for Divisions and Districts to update life-cycle plans (LCP) and annual workplans (AWP) in the FUDS Management Information System (FUDSMIS) at the time of preparation for the POM exhibits, BES, ELR, PRESBUD, annual report to Congress (ARC), and DoD ESOH Management Review.
- Analyze the FUDS program planning and execution in light of the DoD's goals for DERP and the Army's Environmental Cleanup Strategic Plan. Determine appropriate FUDS funding strategies and POM distribution guidance for Divisions.
- Provide obligation criteria for Divisions and monitor Division obligations quarterly, at a minimum.

**Table 2-1**
**Functional Responsibility FUDS Organizational Elements**

| Functional Responsibility | HQ USACE | Geo. Military Division | PM District (1) | HTRW Design District (2) | MM or RCWM Design Center (3) | MM Remedial Action District | Centers of Expertise |
|---|---|---|---|---|---|---|---|
| USACE Policy Formulation | P | S | | | | | A |
| Planning, Programming, and Budgeting | P | P | P | S | S | S | A |
| Program Oversight | P | P | S | | | | A |
| Execution | | | P | S | S/P | S/P | A |
| Reporting | P | P | P | S | S | S | A |
| Coordination | P | P | P | S | S | S | A |
| Quality Management | P | P | P | P | P | P | A |

**Notes:**
(1) Except as authorized by HQUSACE, the geographic military District will be the Project Management (PM) District for FUDS Properties and for the identified HTRW, CON/HTRW, MMRP, and BD/DR projects. For Potentially Responsible Party (PRP) projects, the assigned PRP District will be the PM District.
(2) HTRW Design Districts assist the geographic military District in their execution of response actions at HTRW projects.
(3) The MM Design Centers or the Recovered Chemical Warfare Materiel (RCWM) Design Center assist the geographic military District in their execution of response actions at MMRP projects. See text for details.

**Legend:** **P** = Performs function; **S** = Supports in performing functions; **A** = Assists HQ, Division, or District in performing assigned functions.

2-2.3.1.2 *Planning, Programming, and Budgeting (HQUSACE).*

- Manage all FUDS planning, programming, budgeting, and execution activities in coordination with Headquarters, Department of Army (HQDA), and DoD.
- Review and adjust Division LCP data in the FUDSMIS submission data set at the time of preparation for POM exhibits, BES, ELR, PRESBUD, ARC, and budget-year (BY) AWP.
- Prepare and post in FUDSMIS both the BY AWP and the current-year (CY) AWP updates for use by Divisions and Districts at each official LCP assemblage.
- Program and budget for the Agency for Toxic Substances and Disease Registry (ATSDR) and for Defense and State Memorandum of Agreement (DSMOA).
- Determine management and support (M&S) requirements and monitor all in-house project-specific requirements as defined in the CY AWP.
- Adjust and reallocate funds between ongoing program and project activities as necessary to ensure efficient use of funds.
- Ensure Divisions distribute quarterly funds in accordance with the approved CY AWP.
- Examine the use of prior-year funds for prior-year contract modifications and provide the funds as they become available.
- Provide approval to advertise any contract for which award is scheduled after the third quarter unless the authority of subject to availability of funds (SAF) is provided.
- Allocate funds to and accept funds from other Federal or state agencies and other responsible parties, as appropriate, to manage and execute response actions on projects either in full or partial settlement of all reasonable and necessary claims under the CERCLA, as amended.
- Manage the development and enhancement of the FUDSMIS for use as the sole information management system for all FUDS planning, programming, budgeting, execution, and reporting efforts.

2-2.3.1.3 *Program Oversight (HQUSACE).*

- Ensure that FUDS program management and execution throughout the USACE is consistent with applicable legal requirements and with program and fiscal policies of DoD, HQDA, and HQUSACE. Accounting, financial reporting, and procurement procedures will be based on standard HQDA procedures used by USACE.
- Conduct periodic program reviews with Divisions and Districts to ensure Division and District compliance with DoD and Army policies and evaluate program status and progress through FUDS Program Management Indicators (FPMIs).
- Provide administrative, legal, and technical support as required and resolve issues or conflicts affecting program management and execution.
- Act, through the Office of Chief Counsel, as the lead office on all Potentially Responsible Party (PRP) settlements, Department of Justice coordination, and all matters involving litigation.

2-2.3.1.4 *Reporting (HQUSACE).*

- Prepare and submit POM exhibits, BES, ELR, PRESBUD, and ARC to HQDA and DoD, based on the official LCP in the FUDSMIS submission data set.
- Prepare and submit FUDS program and project status reports for DoD's semiannual IPRs.
- Prepare and submit FUDS program or project reports as requested by HQDA and stakeholders.
- Prepare program or project reports as requested by Congress, forwarding those reports thought the chain of command to ODUSD (I&E) for submittal.

2-2.3.1.5 *Coordination (HQUSACE).*

- Coordinate with DoD, HQDA, congressional staff, Federal agencies, state and local governments, regulators, auditors, stakeholders, Divisions, and Districts on all FUDS program and project matters, as required.
- Conduct periodic coordination meetings with HQDA.
- Coordinate with HQDA draft responses prepared by Divisions for congressional inquiries received from DoD or HQDA.
- Foster Division and District coordination efforts with regulators and stakeholders on FUDS project-specific matters, including the development of Statewide Management Action Plans (SMAP).

2-2.3.1.6 *Quality Management (HQUSACE).*

- Promulgate FUDS quality management process.
- Ensure periodic FUDSMIS data quality reviews.

2-2.3.2 *Geographic Military Division.* USACE military Divisions have regional responsibility for the FUDS program. Table 2-2 identifies the seven military Divisions. Divisions are accountable for the following:

2-2.3.2.1 *USACE Policy Formulation (Geographic Military Division).*

- Provide comments to HQUSACE regarding necessary improvements to existing policy and modifications to draft policy guidance documents.
- Propose new policy to HQUSACE to facilitate program execution, technical competency, business efficiency, and innovation.

2-2.3.2.2 *Planning, Programming, and Budgeting (Geographic Military Division).*

- Disseminate HQUSACE FUDS policy and directives and provide implementing guidance to Districts.
- Determine FUDS property eligibility and provide project approvals in accordance with current FUDS policy.

- Coordinate proposed MMRP and PRP projects with the appropriate Center of Expertise (CX) prior to approval.

**Table 2-2**
**Military Environmental Restoration Boundaries for Geographic Military Division and Military Districts (HTRW/MMRP/PRP)**

| Geographic Military Division | State | Military District | PRP District (9) |
|---|---|---|---|
| Great Lakes & Ohio River (CELRD) | IL, IN, KY, MI, OH | Louisville (5, 8) | Louisville |
| | WV (3) | Huntington (1) | |
| North Atlantic (CENAD) | CT, MA, ME, NH, RI, VT | New England (5) | Baltimore & New England |
| | DC, DE, MD, PA | Baltimore (5, 6, 8) | |
| | NJ, NY | New York | |
| | VA | Norfolk | |
| Northwestern (CENWD) | CO, IA, MN, ND, NE, SD, WI, WY | Omaha (5, 6, 8) | Kansas City, Omaha, & Seattle |
| | KS, MO, NE (2) | Kansas City (5) | |
| | ID, MT, OR, WA | Seattle (5) | |
| Pacific Ocean (CEPOD) | AK | Alaska (5) | Alaska |
| | HI, AS, GM, CN | Honolulu (5) | |
| South Atlantic (CESAD) | SC | Charleston (1) | Savannah |
| | AL, MS, TN | Mobile (5, 8) | |
| | FL, PR, VI | Jacksonville (1) | |
| | GA | Savannah (5, 8) | |
| | NC | Wilmington (1) | |
| South Pacific (6) (CESPD) | AZ, CA (4), NV (4) | Los Angeles (8) | Sacramento |
| | CA (4), NV (4), UT | Sacramento (5, 8) | |
| | NM | Albuquerque | |
| Southwestern (CESWD) | AR | Little Rock | Tulsa |
| | OK, TX (4) | Tulsa (5) | |
| | LA, TX (4) | Fort Worth (8) | |
| Huntsville Center (CEHNC) | All (6, 7, 8) | | |

(1) Civil Works District managed by exception (follow geographic military District roles and responsibilities).
(2) NWK is the PM for Nebraska Ordnance Plant and Blaine Naval Ammunition Depot in Nebraska.
(3) LRH is the PM for Plum Brook Ordnance Works in Ohio.
(4) Split responsibility.
(5) Designated Military HTRW Design Districts.
(6) Designated Military Munitions Design Centers.
(7) Designated RCWM Design Center.
(8) Designated Military Munitions Remedial Action District.
(9) PRP Districts may execute response actions for PRP projects outside their geographic District boundaries.

- Maintain a file of Inventory Project Reports (INPRs) and other official actions, including closeouts.
- Establish Division priorities for projects within each project category.
- Develop the Division LCP and current/budget year workplans in accordance with HQUSACE guidelines and requirements.

- Identify Division and District Management and Support (M&S) budget requirements and manage funds to ensure program requirements are met on time and within budget.
- Allocate and distribute funds via Funding Distribution Documents (FDDs) to executing field operating activities (FOAs) in accordance with the approved current year workplan.
- Authorize workplan substitutions and funding of unprogrammed requirements within Division workplan allocations.
- Adjust and reallocate Division funds among Districts as appropriate to ensure efficient use of funds and to maximize Division execution.
- Evaluate the use of prior year funds for prior-year contract modifications and secure funds when available.
- Document unfunded requirements for future funding consideration.

2-2.3.2.3 *Program Oversight (Geographic Military Division).*

- Review and prioritize District LCPs and current or budget year workplans in FUDSMIS as necessary to meet Division requirements.
- Provide oversight of Districts to ensure Division obligations meet or exceed DoD quarterly obligation goals.
- Conduct Program Review Board (PRB) meetings to review execution and monitor performance.
- Ensure that FUDSMIS life cycle data are maintained to include updated cost-to-complete (CTC) information, risk data, priority codes, and project types.
- Conduct periodic program reviews with Districts and evaluate program status and progress.
- Conduct project visits and site evaluations.
- Facilitate resolution of outstanding issues between Districts and CXs regarding the planning and execution of project response actions.
- Monitor execution of response actions at project, especially at DoD high interest properties, by Districts and the MM Design Centers.
- Ensure that Districts maintain Property Specific Management Action Plans (MAPs) within FUDSMIS and SMAPs for FUDS properties.
- Ensure that Districts prepare and update Project Management Plans (PMPs) in accordance with ER 5-1-11.

2-2.3.2.4 *Reporting (Geographic Military Division).*

- Submit success stories to HQUSACE at required intervals.
- Respond to issues raised during Command Management Reviews (CMRs).
- Submit current Division FUDS data set to HQUSACE for the POM exhibit, BES, ELR, PRESBUD Submission, ARC, annual and life cycle workplans, and ESOH In-Progress Reviews (IPRs).

2-2.3.2.5 *Coordination (Geographic Military Division).*

- Interact with HQUSACE, EPA, states, local stakeholders, Hazardous, Toxic, and Radioactive Waste Center of Expertise (HTRW CX), Military Munitions Center of Expertise (MM CX), Quality Assurance (QA) labs, other Divisions, and Defense State Memorandum of Agreement (DSMOA) points of contact (POCs).
- Participate in District line item reviews and PRBs.
- Ensure effective coordination with all applicable regulators and stakeholders.
- Provide timely feedback to HQUSACE requests for assistance in responding to Congressional, DA, or DoD requests for project or program information.
- Respond directly to Congressional or other correspondence regarding FUDS sent directly to the Division, with a copy furnished to HQUSACE.
- Oversee District DSMOA coordination with states.
- Promote development of SMAPs.
- Provide advance notification to HQUSACE regarding major decision-making meetings.
- Provide information to HQUSACE regarding issues affecting execution.
- Participate in HQUSACE program reviews and annual PRP meetings by providing requested presentations and addressing action items as required.

2-2.3.2.6 *Quality Management (Geographic Military Division).*

- Assure that military Districts submit HTRW project deliverables to the HTRW CX for independent technical review (ITR) in accordance with Chapter 7 requirements.
- Assure that MM Design Centers and MM Remedial Action Districts submit MMRP project deliverables to the MM CX in accordance with ER 1110-1-8153.
- Periodically evaluate District quality processes for quality assurance.
- Perform quality assurance for all FUDSMIS items proposed for use in reports to higher headquarters, including the ARC.

2-2.3.3 *Geographic Military Districts*. The geographic military District is the overall manager for the entire life cycle (i.e., "cradle to grave") for approved FUDS projects (except for PRP projects). The geographic military District, through the project manager (PM), leads and facilitates the project delivery team (PDT) towards effective project development and execution. The District is responsible for managing project cost, schedule, and scope to ensure quality and proper coordination with government and non-government entities. The District is also responsible for programming funding and for upward reporting. Specific duties include, but are not limited to, the following.

2-2.3.3.1 *Planning, Programming, and Budgeting (Geographic Military Districts).*

- Maintain and update the LCP in the FUDSMIS working data set. The District LCP reflects real-time current year execution and planning, programming, and budgeting data, based on Division/HQUSACE instructions that contain fiscal guidance, work prioritization, and other

Division/HQUSACE goals. Submit the data set through the FUDSMIS submission process at least three times a year at the time HQUSACE prepares its POM, BES, and ARC/PRESBUD.

- Ensure that AWPs are consistent with POMs established by HQUSACE and the geographic military Division and are coordinated with the lead regulatory agency through the SMAP process.
- Provide input to and monitor FUDSMIS to ensure that data are complete and accurate for tracking District workload, life-cycle project cost, project schedule, relative risk ratings, legal agreements, project types, and FUDS priority codes.
- Assess each project's cost to complete (CTC) estimate, at least once a year, to determine if revisions are necessary. When newly available project data indicate a change from the previous cost-estimating scenario, or changes in the cost-estimating tool would affect the previous cost estimate, update using appropriate cost-estimating tools [Remedial Action Cost Engineering and Requirements (RACER), Micro Computer-Aided Cost Engineering System (MCACES), etc.].
- Establish the BY AWP by scheduling quarterly in-house and contract obligations.
- Ensure that no fourth quarter contract awards are scheduled.
- Ensure that the CY AWP includes some fourth quarter in-house planning funds to enable contract awards in the first quarter of the BY.
- Prepare and update PMPs in accordance with ER 5-1-11.
- Prepare and update property-specific MAPs and SMAPs.

2-2.3.3.2 *Program Oversight (Geographic Military Districts).* Conduct periodic reviews, evaluating program and project status and progress.

2-2.3.3.3 *Execution (Geographic Military Districts).*

- Identify and recommend to the Division potential FUDS properties and projects consistent with current FUDS policy. Provide notice and opportunity for comment to the EPA, tribes, appropriate state and local officials, and current property owners prior to eligibility determination being finalized.
- Conduct the FUDS Property Screening, as part of the INPR process, for new eligible FUDS properties, properties reexamined at the request of stakeholders, or properties with new MMRP or HTRW projects. (Refer to Chapter 3 and Appendix B for the contents of the FUDS Property Screening.)
- Manage the execution of all phases of response actions at FUDS projects, as assigned.
- Submit deliverables for response actions at HTRW projects to the HTRW CX for independent technical review (ITR) in accordance with Chapter 7 requirements.
- Award and administer remedial/removal action contracts (other than MMRP projects) and ensure contractor compliance with health and safety plans.
- Prepare and sign Records of Decision (RODs), Decision Documents, and Action Memoranda within dollar threshold authority.
- Execute the official CY AWP to meet program goals. Update the official CY AWP quarterly to reflect progress in performance of project response actions.

- Obtain HQUSACE approval to advertise any contract for which award is scheduled after the third quarter, unless subject to availability of funds (SAF) authority is provided.
- Distribute funds in accordance with the approved CY AWP when a lump sum is received via a Funding Authorization Document (FAD).
- Ensure that no contracts are awarded until funds are made available and approvals are obtained. Return all excess funding in a timely manner.
- Ensure the use of prior-year funding, where applicable, for modification of prior-year contracts. Districts should request CY funds for modifications to prior-year contracts only when prior-year funds are not available. Office of counsel and resource management should be consulted on fiscal law matters.
- Obtain necessary rights of entry.
- Establish and maintain, as appropriate, information repository, Public Involvement Plans, Administrative Record file, and permanent Project File for each eligible project.
- Develop and manage public involvement activities, to include establishment of Restoration Advisory Boards (RABs), as appropriate.
- Administer community relations contracts and PRP contracts, as appropriate.
- Execute response actions for FUDS projects on the NPL in accordance with provisions of applicable IAGs or other joint agreements.

2-2.3.3.4 *Reporting (Geographic Military Districts).*

- Provide advance notification through the geographic military Division to CEMP-DE of all major program and project issues and submit copies of all congressional correspondence and responses.
- Assemble and organize specific property and project information and financial data in FUDSMIS for upward reporting.
- Prepare and submit project status and issues to the Division for PRB meetings and the Command Management Review (CMR).
- Update narratives for the ARC and the Public Geographic Information System (GIS) as required.
- Prepare success stories to publicize and document progress made on remediating FUDS properties.
- Submit current District FUDS data set to Division for the POM exhibit, BES, ELR, PRESBUD submission, ARC, AWP, LCP, and ESOH IPRs.

2-2.3.3.5 *Coordination (Geographic Military Districts).*

- Coordinate with the regulators and other stakeholders in accordance with the DSMOA Cooperative Agreement (CA) guidance. Ensure that the DSMOA agreements are consistent with the annual workplan (AWP) and the life cycle plan (LCP).
- Coordinate the preparation and updating of Property Specific MAPs and SMAPs with the EPA, state, and local officials.

- Provide notice and opportunity for comment to the EPA, state and local authorities, and current landowners on proposed actions for approved projects in the annual workplan in accordance with the NCP.
- Query landowners who have refused Right-of-Entry (ROE) periodically to determine if ROE status has changed.
- Coordinate with the appropriate MM Design Center, the Recovered Chemical Warfare Materiel (RCWM) Design Center, and/or MM Remedial Action Districts to identify appropriate execution strategies for response actions at MMRP and RCWM projects.
- Coordinate with the appropriate HTRW Design District to identify appropriate execution strategies for response actions at HTRW projects.
- Coordinate project activities with respective military Divisions to establish annual funding and manpower requirements.
- Develop memoranda of agreement (MOAs) in coordination with the Division, CXs, and military HTRW design District or MM design Center.
- Coordinate with and obtain approval from the delegated PRP District of Community Relations Plans and cleanup or remediation activities for non-PRP projects located on a FUDS property with a PRP project.
- Conduct periodic coordination meetings with states, EPA Regions, and other stakeholders. Coordinate with these stakeholders to identify their property and project priorities.

2-2.3.3.6 *Quality Management (Geographic Military Districts).*

- Prepare and implement a quality management plan for each project in accordance with ER 5-1-11.
- Ensure data in FUDSMIS are complete and accurate.
- Determine and implement quality assurance/quality control (QA/QC) requirements for chemical (ER 1110-1-263) and geotechnical data (ER 1110-1-8157).

2-2.3.4 *Military HTRW Design District*. In addition to the responsibilities of a geographic District, the HTRW design District has the following responsibilities:

2-2.3.4.1 *Planning, Programming, and Budgeting (Military HTRW Design District).*

- Support the geographic military District in the development of the LCP and AWP.
- Support the geographic military District in the updating of each project's cost-to-complete (CTC) estimate.
- Support the geographic military District in preparing Project Management Plans (PMPs).

2-2.3.4.2 *Execution (Military HTRW Design District).*

- Serve on the PDT to support the geographic military District PM in investigation and design activities.
- Submit deliverables for response actions at HTRW projects to the HTRW CX for ITR in accordance with Chapter 7 requirements.
- Submit deliverables for response actions at MMRP projects to the MM CX in accordance with Chapter 7 and ER 1110-1-8153.
- Perform Site Inspection (SI), Remedial Investigation/Feasibility Study (RI/FS), remedial/removal design, PRP support to a PRP District, and other assigned environmental restoration activities within respective Division-wide environmental restoration boundaries.
- When requested by the geographic military Division, review INPRs containing potential HTRW (including PRP) projects submitted by the geographic military Districts. Coordinate review of INPRs containing PRP projects with the HTRW CX and recommend eligible projects to the geographic military Division with a copy furnished to the geographic military District.
- Develop project-specific investigation and design reports in accordance with applicable laws, regulations, and QA/QC requirements.
- Submit documents for HTRW project (as specified in DA PAM 40-578) to the U.S. Army Center for Health Promotion and Preventative Medicine (USACHPPM) for review and approval on behalf of the Army Surgeon General (TSG) for NPL properties with projects requiring human Health Risk Assessments
- Advertise and award remedial/removal contracts for response actions at HTRW projects and transfer contracting officer authorities to geographic military Districts, as appropriate.

2-2.3.4.3 *Reporting (Military HTRW Design District).* Provide project status and issues to the geographic military District for PRB meetings.

2-2.3.4.4 *Coordination (Military HTRW Design District).*

- Assist the geographic military District project manager in coordinating public involvement on HTRW projects within the PM District's boundary.
- Support the geographic military District in developing an appropriate Public Involvement Plan.

2-2.3.4.5 *Quality Management (Military HTRW Design District).* Review and provide input to the geographic military District on their implementation of a quality management plan for each project in accordance with ER 5-1-11.

2-2.3.5 *Potentially Responsible Party (PRP) District*. Project Management responsibility for PRP projects will reside with the PRP District on finalization of a PRP INPR. Only designated PRP Districts may respond to allegations made against DoD concerning past activities associated with CERCLA contaminants at FUDS. Upon receipt of any such allegation, a geographic District will immediately provide a copy of the allegation to the Office of Counsel

at the designated PRP District, who shall have sole authority for determining the appropriateness of its managing the matter as a PRP negotiation. The PRP District will advise the geographic District promptly of its decision and assure that the counsel for the geographic District is kept informed of any subsequent negotiations. Table 2-2 shows the Districts that have the authority to negotiate PRP and related RI/FS activities. All District and Division elements must recognize that the need for maintaining attorney-client privilege and attorney work product privilege, given the potential for litigation in such matters, may influence this information exchange and its dissemination outside of counsel channels. Refer to Chapter 5 and the USACE PRP Standard Operating Procedure (SOP) for further details. The primary goal in PRP matters is to resolve DoD liability in a DOJ coordinated settlement providing DoD a complete release from al claims. If USACE must be involved on-site after settlement, the PRP District remains the PM District and determines which USACE element will perform required oversight of PRP efforts or any USACE on-site work that is part of the settlement.

2-2.3.5.1 *Planning, Programming, and Budgeting (PRP District).*

- Provide input to and monitor FUDSMIS to ensure that PRP data are complete and accurate and do not contain language regarding DoD liability.
- Program all funds associated with a PRP project, including funds required for other USACE elements performing work on the PRP project.

2-2.3.5.2 *Program Oversight (PRP District).* Conduct periodic reviews, evaluating PRP status and progress.

2-2.3.5.3 *Execution (PRP District).*

- Review and concur in PRP project eligibility recommendations.
- Prepare scoping documents, after the project approval, to establish the extent of project complexity and cost.
- Determine the extent of DoD responsibilities for property contamination and, where possible, develop a position on the appropriate allocation of responsibilities between DoD and other PRPs relative to the project.
- Represent the FUDS program and DoD when liability and contribution are determined on assigned FUDS PRP/HTRW and PRP/MMRP projects. Analyze the appropriate position to take on behalf of the program with regulators, other PRPs, and members of the public and provide justification to the Division and HQUSACE.
- Negotiate settlement agreements and other legal arrangements resolving DoD FUDS liability.
- Submit deliverables for response actions at PRP projects to the HTRW CX or the MM CX, as appropriate, for ITR in accordance with Chapter 5 requirements.
- Sign PRP agreements relating to FUDS or Third-Party Sites (TPS) properties where the remedial/removal action phase undertaken by the PRP District is expected to cost less than $2 million. If the remedial/removal action is expected to cost $2 million or more, forward the PRP agreement through the chain of command for signature.

- Initiate CERCLA cost recovery actions, including litigation, against other PRPs, as appropriate.
- Participate as appropriate in alternative dispute resolution (ADR) meetings.
- Prepare the official closeout report for a PRP project and send it to the military Division FUDS point of contact (POC) for concurrence and forwarding to CEMP-DE for their information and files. A copy of all closeout reports will also be furnished to the geographic District PM and the HTRW CX or MM CX, as appropriate.

2-2.3.5.4 *Reporting (PRP District).*

- Prepare and submit status and issue reports for all PRP actions to Divisions and HQUSACE for PRP meetings.
- Provide advance notification to the geographic military Division for all major decision making meetings and copies of all congressional correspondence and responses.
- Report the status of PRP projects through the PRB, if necessary, and fill in the project narrative fields in FUDSMIS.

2-2.3.5.5 *Coordination (PRP District).*

- Inform the geographic military District on PRP project activities and assist the geographic District in preparing the FUDS property MAP. See Chapter 5 for internal PRP project coordination requirements.
- Assist the geographic military District in coordinating the necessary public involvement during PRP planning and negotiations.

2-2.3.5.6 *Quality Management (PRP District).*

- Prepare and implement a quality management plan for each PRP project in accordance with ER 5-1-11 to ensure independent quality reviews of all PRP documents by the PDT, including Counsel.
- Assure data in FUDSMIS are complete and accurate for the PRP project.

2-2.3.6 *Military Munitions Design Centers or RCWM Design Center.* The MM or RCWM Design Centers provide direct support to the geographic military Districts and MM Remedial Action Districts. Only the RCWM Design Center is authorized to execute any phase of a response on a RCWM project.

2-2.3.6.1 *Planning, Programming, and Budgeting (MM or RCWM Design Center).*

- Prepare budget and schedule for each MMRP project and update and provide this information to the Project Manager as requested to support the AWP and data calls.
- Prepare MMRP contract acquisition strategies and planning to ensure sufficient contract capabilities exist to execute assigned work.

2-2.3.6.2 *Execution (MM or RCWM Design Center).*

- Act as the technical specialist for execution of response actions at MMRP projects.
- Execute activities at MMRP projects and review and approve project documents in accordance with appendices D, E, or F of ER 1110-1-8153. Provide copies of project documents to USACE elements for review and approval in accordance with appendices D, E, or F.
- Prepare project-specific statements of work (SOW) and independent Government estimates (IGE) for MMRP activities.
- Contract for MMRP design services; contract for or assist the District approved to execute remedial/removal actions on MMRP projects in contracting for remedial/removal actions.
- Provide engineering and design support for MMRP remedial/removal actions in accordance with ER 1110-1-8153.
- Stay abreast of and use state-of-the-art technologies for MMRP activities.

2-2.3.6.3 *Reporting (MM or RCWM Design Center).*

- Prepare budget, fact sheet, and schedule for each MMRP project and update and regularly submit this information to the District PM.
- Recommend to the MM CX changes needed in criteria, policy, and standards related to MMRP.

2-2.3.6.4 *Coordination (MM or RCWM Design Center).*

- Coordinate all MMRP project activities with the District PM.
- Coordinate with the geographic military District PM to obtain the required environmental and historical documentation and approvals.
- Provide MMRP public affairs support to the geographic military District PM, as needed.
- Coordinate with the U.S. Army Technical Center for Explosives Safety (USATCES) and DoD Explosives Safety Board (DDESB).

2-2.3.6.5 *Quality Management (MM or RCWM Design Center).*

- Oversee the safety and occupational health, technical, and administrative aspects of the fieldwork for design and response actions at MMRP projects. (The District will assume these responsibilities upon transfer of a remedial/removal action.)
- Ensure that manifest documents (when required) are properly prepared and signed by the appropriate personnel (unless the removal action is transferred to the District).
- Provide safety and QA support through all phases of the MMRP project.

2-2.3.7 *Military Munitions Remedial Action District.* The MM Remedial Action District is authorized to perform remedial or removal response actions for MMRP Projects.

2-2.3.7.1 *Planning, Programming, and Budgeting (MM Remedial Action District).*

- Prepare budget and schedule for removal or remedial responses at MMRP projects and update and provide the information to the PM as requested.
- Prepare MMRP remedial or removal contract acquisition strategies and planning to ensure sufficient contract capabilities exist to execute assigned work.

2-2.3.7.2 *Execution (MM Remedial Action District).*

- Execute remedial or removal response actions at MMRP projects and review and approve project documents in accordance with ER 1110-1-8153. Provide copies of project documents to USACE elements for review and approval in accordance with ER 1110-1-8153.
- Contract for remedial or removal response actions at MMRP projects.
- Execute administrative and field contract modifications not affecting the design.
- Execute 5-Year Reviews for MMRP projects.
- Stay abreast of and use state-of-the-art technologies for MMRP response actions.

2-2.3.7.3 *Reporting (MM Remedial Action District).*

- Prepare budget, fact sheet, and schedule for each MMRP project and update and regularly submit this information to the District PM.
- Recommend to the MM CX changes needed in criteria, policy, and standards related to MMRP.

2-2.3.7.4 *Coordination (MM Remedial Action District).*

- Coordinate all activities on MMRP projects with the PM.
- Coordinate MMRP-specific contract requirements with the MM CX.
- Coordinate with the appropriate MM Design Center and/or the MM CX all contract modifications affecting the design before implementing the change.
- Request engineering and design assistance from the appropriate MM Design Center.
- Provide MMRP public affairs support to the geographic military District PM, as needed.

2-2.3.7.5 *Quality Management (MM Remedial Action District).*

- Oversee the safety and occupational health, technical, and administrative aspects of the fieldwork for the remedial/removal response actions for MMRP projects.
- Ensure that manifest documents (when required) are properly prepared and signed by the appropriate personnel.

2-2.3.8 *Centers of Expertise*. USACE designated centers of expertise in ER 1110-1-8158. The HTRW and MM Centers of Expertise have significant roles and responsibilities in support of the FUDS Program, as identified below.

2-2.3.8.1 *HTRW Center of Expertise (HTRW CX)*. The HTRW CX does not execute response actions for programs or projects but assists USACE at all levels in their performance of FUDS projects. Technical specialists are assigned for numerous HTRW-related topics. USACE Divisions and Districts may access various technical specialists and other services through designated CX Points of Contact, specifically assigned for each USACE Division and District. HTRW CX responsibilities include:

- *USACE Policy Formulation (HTRW CX).* Assist HQUSACE in the development, dissemination, and implementation of technical, legal, and management guidance pertaining to FUDS program policy and execution procedures.

- *Planning, Programming, and Budgeting (HTRW CX).* Assist HQUSACE in developing and issuing instructions on how to implement program goals and other HQUSACE objectives.

- *Program Oversight (HTRW CX).* Assist HQUSACE in conducting periodic reviews of FUDS program status and progress.

- *Execution (HTRW CX).* As required by HQUSACE, the HTRW CX will:

  - Maintain state-of-the-art technical expertise for hazardous substance remediation and environmental compliance to support USACE in performing its environmental missions.
  - Provide expert representation with other Federal agencies and professional organizations.
  - Develop and present high quality, specialized environmental training.
  - Perform a review and comment on all FUDS HTRW project Records of Decision and Decisions Documents, as discussed in Appendix C.
  - Perform multi-disciplinary independent technical reviews of key documents as detailed in Chapter 7, as well as other requested technical reviews of project documents.
  - Provide the MM CX technical support and document review for response actions involving Munitions Constituents (MC) on MMRP projects.
  - Provide technical oversight, technical review, and legal assistance to PRP Districts on negotiation and litigation matters. For PRP projects, the HTRW CX will:
    - Perform a review and comment on all PRP Inventory Project Reports (INPRs) before they are submitted to the Division and before Division approval.
    - Provide legal, technical, and programmatic assistance to the PRP Districts as requested by the District, the Division, or HQUSACE. If expert technical or legal assistance is to be requested, it should be directed from the legal office of the requesting organization to the Counsel for the HTRW CX to protect consultation privileges.
    - Maintain a collection of historical information accessible for common use to all the PRP Districts for PRP projects. The PRP District will give the HTRW CX all general

historical documents that are collected for PRP projects, including Alternative Dispute Resolution (ADR) agreements, intermediate and final settlement agreements, and consent orders.

- *Reporting (HTRW CX).*

  - Assist HQUSACE in the reporting of property and project information for use in preparing programmatic submissions and reports.
  - Assist HQUSACE in the development, dissemination, and implementation of technical, legal, and management guidance pertaining to FUDS program policy and execution procedures for HTRW, CON/HTRW, and BD/DR projects.
  - Report to HQUSACE the results of quality assurance reviews performed on District FUDSMIS data, CTC estimates, and other requested reviews.

- *Coordination (HTRW CX).*

  - Assist Divisions and Districts in their coordination and consultation with EPA and state regulators on FUDS projects.
  - Coordinate with PRP Districts during the review of INPRs on PRP projects and during their execution of activities on assigned PRP projects.
  - Coordinate with the MM CX to provide technical support and document review for response actions involving MC on MMRP projects.

- *Quality Management (HTRW CX).*

  - Perform quality assurance reviews of FUDSMIS data and provide focused reports to Districts to aid in their correction of data anomalies.
  - Perform quality assurance reviews of FUDS project Relative Risk Site Evaluation data entries in FUDSMIS.
  - Perform quality assurance reviews of FUDS projects Cost-to-Complete estimates and data entries in FUDSMIS.
  - Provide technical and management assistance to Divisions, as requested, in their oversight role of monitoring District performance and execution.

2-2.3.8.2 *Military Munitions Center of Expertise (MM CX).* The MM CX was established to assist USACE organizational elements in performing their activities and maintaining state-of-the-art technical expertise for all aspects of response activities for projects involving MEC. The mission of the MM CX is to safely eliminate or reduce risks from ordnance, explosives, and recovered chemical warfare materiel at current or formerly used defense sites. MM CX responsibilities include:

- *USACE Policy Formulation (MM CX).*

  - Assist HQUSACE in the development, dissemination, and implementation of technical, legal, and management guidance pertaining to FUDS program policy and execution procedures for MMRP projects.

- Review Federal, DoD, and HQDA regulations related to MMRP and develop and propose to HQUSACE implementation guidance.
- Develop and propose to CEMP-DE evaluation criteria for assessing public risk at FUDS properties with eligible MMRP projects in accordance with applicable Federal, DoD, and HQDA regulations for determining appropriate response actions.
- Review and evaluate munitions response technologies (primarily from DoD- or USACE-sponsored demonstrations). Propose and develop implementation guidance to ensure that USACE techniques are the most efficient and effective.

- *Planning, Programming, and Budgeting (MM CX).* Assist military Districts as they routinely update the FUDSMIS for the LCP and CY/BY AWPs for MMRP Projects.

- *Program Oversight (MM CX).*

  - Assimilate and analyze lessons learned from response actions at MMRP projects.
  - Review MMRP research and development initiatives and projected USACE MMRP requirements and recommend, through HQUSACE, the input required to ensure that DoD is incorporating USACE future needs.
  - Assist HQUSACE in identifying MMRP training requirements. Develop course material and provide instructor support for MMRP-related Proponent Sponsored Engineer Corps Training (PROSPECT).
  - Assist HQUSACE and the geographic military Divisions in reviewing and monitoring District MMRP qualifications as archives search executors, MM Remedial Action Districts, or MM Design Centers.

- *Execution (MM CX).*

  - Develop and submit technology application proposals to HQUSACE that will affect MMRP projects.
  - Develop and provide MMRP-specific contract requirements, including MMRP contractor personnel qualifications and work standards. Maintain current MMRP contract Data Item Descriptions (DID) to be included in every MMRP contract.
  - Assist HQUSACE in refining cost-to-complete methodology for MMRP projects.
  - Maintain the expertise to assist HQUSACE, as technical experts, in discussing program-wide issues with the DDESB, the USATCES, the Office of the Army Surgeon General, the 52nd Ordnance Group (EOD), the U.S. Army Soldier and Biological Chemical Command (SBCCOM), research and development activities, and other affected elements and authorities.
  - Serve as the proponent for negotiation of necessary studies for MMRP cost share projects at FUDS. The MM CX will support the PRP District for PRP/MMRP projects.
  - Obtain technical support and document review from the HTRW CX for response actions involving MC on MMRP projects.
  - Maintain capability to field an immediate response team within 24 hours of notification of imminent MMRP explosives hazard and to notify HQUSACE within 2 hours of MM CX notification.

- *Reporting (MM CX).*

o Develop and provide annual briefing to HQUSACE detailing MM CX accomplishments, expenditure of current year funding, projection of next year funding, and MMRP-related issues with proposed resolutions.

o Provide the geographic District reports reflecting changes or determinations made by the MM CX in the Risk Assessment Code (RAC) score.

- *Coordination (MM CX).*

o Maintain dedicated personnel available for telephonic or written inquiries from MM design Centers, Districts, Divisions, or HQUSACE regarding regulatory and MMRP safety and technical information for MMRP projects. This includes having personnel available for timely response to specific HQUSACE directed MMRP related assignments.

o Provide MMRP technical support to any USACE office conducting construction or HTRW operations in areas where MMRP is suspected or known to exist.

o Coordinates with the HTRW CX to obtain technical support and document review for response actions involving Munitions Constituents (MC) on MMRP projects.

- *Quality Management (MM CX).*

o Review and provide comments and written concurrence or non-concurrence on MMRP and MMRP-related products in accordance with Appendices D, E, or F of ER 1110-1-8153 to ensure compliance with Federal, DoD, HQDA, and USACE MMRP safety and environmental regulations.

o Participate in MMRP Quality Reviews and Evaluations of geographic military Divisions when requested by HQUSACE.

o Participate in QA reviews of MMRP projects when requested by the geographic military Division, District, or PDT.

o Visit selected MMRP projects to develop lessons learned, identify areas for improvement, and identify gaps in current policy and guidance.

o Visit selected HTRW projects and construction sites where military munitions are known or suspected to ensure conformance with approved workplans and the Site Safety and Health Plan (SSHP).

## 2-3 District Project Management Business Process Roles.

2-3.1 *Program Manager (PgM).* The PgM is the single point of contact for management and execution of the District FUDS program. The PgM has overall responsibility for and, at a minimum, serves in a leadership role over the District FUDS team, including project managers and project delivery teams, for the planning, programming, budgeting, reporting, and execution of the District FUDS program.

2-3.2 *Project Manager (PM).* The PM manages response actions for an entire FUDS property, including projects both underway and planned for the future (however, if a PRP project

has been established for the property, the PRP PM role may be assigned to another PM). The PM shall be fully responsive to the District PgM to facilitate FUDS planning, programming, budgeting, reporting, and execution requirements. The PM has the leadership responsibility for development and management of projects through closeout with the full support of a PDT. The PM has the responsibility and the authority to challenge technical issues, when necessary. Refer to ER 5-1-11 for a discussion of the roles of the project manager and PDT.

2-3.3 *Project Delivery Team (PDT).* In addition to the PM for each FUDS property, there are a wide variety of technical, engineering, contracting, counsel, public affairs, and other interdisciplinary specialists on a PDT. The PDT may include experts outside of the local District, specialists, consultants or contractors, stakeholders, representatives from other Federal and state agencies, and members from Division and headquarters who are necessary to effectively develop and deliver the response actions necessary for the project.

# Chapter 3
# FUDS Property and Project Eligibility

## 3-1 Determination of FUDS Property Eligibility.

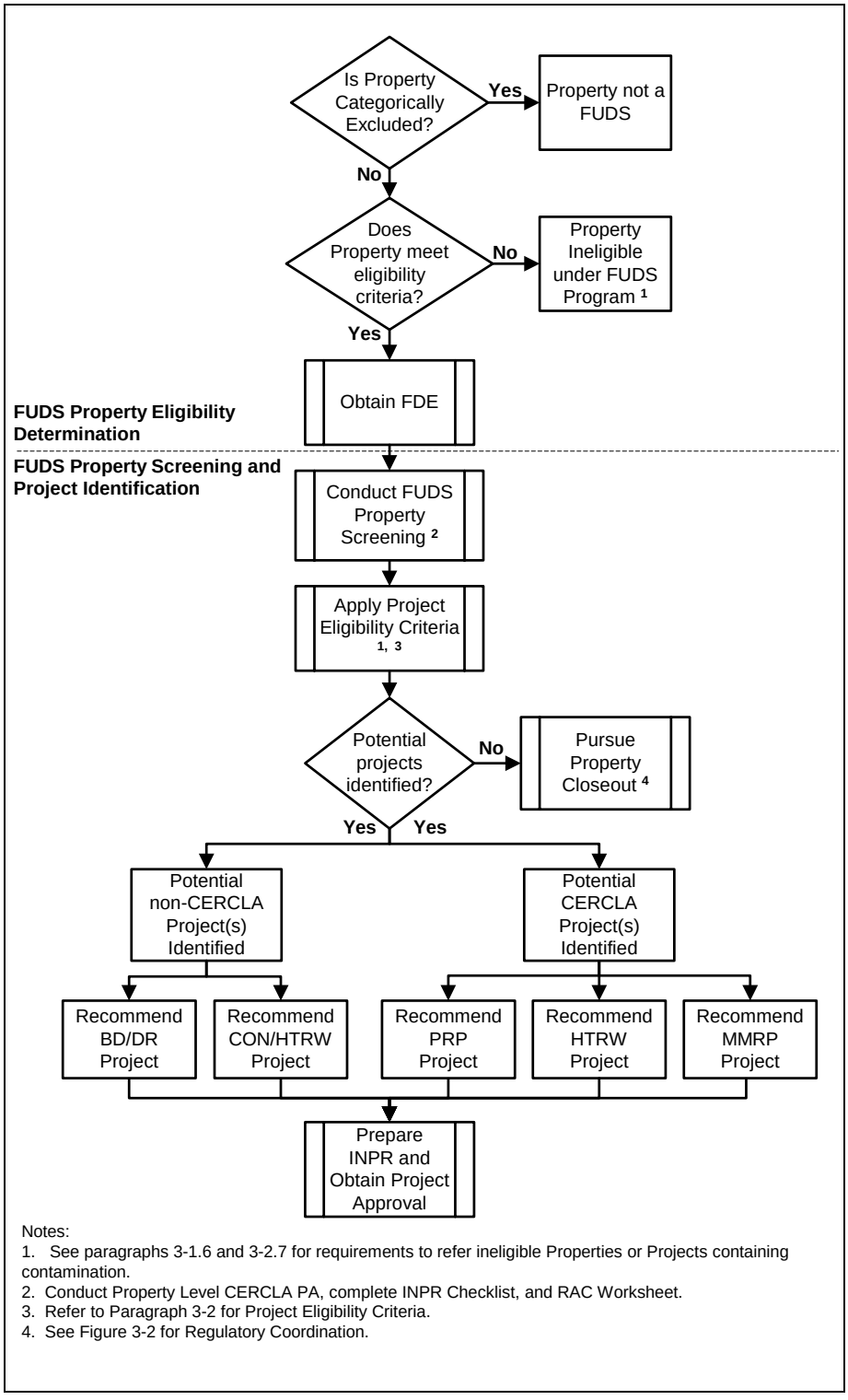
3-1.1 *Introduction*. When a potential FUDS property is identified, the geographic military District enters available property information into the FUDSMIS. The District evaluates the property for ER-FUDS funding eligibility and forwards a recommendation to the geographic military Division. The eligibility determination is documented in a Findings and Determination of Eligibility (FDE) signed by the geographic military Division Commander. The FDE is a part of the Inventory Project Report (INPR) that, in turn, identifies eligible projects for the FUDS program. Refer to Figure 3-1 for the FUDS Property and Project eligibility process.

3-1.1.1 Real estate searches and historical background information searches will be performed to determine if the property is eligible under the FUDS program. Real estate records, such as the National Archives, government records (including federal, State, County and local governments), and private title companies, shall be used when available. A site visit shall be performed to observe if there is property contamination, unsafe conditions, or any evidence that DoD caused the contamination. USACE will interview regulators, current landowners, and knowledgeable individuals; document current property surface conditions; perform non-intrusive analyses; and review as-built drawings, if available. Refer to Appendix B for specific requirements for preparation of the INPR, INPR contents, and INPR review and approval process.

3-1.1.2 During INPR development, USACE shall coordinate with EPA, States, affected Tribes, and local officials and solicit their input. This coordination serves to ensure that all available environmental information is considered before eligibility determinations are finalized.

3-1.2 *FUDS Property Screening (FPS).* The FPS will consist of completion of a CERCLA Preliminary Assessment (PA), the INPR Checklist, and a screening Risk Assessment Code (RAC) Worksheet prepared at the FUDS Property level. The FPS will be conducted for all new FUDS properties following determination of FUDS eligibility in the FDE or for eligible FUDS properties re-examined at the request of a State, Tribe, EPA, or other stakeholder (refer to paragraph 3-1.3). If a new potential HTRW or MMRP project is proposed at an eligible FUDS property subsequent to completion of the original INPR, the INPR will be amended to confirm the proposed project through the FPS process.

3-1.3 *Re-examination of Eligible FUDS Properties at the Request of a State, Tribe, EPA, or Other Stakeholders*. For eligible FUDS properties that were previously determined to have no FUDS eligible projects, USACE districts are authorized to re-examine up to five properties per State per year within their allocated funding. Property will be re-examined upon request of a State, Tribe, EPA, or other stakeholder and may be by mutual consent or upon presentation by EPA, the State, or a tribe of new or additional information concerning potential DoD




Notes:
1. See paragraphs 3-1.6 and 3-2.7 for requirements to refer ineligible Properties or Projects containing contamination.
2. Conduct Property Level CERCLA PA, complete INPR Checklist, and RAC Worksheet.
3. Refer to Paragraph 3-2 for Project Eligibility Criteria.
4. See Figure 3-2 for Regulatory Coordination.

**Figure 3-1. FUDS Property and Project Eligibility Process.**

contamination. These requests for re-examinations can be submitted during the annual workplan review, during the Statewide Management Action Plan process, or at other times in writing. Re-examination will involve the review of records or information used to make the original No DoD Action Indicated (NDAI) determination and review of any additional information provided by EPA, the State, or Tribe concerning potential DoD contamination. If this review provides credible evidence of likely FUDS eligible projects, the FUDS Property Screening discussed in paragraph 3-1.2 will be performed to determine project eligibility.

3-1.4 *Requirements for Identifying and Adding Properties to the FUDS Inventory*. The following is intended to assist the PM in responding to requests to consider inclusion of additional properties in the FUDS inventory.

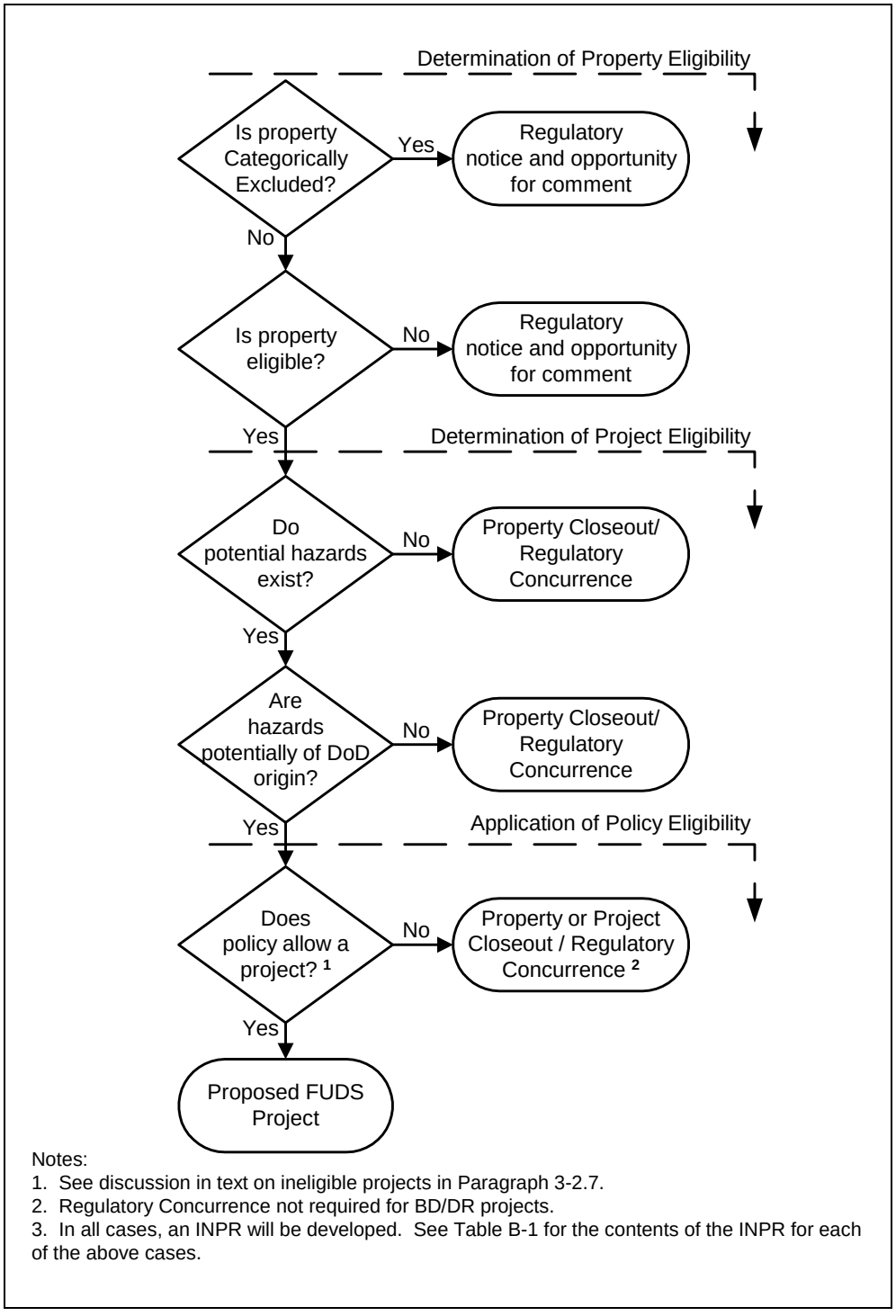
3-1.4.1 Federal or State agencies, Tribal authorities, local officials, or members of the public may request that properties be reconsidered for inclusion in the FUDS inventory. Such requests should be addressed to the Commander of the geographic military District, be signed, and contain the following:

- The full name, Agency affiliation (if appropriate), address, and phone number of the person making the notification;
- Written or historical documentation indicating DoD activities that took place at the property before 17 October 1986 with the potential of causing DoD contamination and/or hazardous conditions;
- A description, as precise as possible, of the location of the suspected former DoD contamination and/or hazardous conditions;
- A description, to the extent available, of the types of hazards or hazardous substances, pollutants, or contaminants released; and
- For members of the public:
  - How the person is or may be affected by suspected former DoD contamination and/or hazardous conditions, and
  - Whether EPA, State, Tribal officials, or local authorities have been contacted.

3-1.4.2 If the documentation provides reasonable evidence as determined by the USACE District Engineer, USACE will determine the eligibility of the property for ER-FUDS funding and, if eligible, perform the FUDS Property Screening. The USACE District shall notify the person or agency making the request with the results of the eligibility determination.

3-1.5 *Factors to be Considered for FUDS Property Eligibility*.

3-1.5.1 *Eligible Properties*. Eligibility of a FUDS property is documented in a Findings and Determination of Eligibility (FDE). A determination that a property fits within the definition of FUDS does not constitute an admission of DoD cleanup liability for that property. Figure 3-2 provides information on the FUDS eligibility decision process that is described in the following text.




Notes:
1. See discussion in text on ineligible projects in Paragraph 3-2.7.
2. Regulatory Concurrence not required for BD/DR projects.
3. In all cases, an INPR will be developed. See Table B-1 for the contents of the INPR for each of the above cases.

**Figure 3-2. Regulatory Coordination at FUDS Property and Project Eligibility Decision Points.**

3-1.5.1.1 FUDS are defined as real property that was under the jurisdiction of the Secretary and owned by, leased by, or otherwise possessed by the United States (including governmental entities that are the legal predecessors of DoD or its Components) and those real properties where accountability rested with DoD but where the activities at the property were conducted by contractors (i.e., government-owned, contractor-operated [GOCO] properties) that were transferred from DoD control prior to 17 October 1986. The FUDS eligibility status of former DoD property is not affected by its being the current responsibility of another federal agency.

3-1.5.1.2 Only properties transferred from DoD control before 17 October 1986 are FUDS, unless:

- The property had already undergone an eligibility determination, and
- The final Inventory Project Report (INPR) stating that the property was FUDS-eligible was signed prior to 30 September 2000, and
- The property was listed in FUDSMIS as a FUDS property before 30 September 2000.

3-1.5.1.3 For the purpose of determining the eligibility of a property for inclusion in the FUDS program, the wording "…was under the jurisdiction of the Secretary and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances." found in the DERP authorizing legislation at 10 USC 2701(c)(1)(B) has specific meaning and intent within that program. Thus, in the context of FUDS property eligibility, the phrase "was under the jurisdiction of the Secretary" requires evidence of the exercise of control over the facility by the Secretary such that access to it and use made of it was subject to Secretarial determination. In this context, the term "facility" is considered to equate to a "FUDS property" rather than the broader definition applied to the term "facility" within CERCLA section 9601(9). Additionally, the facility must have been under the "jurisdiction of the Secretary" when "actions leading to the contamination by hazardous substances" occurred. In determining a property's FUDS eligibility, jurisdiction is evaluated in terms of the nature of the authority exercised over the property by the Secretary. The terms "owned by," "leased to," and "otherwise possessed by" refer to interests taken in the property by the United States and need not have been interests taken specifically by DoD. Thus, FUDS property eligibility requires a showing of both control over the property by the Secretary and the presence of an interest in the property by the United States. The United States' interest in the property must be supported by specific historic documentation. Examples of documentation might range from full title to the property evidenced by a deed; a right to use and occupy the property for a specific period documented in a lease; or, a bare right of forbearance to allow use of the land, as may be memorialized in an easement, permit, license, tenancy at will, or other such document indicating the transfer of something less than full fee title. Project eligibility at an eligible property is then determined by evaluating whether contamination of the property occurred during that period when the Secretary exercised jurisdiction over the property. The term "Secretary" means the Secretary of Defense and the Secretaries of each of the Military Departments, as well as the Secretaries of any predecessor departments or agencies of DoD.

3-1.5.2 *Categorical Exclusions* [1]. Categorically excluded properties are ineligible for action under the FUDS program because of the nature of the operations at these locations. Categorically excluded properties require an INPR be prepared and submitted to the Division. See table B-1 for the content of the INPR. Categorically excluded properties include:

- United Services Organization (USO) properties,
- Recruiting centers, and
- Cemeteries.

3-1.5.3 *Ineligible Properties*. The specific criteria for property ineligibility under the FUDS program are:

3-1.5.3.1 *Properties Declared Excess but Not Conveyed*. This includes properties that were identified by a DoD Component as excess prior to 17 October 1986 but were not conveyed to another entity until after 17 October 1986. The General Services Administration Federal Management Regulation, Chapter 102, Subchapter C, Part 102-75 provides that the landholding agency (see definition in Glossary) remains responsible and accountable for excess and surplus real property, including related personal property, and must perform the protection and maintenance of such property pending transfer to another Federal agency or disposal. The landholding agency is responsible for complying with the requirements of the NCP and initiating or cooperating with others in the actions prescribed for the prevention, containment, or remedy of hazardous conditions.

3-1.5.3.2 *Non-DoD Ownership*. This includes properties that were not under the jurisdiction of the Secretary[2] and owned by, leased by, or otherwise possessed by the United States (including governmental entities that are the legal predecessors of DoD or the Components).

3-1.5.3.3 *State National Guard Properties*. This includes State National Guard properties unless they were formerly under the jurisdiction of the Secretary and owned by, leased by, or otherwise possessed by the United States (including governmental entities that are the legal predecessors of DoD or the Components) at the time of activities that resulted in the hazardous conditions.

3-1.5.3.4 *Non-U.S. Properties*. This includes properties outside the United States or outside those districts, territories, commonwealths, and possessions over which the United States has jurisdiction.

3-1.5.3.5 *Defense Plant Corporation*. This includes Defense Plant Corporation (DPC), and similar properties for which successor agencies and departments other than Defense are responsible for environmental restoration activities. These are sometimes referred to as

[1] The term Categorical Exclusion as used within this regulation does not mean "categorical exclusion" as defined in the "National Environmental Policy Act of 1969", title 42 USC, Section 4321 et seq. as amended.
[2] The term "Secretary" means the Secretary of Defense and the Secretaries of each of the Military Departments, as well as the Secretaries of any predecessor departments or agencies of DoD.

PLANCOR. The DPC was a subsidiary of the Reconstruction Finance Corporation (RFC), a government corporation that usually functioned as an independent agency. These DPC properties were neither owned, controlled, or under the jurisdiction of DoD. Successor interests for PLANCOR facilities have been identified with both GSA and the Department of Commerce.

3-1.5.3.6 *Civil Works Properties*. This includes all Department of the Army Civil Works properties, (i.e., the non-military activities of the USACE), unless previously under military control at the time of activities that resulted in hazards.

3-1.5.3.7 *Acts of War Properties*. This includes properties where a release occurred solely as a result of an act of war.

3-1.5.3.8 *Offshore Ordnance Properties*. Properties where military munitions are more than 100 yards seaward of the mean high-tide point are not eligible. [3]

3-1.5.3.9 *Properties Without Records*. This includes properties for which there are no records showing that the property was formerly under the jurisdiction of the Secretary and owned by, leased by, or otherwise possessed by the United States (including governmental entities that are the legal predecessors of DoD or the Components), or where there is no documentation showing that accountability rested with DoD.

3-1.5.3.10 *Restoration Already Initiated*. This includes a FUDS at which a Component has already initiated environmental restoration activities.

3-1.5.3.11 *Duplicate Properties*. This is a property that is known by a different name, yet is the same physical property already listed in the FUDS inventory.

3-1.5.3.12 *DoD Active Installation*. This includes properties still under the jurisdiction of DoD components.

3-1.6 *Notification Responsibilities for Ineligible or Categorically Excluded Properties Containing Contamination*. Properties that are determined to be Categorically Excluded or ineligible for action under the FUDS program that contain a potential hazard shall be formally referred by the District Commander to an appropriate Component, other federal agency, or state agency for action. Attached to this written notification will be copies of all documents and information collected about the property regarding the potential hazard. Districts will provide copies of this correspondence to the geographic military Division. The USACE District will also notify the lead regulatory agency with respect to the location of the property and potential hazard(s) identified.

[3] This is strictly a factor influencing FUDS eligibility, not a statement of DoD's responsibility for conducting responses at water ranges. The District shall refer such locations to the appropriate Component for action.

## 3-2 Determination of Eligible Projects on FUDS Properties.

3-2.1 *Right of First Refusal*. Environmental restoration actions necessary at FUDS that are adjacent to and independent from an active DoD installation are the responsibility of the USACE. Before the USACE begins those environmental restoration activities, the DoD component controlling the active installation retains the "right of first refusal" to accept the restoration responsibility. Once accepted, the DoD component will execute all appropriate actions, as required. If the DoD component does not exercise its right of first refusal, the USACE will proceed to execute FUDS responsibilities at the property.

3-2.2 *FUDS Project Definition*. A FUDS project is a unique name given to an area of an eligible FUDS property containing one or more releases or threatened releases of a similar response nature, treated as a discrete entity or consolidated grouping for response purposes. This may include buildings, structures, impoundments, landfills, storage containers, or other areas where hazardous substance are or have come to be located, including FUDS eligible unsafe buildings or debris. Response actions at FUDS projects fall under the Installation Restoration (HTRW and CON/HTRW), Military Munitions Response Program (MMRP ), or Building Demolition/Debris Removal (BD/DR) program categories. An eligible FUDS property may have more than one project. Project screening criteria is provided in the following paragraphs.

3-2.3 *Eligible Projects*. The determination that a project is eligible for funding under the ER-FUDS account has two elements. The first requirement for project eligibility is that the property must be eligible for action under the FUDS program. The second requirement for project eligibility is that there is known or potential contamination or hazards on the eligible property attributable to DoD activities prior to 17 October 1986 requiring actions described under the following:

3-2.3.1 Installation Restoration Program category, which includes projects to address HTRW, underground storage tanks, aboveground storage tanks, transformers, hydraulic systems, investigative derived wastes, and abandoned or inactive monitoring wells;

3-2.3.2 Military Munitions Response Program category;

3-2.3.3 Building Demolition/Debris Removal Program category.

3-2.4 *FUDS Project Categories*. Projects determined to exist at eligible FUDS properties fall into one of the following project categories:

3-2.4.1 *Hazardous, Toxic, and Radioactive Waste (HTRW) Projects*. HTRW projects include environmental response actions at an area of an eligible FUDS property as the result of DoD activities related to hazardous substances, pollutants, and contaminants as defined in CERCLA; petroleum, oil, or lubricants (POL); DoD-unique materials; hazardous wastes or hazardous waste constituents; low-level radioactive materials or low-level radioactive wastes; and explosive compounds released to soil, surface water, sediments, or groundwater as a result of ammunition or explosives production or manufacturing at ammunition plants. ER-FUDS

funding can be used for HTRW restoration activities involving the cleanup of petroleum in soils or groundwater, even though it may not be subject to regulation under CERCLA, where the Secretary of Defense determines that such activities will result in correction of environmental damage posing imminent and substantial endangerment to the public health or welfare or to the environment [(10 USC 2701(b)(2)]. Response actions at these latter projects are carried out under authority provided for in the DERP and not as the result of legal requirements imposed on DoD by statute.

3-2.4.2 *Containerized Hazardous, Toxic, and Radioactive Waste Projects (CON/HTRW).*[4] CON/HTRW projects include response actions at an area of an eligible FUDS property to address:

- Underground storage tanks (USTs), aboveground storage tanks (ASTs), transformers, hydraulic systems, investigative derived waste (IDW), abandoned inactive monitoring wells, etc. Response actions for drums containing hazardous substances, pollutants, and contaminants are performed under the HTRW project category.
- Incidental removal of contaminated soils resulting from a leaking UST or other container.
- Long-term corrective actions required by RCRA Subtitle I involving significant soil and groundwater response actions following UST closure/removal actions.

3-2.4.3 *Military Munitions Response Program (MMRP) Projects*. The *DoD Management Guidance for the DERP*, issued by ODUSD (I&E) on 28 September 2001, established a new program category for Military Munitions Response Program (MMRP). MMRP projects include response actions at an area of an eligible FUDS property related to military munitions and explosives of concern (MEC) and their constituents (MC) as the result of DoD activities at FUDS. MMRP projects can include response actions for the removal of foreign military munitions if it is incidental to the response addressing DoD military munitions at a FUDS property. In a given area containing both MEC and MC, Army policy requires that imminent human safety threats be addressed first [ASA (I, L&E) Memorandum, Subject: Interim Guidance for BWM and Non-Stockpile Chemical Warfare Materiel Response Activities, 5 Sep 1997]. This does not preclude consideration of other response actions, such as fencing or providing bottled water, that are required to deal with imminent threats to human health and the environment associated with the property. See Chapter 4 for detailed discussion of response actions that may apply to MMRP. Response actions at MMRP projects address:

- MEC (formerly designated within the FUDS program as OE or OEW), which distinguishes specific categories of military munitions that may pose unique explosives safety risks, includes:
  - Unexploded Ordnance (UXO), as defined in 10 USC 2710(e)(9);
  - Discarded military munitions (DMM), as defined in 10 USC 2710(e)(2); or
  - Munitions constituents (e.g., TNT, RDX) present in high enough concentrations to pose an explosive hazard.

[4] For a CERCLA release from a beneficially used UST or transformer subsequent to DoD control, a PRP project may be proposed only if there is evidence of a CERCLA release resulting from DoD use.

- MC, which are materials originating from unexploded ordnance, discarded military munitions, or other military munitions, including explosive and non-explosive materials, and emission, degradation, or breakdown elements of such ordnance or munitions [10 USC 2710(e)(4)].
- Recovered Chemical Warfare Materiel (RCWM).

3-2.4.4 *Potentially Responsible Party (PRP) Projects, Including Third-Party-Sites (TPS).*

3-2.4.4.1 PRP projects involve activities at an area of an eligible FUDS property where DoD may bear potential CERCLA liability for hazards or hazardous substance releases along with other parties. Districts must consider a PRP project on eligible FUDS Properties where contractors conducted activities that contributed to contamination of the property (i.e., GOCO properties) unless there is evidence that the contract operator is no longer viable and there are no corporate successors. See Chapter 5 for a detailed discussion of PRP projects.

3-2.4.4.2 TPS are properties that are not eligible for response actions under the FUDS program. However, because DoD, along with other parties, may bear potential liability at TPS for DoD hazards or hazardous substance release, a PRP project should be considered. This potential liability may result from actions in disposal, transport, or arranging for transport of DoD hazards or hazardous substances from a FUDS eligible property. If a PRP project is warranted at a TPS, the FDE will identify the property as a third party site.

3-2.4.5 *Building Demolition and Debris Removal Projects.* BD/DR projects are response actions at an area of an eligible FUDS property to address the demolition and removal of unsafe buildings and structures and the removal of unsafe debris. Worksheet B-2 in Appendix B shall be used to document BD/DR eligibility under the FUDS program. For BD/DR projects where hazardous substances are not present, the CERCLA removal action process need not be followed. If a non-incidental (see paragraph 3-2.5.1) actual or threatened release of a CERCLA hazardous substance, pollutant or contaminant (including munitions and MC) is identified during the performance of BD/DR program category activities, DoD policy requires that appropriate response action under the installation restoration or military munitions response program categories be conducted. All such responses are to be conducted in accordance with CERCLA, EOs 12580 and 13016, the NCP, other applicable laws, and applicable DoD and Army policies. BD/DR projects are eligible if the title, deed, or other transfer document conveying the property from DoD specifically requires DoD to undertake BD/DR activities; or, all of the following conditions are met:

- Subsequent to DoD ownership, the property must have always been on lands owned by State, Local Government, or Alaskan Native Corporation.
- The conditions must have been hazardous as a result of prior DoD use and must have been inherently hazardous when the property was transferred or disposed of by GSA before 17 October 1986.

- Inherently hazardous BD/DR must present a clear danger, likely to cause, or having already caused, death or serious injury to a person exercising ordinary and reasonable care. Table 3-1 is a list of examples of hazardous structures and debris.

**Table 3-1**
**Examples of Inherently Hazardous Structures and Debris Presenting a Clear Danger (see note)**

| |
|---|
| Structural hazards (excluding structures or debris 6 ft or less in height above the surrounding grade)<br>• Leaning or weakened load bearing walls or supports.<br>• Sagging roofs or floors.<br>• Unprotected openings in a roof or elevated floor that are 8 × 8 in. or larger.<br>• Broken or missing stairs or railings.<br>• Deteriorated mortar or loss of bricks on chimneys and stacks.<br>• Weakened load-bearing wood frame members through such natural processes as termite infestation or weathering (dry rot). |
| Cave-in or engulfment hazards<br>• Evidence of falling rocks from tunnel ceilings or walls.<br>• Excavations that resulted in unstable or soft material 5 ft. or more in depth or height.<br>• Deteriorated or collapsing tunnel linings. |
| Falling hazards<br>• Open pits, manholes, silos, wells, or shafts that are 8 × 8 in. or larger in size and more than 6 ft. in depth.<br>• Open-sided platforms or floors more than 6 ft. above the next lower level. |
| Climbing hazards<br>• Any structure more than 10 ft. above a level, which is readily climbable using any integral parts of the structure (i.e., a ladder attached to a tower). |
| Drowning hazards<br>• Any pit, depression, or tank, that can collect or contain standing water, for example, swimming pools, USTs, underground missile silos, septic tanks, and sewers. |
| Other hazards<br>• Exposed nails, broken timbers, sharp metal, and unstable concrete block piles.<br>• Openings large enough for a child to enter (8 × 8 in. or larger), in which he/she could be trapped or which would permit exposure to other hazards (e.g., an uncovered manhole leading to a septic tank). |
| Note: These conditions must have been the result of DoD use and inherently hazardous when the property was transferred or disposed of prior to 17 October 1986. |

3-2.5 *Addressing Multiple Program Categories Under a Single FUDS Project.*

3-2.5.1 Response actions at FUDS projects can address more than one DERP program category if incidental to the primary program category, e.g., addressing incidental munitions under a project established primarily to address an Installation Restoration response requirement or addressing incidental CERCLA hazardous substance or pollutants and contaminants under a project established to address a BD/DR response requirement. Incidental is characterized by an

additional response requirement that is unanticipated, localized, easily incorporated into an existing project, or within the general scope of the primary project. For instance, dealing with lead based paints or asbestos-containing material under a BD/DR project would be an example of an incidental requirement. However, if the response requirement is not incidental but significant in nature, a new project under the appropriate program category should be established to address the requirement.

3-2.5.2 Since the DERP Installation Restoration program category includes response actions to address both HTRW and CON/HTRW, either of these project types will comprehensively address CERCLA and/or petroleum response requirements encountered during performance. For example, if a CERCLA hazardous substance affecting public health, safety, or the environment is identified during a response action being addressed by a CON/HTRW project, the CON/HTRW project would follow CERCLA and the NCP to address the contamination, whether incidental or significant, without establishing a separate HTRW project.

3-2.6 *Ineligible Projects*. The FUDS project screening and identification process or the CERCLA PA may identify potential projects at eligible FUDS properties that, upon further investigation, are determined ineligible for FUDS. USACE shall provide the EPA, State, and affected Tribes with notice and opportunity to comment on this determination. Conversely, upon the discovery of new information, the status of a project may change from ineligible to eligible.

3-2.6.1 Ineligible projects include the following:

- Projects where the current owner refuses right of entry.
  - In these cases, the geographic military District shall notify the appropriate authorities, such as EPA, State environmental regulatory agencies, and local government agencies involved with public safety.
  - For projects or properties where military munitions are reasonably believed to be present and access is denied, USACE will notify ODUSD(I&E) through the chain-of-command of the circumstances surrounding the denial of right of entry. According to the *DoD Management Guidance for the DERP*, HQDA is responsible for making appropriate referral to the Attorney General of the United States per CERCLA §104(e)(5)(B).
- Where projects response actions would mitigate hazards that resulted from civil works activities rather than military activities.
- Funding in the ER-FUDS appropriation is not authorized for reimbursement of current landowners or other PRPs for any response actions initiated or completed with regard to DoD contamination on an eligible FUDS property.
- Where project response actions would abate asbestos-containing materials (ACM) or lead-based paints, unless:
  - The ACM or lead-based paint is incidental to the completion of response actions at an approved project, or
  - In situations where the ACM were not incorporated as an integral component of a facility but were released into the environment by DoD disposal actions resulting in an on-site CERCLA hazardous substance release for which DoD is responsible.

- Projects involving underground storage tanks or other structures that have been beneficially used by any owner subsequent to DoD. For a CERCLA release from a beneficially used UST or transformer subsequent to DoD control, a PRP project may only be proposed if there is evidence of a CERCLA release resulting from DoD use.

3-2.6.2 The following activities under the Building Demolition/Debris Removal program category are ineligible at FUDS:

- Projects where the hazard is a result of neglect by an owner/grantee subsequent to DoD use, regardless of whether the deed or disposal document required the owner/grantee to maintain the property improvements.
- Projects for which an owner subsequent to DoD usage has been compensated by the government in lieu of property restoration (by a payment or offset in the purchase price).
- Projects where the response action would only partially demolish a structure (i.e., the demolition must be of the entire building or structure to be allowed).
- Projects involving structures or debris that were altered or beneficially used by owners subsequent to DoD usage.
- Projects where response actions would eliminate potential hazards, to include the deliberate or unintentional demolition of buildings (i.e., conditions that may become hazardous through deliberate and/or careless acts are ineligible).
- Projects for which the lease, permit, deed, or other title transfer document absolves the government from the obligation for property restoration.

3-2.7 *Notification Responsibilities for Ineligible Projects Containing Contamination.* The USACE District Commander shall formally refer to the appropriate Component, federal agency, or State agency in writing any project containing contamination that is ineligible for action under the FUDS program. Attached to this written notification will be copies of all documents and information collected about the project regarding the potential hazard. Districts will provide copies of this correspondence to the geographic military Division. The USACE District will also notify the lead regulatory agency with respect to the potential hazard.

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# Chapter 4
# FUDS Restoration Response

**4-1 Introduction.** This Chapter covers both CERCLA and non-CERCLA response actions. Refer to Paragraph 4-3 for CERCLA response actions on HTRW and MMRP projects, including PRP/HTRW and PRP/MMRP projects. Refer to Paragraph 4-6 for non-CERCLA response actions for CON/HTRW and BD/DR projects.

**4-2 Project and Property Closeout Strategy.** In the planning, programming, budgeting, and execution of FUDS response actions, the USACE PM shall adopt a "cradle-to-grave" approach that ensures all appropriate phases for the project category are included in an overall project closeout strategy. This strategy must include providing notice and opportunity for comment to the lead regulator and must clearly lead to regulatory project [(via the Project Closeout [PCO] phase) and property closeout. The lead regulator will be provided notice and opportunity for comment throughout the course of a response action and this will be reflected in the SMAP and Property Specific MAP. This cradle-to-grave approach will include the development and maintenance of a cost-to-complete estimate that anticipates likely outcomes, includes all appropriate phases, and leads to a realistic estimate of the environmental liability for all eligible properties of the FUDS program. (See Appendix E, paragraph E-6, Development of Estimates.)

## 4-3 CERCLA Response Actions for HTRW and MMRP Projects.

4-3.1 *General.* All response activities undertaken by the USACE as part of the FUDS program that address MMRP and hazardous substances, pollutants or contaminants shall be conducted in accordance with the provisions of CERCLA, Executive Orders 12580 and 13016, and the NCP. This includes complying with public involvement requirements as discussed in Chapter 8 and appropriate regulatory coordination as discussed in Chapter 9. In achieving project closeout, the full range of response actions under CERCLA and the NCP will be used to affect the comprehensive response strategy for the entire FUDS. This chapter addresses the processes available and the factors to be considered in determining the appropriate response action.

4-3.2 *Integration of HTRW and MMRP Projects.*

4-3.2.1 When the potential exists that activities under the Installation Restoration and Military Munitions Response program categories are required at a FUDS property or project, an integrated approach will be developed that leads to response actions conducted in accordance with the provisions of CERCLA, Executive Orders 12580 and 13016, and the NCP. Consistent with Army policy, if a given area contains both MEC and MC, imminent human safety threats must be addressed first (ASA Memorandum, Subject: Interim Guidance for BWM and Non-Stockpile Chemical Warfare Materiel Response Activities, 5 Sep 1997).

4-3.2.2 HTRW and military munitions and their constituents will be addressed by a remedial response, which may include a removal based upon evaluation of the NCP factors

discussed later in this Chapter. Projects cannot reach the remedy-in-place (RIP) or response complete (RC) milestone from the removal process. If a removal response is conducted, a continuation of the remedial response will be necessary to make a determination as to the need for further action or the achievement of the RIP, RC or closeout milestones. When a removal response is conducted in conjunction with the remedial response, the removal action shall, to the extent practicable, contribute to the efficient performance of any anticipated long-term remedial action with respect to the release concerned. All decisions regarding the need for further action will be based on the result of action under the remedial process.

4-3.2.3 The Conceptual Site Model (CSM) serves as the basis for developing a comprehensive approach for addressing response actions at eligible FUDS properties that may fall under the installation restoration (HTRW) and MMRP categories. A CSM will be initiated during the SI phase and refined throughout subsequent phases to provide a description of the property and projects based on existing knowledge of potential sources, pathways, and receptors. Refer to EM 1110-1-1200 for guidance on preparing a CSM for HTRW and MMRP projects.

**4-4 Remedial Action Process**. Remedial response actions are governed by 40 CFR 300.420-440. These actions must be in accordance with CERCLA, EOs 12580 and 13106, and the NCP. Figure 4-1 depicts typical steps in the remedial response process for HTRW and MMRP projects. The geographic military District at all FUDS will consult with the lead regulatory agency and local authorities to provide the notice and opportunity for comment as contained in 10 USC 2705(a) and (b). Response actions under FUDS must identify and attain or formally waive ARARs under Federal and State laws. Office of Counsel will be consulted in all instances where a lead regulator makes demands that are inconsistent with the USACE response plan and on all issues related to the extent of Federal or State authority for site-specific analysis, including ARARs. Refer to the *DoD Management Guidance for the DERP* sections 11.2.5 and 11.2.6 for additional guidance.

4-4.1 *Remedial Site Evaluation.* A remedial site evaluation consists of a remedial preliminary assessment and a remedial site inspection.

4-4.1.1 *Remedial Preliminary Assessment.* The remedial preliminary assessment (PA) is the first step in the remedial process described in the NCP. The purpose of the remedial PA is to: (i) eliminate from further consideration those properties that pose little or no threat to public health or the environment; (ii) determine if there is any potential need for removal action; (iii) set priorities for site inspections; and (iv) gather existing data to facilitate later evaluation of the release pursuant to the Hazard Ranking System (HRS) conducted by EPA. During the PA, readily available property information is collected and a property visit is conducted. If the PA Report identifies a potential PRP project, Office of Counsel shall be consulted prior to release of the report. See Appendix B for additional information on conducting the PA. The PA shall address both HTRW and MMRP aspects of the property.

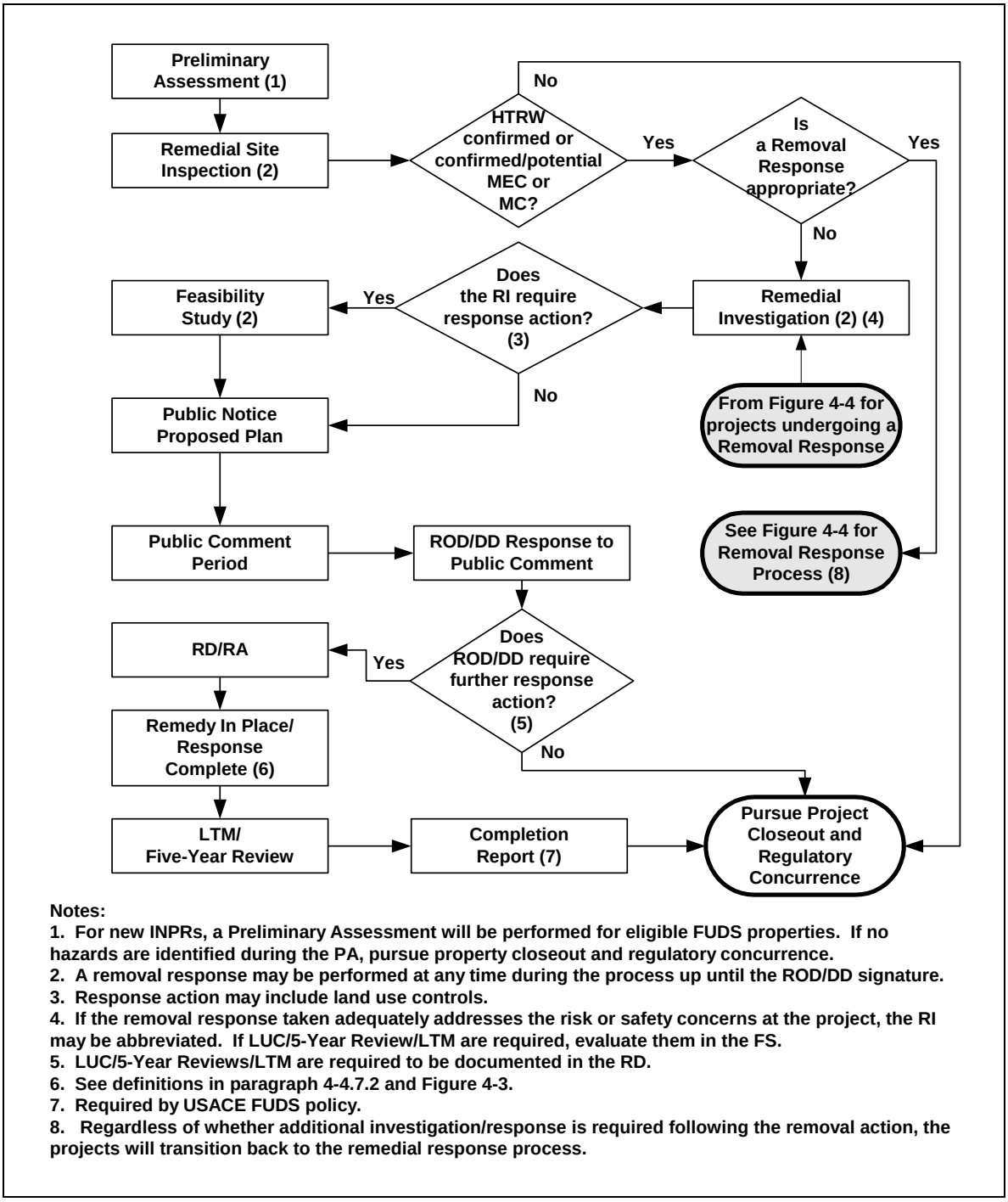


**Figure 4-1. Remedial Response Process for HTRW and MMRP Projects.**

4-4.1.1.1 The PA report must include: (i) A description of the release; (ii) A description of the probable nature of the release; and (iii) A recommendation on whether further action is warranted. The PA Report will be included in the permanent Project File and used in preparation of the Property and Project Summary Sheets. See Appendix B for information on conducting the

PA. If the PA identifies either an actual or a potential threat to human health, safety, or the environment, a Site Inspection (SI) will be performed to confirm the threat. EPA guidance on conducting a PA can be found in EPA/540/G-91/013.

4-4.1.1.2 When the Risk Assessment Code (RAC) prepared at the FUDS Property level results in a score of 1 through 4, the CERCLA PA will include information relevant to the identified MMRP at the property for both MEC and MC. This MMRP information, previously contained in the Archives Search Report (ASR), will be included in the CERCLA Preliminary Assessment Report to identify MMRP projects. The Risk Assessment Code worksheet will be included in the PA Report.

4-4.1.2 *Remedial Site Inspection (SI).* The SI is the second component of the Site Evaluation following the Preliminary Assessment. This SI is not intended as a full-scale study of the nature and extent of contamination or explosives hazards. The objectives of the remedial SI are to: (i) Eliminate from further consideration those releases that pose no significant threat to public health or the environment; (ii) Determine the potential need for removal action; (iii) Collect or develop additional data, appropriate for HRS scoring by EPA; and (iv) Collect data, as appropriate, to characterize the release for effective and rapid initiation of the RI/FS. When information in the PA indicates the presence of significant HTRW contamination, it is not necessary to perform an SI and the response process can proceed directly to the RI phase. Information collected during the SI will also be used to perform the DoD Relative Risk Site Evaluation (RRSE) and update the Risk Assessment Code (RAC) score as appropriate, which will be entered into FUDSMIS. More detailed information pertaining to the Site Inspection can be found in EPA/540-R-92-021. EP 1110-1-18 contains additional guidance for response actions at MMRP projects.

4-4.1.2.1 *Remedial Site Inspection Requirements Common to HTRW and MMRP projects.* The Site Inspection phase for HTRW and MMRP projects consists of the following common elements:

- Initiating the Technical Project Planning (TPP) process to determine the project objectives and associated data needs to reach project closeout, developing Data Quality Objectives (DQOs), and developing the initial CSM. Refer to EM 200-1-2 and EM 1110-1-1200.
- Visiting the property, either before or during TPP, to gather additional historical and site-specific data to confirm data needs and the nature and scope of the SI. This includes looking for hazardous substances or pollutants and contaminants (as defined in CERCLA), and military munitions or munitions constituents. Changes in vegetation, soil characteristics, potential exposure pathways, and ground scars should be identified. Refer to EM 1110-1-1200. An Abbreviated Site Safety and Health Plan will be prepared before the site visit.
- Locating, retrieving, and reviewing all available and appropriate documents, conducting an on-site survey to augment the data collected during the PA, generating additional data, confirming the presence of CERCLA hazardous substances and pollutants or contaminants (including munitions), reevaluating risk, and identifying areas of known or suspected releases.

- Gathering sufficient data to determine the appropriate response action.

4-4.1.2.2 *Site Inspections for HTRW Projects.* In addition to the above, the following requirements apply to HTRW projects as provided in 40 CFR 300.420(c).

- USACE will prepare sampling and analysis plans and submit them to the lead regulatory agency for notice and opportunity to comment. Copies will be provided to other regulatory agencies upon request. Sampling and analysis plans shall consist of the two parts as described below:
  - The field sampling plan (FSP), which describes the number, type, and location of samples and the type of analysis required.
  - The quality assurance project plan (QAPP), which describes policy, organization and functional activities, as well as data quality objectives.
- When planning sampling activities, the HRS scoring information needs should be considered to ensure that adequate data are collected to enable EPA to score the property; however, the expenditure of ER-FUDS funds is limited to addressing only DoD contamination. It is DoD policy that HRS scoring will be conducted by EPA, not by USACE.
- When sampling is necessary for both HTRW and MC, the SI workplans and associated DQOs shall be developed in such a manner as to integrate sampling efforts and prevent duplication of effort.

4-4.1.2.3 *Site Inspections for MMRP Projects.* In addition to the above, the following requirements apply to MMRP projects as determined by the Data Quality Objectives to confirm the findings of the PA:

- Limited surface investigations
- Limited subsurface investigations
- Limited geophysical investigations
- Limited MC sampling
- Footprint analysis, including limited geophysical mapping, to determine the study areas for subsequent investigations
- Spatial Analysis and, if necessary, an aerial survey defining the aerial extent of the military munitions

4-4.1.2.4 *SI Workplans for MMRP Projects*. USACE will develop SI Workplans to detail the SI activities listed above to ensure data obtained is of sufficient quality and quantity to satisfy data needs. When MC sampling is necessary, the requirements under paragraph 4-4.1.2.2 for a FSP and QAPP apply.

4-4.1.2.5 *The SI Report.* Once field data collection activities have been completed and the data reviewed as necessary, an SI Report is generated for the project. Information in the SI report will frequently incorporate information from the PA. In addition to presenting the analytical data, the SI report will contain recommendations for further actions at the project. The SI Report is typically the basis for submittal of information to EPA to allow EPA to make an HRS evaluation addressing DoD contamination. If an MMRP project was identified during the

PA, the SI report will include MC sampling, spatial analysis, data gathered during the field work, and results from the technology evaluation. If the SI Report identifies a potential PRP project, Office of Counsel shall be consulted prior to release of the report. Refer to EP 1110-1-18 and EM 1110-1-4009 for MMRP projects and EPA/540-R-92-021 for HTRW projects.

- Generally, the SI Report recommendations are:
  - That no further action is appropriate;
  - To perform a removal action;
  - To collect additional data to fill data gaps; or
  - To proceed with a Remedial Investigation (RI).
- The narrative portion of the SI Report should, at a minimum:
  - Describe the history and nature of waste handling and military munitions used;
  - Describe known hazardous substances and military munitions that are (or have been) at the property;
  - Describe pathways of concern for these hazardous substances and potential receptors for military munitions and munitions constituents;
  - Identify and describe human population and environmental targets;
  - Present SI analytical results;
  - Make a recommendation for further action, if any.

4-4.2 *Removal Response Following the Site Inspection.* Upon completion and review of the SI, the NCP provides that a determination, using the factors discussed below, may be made as to whether "a removal action is appropriate" [40 CFR 300.415(a)(1)] "to abate, prevent, minimize, stabilize, mitigate, or eliminate the release or threat of release" [40 CFR 300.415(b)(1)]. A removal response is appropriate only when site-specific conditions indicate an imminent threat to human health, safety or the environment. If an evaluation of the NCP factors and site-specific conditions does not indicate a removal response is appropriate, the response will proceed as a remedial response. If a removal response is deemed appropriate based on site specific conditions and any of the following factors, the decision to perform the removal response will be documented consistent with paragraph 4-5.2.3.1 of this Chapter. Refer to paragraph 4-5 for additional information regarding the Removal Response Process. The factors contained in 40 CFR 300.415(b) are:

4-4.2.1 Actual or potential exposures to nearby human populations, animals, or the food chain from hazardous substances, pollutants, or contaminants; or

4-4.2.2 Actual or potential contamination of drinking water supplies or sensitive ecosystems; or

4-4.2.3 Hazardous substances, pollutants, or contaminants in drums, barrels, tanks, or other storage containers that may pose a threat of release; or

4-4.2.4 High levels of hazardous substances, pollutants, or contaminants in soils largely at or near the surface that may migrate; or

4-4.2.5 Weather conditions that may cause hazardous substances, pollutants, or contaminants to migrate or be released;

4-4.2.6 Threat of fire or explosion;

4-4.2.7 The availability of other appropriate Federal or State response mechanisms to respond to the release; or

4-4.2.8 Other situations or factors that may pose threats to public health or welfare of the United States or the environment.

4-4.3 *Remedial Investigation/Feasibility Study (RI/FS).*

4-4.3.1 *RI/FS Purpose.* The Remedial Investigation (RI) is intended "to adequately characterize the site for the purpose of developing and evaluating effective remedial alternatives" [NCP, 40 CFR 300.430(d)]. In addition, the RI provides information to assess the risks to human health, safety, and the environment that were identified during risk screening in the SI. "The primary objective of the Feasibility Study (FS) is to ensure appropriate remedial alternatives are developed and evaluated ... and an appropriate remedy selected" [NCP, 40 CFR 300.430(e)]. Innovative technologies should be considered and evaluated as remedial alternatives. The RI should focus on collecting information to support the FS, so a decision on the remedy can be made. Objective-oriented studies (rather than procedure- and process-driven studies) can lead to timely and appropriate decisions for protecting human health, safety, and the environment. The RI and FS should be conducted in an integrated manner. Typical RI/FS activities are summarized in Figure 4-2.

4-4.3.2 *RI/FS Activities.* RI/FS activities include:

- Identify the RI/FS study area and designate the specific locations to be evaluated. Using a conservative procedure and available information, delineate the populations, both human and ecological, and resources in the vicinity by their risk of exposure to the suspected contamination or military munitions.
- Identify properties, transportation routes, treatment and disposal facilities, and any environmental resources that may be used for, or be directly impacted by, potential response actions. For MMRP projects, locate and coordinate with local support agencies such as the nearest hospital, fire station, airport, local police, sheriff, or military police.
- Determine appropriate response mechanisms and authorities. CERCLA is DoD's preferred framework for environmental restoration. Coordinate with the lead regulatory agency on identification of ARARs under Federal or State laws and to define the roles each party will play in studies and in decision-making. See Chapter 9 for regulatory coordination requirements.
- Coordinate with the local property owner and obtain Right of Entry

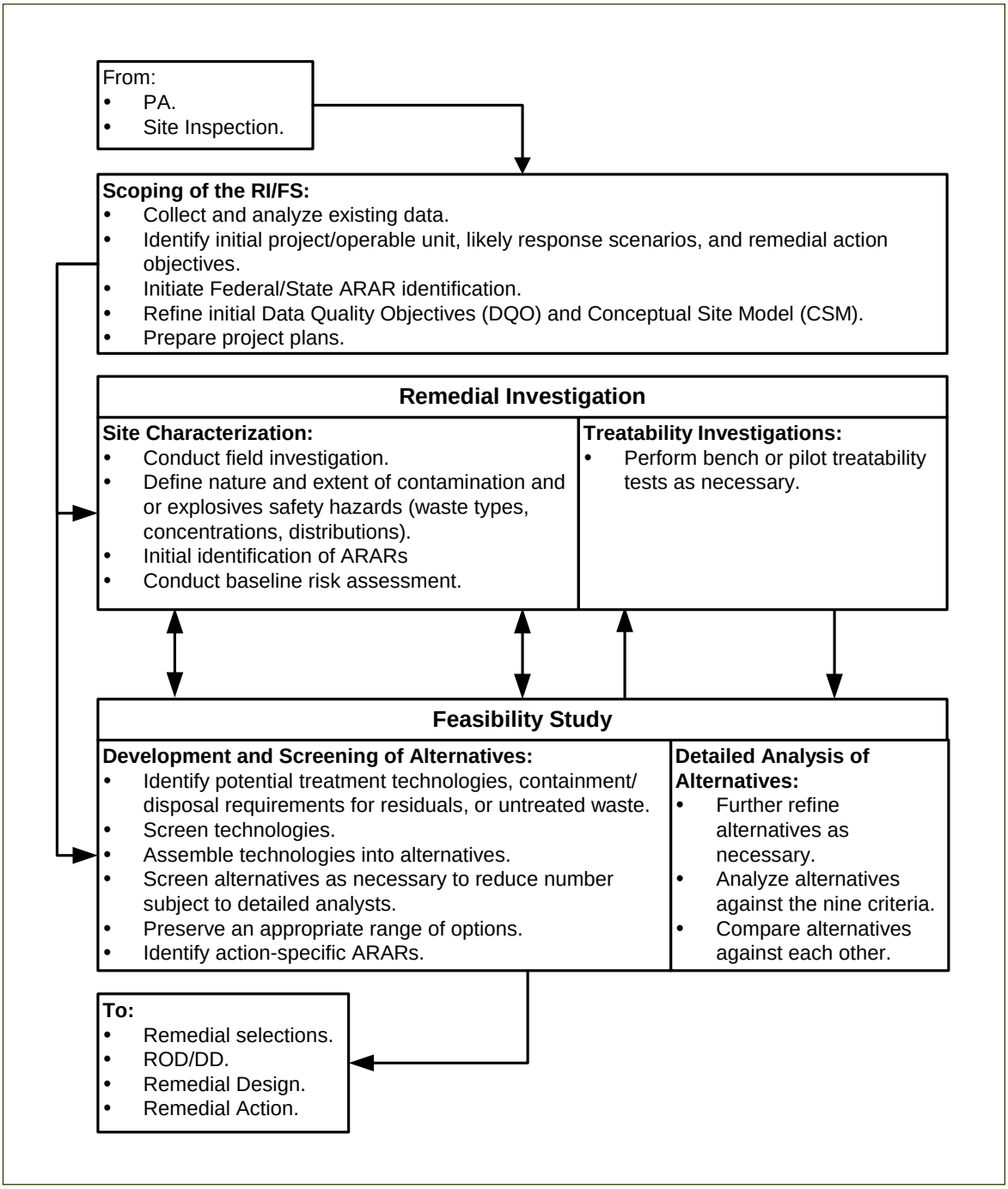


**Figure 4-2. Remedial Investigation/Feasibility Study Process.**

- Collect confirmatory data, if needed.
- Describe the scope of subsequent RI/FS steps. Prepare a statement of work and supporting plans for each step. Identify needs and set priorities for removals, operable units, and continuing monitoring requirements while the RI/FS is being conducted.
- Conduct community interviews and prepare a Public Involvement Plan (PIP). For additional information on public involvement, see Chapter 8.
- Establish a Restoration Advisory Board (RAB), as appropriate.
- Establish and maintain an Administrative Record file and information repository, if not already established.
- Develop an overall work plan for the RI/FS, as needed. Field sampling, health and safety, project quality assurance, and other plans required to support the RI/FS would also be part of scoping. The field sampling and quality assurance project plans shall be submitted to the lead regulatory agency for review and comment. Copies will be provided to other regulatory agencies upon request.
- Continue the Technical Project Planning Process (reference EM 200-1-2) to develop project objectives and Data Quality Objectives to:
    - Define the nature and extent of contamination at a project;
    - Provide data to evaluate risks;
    - Provide data to evaluate remedial alternatives; and
    - Refine the CSM

4-4.3.3 *Remedial Investigation.* USACE will characterize the nature and threat posed by the hazardous substance and/or military munitions, and gather data necessary to assess the extent to which the release poses a threat to human health, safety, or the environment. In addition, data should be gathered to support the analysis and design of potential response actions by assessing the following factors [40 CFR 300.430(d)(2)]:

- Physical characteristics of the property;
- Characteristics/classification of air, surface water, and groundwater;
- Characteristics of the waste or military munitions (e.g., quantities, concentration, toxicity, persistence, mobility, depth, nature and extent, etc.);
- The extent to which the source can be characterized;
- Actual and potential exposure pathways through environmental media;
- Actual and potential exposure routes (e.g., inhalation and ingestion); and
- Other factors such as sensitive populations that pertain to the characterization of the site or support the analysis of potential remedial action alternatives

4-4.3.4 *Baseline Risk Assessment.* A baseline risk assessment for HTRW and MC will be conducted as part of the Remedial Investigation. Refer to EM 200-1-4 Volume 1 and Volume 2. EPA guidance is found in EPA/540/1-89/002, EPA 540/G-89/004, and EPA 540-R-97-006. Contact the MM CX for guidance regarding risk assessments for projects involving MEC.

4-4.3.5 *Identification of ARARs.* ARARs, in conjunction with risk-based levels developed in the risk assessment, are employed in directing response actions and establishing

cleanup goals. ARARs are used as a "starting point" to determining the protectiveness of a site remedy. Additional guidance on ARARs is found in EPA/540/G-89/006. Refer to paragraph 4-9.1 for an in-depth discussion of ARARs.

4-4.3.6 *Identification of Preliminary Remediation Goals (PRGs) and Remedial Action Objectives (RAOs).* Determination of the feasibility of remedial actions requires the identification of PRGs. PRGs are criteria by which aspects of a cleanup under CERCLA are measured. They include potential statutory and regulatory requirements (ARARs), guidance and advisories (to-be-considered criteria, or TBCs), and risk-based concentrations of chemicals in environmental media that have been brought forward from the human health and ecological risk assessments conducted for the project. Candidate PRGs should be developed during the RI and presented in the FS and ROD. Many EPA regions have developed tables of PRGs that can be used as a starting point in PRG development. In addition, the National Contingency Plan specifies that RAOs be developed which address: (1) contaminants of concern, (2) media of concern, (3) potential exposure pathways, and (4) remediation goals [40 CFR 300.430(e)(2)(i)]. Development of RAOs requires consideration of ARARs and the results of the baseline human and ecological risk assessment and should be presented in the FS. Remedial alternatives considered for selection should be able to attain RAOs.

4-4.3.7 *Development of Alternatives.* During the FS, remedial technologies, and their associated containment or disposal requirements are identified, pre-screened, and then combined into alternatives. Information obtained during the RI is considered in developing the list of alternatives for evaluation. Some technologies or property use restrictions may become apparent from this step or may become necessary regardless of which remedy is selected. Evaluation of alternatives should consider, at a minimum, the following:

- A no-action alternative.
- An alternative that reduces or eliminates the toxicity, mobility, or volume of waste.
- An alternative that considers land use controls discussed later in this Chapter. For any evaluation of response alternatives where a use restriction will be imposed, either as a stand-alone response alternative or as one component of a more complex action, USACE Districts will ensure that the evaluation of response alternatives includes an analysis of an alternative with a use restriction, as well as an analysis at the level of detail appropriate to the size and scope of a response not requiring a use restriction (e.g., implementation of a response that allows unrestricted use). This will allow consideration of restricted and unrestricted use alternatives in selecting the response action.
- Unrestricted Use.
- Consideration of innovative technologies.
- Consideration of monitored natural attenuation. Army policy (Department of the Army for Installation Management Directorate of Environmental Programs [DAIM-ED-R], 12 September 1995, Subject: *Interim Army Policy on Natural Attenuation for Environmental Restoration*) requires the consideration of monitored natural attenuation for projects involving HTRW and MC. Also, refer to EPA's Office of Solid Waste and Emergency Response (OSWER) Directive 9200.4-17P.

- Alternatives that provide various levels of protection from explosives safety hazards for projects involving MEC.
- Consideration of Presumptive Remedies.

4-4.3.8 *Initial Screening of Remedial Alternatives.* Alternatives identified in the FS are initially screened for effectiveness, cost, and implementability. This initial screening is preliminary and is not equivalent to the detailed analysis of alternatives discussed below. At this stage, costs should be order-of-magnitude, but should include Remedial Action-Operations (RA-O) and long-term management (LTM) costs, as appropriate. Factors such as safety, constructability, potential opposition from the public, compatibility with planned land uses, and availability of material, equipment, technical expertise, or off-site treatment and disposal facilities may be considered in evaluating implementability. Demonstrated ability of component technologies to achieve design goals should be addressed in evaluating effectiveness. Adverse environmental impacts predictable at this stage should also be considered in evaluating effectiveness. Calculations, assumptions, and references supporting these evaluations will be documented in the FS. The results of the initial screening shall be provided to the State so they can identify State ARARs.

4-4.3.9 *Detailed Analysis of Alternatives.* The purpose of this step is to evaluate and compare the alternatives remaining after the initial screening, and present a proposed plan for regulatory agencies and public review. Section 300.430 (e)(9)(iii) of the NCP describes the nine criteria for evaluating and comparing alternatives during the detailed analysis. They are listed in Table 4-1. Based upon the criteria, the alternatives are compared and the results are placed in a table (preferred) within the draft FS report. Threshold criteria are requirements that each alternative must meet or have specifically waived to be eligible for selection. Primary balancing criteria are those that form the basis for comparison among alternatives that meet the threshold criteria. Modifying criteria are criteria considered in remedy selection. Though Section 120(b) of CERCLA indicates a preference for permanent solutions and requires assessment of permanent solutions and alternative treatment technologies or resource recovery technologies, it does not mandate selection.

**Table 4-1**
**Nine Criteria in the NCP for Detailed Analysis of Alternatives**

| | |
|---|---|
| **Threshold Criteria** | 1. Overall protection of human health and the environment.<br>2. Compliance with ARARs. |
| **Primary Balancing Criteria** | 3. Long-term effectiveness and permanence.<br>4. Reduction of toxicity, mobility, or volume through treatment.<br>5. Short-term effectiveness.<br>6. Implementability.<br>7. Cost. |
| **Modifying Criteria** | 8. State acceptance.<br>9. Community acceptance. |

4-4.3.10 *Treatability Investigations.* Considered a part of the RI, the treatability investigation is an optional step that is performed when the FS indicates a need for further data to evaluate the feasibility of treatment technologies. Treatability investigations may include collecting additional field data, bench or pilot-scale treatability testing, and literature surveys for candidate control technologies.

4-4.4 *Proposed Plan (PP).*

4-4.4.1 The first step in the remedy selection process is the preparation of the PP. The PP document summarizes the remedial alternatives proposed for a project and specifies the preferred cleanup method. The PP can be prepared as a fact-sheet or as a document similar to, but shorter and less conclusive than, the draft ROD. Additional guidance is available from EPA 540R-98-031.

4-4.4.2 The PP should be written in non-technical language and be understandable by the general community. In addition, the PP must, at a minimum:

- Provide a brief summary description of the remedial alternatives evaluated in the detailed analysis done in the FS;
- Identify and provide a discussion of the rationale that supports the preferred alternative;
- Provide a summary of formal comments received from the regulators; and
- Provide a summary explanation of any proposed ARAR waiver.

4-4.4.3 The PP should contain the following sections:

- Introduction – Identifies the project and describes the public involvement process.
- Site Background – Provides facts about the project that provide the context for the subsequent sections of the Proposed Plan.
- Site Characteristics – Describes nature and extent of contamination or hazards.
- Scope and Role – Describes how the operable unit or response action fits into the overall project strategy.
- Summary of Site Risks – Summarizes the results of the baseline risk assessment and the land use and groundwater use assumptions used in the analysis.
- Remedial Action Objectives – Describes what the proposed project cleanup is expected to accomplish.
- Evaluation of Alternatives – Explains the rationale for selecting the preferred alternative.
- Preferred Alternative – Describes the preferred alternative, summarizes support agency comments, and affirms that it is expected to fulfill statutory and regulatory requirements.
- Community Participation – Provides information on how the public can provide input to the remedy selection process (e.g., where to submit written comments, the location of the Administrative Record file, etc.). Refer to Chapter 8 for additional information regarding public involvement requirements.

4-4.5 *Record of Decision for National Priority List Projects and Decision Document for Non-National Priority List Projects.* A ROD in accordance with the provisions of the NCP shall be prepared for projects on a FUDS property listed by EPA on the NPL. DoD has adopted the term Decision Document (DD) for the documentation of remedial action decisions at non-NPL properties and projects. The ROD or DD will be prepared following completion of the Proposed Plan to identify the remedial alternative chosen for implementation and be based on information from the RI/FS and consideration of public comments and community concerns. The remedy selected must be protective of human health and the environment, attain all State and Federal ARARs for that project or justify any waivers of ARARs, be cost-effective, and use permanent solutions and alternative treatment or resource recovery technologies to the maximum extent practicable. A DD should contain the same information about the selected alternative as a ROD for NPL sites, but will not need specific sections regarding the role of EPA in oversight of the RD/RA phases. The ROD/DD must also include a description of and rationale for the reasonably anticipated future land use or other exposure scenario used to select the remedy for all remedial responses that include Land Use Controls (LUCs). Removal actions cannot be used to impose LUCs. Districts will use the ROD or Decision Document guidance contained in Appendix C. All RODs and Decision Documents will be maintained in the Administrative Record file and the permanent Project File.

4-4.5.1 *Final Preparation of the ROD/Decision Document and Amendments.* After the public meeting concludes, any additional information will be incorporated into the Responsiveness Summary and the final ROD/DD will be completed.

4-4.5.2 *Regulatory Review and Approval of ROD/DDs.* For NPL projects, USACE must obtain EPA concurrence on the ROD for the selected remedy. For NPL projects, written concurrence and approval of the ROD by the State is not required. For non-NPL projects, written concurrence and approval of the DD by the EPA and/or State is not required. However, in all cases, concurrence shall be actively sought and efforts made to identify and resolve outstanding regulator issues and comments provided by the State on NPL RODs and the EPA and/or the State on non-NPL DDs.

4-4.5.3 *Signature Authority for ROD/Decision Documents.* To prevent delays in staffing decision documents, early coordination with the U.S. Army Technical Center for Explosives Safety (USATCES) for MMRP projects, the U.S. Army Center for Health Promotion and Preventative Medicine (USACHPPM) for HTRW projects, and the appropriate CX is critical. Appendix C contains the ROD and DD signature requirements for NPL and non-NPL projects with remedial response actions.

4-4.5.4 *Public Involvement Requirements.* After the ROD/DD is signed, USACE shall publish a notice of the availability of the ROD/DD in a major local newspaper of general circulation and make the ROD/DD available for public inspection and copying at or near the FUDS Property prior to the beginning of any remedial action. See Chapter 8 for additional information on public involvement requirements.

4-4.6 *Remedial Design.* Detailed designs, plans, specifications, and bid documents for conducting the remedial action are developed during this phase. For projects involving MEC, the remedial design requires preparation of an Explosives Safety Submission (ESS) or Chemical Safety Submission (CSS) approved by the Department of Defense Explosives Safety Board (DDESB) after review by USATCES and the MM CX. Refer to EP 385-1-95a for safety concepts and considerations for MMRP projects. Value Engineering (VE) methodology should be applied whenever possible in accordance with existing regulations. VE studies should focus on individual components of the remedy without altering the ROD/DD. The HTRW CX and MM CX can assist the PM in coordination with District Value Engineer officers and can participate in studies. The remedial design must ensure that applicable Federal and State requirements have been identified and incorporated, including meeting any conditions or waivers to ARARs. Coordinating the remedial design with the lead regulatory agency at an early stage is essential for eliminating costly delays. Technical reviews should be coordinated to ensure that the specifications include all of the elements necessary to comply with the environmental and safety standards identified in the applicable DD.

4-4.7 *Remedial Action (Construction RA-C and Operation RA-O).* For the DERP, the remedial action phase has been divided into a construction component (RA-C) and an operations component (RA-O). Refer to Figure 4-3.

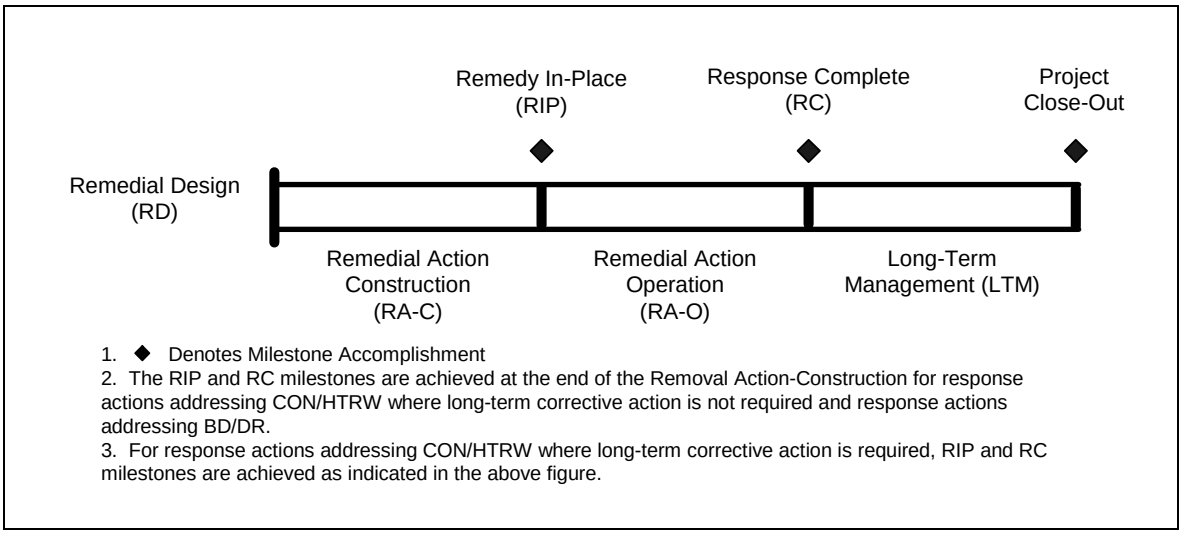


**Figure 4-3. Project Phase Milestone Diagram for RA-C, RA-O, and LTM.**

4-4.7.1 The Remedial Action workplan contains a task-by-task description of the approach to meeting project requirements. RA workplan elements include, but are not limited to, the following:

- Roles and responsibilities.
- RA schedule.

- Sampling and analysis requirements, and implementation methods.
- Methods and plans for implementing design plans and specifications.
- Health and safety plans.
- Other related workplans (e.g., site control, dust suppression, etc.).

4-4.7.2 For FUDS program purposes, milestones are associated with the end of response phases as described below:

- The Remedy-In-Place (RIP) is defined as the end date of RA-C. RIP signifies that the construction is complete, all testing has been done, and that the remedy will function properly.
- Response Complete (RC) is defined as the end date of the RA-O. The RA-O is the period during which the remedy is actually operating to achieve the cleanup objective, as identified in the ROD or the DD. RC signifies the beginning of the subsequent long-term management (LTM) phase. Supervision and Administration (S&A) rates for RA-O contracts will be based on actual costs, not on standard USACE rates.

4-4.7.3 For HTRW and PRP/HTRW projects, the RIP milestone will be the RA-C end date when there is a RA-O phase to follow. If there is no RA-O phase, then the RA-C end date will also be the RC date. The RC is the milestone when the RA-O is completed and the LTM, if required, is to begin.

4-4.7.4 Section 300.440 of the NCP requires that any off-site facility receiving CERCLA remediation wastes must be in compliance with existing permits. The USACE PM must consult with the appropriate permitting authority before designating an off-site disposal facility as part of a CERCLA response action. Additional information on off-site disposal is provided later in this Chapter.

4-4.8 *Long-Term Management (LTM).* LTM activities may be required for HTRW projects following the RA-O phase and for MMRP projects. Refer to the *DoD Management Guidance for the DERP* for the LTM requirements. Geographic military Districts execute the LTM phase of response actions. LTM for FUDS will be funded by the Environmental Restoration-FUDS (ER-FUDS) account and is subject to workplan approval. For planning and budget purposes, LTM should not exceed 30 years unless specific justification for a deviation exists and must include five-year reviews or other activities as described below.

4-4.8.1 *Five-Year Reviews.*

4-4.8.1.1 In accordance with CERCLA, as amended by SARA, and the NCP, remedial actions that do not allow unlimited use and unrestricted exposure (UU/UE) must be reviewed no less than every 5 years after the start of the remedial action, or more frequently if required by the ROD/DD. The reviews are conducted to ensure that the remedial actions remain protective of human health, safety, and the environment. The requirement for five-year reviews applies to all HTRW, MMRP, and CON/HTRW projects (except for CON/HTRW projects involving only petroleum) where the implemented response does not allow for unlimited use and unrestricted exposure. Geographic military Districts are responsible for assuring that all five-year reviews

are conducted in accordance with CERCLA and the NCP. The appropriate CX is available to assist Districts in scoping and conducting five-year reviews. The five-year review report for HTRW and MMRP projects shall be provided to the geographic Military Division and the appropriate CX for comment. EPA has guidance regarding five-year reviews in OSWER Directive 9355.7-03B-P.

4-4.8.1.2 Generally, all FUDS projects requiring five-year reviews on a property should be reviewed concurrent with the five-year review of the first remedial action requiring such review. The projected cost required for the first project should be sufficient to cover the additional projects. For selected large or complex projects, separate five-year reviews may be appropriate and separate costs should be included for each project. USACE preference, however, would be to combine five-year reviews for the entire property whenever possible.

4-4.8.1.3 EP 75-1-4 provides procedures for developing and implementing five-year review requirements on military munitions response actions. The purpose of five-year reviews is to determine if the implemented response action continues to minimize explosives safety risks and continues to be protective of human health, safety, and the environment. The procedures cover the development of the Five-Year Review Plan and its implementation as well as approval of the Five-Year Review Report and termination of such reviews.

4-4.8.1.4 As a related activity, periodic optimization reviews of long-term RA-O phases (e.g., ground water extraction and treatment systems) with annual operations and maintenance costs (including monitoring, sampling, and analysis) of more than $100,000 shall be conducted no less frequently than every 5 years to assess cost-effectiveness, protectiveness, and the reasonableness of the site exit strategy. Optimization reviews shall be included as part of an overall five-year review, where appropriate. Such reviews shall follow the USACE Remediation System Evaluation (RSE) process or other comparable optimization process. Additional information on the RSE process is available from the HTRW CX. The review shall be directed by the geographic military District and be conducted by an independent team of senior technical professionals not involved with the current effort. The team members may be senior environmental staff from a USACE district, the HTRW CX, or a contractor. The report summarizing the optimization review shall be provided to the geographic military Division and the HTRW CX for comment. The District will track implementation of report recommendations and document associated cost savings. Project managers are expected to reasonably consider the recommendations, to document decisions in the project file, and to explain to the geographic military Division the basis for not incorporating recommendations into the operation.

4-4.8.2 *Monitored Natural Attenuation.* In addition to five-year reviews, LTM activities may also include groundwater or soil monitoring for remedies using monitored natural attenuation. As defined by EPA, monitored natural attenuation is:

> *The reliance on natural attenuation processes, within the context of a carefully controlled and monitored site cleanup, to achieve site-specific remedial objectives within a time frame that is reasonable as compared to those offered by more active measures.*

In this context, attenuation processes may include biodegradation; sorption; dilution; dispersion; volatilization; and chemical or biological stabilization, transformation, or destruction. By definition, "monitoring" is the critical component of any natural attenuation remedy, ensuring performance objectives are being achieved and, when they are not, identifying when contingency measures are necessary to prevent any unacceptable risks to human health and the environment.

4-4.8.3 *Other LTM Activities.* Some remedies involve the construction of caps, slurry walls, or engineering controls that must be periodically evaluated for integrity, erosion conditions, lack of containment, etc. When a remedy requires LTM activities, they should be identified as part of the remedy described in the ROD/DD. A LTM workplan should also be developed that describes performance measures as well as associated LTM actions, such as monitoring frequency, analytical procedures, inspection requirements, and contingency measures should the remedy not attain performance standards specified in the ROD/DD.

**4-5 Removal Response Process.** The NCP does not require that a removal PA/SI be performed when a remedial PA/SI has already been completed. Language in 40 CFR 300.410 states that removal site evaluation shall be undertaken, as appropriate, by the lead agency and that the removal SI *may* be performed if more information is required than was provided by the PA. Therefore, if during the course of investigations the determination is made that a removal action is required, the remedial site evaluation already performed will be considered adequate to meet the requirements of a removal site evaluation.

4-5.1 *Removal Actions - General*. Removal actions generally have limited objectives, and typically are short-term actions to mitigate the threat posed by a release or threatened release of hazardous substances or pollutants or contaminants (including MEC and MC). The removal action process cannot attain the RIP or RC milestones and cannot be used to make closeout decisions. All closeout decisions must occur in the remedial process. The decision to perform a removal response to address HTRW and military munitions and their constituents will be based on project specific conditions and consideration of the NCP factors listed in paragraph 4-4.2. Long range planning and programming for removal responses is inconsistent with the application of project specific conditions and consideration of the NCP factors. Therefore, the planning and programming within FUDSMIS to initiate removal responses for HTRW or MMRP projects can only be performed during the current and budget years. Examples of the types of actions that may be taken under removal authority include:

- Installing fences, warning signs, or other security or site control precautions where humans or animals have access to the release.
- Installing drainage controls, for example, run-off or run-on diversion, where needed to reduce migration of hazardous substances or pollutants or contaminants off-site or to prevent precipitation or run-off from other sources, for example, flooding, from entering the release area from other areas;
- Stabilization of berms, dikes, or impoundments or drainage or closing of lagoons, where needed to maintain the integrity of the structures;
- Capping of contaminated soils or sludges, where needed to reduce migration of hazardous substances or pollutants or contaminants into soil, ground or surface water, or air;

- Using chemicals and other materials to retard the spread of the release or to mitigate its effects – where the use of such chemicals will reduce the spread of the release;
- Excavation, consolidation, or removal of highly contaminated soils from drainage or other areas – where such actions will reduce the spread of, or direct contact with, the contamination;
- Removal of MEC, drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances or pollutants or contaminants, where doing so will reduce the likelihood of spillage; leakage; exposure to humans, animals, or food chain; or fire or explosion;
- Containment, treatment, disposal, or incineration of hazardous materials, where needed to reduce the likelihood of human, animal, or food chain exposure; or
- Provision of alternative water supply, where necessary immediately to reduce exposure to contaminated household water and continuing until such time as local authorities can satisfy the need for a permanent remedy.

4-5.2 *Categories of Removal Actions.* EPA categorizes removal actions in three ways: emergency, time-critical, and non-time-critical based upon the situation, the urgency and threat of release or potential release, and the subsequent time frame in which the action must be initiated. Each type of removal action is discussed in detail below. When appropriate, removal actions can be conducted as part of any HTRW or MMRP project and should lower risks and may reduce total project cost. Removals are normally expedited response actions, as opposed to final remedial actions that are usually intended to provide permanent remedies. However, some removal actions may result in the cleanup of all hazardous substances, pollutants, or contaminants at a FUDS. Following any removal action (emergency, time-critical, or non-time critical), the effort shall transition to the remedial action process to determine what additional response action is necessary to achieve the RIP or RC milestones, or project or property closeout. Figure 4-4 shows the typical removal process for HTRW and MMRP projects.

4-5.2.1 *Emergency Removal Actions.* Emergency removal actions address immediate, unacceptable hazards or risks and must commence within hours of discovery. Due to the exigency of an emergency removal, an Action Memorandum is not required prior to performing the emergency removal. However, an Action Memorandum will be completed following the emergency removal action to document the response and to meet the requirements for the Administrative Record. Action Memorandum and Administrative Record requirements are discussed later in this chapter.

4-5.2.1.1 *Explosives or Munitions Emergency Response.* Military EOD units or local law enforcement officials, not the USACE, execute explosives or munitions emergency response actions. USACE will perform follow-on response actions as appropriate in accordance with CERCLA and the NCP. USACE Districts, on being notified of the potential need for an explosives or munitions emergency response should contact the MM CX for assistance in obtaining EOD support. While USACE does not perform explosives or munitions emergency responses, information about such actions should be included as part of the data collected in the preliminary assessment, site inspection, or remedial investigation phases. This information should be available from the installations or local law enforcement agencies where the explosive ordnance disposal team is located.

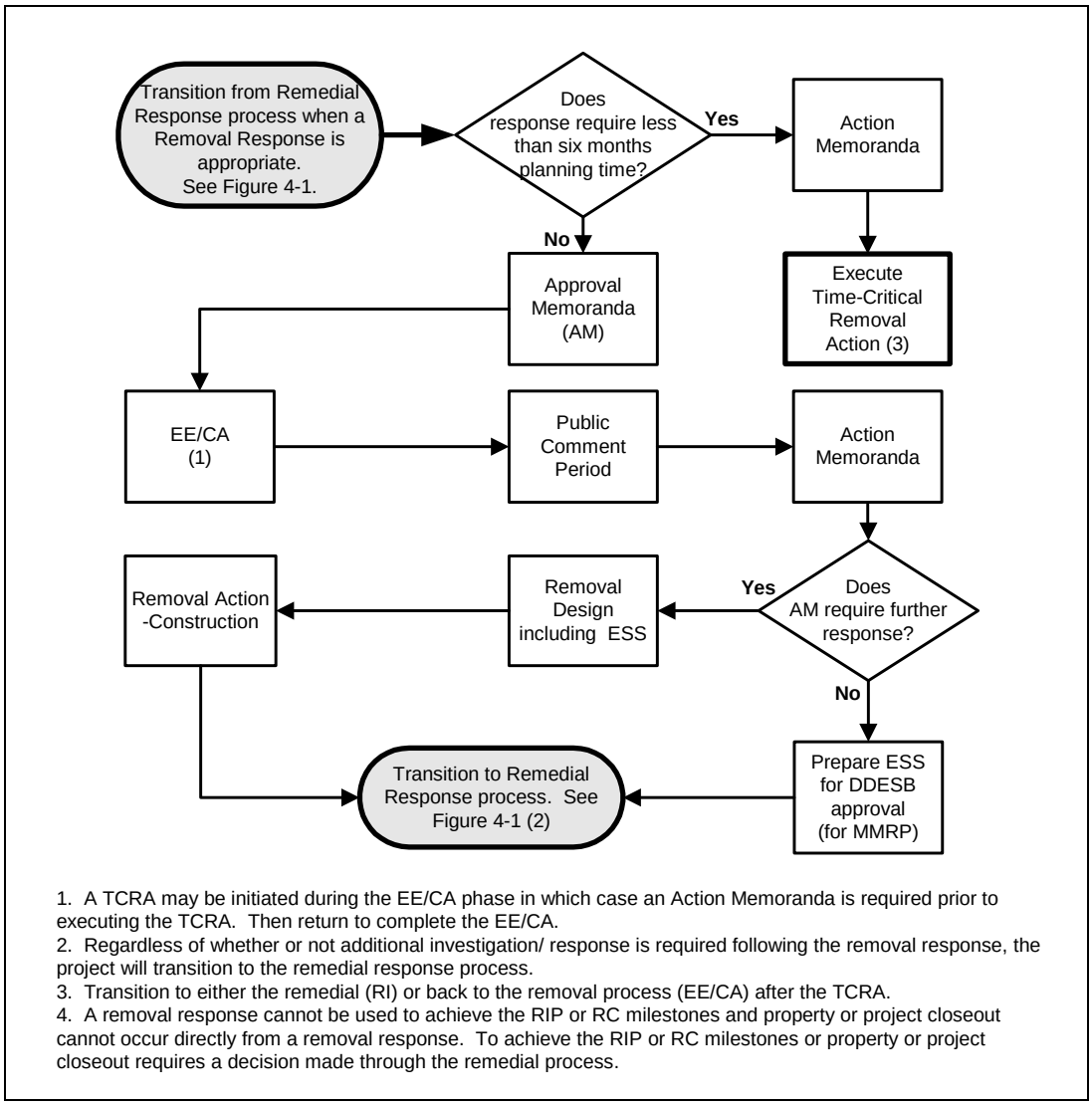


**Figure 4-4. Removal Response Process for HTRW and MMRP Projects.**

4-5.2.1.2 *CERCLA Emergency Removal Actions.* HTRW and MC emergency removal actions would be conducted by USACE at HTRW and MMRP projects where the release of CERCLA hazardous substances, pollutants, or contaminants pose an immediate risk to human health, safety, or the environment. For the most part, these types of immediate threats are not found at sites where DoD activity occurred well in the past. Where the need for an emergency removal action is deemed appropriate, the requirements are found in the NCP at 40 CFR 300.415.

4-5.2.1.3 *Transition from Emergency Removal Actions to the Remedial Process.* If subsequent removal activities are not required upon completion of an emergency removal action, activities at the project will continue under the remedial action process.

4-5.2.2 *Time-Critical Removal Actions (TCRA).* The general difference between a TCRA and a Non-Time-Critical Removal Actions (NTCRA) is the amount of planning time that exists before on-site activities must be initiated. A TCRA is a removal action for which less than six months of planning time is available before on-site activities must begin. TCRAs may be conducted for both HTRW and MMRP projects according to the guidance provided below. ARARs must be attained in executing the removal action only to the extent practicable based upon the exigency of the situation and the scope of the removal action to be taken. However, once work at the project transitions back to the remedial process, ARARs must be either met or formally waived (i.e., non-compliance with an ARAR that extends past the completion of the removal action must be addressed in the remedial decision). Additional guidance on compliance with ARARs during TCRAs can be found in paragraph 4-9.1. TCRAs can be performed at any stage of the CERCLA response process. A TCRA is programmed as an Interim Removal Action (IRA) in FUDSMIS.

4-5.2.2.1 *TCRA Process.* The typical flow of events for a TCRA is shown in Figure 4-4. The three key items are providing the lead regulator notice and opportunity for comment on proposed actions, the Action Memorandum, and the availability of the Administrative Record file. Coordination with regulators shall be performed in accordance with Chapter 9.

4-5.2.2.2 *Administrative Record File.* Because of the immediate nature of a TCRA, the regulations do not require that the Administrative Record file be available before the implementation of the action. However, the Administrative Record file must be available to the public for review and comments within 60 days of the start of the fieldwork. Additional information on Administrative Record requirements is provided later in this Chapter.

4-5.2.2.3 *Action Memorandum.* An Action Memorandum is required before conducting a TCRA. The Action Memorandum must include the information listed in the Action Memorandum outline found in Appendix C. While lead regulator signature is not required on Action Memorandum, concurrence shall be actively sought and efforts made to identify and resolve outstanding regulator issues and comments. The Action Memorandum will describe the State regulatory agency's position, including whether or not that agency supports the action. For MEC removal Action Memoranda, coordination with the MM CX is required prior to signature.

4-5.2.2.4 *TCRA Action Memoranda Signature Authority.* Refer to Appendix C for the signature requirements for TCRA Action Memoranda.

4-5.2.2.5 *Transition from TCRAs to the Remedial Process.* If subsequent removal activities are not required upon completion of a TCRA, activities at the project will continue under the remedial action process. A TCRA cannot achieve the RIP or RC milestones or site closeout.

4-5.2.3 *Non-Time-Critical Removal Actions (NTCRA).* Whenever a planning period of at least six months exists before on-site activities must be initiated, and it has been determined, based upon the Remedial Site Evaluation that a removal action is appropriate, an Engineering Evaluation and Cost Analysis (EE/CA) shall be conducted. Additional guidance for NTCRAs is available in EPA 540-R-93-057. Removal actions done for MEC should also follow guidance in EP 1110-1-18. ARARs must be complied with to the extent practicable based upon the exigency of the situation and the scope of the removal action to be taken. Additional guidance on compliance with ARARs during a NTCRA can be found in paragraph 4-9.1. The typical process for NTCRAs is shown in Figure 4-4. The NCP requires that the Administrative Record file be established when the EE/CA is made available to the public. Additional information on Administrative Records is provided in Chapter 8. Once comments on the EE/CA have been received, considered in the selection of the removal alternative, and responses documented, an Approval Memorandum will be prepared. Additional guidance on processes and procedures for conducting MMRP NTCRAs can be found in EP 1110-1-18.

4-5.2.3.1 *Engineering Evaluation and Cost Analysis (EE/CA) Approval Memorandum.* While not required by the NCP for FUDS projects, an EE/CA Approval Memorandum is required by FUDS policy to document the rationale to conduct a removal action and is prepared once the need for a NTCRA has been determined. The EE/CA Approval Memorandum is not a part of the EE/CA, but is part of the Administrative Record file for the project.

- *EE/CA Approval Memorandum Functions*. The EE/CA Approval Memorandum serves three functions:
  - Secures management approval to conduct the EE/CA.
  - Documents that a NTCRA is appropriate given the conditions at the site and the hazard posed to human health, safety and the environment and that a planning period of at least six months is available before on-site activities must begin.
  - Provides detailed information pertaining to the site background; threats to public health, safety, or the environment posed by the site; and projected costs.
- *EE/CA Approval Memorandum Format*. The EE/CA Approval Memorandum will be prepared in accordance with the format shown in Table 4-2 to provide the rationale and justification to perform a removal action. Section 3 of the memorandum will include an analysis of the removal factors to determine if a removal action is appropriate.
- *EE/CA Approval Memorandum Development and Signature Authority*. The PM District will prepare the EE/CA Approval Memorandum in coordination with the HTRW Design District or the MM Design Center, as appropriate. The preliminary identification of exposures or explosives safety hazards will be based on information obtained from the PA or SI, other investigations that may have been conducted, and the CSM. Upon approval of the EE/CA Approval Memorandum by the District Commander, appropriate removal actions may be undertaken to abate, prevent, minimize, mitigate, or eliminate explosives hazards, releases, or threat of release.

**Table 4-2**
**EE/CA Approval Memorandum Format**

| Section | Title |
|---|---|
| 1. | Subject |
| 2. | Background |
| 3. | Description of the threat to public health, safety, or the environment posed by the release or threat of release at the project and the expected consequences of not implementing a removal action. Include justification for removal response based on the NCP removal factors and site-specific conditions. |
| 4. | Imminent and Substantial Endangerment, if present |
| 5. | Enforcement Actions (if any) |
| 6. | Proposed Project and Estimated Cost |
| 7. | Approval [1] |

Note:
1. The District Commander signs the EE/CA Approval Memorandum.

4-5.2.3.2 *Engineering Evaluation/Cost Analysis.*

- For NTCRAs, CERCLA requires an EE/CA to be conducted whenever there is a six-month period available for planning before on-site activities must begin. EPA guidance for EE/CA preparation can be found in EPA/540-R-93-057. Guidance for preparation of EE/CAs for Projects involving MEC can be found in EP 1110-1-18.
- In preparing an EE/CA, the following requirements must be met:
  - Characterize the site sufficiently to substantiate removal action.
  - Satisfy Administrative Record requirements (documentation of removal action selection, public comments, and responsiveness summary).
  - Removal actions shall, to the extent practicable, contribute to the efficient performance of any anticipated long-term remedial action with respect to the release concerned.
- *EE/CA Scoping*. EE/CA scoping activities include:
  - Continuing the Technical Project Planning (TPP) Process (EM 200-1-2) in order to develop Data Quality Objectives (DQO) to: (i) define the nature and extent of contamination and explosives safety hazards at a site; (ii) provide data to evaluate risks; (iii) provide data to evaluate removal alternatives; and (iv) refine the CSM.
  - Identify the area to be addressed under the NTCRA and designate specific areas within the project to be evaluated as part of the EE/CA.
  - Identifying properties, transportation routes, treatment and disposal facilities, and any environmental resources that may be used for, or be directly impacted by, potential removal actions.

- Determining appropriate response mechanisms and authorities. Coordinate with the lead regulatory agency to identify ARARs under Federal or State laws and to define the roles each party will play in studies and in decision-making. See Chapter 9 for regulatory coordination requirements.
- Describing the scope of subsequent EE/CA steps. Prepare statements of work and supporting plans for each step. Identifying need and setting priorities for removals while the EE/CA is being conducted.
- Establishing a Restoration Advisory Board (RAB), as appropriate. For additional information on public involvement, see Chapter 8 and EP 1110-3-8.
- Coordinating EE/CA scoping decisions with the RAB.
- Maintaining an Administrative Record file.
- Developing an overall work plan for the EE/CA, as needed.

- *EE/CA Work Plan*. The EE/CA Work Plan will be used to describe the goals, methods, procedures, and personnel used for field investigation/sampling and data gathering activities for the Engineering Evaluation/Cost Analysis (EE/CA) phase of the project. The EE/CA Work Plan will include a site-specific field investigation/sampling plan, health and safety plan, project quality control plan, explosives siting and management plans (for MMRP projects), institutional analysis plan, environmental protection plan, and other plans as required to support the EE/CA.
- *Site Characterization*. Site characterization tasks and requirements appear below:
  - Describe contaminants or explosives safety hazards, release mechanisms, and exposure pathways and receptors.
  - Describe using the preliminary risk information from the PA and/or SI, or information from the RI baseline risk assessment (if available), the nature, extent, and potential impact of the response to human health, safety, and the environment.
  - Conduct field investigations in accordance with the approved work plans, which were developed during the EE/CA scoping phase.
- *Development of Alternatives*. For a removal action, a limited number of alternatives are evaluated. Because removal actions generally have limited objectives, and typically are short-term actions to mitigate the threat posed by a release or threatened release of hazardous substances or pollutants or contaminants, thereby allowing completion of the remedial process. The following alternatives are to be considered as part of the EE/CA:
  - A no action alternative that assumes a return to the remedial process to complete site characterization and to determine the need for additional remedial activities;
  - An alternative that achieves identified removal action objectives without achieving full compliance with all ARARs.;
  - An alternative that achieves identified removal action objectives while achieving full compliance with all ARARs.
- *Comparative Analysis*. A comparative analysis is conducted to assess the relative performance of each removal action alternative in relation to its relative effectiveness, implementability, and cost. In addition, the alternatives are to be evaluated to determine their contribution to the efficient performance of any anticipated long-term remedial action with respect to the release concerned. The purpose of this analysis is to identify the advantages and disadvantages among the alternatives. Any key tradeoffs between the removal action alternatives should be documented in the EE/CA report.

- *Initial Screening of Removal Alternatives*. Initial screening of removal alternatives is similar to that performed for remedial actions. For a discussion on the initial screening of removal alternatives, refer to the section on Initial Screening of Remedial Alternatives earlier in this Chapter.
- *Detailed Analysis of Alternatives*. This step will evaluate and compare the alternatives remaining after the initial screening, and present an EE/CA Report for regulatory agencies and public review. Table 4-3 lists the objectives and criteria to be used in comparing removal action alternatives. Based upon the criteria, the alternatives are compared and the results are included in the draft EE/CA Report.

- *EE/CA Report*. The EE/CA Report is prepared after the site characterization phase is completed. The EE/CA Report should be written in non-technical language and be understandable by the general community. In addition, the EE/CA Report must, at a minimum:
  - Provide a brief summary description of the removal alternatives evaluated in the detailed analysis;
  - Identify and provide a discussion of the rationale that supports the preferred alternative(s);
  - Provide a summary of formal comments received from the regulators; and
  - Provide a summary explanation of any proposed ARAR waiver.

4-5.2.3.3 *Public Involvement Requirements.* After the EE/CA Report is prepared, the District will publish a notice of its availability in a major local newspaper of general circulation and make the report available in the Administrative Record file and the Information Repository for a mandatory 30-day public review and comment period. A public meeting will be held to explain the contents of the EE/CA Report. Comments received during the public review period will be addressed in a Responsiveness Summary that will be included in the final EE/CA Report. The final EE/CA Report will be revised to reflect any changes resulting from the public review and included as part of the Administrative Record file for the site. Refer to Chapter 8 for additional information on public involvement requirements.

4-5.2.3.4 *Preparation and Responsibility for Action Memoranda.* For NTCRAs, the Action Memorandum is the Decision Document for the response action. After an EE/CA is completed, the military HTRW design District for HTRW action or an MM Design Center for MMRP actions will prepare an Action Memorandum that identifies the removal action chosen for a FUDS. The Action Memorandum will be based on information contained in the EE/CA and will consider regulator and public comments and community concerns. Appendix C provides an outline of the information that should be included in the Action Memorandum. MM CX coordination is required for a MEC removal Action Memorandum prior to signature. Action Memoranda will be made available to the regulators for notice and comment.

4-5.2.3.5 *NTCRA Action Memoranda Signature Authority.* To prevent delays in staffing decision documents, early coordination with USATCES for MMRP projects, USACHPPM for HTRW projects, and the appropriate CX is critical. Refer to Appendix C for the signature requirements for NTCRA Action Memoranda.

**Table 4-3**
**Objectives/Criteria to Be Used In Comparative Analysis of Removal Action Alternatives.**

| | |
|---|---|
| **1** | **Effectiveness**<br>Protectiveness<br>Protective of public health and community<br>Protective of workers during implementation<br>Protective of the environment<br>Complies with ARARs<br><br>Ability to Achieve Removal Objectives<br>Level of treatment/containment expected<br>No residual effect concerns<br>Maintain control until long-term solution is implemented |
| **2** | **Implementability**<br>Technical Feasibility<br>Construction and operational considerations<br>Demonstrated performance/useful life<br>Adaptable to environmental conditions<br>Contributes to remedial performance<br>Can be implemented in 1 year<br><br>Availability<br>Equipment<br>Personnel and services<br>Outside laboratory testing capacity<br>Off-site treatment and disposal capacity<br>Post removal site control (PRSC)<br><br>Administrative Feasibility<br>Permits required<br>Easements or rights-of-way required<br>Impact on adjoining property<br>Ability to impose land use controls<br>Likelihood of obtaining an exemption from statutory limits (if needed) |
| **3** | **Cost - Capital, PRSC, and Present worth cost** |

4-5.3 *Removal Design (RmD).* The removal design includes the development of detailed workplans, plans and specifications, and bid documents for conducting the removal action. For MMRP projects, the removal design also includes preparation of an ESS or CSS that must be approved by the DDESB or its designee before beginning the removal action. Refer to EP 385-1-95a for basic safety concepts and considerations for MMRP projects. The development of the Removal Design shall ensure that Federal and State requirements have been identified and incorporated. This includes meeting any conditions or waivers to ARARs. VE methodology should be applied whenever possible in accordance with existing regulations. VE studies should focus on individual components of the remedy without altering the ROD/DD. Removal design plans and specifications should be reviewed by the lead regulatory agency during the course of the design rather than waiting until the 100% complete stage. Reviews should ensure that the specifications include elements necessary to address compliance with the environmental and public health standards identified in the Action Memorandum.

4-5.4 *Removal Action—Construction (RmA-C).* The removal action will be conducted in accordance with the final design. Regulatory agencies will be notified before the start of the removal action.

4-5.5 *Transition from NTCRAs to the Remedial Process.* The NCP does not contain provisions for, or envision that, LTM activities, the implementation of land use controls, or five-year reviews, will be a part of a removal action. Upon completion of an NTCRA, the work at the project will return to the remedial process at the point determined to be most appropriate. A NTCRA cannot achieve the RIP or RC milestones or site closeout.

## 4-6 Cleanup Actions for CON/HTRW with Petroleum Underground Storage Tanks and BD/DR Projects that do not Follow the CERCLA Process.

4-6.1 *General.* BD/DR and CON/HTRW projects address conditions that are not regulated under CERCLA or the NCP and, therefore, do not follow the CERCLA process for response actions as do HTRW and MMRP projects.

4-6.2 *BD/DR Projects.* Response actions at BD/DR projects are conducted to mitigate safety hazards resulting from unsafe structures. Because BD/DR projects do not involve a response action to a hazardous substance, pollutant or contaminant, they are not regulated under CERCLA or the NCP, nor are they regulated under any other specific set of environmental requirements. Rather, response actions for BD/DR projects are executed according to the process shown in Figure 4-5. If an actual or threatened release of a CERCLA hazardous substance or pollutant or contaminant, MC, or other eligible substance is identified during the BD/DR action, the actual or threatened release will be addressed in accordance with CERCLA, EOs 12580 and 13016, and the NCP, through an action under the Installation Restoration Program category or the Military Munitions Response Program category.

4-6.3 *CON/HTRW Projects.*

4-6.3.1 *CON/HTRW Projects without Underground Storage Tanks* [1]. CON/HTRW projects involving Aboveground Storage Tanks (ASTs) and their associated piping systems, transformers, and other containers are generally not regulated under the CERCLA process or by the RCRA Corrective Action process[2]. Rather, they are regulated by various other state or federal standards (e.g., Toxic Substance Control Act [TSCA] for Polychlorinated Biphenyls [PCB] transformers, State fire marshal code for petroleum ASTs, etc.) Response actions for this class of CON/HTRW projects are executed according to the process shown in Figure 4-5. If an actual or threatened release of a CERCLA hazardous substance or pollutant or contaminant is identified during the performance of a response action on a CON/HTRW project, execution will transition to the process shown in Figure 4-6 and follow a long-term corrective action, if required

[1] See paragraph 4-6.3.2 for classifying ASTs and piping systems as USTs based on total system volume.
[2] Response actions necessary to remove drums of hazardous substances are most appropriately conducted as removal actions under CERCLA.

by RCRA Subtitle-I or other applicable state or federal regulations, all under the same CON/HTRW project.

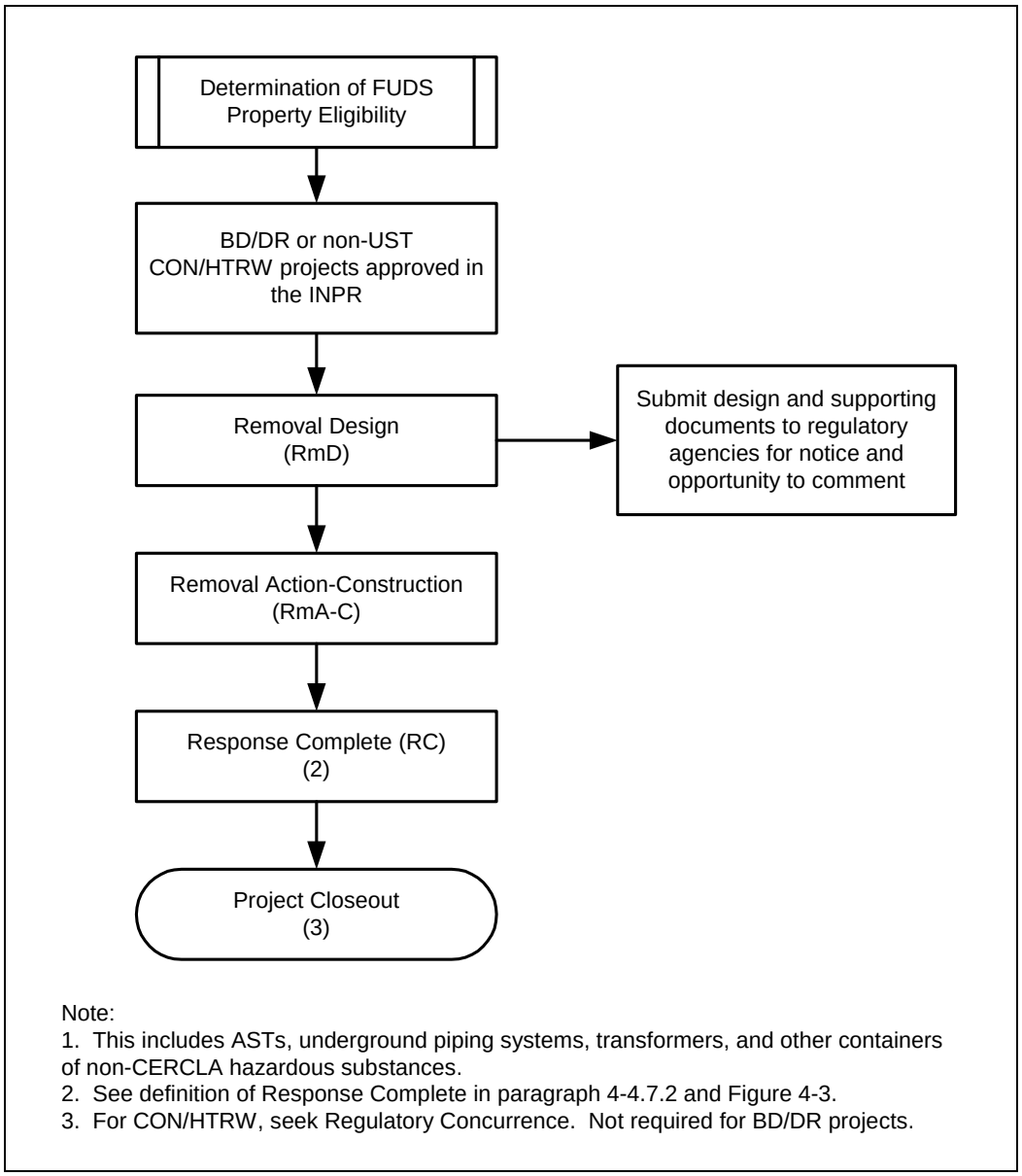


**Figure 4-5. Process for BD/DR Projects or CON/HTRW Projects without USTs.**

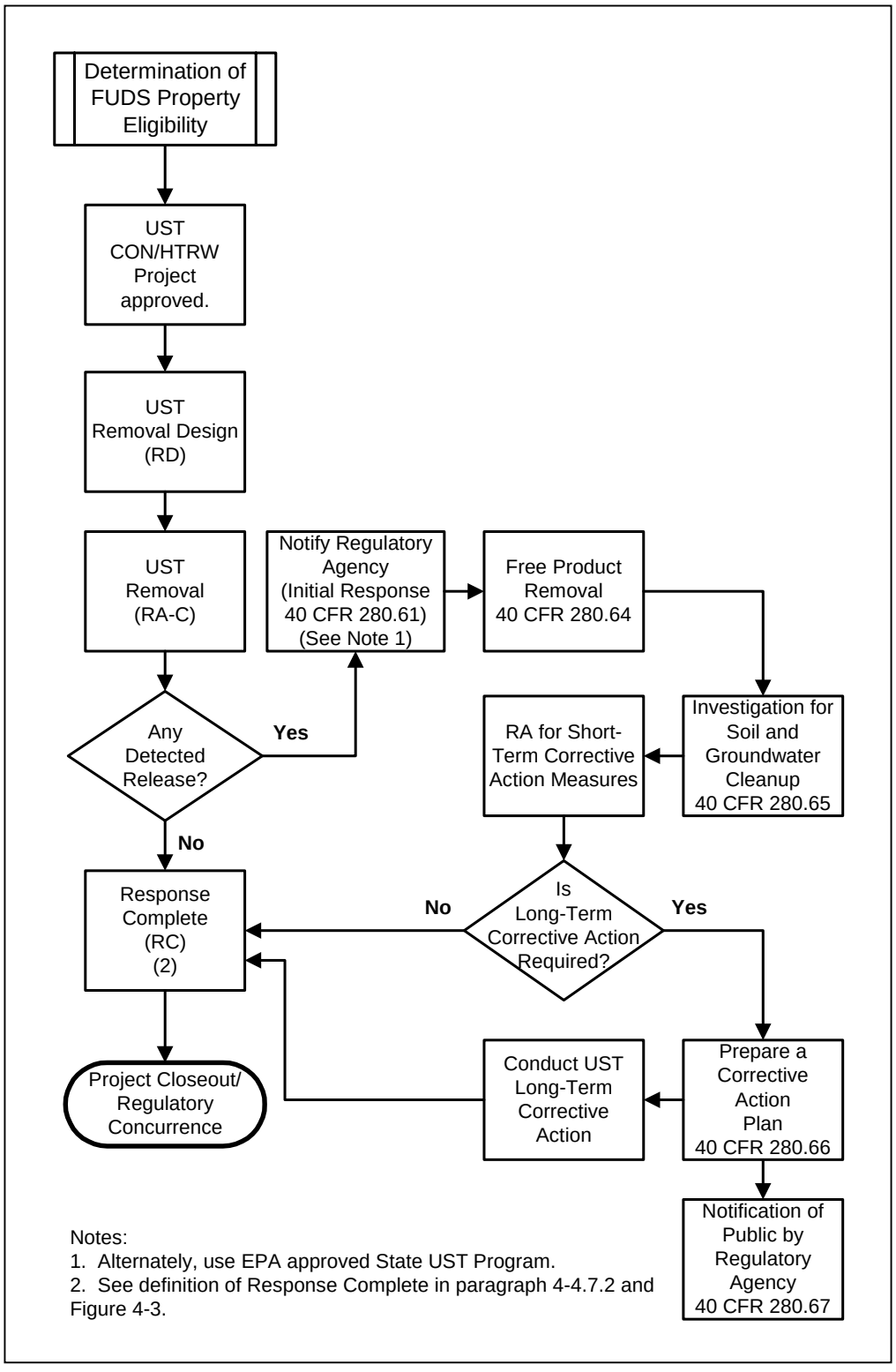


**Figure 4-6. Process for CON/HTRW Projects Involving USTs.**

4-6.3.2 *CON/HTRW Projects with Underground Storage Tanks.* Underground storage tanks (USTs) containing either petroleum or CERCLA hazardous substances are regulated under the RCRA Subtitle I requirements of 40 CFR 280 and applicable State requirements. USTs include aboveground storage and distribution systems if more than 10% of the total system volume is below ground. At a minimum, requirements in 40 CFR 280 must be met. In addition, State requirements that are more stringent than the federal requirements must also be attained. CON/HTRW projects involving the removal of underground storage tanks will follow the process shown in Figure 4-6. Figure 4-6 depicts a seamless approach, transitioning from a simple tank removal to a long-term corrective action, if required by RCRA Subtitle-I, all under the same CON/HTRW project.

## 4-7 Project or Property Regulatory Closeout Decision.

4-7.1 *General Considerations.* If the FUDS eligible hazards or CERCLA hazardous substances, pollutants, and contaminants at a property or project do not pose a threat to public health, safety, or the environment, the eligible property or project should be closed out. USACE shall actively seek lead regulator concurrence of the closeout decision for HTRW, CON/HTRW, MMRP, and PRP projects where USACE performs the response action and for the closeout of FUDS properties containing such projects. The conditions required to justify closeout decisions are specific to a property or project. In general, the decision can be justified on any of the following findings:

4-7.1.1 When information collected during the remedial PA indicates that no CERCLA hazardous substances or pollutants and contaminants, or other materials addressed under DERP are present at the property.

4-7.1.2 When an SI or site characterization shows that the release poses no significant threat to public health, safety, and the environment.

4-7.1.3 When the conclusion of a public health evaluation or baseline risk assessment states that there is no significant threat to public health, safety, or the environment.

4-7.1.4 When a no action alternative is selected from the Remedy Selection step.

4-7.1.5 When all remedial objectives outlined in the Record of Decision are achieved and long-term monitoring or long-term management requirements are completed.

4-7.2 *Key Closeout Decision Objectives.* Key objectives of the closeout are to ensure that:

4-7.2.1 USACE formally makes a closeout decision.

4-7.2.2 The closeout decision is documented. Documentation should clearly identify the property or project, reference the data, studies, or evidence on which the decision is based, and describe the rationale for the decision.

4-7.2.3 The lead regulatory agency and local officials shall be notified of the USACE closeout decision and be provided the opportunity for comment.

4-7.2.4 Procedures specified in the NCP at 40 CFR300.425(e) for deletion of FUDS properties from the NPL are implemented.

4-7.3 *Regulator Concurrence on Closeout Decision.* Project closeout at a FUDS occurs when all removal or remedial responses are complete and no subsequent removal or remedial responses are required. USACE shall consult with the local community and will provide notice and opportunity for comment to the lead regulatory agency on determinations that lead to closeout decisions. USACE must seek concurrence in writing from the lead regulatory agency for HTRW, CON/HTRW, and MMRP projects and for PRP projects where USACE is lead for response actions. If regulatory concurrence cannot be achieved, this should be explained in the closeout report, documented in FUDSMIS, and elevated to Headquarters USACE for final review and a final decision. Headquarters USACE will report the number and results of regulator non-concurrence determinations to DASA(ESOH) at the ESOH IPR. A closed-out FUDS property is one for which all projects requiring regulatory concurrence of closeout decisions have been achieved. The geographic military District will notify the lead regulatory agency when regulatory concurrence has been received for all projects requiring such, and when USACE considers the property to be closed out.

4-7.4 *Closeout Reports*.

4-7.4.1 *Project Closeout Reports.*

4-7.4.1.1 The geographic military District will prepare a project closeout document with input from the executing District and (for MMRP projects) the appropriate MM Design Center and/or MM Remedial Action District. The closeout document for HTRW, CON/HTRW, and MMRP projects and for PRP projects where USACE is lead for response actions should clearly identify the property or project; reference the data, studies, and other evidence upon which the decision is based; and describe the rationale for the decision and regulatory concurrence. The commander of the geographic military District will sign the closeout document. A copy of the report will be included in the permanent Project File and furnished to the geographic military Division. The report will be forwarded by a cover letter to the lead regulatory agency. A public notice of availability of the closeout report will be made in a newspaper of general circulation and the report made available in a local information repository. When the project is closed out, the PM must ensure the data in the FUDSMIS are complete and accurate and closeout date is entered.

4-7.4.1.2 An official closeout report for a PRP Project should be prepared by the PRP District and signed by the PRP District Commander. Notice of project closeout will be provided to the geographic military Division. Copies of the closeout report will be provided to the appropriate CX and geographic military District. Counsel will ensure that the closeout is

reflected in the Matter Tracking System (MTS) PRP negotiation file and the PM must ensure the data in the FUDSMIS is complete and accurate and closeout date is entered.

4-7.4.1.3 For MMRP projects, refer to EP 1110-1-18 for detailed requirements for project closeout.

4-7.4.2 *Property Closeout Reports.* The geographic military District will prepare a Property Closeout Report upon the completion of the response actions at all projects. The report will list the projects with completed response actions, reference the data, studies, and other basis for which the closeout decisions were based, and describe the rationale for the decisions. The report will indicate if regulatory concurrence was received on projects requiring such. If the property is listed on the National Priority List, the report will indicate the status of deleting the property from the NPL.

4-7.5 *Monitoring Wells.* Any of the wells remaining at a closed-out property or project must be plugged and backfilled in accordance with State and local regulations. The ground surface must be restored to its original condition. Drums containing Investigation Derived Waste (IDW) must also be properly disposed of in accordance with Federal, state, and local regulation. In some instances, the property owner may choose to keep the well or wells for future use as a water supply. If this is the case, the property owner shall be required to sign a statement releasing the government from any liability. The final status of the monitoring well(s) and IDW should be documented in the project closeout report.

4-7.6 *Ongoing Responsibility.* Following the closeout step, no future DoD response actions are anticipated. However, the property may be reactivated if future conditions or new information suggests this is necessary. The District is cautioned to establish, maintain, and safeguard all information collected during response actions. Actions regarding the property may occur years after the data have been gathered. It is crucial that records be sufficiently detailed and protected to provide a complete and accurate history of the response action in support of any future legal action. Well-organized information will aid the USACE in answering inquiries from Congress or requests from the public under the Freedom of Information Act.

## 4-8 Allowable Project Phases for FUDS Project Categories.

Table 4-4 summarizes the appropriate phases for each category of FUDS projects. USACE districts will use this table in their programming of FUDS projects response actions and development of CTC estimates.

## 4-9 Additional CERCLA Requirements to be Considered.

4-9.1 *Applicable or Relevant and Appropriate Requirements (ARARs).* The District Office of Counsel should be consulted with regard to the determination of ARARs. CERCLA section 121(d) requires that on-site CERCLA remedial actions attain Federal standards determined to be legally applicable or relevant and appropriate to the circumstances. Removal actions are required to attain ARARs to the extent practicable considering the exigency of the situation. ARARs, in conjunction with risk-based levels developed in the risk assessment, are employed in directing response actions and establishing cleanup goals. ARARs are used as a

**Table 4-4**
**FUDS Project Categories and Phases**

| Project Category | PRP | Remedial Response | | | | | | Removal Response | | | | Close-out |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | TCRA[5] | NTCRA[5] | | | |
| | PN | SI | RI/FS | RD | RA-C | RA-O | LTM | IRA | EE/CA | RmD | RmA-C | PCO |
| HTRW | | X | X | X | X | X | X | X | X | X | X | X |
| MMRP[7] | | X | X | X | X | X | X | X | X | X | X | X |
| CON/HTRW | | X[2] | X[3] | X[3] | X[3] | X[3] | X[3] | | | X[6] | X[6] | X |
| BD/DR | | | | | | | | | | X[6] | X[6] | |
| PRP/HTRW | X[1] | X | X | X[4] | X[4] | X[4] | X[4] | X[4] | X[4] | X[4] | X[4] | X |
| PRP/MMRP | X[1] | X | X | X[4] | X[4] | X[4] | X[4] | X[4] | X[4] | X[4] | X[4] | X |

Notes:
1. PRP Negotiations
2. SI for CON/HTRW is not the norm, but may be authorized by HQUSACE as an exception.
3. May be required to address UST long-term corrective action under RCRA Subtitle I or State UST program requirements. Refer to Figure 4-3 for determination of RIP and RC dates.
4. Normally not required unless USACE conducts response action subject to settlement agreement with other PRPs.
5. TCRA and NTCRA for CERCLA response actions addressing HTRW and MMRP. Planning and programming within FUDSMIS to initiate removal responses for HTRW or MMRP projects can only be performed during the current and budget years. Refer to Figure 4-3 for determination of RIP and RC dates.
6. CON/HTRW and BD/DR are not required to follow the CERCLA process. Refer to Figure 4-3 for determination of RIP and RC dates.
7. Includes MMRP/RCWM project category.

"starting point" to determining the protectiveness of a site remedy. Additional guidance on ARARs can be found in EPA/540/G-89/006. Refer to EP 1110-1-18 for a list of ARARs that may apply to MMRP projects. The definition of ARARs is found in two parts in 40 CFR 300.5. EPA defines the "Applicable" portion of the term as:

> *Cleanup standards, standards of control, and other substantive requirements, criteria or limitations promulgated under Federal environmental or state environmental or facility siting laws that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance found at a CERCLA site. Only those state standards that are identified by a state in a timely manner and that are more stringent than Federal requirements may be applicable.*

The "Relevant and Appropriate" portion of the ARAR term is defined as:

> *Cleanup standards, standards of control, and other substantive requirements, criteria or limitations promulgated under Federal environmental or state environmental or facility siting laws that, while not 'applicable' to a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site, address problems or situations sufficiently similar to those encountered at the CERCLA site that their use is*

*well suited to the particular site. Only those state standards that are identified by a state in a timely manner and that are more stringent than Federal requirements may be relevant and appropriate.*

4-9.1.1. *To-Be-Considered (TBC) Criteria.* During the ARAR identification process, standards and guidelines that are actually TBCs are often mistakenly classified as ARARs. TBCs are non-promulgated guidelines, advisories, or guidance issued by Federal or State government that are not legally binding and do not have the status of potential ARARs. TBCs may be considered along with ARARs and the risk assessment in establishing cleanup levels. DoD Standards, Army Regulations, and USACE Engineer Regulations, manuals, and guidance documents are TBCs and not ARARs. The District Office of Counsel must be consulted with regard to the identification of TBCs.

4-9.1.2 *The ARAR Identification Process.* ARARs are identified by both the USACE and the State at both NPL and non-NPL FUDS. ARARs are identified based on site-specific factors such as contaminants present, the location, site physical features, and actions being considered. These all contribute in determining what standards must be followed. ARAR are identified at several points throughout the CERCLA process. Table 4-5 shows USACE and State roles in identifying and attaining ARARs. The District Office of Counsel must be consulted with regard to the identification and application of ARARs.

4-9.1.3 *ARAR Waivers.* Proposed ARAR waivers must be documented and justified in the detailed analysis of alternative in the FS as well as in the Proposed Plan and done in consultation with the District Office of Counsel. Final ARAR waivers are to be documented and explained in the ROD or DD. The following waivers are applicable under 40 CFR 300.430(f)(1)(ii)(C) of the NCP:

- The action taken is only part of a total remedial action that will attain the ARAR when completed.
- Compliance with the ARAR at the site will result in greater risk to human health and the environment than alternative options.
- Compliance with the ARAR is technically impractical from an engineering perspective.
- The remedial action selected will attain a standard of performance that is equivalent to that required under the otherwise applicable requirement through use of another method or approach.

4-9.1.4 *Inconsistent Application of State Standards.* When the State has not consistently applied (or demonstrated the intention to consistently apply) ARARs in similar circumstances at other remedial actions within the State, the ARAR can be challenged. Should this situation occur at a FUDS project, personnel should consult with their District Office of Counsel.

**Table 4-5**
**USACE and State Roles in Identifying ARARs.**

| CERCLA PHASE | USACE | State |
|---|---|---|
| **RI/FS or EE/CA Scoping** | Identify preliminary chemical- and location-specific ARARs | State requested to provide preliminary chemical- and location-specific ARARs within 30 days of receipt of request [40 CFR 300.515(g)(2)] or within the time period specified in the IAG for NPL properties. |
| **Site Characterization** | Review Federal chemical- and location-specific ARARs and TBCs. | State requested to verify chemical- and location-specific ARARs and TBCs. |
| **Screening of Alternatives** | Identify action-specific ARARs for each proposed alternative | State requested to identify action-specific ARARs for alternatives that passed the screening process within 30 days of request or as specified in the IAG for NPL properties. |
| **Detailed Analysis of Alternatives** | All ARARs and TBCs for each alternative are examined as a package to determine what is needed to comply with other laws and be protective. ARAR waivers to be initially documented and associated rationale provided. | State requested to certify identification of action-specific ARARs |
| **Proposed Plan** | Final ARARs and any associated waivers are documented | Notice and opportunity for comment. |
| **EE/CA Report** | Identify and attain ARARs to the extent practicable considering the exigencies of the situation. [40 CFR 300.415(j)] | Notice and opportunity for comment. |
| **ROD/DD/Action Memorandum** | Selected alternative must be able to attain all Federal and state ARARs unless statutory waivers are invoked. Final ARAR waivers are documented. | Notice and opportunity for comment. |
| **Remedial/Removal Design** | Ensure that technical specifications of construction attain ARARs | Notice and opportunity for comment. |

4-9.1.5 *Exceptions to ARARs for Removal Actions.* The extent to which ARARs must be attained during removal actions depends upon site-specific conditions. Removal actions must attain ARARs to the extent practicable considering the exigency of the situation, the impact of the ARAR on the cost and duration of the removal action, and subsequent remedial actions planned for the project. Chemical-specific ARARs may not have to be attained during a removal action if the removal action is part of an ongoing or subsequent remedial action that will attain ARARs. For additional guidance, refer to EP 1110-1-18 for MMRP projects and EPA 540-P-91-011.

4-9.1.6 *Technical Impracticability.*

4-9.1.6.1 EPA's goal for groundwater cleanup is the restoration of groundwater to ARAR based cleanup levels wherever technically practicable. However, historical data and studies done by EPA indicate that complete restoration of contaminated groundwater might not be technically practicable with available remediation technologies due to the presence of non-recoverable Dense Non-Aqueous Phase Liquids (DNAPLs), or for other reasons related to complex hydrogeology or contaminant characteristics. Where such factors constrain groundwater restoration, EPA's approach is to emphasize removal or treatment of source materials, containment of non-restorable source areas, and restoration of aqueous contaminant plumes.

4-9.1.6.2 Whenever a technical impracticability (TI) waiver is anticipated at a project, a TI evaluation must be conducted. A typical TI evaluation should consist of a concise stand-alone report or a separate section in a site characterization document such as an RI/FS. Reviews of the TI evaluation will require project-specific decisions regarding data sufficiency, methods of data analysis, and the selection of appropriate alternative remedial strategies where total restoration is technically impracticable. Each of these facets of a TI decision is potentially complex and resource intensive. For further information regarding TI waiver implementation, refer to EPA's OSWER Directive 9234.2-25.

4-9.2 *Land Use Controls (LUC).*

4-9.2.1 At all FUDS projects where a use restriction is part of environmental restoration activities, the LUC must be clearly defined, established in coordination with current landowner and affected parties, and enforceable. The District Office of Counsel must be consulted in the establishment of LUCs. DoD policy regarding land use controls is evolving and PMs should ensure they are using the most recent guidance.

4-9.2.2 For this regulation, the term "land use controls" includes engineering controls in addition to institutional controls discussed in the NCP. LUCs include any type of physical, legal, or administrative mechanism that restricts the use of, or limits access to, real property to prevent or reduce risks to human health, safety, and the environment. LUCs are considered response actions under CERCLA, and, as such, must be coordinated with the current landowner, regulatory agencies, and appropriate local authorities. The objective of LUCs is to ensure that future land use remains compatible with the land use that was the basis for the evaluation, selection, and implementation of the response action. Refer to EP 1110-1-24 for land use control procedures applicable to MMRP projects.

4-9.2.3 LUCs should be managed and maintained at the local level whenever possible. For FUDS Properties, State or local government agencies with appropriate authorities (i.e., zoning boards) or the property owner are often the best candidates for LUC management and enforcement.

4-9.2.4 In implementing LUCs, USACE Districts will:

4-9.2.4.1 Develop a LUC strategy, consistent with applicable real estate laws, that defines the responsibilities of all parties involved in implementing the LUCs.

4-9.2.4.2 Plan, program, and budget for the necessary funding in the ER-FUDS account to implement and maintain LUCs. Land use control (LUC) information**,** including cost information, is to be recorded in FUDSMIS for all FUDS projects with a signed Decision Document (DD), Record of Decision (ROD), or Action Memorandum (AM) that includes LUCs as part of the selected remedy. The LUC cost information to be recorded in FUDSMIS, immediately after the DD/ROD/AM approval, is to represent the costs in the IRA, RmD, RmA-C, RD, RA-C, RA-O, and/or LTM phases required to implement, monitor, and report the LUCs selected in the ROD/DD/AM. These costs are typically developed as part of the feasibility study for the selected alternative and should be included in the cost-to-complete for those phases of the project.

4-9.2.4.3 Update FUDSMIS with the appropriate Restoration Management Information System (RMIS) data requirements for land use controls.

4-9.2.4.4 For any evaluation of response alternatives where a use restriction will be imposed, either as a stand-alone response alternative or as one component of a more complex action, USACE Districts will ensure that the evaluation of response alternatives includes an analysis of an alternative with a use restriction. In addition, an analysis at the level of detail appropriate to the size and scope of a response not requiring a use restriction (e.g., implementation of a response that allows unrestricted use) will be included. This will allow restricted and unrestricted use alternatives to be considered in selecting the response action.

4-9.2.4.5 Provide timely notice to the lead regulatory agency of the intent to use LUCs. Regulatory comments received during the development of draft documents will be considered in the final LUCs, as appropriate. For properties or projects on the NPL, the ROD will describe the LUC objectives, explain why and for what purpose the LUCs are necessary, reflect the areas covered by the LUCs, specify the expected duration of the LUCs, and identify the entities responsible for implementing, monitoring, reporting on and enforcing the LUCs. The ROD will not address LUC implementation requirements but will refer to the RD Work Plan that will contain an LUC Implementation Plan.

4-9.2.4.6 Include a description and rationale for the reasonably anticipated future land use or other exposure scenario used to select the remedy in the environmental restoration decision documents (e.g., RODs) for all responses that include LUCs.

4-9.2.4.7 Institute a process to review and evaluate the effect on human health, safety, and the environment of any proposed land use changes for areas covered by LUCs. Where performed as part of the environmental restoration process and as required by CERCLA, five-year reviews and long-term management may provide convenient opportunities for the USACE to concurrently review LUCs. At that time, the integrity of the LUCs or layering mechanism

shall also be reviewed for their continued effectiveness (e.g., assessment of whether zoning and land use is still consistent with the use restrictions).

4-9.3 *Off-Site Disposal of CERCLA Wastes.* Whenever a response action requires the transfer of any contaminated media or other CERCLA waste to an off-site facility for treatment or disposal, the CERCLA off-site rule [40 CFR 300.440] is triggered. The purpose of the off-site rule is to ensure that waste leaving a FUDS property is properly handled to avoid creating another CERCLA site in the future.

4-9.3.1 It is important during the design phase that an appropriate treatment/disposal facility is identified and selected to receive project wastes. The status of any given facility can be established by calling the EPA region in which the facility is located. The receiving facility must have all applicable RCRA permits, no significant violations, and no releases of hazardous substances. If the facility has had a significant release of hazardous substances, the release must be controlled by an enforceable agreement for corrective action under an applicable State or Federal authority.

4-9.3.2 A hazardous waste manifest is the document used for tracking hazardous waste in the RCRA "cradle-to-grave" management scheme. Whenever hazardous wastes are transported off-site, a manifest that describes the hazardous waste in detail must be prepared including land disposal restriction (LDR) notifications. Detailed guidance can be found in AR 200-1 and EP 415-1-266.

4-9.4 *Natural Resource Injury (NRI).* This section contains requirements of CERCLA and the NCP pertaining to Natural Resource Trustee notification and coordination. Because DoD no longer owns FUDS properties, DoD is not a Trustee at FUDS.

4-9.4.1 As the lead agency at FUDS, USACE shall:

4-9.4.1.1 Identify and notify Trustees when the release of a CERCLA hazardous substance has the potential to cause NRI in accordance with CERCLA Section 104(b)(2), the NCP, and this guidance.

4-9.4.1.2 Coordinate necessary assessments, investigations, and planning with Trustees in accordance with CERCLA, the NCP, and this guidance.

4-9.4.1.3 Utilize the services of a qualified Army natural resource professional as defined in the Glossary.

4-9.4.1.4 When practicable, appropriate, and consistent with the NCP, ensure response actions are evaluated and selected that limit the potential for NRI. This includes evaluating whether implementation of a particular response alternative will itself cause additional natural resource injury.

4-9.4.2 ER-FUDS funds shall not be used to assess natural resource damages, to enhance or restore natural resources beyond CERCLA remediation requirements, or to compensate Trustees directly or indirectly.

4-9.4.3 Guidance is contained in the *FUDS Program Guidance to Implement Army Interim Policy for Integrating Natural Resource Injury Responsibilities and Environmental Response Activities,* dated 25 February 2003. The guidance provides detailed instructions on how to comply with NRI requirements at FUDS.

4-9.5 *FUDS Properties on the Federal Facility Docket.* CERCLA Section 120c provides for the establishment of a Federal Agency Hazardous Docket. In compliance with this, EPA issues a notice to the owner of the Federal property and requires the preparation of a CERCLA Preliminary Assessment (PA) in a specified period. Situations can arise where a FUDS is located on property currently owned by the Federal government. In this situation, it is normally the responsibility of the agency currently owning the Federal property, not the FUDS program, to complete the PA. If EPA places a FUDS on the Federal Facility docket, the required action, if any, should be coordinated with the District Office of Counsel and the agency owning the property.

# Chapter 5
# Potentially Responsible Party Process

**5-1 Responsibilities**. General organizational responsibilities for USACE elements are discussed in Chapter 2. Owing to the unique nature of PRP projects, the roles and responsibilities related to the execution of activities at PRP projects are further supplemented below.

5-1.1 *PRP District*.

5-1.1.1 *PRP District Commander*. The PRP District Commander, through the Office of Counsel (OC), PM, and PDT, is responsible for representing the FUDS Program and the Department of Defense in determinations of liability and contribution on FUDS PRP projects assigned to the District. This includes analyzing the appropriate position to take on behalf of the program with regulators, other PRPs, and members of the public, and providing justification to the geographic military Division and HQ regarding these positions and determinations. This responsibility continues through the completion of negotiations and fulfillment of any PRP agreement, or any litigation regarding the environmental liability of DoD for the property.

5-1.1.2 *PRP District Project Manager (PM)*. The PM for a FUDS PRP project is at the PRP District designated for that project except, as provided below, when USACE has agreed to execute work at a PRP property. The PM at the PRP District is the overall manager of the effort to assure that the process moves forward. The PM is responsible for providing adequate and accurate PRP data in FUDSMIS that are required for planning, programming, budgeting, execution, and reporting. The PM participates with Counsel at the PRP District in the negotiation effort, in reviews and comments on the scope of work (SOW), and is a participant in the negotiation and settlement process. The PM is responsible for assembling the Project Delivery Team. The PM, in coordination with PRP counsel, arranges for the historical and technical research, either from in-house team members or contracting of the site ownership and operation history (SOOH) and liability studies, develops the SOW for the contracting effort, in coordination with the Office of Counsel, and acts as the lead on resolving any technical issues. The PM reviews and comments on PRP documents, coordinates technical input to the historical analysis and cost allocation reports and all technical support to activities conducted at the project, and coordinates the contract or in-house field investigation in support of the project, if any.

5-1.1.2.1 The PRP District PM is responsible for keeping the geographic military District informed of project activities, and assisting the geographic military District in preparing the FUDS property MAP. At least two times per year while USACE activities for a PRP project are ongoing, the PRP District PM will provide general information on the status of the project to the geographic military District PM, and once per year the PRP District PM will offer to meet in person or by conference call with the geographic military District PM to provide an update on the project.

5-1.1.2.2 The PRP District PM will report the status of all PRP projects through the Project Review Board (PRB) and the project narrative fields in FUDSMIS. The PRP District Counsel will assure that PRP matters are entered into the Matter Tracking System (MTS) and that information is updated as necessary to ensure its timeliness, completeness, and accuracy. PM and Counsel will coordinate their data entries to assure reporting consistency between FUDSMIS and MTS.

5-1.1.2.3 The PRP District PM, in coordination with the PRP District Counsel and the geographic military District, will be responsible for programmatic project closeouts by declaring project NDAIs in FUDSMIS, sending the report to the geographic military Division FUDS Program Manager for concurrence, and forwarding the report to CEMP-DE for their information and files. A copy of all PRP project closeout reports will be furnished to the geographic military District PM and the HTRW CX.

5-1.2 *PRP District Project Delivery Team (PDT).* The PDT, as needed, participates in the negotiation effort, review and comment on the SOW, and provides technical assistance in the negotiation and settlement process. The PDT also assists in developing the SOW for the contracting effort; assists in resolving any technical issues related either to the PRP negotiations or technical compliance with CERCLA and the NCP; reviews and comments on PRP documents; provides technical input to the historical analysis and cost allocation reports; provides assistance in the contract or in-house field investigation of the project; and provides technical assistance in the negotiations or litigation.

5-1.3 *PRP District Office of Counsel*. The Office of Counsel at the designated PRP District bears ultimate responsibility and accountability for developing case strategy, for leading the PRP District team during negotiations, settlement, or litigation, as well as any other substantive project activities related to the PRP negotiation or litigation effort, and for the legal sufficiency of all settlement arrangements and administrative agreements.

5-1.3.1 Counsel approves the SOW for and oversees legal review of PRP investigation reports developed by in-house or contractor personnel, as well as any documents and correspondence submitted to other PRPs or regulators on DoD's PRP status.

5-1.3.2 In accordance with AR 27-40, the Office of Counsel is the sole point of contact (POC) between USACE and the Department of Justice (DOJ) on all PRP projects. Requirements of AR 27-40, the *Freedom of Information Act*, and the *Federal Rules of Civil Procedure* will control release of these documents. The PRP District will provide the HTRW CX historical documents on topics of general applicability that are collected for PRP projects.

5-1.3.3 Counsel shall assure that PRP matters are entered into the Office of the Chief Counsel's Matter Tracking System (MTS) and that information is updated promptly to ensure its accuracy and completeness. Counsel and PM will coordinate, as required, to ensure consistency between MTS and FUDSMIS entries.

5-1.3.4 As any cost recovery claims by USACE seeking payment of response costs from other PRPs are subject to Statutes of Limitations (SOL) under CERCLA or other laws, PRP Counsel must promptly evaluate the circumstances to determine the date on which the SOL would bar the government from pursuing cost recovery and take necessary action to assure that recovery actions are filed well within the SOL period.

5-1.3.5 Any agreement that is a final settlement of claims by or against the United States, or that preserves or waives a legal defense or claim of the United States, must be coordinated with and approved by the Department of Justice. This coordination will be processed within USACE by the PRP District Counsel through the geographic military Division Counsel to CECC-E, in the case of pre-litigation settlements and administrative orders, and to CECC-L where the settlement is subsequent to the filing of litigation.

5-1.4 *Geographic Military District.*

5-1.4.1 The geographic military District is responsible for identifying PRP projects, properly classifying all projects with PRP issues, and documenting the project eligibility in the INPR. Prior to finalizing the INPR, the geographic military District Counsel should consult with counsel at the PRP District on the INPR determination of PRPs for the FUDS project, and review the INPR and any related documentation for factual accuracy and legal sufficiency.

5-1.4.2 The geographic military District ensures that the Management Action Plan (MAP) information reported in FUDSMIS for all FUDS properties involving PRP projects is adequate and accurate.

5-1.5 *Geographic Military Division.*

5-1.5.1 The Division FUDS Program Manager, for the Division to which a PRP project is assigned, coordinates budgets, workplans, and proposed agreements for review and concurrence at the Division level, as appropriate. The Division FUDS Program Manager is also responsible for coordinating assignments within the Division boundaries.

5-1.5.2 The Division Office of Counsel, for the Division to which a PRP project is assigned, oversees PRP District Counsel efforts, and provides review and concurrence on all agreements or litigation settlements referred to the Office of the Chief Counsel. The Division Counsel also serves as the USACE point of contact with EPA Regions for receipt of and response to regional information requests under CERCLA 104(e). Division Counsel will also undertake outreach to EPA Regional Counsel to promote early resolution of any disagreements arising between EPA Regions and PRP District Counsel on FUDS PRP matters.
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5-1.6 *Headquarters*

5-1.6.1 CEMP-DE is responsible for overall program management and execution, including assigning PRP project management responsibilities for FUDS.

5-1.6.2 CEMP-DE coordinates with HQDA for approval of PRP agreements with aggregate USACE response costs to be funded by the ER-FUDS account are expected to be in excess of $10 million.

5-1.6.3 In the Office of the Chief Counsel, CECC-E is the primary program legal support office for the FUDS program initiatives and for pre-litigation coordination with Department of Justice (DOJ). With initiation of litigation, responsibility for DOJ coordination and HQ oversight of the litigation rests with CECC-L. FUDS settlement activities are considered to be of National interest and consequently all PRP settlement and administrative agreements must be reviewed and approved by the Office of the Chief Counsel. Pre-litigation and administrative agreements will be referred to CECC-E; while settlement agreements and consent decrees associated with previously filed litigation will be referred to CECC-L.

5-1.7 *HTRW Center of Expertise (HTRW CX).*

5-1.7.1 The HTRW CX will review all HTRW PRP Inventory Project Reports (INPRs) prior to their submission to the Division by the geographic military District.

5-1.7.2 The HTRW CX is available to provide legal, technical, and programmatic assistance to the PRP Districts as requested by the District, the Division, or HQUSACE. Though not mandatory for FUDS PRP projects, PRP Districts are strongly encouraged to seek HTRW CX legal and technical staff review of SOOH analysis reports, liability and cost allocation analysis reports, administrative orders, settlement agreements, and consent decrees. Where CX assistance is requested on such matters, it should be directed from the legal office of the requesting organization to the Counsel for the HTRW CX to protect the privileges applicable to the consultation efforts.

5-1.7.3 The HTRW CX will maintain a collection of historical information noted in paragraphs 5-1.7.1 and 5-5.6 for common use and ensure easy accessibility to it by USACE elements.

5-1.8 *Military Munitions Center of Expertise (MM CX).*

5-1.8.1 The MM CX will review all MMRP PRP Inventory Project Reports (INPRs) prior to their submission to the Division by the PRP District.

5-1.8.2 The MM CX is available to provide legal, technical, and programmatic assistance to the PRP Districts as requested by the District, the Division, or HQUSACE. Though not mandatory for FUDS PRP projects, PRP Districts are strongly encouraged to seek MM CX legal and technical staff review of SOOH analysis reports, liability and cost allocation analysis reports, administrative orders, settlement agreements, and consent decrees. Where MM CX assistance is requested on such matters, it should be directed from the legal office of the requesting organization to the Counsel for the MM CX to protect the privileges applicable to the consultation efforts.

5-1.8.3 The MM CX will maintain a collection of this historical information for common use and ensure easy accessibility to it by USACE elements.

**5-2 Legal Requirements**. USACE, in its role as the DoD executing agent for environmental restoration at FUDS under the Defense Environmental Restoration Program (DERP), is required to represent the interests of DoD on CERCLA PRP liability issues related to FUDS properties. Experience has shown that effective management of these PRP negotiations demands major commitments of legal, project management, and technical resources. Furthermore, the complexity of the legal issues that must be addressed, and the effect that those issues have on resolving DoD CERCLA liability or on the need for litigation, requires that Counsel take the lead in such negotiation efforts. It is especially vital that Counsel and technical resources are adequately staffed and trained to support the ER-FUDS negotiation requirements.

5-2.1 *PRP Project Activities*. These encompass the following efforts.

5-2.1.1 Conducting research (historical, technical, and legal) on all PRPs related to the property.

5-2.1.2 Evaluating the potential liability of DoD for CERCLA hazardous substances contaminating a property.

5-2.1.3 Developing a legal position with respect to the basis for, defenses from, and allocation of CERCLA liability associated with DoD past use of the FUDS property.

5-2.1.4 Directing negotiations before litigation that focus on resolving CERCLA liability, including agreements and Alternative Dispute Resolutions (ADRs) with PRPs, Federal, tribal, and state regulatory agencies arising from CERCLA liability, and including Interagency Agreements (IAG) under Section 120 of CERCLA, if appropriate.

5-2.1.5 Managing USACE litigation associated with United States CERCLA liabilities arising from DoD activities and USACE cost recovery initiatives against other responsible parties at FUDS properties.

5-2.1.6 Carrying out any agreements requiring further efforts by USACE arising from settlement of DoD CERCLA liability. Should additional remedial design/remedial action be required by USACE under an agreement, it would be conducted in accordance with the roles and responsibilities in Chapter 2.

5-2.2 *Potentially Responsible Party (PRP) Mission Goals.*

5-2.2.1 To avoid the need for litigation to recover ER-FUDS program appropriations expended for response actions that deal with other PRPs' contamination on FUDS, USACE focuses its PRP efforts toward settlement of any DoD CERCLA liability with other PRPs, rather than on conducting response actions at properties with other PRPs. The PRP mission goal is to negotiate a fair and equitable settlement with other PRPs who either have or will take the

response action in exchange for a release of DoD liability under CERCLA, other applicable environmental laws, and rules of common law. These settlements should reflect any DoD contribution made toward investigating and remediating contamination. Payments of such settlements will be certified by DOJ for payment from the Judgment Fund, as they reflect liability incurred by the United States associated with past DoD activities.

5-2.2.2 USACE coordinates its PRP settlement efforts with the DOJ. USACE strives to achieve final settlement of any DoD CERCLA liabilities arising at FUDS properties, using the Judgment Fund for payment of DoD's fair share allocation of response costs sought by other PRPs. USACE also seeks, in appropriate cases, recovery from other PRPs of the costs it has expended in response actions related to hazardous substance releases for which other PRPs are liable. Program policy to not conduct response actions on sites with other viable PRPs is based on the following:

5-2.2.2.1 Fiscal law restraints, which prevent ER-FUDS funds from being used to clean up contamination not caused by DoD.

5-2.2.2.2 Lack of adequate resources to pursue cost-recovery or contribution action.

5-2.2.2.3 Concern that the burden of proof is not unnecessarily shifted to the United States with respect to any action.

5-2.2.2.4 Necessity to preclude diversion of program dollars from other FUDS program response actions.

5-2.2.2.5 Desire to avoid incurrence of long-term cost demands on the FUDS program.

5-2.2.2.6 Desire to foster the National policy that the "polluter pays" for contamination for which it is liable and that general taxpayer funds should not be used to relieve PRPs of their liability under CERCLA.

5-2.2.3 USACE PRP negotiations should strive to resolve all DoD liability for contribution to and indemnification for future claims including those based on CERCLA, the *Resource Conservation and Recovery Act of 1976* (RCRA) sections 7002 or 7003, and any other Federal law. It is recognized that this is a matter of negotiation and may affect other terms of the settlement; however, it is generally considered in the best interest of the agency to fully resolve all possible liability for environmental response actions in a single comprehensive settlement.

**5-3 Potentially Responsible Party Process**. Figure 5-1 shows the standard USACE PRP process. This USACE process does not preclude potential regulator enforcement against private PRPs to perform the cleanup.

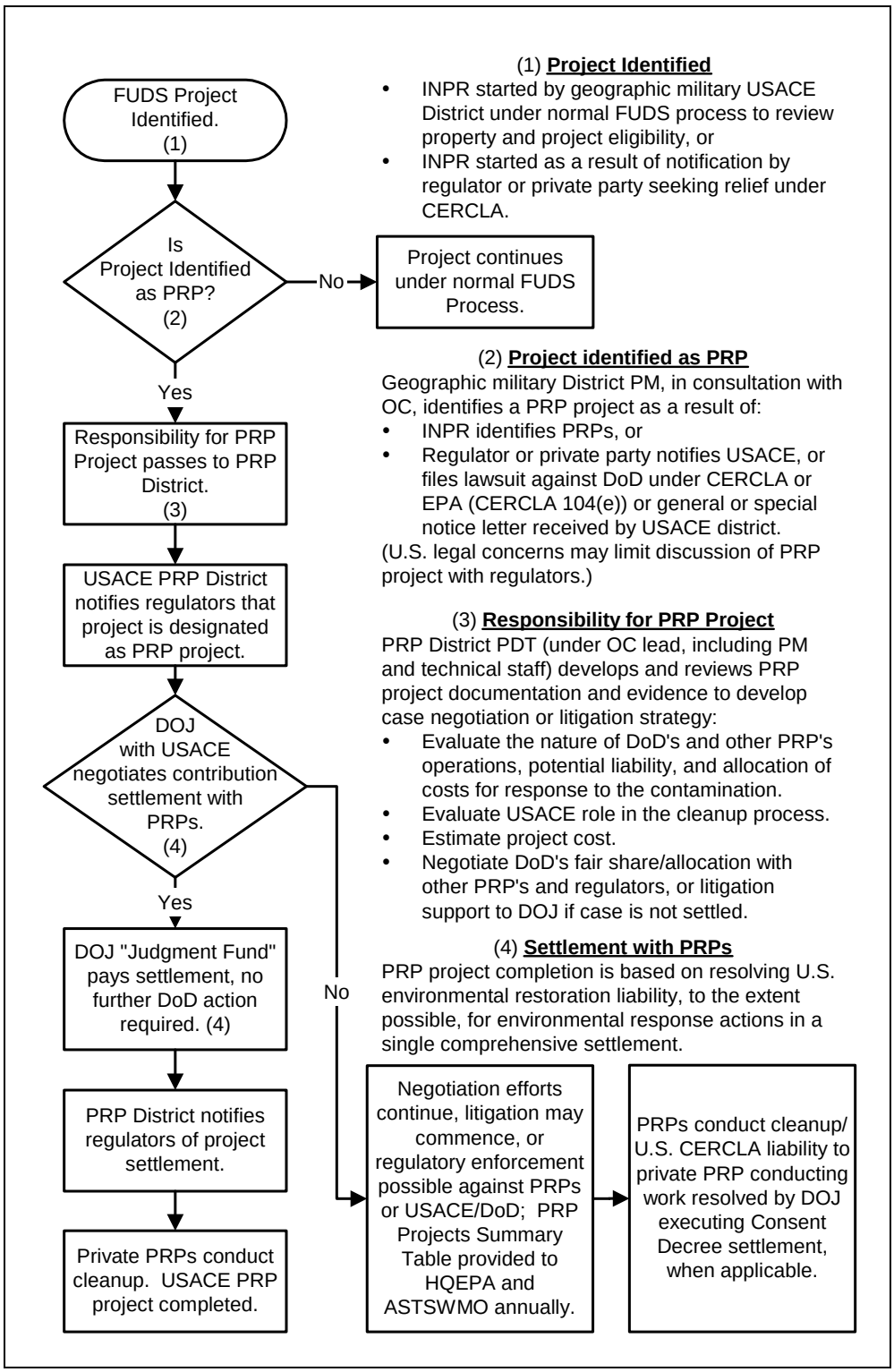


**Figure 5-1. Standard Potentially Responsible Party (PRP) Process.**
(Does not preclude Regulatory enforcement against the private PRPs.)

## 5-4 Considerations for PRP Project Eligibility.

5-4.1 *Applicable CERCLA Definitions*. CERCLA Section 107 defines PRPs as all current owners and operators; all past owners and operators at the time of disposal; all persons who arranged for the treatment or disposal at a facility of hazardous substances or pollutants or contaminants they owned or possessed; and all persons who transported hazardous substances or pollutants or contaminants to the facility for treatment or disposal, if they helped select the receiving facility. CERCLA Section 101(21) defines persons as including the United States Government; and Section 120(a), as amended by SARA, provides that Federal agencies are liable to the same extent as private persons under Section 107. Hazardous substances are defined under Section 101(14) of CERCLA, as amended, and listed in 40 CFR Part 302. CERCLA Section 101(33) defines pollutant or contaminant.

5-4.2 *Current Property Owner*. FUDS at which the only PRP, other than DoD, is the current owner whose activities have not contributed to the release or threatened release of hazardous substances, will normally not be considered as PRP projects. This is, however, a matter of agency discretion, and PRP projects may be designated for these properties when it is in the best interest of the program and the United States. Projects with any other CERCLA PRPs will be classified as PRP projects and Counsel should be consulted concerning the listing of parties as PRPs.

5-4.3 *Third-Party Sites (TPS)*. FUDS program TPS are non-FUDS eligible properties and as such ER-FUDS account funding is not available for response action. However, DoD along with other parties may bear potential liability for DoD hazards or hazardous substance release at TPS. This liability may result from DoD disposal, transport, or arranging for transport of hazards or hazardous substances from a FUDS property. In the case of a TPS, the FDE will reflect that the property is a TPS not eligible for DERP response action. However, where the potential liability and need to defend DoD environmental restoration interests exists, a PRP project should be considered following consultation with Counsel. Refer to Appendix B for instructions on how to develop the INPR for this category of projects. If a TPS is currently used by DoD or an active military service component or has more recently or predominantly been used by an active component, as compared to the FUDS involvement, responsibility for representing the interests of the DoD regarding the property, including any associated with the FUDS program, will be borne by the active military component. PRP Districts will negotiate resolution of any DoD CERCLA liability at such properties in coordination with the DOJ, providing for settlement payments to be certified to the Judgment Fund for payment. A contiguous plume extending off an eligible FUDS property or extended range fans are not TPS projects and should be considered under the originating FUDS property.

5-4.4 *Government Property Holding Corporations*. Certain government corporations (Reconstruction Finance Corporation (RFC), Defense Plant Corporation (DPC), War Assets Administration (WAA), and their successors) held property used in the production of materials used in the Nation's defense. These entities were not under the jurisdiction of the DoD and, therefore, are not eligible for funding under the FUDS program. Successor interests for these properties were established by statute and include the General Services Administration (GSA),

the Department of Commerce, the Department of the Treasury, and other civilian agencies. Where there was DoD jurisdiction and ownership, leasing or possession by the United States over the property before or after ownership by these other Governmental entities, there may be FUDS eligibility for DoD PRP contributions if hazardous substances were disposed of while DoD had jurisdiction. For properties with both FUDS and other agency involvement, FUDS will not accept responsibility for the non-DoD period.

5-4.5 *Potentially Responsible Party Project Justification Requirements*. Initiating activities on a proposed PRP project is not an admission of DoD responsibility. Project activities may be used to conduct investigations (e.g., records searches) to determine the validity of the PRP designation. Proposed PRP projects should take into account the property conditions and circumstances. Proposed PRP projects should be commensurate with PRP Counsel's best professional judgment of risk and needs. Prior to proposing a PRP project, the USACE Division or District must ensure that there is one of the following:

- Documented or reliable testimonial evidence that DoD is potentially responsible for property contamination and that the contamination may at least partially be the result of other PRP's actions.
- Receipt of a PRP notification letter from an environmental regulator.
- A letter or other notification from a private party alleging DoD PRP liability and indicating intent to seek recovery under CERCLA.
- Filing of court action seeking contribution under CERCLA based on DoD's alleged responsibility for contamination.

5-4.5.1 The *DoD Management Guidance for the DERP* specifies that cost recovery is to be pursued where DoD has incurred response costs above $50,000 for which another party may be liable. Where the PRP District's estimate of cost recovery potential is significantly lower than its estimate of costs to pursue recovery, the PRP counsel will consult with CECC-E prior to any referral being made to DOJ. When the settlement costs are not clear but may be low, the PRP District shall do a limited amount of historical and technical research and legal analysis before making a decision to contract for a full history analysis of the PRP project. In general, a contract to research and analyze facility history will not be justified if the contract cost exceeds the estimated project response costs, if USACE analysis determines the DoD potential liability is unfounded or potential contribution share is *de minimis*, or if the necessary research effort can be completed by in-house personnel for less than the cost of contracting.

5-4.5.2 The following actions should be taken by PRP counsel, PM and PDT for PRP and TPS projects:

- Review all readily available information from the INPR and otherwise.
- Estimate costs of PRP/TPS investigation, preparation, and negotiation compared to the estimated settlement cost based on assumed response costs.
- For PRP projects, justify to CEMP-DE the basis for continuing PRP negotiation and investigation activities on the project where the costs of such action exceed the anticipated removal/remedial action costs.

- Evaluate, in consultation with DOJ, participation under a simple contribution agreement if liability is established and this is less costly than continuing with PRP negotiations and investigations.
- Evaluate applicability of any Statute of Limitations (SOL) that would bar cost recovery by USACE for response costs incurred.

5-4.6 *Former Government Owned/Contractor Operated (GOCO) Facilities*. All FUDS properties will be reviewed to determine if GOCO facility operations on the property may have contributed to contamination. A PRP project will be designated and the GOCO party will be considered a PRP for the property whenever the GOCO party, whose actions contributed to contamination of the property or its successor in interest, is apparently financially viable. This applies to all areas subject to the contract, lease, or other arrangement. The PRP District will determine whether the operating contractor had insurance that might cover response costs and fully evaluate the impact of hold harmless or indemnification arrangements that apply to activities conducted on the property.

5-4.7 *Contract Claims*. USACE determination of CERCLA liability allocation associated with FUDS will be independent of any government contract claim entitlements raised by other PRPs. Subsequent payment demands for contribution or cost recovery against a government contractor PRP to address the contractor's CERCLA liability will not be offset by claims the contractor may assert under a previously issued government contract. The responsible DoD component Contracting Office must address whether contract claims for CERCLA costs are payable directly under the contract. This is especially important in the case of cost recovery referrals to the DOJ, as such referrals must address potential government contract claims or equity arguments that the PRP might seek to raise as offset to the CERCLA-based recovery claim. These situations require that the PRP District, the responsible contracting office, and DOJ coordinate closely. CECC-E will be consulted should the identity of the contracting office be in doubt or should the PRP District require assistance in getting the contracting office to provide its views on the PRP's right to contract entitlements. Contract claims for payment entitlement under the provisions of a contract should be distinguished from the equitable consideration of the contracting relationship in determining a fair share allocation of CERCLA liability for a period of government ownership and contractor operation. The PRP District will be responsible for evaluating the relationship of each PRP to the areas where hazardous substances were released and their contractual roles and responsibilities. The extent to which contractual roles and responsibilities may affect the equitable allocation of costs among PRPs also will be addressed.

5-4.8 *Real Estate Instruments*. As part of the PRP investigation, real estate instruments for the property will be evaluated to determine if CERCLA claims have been indemnified, waived, or otherwise affected by the terms of the instruments. This includes the instruments under which the United States took an interest and the instruments that transferred the interest from the United States, as well as documentation of the negotiation of the transfer, or a contract for a deed. Real property appraisal documents and property inventories often include important information about the condition of the site or the understanding of the parties at the time of the transfer. These real estate documents will be evaluated early in the PRP investigation. If a defense to a CERCLA contribution claim or a claim of indemnification in favor of the United

States is possible from the language of a real estate instrument, the validity of these defenses or claims will be pursued prior to further expenditures on the project, except as justified by the PRP District counsel and approved by the Division and HQUSACE.

5-4.9 *Coordination within USACE of PRP and Non-PRP Projects*. Project management actions by the geographic military District involving cleanup or remediation for non-PRP projects anywhere on a property with a PRP project will not be performed without written concurrence of the delegated PRP District. In the event of conflict between a geographic military District and the PRP District over the performance of work on a property with a PRP project, the issue will be raised for resolution at the Division level. If unresolved at the Division level, the issue will be referred to CEMP-DE for resolution. The PRP District will keep the geographic military District informed of its activities on the property and, if any project response actions are being conducted under FUDS, the executing District will keep the PRP District informed of the progress on those projects.

## 5-5 Project Performance.

5-5.1 *Inventory Project Reports, Site Ownership and Operational History, Cost Allocation Reports, and Settlement Agreements for PRP Projects*. After the property and project eligibility are determined, the geographic military District submits the INPR to the appropriate CX for review. The District will resolve CX comments prior to forwarding to the Division for approval. After the geographic military Division has approved the proposed PRP project and assigned it to the appropriate PRP District, the PRP District PM will request assignment of counsel and PDT members that includes the necessary technical disciplines. The PRP PDT will gather and review all documentation assembled for the INPR and otherwise readily available, prepare a scope of work if it is necessary to contract for the investigation, prepare a cost justification analysis, conduct a legal and technical evaluation of the issues on the project, and then coordinate with the appropriate CX for a quality assurance review. In view of the potential for litigation or regulatory action on such properties, the INPR or supporting documentation shall not be released prior to consultation with counsel.

5-5.2 *Cost Sharing and Cost Recovery Agreements*.

5-5.2.1 ER-FUDS funds are authorized for conducting response actions for DoD contamination only. The FUDS policy is intended to avoid the need for cost-sharing and cost recovery associated with contamination by other PRPs.

5-5.2.2 However, there may be cases where expenditure of ER-FUDS funds can be used, subject to CEMP-DE approval, to address the remediation of non-DoD contamination that is commingled with DoD contamination or other circumstances where public health and safety are involved. In these cases, contribution from other PRPs must be pursued through negotiation of cost-sharing agreements or through litigation for cost recovery under CERCLA. As a matter of DoD policy, USACE should pursue recovery of response costs of $50,000 or more from other PRPs. In these cases, there is the additional burden for the executing Districts of maintaining appropriate records to support cost recovery and contribution claims, to demonstrate compliance

with the National Contingency Plan, 40 CFR Part 300, and to provide evidence of the response costs that are claimed.

5-5.3 *Response Actions*. The respective geographic military District will be responsible for project management on any subsequent response action on the property. The USACE element performing the work at the property is responsible for documenting the cost documentation and providing records to the PRP District for its use in actions to pursue contribution from other PRPs. Funds obtained in cost recovery actions against other PRPs as reimbursement for past response costs expended by USACE will be deposited in the ER-FUDS account; funds obtained in contribution actions to offset future response action expenditures by USACE may be provided to the project account subject to CEMP-DE approval.

5-5.4 *Approval of Department of Justice Settlement Agreements Payable from Judgment Fund*. In accordance with the *DoD Management Guidance for the DERP*, no ER-FUDS funds will be used to pay settlements or court judgments resulting from DoD liability for response costs or natural resource damages under CERCLA. The Judgment Fund, provided under 31 USC 1304, is available to pay final settlements and awards in lieu of or in the course of litigation.

5-5.4.1 If DOJ will execute the agreement on behalf of the United States, signature of the agreement by the District or other program level is not considered legally required, unless continuing oversight involvement by USACE is included in the settlement. Settlement and administrative agreements intended for certification by DOJ to the Judgment Fund for payment require approval by the Office of the Chief Counsel and are not subject to the signature delegation limitations applicable to ER-FUDS financed agreements.

5-5.4.2 Counsel will assure review and approval by DOJ of all agreements that include a release of claims by or against the United States, admission of liability on behalf of the United States, or waiver of any legal defense or claim of the United States, including tolling agreements.

5-5.5 *Defense and State Memorandum of Agreement (DSMOA).* PRP projects are generally not eligible for DSMOA funding. The state regulatory oversight costs for PRP projects are paid by the PRPs executing the response actions. DoD contribution to these costs will be included in any settlement agreements. If USACE is performing the remedial action work, and the state certifies that it is receiving funding from no other source for activities otherwise eligible for DSMOA funding, the USACE lead project may be added to the DSMOA Cooperative Agreement, if found to be appropriate under the circumstances. Costs paid to a state under DSMOA will be included in the amounts subject to cost recovery from the other PRPs.

5-5.6 *Signature/Approval of Agreements Involving USACE Execution of Work Using Defense Environmental Restoration Program (DERP) ER-FUDS Funds*. Agreements that will require commitment of ER-FUDS funding for USACE execution of response actions are subject to the approval and signature delegation contained in Appendix C. The HTRW CX and MM CX legal and technical staffs are available to assist the District in assuring that the agreement is consistent with USACE, Army, and DoD guidance. Copies of all final signed agreements will be provided to the geographic military District and the appropriate CX.

5-5.7 *Alternative Dispute Resolution Processes (ADR).* Use of ADR procedures in coordination with the DOJ, such as non-binding arbitration, mediation, facilitation, mini-trial, and disputes panels, should be considered wherever normal negotiation techniques are unsuccessful. Before using an ADR procedure in a PRP negotiation, the involved Counsel will provide notice to CECC-E. If litigation has already been filed in the matter, notice will also be provided to CECC-L. Upon request, CECC-E will assist Districts receiving PRP negotiation assignments in both tailoring existing ADR procedures and developing new ones. The PRP District Commander may sign agreements providing for an ADR process on a PRP project. DOJ's involvement must be requested as early as possible to allow for participation in developing and implementing the ADR initiatives, as any settlement payments to other PRPs arising from the ADR would be expected to be certified by DOJ to the Judgment Fund for payment. The PRP District Counsel will assure that MTS reflects the status of the ADR effort. Costs associated with undertaking ADR proposals will be coordinated between PM and counsel elements. Copies of all agreements establishing an ADR process or settlements agreements resulting from an ADR will be furnished to the appropriate CX.

5-5.8 *Semiannual Project Progress Review*. The PRP District PM shall convene a project progress review meeting, at least semiannually, with the Project Delivery Team including the District Counsel to review the execution status of activities at the project and resolve any outstanding issues.

## 5-6 Funding of Potentially Responsible Party Projects.

5-6.1 *Funding District Activities*. Funding for District PRP project activities, including those coordinated with and provided by geographic military Districts, will be provided from the annual workplan of the PRP District. All anticipated costs associated with a PRP project, including any costs required by a signed PRP agreement that are not payable from the Judgment Funds, must be programmed through the FUDSMIS. Programming requirements for ER-FUDS include eligible project activities anticipated in future years. ER-FUDS funds cannot be used for the following.

5-6.2 *PRP Settlement Payments*. The DoD policy precludes the use of ER-FUDS funds to pay a settlement or litigative award in a PRP or TPS matter. The Judgment Fund is available to fund such payments. ER-FUDS funds may be available to fund other USACE work efforts related to the PRP project (records searches, technical participation during response actions, or cost oversight) prior to final resolution of liability.

5-6.3 *Non-CERCLA Based Litigation*. ER-FUDS (as provided by DERP, 10 USC Sec 2701) funding generally is limited to support CERCLA-based litigation associated with FUDS properties and is not available for legal support for toxic tort actions brought under the Federal *Torts Claims Act*. Consistent with Chapter 6 of AR 27-40, responsibility for Army toxic tort legal representation associated with FUDS may be determined, on a case-by-case basis, by the Chief, Environmental Law Division (Office of the Judge Advocate General of the Army), and the USACE Chief Counsel. Responsibility for toxic tort litigation for the Air Force, Navy, and

the Defense Logistics Agency remains with those services. Since toxic tort litigation may be combined with actions for response costs under CERCLA, the USACE Office of the Chief Counsel will coordinate with appropriate service counsel regarding the use of ER-FUDS funding on such cases. Administrative claims under the Federal *Torts Claims Act* in toxic tort actions will be processed in accordance with service claims regulations.

5-6.4 *Administrative Fines and Penalties*. In accordance with 10 USC 2703(f), ER-FUDS appropriations may not be used to pay administrative fines or penalties, or to provide for a supplemental environmental project ("SEP"), assessed by an environmental regulator against DoD or USACE unless the underlying action arises out of an ER-FUDS funded activity and the payment of the fine or penalty or SEP is specifically authorized by law.

## 5-7 Potentially Responsible Party Project Completion Procedures.

5-7.1 *Lead Regulator Notification*. The PRP District Counsel will notify the lead regulator of the completion of activities at the PRP project.

5-7.2 *USACE Programmatic PRP Project Closeout Procedures*. An official closeout report for a PRP Project should be prepared by the PRP District and signed by the PRP District Commander. Notice of project closeout will be provided to the geographic Military Division. Copies of the closeout report will be provided to the appropriate CX and geographic military District. Because certain portions of this report may contain sensitive information that could be damaging to United States legal interests if released, counsel will assure that portions of the report containing such information are appropriately marked as attorney work product privileged and that release of such information is managed in accordance with that status. FUDSMIS and MTS will be updated to reflect the NDAI status and the project closeout. Refer to Chapter 6 for NDAI procedures. The official closeout report should have the following attachments:

5-7.2.1. A Memorandum for Record (MFR) that contains a brief history of the project.

5-7.2.2. Information on DOJ settlement (if appropriate).

5-7.2.3. A copy of the settlement agreement or any other pertinent settlement information.

5-7.2.4. Any memoranda or letters from the PRP District Commander or Counsel providing a determination on liability, applicability of contribution, or other required action.

5-7.2.5. Any comments provided by the lead regulator on the PRP project closeout.

## 5-8 Reporting for PRP Projects.

5-8.1 *Cost-to-Complete*. During the project negotiations (PN) phase, cost-to-complete data should include only in-house expenditures and contract costs for PRP project support.

Estimates of costs of remediation or estimated settlement figures should not be included. These are costs that must remain confidential until final negotiation and settlement.

5-8.2 *Relative Risk Evaluation*. Relative Risk Site Evaluations are not required for PRP project activities per the *DoD Relative Risk Site Evaluation Primer*.

5-8.3 *Project Management Plans*. The PRP District PM, in coordination with the PRP District Counsel, will prepare a Project Management Plan for every PRP project. Schedules for project activities will include estimated target dates for all appropriate phases but will not compromise privileged information.

5-8.4 *Restoration Advisory Boards*. Establishment of a RAB is not appropriate at properties that only have PRP projects. In cases where both PRP and non-PRP projects exist at the same property, all activities involving PRP issues shall be coordinated with the PRP District's PM and Office of Counsel. (See Chapter 8 for public involvement requirements).

5-8.5 *Management Action Plans and FUDSMIS*. Activities at the PRP project must be scheduled and resourced in FUDSMIS. Narratives in the Property Specific MAP, FUDSMIS, or the SMAP must not include any information relating to DoD liability issues and must be coordinated with counsel prior to release.

5-8.6 *Report to Regulatory Community on PRP Projects*. Annually, CEMP-DE will provide Headquarters EPA (Federal Facility Restoration and Reuse Office) and the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) a listing of all PRP projects reported in FUDSMIS.

**5-9 Public Involvement and Administrative Record**. Public involvement and Administrative Record requirements are the responsibility of the geographic military District when USACE is the lead agency for the response actions. These matters will be closely coordinated with the PRP District Counsel on properties with PRP projects. Counsel and the PMs for all Districts involved with response actions on projects performed by USACE will coordinate closely to ensure compliance with CERCLA and the NCP regarding public comments and to assure the Administrative Record file and permanent Project Files are properly assembled and maintained.

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# Chapter 6
# FUDS Program Internal Practices and Procedures

## 6-1 FUDS Planning, Programming, Budgeting, and Execution System (PPBES).

6-1.1 *Overall Process*.

6-1.1.1 *Overview of the Planning, Programming, Budgeting, Executing, and Reporting Phases*. Environmental restoration requirements will be planned, programmed, budgeted, and then executed as part of Army's PPBES cycle. The overall PPBES process is shown in Figure 6-1. Figure 6-2 shows the FUDS life cycle and PPBES nomenclatures. The PPBES life cycle also has a reporting requirement as required by the DoD and HQUSACE. Each PPBES phase is briefly described below with the detailed FUDS workplan process thereafter.

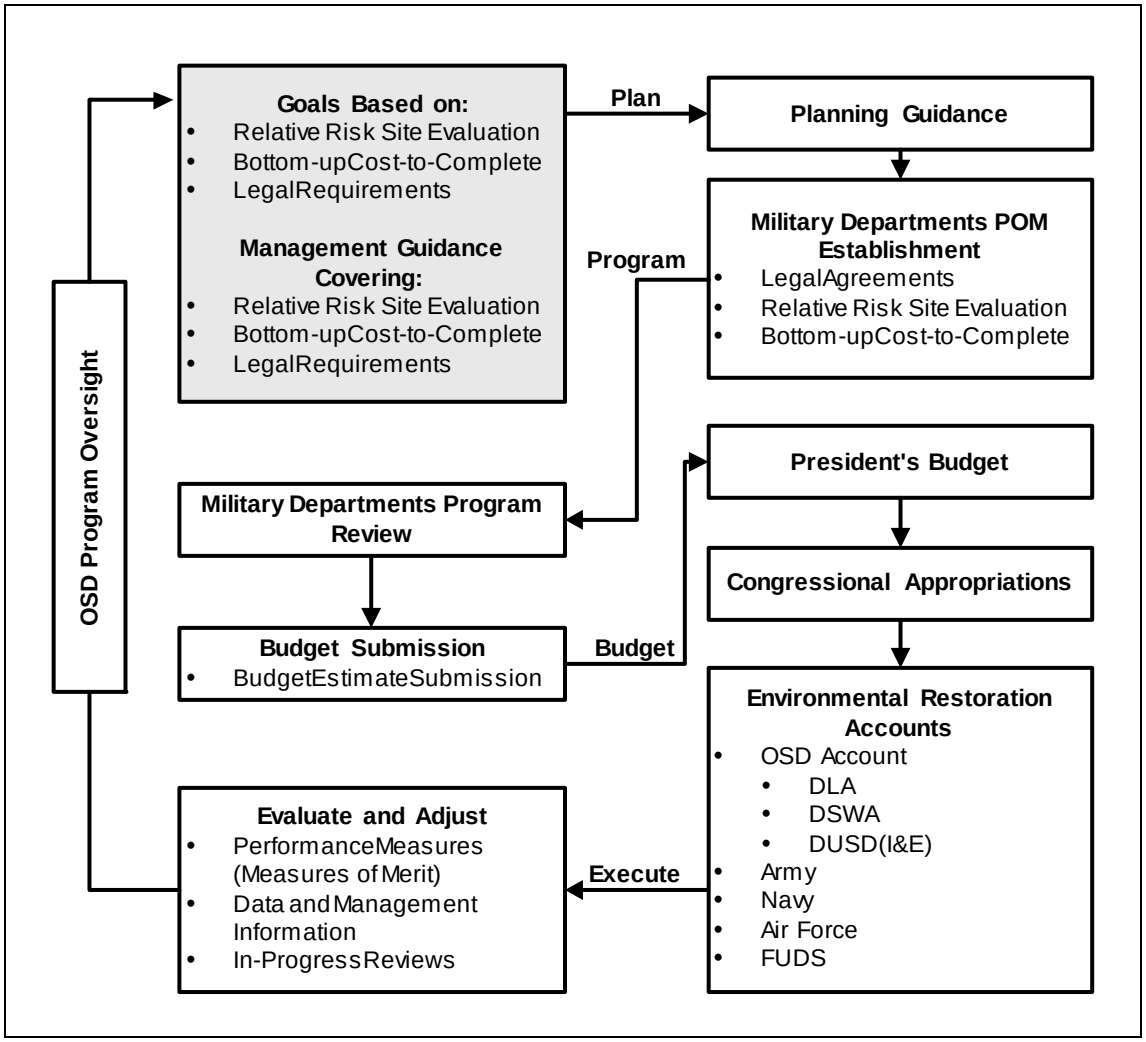


**Figure 6-1. DERP Planning, Programming, Budgeting, and Execution System.**

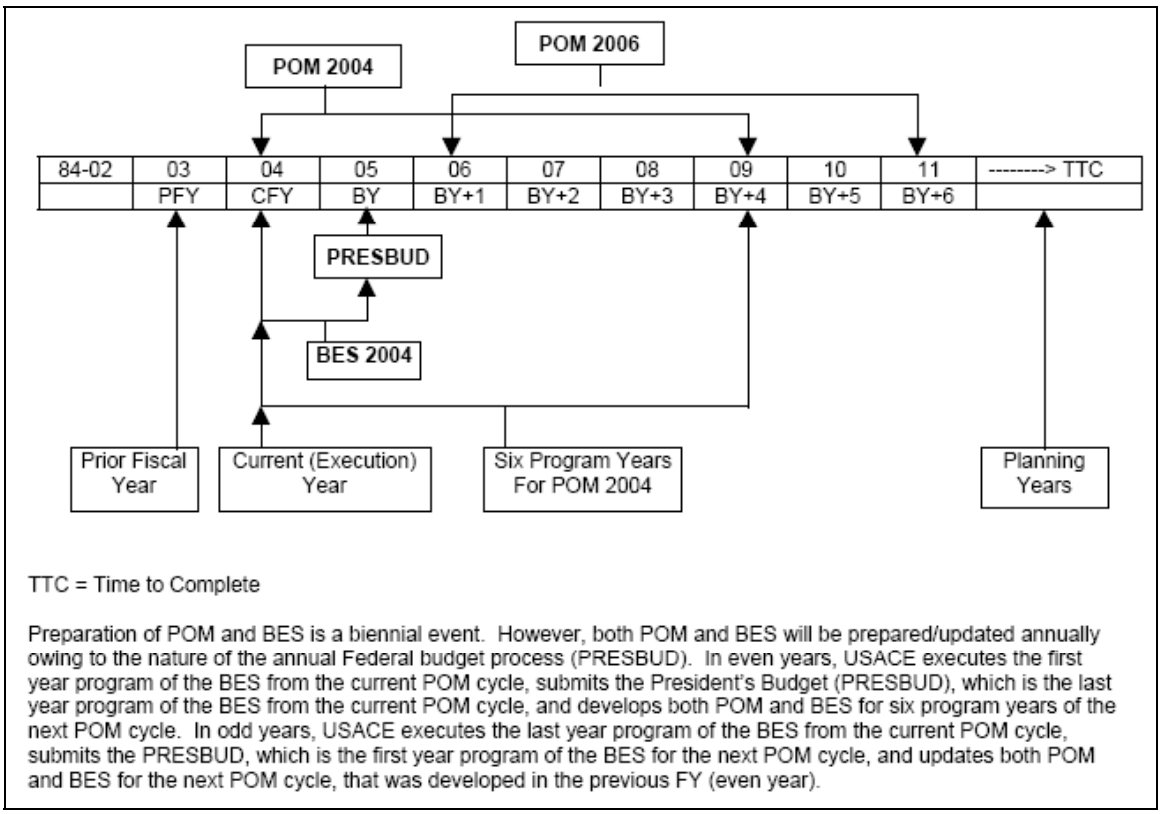


**Figure 6-2. ER-FUDS PPB Cycle and Nomenclature.**

6-1.1.1.1 *Planning.* Planning is the first phase of the PPBES, which looks into the future to decide what the USACE needs to do to meet DoD program goals. The essential documents for the FUDS Program are the *DoD Management Guidance for the DERP* and the DoD Goals for DERP. This ER sets the objectives and fiscal constraints for the PPBES cycle.

6-1.1.1.2 *Programming.* Programming is the second phase of the PPBES, which determines how the USACE is going to meet DoD program goals. The important documents for this phase are the Program Objective Memorandum (POM) and the Future Years Defense Plan (FYDP).

6-1.1.1.3 *Budgeting.* Budgeting is the third phase. It establishes the required funding for the POM years. The budget must accurately reflect program costs. Key documents in this phase are the Budget Estimate Submission (BES) and the President's Budget (PRESBUD) or Budget Year Annual Work Plan (BY AWP).

6-1.1.1.4 *Execution.* Execution is the fourth phase. This is where funds are obligated and expended to accomplish the workplan in attaining program goals and objectives. A key document in this phase is Current Year (CY) AWP.

6-1.1.1.5 *Reporting.* Reporting occurs throughout the PPBES cycle. Key documents are POM exhibits, BES, PRESBUD, the CY/BY AWPs, Annual Report to Congress (ARC), the

official Life Cycle Plan (LCP), disclosure of environmental liabilities report (ELR) in the DoD Annual Financial Statement, and information required at the semiannual ESOH Management Reviews.

6-1.1.2 *Formerly Used Defense Sites Process*.

6-1.1.2.1 *Planning Activity*. Planning requires the documentation of current and future funding requirements, including preparing a project summary sheet for each eligible project, identifying resource requirements, and assigning project priorities based on relative risk site evaluations, RAC scores, and legal agreements. Cost-to-Complete (CTC) will be updated annually, and for projects underway, the relative risk site evaluations will be updated semiannually and project priorities will be adjusted, as necessary. The FUDS PM will record all FUDS project data in the FUDS Management Information System (FUDSMIS).

- *Project Cost-to-Complete (CTC) Estimating and Reporting*. CTC estimates supporting FUDS projects will be prepared and submitted in accordance with Appendix E.
- *Project Priorities*. See Paragraph 6-1.2.
- *Project Summary Sheets*. See Appendix B.

6-1.1.2.2 *Programming Activity*. CEMP-DE establishes the official Life Cycle Plan using the POM Shift utility in FUDSMIS. The POM exhibits will then be prepared by summarizing the official LCP for submission to DoD through the Department of the Army. Figure 6-3 depicts the process, and the data input requirements are described below.

- *FUDS Program Development Instructions (PDI)*. Based on the preliminary DoD Programming Data Requirements (PDR), the DoD Goals for DERP, and the HQDA PDI, CEMP-DE issues the FUDS PDI in February that contains both management and fiscal guidance for updating the FYDP/LCP. CEMP-DE establishes and records in FUDSMIS the funding constraint for each POM year for each Division. This is the initial fiscal allocation to the geographic military Divisions. It may be adjusted throughout the year because of the final DoD PDR issued in April, DoD funding reallocations throughout the year, or reallocations resulting from the semiannual FUDS Program Reviews. Each Division then forwards HQUSACE's PDI with Division implementing instructions and their fiscal guidance. Each Division also records the funding constraints in FUDSMIS for each POM year by each District.
- *FUDS POM Exhibit Data Submission*. PM Districts shall update their FYDP/LCP in FUDSMIS based on the allocated POM numbers during February through March each year. Divisions will review and adjust the Districts' FYDP/LCP data by the suspense date specified in the PDI. Then, CEMP-DE establishes the official FYDP/LCP using the POM Shift utility in FUDSMIS, if necessary, during April each year. CEMP-DE prepares the FUDS POM exhibit data based on the official FYDP/LCP by completing the POM exhibit formats in accordance with the DoD PDR. The POM exhibits cover 9 years, that is, PFY-1, PFY, CFY, BY, BY2, BY2+1, BY2+2, BY2+3, BY2+4, and Balance to Complete. In April of each year, HQUSACE submits the FUDS POM exhibits to DA/DoD. The project and phase level detail produced by the FUDSMIS POM Shift module for every year through completion of the FUDS program must also be submitted to DoD.

- *Environmental Safety and Occupational Health (ESOH) Mid-Year Management Review*. HQUSACE briefs HQDA and DoD at the midyear ESOH Management Review (normally held in June) on the CY AWP execution for the first half of the current FY and on the FUDS POM exhibits submitted in April. HQDA and DoD also review the Measures of Merit (MoMs), status of Restoration Advisory Boards (RABs), and program issues and successes.

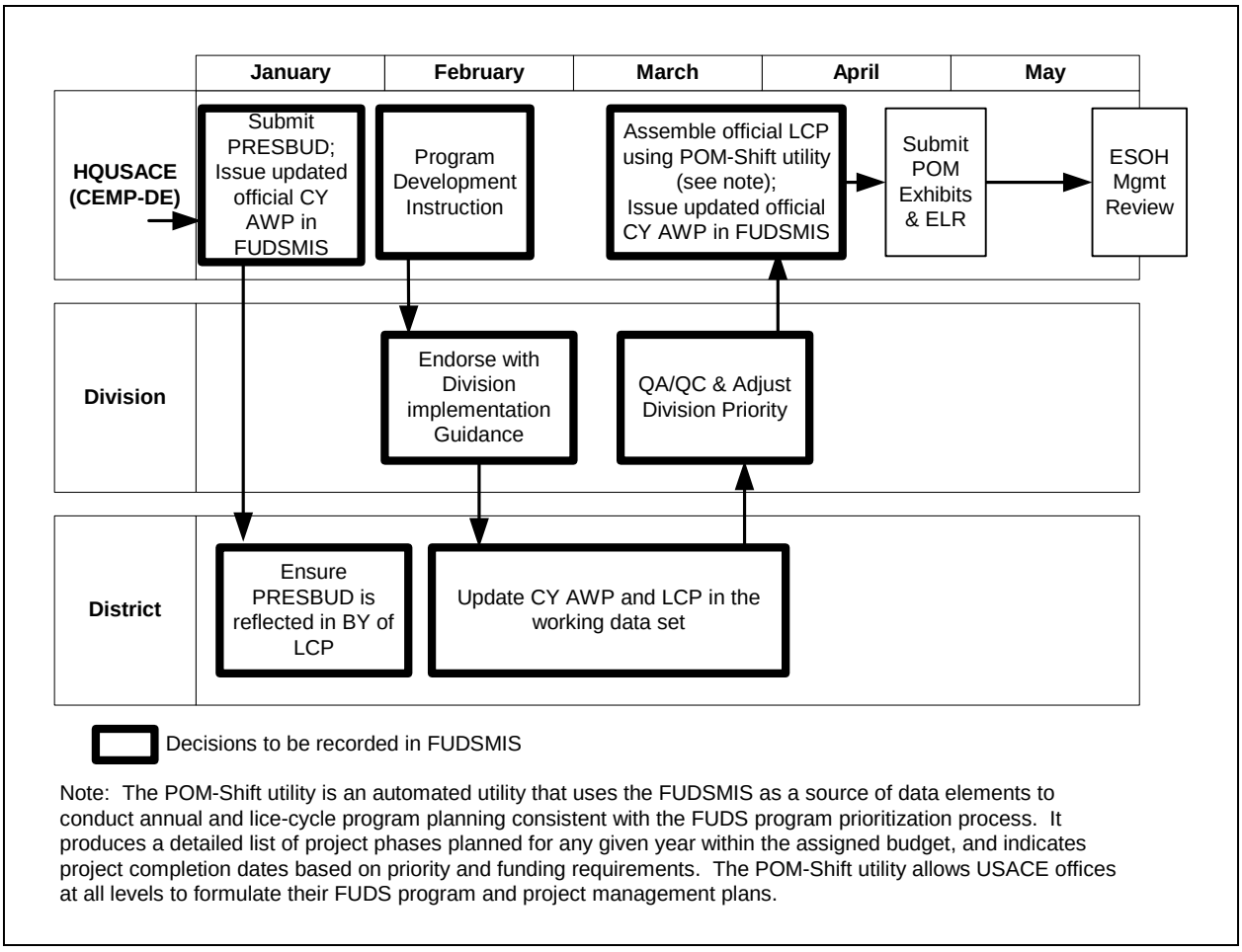


**Figure 6-3. ER-FUDS Programming Activity.**

6-1.1.2.3 *Budgeting Activity*. CEMP-DE prepares BES and PRESBUD at this phase. Based on DoD's Program Decision Memorandum (PDM), CEMP-DE may issue FUDS Budget Development Instructions (BDI) in July for BES preparation. Figure 6-4 depicts the process and data input requirements.

- *FUDS Budget Estimate Submission (BES).* PM Districts shall update their FYDP/LCP in FUDSMIS based on the FUDS BDI during June through early July each year. Divisions review the Districts' FYDP/LCP and ensure that it meets HQ's funding guidance in mid-July. CEMP-DE establishes the official FYDP/LCP in FUDSMIS using the Shift-POM utility, if necessary, in late July each year. CEMP-DE prepares the FUDS BES, based on the

official FYDP/LCP, by completing the budget exhibits for the BES and the PRESBUD in accordance with the current DoD Financial Management Regulation (FMR), published under the authority of Department of Defense Instruction (DODI) 7000.14R. The budget exhibits for the BES and the PRESBUD cover 8 years in odd years and 7 years in even years, owing to the biennial nature of the POM/BES cycle. For instance, if USACE is in FY2004 and executing the first year of the FY04/05 BES, the budget exhibits will cover 7 years, FY03 (actual), FY04, FY05, and summary information for 4 subsequent program years FY06 through FY09. If USACE is in FY2005 and executing the final year of the FY04/05 BES, the budget exhibits will cover 8 years, FY04 (actual), FY05, FY06, FY07, and summary information for 4 subsequent program years FY08 through FY11. In late August of each year, HQUSACE submits the FUDS BES to DA/DoD and brief BY AWP to HQDA. The project and phase level detail produced by the FUDSMIS POM Shift module for every year through completion of the FUDS program must also be submitted to DoD.

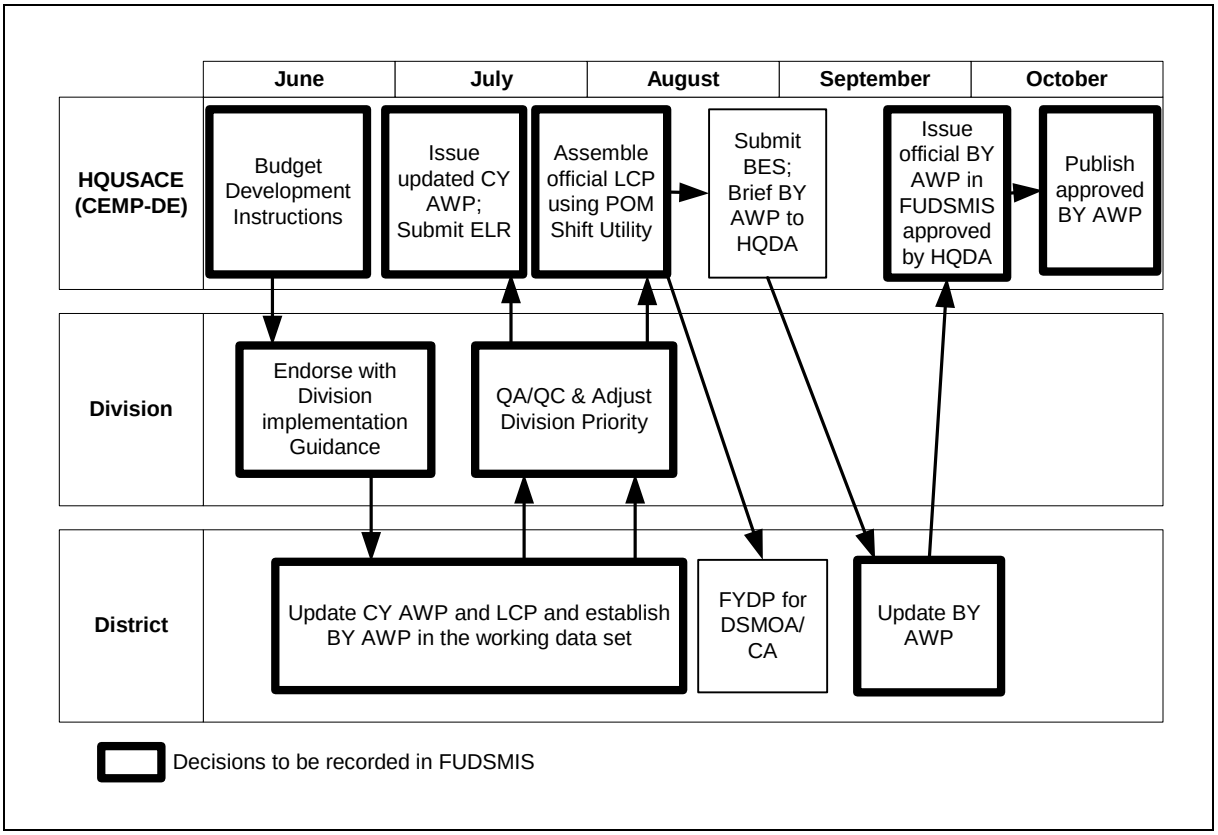


**Figure 6-4. ER-FUDS Budgeting Activity.**

- *FUDS President's Budget (PRESBUD) Submission.* (see Figure 6-6.) CEMP-DE updates the budget exhibits for the BES and the PRESBUD based on the official FYDP established for the Annual Report to Congress (ARC) preparation and submits them to DA/DoD as FUDS PRESBUD in January of each year. DoD/Office of Management and Budget (OMB)

send the PRESBUD to Congress in early February each year. Divisions and Districts establish their initial draft BY AWP by scheduling their quarterly obligation or execution plans of the PRESBUD (BY program of the FYDP).

- *Finalization of BY AWP and FYDP.* Districts will establish their initial BY AWP and FYDP at the time of CY AWP update in early July. Districts will balance LCP in FUDSMIS for BES preparation and update BY AWP based on this balanced LCP by late July. In late August at the time of BES submission, the draft BY AWP will be assembled for briefing to HQDA. CEMP-DE finalizes the BY AWP and FYDP incorporating HQDA comments in mid-September each year and makes it official in FUDSMIS for HQDA approval. Upon HQDA approval, this Official BY AWP becomes the approved CY AWP.

6-1.1.2.4 *Executing Activity*. CEMP-DE provides execution guidance with the approved CY AWP, and Divisions and Districts execute the CY AWP. Activities in this phase take place throughout the fiscal year, together with planning, programming, budgeting, and reporting. Figure 6-5 depicts the process and data input requirements.

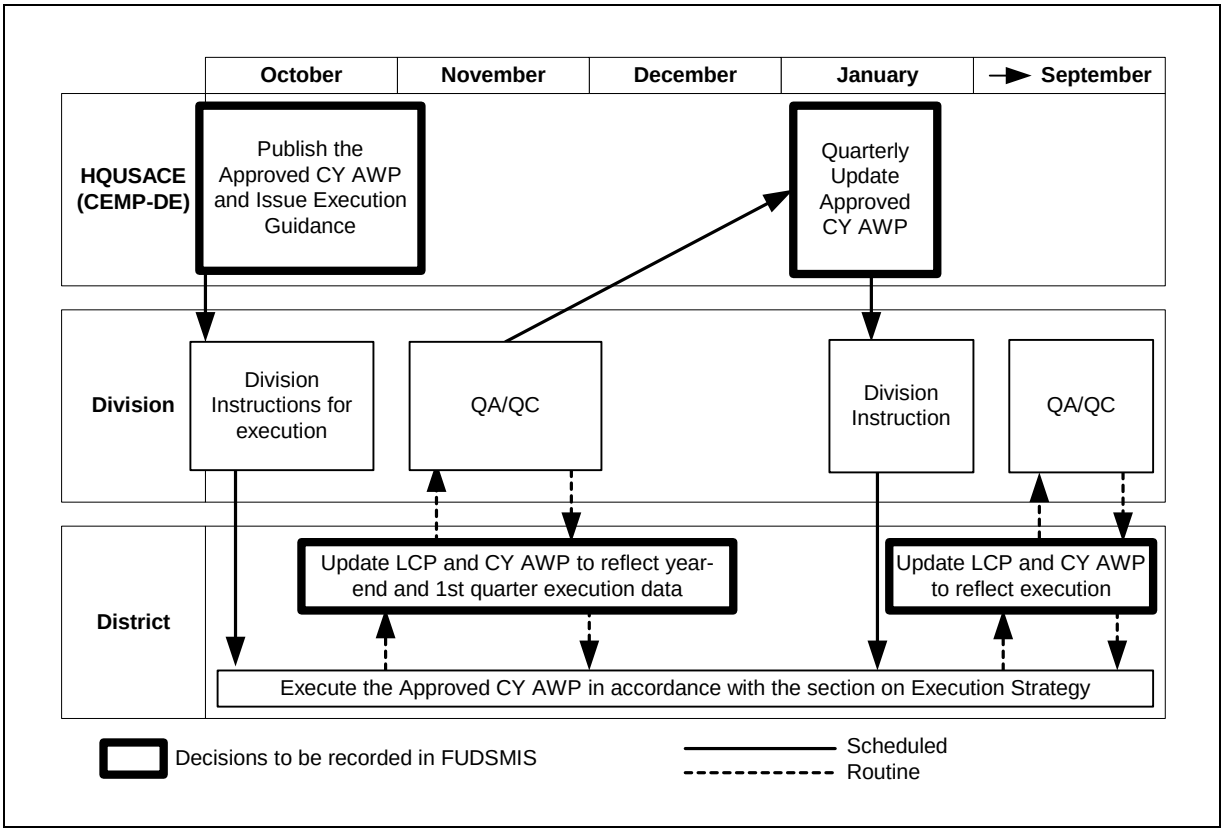


**Figure 6-5. ER-FUDS Executing Activity.**

- *Approved CY AWP.* The approved CY AWP in FUDSMIS will be updated quarterly. At each quarter's end, Districts will review the actual obligation and adjust the remaining

quarters' obligation plans in the working data set, as necessary. Divisions review and ensure that total planned obligation equals the POM amount. Upon review and adjustment, CEMP-DE will publish the official updated CY AWP in FUDSMIS for District execution.

- *Obligation Report*. FUDSMIS automatically uploads actual obligations from the Corps of Engineers Financial Management System (CEFMS) into the working data set CY AWP daily. To correctly capture actual obligations in FUDSMIS, Districts must follow the FUDSMIS-CEFMS Interface Standard Operating Procedure (Appendix F). FUDSMIS provides exception reports for those obligations not uploaded. Districts must periodically review these exception reports and correct discrepancies between FUDSMIS and CEFMS.
- *Year-end Obligations in the CY AWP*. Divisions and Districts must review the FUDSMIS obligation exception reports and correct any discrepancies. There must not be any obligation exceptions at the year-end. FUDSMIS automatically replaces the CY AWP planned amounts in the working data set with the actual obligations when the CEFMS year-end database is available in October.
- *FUDS Semi-Annual Program Reviews.* The purpose of these meetings is to review the CY program execution by geographic military Divisions and Districts, the attainment of program goals, including the FYDP, the allocated individual Division POM funding levels established by CEMP-DE, and the initial draft BY AWP. The FUDS PDI may be revised based on the results of the second quarter FUDS Program Review.
- *FUDS Program Review in the Fourth Quarter*. The intent of the meeting is to (but not limited to) review the CY AWP program execution by Divisions and Districts, finalize the BY AWP, and discuss the potential redistribution of the CY funds to meet 100 percent obligation. HQUSACE will also discuss the Budget Development Instructions (BDI) based on DoD's PDM for the August BES to DA/DoD. Divisions and Districts are to update their FYDP/LCP in FUDSMIS based on the FUDS BDI.
- *ESOH End of Year Management Review (see Figure 6-6).* At the first quarter ESOH Management Review, which is normally held in December, HQUSACE briefs HQDA and DoD on the program execution for the FY just completed and plans for the new CY AWP and the BES. Other review items include the MoMs, status of RABs, program issues, and program successes.

6-1.1.2.5 *Reporting Activity*. Throughout the PPBES process, HQUSACE (CEMP-DE), using FUDSMIS data provided by the Districts, will generate planning (ELR), programming (POM exhibits and ELR Report), budgeting (BES, PRESBUD, and ELR), and execution (ARC) reports. Activities for the Annual Report to Congress (ARC) normally occur during the first two quarters of each fiscal year. Figure 6-6 depicts the process and data input requirements.

- *Year-end Workplan Update.* Divisions/Districts must update the FYDP/LCP and CY AWP in FUDSMIS during October and November, based on the results of the prior year execution for both in-house expenditures and contract award amounts. This information is used to support the ESOH Management Review and the ARC.
- *Annual Report to Congress (ARC).* The DoD publishes an Annual Report to Congress detailing the progress and accomplishments of DERP for each FY. HQUSACE, as Executing Agent, is responsible for providing the requested information that makes up the FUDS portion of the ARC. The initial request for development of the ARC occurs in October for the

previous FY. PM Districts shall update their LCP and other required ARC data of the working data set in FUDSMIS based on HQUSACE instructions during October through November each year. Divisions review and ensure that Districts' data are within the POM funding constraints and in accordance with instructions. CEMP-DE establishes the official FYDP/LCP in FUDSMIS using the POM Shift utility in late November/early December. The preparation of the ARC is based on the official LCP and data set in FUDSMIS and usually occurs in October through the following March.

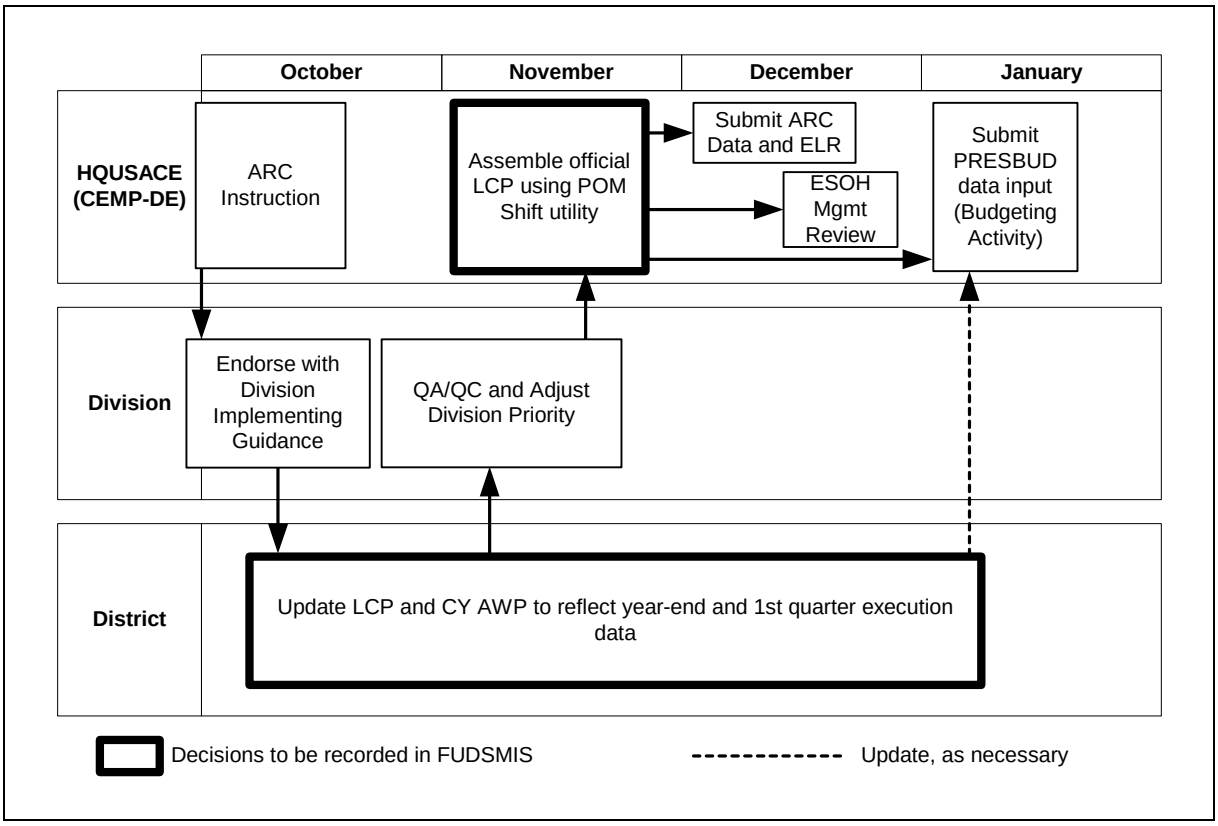


**Figure 6-6. ER-FUDS Reporting Activity.**

- *Preparation of Environmental Liability Report (ELR).* Calculation and disclosure of environmental restoration liabilities is a requirement under the *Chief Financial Officers (CFO) Act*, the DoD-FMR, and the *DoD Management Guidance for the DERP*. The specific requirements for calculating and disclosing environmental restoration liabilities under the ER-FUDS account are detailed in the DoD-FMR and the *DoD Management Guidance for the DERP*. In general, a complete disclosure of environmental restoration liabilities has three main elements, including: (i) complete disclosure of all environmental restoration liabilities (funded and unfunded), per the requirements of Statement of Federal Financial Accounting Standards (SFFAS) 5 and 6, FMR 7000.14, the *DoD Management Guidance for the DERP*, and other applicable guidance; (ii) complete, formal, and auditable documentation of all data, models, and

other information used to develop the estimate of the environmental restoration liability; and (iii) documentation that all models were assessed per the requirements of DoDI 5000.61. The initial ELR is submitted in early October and updated quarterly (January, April, and July).

6-1.1.2.6 *Data Calls and Annual Reporting*. Refer to Table 6-1 for the schedule of data calls and annual reporting requirements.

6-1.2 *Programming Prioritization*.

6-1.2.1 *Overview of the DERP Risk Management Concept*. DERP focuses on directly incorporating risk to human health, safety, and the environment into the decision-making process. As a result of this focus, DoD has developed a viable, consistent, risk-based approach to categorizing response actions for projects. This approach assists in sequencing environmental restoration work within the context of DERP legal agreements via legal driver codes (see Table 6-2). The *DoD Relative Risk Site Evaluation Primer* provides a framework for this approach for HTRW projects. The Risk Assessment Code, or its successor, will be used to assist in the prioritization of FUDS MMRP projects involving MEC. For further information regarding Risk Management, refer to the *DoD Management Guidance for the DERP*.

6-1.2.1.1 For eligible HTRW projects , a RRSE is not required (NR) when:

- Insufficient data are available to perform the evaluation (e.g., the SI phase not completed).
- The project is classified as having all Remedies In Place (RIP). Refer to Chapter 4 for a discussion of RIP.
- The project is classified as Response Complete (RC). Refer to Chapter 4 for a discussion of RC.

6-1.2.1.2 Classification of FUDS projects into high, medium, or low relative risk categories does not substitute for either a baseline risk assessment or health assessment nor does it serve as a tool to justify a particular type of action (e.g., the selection of a remedy).

6-1.2.1.3 The legal drivers and the priority-setting factors described below become a major contributor to the FUDS priority score in terms of successful funding of response actions for a project.

- HTRW Priority-Setting Factors. The Relative Risk Site Evaluation (RRSE) framework evaluates eligible HTRW projects and places them into categories of high, medium, and low relative risk. It is a relative evaluation of project information at a point in time and is based on three key factors: the Contaminant Hazard Factor (CHF), the Migration Pathway Factor (MPF), and the Receptor Factor (RF). Factor ratings are based on a quantitative evaluation of pathways and human or ecological receptors in six media most likely to result in significant exposure: groundwater, soil, surface water (human endpoint), surface water (ecological endpoint), sediment (human endpoint), and sediment (ecological endpoint). The RRSE framework will be used for HTRW projects but does not extend to CON/HTRW, MMRP,

BD/DR, or PRP projects (unless USACE performs the response actions). For eligible HTRW projects, relative risk may be evaluated only for those with reliable chemical concentration data and with chemicals included in the evaluation benchmarks (EPA Preliminary Remediation Goals [PRGs]). When conducting RRSE for HTRW projects with soils or groundwater contaminated solely with petroleum, oils, and lubricants (POL), do not use total petroleum hydrocarbon data. Instead, use the concentrations for benzene, toluene, ethylbenzene, and xylene (BTEX) compounds in each medium, together with corresponding BTEX standards, to calculate the CHF. RRSE is not required for any project beyond the phase of remedial-action construction (RA-C) (that is, with remedy in place [RIP], with remedial-action operation [RA-O], with response complete [RC], with long-term management [LTM], or with No DoD Action Indicated [NDAI]).

**Table 6-1**
**Annual Reporting and Mandatory Data Call Schedules**

| HQUSACE Submission Date | Task | Data Downloaded from FUDSMIS |
|---|---|---|
| 1st Friday in October | Issue HQDA-approved CY AWP (Baseline); and<br>Submit annual ELR data and RMIS cost data to Army/DoD | |
| 2nd Friday in November | Submit ARC narrative data to HQDA/DoD | 1st Friday in November |
| 4th Friday in December | Submit 1st QTR ELR;<br>Prepare for ESOH Management Review | |
| 2nd Friday in January | Issue the official CY AWP update for 2nd quarter | 1st Friday in January |
| 3rd Friday in January | Submit PRESBUD data | |
| 2nd Friday in February | Issue Division POM allocations, based on PRESBUD data | |
| 1ST Friday in April | Submit 2nd QTR ELR | |
| 2nd Friday in April | Issue the official CY AWP update for 3rd quarter;<br>Submit POM Exhibits to HQDA/DoD | 1st Friday in April |
| 2nd Friday in May | Issue Updated BY Division POM allocations, based on POM Exhibits | |
| 2nd Friday in June | Prepare for ESOH Management Review | |
| 1st Friday in July | Submit 3rd QTR ELR | |
| 2nd Friday in July | Issue the official CY AWP for 4th quarter | 1st Friday in July |
| 4th Friday in August | Submit BES to HQDA/DoD and BY AWP Briefing to HQDA | 4th Friday in July |
| Mid-September | BY AWP Approval by HQDA (incorporate HQDA's comments) - becomes the approved CY AWP for execution | |

**Table 6-2**
**Types of DERP Legal Agreements (Legal Driver Codes)**

| CODE | DERP Legal Agreement |
|---|---|
| A | Federal Facility Agreement or FUDS Agreement at NPL and Proposed NPL properties. |
| B | Interagency Agreement (2- and 3-party) at non-NPL properties. |
| C | RCRA Permits with Corrective Action Requirements. |
| D | RCRA Corrective Action Orders (issued by EPA or a state). |
| E | Consent Order under state laws. |
| F | Memorandum of Understanding commitments. |
| G | Memorandum of Agreement commitments (e.g., DSMOA). |
| H | Notice of Violation requirements. |
| I | Requirements related to Agency for Toxic Substances Disease Registry. |
| J | Requirements related to Natural Resource Trustee claim (e.g., damage claim). |
| K | Court ordered requirements (in case of litigation). |
| L | Imminent threats. |
| M | Consent Decrees (usually for potentially responsible party [PRP] or third-party site [TPS] projects). |
| N | Unilateral Orders (usually for PRP or TPS projects). |
| O | Preliminary Assessments for Federal properties listed on the Docket. |
| P | Remedial Action Operation and Long-Term Management for in-place cleanup systems for properties without agreements. |
| Q | State laws and regulations requiring response within a specified period. |
| R | Congressional or owner concerns. |
| S | Building demolition/debris removal. |
| T | Military Munitions Response Program (MMRP), RAC 1-2. |
| U | Military Munitions Response Program (MMRP), RAC 3-4. |
| Z | No agreements. |
| Blank | Manpower/work years (Management & Support). |

- *CON/HTRW Priority-Setting Factors*. For eligible CON/HTRW projects, priorities are determined by the condition and location of the underground storage tank (UST). It is the FUDS program policy that field sampling is normally done after UST removals. A CON/HTRW project has a priority of 1 when there are known leaks or spills. This includes compliance with regulatory requirements for removal of leaking USTs and other short-term corrective actions. Priorities 2 and 3 are for CON/HTRW projects that are not leaking, located in urban and rural areas, respectively. All other UST removals under priority 1 must be justified by specific regulatory requirements, subject to approval by HQUSACE (see Table 6-3).
- *MMRP Priority-Setting Factors*. For eligible MMRP projects with MEC, the Risk Assessment Code (RAC), or its successor, will be used to help determine priorities. The MMRP

risk assessment is composed of two factors: hazard severity and hazard probability. These factors are based on the best available information resulting from records searches, reports of Explosive Ordnance Disposal (EOD) detachment actions, field observations, interviews, and measurements.

- *Other Priority-Setting Factors*. Relative risk is not the sole factor in determining the sequence of environmental restoration work, but it is the cornerstone upon which the priority-setting process is based. Other factors in setting priorities include the concerns of the regulators, tribes, and the public. Regulator involvement through Statewide Management Action Plans (SMAPs) and public involvement, including RABs, are essential to the successful implementation of the relative risk concept (see Chapter 8 for information on RABs and Chapter 9 for information on SMAPs). The actual funding priority for response actions at a project is identified after the relative risk site evaluation, RAC scores, and other information are combined with additional important risk management considerations (e.g., the legal agreement of a project, stakeholder concerns, program execution considerations, and economic factors). These additional risk management considerations can potentially result in a decision to fund response actions at a project that is not classified as a high relative risk.

**Table 6-3**
**FUDS Risk Management Methodologies for FYDP and Annual Workplan Development**

| FUDS Priority | FYDP/Workplan Line Item [a] |
|---|---|
| 01 | HQUSACE M&S. |
| 02 | PRP Payments (agreed to in prior year when the Judgment Fund is not applicable). |
| 03 | Fines and Penalties (agreed to in prior year). |
| 04 | DSMOA Requirements. |
| 05 | ATSDR Requirements, Legal Driver Code I. |
| 06 [b] | BD/DR Priority = 1 (Urban or densely populated area, unrestricted access), Legal Driver Code S. |
| 07 | BD/DR Priority = 2 (Small town, unrestricted access), Legal Driver Code S. |
| 08 | BD/DR Priority = 3 (Rural area or remote island, unrestricted access), Legal Driver Code S. |
| 09 | BD/DR Priority = 4 (Urban or densely populated area, restricted access), Legal Driver Code S. |
| 10 | BD/DR Priority = 5 (Small town, restricted access), Legal Driver Code S. |
| 11 | BD/DR Priority = 6 (Urban or densely populated area, entrance guarded), Legal Driver Code S. |
| 12 | BD/DR Priority = 7 (Rural area or remote island, restricted access), Legal Driver Code S. |
| 13 | BD/DR Priority = 8 (Small town, entrance guarded), Legal Driver Code S. |
| 14 | BD/DR Priority = 9 (Rural area or remote island, entrance guarded), Legal Driver Code S. |
| 15 | Determination of FUDS eligibility and PA requirements (as appropriate), Legal Driver Code O. |
| 21 | Division M&S (established in accordance with HQUSACE guidelines). |
| 22 [c] | Project Supervision and Administration (S&A) and Supervision and Review (S&R) for Contracts Awarded in Prior Year(s); or In-house Costs for Regulatory Closeout of Projects (PCO phase). |

| FUDS Priority | FYDP/Workplan Line Item [a] |
|---|---|
| 23 | DoD/DA Directed Projects (entered by HQUSACE). |
| 24 | Interim Removal Actions (TCRA). |
| 25 | Projects in phase of RA-O or LTM (Relative Risk Evaluation is Not Required), Legal Driver Code P. |
| 26 | Continuation of Prior-Year Contracts for the Same Single Project Phase of SI, EE/CA, RI/FS, RD, RA-C, IRA, or RAB and TAPP. |
| 27 | Eligible PRP/TPS Projects (payment not included). |
| 28 | High-Risk Projects (HTRW), Legal Driver Code A, B, C, D, E, F, H, K, M, N, or R or MMRP [d] with T (RAC-1 or -2). |
| 29 | High-Risk Projects (HTRW or MMRP), Legal Driver Code G, J, Q, or Z. |
| 30 | Limited SI Phase for Not-Evaluated HTRW Projects to Establish Necessary Data for RRSE or for MMRP Projects to Verify the PA Phase RAC Score (or its successor). |
| 31 | Medium-Risk Projects (HTRW), Legal Driver Code A, B, C, D, E, F, H, K, M, N, or R; or MMRP with U (RAC-3). |
| 32 | Medium-Risk Projects (HTRW), Legal Driver Code G, J, Q, or Z. |
| 33 | Low-Risk Projects (HTRW), Legal Driver Code A, B, C, D, E, F, H, K, M, N, or R; or MMRP with U (RAC-4). |
| 34 | Low-Risk Projects (HTRW) with Legal Driver Code G, J, Q, or Z. |
| 35 | CON/HTRW Priority = 1, Potential leak or spill CON/HTRW—RD/RA (Rationale: Compliance with regulatory requirements for removal of leaking USTs and other short-term corrective actions [e]). |
| 36 | CON/HTRW Priority = 2, Urban CON/HTRW—RD/RA (Rationale: Non-time-critical activities). |
| 37 | CON/HTRW Priority = 3, Rural CON/HTRW—RD/RA (Rationale: Non-time-critical activities). |
| 38 [f] | HTRW Projects in the Phase of EE/CA, RI/FS, RD, or RA-C without a RRSE. |
| 99 | Completed Project Phases. |

**Notes:**

[a] The Annual Workplan and life-cycle plan are funded in stages, with FUDS Priority Codes 01 through 05, 15, 21 through 27, and 30 being fully funded first. The second stage will be a limited set-aside funding, with amounts determined by HQUSACE for certain portions of FUDS Priority Codes 06 through 14 for BD/DR projects, 28 and 29 for high-risk MMRP projects, and 35 through 37 for CON/HTRW projects. The next stage of funding, which constitutes the majority of program funds, will be allocated in the following priority orders: FUDS Priority Codes 28 and 29 for high-risk HTRW projects, 28 and 29 for remaining high-risk MMRP projects, 31 and 32 for medium-risk HTRW and MMRP projects, 33 and 34 for low-risk HTRW and MMRP projects, 35 through 37 for remaining CON/HTRW projects, 6 through 14 for remaining BD/DR projects, and 38 for HTRW projects without remedy-in-place and without relative risk ratings.

[b] FUDS priorities 06 through 14 are not intended to be higher priorities than other project categories, but allow HQUSACE to set aside a limited amount of funding for BD/DR projects.

[c] S&A based upon expected placement of contract during the CY.

[d] HTRW projects will have higher priority than MMRP in order to meet DoD Goals for DERP. A set aside will be established for MMRP projects.

[e] Other UST removals under this priority must be justified by specific regulatory requirements subject to approval by HQUSACE.

[f] Priority 38 is primarily for the FYDP development and projects under this priority will be phased out when the SI phase under priority 30 is completed and projects get evaluated for relative risk.

6-1.2.2 *Formerly Used Defense Sites Program Priority Setting.* Priority setting for the development of the Annual Workplan and the Life Cycle Plan is determined by two approaches: the first is the FUDS risk management methodology, while the second uses the FUDS BD/DR and CON/HTRW prioritization systems.

6-1.2.2.1 *Risk Management Methodology*. The FUDS risk management methodology (See Table 6-3) is based on the DoD DERP risk management concept. It is to be used in developing POM exhibits, BES, and PRESBUD within PPBES, and will be used to develop the FUDS FYDP and CY/BY AWPs. The FUDS risk management methodology considers relative risk, legal agreements (see Table 6-2), and other aforementioned risk management factors. The FUDS Priority field in Table 6-3 is the code entered in the FUDSMIS, based on the various factors mentioned above.

6-1.2.2.2 *Prioritization for BD/DR and CON/HTRW*. The FUDS prioritization systems for BD/DR (see Table 6-3, FUDS Priorities 06 through 14) and CON/HTRW (Table 6-3, FUDS Priorities 35 through 37) will be used, as appropriate, to supplement the FUDS risk management methodology to rank response actions at BD/DR and CON/HTRW projects, respectively.

6-1.2.2.3 *Division/District Priority*. All eligible projects and all phases of work identified by Divisions and Districts for all eligible FUDS properties cannot be executed within a reasonable time because of the limited funding USACE receives in any given FY. Therefore, response actions at projects need to be further prioritized on the basis of this limited funding. This information is very important for the POM-Shift module to accurately predict the start of future response actions at projects. This will be done as follows.

- Each District establishes a numerical priority in "rank order" of greatest to least need for all projects in each project category (1 through total number of projects in each category). This numerical value is entered in the District Priority field in the FUDSMIS.
- Each Division compiles the various Districts' priorities again in rank order following the same procedure as the Districts. This numerical value is entered in the FUDSMIS in the Division Priority field.

6-1.2.3 *Formerly Used Defense Sites Program Prioritization Process*. Funding priority for the Annual Workplan and Life-Cycle Plan are determined in stages as follows (Refer to Table 6-3):

- *First priority*—Line items with FUDS Priority Codes 01 through 05, 15, 21 through 27, and 30.
- *Second priority*—A limited set-aside funding, with amounts determined by HQUSACE, for line items with FUDS Priority Codes 06 through 14 for BD/DR projects; 28 and 29 for high-risk MMRP projects, and 35 through 37 for CON/HTRW projects (Divisions and Districts must justify UST removals under the set-aside, subject to approval by HQUSACE [see Table 6-3]).
- *Third priority*—This stage of funding, which may represent the majority of AWP, is for line items with FUDS Priority Codes 28 and 29 for high-risk HTRW projects or remaining high-risk MMRP projects (a set aside will be established for MMRP projects).
- *Fourth priority*—Line items with FUDS Priority Codes 31 and 32 for medium-risk HTRW or medium-risk MMRP projects.

- *Fifth priority*—Line items with FUDS Priority Codes 33 and 34 for low-risk HTRW and low-risk MMRP projects.
- *Sixth priority*—Line items with FUDS Priority Codes 35 through 37 for remaining CON/HTRW projects.
- *Seventh priority*—Line items with FUDS Priority Codes 6 through 14 for remaining BD/DR projects.
- *Eighth priority*—Line items with FUDS Priority Codes 38 for HTRW projects without remedy-in-place and without relative risk ratings.

Division priority rankings for each project category will be considered within each prioritization stage indicated above.

## 6-2 Current Year Annual Workplan (AWP) Building and Maintenance.

6-2.1 HQUSACE will post in FUDSMIS the official AWP for the upcoming FY (approved by HQDA) for each Division, on or about 30 September (for further details of the workplan development process, see Paragraph 6-1). The total dollar amounts per Division in this workplan will be fixed for the year with exceptions as discussed in paragraph 6-2.4.

6-2.2 The official CY AWP will be updated each quarter to account for actual obligations and to adjust the remaining quarterly obligation plans as follows:

- The geographic military Districts will update the FUDSMIS working data by mid-December for the second quarter, by mid-March for the third quarter, and by mid-June for the fourth quarter CY AWP update. Refer to Table 6-1.
- Divisions will ensure the Districts have updated and balanced the POM in the FUDSMIS working data set as indicated in Table 6-1.
- HQUSACE will archive the FUDSMIS CY AWP working data set on the fourth Mondays of December, March, and June.
- HQUSACE will make the final adjustment to the archived data set.
- HQUSACE will make the POM balanced data set official.

6-2.3 The exchange of financial information from CEFMS to FUDSMIS facilitates the automatic recording of actual obligations into FUDSMIS. The following manual updating of FUDSMIS is required at least quarterly:

- The geographic military District will review the FUDSMIS reports, “CEFMS line items not listed in the CY AWP” and “Project Execution Accounting Report (PEAR) Code Exception Report”, to reconcile each line item either correcting the CEFMS PEAR code or adding it to the CY AWP.
- Within FUDSMIS, the geographic military District may add new projects to or delete projects from the CY approved program after approval by the geographic military Division.
- The geographic military Division will ensure that the Division total CY funding allocation is equal to the official POM.

- The geographic military District will update future quarter contracts and in-house estimates, including distribution changes by quarter. This update is critical as it determines the next quarter's allocation for Divisions and Districts. The next quarter's funding will be distributed, up to an amount equal to the next quarter's cumulative obligation plan minus the previous quarter's cumulative distribution.
- To meet DoD execution goals, the quarterly planned obligations in the AWP should exceed the minimum execution goals of 28, 55, and 80 percent for the first, second, and third fiscal quarters, respectively.

6-2.4 The geographic military Divisions have the delegated authority to substitute "similar" projects into the approved CY AWP. Similar projects are defined as projects having the same or higher FUDS priority, relative risk, and (when possible) the same funding category. The geographic military Divisions are authorized to deviate from the HQDA approved AWP distribution, as indicated in Table 6-4.

**Table 6-4**
**Allowable Deviation from HQDA Approved AWP**

| Funding Category | Allowable Deviation |
|---|---|
| Management and Support (M&S) | Cannot exceed. |
| HTRW | Cannot be less than. |
| CON/HTRW | Cannot exceed. |
| MMRP, including RCWM | 10% variation, plus or minus. |
| BD/DR | Cannot exceed. |
| PRP | Not limited, except by available funds within workplan |

6-2.5 Scoping and contract development of response actions for projects in the following year's (BY) AWP are encouraged at any time. In the fourth quarter, more substantial planning and scoping activities should be done on response actions for the following year's (BY's) projects using the CY funds.

6-2.6 The geographic military Divisions and their Districts will rearrange their current CY AWP to fund mandatory unexpected requirements. Except as allowed by HQUSACE, rearrangements must maintain the category limits provided above.

6-2.7 Geographic military Divisions that do not obligate at least 80 percent of their projected CY AWP amount by the end of third quarter will have funds withdrawn by HQUSACE for redistribution to other Divisions. These Divisions will be provided only M&S and in-house funding for the fourth quarter.

6-2.8 Geographic military Divisions may not program contracts awards in the fourth quarter. If a contract scheduled for third quarter award slips, it may be awarded in the fourth

quarter after coordination with HQUSACE and subject to the availability of funds and the Division's attainment of the 80 percent obligation goal at the end of the third quarter.

**6-3 Financial Budgeting and Costing Policy**. With respect to funds issued to the ER-FUDS account, the Army is responsible for ensuring that ER-FUDS funds are used only for environmental restoration activities at FUDS. The Army has no authority to shift, realign, or reprogram funds between any other Army account and the ER-FUDS account without prior ODUSD(I&E) approval and specific congressional authorization.

6-3.1 *Budgeting Supervision and Administration (S&A) on Remedial/Removal Action Contracts.* When Districts estimate costs for the FYDP, the S&A on all remedial/removal action contracts will be estimated at the current Operations and Maintenance Appropriation (OMA) S&A flat rate of the total RA-C contract cost, even though the actual cost of S&A may differ. For CY AWP, each geographic military District should plan its CY S&A expenditure capability within the current OMA S&A flat rate of the planned CY placement value, subject to policy revision. S&A rates should only be programmed for the amount of construction funding that can and will be expended in the current year. RA-O oversight will be performed at actual cost rather than a flat rate.

6-3.2 *Engineering During Construction (EDC).* When costs are estimated for the FYDP and the CY AWP, a 0.5 percent limitation based on the total contract cost will be used for estimating all EDC costs. This rate should be viewed as a limitation of engineering cost applied during the construction phase of work for a particular project. Any request for additional EDC must be approved by HQUSACE.

6-3.3 *Project Management Cost*. All geographic military District project management costs, which can be identified to a project, must be charged directly to that project.

**6-4 Funding Execution**. The geographic military Division FUDS Program Managers have complete control and accountability for that Division's funds and for ensuring that obligation goals are met.

6-4.1 *Establishment of Individual Accounts*. In coordination with CEMP-DE, CERM establishes individual accounts for LRD, NAD, NWD, POD, SAD, SPD, and SWD. These accounts will be funded at the beginning of each quarter or as funds become available, based on projected obligations for respective quarters as stated in the approved CY AWP. If DoD is under a Continuing Resolution Authority (CRA), USACE may not be fully funded on 1 October. Given this situation, first quarter accounts will be funded incrementally, usually on a 2-week basis, until the DoD Appropriations Act is signed into law and an allotment is received in CERM.

6-4.2 *Issuance of Funds*. To access their accounts, the geographic military Division FUDS Program Managers will forward a Funding Distribution Document (FDD) via e-mail to CERM with a copy furnished to CEMP-DE and CEMP-CE each time funds are requested. Upon receipt of the FDD, CERM will issue a Funding Authorization Document (FAD) in accordance

with guidance contained in the FDD. After the funds have been sent, CEMP-CE will notify the Division Program Manager that the funds have been sent.

6-4.3 *Funding Reconciliation Sheet*. CERM will provide a funding reconciliation sheet to CEMP-DE and CEMP-CE weekly at a minimum, or more frequently if needed, showing all funds that have been issued. CEMP-CE will provide a copy to each Division Program Manager.

6-4.4 *Army Management Structure Code (AMSCO) Level*. CERM will issue funds at the two-digit AMSCO level (i.e., 49). However, the remarks section of the FAD will state that the funds are for 493008.2 and 493008.5. The geographic military Division FUDS Program Managers have the authority to move funds among AMSCOs and between in-house and contract requirements, as deemed appropriate.

6-4.5 *Control of Funds Issuance*. The geographic military Divisions are responsible for issuing FDDs and may not delegate authority to Districts.

6-4.6 *Emerging Requirements*. The geographic military Divisions will fund emerging requirements such as TCRAs, projects with unexpected requirements, or prior-year contract modifications (when prior year funds are unavailable) by rearranging their CY AWP.

6-4.7 *FUDSMIS Requirements*. The geographic military District will be responsible for entering project names and other required project information into FUDSMIS to enable the system to generate valid PEAR codes. The FUDSMIS-generated PEAR codes will be the officially authorized codes, which will be used and eventually entered into other systems such as CEFMS. The PEAR codes in both FUDSMIS and CEFMS must be consistent and routinely verified by the Division and District PMs. All files must be kept up to date so that finance and accounting information can be reported upward from Districts and Divisions to HQUSACE and to higher authority.

6-4.8 *Geographic Military Division M&S Funding*. ER-FUDS M&S funds provide financial resources at each geographic military Division office for program management functions, such as program development, review, analysis, and oversight of District execution. The Division M&S allocation cannot be exceeded without authorization by HQUSACE. The geographic military Division FUDS Program Manager will manage the M&S budget, including the M&S funds allocated to Districts by the Division. FUDS M&S funds will not be used to support projects funded in the AWP. District offices have project funds for labor, travel, contract, training, supplies, and overhead costs. However, for general DERP-FUDS planning and programming functions only, Districts are allowed to charge against M&S funds as allocated by the Division. At the District level, the District FUDS Program Manager is responsible for managing the allocated M&S budget and ensuring its use to exclusively support FUDS planning and programming.

6-4.9 *Within Scope Contract Modifications*. Within scope contract modifications will be funded from the prior-year account that funded the original contract, if available. District Resource Management Offices shall determine the availability of prior funds within the District.

If prior year funds are not available within the District, a request for prior year funds will be forwarded to the Division FUDS Program Manager. If prior year funds are not available within the Division, the Division will contact CERM to determine if prior year funds are available. If prior year funds are available within the Division or at HQUSACE, a FDD citing the appropriation year of the funds required shall be sent by the Division to CERM. The FDD must indicate the prior year AMSCO, PEAR code, project name, project number, project phase, and a brief justification for the project modification. If prior year funds are not available, current year funds must be used.

6-4.10 *Management of Prior Year Funds.* Divisions and Districts must review FUDSMIS financial reports concerning the current status of prior year funding and periodically verify that all prior year unliquidated obligations are still valid. Divisions and Districts must ensure that DoD established goals for expenditure rates for individual fiscal years are met or exceeded (CFY-1 = 22%, CFY-2 = 67%, CFY-3 = 89%, CFY-4 = 95%, and CFY-5 = 100%). All unliquidated obligations that are no longer valid must be promptly deobligated and returned to HQUSACE.

6-4.11 *Solicitation Subject to the Availability of Funds (SAF).* Since FUDS is a high-priority program and there is a high probability that the contract requirement will not be cancelled, USACE contracting activities are authorized to issue contract solicitations and negotiate task orders before obtaining assurance of funds availability in accordance with Army *Federal Acquisition Regulation* (AFAR) 5101.602-2(a)(ii)(B). Appropriate statements will be included in the requests or solicitations as referenced in the AFAR.

## 6-5 Monitoring of Current Year Workplan Execution.

6-5.1 Headquarters will monitor Division obligations monthly, at a minimum, or as necessary.

6-5.2 Divisions will be evaluated against the updated workplan guidance criteria for category dollar amounts and obligation goals. Obligation goals shall meet the higher of the following:

6-5.2.1 DoD goals of 28 percent (first quarter), 55 percent (second quarter), 80 percent (third quarter), and 100 percent (fourth quarter) cumulative obligation, as a percentage of the updated CY AWP.

6-5.2.2 USACE goal of 90 percent of the Division's scheduled quarterly obligations in the AWP.

6-5.3 Divisions will monitor District obligations monthly, at a minimum.

6-5.4 Divisions will provide information to HQUSACE as requested for the workplan briefing to HQDA.

## 6-6 Unfunded Requirements (UFR).

6-6.1 *General*. The FUDS UFR is a comprehensive listing of all known critical FUDS projects that (i) were not able to be included in the CY AWP because of overall program funding constraints and (ii) have the potential to become an issue requiring resolution at the HQDA level or above. The FUDS UFR **IS NOT** intended to be a "wish list" or a "capability" exercise, but rather a legitimate attempt to clearly identify those known unfunded response actions for projects where the most significant impact is expected.

6-6.2 *Purposes of UFR*. These UFRs could be a result of statutory impacts, Congressional interest, regulatory interest, public interest, schedule impacts, or other requirements. The FUDS UFR listing serves the following purposes:

6-6.2.1 A "heads up" for HQDA to identify known specific potential significant program impacts that may be raised to their level for resolution due to an overall funding shortfall.

6-6.2.2 Specific backup for HQDA to solicit additional current year FUDS funding when the opportunity presents itself.

6-6.3 *UFR Prioritization*.

6-6.3.1 UFR will be established in FUDSMIS upon establishment of the official BY AWP within FUDSMIS in September of each year, as follows:

- Districts assemble a prioritized listing of UFR in FUDSMIS.
- Divisions prioritize their District's prioritized lists.
- HQUSACE prioritizes the listing for each property.
- HQUSACE makes the UFR listing official.

6-6.3.2 If additional funding becomes available, response actions for projects in the UFR list will be executed in priority order and FUDSMIS updated accordingly.

6-6.3.3 The UFR list will be updated as requested by HQUSACE.

## 6-7 Programmatic Closeout – No DoD Action Indicated (NDAI) Decision Making and Criteria.

6-7.1 *General*. NDAI determinations are USACE programmatic decisions intended solely to assist USACE in demonstrating its accomplishment of DERP program goals and objectives to Army and DoD. NDAI determinations will be reevaluated by USACE should new information become available that provides reasonable grounds to believe that DoD activities, carried out on the property while it was in DoD ownership, justify USACE undertaking further investigations. NDAI determinations are recorded in FUDSMIS. NDAI determination can directly result in a project closeout without regulatory concurrence only (i) in the case of BD/DR projects that are based entirely on safety issues, not environmental response actions, or (ii) PRP

projects where USACE negotiates a fair and equitable settlement representing DoD's contribution for contamination at the property and response actions are performed by other PRP(s).

6-7.2 *Regulatory Notice of NDAI Determinations.* USACE shall provide the lead regulator with notice and opportunity to comment on property and project level NDAI determinations. Regulator concurrence is not required for NDAI determinations but is required for regulatory closeout of the property or project as discussed in Chapter 4.

6-7.3 *NDAI Decision Making*. Decisions to recommend a FUDS property or project as NDAI, or to proceed with site-specific response actions, are made based on available information. NDAI decisions will be fully supported by documentation contained in the project file.

6-7.4 *NDAI Categories*.

6-7.4.1 *Property Level NDAI Decisions*. Property level NDAI decisions can be made based on the results of the INPR if the property is (i) categorically excluded for consideration under the FUDS program, (ii) not eligible for consideration under the FUDS program, or (iii) eligible but no potential hazards were identified. Before making this decision, the USACE District shall coordinate this determination with the property's lead regulator. This will allow the lead regulator the opportunity to provide new information that may affect the USACE final determination.

6-7.4.2 *Project Level NDAI Decisions*. Project level NDAI decisions can be made at several different points in the FUDS process, resulting in four Project level NDAI decision categories, each with unique decision criteria. Table 6-5 provides the framework for FUDS project designations and associated NDAI considerations.

6-7.4.2.1 *NDAI-I Decisions*. Category-I NDAI decisions are made following the FUDS Project Screening (FPS) where USACE has determined that the hazards found were not attributable to DoD, or if, for policy reasons, the project is not approved.

6-7.4.2.2 *NDAI-II Decisions*. Category-II NDAI decisions are made by the USACE based on the results of a SI after USACE has determined that hazardous substances, military munitions or their constituents, or petroleum products or their derivatives do not pose risk to human health or the environment or pose an explosives safety hazard warranting further studies.

6-7.4.2.3 *NDAI-III Decisions*. Category-III NDAI decisions are made by the USACE based on the results of the RI (and FS if required) after USACE has determined that hazardous substances, military munitions or their constituents, or petroleum products or their derivatives do not require further response actions. Refer to the discussion of transitioning from NTCRAs to the remedial process in paragraph 4-5.5.

6-7.4.2.4 *NDAI-IV Decisions*. Category-IV NDAI decisions are made by the USACE when a response action, or an equivalent effort for a CON/HTRW or BD/DR project, have been completed. If LTM is required as part of the response action, NDAI-IV cannot be declared until the LTM is completed.

6-7.5 *NDAI Criteria Summary*. Table 6-5 presents a summary of the criteria applicable to each NDAI criterion, and shows the relationship of NDAI decisions to reporting terms such as "response complete" and "project closeout" that are used to measure and track progress in FUDSMIS. Figure 6-7 shows the FUDSMIS coding for requirement for NDAI decision points.

**Table 6-5**
**Framework for FUDS Project Designations and Associated NDAI Considerations**

| | **INPR Efforts**[1,2] | **SI Efforts**[2] | **RI/FS Efforts** [2] | **RA Efforts**[2] |
|---|---|---|---|---|
| **NDAI Criteria** | INPR/PA report indicates no further DoD response action required. | SI report indicates no further DoD response action required. | RI/FS report indicates no further DoD response action required. | All DoD response actions taken |
| **NDAI Category** | Category-I NDAI Decision | Category-II NDAI Decision | Category-III NDAI Decision | Category-IV NDAI Decision |
| **DoD Progress Measurement Terminology** | Response Complete (RC) | Response Complete (RC) | Response Complete (RC) | • Remedy In Place (RIP)<br>• Response Complete (RC) |

Notes: 1. Includes the determination of FUDS eligibility or CERCLA Preliminary Assessment phase.
2. Efforts include equivalent activities under RCRA.

**6-8 Declaration of Project Closeout Decisions.** At the completion of a project phase, the PM will prepare and sign a Project Declaration Statement that serves to summarize the project documents and affirm that either (i) no further response action is required and the project should be declared NDAI or (ii) additional response action is required and follow-on phases should be conducted. Appendix C contains the Project Declaration Statements worksheet C-2 and instruction for use.

**6-9 FUDSMIS Entries for NDAI Decision.** Figures 6-8 and 6-9 provide guidance on entering key decision point information into FUDSMIS based on FUDS property and project eligibility status.

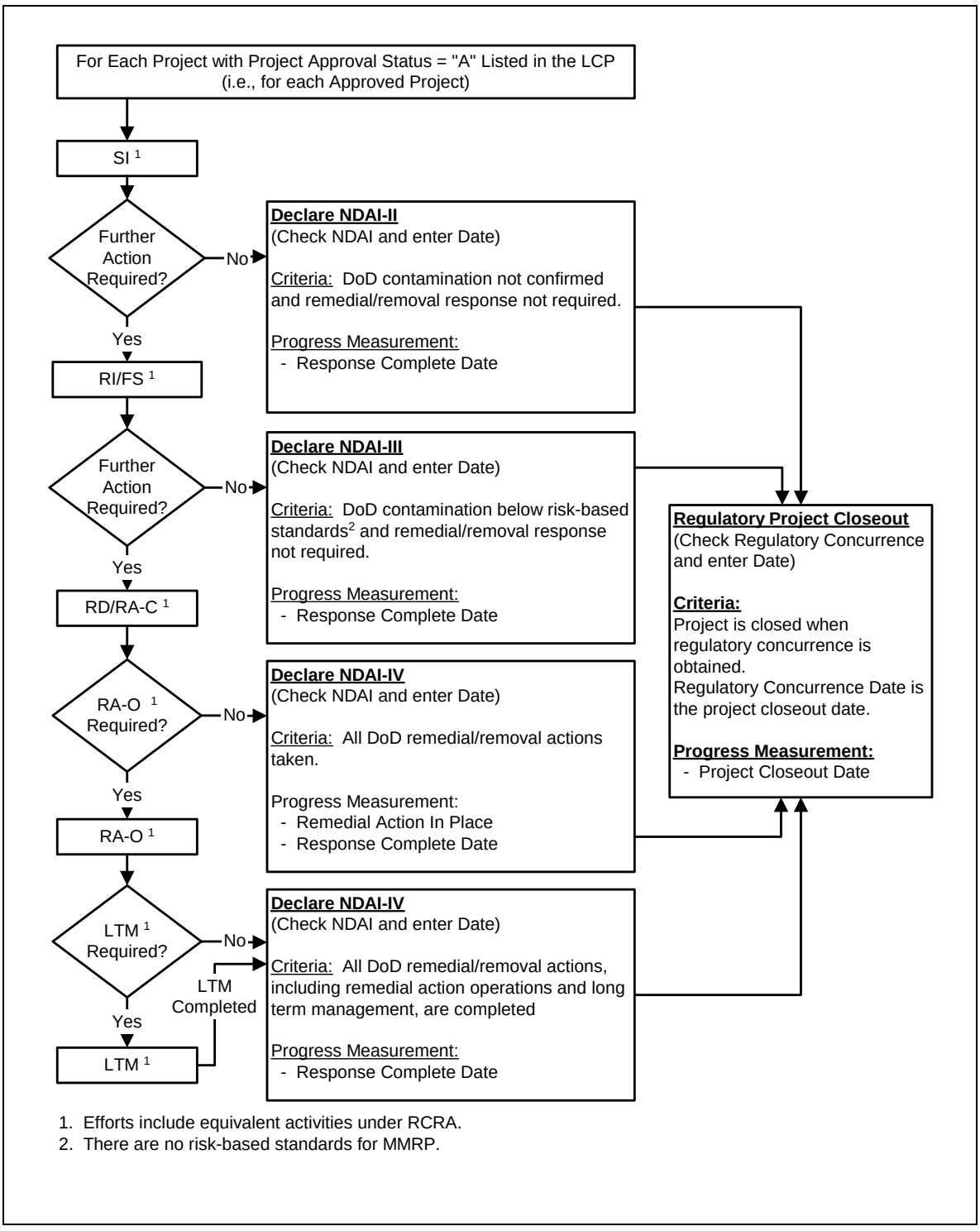


**Figure 6-7. Project Process Flow Chart and FUDSMIS Coding Requirements for NDAI Decision Points.**

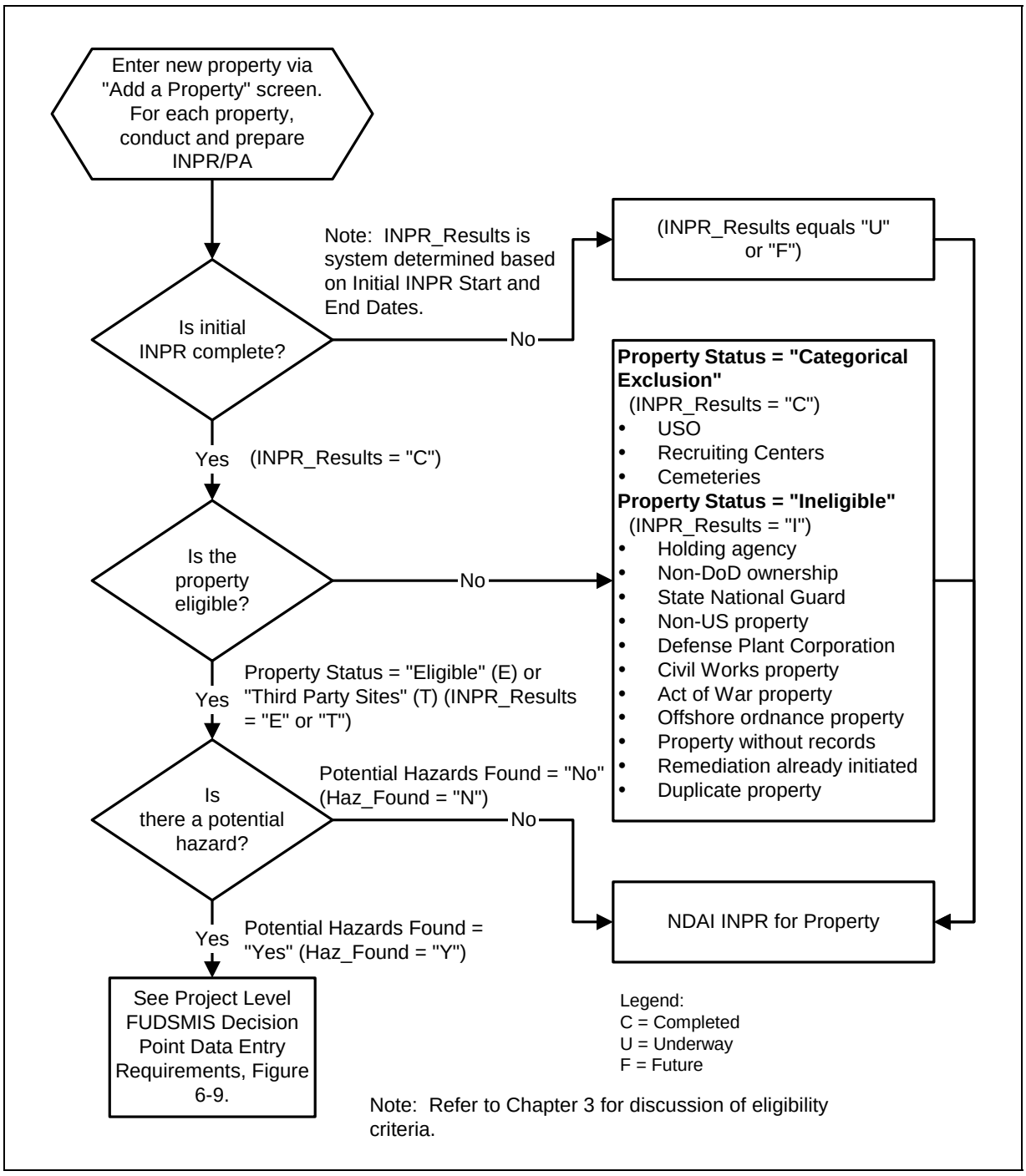


**Figure 6-8. Property Level FUDSMIS Decision Points for Data Entry Requirements.**

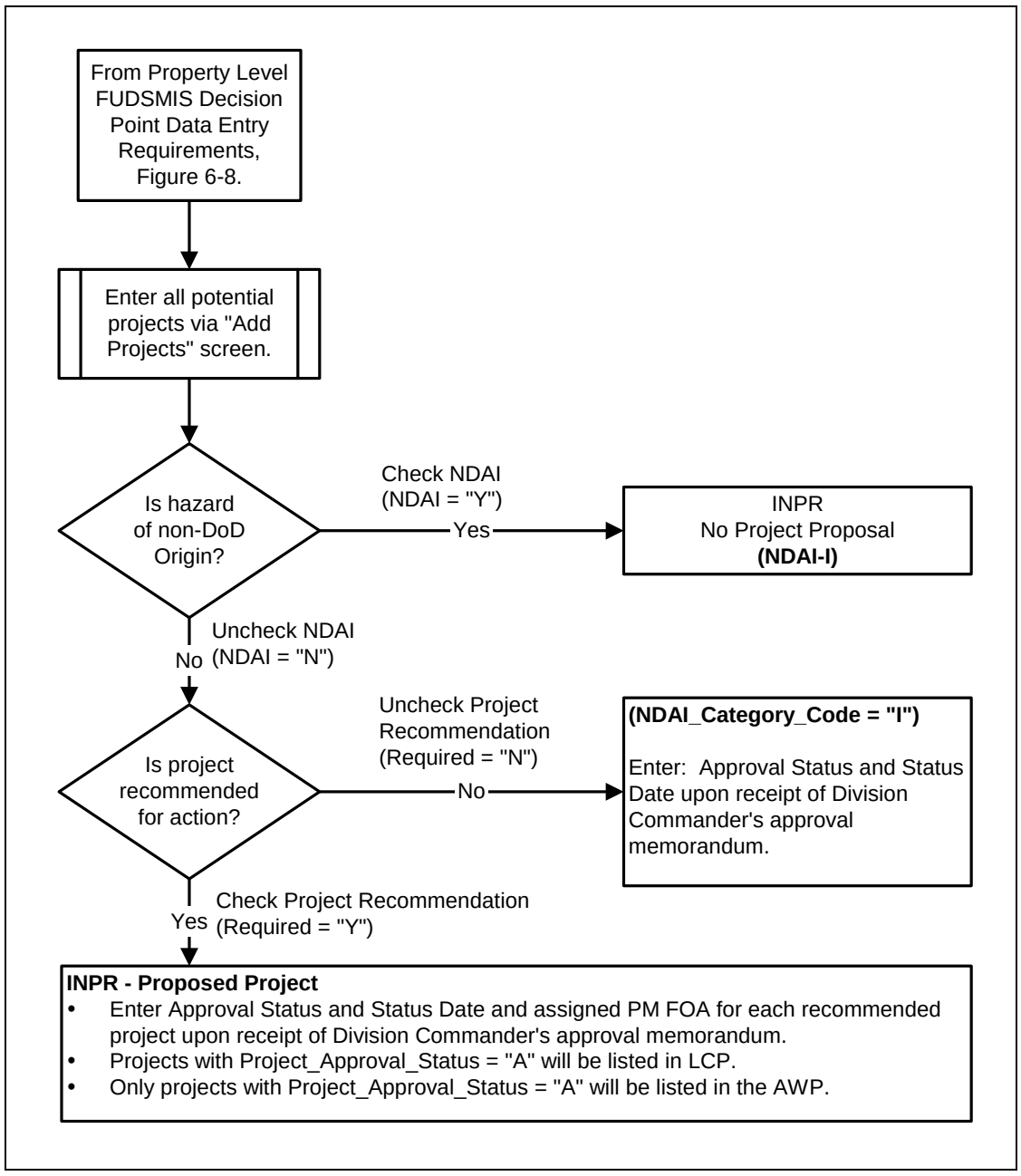


**Figure 6-9. Project Level FUDSMIS Decision Points for Data Entry Requirements.**

## 6-10 Property Specific Management Action Plans (Property Specific MAP).

The property specific MAP is a key document for managing all projects at a FUDS property. The property specific MAP is generated by FUDSMIS and summarizes funding for project response actions, schedules, and other information for the life cycle of the property, as discussed in the paragraph below. It is the basis for input into program planning, budget development, and execution decisions. The PM, in coordination with the PDT, is responsible to input and update the data in FUDSMIS that generates the property specific MAP. Stakeholders, such as the regulatory and community members of a Restoration Advisory Board (RAB), will be given the opportunity to provide input to the MAP. Property specific MAPs with PRP projects must be coordinated with Counsel before release outside USACE. The property specific MAP should be referenced in the individual Project or Program Management Plans required by ER 5-1-11. The property specific MAP is used to develop the SMAP discussed in Chapter 9.

6-10.1 *Content*. The property specific MAP contains the following elements at the individual project level.

- The environmental restoration history (i.e., a list and description of all response actions taken).
- Current project status, based on the current data in the FUDSMIS.
- RRSE status and category, a RAC status, or RAC category, or all three.
- A list of contaminants of concern and military munitions and their constituents known or suspected of being present.
- A list of all identified environmental restoration requirements.
- An outline of the technical approach being taken for project characterization and removal or remedial activities.
- An exit strategy to achieve RIP/RC and regulatory closeout for projects with response actions underway at a property.
- Prior year funding and current year funding.
- Estimates of future costs, by fiscal year, for the remainder of the response process (the requirements that appear in the POM and budget submittals shall match those that are identified and sequenced in the MAP).
- Past and future milestones, goals, and schedules.
- Justification for funding response actions for projects that are categorized as medium or low relative-risk or RAC 3 or 4 ahead of response actions for projects that are categorized as high relative-risk or that are RAC 1 or 2.

6-10.2 *Property Specific MAP Updates*. The property specific MAP is intended to be a living document, and should be kept current for all FUDS properties with future environmental restoration requirements. At a minimum, property specific MAPs should be updated annually. Stakeholders, such as the regulatory and community members of a property's RAB, should be involved in preparing and updating the property specific MAP.

# Chapter 7
# FUDS Program Performance and Quality Management

## 7-1 Quality System Requirements and Implementation.

7-1.1 *Quality System Requirements*. Execution of FUDS activities must include a process that ensures the quality of property, project, and phase information. All USACE organizational elements engaged in FUDS activities share responsibility in this quality management process.

7-1.1.1 *Quality System Manager (QSM).* The FUDS Program Manager at a geographic Military Division is the QSM responsible for implementation and oversight of the quality management process at the regional level. The FUDS Program Manager at a geographic Military District is the QSM responsible for implementation of the quality management process at the district level.

7-1.1.2 *Quality Assurance/Quality Control Management Plan (QMP).* Beginning in FY05, the geographic military Division FUDS Program Manager will develop by the end of first quarter and update, when necessary, a Division QMP for property, project, and phase information. Examples of information that must be addressed in the QMP include relative risk and RAC scores, CTC estimates, accuracy, and completeness of FUDSMIS data elements, records management, and others as required by the FUDS Program Management Indicators.

7-1.2 *Quality System Implementation.* The geographic military Division FUDS Program Manager will routinely assess the effectiveness of the QMP implementation by the Districts, report assessment results to HQUSACE (CEMP-DE) at the end of October for the prior fiscal year, and implement corrective actions, if necessary, based on assessment results. The CEMP-DE will establish overall guidance, direction, and priorities for the FUDS Quality System, provide program oversight, and conduct periodic reviews. The CXs will be available to assist CEMP-DE, Division, and District elements in developing, implementing, and maintaining the quality system for FUDS property, project, and phase information.

## 7-2 FUDS Program Management Indicators (FPMI).

7-2.1 HQUSACE developed the following management indicators to evaluate Divisions' and Districts' performance and to measure and demonstrate progress toward the mission of cleaning up DoD-eligible contamination at FUDS. FPMIs are internal USACE FUDS program measures created in response to the *Government Performance and Results Act* (GPRA), which was enacted to reduce waste and inefficiency in the Federal Government. GPRA was designed to hold Federal agencies accountable for achieving program results and requires the setting of program goals, measuring program performance against those goals, and reporting publicly on their progress. In addition, DoD establishes overall goals for its programs, in accordance with Federal financial accounting and auditing requirements. FPMIs are needed to provide USACE with meaningful and compelling information justifying the program's effectiveness and the need for increased funding.

7-2.2. Table 7-1 contains the FUDS Program Management Indicators used to evaluate performance of the FUDS Program.

**Table 7-1**
**FUDS Program Management Indicators**

| Requirement/Driver[1] | FUDS Program Management Indicator | How to Measure? |
|---|---|---|
| ***FPMI Objective 1.*** | | |
| Outlined in *DoD Management Guidance for the DERP,* Chapter 15; CFOA, FFMIA, GMRA, GPRA, SFFAS No. 5 and 6[2] | Project CTC updates where CTC changes ± 10%; adequate documentation of CTC and changes | Query of FUDSMIS data elements[6]; internal audits |
| | Relative risk and RAC scores updates | |
| *DoD Management Guidance for the DERP,* Chapter 14 | Division POMs balanced against overall POMs | Query of FUDSMIS data elements |
| ***FPMI Objective 2.*** | | |
| Outlined in *DoD Management Guidance for the DERP,* 13.4.1—OSD must review progress toward goals established in the DoD Goals for DERP that are established in FFAA Technical Release No. 2. Measures of Merit (MOMs) for the Installation Restoration program category have been established to provide status to date and projection of future progress. Refer to the Army Environmental Cleanup Strategic Plan. | MoM R1—Relative-risk reduction. Tracks and projects relative-risk reduction by year. | Query of FUDSMIS data elements |
| | MoM R2—Phase progress. Tracks and projects progress through program phases by year (phases are investigation, response action, and response complete) | Query of FUDSMIS data elements |
| | MoM R4—RIP and RC completion. Tracks and projects progress of projects achieving final RIP/RC by year. | Query of FUDSMIS data elements |
| ***FPMI Objective 3.*** | | |
| *DoD Management Guidance for the DERP,* 13.4.2—Outlines PMIs to complement the MoMs. | Restoration Advisory Board (RAB) establishment and expenditures | Query of FUDSMIS data elements, internal audit |
| ***FPMI Objective 4.*** | | |
| DoD Comptroller-mandated; outlined in DoD Financial Management Regulations (FMR), DoDI 70014.R | Program obligations and outlays vs. DoD execution goals | Query of FUDSMIS data elements; CEFMS |
| Army Environmental Cleanup Strategic Plan. | AWP obligations (dollars by risk, project category, and phase). | Query of FUDSMIS data elements. |

| Requirement/Driver[1] | FUDS Program Management Indicator | How to Measure? |
|---|---|---|
| Army Environmental Cleanup Strategic Plan. | AWP progress towards RIP/RC and phase completion. | Query of FUDSMIS data elements. |
| ***FPMI Objective 5.*** | | |
| DoD Goals for DERP (FFAA Technical Release No. 2); outlined in *DoD Management Guidance for the DERP,* Chapters 5, 9.4, 16.3, 16.4, and *DoD Relative Risk Site Evaluation Primer* | Progress toward completion of relative risk and RAC evaluations (as percentage of total projects in inventory for current FY) | Query of FUDSMIS data elements |
| Interim steps toward DoD Goals for DERP (*DoD Management Guidance for the DERP,* Chapters 9.4, 13.4) | Progress toward completion of SI's (as percentage of total projects in current inventory) | Query of FUDSMIS data elements |
| Interim steps toward DoD Goals for DERP (*DoD Management Guidance for the DERP*, Chapters 9.4, 13.4) | Progress toward completion of INPRs (as percentage of total projects in current inventory) | Query of FUDSMIS data elements |
| *DoD Management Guidance for the DERP*, Chapter 16; FFAA Tech Release No. 2; Chapter 6 (category targets)[4] | Program priorities for current-year workplan and FYDP: actual vs. target project categories, projects, and phases | Query of FUDSMIS data elements (POM Distribution screen); CEFMS |
| *DoD Management Guidance for the DERP*, Chapters 9.4.3, 13.1.3, and 13.2.2.2 | Number and percentage of projects declared NDAI | Query of FUDSMIS data element |
| USACE ER 200-3-1, Chapter 4; *DoD Management Guidance for the DERP,* Chapters 13 and 24 | Number of projects completed with regulatory project closeout achieved | Query of FUDSMIS data elements |
| *DoD Management Guidance for the DERP,* Chapter 13.6 (In Progress Reviews) | Studies vs. cleanup to meet goals by Program and Division | Query of FUDSMIS data elements; CEFMS |
| *DoD Management Guidance for the DERP,* Chapter 13 (related to Moms) | Individual and cumulative duration of phases for Projects | Query of FUDSMIS data elements. |
| *Performance based contract (PBC), FAR 37.601, DFARS 237.170* | Percentage of dollars for PBC awarded compared to total contract dollars awarded in support of the FUDS program per FY | Query of FUDSMIS data elements, internal audit. |
| ***FPMI Objective 6.*** | | |
| *DoD Management Guidance for the DERP,* Chapters 14.2.5, 15.5.4, (23 for 5-yr reviews); CFOA[3] | Accuracy and completeness of FUDSMIS data elements (e.g., lat/long info supplied, uncosted projects, DIV/DIST priorities, LUCs, Five-Year Review planning) | Query of FUDSMIS data elements, internal audit |

| Requirement/Driver[1] | FUDS Program Management Indicator | How to Measure? |
|---|---|---|
| ***FPMI Objective 7.*** | | |
| *DoD Management Guidance for the DERP,* Chapter 19 (records mgmt)[5] | Establishment of Project Administrative Record and permanent Project File | Query of FUDSMIS data elements, Internal audits |
| ***FPMI Objective 8.*** | | |
| TAPP Rule; *DoD Management Guidance for the DERP,* Chapters 10 and 11 | Coordination with EPA/state/Federal/tribal stakeholders | Survey, internal audit |
| ***FPMI Objective 9.*** | | |
| *DoD Management Guidance for the DERP,* Chapter 13 (report M&S) | Ratio of in-house and M&S expenditures to Full Time Equivalents | CEFMS and FTE Model |
| ***FPMI Objective 10.*** | | |
| *DoD Management Guidance for the DERP,* Chapter 13 (ESOH Management Review reporting) and Chapter 20 | Ability to communicate successes and efficiencies of the program (via number of success stories submitted annually Goal: at least three per Division) | ARC submittals |

Notes:
1. Legislative and regulatory drivers for all reporting requirements include: CERCLA of 1980, as amended by SARA of 1986; Defense Environmental Restoration Program, 10 USC Sections 2701-2708, 2805, and 2810; Executive Order 12580, Superfund Implementation; Executive Order 13016, CERCLA Amendments (Amends 12580); NCP, 40 CFR Part 300; DoD Directive 4715.1, Environmental Security; and DoD Instruction 4715.7, Environmental Restoration Program.
2. Cost to complete estimates are required by the *Chief Financial Officers Act* of 1990 (CFOA); *Federal Financial Management Improvement Act* of 1996 (FFMIA); *Government Management Reform Act* of 1995 (GMRA); *Government Performance and Results Act* of 1993 (GPRA); Statements of Federal Financial Accounting Standards (SFFAS) No. 5, Accounting for Liabilities of the Federal Government, and No. 6, Accounting for Property, Plant, and Equipment; DoD Instruction 7000.14R, DoD financial Management Policy and Procedures, 15 November 1992; and DoD Financial Management Regulations (FMR) 7000.14, December 1996, October 1999, May 2001, and June 2001.
3. QA/QC of MMRP data elements is also required by FYDP Structure Changes (2000–07), Deputy Director Program Analysis and Evaluation Memorandum, 30 December 2000 (the UXO Program Element).
4. DoD goals are established in the DoD Goals for DERP, contained in Federal Financial Accounting and Auditing Technical Release No. 2., Determining Probable and Reasonably Estimable Costs for Environmental Liabilities in the Federal Government
5. Administrative records are also required by U.S. Environmental Protection Agency (EPA) Office of Solid Waste and Emergency Response (OSWER) Directive 9833.3A-1.
6. USACE believes specific data elements already exist within FUDSMIS to measure the FPMI and will be specifically identified from within the FUDSMIS data dictionary. USACE plans that these can be accessed through an electronic link to the database that allows the “download” of specific tables (that correspond to FUDSMIS screens). The tables are copied into a Microsoft Access file created by the individual user and then queried for specific elements to provide counts of project/phase/activity/status, expenditures, etc., used for FPMIs.

**7-3 FUDS Program Measures of Merit.** Table 7-2 lists and describes the Measures of Merit (MoM) for the DERP. DoD computes the MoM tables for the semiannual ESOH In-Progress Reviews.

**Table 7-2**
**DERP Measures of Merit**

| MoM | TITLE | REPORT PERIOD | DESCRIPTION |
|---|---|---|---|
| 1 | Relative Risk Reduction | Semiannual | Number of projects by fiscal year in categories of high relative risk, medium relative risk, low relative risk, risk not evaluated, and evaluation not required. |
| 2 | Phase Progress | Semiannual | Number of projects by fiscal year in phases of analysis (PA, SI, RI/FS, or EE/CA underway); cleanup (RD, RA-C, or RA-O underway); and response complete/NDAI (has actual response complete/NDAI date or in the long-term monitoring phase). |
| 3 | Milestones Accomplished | Semiannual | Number of projects by fiscal year with work initiated (PA, SI, RI/FS, EE/CA, RD, or RA-C underway); action taken (IRA or RA-C complete); remedy in-place (has actual remedy in-place date); and response complete (has actual response complete date). |
| 4 | Properties Achieving Final RIP/RC | Semiannual | Properties achieving final RIP/RC. This MoM shows the number of properties that have all their projects in the RIP/RC category. The desired trend is to increase the number of properties in RIP/RC. |

## 7-4 FUDS Program Management Plan (PgMP).

7-4.1 The *"Army Environmental Cleanup Strategy"* provides a roadmap that guides the Army in attaining its environmental cleanup vision. The primary purpose of this strategy is to identify common objectives, thus creating consistency and accountability across the Army's Cleanup Program. The strategy defines the Army's cleanup vision, identifies uniform cleanup program objectives, describes the various Army cleanup program areas, provides a mission statement for each program area, and briefly describes cleanup resources and cleanup strategy management.

7-4.2 The *"Army Environmental Cleanup Strategic Plan"* provides a framework for implementing the *"Army Environmental Cleanup Strategy"* and identifies specific objectives,

targets, success indicators, reporting mechanisms, and management review processes for each of the cleanup program areas. Implementing guidance for the Army Environmental Cleanup Strategic Plan required USACE develop a FUDS PgMP, providing details on projects and initiatives required to achieve each objective and target in the *Strategic Plan*. This PgMP is updated annually, at a minimum, and is the basis for delivering quality products and/or services, assisting the program delivery team (PgDT) to maintain a constant focus on the customers' needs, wants, and expectations.

7-4.3 Consistent with the USACE Project Management Business Process (PMBP), beginning in FY05, the geographic military Division FUDS Program Manager will develop and update, when necessary, an annual Division FUDS PgMP to establish the regional-level FUDS program goals, objectives, and priorities in accordance with the objectives and targets of the "Army Environmental Cleanup Strategic Plan." The FPMIs and DERP Measures of Merits shall also be considered in development of this PgMP. The Division Program Manager must submit the annual PgMP to CEMP-DE by the end of first quarter, which will serve as the basis for developing an overall FUDS PgMP.

## 7-5 Permanent Project File Requirements.

7-5.1 *Introduction.* Project records for all FUDS projects will be retained in accordance with AR 25-400-2 that prescribes the Army Records Information Management System (ARIMS). PMs will become familiar with the requirements of the ARIMS regulation and will maintain project records accordingly. All records contained in the Administrative Record file will be included in the permanent Project File. However, not all permanent Project File documents should be included in the Administrative Record file. PMs must ensure that only appropriate documents are placed in the Administrative Record file per EP 1110-3-8 instructions.

7-5.2 *Documents to Retain.* A list of documents to be retained in the permanent Project File is included in Table 7-3. PMs will ensure that a copy of each of these documents generated during execution of work at the project is labeled and retained according to the instructions in the following paragraphs and AR 25-400-2. Electronic files may be used as long as ARIMS requirements for such are followed.

7-5.3 *Document Labeling.* All documents will be labeled according to ARIMS labeling requirements. Specific ARIMS numbering requirements for documents are included in Table 7-3. ARIMS document labeling requirements are in addition to those required for the index numbering done for Administrative Record file documents. The most current index can be accessed from the Project Information Retrieval System (PIRS) home page.

7-5.4 *Document Retention Time*. All project documents included in the permanent Project File and the Administrative Record file are considered permanent according to AR 25-400-2 ARIMS requirements and are not to be destroyed. Permanent records should be held for 3 years following completion of activities at the project in the District and then retired to the servicing Federal Records Center. However, records may be held longer in the District if the PM determines a need to keep the documents.

**Table 7-3**
**Document Retention and Labeling Guidelines**

| Type of Document [1] | ARIMS Number [2] | Included in Administrative Record File [3] |
|---|---|---|
| Complete INPR [4] and supporting documentation | 200-1e | X |
| Correspondence having impact to the project | 200-1e | X |
| Correspondence with regulators, the public, and stakeholders | 200-1e | X |
| Copies of critical emails affecting project decisions | 200-1e | X |
| MMRP Appendix to the Preliminary Assessment Report | 200-1e | X |
| ASR Findings Report [9] | 200-1e | X |
| ASR Conclusions and Recommendations Report [9] | 200-1f | |
| ASR RAC Score and supporting documentation [9] | 200-1e | X |
| Final Scopes of Work [10] | 200-1f | |
| MM CX Project Fact Sheet [9] | 200-1e | X |
| MM CX RAC Score and supporting documentation [9] | 200-1e | X |
| Workplans (Including Sampling and Analysis Plans) | 200-1e | X |
| Progress Reports [5] and Trip Reports | 200-1e | X [5] |
| Interagency Agreements/Memoranda | 200-1e | X |
| ARAR determinations | 200-1e | X |
| Chain-of-Custody forms for analytical sampling | 200-1e | X |
| Validated Sampling Data | 200-1e | X |
| Work registers and logs [5] | 200-1f | |
| Anomaly Review Board Documents | 200-1e | X |
| Removal Response Reports | 200-1e | X |
| On-Scene Coordinator Reports | 200-1e | X |
| Final Reports (PA, SI, RI, FS, EE/CA, etc.) | 200-1e | X |
| Relative Risk score and supporting documentation | 200-1e | X |
| Final Cost-to-Complete used in remedy selection | 200-1e | X |
| Cost-to-Complete RACER Report (“Jumbo Report”) | 200-1f | |
| Risk Assessments and/or Risk Screenings | 200-1e | X |
| Proposed Plans | 200-1e | X |
| Final Decision Documentation [6] | 200-1e | X |
| Amendments to final decision documentation | 200-1e | X |
| Remedial/Removal Designs | 200-1f | |
| Operations and Maintenance Plans | 200-1f | |
| Construction and Operation and Maintenance Work Logs [5] | 200-1f | |
| Site Completion/Closeout Documentation | 200-1f | |
| PRP Project Closeout Report | 200-1f | |
| Mailing Lists | 200-1f | |
| Community Relations Plan | 200-1e | X |
| Briefing Papers | 200-1e | X |
| Project Fact Sheets/Newsletters | 200-1e | X |
| News Clippings and Press Releases | 200-1e | X |
| Meeting minutes/transcripts for all public meetings | 200-1e | X |
| RAB/Technical Review Committee meeting minutes/transcripts | 200-1e | X |
| Internal Review Comments (contractor’s and Corps’) | 200-1f | |
| Public and RAB/TRC comments | 200-1e | X |
| Written responses to Public/RAB/TRC comments | 200-1e | X |
| Public Notices [7] | 200-1e | X |
| Documentation pertaining to Congressional inquiries | 200-1f | |

| Type of Document [1] | ARIMS Number [2] | Included in Administrative Record File [3] |
|---|---|---|
| Freedom of Information Act Documents (requests, responses, etc.) | 200-1f | |
| Real Estate Documentation | 200-1f | |
| Attorney Privileged Information [8] | 200-1f | |
| Dispute Documentation | 200-1f | |
| PRP related documents | 200-1f | |
| Institutional Controls/LUC requirements and supporting documents | 200-1e | X |
| Five-Year Review Plans and Reports | 200-1e | X |

Notes:

1. Each type of document listed includes those for all project phases. For example, the "workplan" entry in the table means workplans for the SI, RI/FS, EE/CA, or Design phases.
2. In some instances, two different ARIMS numbers may be appropriate for a given document. This table identifies the most appropriate number to use and PMs should use the numbers assigned in this table. The numbers used in the table are as follows:
   - 200-1e – Army Environmental Restoration Administrative Record.
   - 200-1f – Environmental Restoration Project Files (documents after the ROD/DD).

   Both categories require permanent retention of documents.
3. Documents marked for inclusion in the Administrative Record file reflect minimum requirements. Other documents may be included per instructions in EP 1110-3-8. PMs need to check the EP for additional guidance on Administrative Record file requirements.
4. A complete INPR includes all those components identified in Appendix B of this ER.
5. Include only if they contain information affecting execution of activities at the project or critical project decisions, or both.
6. Includes documentation of NDAI determinations, Decision Documents for non-NPL remedial responses, RODs for NPL projects, and Action Memoranda for removal actions.
7. Includes notices of availability of Administrative Record file, Public Comment Periods, Public Meetings, etc.
8. Must be protected from unauthorized release.
9. These documents are no longer prepared for MMRP projects, but must be retained if the documents already exist.
10. Contracting documents are formally maintained in the contracting office according to regulation and should not be included in the permanent Project File. Working copies may be kept by the PM until no longer needed.

7-5.5 *Electronic Submission of Project Documents and Data.*

7-5.5.1 *Project Documents.* Districts will provide all environmental permanent Project File documents in electronic format to the Rock Island District for uploading to the Project Information Retrieval System (PIRS). PIRS is the USACE centralized electronic document storage system for FUDS permanent Project Files. Contact the Rock Island District for details on electronic format requirements. In addition to the electronic submission, one printed copy of the documentation (that will not be returned) will be provided to the Rock Island District, if available, for quality assurance purposes.

7-5.5.2 *Staged Electronic Data Deliverable (SEDD).* All environmental laboratory chemistry data produced for appropriate FUDS project classifications (except BD/DR) shall be provided in the SEDD format. The SEDD is a specification for developing standardized electronic deliverable formats for environmental analytical data and is designed to be Agency and Program neutral. The actual electronic data delivered is called an Electronic Data Deliverable (EDD). The analytical data delivered by laboratories include sample identification, laboratory measurements, and laboratory quality control information. Details on the SEDD format are given in the SEDD Specification. The complete SEDD Specification and the SEDD Specification Appendix A (Data Element Dictionary) can be downloaded from the USACE HTRW CX web site.

7-5.5.2.1 *SEDD File Management*. All original SEDD data files shall be archived and under direct control of the USACE District PM and sent to PIRS for inclusion in permanent Project File documentation. In addition, the validation criteria used to review the laboratory data along with any outputs from the electronic validation tools shall also be archived. All sample location data shall also be archived in an eXtensible Mark-up Language (XML)-based electronic format such that it can be readily linked to the laboratory-generated data.

7-5.5.2.2 *Additional Assistance*. The HTRW CX can assist Project and laboratory personnel to better understand what SEDD is and how to implement it. This includes how to choose the correct Stage of SEDD and how to choose appropriate data validation guidelines. The HTRW CX will provide scoping language upon request from the district.

7-5.5.3 *Meta Data and Data Management*. Large amounts of geotechnical and chemical data are generated during the performance of activities at FUDS projects. The PDT shall review data stored in digital (electronic) form to ensure its accuracy. To comply with EO 12906, all geotechnical data generated for FUDS projects will be documented using Federal Geographic Data Committee (FGDC)-STD-001-1998. This requirement exists for data generated both in-house and by contractors.

## 7-6 Independent Technical Review (ITR) of Project Documents.

7-6.1 *HTRW Projects*.

7.6.1.1 Geographic military Divisions will ensure that geographic military Districts executing HTRW projects for FUDS submit project documents for independent technical review. The ITR can be performed within the same district by an interdisciplinary team not associated with the project, by another HTRW Design District, or by the HTRW CX. The District and the ITR team will attempt to resolve ITR comments. In the event of unresolved comments, the District will provide a memorandum explaining its position for not accepting the comment and include this as part of the project documentation in the case of actions that are within the District's authority to approve. Where referral to higher authority is required for approval, the District will assure that its referral includes a detailed statement of the ITR team comments as well as the ITR team's rationale for the comment, and a thorough explanation of the basis for the District's not accepting the ITR team comment.

7-6.1.2 For all HTRW projects with the estimated CTC for the RA-C and RA-O phases, or both, greater than $2 million, the executing Districts shall submit the following project documents to the HTRW CX for review:

- All project documents in the RI/FS phase, which includes SOWs, investigation workplans (e.g., SAPs, QAPPs, SSHPs), RI/FS Reports, and risk assessments.
- All project documents for HTRW TCRAs and NTCRAs, which includes SOWs, investigation workplans (e.g., SAPs, QAPPs, SSHPs), and EE/CA Reports.
- All Proposed Plans, RODs, Decision Documents, and Action Memoranda for HTRW projects with Remedial or Removal Actions.

- Project documents for any project requested by HQ, the geographic military Division, or the geographic military District.

7-6.2 *MMRP Projects*. The MM CX will perform independent technical review of the following MMRP project documents, which must be submitted by geographic military Districts, MM Design Centers, RCWM Design Center, and MM Remedial Action Districts.

- INPRs, RAC worksheets, and Preliminary Assessment Reports.
- Action Memoranda, Workplans/SSHPs, ESS, and TCRA Reports for TCRA projects.
- SI Report.
- EE/CA Reports, ESS, Site Specific Final Reports, and Project Closeout Reports for projects undergoing a NTCRA.
- RI/FS Reports, Risk Assessments, Proposed Plans, ESS, Remedial Action Reports, and Project Closeout Reports.
- All RODs, Decision Documents, and Action Memoranda.
- All Five-Year Review Reports.
- SOWs, workplans/SSHPs, ESS, and Final Reports for projects involving Anomaly Avoidance/Construction Support.
- All workplans/SSHPs and CSS for projects involving RCWM.
- Project documents for any project requested by HQ, the geographic military Division, or the geographic military District.

7-6.3 *PRP Projects*. The appropriate CX will perform a quality assurance review of Inventory Project Reports for PRP Projects as required by paragraph 5-5.1.

# Chapter 8
# Public Involvement

## 8-1 Public Involvement Activities/Procedures Under CERCLA.

8-1.1 *Public Involvement and Participation.* Inviting the public to participate in the response action process promotes active two-way communication between the USACE and communities affected by response actions at FUDS projects. USACE's objectives are to foster and maintain a climate of understanding and trust by:

8-1.1.1 Collecting information about the concerns of the community and affected or interested parties.

8-1.1.2 Supplying accurate and timely information about planned actions and progress.

8-1.1.3 Providing affected parties and the communities with the opportunity to participate in the environmental restoration process.

8-1.1.4 Responding to issues and concerns in a timely manner.

8-1.2 *Two-way Communications*. FUDS execution provides USACE with a unique opportunity for public involvement. USACE personnel shall foster open, two-way communication during the environmental restoration process. District PMs will ensure coordination with local elected officials, property owners, and the public to establish and maintain an open dialogue among all interested parties so that concerns are heard and considered before making decisions regarding response actions. Public and community involvement activities are discussed in detail in EP 1110-3-8 and summarized in Tables 8-1 and 8-2 of this ER.

8-1.3 *Restoration Advisory Boards (RAB).*

8-1.3.1 USACE PMs, with the assistance of the Public Affairs Office (PAO), will establish a RAB at FUDS properties that have sufficient and sustained public interest in the FUDS property cleanup. The RAB should be formed as early as feasible in the response process to ensure that community members can provide meaningful input in the remedy selection. For MMRP projects, RAB interest will be determined within 3 months of initiation of the RI/FS or EE/CA phases. RABs complement other community involvement efforts by providing a forum for expression of diverse points of view. PMs will consult with the District Office of Counsel before establishing a RAB for FUDS properties that have both PRP and non-PRP projects. Public interest in establishing a RAB at FUDS properties with ongoing response actions will be reassessed every 2 years. Additional information pertaining to establishing, operating, adjourning, and disbanding a RAB is found in EP 1110-3-8.

8-1.3.2 ER-FUDS funding allows for the use of government purchase orders to provide independent technical support to the RAB through the DoD Technical Assistance for Public

Participation (TAPP) program. EP 1110-3-8 contains information on the TAPP process. If the FUDS property has been listed on the NPL, the public must also be informed of the availability of Technical Assistance Grants (TAGs) from the EPA. If the FUDS property has not been listed on the NPL, the public should be made aware of Technical Outreach Services to Communities (TOSC) support available through the EPA.

**Table 8-1**
**Public Involvement Activities for CERCLA Remedial Responses**

| **Remedial Phases** | **PA** | **SI** | **RI/FS** | | | | **RD** | **RA-C** | **RA-O** | **LTM** | **PCO** |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **Public Involvement Activities** | **PA** | **SI** | **RI** | **FS** | **PP** | **ROD/ DD** | **RD** | **RA-C** | **RA-O** | **LTM** | **Close -out** |
| Contact local officials | R | R | R | R | R | R | R | R | R | R | R |
| Contact property owners | R | R | R | R | R | R | D | D | D | D | D |
| News release | | D | D | D | D | | D | D | D | D | D |
| Workshops | | D | D | D | | | D | D | | | |
| Community Interviews (Note 1) | | R | R | | | | | | | | |
| Public Involvement Plan (PIP) (Note 1) | | R | R | R | R | R | R | R | R | R | |
| Establish Information Repository and inform public | | | R | R | R | R | | | | | |
| Initiate and maintain the Administrative Record file | | | R | R | R | R | | | | | |
| Determine need for Restoration Advisory Board (Note 2) | | | R | | | | | | | | |
| Publicize TAG and other technical assistance opportunities (Note 3) | | | R | | | | | | | | |
| Fact Sheets | | D | D | D | R | D | R | R | D | D | R |
| Public notice | | | R | | R | R | | | | | D |
| Public meeting (Note 4) | | | | | R | | | | | | |
| Public comment period (30–60 days) | | | | | R | | | | | | |
| Responsiveness Summary | | | | | R | | | | | | |
| Revise Proposed Plan (Note 5) | | | | | R | | | | | | |
| Second comment period (30–60 days) (Note 5) | | | | | R | | | | | | |
| Revise PIP | | | R | R | R | R | R | R | R | R | |

1. Only when the SI indicates an RI is required, will the PIP be developed and community interviews conducted during the SI phase.
2. Establish a RAB at properties in accordance with EP 1110-3-8. The RAB shall continue throughout the RA-O phase, as necessary, based on the RAB's desire to do so.
3. For NPL FUDS projects only. If the FUDS project is listed on the NPL after the RI begins, then Technical Assistance Grants are publicized at that time.
4. An opportunity for a public meeting is required at the Proposed Plan. A transcript of the public meeting must be developed and made available to the public.
5. Revise Proposed Plan (PP) and provide a second comment period if significant changes are made regarding proposed FUDS project activities prior to the Record of Decision/Decision Document (ROD/DD) and those changes could not have been reasonably anticipated by the public.

R = Required D = Desirable

8-1.4 *Public Involvement Plans (PIP).* PMs will ensure PIPs, formerly Community Relations Plans, are prepared for all FUDS projects in accordance with the provisions of the NCP and EP 1110-3-8. An organized approach to community relations keeps community leaders, local government officials, and affected citizens informed. Such an approach also allows them to provide feedback to USACE. The PIP is a dynamic document requiring continual updating throughout the CERCLA process.

**Table 8-2**
**Public Involvement Activities for CERCLA NTCRA**

| **Removal Phases (Notes 1, 2)** | **EE/CA** | | | **RmD** | **RmA-C** |
|---|---|---|---|---|---|
| **Public Involvement Activities** | **EE/CA Approval Memo** | **EE/CA** | **Action Memo** | **RmD** | **RmA-C** |
| Contact local officials | | R | R | R | R |
| Contact property owners | | R | R | D | D |
| News release | | D | D | D | D |
| Workshops | | D | | D | D |
| Community Interviews | | R | | | |
| Public Involvement Plan (PIP) | | R | R | R | R |
| Establish Information Repository and inform public | R | R | R | | |
| Initiate and maintain the Administrative Record file (Note 3) | R | R | R | | |
| Determine need for Restoration Advisory Board (Note 4) | | R | | | |
| Publicize technical assistance opportunities | | R | | | |
| Fact Sheets | | D | D | R | R |
| Public notice | | R | R | | |
| Public meeting | | R | | | |
| Public comment period (30–60 days) | | R | | | |
| Responsiveness Summary | | R | | | |
| Revise PIP | | R | R | R | R |

1. PA, SI, RI/FS, RD, RA-C, RA-O, LTM, and PCO are phases performed in the remedial response. See table 8-1 for public involvement activities during these phases.
2. Public participation for Time Critical Removal Actions is discussed in the text.
3. Establish the Administrative Record file no later than when the EE/CA approval memorandum is signed. It must contain the Inventory Project Report (INPR) and documents developed during the preceding PA and SI phases.
4. Establish a RAB at NPL properties, proposed NPL properties, or when EP 1110-3-8 conditions are met.
R = Required D = Desirable

8-1.5 *Additional Guidance on Public Involvement.* Each FUDS project is unique and public involvement may vary according to project-specific conditions and the level of community interest. For FUDS projects, Districts shall follow the detailed public involvement requirements contained in EP 1110-3-8. Additional guidance regarding development and implementation of the public involvement requirements of CERCLA and the NCP is found in

EPA/540-K-01-003. Cost associated with Public Involvement activities are captured in FUDSMIS as a Community Relations (COMM/REL) pseudo project. Refer to Appendix F.

## 8-2 Administrative Record Requirements.

8-2.1 *Purpose*. The purpose of establishing and maintaining an Administrative Record is twofold. First, it establishes a record containing the documents that form the basis for selecting the response action. Second, it meets the CERCLA requirement for public involvement in determining the selected response alternative.

8-2.2 *Basic Requirements.* Following are the basic requirements for the Administrative Record File.

8-2.2.1 The geographic military District PM is responsible for establishing and maintaining the Administrative Record file. An Administrative Record is required for all FUDS projects at which removal actions are performed (either time- or non-time-critical) or at which a Remedial Investigation is performed. This includes both NPL and non-NPL FUDS projects. The Administrative Record file contains documents providing the basis for decisions made on the project, and includes information such as relevant work plans, reports, decision documents, copies of regulations, and copies of press releases and fact sheets.

8-2.2.2 The NCP 40 CFR 300.805(a) requires the Administrative Record file be initiated at the start of the Remedial Investigation phase for a remedial action, upon signature of the EE/CA Approval Memorandum for a NTCRA, or within 60 days of beginning on-site activities for a TCRA. Notification of the availability of the Administrative Record file shall be made, at a minimum, in a major local newspaper of general circulation. USACE policy is to not initiate the Administrative Record file nor establish the information repository before the requirements established in the NCP unless approved by CEMP-DE.

8-2.2.3 The NCP requires the Administrative Record file be located in two places. One copy of the Administrative Record file shall be located and maintained as specified in the PIP at or near the site in a local information repository. This local information repository can be a public library, law enforcement office, city hall, school, or other location with easy public access. A second copy of the Administrative Record file shall be maintained at the geographic military district with PM responsibility and shall be made available to the public upon request. If the Administrative Record file is made available to the public by way of the Internet, PAO shall be notified to ensure that all applicable regulatory requirements for public information are met. The repository must be maintained and updated up to the signature of the ROD/DD/Action Memorandum.

8-2.3 *Additional Guidance on the Administrative Record.* A complete discussion of the requirements for the Administrative Record is complex and beyond the scope of this document. The USACE geographic district will refer to the following guidance:

8-2.3.1 EP 1110-3-8, Public Participation in the Defense Environmental Restoration Program (DERP) for Formerly Used Defense Sites (FUDS).

8-2.3.2 EPA OSWER Directive 9833.3A-1, *Final Guidance on Administrative Records for Selecting CERCLA Response Actions*.

## 8-3 Remedial Action Procedures.

8-3.1 *Site Inspection (SI).* Because the SI phase involves visible activity at the property, public involvement is desirable. Before the SI begins, USACE Districts will notify EPA, state, and local officials, heads of community organizations, citizens who have indicated concern about the project, property owners, and people who live near or adjacent to the FUDS property. This advance notice can prevent undue concern and provide an opportunity for USACE to explain the scope of the SI phase. An aggressive effort should be mounted during the SI development to solicit information from the local public regarding their knowledge of the FUDS property. If the SI indicates that further action is warranted, a PIP will be developed and community interviews conducted. USACE policy is that the SI report will not typically be made available for public review and comment. However, there may be situations in which project-specific conditions dictate that a public review of the SI is necessary. In such cases, the SI may be made available for public review after it has undergone internal USACE review and the District PM receives approval to do so from the geographic military Division.

8-3.2 *Remedial Investigation/Feasibility Study (RI/FS).* If the response action at the project will proceed to the RI phase, the geographic military District will identify community leaders, officials, property owners, contiguous property owners, and concerned citizens for community interviews and development of a mailing list. Community interviews will be conducted to learn what the public's concerns are and how the public wants to be involved in the FUDS property cleanup. The PIP, developed at the end of the SI phase, will be revised at the conclusion of the interviews. The geographic military District will keep state and local officials, landowners, community leaders, and concerned citizens apprised of planned project activities. Workshops, fact sheets, news releases, and other activities are desirable during this phase to keep the public informed of project activities. The PIP will be updated to address community concerns throughout the RI/FS process.

8-3.3 *Proposed Plan (PP).* The NCP requires that the availability and a brief summary of the PP be announced by way of a notice published in a major local newspaper of general circulation. The PP and supporting analysis (including the RI/FS) must be available in the Administrative Record file. USACE must provide a reasonable opportunity of not less than 30 calendar days for the submission of written or oral comments on the PP. The 30-day period may be extended upon timely request from the public. The opportunity for a public meeting at or near the project must be provided during the public comment period and a transcript of the public meeting must be kept and made available to the public in the Administrative Record file . The PM, in conjunction with the PAO, is responsible for organizing the public meeting, collecting written or oral comments received during the comment period, and conducting any additional public involvement activities, such as workshops, preparing exhibits, news releases, or fact

sheets. After the comment period, Office of Counsel will assist in preparing a Responsiveness Summary that addresses significant comments received from the public. If any significant changes are made to the remedy with respect to scope, performance, or cost that could not have been reasonably anticipated by the public based upon the information in the Proposed Plan, the Proposed Plan must be revised, re-issued and a second 30-day public comment period is necessary.

8-3.4 *Pre- and Post-ROD/DD Changes*. Refer to EPA/540-R-98-031 for guidance on public involvement requirements related to changes in the remedy selection that occur before or after the signing of the ROD/DD.

8-3.5 *Record of Decision/Decision Document*. The ROD/DD document identifies the selected remedy. Before the ROD/DD is signed, the geographic military District will notify key officials and community members. After the ROD/DD is signed, the Administrative Record file must be updated to include materials that support issuance of the ROD/DD. The geographic military District will announce the final decision in a major local newspaper of general circulation in the community where the project is located.

8-3.6 *Remedial Design (RD).* Before the RD phase, the PIP will be revised to reflect any new community concerns. When the RD is finished, the geographic military District will notify key officials and community members. A fact sheet explaining the cleanup process will be prepared and mailed to those on the PIP mailing list and a public briefing will be conducted before the start of the remedial action. The PIP will be revised to reflect any new community concerns.

8-3.7 *Remedial Action-Construction, Remedial Action-Operation, and Long-Term Management (LTM).* During these phases, the geographic military District should prepare fact sheets about project activities tailored to the community information needs and concerns. Public meetings are desirable to help the public understand and feel more comfortable about actions taken at the FUDS property. The PIP will be revised to reflect any new community concerns.

## 8-4 Removal Action Procedures.

8-4.1 *Time-Critical Removal Actions (TCRA).*

8-4.1.1 *General Requirements*. Within 60 days of the start of on-site removal activity, the geographic military District will publish a public notice in a major local newspaper of general circulation to announce the availability of an Administrative Record file and the start of a 30-day public comment period. Written responses will be prepared for significant public comments received during the comment period. The comments and responses will be maintained in the Administrative Record file.

8-4.1.2 *Removal Actions Expected to Extend Beyond 120 Days*. Before the end of the 120-day period following the start of field activities, the geographic military District will conduct community interviews with local officials, community residents, public interest groups, and other

interested parties to solicit their concerns and information needs. The geographic military District will complete a formal PIP using the information gathered during interviews.

8-4.2 *Non-Time Critical Removal Action (NTCRA).* If the SI indicates that a NTCRA is warranted, the PIP will be developed and community interviews conducted. Before beginning the EE/CA, the geographic military District will conduct community interviews, revise the PIP, and determine whether a RAB is appropriate. Upon completion of the EE/CA, the geographic military District will make the EE/CA report available for a 30-day public comment period, which can be extended by at least 15 days upon timely request from the public. The geographic military District will provide the opportunity for a public meeting to be conducted during the public comment period at or near the FUDS property. The public notice should also state that the notice satisfies the notification requirements of CERCLA. Written responses to significant comments received from the public will be addressed in the Responsiveness Summary, which will be included in the final EE/CA report. The signed Action Memorandum will be included in the Administrative Record file.

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# Chapter 9
# Coordination with Regulatory Agencies

## 9-1 Notice of Environmental Restoration Activities.

9-1.1 10 USC 2705 requires DoD to take such actions as necessary to ensure that the regional offices of the Environmental Protection Agency and appropriate state and local authorities for the state in which a FUDS is located receive prompt notice of each of the following:

9-1.1.1 The discovery of releases or threatened releases of hazardous substances at the property.

9-1.1.2 The extent of the threat to public health, safety, and the environment that may be associated with any such release or threatened release.

9-1.1.3 Proposals made to carry out response actions with respect to any such release or threatened release.

9-1.1.4 The initiation of any response action with respect to such release or threatened release and the commencement of each distinct phase of such activities.

9-1.2 By DoD policy, the requirement to provide notice in 10 USC 2705 will be followed upon discovery of military munitions and their constituents.

9-1.3 The geographic military District Commander is responsible for ensuring the prompt notification of these agencies for actions being taken in their geographical area.

**9-2 Early Coordination Requirements**. Early coordination during the development of all new and updated INPRs will allow the USACE, EPA, the state, and affected tribes to ensure that all available environmental information is taken into account before eligibility determinations are finalized. The geographic military District shall notify the lead regulatory agency of proposed actions at the earliest opportunity and when funding is available for the approved project or projects in accordance with the annual workplan. An exit strategy that defines a common understanding of project and property closeout objectives should be established between USACE and the lead regulator early in the response process and refined as new information becomes available. The Technical Project Planning process can facilitate the development of this strategy by the mutual agreement of Data Quality Objectives and the CSM. Refer to EM 200-1-2 and EM 1110-1-1200 for additional discussion on these concepts.

**9-3 Identification of the Lead Regulator.** To minimize potential duplication of efforts by states, tribes, and the EPA with respect to FUDS, it is important that the lead regulator be clearly identified and communicated to all parties for each FUDS property.

9-3.1 States or tribes will generally be the lead regulator for environmental investigations and response at non-NPL FUDS. In certain circumstances, EPA may serve as lead regulator where the state or tribe requests that EPA assume the lead or when EPA chooses to exert its lead regulator role. In instances where EPA assumes the role of lead regulator, the USACE PM should document this decision and notify all parties. This designation should be placed in the permanent Project File and the Project Management Plan (PMP).

9-3.2 In cases where a non-NPL FUDS is on or affecting tribal land, the lead regulator role generally falls to the affected tribe. Project-specific circumstances may warrant assumption of the lead regulator role by EPA. In such cases, specific roles and responsibilities of the agencies involved should be negotiated between the state or tribe and EPA, documented, and communicated to all parties.

9-3.3 When a FUDS is either proposed for inclusion or listed on the NPL, EPA is the lead regulator.

## 9-4 Coordination of Documents with Lead Regulator.

9-4.1 USACE commits to coordinate and communicate openly and freely with the lead regulatory agency. Such coordination shall be in the form of, but not limited to, the following.

9-4.1.1 Providing the lead regulatory agency with the following for non-PRP projects:

- Project Management Plans, property specific MAPs, and SMAPs.
- Timely information about FUDS Inventory Project Reports (INPRs), categorical exclusions, and NDAI determinations, and available relevant information regarding non-DoD contamination at FUDS.
- Reasonable opportunities for meaningful regulatory review of and comment on the results of Relative Risk and RAC scores and on major project documents, including, but not limited to, the INPR, site-specific workplans, scopes of work, sampling and analysis plans, investigatory/study (including PA and SI) reports, RI/FS reports, EE/CAs, ROD/DD or Action Memoranda, RD documents (excluding ESS), RA documents, Operation and Maintenance (O&M) workplan, LUC implementation plan, and 5-year review plans and reports.
- Written response to lead regulator comments along with final project documents.

9-4.1.2 Providing the ASTSWMO and EPA on an annual basis with a list of USACE's designation of FUDS PRP projects.

## 9-5 Specific Requirements.

9-5.1 *Addressing State Legal Requirements*. Efforts should be made to attain state standards, requirements, or criteria requested by the lead regulator where they are consistent with CERCLA and the National Contingency Plan's processes and criteria. Office of Counsel should be consulted for project-specific analysis on all issues related to the extent of state authority. Where a decision not to follow the CERCLA framework is considered, the facts related to the

decision are to be documented (with written regulatory agency concurrence), documented in a memorandum forwarded through the chain-of-command to the Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) (DASA (ESOH)) shall forward the memorandum to ODUSD(I&E) for approval prior to entering into discussions with the regulatory agency. Once the discussions are complete, other Components and ODUSD(I&E) are to have a minimum of three (3) full working days to review the draft agreement. USACE can only sign such an agreement if no objections are raised during this review.

9-5.2 *Environmental Protection Agency—Interagency Agreements (IAG).*

9-5.2.1 For FUDS listed on the NPL, efforts should be made to enter into an IAG that is in accordance with the provisions of CERCLA Section 120 as soon as practicable after listing or during the RI/FS phase. Geographic military Districts shall notify DASA(ESOH) through the chain of command if they are unable to enter into an IAG for NPL projects within the required time and the reasons for the delay. The DASA(ESOH) will be the "signatory" of the IAG after it is reviewed by the appropriate CX and concurred with by CECC-E, CEMP-DE, and the ACSIM. The IAG language must strictly adhere to the DoD Model for those clauses applicable to FUDS. This IAG model language was intended to facilitate field negotiations, present a consistent policy on critical issues, and permit facilities to proceed with the actual cleanup. The Office of Counsel will be the lead for the negotiation of IAGs or any similar agreements.

9-5.2.2 CERCLA Section 120(e)(4) established three (minimal) IAG requirements: (i) to select a remedial action after EPA and the executing Division and District have reviewed the proposed alternatives. If the USACE and EPA are unable to reach an agreement on the remedy, the EPA's selection will take precedence; (ii) to schedule and complete each remedial action; and (iii) to arrange any necessary long-term Remedial Action-Operation and Long-Term Management (LTM).

**9-6 Department of Defense and State Memorandum of Agreement (DSMOA) Program.** The DSMOA Program was established to expedite environmental restoration at Department of Defense (DoD) installations through partnerships with States and Territories. Authority for this program is contained in 10 USC 2701(d) with specific criteria contained in 57 Federal Register 28835. Army is the lead agency for the DSMOA Program and FUDS is one of the participating Components. The DSMOA Grants Officer and the DSMOA Office, both located at the HTRW CX, execute the DSMOA program.

9-6.1 *Reimbursement for DSMOA Eligible Services.* Title 10 USC 2701(d) allows the Secretary of Defense to enter into agreements on a reimbursable basis with States (or Territories) to support cleanup efforts at DoD installations, including eligible FUDS Properties. The DSMOA establishes the working relationship between the DoD and the State and allows a participating State to be reimbursed for DSMOA-eligible services at eligible FUDS properties listed in the State's DSMOA. A DSMOA also provides for identification of DoD and State points-of-contact to support each FUDS property and guidance in the use of dispute resolution.

9-6.2 *Eligible State Services*. Specific criteria, funding information, and services eligible for state reimbursement for this program are contained in Department of Defense Grant and Agreement Regulations (DoDGAR) and 57 Federal Register 28835.

9-6.3 *Cooperative Agreement (CA)*. The CA is the instrument that allows DoD to provide funding to States for their assistance and specifies the amount and period of availability of funds. The document "*Working Together to Achieve Cleanup: A Guide to the Cooperative Agreement Process*" describes the Cooperative Agreement and the Six Step Process in detail.

9-6.3.1 *USACE's Role in State's Cooperative Agreement Application Process.* The Six Step Process was developed to guide USACE and States through their respective roles during the CA process. HQUSACE, geographic military Divisions, and geographic military Districts have specific responsibilities during the State's CA application process. The FUDS role involves discussing with the State the cleanup execution plans for eligible FUDS properties and the associated DSMOA services to be provided by the State, as well as verification of the reasonableness of the State's expected costs for these services for the periods specified.

9-6.3.2 *USACE's Role during the Cooperative Agreement Period*. During a CA period, USACE is responsible for participating in CA funding reviews, addressing new requirements or issues that were not captured at the time of the CA application, and reviewing performance reports submitted by States.

9-6.3.2.1 *Cooperative Agreement Funding Reviews*. HQUSACE, geographic military Divisions, and geographic military Districts participate in reviews of the status of State funding. Information on State obligations and expenditures, plus details on procedures for participating in funding reviews, is available from the DSMOA Office.

9-6.3.2.2 *Attachment A*. Attachment A to the Cooperative Agreement contains a list of eligible FUDS properties to which the CA applies. FUDS properties can be added by mutual agreement of the State and USACE. Special FUDS initiatives, like SMAPs, may also be added to the Attachment A. Changes to the Attachment A are made by the DSMOA Office upon request of the geographic military District.

9-6.3.2.3 *Cooperative Agreement Performance Reports*. The geographic military District FUDS PMs are responsible to review performance reports submitted by States and to report concerns to the DSMOA Office.

9-6.4 *Additional Information on DSMOA*. Detailed information on the management and execution of the DSMOA program is available on the Defense Environmental Network & Information Exchange (DENIX) DSMOA web site. This web site contains a copy of the 57 Federal Register 28835, a list of DSMOA eligible services, copies of the participating States' Memoranda of Agreement, State and USACE points-of-contact, the guidance document "*Working Together to Achieve Cleanup: A Guide to the Cooperative Agreement Process*", and USACE and State roles and responsibilities. Additional information and guidance on executing the DSMOA program is available from the DSMOA Office located at the HTRW CX.

**9-7 Statewide Management Action Plans (SMAP).** The primary purpose of a SMAP is to involve regulators in the development of life-cycle plans for the investigation and cleanup of all FUDS properties within a state. Joint development of SMAPs with the EPA, state, and tribes can vastly improve communications. The DSMOA CA process can be used as a funding vehicle for state participation in SMAP development

9-7.1 *A Living Document.* The SMAP is a living document to be updated annually using information from Property Specific Management Action Plans discussed in Chapter 6. The format of the SMAP may be specific to each state and is different from the requirements for the MAP at an individual FUDS. The SMAP cannot be used in lieu of a property-specific MAP for FUDS. As appropriate, EPA, states, and tribes should be invited to participate in SMAP development. All SMAPs shall be coordinated with the USACE District Office of Counsel. Each District developing or updating a SMAP will submit a monthly Status Report to the geographic military Division and the HQUSACE DoD Team.

9-7.2 *SMAP Goals.* Some of the goals in developing a SMAP include:

- Improve communications and coordination between all parties.
- Identify the lead regulator at each FUDS.
- Verify the inventory of FUDS properties within the state.
- Determine a statewide clean-up priority for each project and property.
- Develop decision points and strategies for regulatory property/project closeout.
- Identify funding requirements, constraints, and other issues.

**9-8 Promotion of Efficiency**. Per the requirements of the *DoD Management Guidance for the DERP*, USACE shall work to promote efficiency in the regulatory process by:

9-8.1 Encouraging regulators to adopt an oversight approach where projects posing a greater risk receive more regulatory oversight than projects posing a lesser risk.

9-8.2 Encouraging regulators to designate a lead regulatory agency for FUDS properties where both Federal and state regulatory agencies have jurisdiction.

9-8.3 Negotiating and signing agreements with regulatory agencies, as appropriate, regarding environmental restoration activities that:

9-8.3.1 Use performance standards as opposed to administrative requirements.

9-8.3.2 Reflect the timing of the Federal budget process.

9-8.3.3 Consider fiscal constraints.

9-8.3.4 Have flexible and regularly updated (at least annually) milestones.

9-8.3.5 Reflect the results of the assessment of the relative-risk posed by projects.

9-8.3.6 Consider other management factors.

9-8.4 Working cooperatively with regulatory agencies to identify the most effective response strategy, taking full advantage of options to increase the pace of risk reduction, such as the use of removal actions and interim remedial actions.

9-8.5 Supporting the DSMOA program by reviewing state CA applications and progress reports, and by providing funds in accordance with work plans for eligible DSMOA services agreed to between the FUDS and the regulators.

**9-9 Documentation of Coordination with Regulators**. USACE Project Managers will ensure the FUDS permanent Project File accurately documents coordination with regulators, including emails and correspondence pertaining to response action decisions, development and updating of INPRs and eligibility determinations, and the development of project documents.

# Appendix A
# References

## A-1 United States Statutes.

**10 USC §§2701-2708, §2710, §2805**
Defense Environmental Restoration Program.

**42 USC §§4321-4370d**
National Environmental Policy Act of 1969.

**42 USC §§6901-6992**
Resource Conservation and Recovery Act of 1976 (RCRA).

**42 USC §§9601-9657**
Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986.

**57 Federal Register 28835**
Notice of Fund Availability and Application Instructions [for DSMOA], 16 July 1992.

**PL 91–646**
Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) of 1970, 42 USC 4601 et seq.

**PL 92-392**
Alaska Native Claims Settlement Act, as amended by Pub.L.100-241.

**PL 101-576**
Chief Financial Officers Act of 1990.

**PL 102-425**
Community Environmental Response Facilitation Act, amending 42 USC §9620(h).

**PL 103-356**
Government Management Reform Act of 1994.

**PL 103-62**
Government Performance and Results Act of 1993, 3 August 1993.

**PL 104-208**
Federal Financial Management Improvement Act of 1996, 31 USC §3512.

**Annual Defense Appropriation and Authorization Acts**
Environmental Restoration Account Appropriations.

## A-2 Executive Orders.

**EO 12580**
Superfund Implementation, 23 January 1987.

**EO 12906**
Coordinating Geographic Data Acquisition and Access: The National Spatial Data Infrastructure.

**EO 13016**
CERCLA Amendments (Amends 12580), 28 August 1996.

## A-3 Federal Regulations.

**40 CFR Parts 260-270**
Military Munitions Rule

**40 CFR Part 300**
National Oil and Hazardous Substances Pollution Contingency Plan.

**49 CFR Part 24**
Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.

**FAR 52.000 through 52.300.**

**Federal Accounting Standards Advisory Board (FASAB), Statements of Federal Financial Accounting Standards (SFFAS) No. 5**
Accounting for Liabilities of the Federal Government.

**Federal Accounting Standards Advisory Board (FASAB), Statements of Federal Financial Accounting Standards (SFFAS) No. 6**
Accounting for Property, Plant, and Equipment.

## A-4 Department of Defense Directives and Instructions

**DoD 6055.9-STD**
DoD Ammunition and Explosives Safety Standards.

**DoD Instruction 5000.61**
DoD Modeling and Simulation Verification, Validation, and Accreditation (VV&A), 29 April 1996.

**DoD Instruction 7000.14R**
DoD Financial Management Policy and Procedures, 15 November 1992.

**DoD and State Memorandum of Agreement/Cooperative (DSMOA/CA) Program**
Working Together to Achieve Cleanup: A Guide to the Cooperative Agreement Process.

**DoD Relative-Risk Site Evaluation Primer**
Revised Edition, Summer 1997.

**DoD/EPA Principles and Procedures Agreement Concerning Land Use Controls**
9 April 2003.

**DUSD(ES/CL) memorandum, 2 March 2002**
Guidance on Land Use Control Agreements with Environmental Regulatory Agencies.

**DUSD(I&E) Memorandum, 4 June 2002**
Interim Guidance on Environmental Restoration Records of Decision.

**DUSD(I&E) Memorandum, 28 September 2001**
Management Guidance for the Defense Environmental Restoration Program (DERP) – September 2001.

**FMR 7000.14**
DoD Financial Management Regulations (FMR) 7000.14, Volume 3, Chapter 17, Volume 4, Chapter 14, Volume 6B, Draft Chapter 4; Volume 6B, Draft Chapter 10.

**MIL-STD 882C**
System Safety Program Requirements.

**ODUSD(ES) Memorandum, 7 January 2000**,
Lead Based Paint Policy for Disposal of Residential Real Property.

**ODUSD(I&E) Memorandum, 2 May 2000**
Interim Guidance on Environmental Restoration Records of Decision, 4 June 2002.

**ODUSD(I&E) Memorandum, 2 May 2000**
Interim Policy on Integration of Natural Resource Injury Responsibility of Environmental Restoration Activities.

**ODUSD(I&E) Memorandum, September 2001**
DoD Management Guidance for the Defense Environmental Restoration Program.

## A-5 Department of Army Publications.

**AR 1-1**
Planning, Programming, Budgeting, and Execution System.

**AR 25-400-2**
Army Records Information Management System (ARIMS)

**AR 27-40**
Litigation.

**AR 200-1**
Environmental Protection and Enhancement.

**AR 385-10**
The Army Safety Program

**AR 385-64**
U.S. Army Explosives Safety Program

**ASA (I, L&E) Memorandum, 5 September 1997**
Interim Guidance for BWM and Non-Stockpile Chemical Warfare Materiel Response Activities

**DA PAM 40-8**
Occupational Health Guidelines for the Evaluation and Control of Occupational Exposure to Nerve Agents GA, GB, GD, and VX.

**DA PAM 40-173**
Occupational Health Guidelines for the Evaluation and Control of Occupational Exposure to Mustard Agents H, HD, and HT.

**DA PAM 40-578**
Health Risk Assessment Guidance for the Installation Restoration Program and Formerly Used Defense Sites

**DA PAM 200-1**
Environmental Protection and Enhancement**.**

**DA PAM 385-61**
Toxic Chemical Agent Safety Standards.

**DA PAM 385-64**
DA Ammunition and Explosives Safety Standards.

**Army Environmental Cleanup Strategic Plan,** 29 May 2003.

**Army Interim Policy for Integrating Natural Resource Injury Responsibilities and Environmental Response Actions**, March 2002.

**FUDS Guidance to Implement Army Interim Policy for Integrating Natural Resource Injury Responsibilities and Environmental Response Activities**

**DAIM-ED-R, Memorandum, 12 September 1995**
Interim Army Policy on Natural Attenuation for Environmental Restoration.

**DASA-ESOH Memorandum, 31 October 2003.**
Charter for the Formerly Used Defense Sites Program.

## A-6 USACE Publications.

**ER 5-1-11**
Management – U.S. Army Corps of Engineers Business Process.

**ER 10-1-2**
U.S. Army Corps of Engineers Division and District Offices.

**ER 200-1-5**
Policy for Implementation and Integrated Application of the U.S. Army Corps of Engineers (USACE) Environmental Operating Principles (EOP) and Doctrine

**ER 385-1-40**
Occupational Health Program.

**ER 385-1-80**
Radiological Safety.

**ER 385-1-92**
Safety and Occupational Health Document Requirements for Hazardous, Toxic and Radioactive Waste (HTRW) and Ordnance and Explosive Waste (OEW) Activities.

**ER 385-1-95**
Safety and Health Requirements For Ordnance and Explosives (OE) Operations.

**ER 405-1-12**
Real Estate Handbook.

**ER 1110-1-12**
Engineering and Design – Quality Management.

**ER 1110-1-263**
Chemical Data Quality Management for Hazardous, Toxic, Radioactive Waste Remedial Activities.

**ER 1110-1-8153**
Ordnance and Explosives Response.

**ER 1110-1-8157**
Geotechnical Data Quality Management for Hazardous Waste and Remedial Activities.

**ER 1110-1-8158**
Corps-Wide Centers of Expertise Program.

**ER 1110-3-1301**
Cost Engineering Policy Requirements for Hazardous, Toxic, and Radioactive Waste (HTRW)—Remedial Action Cost Estimate.

**EP 75-1-2**
Unexploded Ordnance (UXO) Support During Hazardous, Toxic, and Radioactive Waste (HTRW) and Construction Activities.

**EP 75-1-3**
RCWM Response.

**EP 75-1-4**
Recurring Reviews on Ordnance and Explosives Response Actions

**EP 385-1-95a**
Basic Safety Concepts and Considerations for Ordnance and Explosives Operations.

**EP 1110-1-18**
Ordnance and Explosives Response.

**EP 1110-1-24**
Establishing and Maintaining Institutional Controls for Ordnance and Explosive (OE) Projects.

**EP 1110-3-8**
Public Participation in the Defense Environmental Restoration Program (DERP) for Formerly Used Defense Sites (FUDS).

**EM 200-1-2**
Technical Project Planning (TPP) Process.

**EM 200-1-4**
Risk Assessment Handbook

**EM 385-1-1**
Safety and Health Requirements Manual.

**EM 1110-1-1200**
Conceptual Site Models for Ordnance and Explosives and Hazardous, Toxic, and Radioactive Waste.

**EM 1110-1-4006**
Removal of Underground Storage Tanks (USTs).

**EM 1110-1-4009**
Engineering and Design—Ordnance and Explosives Response.

**Corps of Engineers Management Information System (CEFMS).**

**CEMP-RF Memorandum, 11 April 1991**
Defense Environmental Restoration Program – Interim Guidance on Provision of Alternative Water Supplies at Contaminated Drinking Water Sites.

**CEMP-RF Memorandum, 20 February 1992**
Defense Environmental Restoration Program for Formerly Used Defense Sites Policy Guidance for Environmental Restoration at Former Missile Sites.

**CEMP-RF Memorandum, 31 July 1990**
Policy Guidance for Underground Storage Tanks (USTs) on Formerly Used Defense Sites.

**FUDS Program Guidance to Implement Army Interim Policy for Integrating Natural Resource Injury Responsibilities and Environmental Response Activities, 25 February 2003.**

**Environmental Cleanup and Protection Management Plan for Military Program.**

**Federal Remediation Technology Roundtable (FRTR), Remediation Technologies Screening Matrix and Reference Guide, 4th Edition, January 2002.**

**FUDS, Standard Operating Procedure for Potentially Responsible Party Projects, March 1994.**

## A-7 Other Federal Agency Publications.

A-7.1 *Environmental Protection Agency*

**EPA/540/G-89/004**
Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA (Interim Final), OSWER Directive 9355.3-01.

**EPA/540/G-89/006**
CERCLA Compliance with Other Laws Manual.

**EPA/540/G-91/013**
Guidance for Performing Preliminary Assessments Under CERCLA.

**EPA/540-K-01-003**
Superfund Community Involvement Handbook.

**EPA 540-P-90-004**
Superfund Removal Procedures - Action memorandum Guidance.

**EPA/540-P-91-011**
Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions.

**EPA/540-R-92-021**
Guidance for Performing Site Inspections Under CERCLA, Interim Final, OSWER Directive 9345.1-05.

**EPA 540-R-93-057**
Guidance on Conducting Non-Time-Critical Removal Actions Under CERCLA.

**EPA 540-R-97-006**
Ecological Risk Assess Guidance for Superfund.

**EPA/540-R-98-031**
A Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents.

**EPA/540/1-89/002**
Risk Assessment Guidance for Superfund, Volume I, Human Health Evaluation Manual (Part A) (Interim Final).

**OSWER Directive 9200.4-17P**
Use of Monitored Natural Attenuation at Superfund, RCRA Corrective Action, and Underground Storage Tank Sites.

**OSWER Directive 9200.1-23P**
Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents.

**OSWER Directive 9230.0-3B**
Community Relations in Superfund.

**OSWER Directive 9234.2-25**
Guidance for the Evaluating the Technical Impracticability of Ground-Water Restoration.

**OSWER 9355.3-01**
Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA, Interim Final, EPA 540/G-89/004

**OSWER Directive 9355.7-03B-P**
Comprehensive Five-Year Review Guidance.

**OSWER Directive 9355.0-04B**
Remedial Design/Remedial Action Handbook.

**OSWER Directive 9833.3A-1**
Final Guidance on Administrative Records for Selecting CERCLA Response Actions.

**EPA, Superfund Community Relations Program: A Guide to Effective Presentations with Visual Aids.**

A-7.2 *Federal Geographic Data Committee*

**FGDC-STD-001-1998**
Content Standard for Digital Geospatial Metadata.

A-7.3 *General Services Administration*

**Federal Management Regulation, Chapter 102, Subchapter C, Part 102-75**
Real Property Disposal

# Appendix B
# Inventory Project Report Preparation, Review, and Approval Process

## B-1 FUDS Property and Project Eligibility.

B-1.1 *Determination of FUDS Eligibility*. During this stage, information is gathered to determine the eligibility of both the potential FUDS property and any potential projects under the FUDS program. The geographic military District recommends eligibility for each potential FUDS property and, in all cases, documents the results in an Inventory Project Report (INPR). The geographic military Division Commander signs the Findings and Determination of Eligibility, a signed copy of which must be retained with the INPR in the FUDS permanent Property File.

B-1.1.1 *Property Eligibility Record Review*. The determination of eligibility will include a review of real estate and historical records. Real estate records, such as the National Archives, government records (including Federal, state, county and local governments), and private title companies, will be used when available.

B-1.1.2 *Property Visit and Interviews*. If the record review provides evidence of FUDS property eligibility as discussed in Chapter 3, a property visit will be conducted after Right of Entry is obtained. The lead regulator and the landowners should be invited to participate in the property visit. Interviews conducted during the property visit should be limited to the interviewee's first hand knowledge during the period when they actually owned, operated, or worked at the property. These interviews may be used to supplement property history documentation. However, historical documents will serve as the primary source of information. Information obtained from the property visit will be incorporated into a trip report. The trip report will be retained as part of the permanent Property File.

B-1.2 *FUDS Property Screening (FPS).* The FUDS Property Screening consists of completion of a CERCLA Preliminary Assessment (PA), the INPR Checklist (Worksheet B-3), and a screening Risk Assessment Code (RAC) Worksheet (Worksheet B-5) prepared at the FUDS Property level. The FUDS Property Screening will be conducted for all new FUDS properties following determination of FUDS eligibility in the FDE or for eligible FUDS properties re-examined at the request of a State, Tribe, EPA, or other stakeholder (refer to paragraph 3-1.3). If a new potential HTRW or MMRP project is proposed at an eligible FUDS property subsequent to completion of the original INPR, the INPR will be amended to confirm the proposed project through the FPS process.

B-1.2.1 *The CERCLA Preliminary Assessment (PA).*

B-1.2.1.1 The PA is the first step in the CERCLA site assessment phase. A CERCLA remedial PA will be conducted for all FUDS properties when initially determined to be eligible and added to the inventory or if re-examined at the request of a State, Tribe, EPA, or other stakeholder (refer to paragraph 3-1.2). If a new potential HTRW or MMRP project is identified subsequent to completion of the original INPR, the INPR will be amended to reflect current

property conditions and the CERCLA PA will be supplemented, as appropriate, or completed if not previously conducted. The final PA Report will be maintained in the FUDS permanent Property File.

B-1.2.1.2 During the PA, readily available property information is collected and a property visit is conducted. The purpose of the remedial PA is to: (i) eliminate from further consideration those properties that pose little or no threat to public health or the environment; (ii) determine if there is any potential need for removal action; (iii) set priorities for site inspections; and (iv) gather existing data to facilitate later evaluation of the release pursuant to the Hazard Ranking System (HRS) conducted by EPA.

B-1.2.1.3 If the screening RAC score developed at the FUDS property level results in a score of 1-4, the CERCLA PA will include information relevant to the identified MMRP at the property for both MEC and MC. This MMRP information, previously contained in the Archives Search Report (ASR), will be included in the CERCLA Preliminary Assessment Report to identify MMRP projects.

B-1.2.1.4 In all cases, PA requirements will be discussed with the lead regulator. Specific regulatory requirements for conducting a PA are found in 40 CFR 300.420(b). EPA guidance on conducting a PA can be found in EPA/540/G-91/013.

B-1.2.2 *Inventory Project Report (INPR) Checklist.* The INPR Checklist will be used to document the activities performed to ensure all relevant and required information is considered, documented, and included in the INPR. The INPR Checklist is at Worksheet B-3.

B-1.2.3 *FUDS Property Screening Risk Assessment Code (RAC) Score*.

B-1.2.3.1 The RAC is a risk assessment procedure developed in accordance with MIL-STD 882C and AR 385-10. The RAC score is used to prioritize the response actions for MMRP projects at FUDS. The risk assessment should be based on the best available information resulting from record searches, reports of Explosive Ordnance Disposal (EOD) Detachment actions, field observations, and interviews. This information is used to assess the risk involved, based on the potential MMRP hazards identified at the property. Use the RAC Worksheet at Worksheet B-5 and refer to EP 1110-1-18 for details on how to prepare the worksheet.

B-1.2.3.2 If the screening RAC score developed at the FUDS property level results in a score of 1-4, the information obtained during the development of the PA will be used to develop a separate RAC Worksheet for each MMRP project proposed in the INPR. The FUDS property screening RAC score will be entered for information into FUDSMIS at the Property level and any project RAC scores entered into FUDSMIS at the project level.

B-1.2.4 *Reporting the Results of the FUDS Property Screening*. After the FUDS Property Screening is completed, the results will be summarized in the INPR. The content of the INPR is discussed in the following sections of this Appendix. If the FPS identifies potential FUDS projects, the geographic military District will complete the INPR and recommend

appropriate projects to the geographic military Division for approval. If the FPS indicates no FUDS eligible hazards exist, the geographic military District will complete the INPR, make a property level NDAI determination, and pursue property regulatory closeout.

B-1.3 *Communication with Regulatory Agency and Property Owners on INPR Development*. Early communications with the lead regulatory agency and property owners will assist the District in identifying additional information on the FUDS property. Joint participation provides the lead regulator the opportunity to provide input into the eligibility determination, which could eliminate or mitigate regulator concerns. Many times, states or other regulatory agencies have conducted studies or have additional information about the property that should be considered in preparing the INPR. Under DSMOA funding, states can participate in the review of documents, provide historical documentation about past uses at the property, and can review records from other entities that may add to the overall knowledge of the property. Before sharing a draft INPR with the lead regulator, the draft INPR will have undergone an internal review within the District, including Counsel, and be clearly marked as a draft.

## B-2 Inventory Project Report Preparation.

B-2.1 *General.* An INPR will be prepared in all cases to document the results of the eligibility determination. If the property was previously determined eligible for FUDS, a copy of the signed FDE will be included with each INPR amendment submitted to the Division for the property. Figure B-1 provides a flow diagram of the USACE INPR review process.

B-2.2 *Inventory Project Report Content.* The content of each INPR will differ, depending on property eligibility, project eligibility, and the categories of recommended projects. Refer to Table B-1 to ensure all relevant and required components of the INPR have been included. All INPR statements will be factual and supported by site-specific documentation. No admission of CERCLA liability will be included in the INPR. The District will submit the completed INPR to the geographic military Division for approval. The following are descriptions of the major components of an INPR.

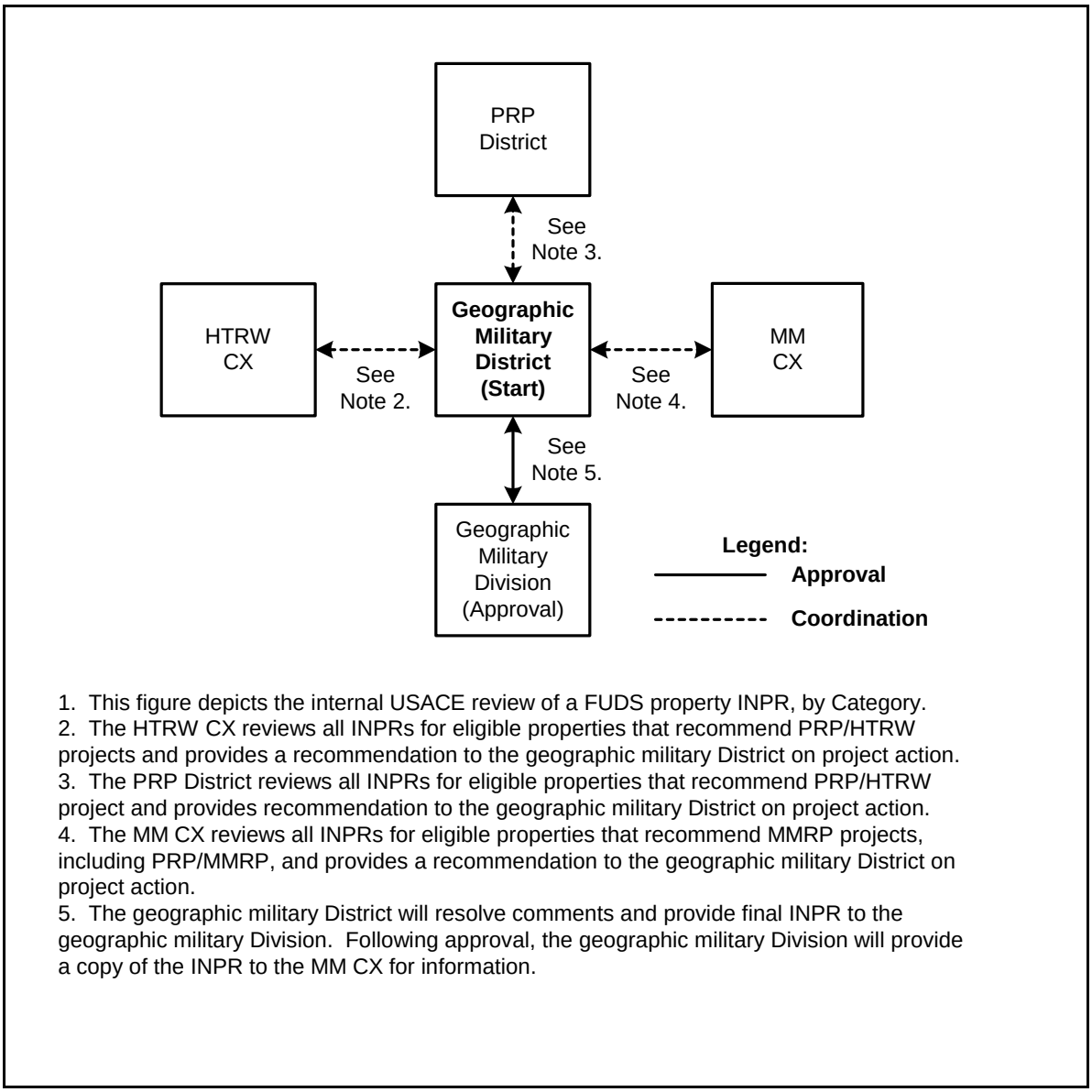
B-2.2.1 *District Commander's Transmittal Memorandum.* The INPR will be transmitted under the District Commander's memorandum. This memorandum will include:

- A statement that Counsel and Real Estate concur with the property eligibility recommendation and all proposed project recommendations.
- A statement that the draft INPR has been provided to the lead regulator and a summary of any outstanding regulatory issues and concerns.[1]
- A statement that required CX review has occurred for MMRP and PRP projects, along with a summary of any outstanding CX issues and concerns.

B-2.2.2 *Property Survey Summary Sheet*. The Property Survey Summary Sheet provides an overview of the property, location, history of the military and private operations, category of

[1] Before sharing a draft INPR with the lead regulator, the draft INPR will have undergone an internal review within the District, including Counsel, and be clearly marked as a draft.

proposed projects, and points of contact. Table B-2 provides an outline of the contents of the Property Survey Summary Sheet. Maps showing the location of the property and any available property details will be included with the Property Survey Summary Sheet.




1. This figure depicts the internal USACE review of a FUDS property INPR, by Category.
2. The HTRW CX reviews all INPRs for eligible properties that recommend PRP/HTRW projects and provides a recommendation to the geographic military District on project action.
3. The PRP District reviews all INPRs for eligible properties that recommend PRP/HTRW project and provides recommendation to the geographic military District on project action.
4. The MM CX reviews all INPRs for eligible properties that recommend MMRP projects, including PRP/MMRP, and provides a recommendation to the geographic military District on project action.
5. The geographic military District will resolve comments and provide final INPR to the geographic military Division. Following approval, the geographic military Division will provide a copy of the INPR to the MM CX for information.

**Figure B-1. FUDS Inventory Project Report (INPR) Internal Review Process.**

**Table B-1**
**Inventory Project Report Content Matrix**

| INPR Content to Document Property Eligibility | Property Status | | |
|---|---|---|---|
| | Categorical Exclusion | Not Eligible | Eligible (with or without recommended projects) |
| Division Cdr Memorandum (Note 1) | Yes | Yes | Yes |
| District Cdr Memorandum (Note 1) | Yes | Yes | Yes |
| Property Survey Summary Sheet (Table B-2) | No | No | Yes |
| FDE (Worksheet B-4) (Note 2) | No | Yes | Yes |
| INPR Checklist (Worksheet B-3) (Note 3) | No | Yes | Yes |
| Executive Summary of PA (Note 4) | No | No | Yes |
| RAC Worksheet (Worksheet B-5) (Note 5) | No | No | Yes |
| Categorical Exclusion/ Ineligible Property (Worksheet B-1) | Yes | Yes | No |

| INPR Content to Document Project Eligibility for Eligible FUDS Properties | Project Type | | | | |
|---|---|---|---|---|---|
| | CON/ HTRW | BD/DR | HTRW (Note 6) | PRP (Notes 6 & 7) | MMRP (Note 7) |
| Project Summary Sheet (Table B-3) (Note 8) | Yes | Yes | Yes | Yes | Yes |
| Project Cost Estimate (Note 9) | No | No | No | No | No |
| RAC Worksheet (Worksheet B-5) (Note 10) | No | No | No | No | Yes |
| BD/DR Summary Sheet Checklist (Worksheet B-2) (Note 11) | No | Yes | No | No | No |

1. The District Commander's memorandum transmits the INPR, including amendments, to the Division Commander for approval. The Division Commander's memorandum officially approves the INPR and authorizes projects.
2. The FDE is completed and submitted to the geographic military Division for signature prior to conducting the FPS.
3. Include a completed INPR Checklist with the initial INPR submission and for FUDS NDAI properties re-examined at the request of a State, Tribe, EPA, or other stakeholders. This worksheet will be completed for amendments to the original INPR if not previously prepared.
4. The INPR will contain an executive summary of the CERCLA PA Report.
5. A screening RAC score will be developed for the FUDS property and entered for information purposes into FUDSMIS at the FUDS property level.
6. The HTRW CX reviews all INPRs for eligible properties that recommend PRP/HTRW projects and provides a recommendation to the geographic military District.
7. The MM CX reviews all INPRs for eligible properties that recommend MMRP projects, including PRP/MMRP, and provides a recommendation to the geographic military District.
8. A Project Summary Sheet is required for each INPR that reports eligible projects or projects determined to be ineligible due to policy considerations.
9. The Project Cost Estimate is not part of the INPR. After the project is approved, the District will develop the CTC estimate and enter it into FUDSMIS. Refer to Appendix E for guidance on preparation of the CTC estimate.
10. If the screening RAC score developed at the FUDS property level results in a score of 1-4, the information obtained during the development of the PA will be used to develop a separate RAC Worksheet for each MMRP project proposed in the INPR and entered into FUDSMIS as the project RAC score. Refer to EP 1110-1-18 for the instructions and forms to prepare the RAC scoring.
11. Use the BD/DR Project Summary Sheet Checklist to document BD/DR project eligibility or for projects not recommended for policy considerations.

**Table B-2**
**Property Survey Summary Sheet Outline**

| | |
|---|---|
| **Title Block** | Enter the FUDS Property Number and FFID Number. |
| **1** | **Property Name(s)**<br>Enter current and former names. |
| **2** | **Location**<br>Give address or directions to the property; attach a property map showing the general property vicinity and specific project locations; determine longitude and latitude coordinates to the nearest second; include Congressional District and EPA Region. |
| **3** | **Property History**<br>Enter a brief description of DoD and current and past owner/operator property use from first use through disposal by DoD. Include a brief description of the current property owner's use and any environmental cleanup being conducted. |
| **4** | **Property Visit**<br>Enter date and participants in the property visit, including landowners and regulators. |
| **5** | **Category of Hazard(s)**<br>Provide a declarative statement of whether or not each of the following categories of hazards was found. (CON/HTRW, BD/DR, HTRW, MMRP, PRP) Where no basis is found supporting a HTRW, CON/HTRW, MMRP, or BD/DR project, explicitly state so in this section. |
| **6** | **Project Description**<br>Provide a short description of each project with potential response actions by category, project number generated by FUDSMIS, and project status. For INPR amendments, the Property Summary Sheet will be updated to reflect the status of existing projects and a description of proposed projects. |
| **7** | **Available Studies And Reports**<br>List any studies and reports that may contribute to an understanding of potential projects. |
| **8** | **Point Of Contact**<br>Enter name and telephone number of preparing District point of contact (POC). |
| **9** | **Lead Regulator**<br>Enter the office, name, and telephone number for the point of contact. |

B-2.2.3 *Findings and Determination of Eligibility (FDE)*. The FDE documents whether or not the property is eligible for ER-FUDS funding. There are two components of the FDE: the Findings of Fact and the Determination of Eligibility. The Findings of Fact must explain when and in what manner the property was owned by, leased by, possessed by the United States, and under the jurisdiction of the Secretary of Defense before 17 October 1986. The Determination of Eligibility is the Division Commander's signed determination of property eligibility. The FDE is completed and submitted to the geographic military Division for signature prior to conducting the FPS. The original signed FDE shall not be revised unless there is a change of property eligibility. The FDE for a Third Party Site will reflect that the property is not eligible for inclusion in the DERP-FUDS. A PRP project, however, may be authorized for the TSP should the need arise to defend DoD from allegations of CERCLA liability associated with alleged disposal, transport, or arranging for transport by DOD from an eligible FUDS property to the TPS. See Worksheet B-4 for the suggested format of the FDE.

B-2.2.4 *Project Summary Sheet*. Project summary sheets are required for each INPR that reports eligible projects or projects determined to be ineligible due to policy considerations. The Project Summary Sheet outline is provided in Table B-3. If the current or a past property owner/operator is under remediation or removal orders, or a RCRA corrective action order, a copy of that order should accompany the Project Summary Sheet.

**Table B-3**
**Project Summary Sheet Outline**

| | |
|---|---|
| **Title Block** | Enter the FUDS Project Number and Project Category**.** |
| **1** | **Project Description**<br>Provide as much information about the project as can be found through research and a site visit. It does not need to be exhaustive. For CON/HTRW and BD/DR projects, enough information should be developed to allow a cost estimate to be prepared, including the nature and quantity of tank contents, depth of tank, tank capacity, etc. For HTRW and MMRP, try to develop enough information, without sampling, boring, or testing of subsoils, to determine project eligibility. |
| **2** | **Project Eligibility**<br>Explain the project's eligibility, as opposed to the property's eligibility, for FUDS. The Project Summary Sheet must show that the hazards to be remediated potentially resulted from past ownership, lease, or possession while under the jurisdiction of the Secretary of Defense as discussed in Chapter 3. |
| **3** | **Policy Considerations**<br>• Address all potential policies or special circumstances that apply to the project (i.e., beneficial use, condition at the time of transfer, or current ownership). Refer to Chapter 3 for a discussion of policy considerations.<br>• Identify in the INPR if the deed has "hold harmless" clauses or an "indemnification" clause or similar statements in sales agreement that clearly state that the "purchaser" is taking the land "where is" and "as is" for BD/DR. Also, identify if the appraisal recognizes the buildings are not an asset and the new owners will demolish or that the cost of the property was adjusted to reflect the condition of the buildings or other appurtenances.<br>• Identify any clauses that recognize the DoD's use of the property and identify the potential presence of contamination. |
| **4** | **Proposed Activities**<br>For all recommended projects, briefly describe the proposed activities anticipated through closeout of the project. |
| **5** | **Project Point Of Contact**<br>Enter the office, name, and telephone number of the preparing District's POC for the project. |
| **6** | **Lead Regulator**<br>Enter the office, name, and telephone number for the point of contact. |

B-2.2.5 *Executive Summary of the CERCLA Preliminary Assessment Report.* At the conclusion of the PA, a PA Report will be prepared that will be maintained in the FUDS permanent Property File. An executive summary of the PA Report will be attached to the INPR. For eligible FUDS properties with MMRP projects, the PA Report will also include a copy of the RAC Worksheet that is discussed in the following paragraph and any additional information discovered during the property visit and records search.

B-2.2.6 *Risk Assessment Code (RAC) Worksheet*. Include the screening RAC Worksheet conducted at the FUDS Property level and a separate RAC worksheet for each recommended MMRP project. Use the RAC Worksheet at Worksheet B-5 and refer to EP 1110-1-18 for details on how to prepare the worksheet.

B-2.2.7 *INPR Checklist*. Include a completed INPR Checklist, Worksheet B-3, with the initial INPR submission and for FUDS NDAI properties re-examined at the request of a State, Tribe, EPA, or other stakeholders (refer to Paragraph 3-1.2). This worksheet will be completed for amendments to the original INPR if not previously prepared.

**B-3 Inventory Project Report Review and Approval.** The review, coordination, and approval process is shown in Figure B-1 and discussed below.

B-3.1 *INPRs with Proposed PRP/HTRW Projects.* The geographic military District will forward INPRs recommending potential PRP/HTRW projects to the HTRW CX and the PRP District for review and comment and will resolve comments before forwarding the final INPR to the geographic military Division for approval.

B-3.2 *INPRs with Proposed MMRP and PRP/MMRP Projects*. The geographic military District will forward INPRs recommending potential MMRP and PRP/MMRP projects to the MM CX for review and comment and will resolve comments before forwarding the final INPR to the geographic military Division for approval.

B-3.3 *Division Commander's Approval Memorandum.* Based on the information presented in the INPR, the Division Commander determines whether a property is or is not eligible under the FUDS program and signs the FDE to that effect. The FDE signature authority cannot be delegated. The geographic military Division must send the geographic military District a memorandum documenting the property and project eligibility.

**B-4 Reporting of INPR Results in FUDS Management Information System (FUDSMIS).** After the INPR is approved, the District responsible for project management must prepare the CTC estimate, in accordance with Appendix E, and ensure the property and project information, including schedules and CTC requirements, is entered into FUDSMIS.

**B-5 Notification of INPR Results.**

B-5.1 *Land Owner Notification*. Immediately after receipt of the Division Commander's Approval Memorandum, the current landowner will be sent a letter summarizing the results of the INPR. The PRP District will make this notification for INPRs containing PRP projects and the geographic military District for all other INPRs. Copies of the actual INPR will be provided on request. This letter will include a brief overview of the FUDS program and explain what was found at the property, whether or not the property is eligible under the FUDS program, any proposed projects, and relevant policy decisions, as appropriate. Properties having multiple owners may be notified through group mailings or public notices, where warranted. This

notification will be coordinated with the geographic District PAO. In cases where there may be significant issues at the property, a visit or meeting with the property owners is encouraged. A copy of the notification will be sent to the geographic military Division.

B-5.2 *Regulatory Agency Notification*. Immediately after receipt of the Division Commander's Approval Memorandum, the EPA, the state, and affected tribes will be forwarded a copy of the INPR and the PA Report. The PRP District will perform this notification for INPRs containing PRP projects and the geographic military District for all other INPRs.

B-5.3 *Permanent Property File*. District will include the completed INPR, supporting worksheets, and the PA Report in the permanent Property File for the FUDS property and submit them to the Rock Island District for uploading into PIRS according to instructions in Chapter 7. As necessary, copies of these documents, or a MFR indicating the originals of these documents are located in the FUDS property file, will kept in the individual permanent Project Files.

## Worksheet B-1
## Categorical Exclusion or Ineligible Properties Checklist

**Preparer**: _____ **Office Symbol**: _____ **Date:** _____

**Property Name:** _____ **Property No:** _____

**Location:** _____

### Categorical Exclusions (refer to Chapter 3):

_____ USO Properties _____ Recruiting Centers _____ Cemeteries

### Ineligible Properties (refer to Chapter 3):

_____ *Properties Declared Excess but Not Conveyed*: Properties identified by the DoD Component for excess prior to 17 October 1986, but not conveyed to another entity until after 17 October 1986.

_____ *Duplicate Properties*: A property that is known by a different name, yet is the same physical property already listed in the FUDS inventory. (Provide the Property Name and Number of the property duplicated in comments below.)

_____ *State National Guard*: State National Guard properties unless formerly owned by, leased to, possessed by US and under Jurisdiction of DoD when contaminated .

_____ *Non-US Property*: Outside the U.S. or districts, territories, commonwealths, and possessions over which the U.S. has jurisdiction.

_____ *Defense Plant Corp.*: Never under the Jurisdiction of DoD.

_____ *Civil Work Property*: DoD Army Civil Work properties unless contaminated while under DoD military control.

_____ *Acts of War*: Where release occurred solely as result of an act of war.

_____ *Offshore Ordnance*: More than 100 yards seaward of mean high tide.

_____ *Property without Records*: No records to support eligibility determination.

_____ *Restoration Already Initiated*: Where a Component has already initiated restoration activities.

_____ *Active DoD Installation*: Properties still under the Jurisdiction of DoD components.

_____ *Non-DoD Ownership*: No DoD Jurisdiction.

_____

_____

_____

_____

_____

## Worksheet B-2
## BD/DR Project Summary Sheet Checklist

**Preparer**: _____ **Office Symbol**: _____ **Date:** _____

**Property Name:** _____ **Property No:** _____

**Location:** _____

**Instructions:**

- **Answer each question with a check in the appropriate box.**
- **If a response is a Shaded box, a project cannot be eligible.**
- **Discuss each criterion resulting in an eligible project determination in the Project Eligibility section of the Project Summary Sheet.**
- **Provide supporting comments at the end of this worksheet, keyed to the question number.**

| | | Yes | No |
|---|---|---|---|
| 1 | Has the project continuously been on state, local government, or Alaskan Native Corporation lands? (Must be "Yes" to be eligible.) | | |
| 2 | Are safety hazards identified? (If "Yes", go to questions 2.a through 2.e below, one of which must be answered "Yes" for a project to be eligible.) | | |
| | a. Structural | | |
| | b. Cave-in or engulfment | | |
| | c. Climbing | | |
| | d. Drowning | | |
| | e. Other (explain below) | | |
| 3 | Are the safety hazards identified in 2 above inherently hazardous presenting a clear danger, likely to cause, or having already caused, death or serious injury to a person exercising ordinary and reasonable care? (Must be "Yes" to be eligible.) | | |
| 4 | Are the safety hazards identified in 2 above the result of prior DoD use and inherently hazardous when the property was transferred or disposed of before 17 October 1986? (Must be "Yes" to be eligible.) | | |
| 5 | Are the safety hazards identified in 2 above the result of civil works activities rather than military activities? (Must be "No" to be eligible.) | | |
| 6 | Are the safety hazards identified in 2 above the result of neglect by an owner/grantee subsequent to DoD ownership, use, or control? (Must be "No" to be eligible.) | | |
| 7 | Did the title transfer document that conveyed the site from DoD or GSA absolve the Government from site restoration? (Must be "No" to be eligible.) | | |
| 8 | Did the Government compensate an owner subsequent to DoD in lieu of site restoration? (Must be "No" to be eligible.) | | |
| 9 | Have structures been altered or beneficially used by owners subsequent to DoD? (Must be "No" to be eligible.) | | |
| 10 | Would a proposed project result in partial demolition of a structure? (Must be "No" to be eligible.) | | |
| 11 | Did past or current owners or other parties initiate the proposed project? (Must be "No" to be eligible.) | | |

| | | Yes | No |
|---|---|---|---|
| 12 | Would the proposed project eliminate potential hazards (i.e., conditions that may become hazardous through deliberate and/or careless acts)? (Must be "No" to be eligible.) | | |
| 13 | Are response actions at the project intended to remediate or remove asbestos-containing materials (ACM) or lead-based paints? (If "Yes," go to questions 13.a and 13.b below, one of which must be answered "Yes" for a project of this type to be eligible.) | | |
| | a. Are response actions to address the ACM or lead-based paint incidental other actions at an approved project? | | |
| | b. Was the ACM not incorporated as an integral component of a facility but released into the environment by DoD disposal actions resulting in an on-site CERCLA hazardous substance release for which DoD is responsible? | | |

**Comments (Key comments to question number):**

## Worksheet B-3. Inventory Project Report (INPR) Checklist (Use space at bottom of this worksheet for continuation)

| | | |
|---|---|---|
| **Checklist Preparer:** | Date: | |
| Name: | Title: | |
| District: | Phone Number: ( ) -- | |
| Email address: | | |
| **Property information:** | | |
| Property Name: | Property #: | |
| Previous Names, if any: | | |
| Former Service: | | |
| Property Location (Section, Township, Range): | | |
| | | |
| Street: | | |
| City: | County: | State: |
| Latitude (D/M/S): | Longitude (D/M/S): | |
| Current Use (residential, commercial, etc.): | | |
| **Primary Property Owner Information** (address multiple owners in Comments)**:** | | |
| Name: | | |
| Address (if other than above): | | |
| Street: | | |
| City | | |
| Phone Number: ( ) -- | County: | State: |

**Indicate the status of the following checklist items in determining the completeness of the INPR. Provide a narrative in the comments section below to explain, and keyed to, the shaded boxes checked:**

| | | Yes | No | NA |
|---|---|---|---|---|
| **Property Document Search:** | | | | |
| X | Were the following records available and used in the preparation of the INPR? | | | |
| 1 | Archive records | | | |
| 2 | Site maps, including facility as-built drawings | | | |
| 3 | Aerial or ground photographs | | | |
| 4 | Prior studies, documents, reports, property contamination records, or public/private sampling data | | | |
| 5 | Compliance orders issued to current or past owners/operators | | | |
| 6 | Real estate records, deeds, or property transfer records | | | |
| 7 | Local historical societies and public libraries | | | |
| 8 | EPA/State environmental records or reports | | | |
| 9 | EOD incident reports | | | |
| 10 | Other documentation | | | |
| **Property Visit:** | | | | |

**Indicate the status of the following checklist items in determining the completeness of the INPR. Provide a narrative in the comments section below to explain, and keyed to, the shaded boxes checked:**

| | | Yes | No | NA |
|---|---|---|---|---|
| X | Indicate whether the following have been contacted and interviewed to obtain information. | | | |
| 11 | Current landowner(s) | | | |
| 12 | Neighbors | | | |
| 13 | Previous landowner(s) | | | |
| 14 | Prior employee(s) | | | |
| 15 | Federal agencies, including regulatory agencies | | | |
| 16 | State agencies, including regulatory agencies | | | |
| 17 | Local agencies, including regulatory and law enforcement agencies | | | |
| 18 | Other available sources | | | |
| 19 | Was access to the property possible (right of entry provided by landowner)? | | | |
| 20 | Was the property physically visited? | | | |
| 21 | Was access sufficient to allow for a thorough property inspection? | | | |
| 22 | Was access sufficient to identify potential hazards? | | | |
| 23 | Did regulatory agencies accompany USACE on the property visit? | | | |
| 24 | Did the landowner accompany USACE on the property visit? | | | |
| 25 | Was there evidence of a release of hazardous material or use/disposal of military munitions during DoD control? | | | |
| 26 | Was there evidence of a release of potential DoD hazardous material into a public or private drinking water supply? [2] | | | |
| 27 | Is there evidence of a release into a public or private drinking water supply due to deterioration of the system through ordinary use? [2] | | | |
| 28 | Is there evidence of a release from products that are part of the structure of, and result in exposure within, residential buildings or businesses or community structures? [3] | | | |
| 28 | Is some other program actively involved with the property (i.e., another Federal, state, or tribal program)? | | | |
| 30 | Is there evidence that activities by non-DoD parties at the property may be the source of potential contamination? | | | |
| 31 | Was information on hazards found at similar types of FUDS properties considered in identifying potential hazards at this property? | | | |
| 32 | Were site maps compared to actual conditions during the site visit? | | | |
| 33 | Were photographs taken? | | | |
| 34 | Were property owners advised to contact USACE if evidence of potential hazards is found later? | | | |
| 35 | Was a trip report of the property visit prepared? | | | |

[2] This can be determined by reviewing public water supply sampling data. Provide discussion of how it was determined to be release due to DoD activities rather than by current or past owners/operators.
[3] This question is from the EPA Pre-CERCLIS Screening Assessment Checklist/Decision Form, EPA-540-F-98-039 *"Improving Site Assessment: Pre-CERCLIS Screening Assessments."*

**Indicate the status of the following checklist items in determining the completeness of the INPR. Provide a narrative in the comments section below to explain, and keyed to, the shaded boxes checked:**

| | | Yes | No | NA |
|---|---|---|---|---|
| **Property Eligibility Determination (refer to Chapter 3):** | | | | |
| 36 | Is the property Categorically Excluded? | | | |
| 37 | Are there release, hold harmless, "as-is", or indemnification clauses in deeds or property transfer documents that limit DoD liability? | | | |
| 38 | Is there evidence of this property being a Third Party Site? | | | |
| 39 | Is the property eligible under FUDS? | | | |
| 40 | If necessary, has a ***"Categorical Exclusion or Ineligible Property"*** worksheet been prepared (Worksheet B-1) | | | |
| **FUDS Property Screening:** | | | | |
| 41 | Was a CERCLA Preliminary Assessment completed? | | | |
| 42 | Was a RAC Worksheet prepared for the property? | | | |
| **Project Eligibility Determination (refer to Chapter 3):** | | | | |
| 43 | Have all typical hazards been investigated for possible occurrence at this type of property? | | | |
| 44 | Were hazards identified? | | | |
| 45 | Are identified hazards of DoD Origin? | | | |
| 46 | If identified hazards were of non-DoD origin, has the lead regulatory agency been informed? (Provide name, phone number, date) | | | |
| 47 | Is the current owner under a RCRA or CERCLA clean-up order? | | | |
| 48 | Has the "right of first refusal" been exercised by an adjacent DoD installation? | | | |
| 49 | Is there evidence of beneficial use? | | | |
| 50 | Are there other policy considerations against recommending a project? | | | |
| 51 | Are eligible FUDS projects recommended? (If yes, identify projects below) | | | |
| **INPR Preparation and Review:** | | | | |
| 51 | Is the INPR prepared consistent with INPR Content Matrix (Table B-2)? | | | |
| 52 | Is the INPR Property Survey Summary Sheet consistent with Table B-3? | | | |
| 53 | Is the Project Summary Sheet(s) consistent with Table B-4? | | | |
| 54 | If appropriate, has a ***"BD/DR Project Summary Sheet Checklist"*** been prepared? (See Worksheet B-2) | | | |
| 55 | If the INPR recommends a PRP/HTRW project, has the PRP District reviewed the INPR? (See Figure B-1) | | | |
| 56 | If the INPR recommends a PRP/HTRW project, has the HTRW Center of Expertise reviewed the INPR? (See Figure B-1) | | | |
| 57 | If the INPR recommends a MMRP or PRP/MMRP project, has the MM Center of Expertise reviewed the INPR? (See Figure B-1) | | | |
| 58 | Was the draft INPR coordinated with Office of Counsel and Real Estate? | | | |

**Indicate the status of the following checklist items in determining the completeness of the INPR. Provide a narrative in the comments section below to explain, and keyed to, the shaded boxes checked:**

| | | Yes | No | NA |
|---|---|---|---|---|
| 59 | Was the draft INPR shared with the Lead Regulatory Agency after internal USACE review? | | | |

**Narrative comments to explain above notations:** (Key your comments to the checklist item number)

## Worksheet B-4
## Sample Finding and Determination of Eligibility

DEFENSE ENVIRONMENTAL RESTORATION PROGRAM
FOR
FORMERLY USED DEFENSE SITES
FINDINGS AND DETERMINATION OF ELIGIBILITY

*<**Property Name** [4]>*

FUDS Property Number <_____>
***<City, County, State>***

FINDINGS OF FACT

**1.** ***Provide in narrative format the legal description of the FUDS property and property acreage.***

**2.** ***Provide in narrative format a brief history of the property describing the circumstances how the property was owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary of Defense or the Components (including governmental entities that are the legal predecessors of DoD or the Components), before 17 October 1986. Describe the activities that took place at the property while it was under DoD ownership, lease, or possession.***

***3. Provide a brief history of the sale, transfer, or termination of lease agreements for the property. Include a description of the current or other past owners and activities taking place at the property.***

***4. Provide a discussion of the information obtained through coordination with regulators or affected tribes that influenced the eligibility determination.***

DETERMINATION

Based on the foregoing findings of fact, the property has been determined to have *(have not)* been under the jurisdiction of the Secretary of Defense and owned by, leased to, or otherwise possessed by the United States prior to 17 October 1986. This property is therefore eligible *(ineligible)* for inclusion into the Defense Environmental Restoration Program - Formerly Used Defense Sites established under 10 USC 2701 et seq.[5]

***< signed >***
***Rank, USA***
Commanding

[4] Use the full correct military site name as it appears in the real estate records.

[5] Where the determination of FUDS program ineligibility is based on the property being a third-party site, the FDE will provide that, "This property is therefore ineligible for inclusion into the Defense Environmental Restoration Program - Formerly Used Defense Sites established under 10 USC 2701 et seq as a third-party site. However, a PRP project is authorized to address allegations of DoD CERCLA liability associated with the property."

## Worksheet B-5
## Risk Assessment Code (RAC) Worksheet

Use the following eight-page worksheet when performing a RAC scoring for MMRP projects on FUDS properties.

RISK ASSESSMENT PROCEDURES FOR
MILITARY MUNITIONS RESPONSE PROJECTS

Property Name: _____ Rater's Name: _____
Property Location: _____ Phone Number: _____
FUDS Property/Project #: _____ District: _____
Property Type: _____ Office Symbol: _____
Score: _____ Date Completed: _____

RISK ASSESSMENT**:**

This risk assessment (RAC) procedure was developed to address explosives safety hazards related to munitions. This procedure does not address environmental hazards associated with munitions constituents. The U.S. Army Engineering and Support Center, Huntsville (USAESCH), Ordnance and Explosives Directorate (CEHNC-OE) developed this procedure in accordance with MIL-STD 882C and AR 385-10. The Risk Assessment Code (RAC) score will be used by the U.S. Army Corps of Engineers to prioritize the response action(s) at Formerly Used Defense Sites (FUDS). The risk assessment should be based on the best available information resulting from record searches, reports of Explosive Ordnance Disposal (EOD) actions, field observations (site visits), and interviews. This information is used to assess the risk involved based on the potential MMRP hazards identified for the project. The risk assessment evaluates two factors, hazard severity and hazard probability.

**Part I - Hazard Severity**. Hazard severity categories are defined to provide a qualitative measure of the worst credible event resulting from personnel exposure to various types and quantities of unexploded ordnance.

**TYPE OF ORDNANCE: (Check all that apply)**

| **A. Conventional ordnance and ammunition:** | VALUE |
|---|---|
| Projectiles, explosive (20 millimeter and larger) | 10☐ |
| Bombs, explosive | 10☐ |
| Grenades, hand or rifle, explosive | 10☐ |
| Landmine, explosive | 10☐ |
| Rockets, guided missile, explosive | 10☐ |
| Other Explosive item not previously stated | 10☐ |
| Bomb, practice (w/spotting charge) | 6☐ |
| Detonators, blasting caps, fuses, boosters, bursters | 6☐ |
| Practice ordnance (w/ spotting charges, other than bombs) | 4☐ |
| Small arms, complete round (.50 cal or less) | 1☐ |
| Small arms, expended (.50 cal or less) | 0☐ |
| Practice ordnance (w/o spotting charges) | 0☐ |
| **Conventional ordnance and ammunition (enter largest single value checked)** | ____ |

What evidence do you have regarding conventional unexploded ordnance? _____

**B. Pyrotechnics (for munitions not described above):**

| | VALUE |
|---|---|
| Munitions containing White Phosphorus (WP) or other pyrophoric material (i.e., spontaneously flammable) | 10☐ |
| Munitions containing a flame or incendiary material (i.e., Napalm, Triethylaluminum metal incendiaries) | 10☐ |
| Containers containing WP or other pyrophoric material or flame or incendiary material | 6☐ |
| Flares, signals, simulators, screening/burning smokes (other than WP) | 4☐ |
| **Pyrotechnics (enter the single largest value checked)** | ____ |

What evidence do you have regarding pyrotechnics? _____

**C. Bulk Explosives (HE) (not an integral part of conventional ordnance; un-containerized):**

| | VALUE |
|---|---|
| Primary or initiating explosives (Lead Styphnate, Lead Azide, Nitroglycerin, Mercury Azide, Mercury Fulminate, Tetracene, etc.) | 10☐ |
| Secondary explosives (Demolition charges, PETN, Compositions A, B, C, Tetryl, TNT, RDX, HMX, HBX, Black Powder, etc.) | 8☐ |
| Insensitive explosive substances (explosive contaminated soils, ammonium nitrate) | 3☐ |
| **Pyrotechnics (enter the single largest value checked)** | ____ |

What evidence do you have regarding bulk explosives? _____

**D. Bulk propellants (not an integral part of rockets, guided missiles, or other conventional ordnance; uncontainerized )**

| | VALUE |
|---|---|
| Solid or liquid propellants | 6☐ |
| **Bulk Propellants (select 6 or 0)** | ____ |

What evidence do you have regarding bulk propellants? _____

**E. Recovered Chemical Warfare Materiel (RCWM), Weaponized Industrial Chemicals and Radiological Materiel:**

| | VALUE |
|---|---|
| Toxic chemical agents (H-Mustard, G-Nerve, V-Nerve and L-Lewisite) | 25☐ |
| Chemical Agent Identification Sets | 20☐ |
| Radiological Materiel (If rad waste is identified please call the HTRW CX at 402-697-2555) | 15☐ |
| Weaponized Industrial Chemicals (Hydrogen Cyanide AC; Cyanogen Chloride, CK; Phosgene, CG) | 10☐ |
| Riot Control Agents (vomiting, tear) | 5☐ |
| **Chemical and Radiological (enter the single largest value checked)** | ____ |

What evidence do you have regarding chemical or radiological? _____

TOTAL HAZARD SEVERITY VALUE (Sum of value A through E, maximum of 61) ____
Apply this value to Table 1 to determine Hazard Severity Category

TABLE 1
HAZARD SEVERITY*

| DESCRIPTION | CATEGORY | HAZARD SEVERITY VALUE |
|---|---|---|
| CATASTROPHIC | I ☐ | 21 and/or greater |
| CRITICAL | II ☐ | 10 to 20 |
| MARGINAL | III ☐ | 5 to 9 |
| NEGLIGIBLE | IV ☐ | 1 to 4 |
| **NONE | V ☐ | 0 |

*Apply Hazard Severity Category to Table 3 and complete Part II of this form.
**If hazard severity value is 0, complete Part II of this form. Then proceed to Part III and use a RAC score of 5 to determine your appropriate action.

**PART II - Hazard Probability**. The probability that a hazard has been, or will be, created due to the presence and other rated factors of unexploded ordnance, explosives, incendiary, pyrotechnic, radiological, or RCWM materials on a formerly used Department of Defense (DOD) site.

AREA, EXTENT, ACCESSIBILITY OF MMRP HAZARD (Check all that apply)

**A. Locations of MMRP hazards:**

| | VALUE |
|---|---|
| On the surface | 5 ☐ |
| Within tanks, pipes, vessels, or other confined areas | 4 ☐ |
| Inside walls, ceilings, or other building/structure | 3 ☐ |
| Subsurface | 2 ☐ |
| **Location (enter the single largest value checked)** | ____ |

What evidence do you have regarding the location of MMRP? _____

**B. Distance to nearest inhabited location/structure likely to be at risk from MMRP hazard (road, park, playground, building, etc.).**

| | VALUE |
|---|---|
| Less than 1,250 feet | 5☐ |
| 1,250 feet to 0.5 mile | 4☐ |
| 0.5 mile to 1.0 mile | 3☐ |
| 1.0 mile to 2.0 Miles | 2☐ |
| Over 2 miles | 1☐ |
| **Distance (enter the single largest value checked)** | ____ |

What are the nearest inhabited structures/buildings? _____

**C. Number(s) of building(s) within a 2-mile radius measured from the MMRP hazard area, not the installation boundary.**

| | VALUE |
|---|---|
| 26 and over | 5☐ |
| 16 to 25 | 4☐ |
| 11 to 16 | 3☐ |
| 6 to 10 | 2☐ |
| 1 to 5 | 1☐ |
| 0 | 0☐ |
| **Number of buildings (enter the single largest value checked)** | ____ |

Narrative: _____

**D. Types of Buildings (within 2-mile radius)**

VALUE

| | |
|---|---|
| Educational, childcare, residential, hospitals, hotels, commercial, shopping centers | 5☐ |
| Industrial, warehouse, etc. | 4☐ |
| Agricultural, forestry, etc. | 3☐ |
| Detention, correctional | 2☐ |
| No buildings | 0☐ |

**Types of buildings (enter the single largest value checked)** ____

Describe the types of buildings: _____

**E. Accessibility to site refers to access by humans to military munitions. Use the following guidance:**

| | VALUE |
|---|---|
| No barrier nor security system | 5☐ |
| Barrier is incomplete (e.g., in disrepair or does not completely surround the site). Barrier is intended to deny egress from the site, as for a barbed wire fence for grazing | 4☐ |
| A barrier (any kind of fence in good repair) but no separate means to control entry. Barrier is intended to deny access to the site. | 3☐ |
| Security Guard, but no barrier | 2☐ |
| A 24-hour surveillance system (e.g., television monitoring or surveillance by guards or facility personnel continuously monitors and controls entry; or, an artificial or natural barrier (e.g., fence combined with a cliff) which completely surrounds the area; and, a means to control entry at all times through the gates or other entrances (e.g., an attendant, television monitors, locked entrances, or controlled roadway access to the area). | 0☐ |

**Accessibility (enter the single largest value checked)** ____

Describe the site accessibility:

_____

**F. Site Dynamics. This deals with site conditions that are subject to change in the future, but may be stable at the present. Examples would be excessive soil erosion on beaches or streams, increasing land development that could reduce distances from the site to inhabited areas or otherwise increase accessibility.**

| | VALUE |
|---|---|
| Expected | 5☐ |

Not anticipated 0☐

**Site Dynamics (enter the single largest value checked)** ____

Describe the site dynamics: _____

TOTAL HAZARD PROBABILITY VALUE ____
(Sum of largest values for A through F (maximum of 30). Apply this value to Hazard Probability Table 2 to determine the Hazard Probability Level.

**TABLE 2**
**HAZARD PROBABILITY***

| DESCRIPTION VALUE | LEVEL | HAZARD PROBABILITY |
|---|---|---|
| FREQUENT | A☐ | 27 or greater |
| PROBABLE | B☐ | 21 to 26 |
| OCCASIONAL | C☐ | 15 to 20 |
| REMOTE | D☐ | 8 to 14 |
| IMPROBABLE | E☐ | less than 8 |

*Apply Hazard Probability Level to Table 3.

**Part III - Risk Assessment.** The risk assessment value for this site is determined using the following Table. Enter the results of the Hazard Probability and Hazard Severity values.

TABLE 3

| PROBABILITY LEVEL | FREQUENT A | PROBABLE B | OCCASIONAL C | REMOTE D | IMPROBABLE E |
|---|---|---|---|---|---|
| SEVERITY CATEGORY: | | | | | |
| CATASTROPHIC I | 1☐ | 1☐ | 2☐ | 3☐ | 4☐ |
| CRITICAL II | 1☐ | 2☐ | 3☐ | 4☐ | 4☐ |
| MARGINABLE III | 2☐ | 3☐ | 4☐ | 4☐ | 4☐ |
| NEGLIGIBLE IV | 3☐ | 4☐ | 4☐ | 4☐ | 4☐ |

None (V) = RAC 5☐

RISK ASSESSMENT CODE (RAC)

| | |
|---|---|
| RAC 1-4 | Recommend and approve further action as appropriate. Refer to EP 1110-1-18 for discussion of MMRP projects and the process to be followed for execution of project response actions. |
| RAC 5 | Usually indicates that No DOD Action Indicated (NDAI) is necessary. Recommend and approve NDAI and follow instructions for project closeout in accordance with current program guidance. |

**PART IV - Narrative**. Summarize the documented evidence that supports this risk assessment. If no documented evidence was available, explain all the assumptions that you made.

## Appendix C
## Decision Document Outlines

**C-1 General.** The following addresses formats to be used in the development of Records of Decision, Decision Documents, and Action Memoranda for FUDS projects at both NPL and non-NPL FUDS properties.

**C-2 Record of Decision (ROD).** A ROD is the document used to record the remedial action decision made at an NPL property. The ROD will be maintained in the project Administrative Record file and permanent Project File. The guidance for formatting RODs can be found in EPA/540-R-98-031.

**C-3 Decision Document (DD)**. In accordance with DoD DERP guidance, USACE uses the term "Decision Document" for the documentation of remedial response decisions at non-NPL FUDS properties. The DD for projects not covered by an Interagency Agreement (IAG) shall contain the same information found in a NPL ROD according to the EPA guidance document in C-2 above. However, the DD need not contain information pertaining to EPA oversight activities for RD/RA phases. The DD shall be maintained in the project Administrative Record file and permanent Project File.

**C-4 TCRA Action Memorandum.** For a TCRA, the Action Memorandum will provide the following information:

- Location and description of the site, including FUDS project number, if applicable.
- Description of the hazards existing at the site.
- Description of the current land use activities and risk of exposure.
- Previous actions that have taken place to address the hazard.
- For MMRP projects:
    - An endangerment determination with the following statement: "There is a significant possibility that military munitions exist at this FUDS property that pose a safety hazard to individuals if not addressed through the response action described in this Action Memorandum."
    - Rationale for surface removal or removal depth selection.
- An explanation of the proposed action and how the action addresses the actual threat.

**C-5 NTCRA Action Memorandum**. The Action Memorandum for a Non-Time Critical Removal Action provides a concise written record of the decision to select an appropriate removal action. Table C-1 provides an outline of the information that should be included in the Action Memorandum. Additional guidance for preparing Action Memoranda for HTRW projects can be found in EPA's "*Guidance on Conducting Non-Time-Critical Removal Actions Under CERCLA,*" EPA 540-R-93-057 and "*Superfund Removal Procedures – Action memorandum Guidance,*" EPA 540-P-90-004. Refer to EP 1110-1-18 for guidance on preparing Action Memoranda for MMRP projects. Signature authority for the Action Memorandum is provided in the following paragraph.

**Table C-1**
**Action Memorandum Outline**

| Section | Topic |
|---|---|
| 1 | Introduction – Identifies the project (include FUDS property/project number) and provides a short declaration of intent. |
| 2 | Statement of Basis and Purpose – Provides a brief site background discussion/description (including past actions – if any, taken) and the basis and purpose of the response action. |
| 3 | Project Justification – Provides a brief discussion of why the action is necessary based upon threats posed to human health, safety and the environment and the removal criteria discussed in Chapter 4. |
| 4 | Alternative Considered – Provides a brief summary of alternative response actions considered for the project. |
| 5 | Highlights of Community Participation – Includes a statement that all public involvement have been satisfied (see Table 8-2) and a summary of all public involvement efforts (e.g., dates of public meetings, news releases, etc.) |
| 6 | Regulator Coordination Summary – Includes a brief description of and provides a statement to the effect that all regulatory coordination has been done as required by Chapter 9 of this regulation. |
| 7 | Selection Criteria – This section includes a discussion of the selection criteria used to evaluate the alternatives. A reference should be made back to the associated section of the EE/CA regarding selection criteria evaluation. This section will also include the ARAR evaluation for the removal action and a discussion of how the removal action contributes to the overall remedial performance. |
| 8 | Description of Selected Alternative – Provides a description of the selected response action. |
| 9 | Trade Off Analysis – For the MEC portion of an MMRP project, the following statement will be made: "The alternative recommended for each sector is the best alternative for that sector, as determined by the EE/CA." |
| 10 | Expected Change in Situation Should Action Be Delayed or Not Taken – This section should include a statement to the effect that should the actions outlined in the Action Memorandum are delayed or not taken, the potential exists for continued and substantial endangerment to public health, safety and the environment. |
| 11 | Responsiveness Summary – Provides a summary of public involvement activities. |

## C-6 Signature and Approval Authority for Records of Decision (ROD), Decision Documents (DD), and Action Memorandum (AM).

C-6.1 *Policy*.

C-6.1.1 This policy applies to DDs, including RODS, Interim RODS, Action Memoranda, and Statements of Basis for response or corrective actions taken in accordance CERCLA, the NCP, Executive Order 12580 and RCRA.

C-6.1.2 Decision documents are required to document response or corrective actions that are DERP eligible, including interim remedial actions, remedial actions, removals or implementation of land use controls that USACE imposes as part of a remedy to address a CERCLA or MMRP risks or eligible RCRA corrective actions. Emergency response actions shall be documented after the fact. All DDs must be included in the Administrative Record file for the FUDS project.

C-6.1.3 HQUSACE shall ensure decision documents that commit the Army to future expenses pass the following checks:

C-6.1.3.1 The project must be FUDS eligible.

C-6.1.3.2 The Management Action Plan for the property contains funding for the response action at the project(s).

C-6.1.3.3 The costs are accurately described in the property CTC report and that adequate funding exists within the budget year (PRESBUD) and program years (FYDP) to support the response action at the project(s).

C-6.1.3.4 The project is consistent with priorities for relative risk reduction in program guidance.

C-6.1.3.5 All signed decision documents are to be documented in FUDSMIS.

C-6.2 *Signature Authority*. Approval thresholds for DDs are described below:

C-6.2.1 The Assistant Chief of Staff for Installation Management (ACSIM) is the approval authority for all decision documents that have a selected remedy[1] with a present worth cost estimate of more than $10 million.

C-6.2.2 The Chief, CEMP-DE is the approval authority for DDs that have a selected remedy with a present worth cost estimate of more than $2 million but less than or equal to $10 million. The Chief, CEMP-DE may delegate this approval authority to a colonel (06) or GS-15 within HQUSACE.

C-6.2.3 The District Commander, USACE, is the approval authority for those DDs that have a selected remedy with a present worth cost estimate of $2 million or less.

C-6.2.4 For DDs of interest to the Army Secretariat, The Deputy Assistant Secretary of the Army (Environmental, Safety and Occupation Health) [DASA(ESOH)] may elect to sign the DD.

C-6.3 *Requirements if Changes Occur in Decision Documents.*

[1] The selected remedy includes the RA-C and RA-O phases.

C-6.3.1 The geographic military District Commander may approve Explanation of Significant Differences (ESD) and ROD/DD amendments for RODs originally approved by HQUSACE or ACSIM if the ESD or amendment does not cause an increase in cost of greater than $2 million. ESD or ROD amendments with increases greater than $2 million will be forwarded through the chain of command for HQUSACE (for increases of more than $2 million but less than $10 million) or ACSIM (for increases of more than $10 million) for approval in accordance with staffing procedures below.

C-6.3.2 When the actual cost of the remedy exceeds the authority of the original approval authority (e.g., $1.5 million ROD approved by District Commander; actual cost exceeds $2 million) due to, for example, a change in the project scope or remedy cost, the District Commander shall provide the next higher level approval authority (HQUSACE or ACSIM, as appropriate) information regarding the original scope and cost estimate of the project and the nature, extent, costs of any changes thereto.

C-6.4 *Staffing Procedures*.

C-6.4.1 Regardless of the approval level, before signing or forwarding the DD for approval, the District Commander shall staff DDs with their environmental, legal and public affairs offices, obtain review and comment from the appropriate USACE Center of Expertise (see paragraph 7-5), and obtain coordination with the U.S. Army Center for Health Promotion and Preventative Medicine (USACHPPM) for HTRW projects or the U.S. Army Technical Center for Explosives Safety (USATCES) for MMRP category responses with explosive hazards. The CX review is not one for approval but rather intended to provide technical and legal comments for consideration by the District. The District will prepare a summary of unresolved comments resulting from the review by the appropriate CX or the coordination with USACHPPM or USATCES and provide to the Division for DDs greater than $2 million. Figure C-1 shows the FUDS decision document staffing procedures. Use Worksheet C-1 to document required review and coordination and include the matrix when forwarding decision documents for approval.

C-6.4.2 For decision documents of more than $2 million but less than $10 million, the USACE District Commander will submit three copies of the final DD through the geographic Military Division to CEMP-DE:

C-6.4.2.1 One copy for each level in the chain-of-command below the approval authority.

C-6.4.2.2 A statement describing the lead regulatory agency’s determination, including whether that agency supports this action.

C-6.4.2.3 The completed Staffing Matrix (Worksheet C-1).

C-6.4.3 DDs with costs of more than $10 million: The USACE District Commander will submit five copies of final DDs through the geographic Military Division to CEMP-DE for forwarding to Headquarters, Department of the Army, ACSIM, ATTN: DAIM-EDC, 600 Army Pentagon, Washington, D.C. 20310-0600. The Office of the Director, Environmental Program (ODEP), will provide copies to the appropriate Headquarters, Department of the Army (HQDA) staff elements for staffing.

C-6.5 *Executive Summary*. In addition to placing a copy of all signed DDs in the FUDS project Administrative Record file, the approving USACE headquarters (USACE District Commander for DDs with costs less than $2 million and CEMP-DE for DDs with costs between $2 and 10 million) shall prepare a short executive summary of the DD and send the executive summary via email to the Chief of the Cleanup Division, ODEP, and to the Assistant for Restoration, Office of the DASA(ESOH). The executive summary should describe:

C-6.5.1 The selected response action and its relationship to other cleanup actions and operable units.

C-6.5.2 Degree of risk reduction.

C-6.5.3 Present value cost of the remedy and the contribution to the cost-to-complete of all remedies for the FUDS Property.

C-6.5.4 Amounts and fiscal year(s) that funds are required for remedial action design and construction.

C-6.5.5 Duration of any RA-O.

C-6.5.6 LUCs required and means of maintaining them.

C-6.5.7 Other potential remedies considered.

C-6.6 *Suspense*.

C-6.6.1 District transmittal memoranda should advise the chain of command of any negotiated or imposed deadlines and allow sufficient time for staffing at each level. To assist planning, Figure C-1 provides the time required for staffing each stage. USACE policy suggests allowing 60–90 days for technical review and concurrence in addition to 20-45 days for administrative staffing at HQUSACE and HQDA.

C-6.6.2 In situations when an IAG deadline might be missed for decision documents over $2 million, USACE District will:

C-6.6.2.1 Convene a conference call with the geographic military Division Program Manager, HQUSACE FUDS Program staff, and (for decision documents over $10 million) ODEP representatives to initiate expedited staffing procedures. This conference call should

result in an understanding of any deadlines and if and how the staffing process may be expedited to meet the IAG deadline.

C-6.6.2.2 To initiate the HQUSACE staffing process, the District Commander should send a copy of the final decision document to HQUSACE and to ODEP (for information for decision documents over $10 million) via email in Adobe portable document format (pdf) for smaller documents or overnight or next day commercial delivery.

## C-7 Project Declaration Statement.

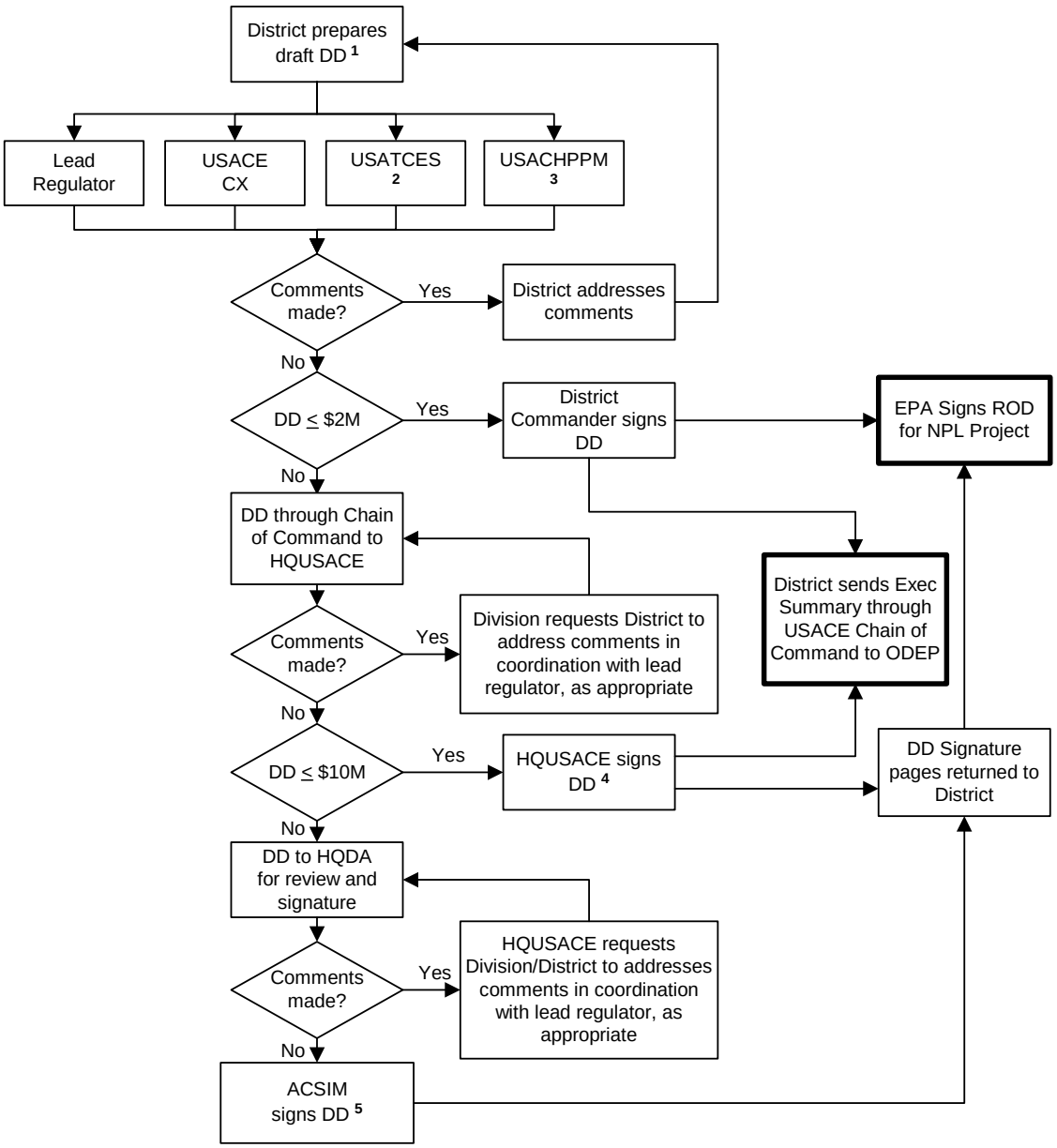
C-7.1 Project Declaration Statements are brief one- or two-page documents the PM completes and signs at the completion of a project phase that declares the current status of the project. The Declaration will serve to summarize the project documents and affirm that either (i) no further response action is required and the project should be declared NDAI or (ii) additional response action is required and follow-on phases should be conducted. Project Declaration Statements are required at the completion of:

- The INPR, to concur with the findings of PA Report;
- The SI phase, to concur with the findings of SI Report;
- The RD phase for a CON/HTRW, to indicate when no USTs or containers were located during the RD phase;
- The RA-C phase;
- The RA-O phase;
- The LTM phase.

C-7.2 When a ROD, DD or Action Memorandum is prepared for a project, it shall be considered to fulfill the requirement for the Project Declaration Statement and a separate declaration statement need not be prepared.

C-7.3 Project Declaration Statement shall be retained as part of the Administrative Record file and permanent Project Files.

C-7.4 A template for the project declaration statement is provided as Worksheet C-2.




Notes:
1. Includes ROD/Decision Documents/Action Memoranda.
2. For MMRP projects with explosives risk, USATCES coordination requirement is satisfied by providing opportunity for review and comment of the draft EE/CA or draft Proposed Plan.
3. For HTRW projects, USACHPPM coordination requirement is satisfied by providing opportunity for approval of human health risk assessments and review of ecological risk assessments developed during the RI/FS. [AR 200-1, 1-18.a.(3)] USACHPPM coordination not required for removal responses.
4. HQUSACE signature authority may be delegated to a colonel (O6) or GS-15 within HQUSACE.
5. For Decision Documents of interest to the Army Secretariat, DASA(ESHO) may elect to sign.

**Figure C-1. FUDS Decision Document Staffing Procedure.**

## Worksheet C-1
## Staffing Matrix for Records of Decision/Decision Documents/Action Memoranda [1]

| **Decision Document Title:** | | | | | | |
|---|---|---|---|---|---|---|
| **Organization** | **Staff Activity** | **POC Name** | **Office Symbol** | **Phone Number** | **FAX Number** | **Email Address** |
| **Geographic Military District** | FUDS Program Mgr. | | | | | |
| | Counsel | | | | | |
| | PAO | | | | | |
| **HTRW Design District/ MM Design Center/Centers of Expertise** | Technical/environmental | | | | | |
| | HTRW CX | | | | | |
| | MM CX | | | | | |
| | USATCES [2] | | | | | |
| | USACHPPM [3] | | | | | |
| **Geographic Military Division** | FUDS Program Mgr. | | | | | |
| **HQUSACE** | CEMP-DE | | | | | |
| | Counsel | | | | | |
| | PAO | | | | | |
| **HQDA** | ODEP | | | | | |
| | TJAG | | | | | |
| | Army Public Affairs | | | | | |
| | OTSG | | | | | |
| | ODASA (ESOH) | | | | | |
| | Army Safety Office | | | | | |

1. To be completed and forwarded with ROD/DD/AM where the present cost of the selected remedy (RA-C and RA-O phases) exceeds $2 million.
2. For MMRP projects with explosives risk, USATCES coordination requirement is satisfied by providing opportunity for review and comment of the draft EE/CA or draft Proposed Plan.
3. For HTRW projects, USACHPPM coordination requirement is satisfied by providing opportunity for approval of human health risk assessments and review of ecological risk assessments developed during the RI/FS. [AR 200-1, 1-18.a.(3)] USACHPPM coordination not required for removal responses.

## Worksheet C-2
## Project Declaration Statement

Property/Project Number: _____
Property Name: _____
Project Description: _____
_____
Property Location: _____

1. This declaration statement is being for the following project category (check one):
   - ☐ HTRW
   - ☐ MMRP
   - ☐ CON/HTRW
   - ☐ BD/DR
   - ☐ PRP/HTRW
   - ☐ PRP/MMRP

2. This declaration is being made upon the completion of this phase of work at the project (check one):
   - ☐ The INPR (documented in the PA Report)
   - ☐ The SI (documented in the SI report)
   - ☐ RmD for USTs (when no USTs or containers were found)
   - ☐ RA-C or RmA-C
   - ☐ RA-O
   - ☐ LTM

3. I have reviewed the project file and associated documentation and concur that (check one):
   - ☐ No additional response action is required for the project.
   - ☐ Additional response action is required for the project.

4. If no additional response action is required at the project, I have made the appropriate NDAI entry into FUDSMIS. If additional response action is required, the appropriate Cost-to-Complete information has been entered into FUDSMIS. I have included a copy of this declaration in the permanent Project File for the project.

Printed Name: _____

Office: _____

Date: _____

PM Signature: _____

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## Appendix D
## Program History

**D-1 General**. The following discussion of program history provides an overall perspective of the evolvement of the FUDS program history.

### D-2 Program History.

D-2.1 *The Beginning*. The DERP program evolved out of agency decisions within DoD in the early 1970s. In 1974, DoD directed USACE to conduct a study to determine the nature and extent of the environmental impact of abandoned military debris on Federal lands in Alaska. A draft environmental impact statement (EIS) was prepared for a proposal to remove and dispose of debris and obsolete buildings. In 1975, DoD launched a pilot environmental restoration program to respond to known environmental contamination at several Army installations. The Army environmental restoration program was extended throughout DoD in 1976. These activities were originally designed to primarily prevent contamination from migrating off the boundaries of DoD properties. Cleanup was not required unless DoD was going to relinquish ownership of a property or use the property in another DoD mission. During this time, many of the pollution control statutes, such as the *Clean Water Act* and *Solid Waste Disposal Act* (commonly referred to as the *Resource Conservation and Recovery Act* [RCRA]), were enacted or substantially revised.

D-2.2 *The Early 1980s*. Congressional concern over abandoned military buildings and debris in Alaska, and releases of hazardous substances from Federal facilities, laid the foundation of the DoD environmental restoration program.

D-2.3 *1983*. In December 1983, the *Defense Appropriations Act* (Public Law [PL] 98-212) provided 1-year funding for cleaning up hazardous substances released from DoD properties and removing unsafe or unsightly DoD buildings and debris. The Act also initiated environmental restoration activities at FUDS.

D-2.4 *1984*. Execution of the program was delegated by DoD, through the Headquarters of the Army, to the USACE. The delegation made USACE the chief executor for environmental restoration activities at FUDS.

D-2.5 *1985 and 1986*. The line-item appropriations continued in 1985 and 1986. However, project eligibility for BD/DR was narrowed by replacing the aesthetic requirements of being “unsightly” with a requirement that the building or debris be “unsafe”. Moreover, these activities were limited to former DoD properties currently owned by state or local governments or Native American corporations in Alaska. In October 1986, the *Superfund Amendments and Reauthorization Act* (SARA) was signed into law. Section 211 of SARA established the Defense Environmental Restoration Program (10 USC §2701 et seq.). The DERP legislation authorized the Secretary of Defense to carry out response actions with respect to releases of hazardous substances from active and FUDS.

D-2.6 *1997*. Public Law 104-201, *National Defense Authorization Act* for FY 1997 established environmental restoration accounts for each military component and DoD, i.e., ER-Army, ER-Navy, ER-Air Force, and ER-Defense. The *Floyd David Spence National Defense Authorization Act* for FY 2001, Public Law 106-398, established the ER-Formerly Used Defense Site account.

## Appendix E
## Project Cost-to-Complete Estimating Guidance

**E-1 Purpose.** This Appendix establishes criteria and standards for development, review, and reporting of Cost-to-Complete (CTC) estimates that support project management and upward reporting for the Environmental Restoration Liability, budget submittals, the Annual Report to Congress (ARC), and the DoD In-Progress Reviews. Project "Cost-to-complete" is defined as an estimate of the current and future years costs of an eligible FUDS project. This Appendix outlines responsibilities, methodologies, and procedures for preparing and documenting the portion of the CTC represented by the Budget Year and beyond and performing Quality Control and Quality Assurance. Refer to Chapter 6 for a discussion of the FUDS Planning, Programming, Budgeting, Executing, and Reporting process.

**E-2 Overview.** The 1990 *Chief Financial Officers (CFO) Act* added new requirements for the Department of Defense (including USACE) to report liabilities, including environmental restoration liabilities. These requirements were expanded through subsequent legislation including the *Government Performance and Results Act (GPRA)*, the *Government Management Reform Act (GMRA)*, and the *Federal Financial Management Improvement Act (FFMIA)*. Also, refer to the *DoD Management Guidance for the DERP* (Chapter 15) for CTC estimate and financial reporting requirements.

**E-3 Requirements**. These statutes require USACE to develop auditable financial statements that report both assets and liabilities. The Statement of Federal Financial Accounting Standards (SFFAS) Number 5, Accounting for Liabilities of the Federal Government, generally defines a liability as a probable and estimable future outflow of resources attributable to a past government transaction or event. SFFAS Number 6, Accounting For Property, Plant, And Equipment, contains accounting standards for federally owned property, plant, and equipment (PP&E); deferred maintenance on PP&E; and cleanup costs. The test for "probable" is when an outflow is more likely to occur than not occur, based on current facts and circumstances. Within the environmental arena, liabilities are divided into two distinct categories: "environmental restoration" and "environmental disposal". In the case of environmental restoration, all actions that can be taken under the DERP are reportable as environmental liabilities.

E-3.1 For USACE, a complete disclosure of environmental liabilities in the annual financial statements has two main elements, including:

E-3.1.1 Complete disclosure of all environmental liabilities (funded and unfunded), per the requirements of SFFAS 5 and 6, the DoD Financial Management Regulation (FMR) 7000.14, and this guidance and other applicable guidance. This disclosure includes having complete, formal, and auditable documentation of all data, models, and other information used to develop the estimate of the environmental liability.

E-3.1.2 Documentation that all models were assessed per the requirements of DoDI 5000.61 – DoD Modeling and Simulation Verification, Validation, and Accreditation (VV&A).

E-3.2 To meet these requirements for disclosure and documentation for each DERP program category (i.e., Installation Restoration, Military Munitions Response Program, and Building Demolition/Debris Removal), USACE shall undertake actions in the following areas:

E-3.2.1 USACE will prepare the annual cost-to-complete estimates in current year dollars for each FUDS project in the program in accordance with this Appendix and DoD-FMR 7000.14. These estimates will reflect the environmental restoration strategy and sequence as presented in the Management Action Plan for FUDS projects and all activities and changes that occurred in individual fiscal years.

E-3.2.2 For each FUDS project, USACE shall prepare a cost–to-complete estimate for the financial liability statement using project-specific information available at the time of the estimate development. If detailed project-specific information is available, such as a completed RI/FS report or remedial design documents, a detailed cost estimate is preferable to using a parametric cost estimating system to develop a probable cost. If insufficient information is available to develop a detailed cost estimate, a parametric estimating tool can be used to augment available project specific information and develop a probable estimate.

E-3.2.3 USACE geographic military Districts will ensure the reliability and completeness of the data used to calculate their cost-to-complete estimates. FUDS project inventory and estimated cost data prepared for the DERP Annual Report to Congress will be used by the USACE as the baseline for the environmental liability estimate. USACE geographic military Districts are required to ensure that these data sets are complete, up-to-date, and fully and formally documented in a manner that will withstand an audit. The USACE geographic military District will perform and document an annual quality control review of all their cost-to-complete estimates, including estimates developed by others.

E-3.3 Cost-to-complete estimates and FUDSMIS shall document environmental restoration cost information on material changes. A material change is a change of more than 10 percent of the cost-to-complete (up or down) of individual FUDS projects. Reasons for such a change may include changes to project scope and requirements, inflation, deflation, new regulatory requirements, changes in laws, technologies, plans, or delays in implementation because of events such as legal action, natural disaster, or adverse weather.

E-3.4 Cost-to-complete estimates are subject to audit. The FMR emphasizes that financial records must have audit trails to allow transactions to be traced from the point of initiation to the final report. For the FUDS program, the audit trail begins with the project file, incorporates the selected remedy and quantities documented in the estimate, hinges on accurate entry of phase cost data into FUDSMIS, and ends with the Environmental Liability statement. A fundamental requirement of a good audit trail is that all transactions must be adequately supported with pertinent documents and source records. The source document shall include a narrative providing sufficient explanation for the basis of the estimate, the date prepared, the preparer’s name, and evidence of management approval. Original estimates and changes in those estimates shall be documented and available for review.

E-3.5 USACE must implement a formal training program (e.g., introductory training and recurring "refresher" training) for staff developing cost-to-complete estimates or preparing environmental liability reports. Documentation that staff received this training shall be maintained as a part of the audit trail for the annual financial statement.

**E-4 CTC Preparation Using the Project Delivery Team.** CTC estimates will only be as good as the accuracy of the project information known at the time of preparation and the validity of the assumptions made in arriving at the estimate. A multidisciplinary integrated team approach must be used to verify and develop the project technical assumptions, a representative remedy, quantities, and schedule used in cost estimate preparation.

**E-5 Responsibilities.** The geographic military District FUDS PM is ultimately responsible for the costs that are developed and reported in the FUDSMIS database. The PM must ensure that the FUDS CTC estimates are complete and that they include all present and future project costs in current year dollars.

E-5.1 Districts must ensure that the FUDS CTC estimates are reviewed and updated annually and as necessary (see Paragraph E-9).

E-5.2 Divisions must conduct oversight of the CTC process to ensure that Districts are complying with requirements.

E-5.3 In addition to District and Division QA/QC review of estimates, HQUSACE tasks the HTRW and OE Centers of Expertise to perform an independent QA review of queried estimates reported into FUDSMIS. Paragraph E-10 further describes the QA/QC details.

**E-6 Development of Estimates.** A project CTC estimate is prepared to determine the expected total remaining cost of response actions at a FUDS project. Total project CTC includes all appropriate project phases, including allowable markups. All phases of work, unusual features, and follow-on response actions (if required) must be identified and adequately quantified and costed. Failure to identify and include provisions for follow-on response actions will result in serious under programming and subsequent funding shortfalls. The project CTC estimate must be conscientiously developed, with all conditions that may affect the scope or cost taken into account.

**E-7 Cost Estimating Methods.** There are several estimating methods that can be used for a CTC estimate. The appropriateness of selecting an estimating method depends upon the extent of project information available. These methods are described below:

E-7.1 *Parametric Cost Estimating*. Parametric estimating means using various factors to develop an estimate. The factors are based on engineering parameters, developed from historical databases, remediation practices, and engineering and treatment technologies. The appropriateness of selecting the parametric method depends upon how well the project is defined, the similarity between the project and historical data models, and the ability to calculate details. A parametric cost estimating approach is useful when little or no design information is available to develop a detailed cost estimate.

E-7.2 *Detailed Cost Estimating*. Detailed estimating is also known as definitive or "bottom-up" estimating. A detailed cost estimating approach can be used when adequate design information is known or can be reasonably assumed.

**E-8 Estimate Backup Data.** Each estimate should be fully documented and supported. Documentation must be sufficient to explain the basis for phases included, the remedy selected, and the quantities used as well as reference the source documents used in estimate development. All ground rules and assumptions used in developing the estimate should be documented for each phase of the project.

**E-9 Update of Cost Estimates.** All CTC estimates will be priced in Current Year dollars and will not include future inflation. CTC project estimates should be reviewed and updated in a timely manner to make sure that they reflect current pricing for the work to be performed. As a rule, all FUDS projects with cost estimates more than 1 year old should be updated based on current project information and schedules.

**E-10 Quality Review of CTC Estimates.** Consistent with the Quality System Requirements discussed in Chapter 7, FUDS Program Manager at the geographic military Divisions and Districts will incorporate a quality review of the FUDS CTC into their Quality Management Plan. All CTC estimates (whether prepared in-house or by contract) will undergo quality assurance and quality control reviews.

E-10.1. Geographic military Divisions are responsible to assign quality review roles and to conduct quality assurance reviews of the QA/QC process used by the geographic military Districts and Centers of Expertise. As requested by HQUSACE or the Divisions, the HTRW and MM CXs will conduct quality assurance reviews on a representative sample of District prepared CTC estimates. These reviews will verify if Districts have completed their quality control process and if the CTC estimates are accurately entered into FUDSMIS. The CXs will prepare a Quality Assurance Report following their review for submittal to HQUSACE and Division.

E-10.2 Geographic military Districts will use the attached Worksheet E-1, *FUDS Cost-to-Complete Quality Control Review Checklist* to document the completion of their review of CTC estimates prepared annually for each project in their inventory. The completed QC checklist shall be signed and filed in the permanent Project File for the FUDS project.

**E-11 Cost Estimating Systems.** The use of automated cost estimating systems enhances the efficiency, accuracy, and credibility of CTC estimates. Automation assists in the standardization of estimating procedures and provides estimates that are easily reviewed, revised, and adapted to new projects or situations. Automation is just a tool and cannot take the place of professional cost engineering knowledge or judgment. The cost estimator should always be knowledgeable of the system's capabilities and limitations in relation to a project. The cost estimator must be especially careful when using models and when adapting cost estimates to new projects to ensure that there are neither duplications nor omissions in the estimate. Output should be checked for reasonableness, and assumptions and methodology should be verified and documented. The best automated system is not a replacement for good estimator judgment.

Available cost estimating software programs to develop FUDS CTC estimates are described below.

E-11.1 *Remedial Action Cost Engineering and Requirements® (RACER®).* RACER is a parametric estimating tool that can develop FUDS CTC cost estimates for all project phases, from characterization through final closeout. At a minimum, RACER will be used to develop CTC estimates for FUDS HTRW and MMRP projects before the decision document is finalized and for CON/HTRW and BD/DR projects before the design is completed.

E-11.1.1 RACER is used primarily to develop budgetary cost estimates in the early stages of project response actions, when details are limited or not available. RACER uses cost models of cleanup systems to develop costs for response actions. It uses generic cost models that are based on historical project information and technologies. The generic models available in RACER are modified to reflect actual conditions of new projects. The tailored models are then quantified and pricing is updated in accordance with the budget year costing data using a commercial environmental unit price book as a base. RACER will estimate costs for studies, design, remedial action, operation and maintenance, and long-term management. Over 100 generic cost models have been developed to date. The latest version of RACER should be used by USACE for developing FUDS CTC estimates unless otherwise approved by HQUSACE.

E-11.1.2 RACER was accredited in accordance with DoD Instruction 5000.61, Modeling and Simulation Verification, Validation, and Accreditation (VV&A). RACER provides an automated, consistent, and repeatable method to estimate and document the program costs for environmental cleanup of contaminated sites, and to provide a reasonable cost estimate for program funding consistent with the information available at the time of the estimate preparation.

E-11.2 *Micro Computer-Aided Cost Engineering System® (MCACES®).* MCACES is the standard detailed cost estimating system used by all district Cost Engineering offices. Primarily, it is used for cost estimates where detailed design information is available. MCACES includes a Unit Price Book (UPB) database that contains cost information on more than 21,000 unit price line items for construction labor, equipment, and material.

**E-12 Submission of CTC Estimates to FUDSMIS.** The District FUDS program manager is responsible for ensuring that CTC estimates are updated and populated in FUDSMIS before USACE submissions to the BES and ARC. Budgetary estimates are submitted every year as part of the development of the Annual POM Exhibits, BES, PRESBUD, ELR, and ARC. Table E-1 describes the schedule of activities for the annual budget submission.

**Table E-1**
**FUDS Schedule of Annual Cost-to-Complete Estimate Development and Update**

| | ACTIVITY | INITIATION DATE | COMPLETION DATE |
|---|---|---|---|
| | The Districts queries FUDSMIS and provides a list of projects to Divisions | Middle Of July | 1st Week In October |
| | Division Assigns Estimate Preparation Responsibilities to Districts and CXs | Last Week In July | 2nd Week In October |
| District Responsibility | Districts Prepares CTC Estimates For Assigned Projects, Performs QC Review, Incorporates comments from QC Review And Updates Information In FUDSMIS. | Last Week In July | 1st Week In December |
| | Districts Submit CTC Estimates To CXs For QA Review. | 2nd Week In November | 2nd Week In December |
| | District performs QC Review on CX developed Estimates and provides comments to be incorporated into estimates. | 1st Week In October | 1st Week In January |
| CX Responsibilities | CXs Prepare CTC Estimates For Assigned Projects. | Last Week In July | 1st Week In December |
| | CXs Submit CTC Estimates To Districts For QC Review. | Early October | 1st Week In December |
| | Incorporated QC Comments, Complete Final Estimate Revisions And Enter Revised Estimates Into FUDSMIS and Provide estimates to Districts. | 1st Week in December | 1st Week In February |
| | CXs perform QA of Representative sample of CTC Estimates. | 1st Week In February | 1st Week In March |
| | All estimates QA'ed and QA'ed, entered into FUDSMIS, and available for HQUSACE use. | NA | Last Week in March |
| | Divisions, or CXs as requested by Divisions, submit After Action Report to HQUSACE. | 1st Week March | 1st Week In April |
| | CEMP-DE prepares POM exhibits and Environmental Liability Report. | NA | 1st Week In April |

## Worksheet E-1
## FUDS Cost-to-Complete Quality Control Review Checklist

| FUDS Property Name: _____<br>FUDS Project Description: _____<br>FUDS Property Number: _____; FUDS Project Number: _____<br>Estimate Reviewed File Name and Location: _____ | | Yes | No |
|---|---|---|---|
| 1. | Does the estimate include background information? | | |
| 2. | Is sound estimating methodology used and the assumptions used reasonable? | | |
| 3. | Does the estimate include all relevant phases and costs to complete the project? | | |
| 4. | Are the estimate phase totals consistent with phase amounts in FUDSMIS? | | |
| 5. | Does the Project Delivery Team (that may include an estimator) include qualified personnel and has the PDT received applicable training to prepare the CTC estimate? | | |
| 6. | Is there an adequate audit trail? | | |
| 7. | Is the estimate prepared in the current year dollars? | | |
| 8. | Is the QC review documented? | | |
| 9. | Has an electronic version of the estimate been submitted to PIRS? | | |
| 10. | Has a printed copy of the estimate been filed in the District permanent Project File? | | |
| Project Manager Signature: _____ Date: _____/_____/_____ | | | |
| Comments: | | | |
| Use the instructions on the reverse of this Worksheet. | | | |

## Instructions for completing the *FUDS Cost-to-Complete Quality Control Review Checklist*.

Answer the questions on the Checklist using the following criteria.

***Question 1: Does the estimate include background information?*** In order to respond with a "Yes", the estimate must include all of the following information.

- Remediation Expert (RE) name and telephone number consulted during estimate development
- Cost Estimator (CE) name and telephone number who developed the estimate
- District Project Manager Name and telephone number who is responsible for the project estimate name
- Documents on which the estimate was developed from (e.g., INPR, SI)
- Basis for Project start date (i.e., per District PM)
- Other narrative descriptions that describe the project (project history, media and contaminant remediation, assumed approaches, etc.)
- Other instructions, if any, provided by the District PM

***Question 2: Is sound estimating methodology used and the assumptions used reasonable?*** In order to respond with a "Yes", the estimate must include all of the following information.

- Rationale for technology selections documented in estimate
- Rationale for quantities and costs (In RACER this would be notes that provide reasons and/or justification for the required parameter entries, reasons and/or justification for changes to the secondary parameters and assemblies)
- Unique or special site-specific considerations and/or regulatory requirements that may have a significant effect on the technologies selected.
- Appropriate Mark – Ups used in developing contract and in house costs.
- Appropriate Area Cost Factors and Safety Factors used.

***Question 3: Does the estimate include all relevant phases and costs to complete the project?*** In order to respond with a "Yes", the estimate must include all of the following information.

- Only phases relevant to the type of project and status (stage) of the project are being estimated (e.g. the estimate should only contain future phases).
- All the phases included in the particular category project estimate reflect the proper FUDSMIS entries for project (i.e., SI, RI/FS, EE/CA, RD, RA-C, RA-O, LTM, and PCO). See Table 4-4 in the FUDS ER.

***Question 4: Are the estimate phase totals consistent with phase amounts in FUDSMIS?*** In order to respond with a "Yes", the estimate and FUDSMIS phases and phase amounts must be the same.

***Question 5: Does the Project Delivery Team (that may include an estimator) include qualified personnel and has the PDT received applicable training to prepare the CTC estimate?*** In order to respond with a "Yes", the PDT must has the following training and experience.

- RACER training.
- Experience in developing estimates.
- Formal or informal environmental training.
- FUDS Cost to Complete training.

***Question 6: Is there an adequate audit trail?*** In order to respond with a "Yes", all of the following criteria must be met.

- The estimate is consistent with FUDSMIS entries.
- The estimate can be replicated.
- The estimate documentation is added to the permanent Project File.
- Notes in estimate explaining where the source documentation can be located, e.g., project files.
- Comparison of the prior year estimate to the current year estimate is documented and the basis for the change is explained.

***Question 7: Is the estimate prepared in the current year dollars?*** In order to respond with a "Yes", the estimate must meet the following criteria.

- The most current software and databases were used to develop the CTC estimate.
- A price level index was applied if the estimate was not developed using with most current software and databases.

***Question 8: Is the QC review documented?*** In order to respond with a "Yes", the estimate must include all of the following information.

- The Quality Control Checklist is completed and signed
- The name and qualifications of the QC reviewer are documented on the signed checklist.

***Question 9: Has an electronic version of the estimate been submitted to PIRS?*** In order to respond with a "Yes", the electronic file containing the estimate must have been submitted to PIRS for the electronic permanent Project File. For RACER estimates, this includes the RACER.mdb file and the Cost-Over-Time report.

***Question 10: Has a printed copy of the estimate been filed in the District permanent Project File?*** In order to respond with a "Yes", a hard copy of the estimate must have been printed and inserted in the permanent Project File. For RACER estimates, this includes the Cost-Over-Time report.

## Appendix F
## FUDSMIS-CEFMS Interface Standard Operating Procedure

**F-1 General**. To facilitate the FUDSMIS-CEFMS interface, to maintain the consistency in the FUDS F&A reporting, and to automatically update the FUDSMIS Annual Workplan (AWP) obligation data, USACE must follow the following rules for the current-year AWP execution:

F-1.1 *LINE ITEMS FUNDED WITH FAD (Direct Funded).* Enter PEAR code at the Funding Register as follows (See Figure F-1):

F-1.1.1 Enter first 7 characters of the PEAR into PROJECT CODE field.

F-1.1.2 Enter last 5 characters of the PEAR into LOCATION CODE field.

F-1.2 *LINE ITEMS FUNDED WITH CUSTOMER ORDERS (MIPRs):*

F-1.2.1 The Government Order by the issuing agency must include FUDS AMSCO and PEAR code.

F-1.2.2 The Customer Order by the performing agency must include the issuing agency's AMSCO and PEAR code (2FZZZ... is no longer valid).

F-1.3 All PEAR codes in CEFMS must be from the current year AWP in the FUDSMIS and must be in conformance with the FUDSMIS PEAR code rule (see Paragraph F-2 below). Any deviation from this rule must be approved by CEMP-DE.

F-1.4 The following FUDS In-house and Contract definitions will be used for FUDSMIS-CEFMS interface and FUDS F&A reporting purposes:

F-1.4.1 Contract Cost (both obligations and expenditures) is queried by keying:

Method of Accomplishment = C2, and
Resource Code = AESVCS, CONSTSVCS, CONTSVC, OTHCONSVC,
O&MCONT, ADV&ASTSVC, ITEREST, CONTEARN

F-1.4.2 Then, <u>definition of FUDS In-house Cost</u> is:

In-house Obligation = Total Obligation – Contract Obligation, and
In-house Expenditure = Total Expenditure – Contract Expenditure

F-1.5 FUDSMIS will include both the Direct Funded Report and the Customer Order Report for FUDS F&A information.

## F-2 FUDSMIS Automatic Generation of PEAR Code.

F-2.1 Allowable Project Phases for each project category are shown in Table 4-4.

F-2.2 Allowable Project Phases for Each Pseudo Project:

| Project Category * | PA | RAB | TRC | TAPP | M&S |
|---|---|---|---|---|---|
| **PA/INPR** | X | | | | |
| **COMM/REL** | | X | X | X | |
| **OTHER** | | | | | X |

* Pseudo projects do not need to be approved as projects in the INPR.

F-2.3 The PEAR Code for each allowable project phase for each project category will be system generated, as follows:

F-2.3.1 First two characters: "2F"

F-2.3.2 Third character for project (category):

| | | | |
|---|---|---|---|
| COMM/REL | = "R" | BD/DR | = "D" |
| CON/HTRW | = "C" | HTRW | = "H" |
| MMRP | = "O" | MMRP/CWM | = "W" |
| PRP/HTRW | = "P" | PRP/MMRP | = "X" |
| PA/INPR | = "I" | OTHER | = "N" |

F-2.3.3 Fourth character for (project) phase:

| | | | |
|---|---|---|---|
| PA/INPR | = "P" | SI | = "S" |
| PN | = "G" | RI/FS | = "R" |
| EE/CA | = "Q" | RD | = "D" |
| IRA | = "I" | RA-C | = "E" |
| RA-O | = "O" | LTM | = "C" |
| RmD | = "K" | RmA-C | = "L" |
| RAB | = "B" | TRC | = "T" |
| TAPP | = "U" | M&S | = "M" |
| OTHER | = "N" | PCO | = "X" |

F-2.3.4 Fifth through Tenth characters: The 4th through 9th characters of the Property Number (two-character State code plus four-digit property serial number).

F-2.3.5 Eleventh (11th) through Twelfth (12th) characters: Two-digit project serial number.

F-2.4 PEAR codes for COMM/REL (pseudo project):

RAB: "2FRB" + 4-9$^{TH}$ Characters of Property No. + 2-digit Project Number
TRC: "2FRT" + 4-9$^{TH}$ Characters of Property No. + 2-digit Project Number
TAPP: "2FRU" + 4-9$^{TH}$ Characters of Property No. + 2-digit Project Number

F-2.5 PEAR codes for PA/INPR:

"2FIP" + 4-9th characters of Property No. + "0" (one zero).

F-2.6 PEAR codes for DSMOA: "2FNN**XX0**DSMOA"

where, **XX0** is two-character State code plus one numeric zero.

F-2.7 PEAR code for ATSDR: "2FNN**000**ATSDR"

where, **000** is three numeric zeros.

F-2.8 PEAR codes for M&S: "2FNM**00000XXX**"

where, **00000** is five numeric zeros and **XXX** is three-character division code.

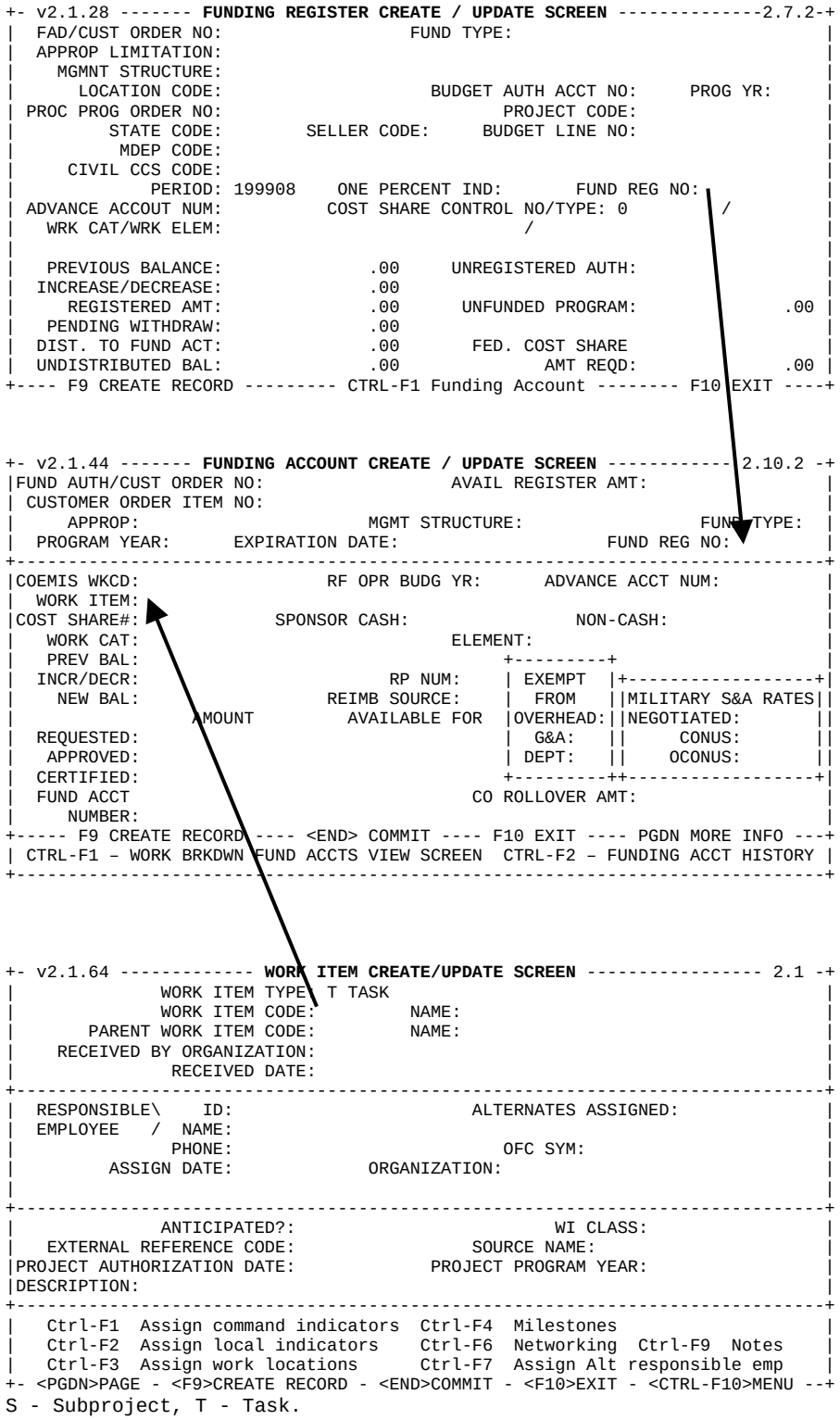
Example:
2FNM00000NWD (for each division. Districts must use their divisions' code)
2FNM00000CXH ("CXH" for HTRW CX )
2FNM00000CXO ("CXO" for MM CX )
2FNM00000HNC ("HNC" for HNC OE Directorate)

F-2.9 Fines and Penalties:

"2FFF" + 4$^{th}$ to 9$^{th}$ characters of Property Number + "00" (two zeros)

F-2.10 Statewide Management Action Plans:

"2FNN" + 2 digit State code + "000MAP"




**FUNDING REGISTER:** Establishes authority to commit & obligate by Army Management Structure Code (AMSCO). There is a separate funding register for each Management Structure Code.

**FUDS PEAR =**
**First 7 characters of PEAR at PROJECT CODE plus last 5 characters of PEAR at LOCATION CODE.**

**PEAR Code must be consistent with that of FUDSMIS.**

**FUNDING ACCOUNT:** is a summary of all financial information tied to a specific work item (funded work item). There is a separate funding account for each funded work item.

**One or more Funding Accounts can belong to one Funding Register.**

**For FUDS, however, only one Funding Account is possible for each Funding Register (This is because PEAR is at the Funding Register level).**

**WORK ITEM:** becomes a **Funded Work Item (FWI)** if its work item code is referenced by a **Funding Account.**

**There is a separate Funding Account for each Funded Work Item.**

**A Funded Work Item can have none, one, or more Funded or Ordering Work items as children.**

**Figure F-1 CEFMS Funding Register, Funding Account, and Funded Work Item.**

## Appendix G
## Real Estate Access and Acquisition

**G-1 Need for Real Estate Coordination.** The failure to obtain an appropriate right-of-entry or interest in real estate before entering onto land for investigation or remediation can subject Government and contractor personnel to civil or criminal penalties for trespass. Real Estate personnel from the geographic military District are familiar with laws and regulations regarding Government access to real estate, as well as alternative methods for gaining needed access and are trained to negotiate with landowners to obtain access rights. Moreover, Real Estate personnel can ensure that the Government action is not prejudiced by a violation of landowner rights, such as those under PL 91-646, as amended, and can obtain appraisals of fair market value where an easement rather than a right-of-entry is needed.

**G-2 Real Estate Access Notification.** A letter notifying a landowner that the Government requires use of his land has the potential for subjecting the Government to liability for payment to the landowner for various expenses the landowner may incur as a result of that letter. This is particularly true if the letter indicates intent on the part of the Government to displace the landowner from a home, business, or farm. See PL 91-646, as amended, *The Uniform Relocation Assistance and Real Property Acquisition Policies Act*, 42 U.S.C. 4601 et seq. Furthermore, if such a letter is intended to open negotiations for the Government's use of the land, the law cited above may require that the landowner be provided certain information. For these reasons, any landowner notification letter should be coordinated with or sent by the District Chief of Real Estate.

**G-3 Acquisition Authority.** District Chiefs of Real Estate are authorized to obtain rights-of-entry for survey and exploration. HQUSACE authorization may be required for the District to acquire real estate interest for work involving construction activities, such as excavation, removal of USTs, and the installation of LTM wells. Requests for authority to acquire such other interests should be submitted to HQUSACE, Office of Chief Counsel (CECC-R). A copy of the project approval memo from HQUSACE will help speed up the approval process. If the language of the draft worksheets included in this Appendix is used without variance, CECC-R approval of the language is not required.

**G-4 Real Estate Requirements.** Removal and remediation work will normally be carried out under a right-of-entry or an easement. A right-of-entry provides protection to the Government for projects that are relatively small. An easement differs from a right-of-entry in several ways. An easement is an interest in real estate whereas a right-of-entry is not. More authority and formality are required for the acquisition of an easement. Additionally, an easement provides protection to the Government that a right-of-entry lacks. For example, an irrevocable right-of-entry binds only the current landowner and may become void if the owner sells the land. Moreover, the title search and other processes required for the acquisition of an easement ensure that the owner has the authority to grant the interest the Government needs. This protection would be important for a project on which the Government intends to spend a considerable amount of money on contractor mobilization and project operation and requires access to the property for LTM. Project staff and District Chiefs of Real Estate should

coordinate early with CECC-R regarding potential real estate requirements and acquisition strategies, so that the process of acquiring necessary property rights does not delay removal or remedial actions.

**G-5 Indemnity, Hold-Harmless, and Restoration Agreements.** It is a violation of the *Anti-Deficiency Act* to enter into a contractual indemnity provision that subjects the United States to indefinite and uncertain liabilities without specific Congressional authority. The Comptroller General discourages such provisions, even where liability is limited to available appropriations. Paragraph 4 of Worksheet G-1 and paragraph 5 of Worksheet G-3 provide approved Army language. Revision to the language on these worksheets requires approval of CECC-R. A District seeking such revision will document the maximum amount of liability or state how it can readily be determined and state that sufficient funds to cover the maximum liability will be available.

## G-6 Temporary or Permanent Relocation for Response Action.

G-6.1 *Purpose.* The purpose of this Appendix is to provide FUDS Project Managers and Project Delivery Teams (PM/PDT) an overview of the relocation guidance for FUDS response actions. The actual execution of relocation is the responsibility of the Corps Real Estate Branch, typically conducted under Public Law 91-646, the *Uniform Relocation Assistance and Real Property Acquisition Policies Act* of 1970 (URA), as amended and the *Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs* under 49 CFR Part 24.

G-6.2 *Authority.*

G-6.2.1 CERCLA authorizes temporary or permanent relocations as part of removal actions and remedial actions in three sections as follows:

G-6.2.1.1 42 USC 9601 CERCLA Section 101(23) states a “removal” may include temporary evacuation and housing of threatened individuals not otherwise provided for.

G-6.2.1.2 42 USC 9601 CERCLA Section 101(24) states a “remedial action” may include “the costs of permanent relocation of residents and businesses and community facilities where the President determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect the public health or welfare.”

G-6.2.1.3 42 USC 9604 CERCLA Section 104 (i)(B) (11) provides for permanent or temporary relocation[1] of individuals if “a health assessment or other study carried out under this subsection contains a finding that the exposure concerned presents a significant risk to human

[1] For purposes of this guidance, permanent relocation requires acquisition of real property while temporary relocation does not. Typically, FUDS relocations are expected to be temporary; however, under certain circumstances, cost/benefit analysis or other factors may justify permanent relocation.

health," which requires taking "steps as may be necessary to reduce such exposure and eliminate or substantially mitigate the significant risk to human health."

G-6.2.2 The authority for FUDS to conduct relocations is provided under the DERP statute at 10 USC 2701(a), which requires that response actions be carried out subject to and in accordance with the provisions of CERCLA. Similar to the owner refusal of right-of-entry discussed in Chapter 3 of this ER, the FUDS policy is not to compel access and relocation but to notify the owner that, without their cooperation, we will refer the matter to the appropriate Federal or state environmental regulatory agencies.

G-6.3 *Need for Temporary or Permanent Relocation.* During execution of environmental response actions at a FUDS, it may become necessary to relocate owners and tenants. The PM/PDT are responsible for identifying the need for relocation, estimated duration, and effected geographic extent.

G-6.3.1 In evaluating the need for relocation, the threshold standards should be documented that clearly shows the following:

G-6.3.1.1 The contamination or implementation of the response action poses an unacceptable health or exposure risk.

G-6.3.1.2 The response action implementation method poses an unacceptable safety risk to residents in the area and no equally cost effective implementation method is available.

G-6.3.1.3 That relocation will allow for more efficient and cost-effective response action implementation.

G-6.3.2 Once it is determined that relocation is a consideration, the Real Estate Branch must be contacted and brought into the PDT to provide input into costs and timing elements of the relocation evaluation process.

G-6.3.3 In addition, the real estate responsibility includes cost estimation, determination of reasonable and eligible costs, advising the affected persons on how to prepare for the relocation, and negotiation of the relocation benefits with the owners and tenants based on current law and regulations.

G-6.4 *Eligible Costs*. DERP funds may be used to pay for reasonable expenses incurred by residents who are relocated during FUDS response actions. Eligible costs, rates of reimbursement, and cost documentation requirements are established by applicable laws and regulations, including but not limited to the *Joint Travel Regulations* (JTR), the *Uniform Relocation Assistance and Real Property Acquisition Policies Act* (URA), the U.S. Department of Transportation regulations at 49 CFR Part 24, and ER 405-1-12, as amended or superseded. The PDT real estate personnel shall identify the current rates and provide the relocation project cost estimate.

G-6.5 *Funding Source.* Under CERCLA, the potentially responsible parties are also responsible for funding relocation costs. ER-FUDS funds may be used to reimburse relocation costs in appropriate situations. Part of project planning should include notifying HQUSACE through the chain of command that relocations are anticipated, so that HQUSACE can make its decision, in advance of the need for relocation, to authorize use of ER-FUDS funds. The notification should include a description of the type of project, the reason why relocation is expected, the estimated numbers and categories of persons/entities likely affected, and the length of time relocations are expected to be needed. Reimbursement of relocation expenses is exempt from the *Prompt Payment Act*.

G-6.6 *Emergency Evacuation.* Emergency response plans are required as part of the Site Safety and Health Plan (SSHP) as identified in EM 385-1-1 and "shall be compatible and integrated with the disaster, fire, and emergency response plans of local, state, and Federal agencies." These emergency measures or operations are necessary to prevent or mitigate injury to human health or the environment. Section 123 of CERCLA provides for reimbursement to local governments of some and (in rare cases) all of the expenses incurred in conducting the temporary emergency measures. However, the Executive Order 13016 Amendment to Executive Order 12580 provides this reimbursement authority only to the EPA Administrator. Therefore, any responsibility for DoD to reimburse costs is beyond the scope of this guidance. Typically, the person or persons responsible for discharges or releases are liable for costs of cleanup.

**G-7 Draft Real Estate Worksheets.** The INPR approval memorandum authorizes the project eligibility and start of Right-of-Entry, Easement, and Access Agreement negotiations for the approved FUDS project. Draft worksheets are provided below. If any variance to the language of these worksheets is proposed, an approval by District Chief of Real Estate is required. The following paragraph found on any of the following worksheets cannot be changed without CECC-R approval:

> If any action of the Government's employees or agents in the exercise of this right-of-entry results in damage to the real property, the Government will, in its sole discretion, either repair such damage or make an appropriate settlement with the Owner. In no event shall such repair or settlement exceed the fair market value of the fee title to the real property at the time immediately preceding such damage. The Government's liability under this clause is subject to the availability of appropriations for such payment, and nothing contained in this agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies. The provisions of this clause are without prejudice to any rights the Owner may have to make a claim under applicable laws for any damages other than those provided for herein.

G-7.1 The Right-of-Entry for Environmental Assessment and Response worksheet is given here as Worksheet G-1.

G-7.2 The Temporary Environmental Response Easement Language worksheet is given here as Worksheet G-2.

G-7.3 The Access Agreement for Construction on a FUDS worksheet is given here as Worksheet G-3.

G-7.4 A Form Letter to Support Request for Reimbursement for temporary or permanent relocation is given here as Worksheet G-4.

## Worksheet G-1
## DA Right-Of-Entry For Environmental Assessment and Response

Project, Installation or Activity: _____

Tract No., Address or Property I.D.: _____

The undersigned, herein called the "Owner," in consideration for the mutual benefits of the work described below, hereby grants the UNITED STATES OF AMERICA, hereinafter called the "Government," a right-of-entry upon the following terms and conditions:

1. The Owner hereby grants to the Government an irrevocable and assignable right to enter in, on, over and across the land described in Schedule A, for a period not to exceed _____ months, beginning with the date of the signing of this instrument, and terminating with the earlier of the completion of the remediation or the filing of a notice of termination in the local land records by the representative of the United States in charge of the (Project Name), for use by the United States, its representatives, agents, and contractors, and assigns, as a work area for environmental investigation and response; including the right to store, move, and remove equipment and supplies; erect and remove temporary structures on the land; investigate and collect samples; (excavate and remove ordnance and explosive waste, pollutants, hazardous substances, contaminated soils, containerized waste, and replace with uncontaminated soil); (add or substitute the following, as appropriate)

- Excavate and remove all storage tanks (above, at, and below ground level), contents, and appurtenant piping.
- Demolish and dispose of former military structures and debris.
- Construct, operate, maintain, alter, repair, and remove groundwater monitoring wells, groundwater purification and injection systems, appurtenances thereto, and other devices for the monitoring and treatment of contamination in soil, air, and water.
- Dispose of ordnance and explosive waste by detonation.

and perform any other such work which may be necessary and incident to the Government's use for the investigation and response on said lands; subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowner(s), their heirs, executors, administrators, successors and assigns, all such right, title, interest, and privilege as may be used and enjoyed without interfering with or abridging the rights and right-of-entry hereby acquired.

2. The Owner also grants the right to enter and exit over and across any other lands of the Owner as necessary to use the described lands for the purposes listed above.

3. All tools, equipment, and other property taken upon or placed upon the land by the Government shall remain the property of the Government and may be removed by the Government at any time within a reasonable period after the expiration of this permit of right-of-entry.

4. If any action of the Government's employees or agents in the exercise of this right-of-entry results in damage to the real property, the Government will, in its sole discretion, either repair such damage or make an appropriate settlement with the Owner. In no event shall such repair or settlement exceed the fair market value of the fee title to the real property at the time immediately preceding such damage. The Government's liability under this clause is subject to the availability of appropriations for such payment, and nothing contained in this agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies. The provisions of this clause are without prejudice to any rights the Owner may have to make a claim under applicable laws for any damages other than those provided for herein.

5. The land affected by this permit or right-of-entry is located in _____, State of _____ and is described as follows:

WITNESS MY HAND AND SEAL this _____ day of _____, 20_____.

_____(SEAL)
(Owner)

_____(SEAL)
(Owner)

UNITED STATES OF AMERICA
By _____

## Worksheet G-2
## Temporary Environmental Response Easement Language

An assignable easement and right-of-way in, on, over, and across the land described in Schedule A, for a period not to exceed _____ years, beginning with the date of the signing of this instrument, and terminating with the earlier of the completion of the remediation or the filing of a notice of termination in the local land records by the representative of the United States in charge of the _____(Project Name), for use by the United States, its representatives, agents, contractors, and assigns, as a work area for environmental investigation and response; including the right to store, move, and remove equipment; and supplies; erect and remove temporary structures on the land; investigate and collect samples; (add or substitute the following, as appropriate)

a. Evacuate and remove ordnance and explosive waste, pollutants, hazardous substances, contaminated soils, containerized waste, and replace with uncontaminated soil.

b. Excavate and remove all storage tanks (above, at, and below ground level), contents, and appurtenant piping.

c. Demolish and dispose of former military structures and debris.

d. Construct, operate, maintain, alter, repair and remove groundwater monitoring wells, groundwater purification and injection systems, appurtenances thereto, and other devices for the monitoring and treatment of contamination in soil, air and water.

e. Dispose of ordnance and explosive waste by demolition.

and perform any other such work which may be necessary and incident to the Government's use for the environmental investigation and response on said lands under the Project; subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowner(s), their heirs, executors, administrators, successors, and assigns, all such right, title, interest, and privilege as may be used and enjoyed without interfering with or abridging the rights and easement hereby acquired.

## Worksheet G-3
## DA Access Agreement for Construction

Property Name: _____ Location: _____

Property No: _____

The undersigned, hereinafter called "Owner", hereby grants the UNITED STATES OF AMERICA, hereinafter called "Government", a permit upon the property located in the State of _____, County of _____, described as _____, as highlighted on the attached map. The permit is granted upon the following terms:

1. The Owner hereby grants the Government an irrevocable right to enter upon the lands hereinafter described at any time within a period of _____ months from the date of this instrument, to survey, make test borings, conduct samplings, and carry out such other construction activities, as delineated in paragraph 2, which may be necessary to complete the investigation being made of said lands by the Government or its contractor under the Defense Environmental Restoration Program.

2. Scope of work shall include, but may not be limited to, the following:
[Insert appropriate Scope of Work here.]

3. The Owner also grants the right to enter and exit over and across any other lands of the Owner as necessary to use the described lands for the purposes listed above.

4. All tools, equipment, and other property taken upon or placed upon the land by the Government shall remain the property of the Government and may be removed by the Government at any time within a reasonable period after the expiration of this permit.

5. If any action of the Government's employees or agents in the exercise of this right-of-entry results in damage to the real property, the Government will, in its sole discretion, either repair such damage or make an appropriate settlement with the Owner. In no event shall such repair or settlement exceed the fair market value of the fee title to the real property at the time immediately preceding such damage. The Government's liability under this clause is subject to the availability of appropriations for such payment, and nothing contained in this agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies. The provisions of this clause are without prejudice to any rights the Owner may have to make a claim under applicable laws for any damages other than those provided for herein.

6. If aircraft flights over said land, or entry upon the land by means of helicopter or other type aircraft, are necessary, the Government shall inform the Owner, in advance, of each such flight or entry.

WITNESS MY HAND AND SEAL this _____ day of _____, 20_____.

_____(SEAL)
(Owner)

_____(SEAL)
(Owner)

---

ACCEPTED
UNITED STATES OF AMERICA
By _____

## Worksheet G-4
## Form Letter to Support Requests for Reimbursement

Chief, Finance and Accounting Branch
U.S. Army Engineer District,
Address Block

RE: Site Name - Request for Reimbursement

The undersigned, residing at _____ is a resident of Site Name who was asked to evacuate his/her residence as a result of the temporary evacuation procedures at the Site Name site from _____until _____. Other members of my household who reside with me permanently and are affected by the temporary evacuation are:

| NAME | RELATIONSHIP | SSN |
|---|---|---|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

If there are any questions concerning my request, I can be reached by telephone at _____ during the day, or _____at night.

Attached is a list of the itemized expenses incurred as a result of the temporary evacuation of my family and the basis for these expenses.

I certify that I am not being reimbursed from any other source for these expenses. I understand that submission of a fraudulent reimbursement request may subject the requester to forfeiture of any payment received and a fine of not less than $5,000.00 and not more than $10,000.00 plus triple the amount of damages sustained by the United States (see 31 U.S.C. 3729), imprisonment for not more than 5 years, or both (see IS U.S.C. 287,1001).

I agree to accept said amount requested in full satisfaction and final settlement of this request for reimbursement of expenses incurred to date.

_____
Typed or printed name

_____ _____
Signature Date

INFORMATION REQUIRED BY THE PRIVACY ACT OF 1974

a. AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 2701 et seq.; 42 U.S.C. 9601 et seq.; Joint Travel Regulations, Volume II.

b. PRINCIPAL PURPOSE: To substantiate and account for reimbursements of expenses associated, with temporary evacuation.

c. ROUTINE USES: Used by the Department of the Army for reviewing requests for, approving expenditure of, accounting for, and disbursing Defense Environmental Restoration Account Funds for expenses associated with temporary evacuation.

d. DISCLOSURE: Voluntary, Failure to furnish information requested may result in total or partial denial of the amount requested for reimbursement.

# GLOSSARY

## Glossary-1 Acronyms and Abbreviations.

| Acronym | Meaning |
|---|---|
| ACM | Asbestos-Containing Materials |
| ACSIM | Assistant Chief of Staff for Installation Management |
| ADR | Alternative Dispute Resolution |
| AECS | Army Environmental Cleanup Strategy |
| AFAR | Army Federal Acquisition Regulation |
| AHA | Activity Hazards Analysis |
| AMSCO | Army Management Structure Code |
| AR | Army Regulation |
| ARARs | Applicable or Relevant and Appropriate Requirements |
| ARIMS | Army Records Information Management System |
| ARC | Annual Report to Congress |
| ASA(I&E) | Assistant Secretary of the Army for Installations, and Environment |
| ASR | Archives Search Report |
| AST | Aboveground Storage Tanks |
| ASTSWMO | Association of State and Territorial Solid Waste Management Officials |
| ATSDR | Agency for Toxic Substances and Disease Registry |
| AWP | Annual Workplan |
| BD/DR | Building Demolition and Debris Removal |
| BDI | Budget Development Instructions |
| BES | Budget Estimate Submission |
| BTEX | Benzene, Toluene, Ethylbenzene, and Xylene |
| BWM | Biological Warfare Materiel |
| BY | Budget Year |
| CA | Cooperative Agreement |
| CEFMS | Corps of Engineers Financial Management System |
| CERCLA | Comprehensive Environmental Response, Compensation and Liability Act |
| CFO | Chief Financial Officer |
| CFR | Code of Federal Regulations |
| CHF | Contaminant Hazardous Factor |
| CMR | Command Management Review |
| CON/HTRW | Containerized/Hazardous, Toxic, and Radioactive Waste |
| CRA | Continuing Resolution Authority |
| CSM | Conceptual Site Model |
| CSS | Chemical Safety Submission |
| CTC | Cost-to-Complete |
| CWM | Chemical Warfare Materiel |

| Acronym | Meaning |
|---|---|
| CX | Center of Expertise |
| CY | Current Year |
| DA | Department of the Army |
| DASA (ESOH) | Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health |
| DD | Decision Document |
| DDESB | DoD Explosives Safety Board |
| DENIX | Defense Environmental Network and Information Exchange |
| DEP | Director of Environmental Programs |
| DERA | Defense Environmental Restoration Account |
| DERP | Defense Environmental Restoration Program |
| DID | Data Item Descriptions |
| DLA | Defense Logistic Agency |
| DMM | Discarded Military Munitions |
| DNAPL | Dense, non-aqueous Phase Liquid |
| DoD | Department of Defense |
| DoDGAR | Department of Defense Grant and Agreement Regulations |
| DoDI | Department of Defense Instruction |
| DOJ | Department of Justice |
| DPC | Defense Plant Corporation (also called PLANCOR) |
| DQO | Data Quality Objective |
| DSMOA | Defense and State Memorandum of Agreement |
| DUSD(I&E) | Deputy Under Secretary of Defense for Installation and Environmental |
| DUSD(ES/CL) | Deputy Under Secretary of Defense for ? |
| EDC | Engineering During Construction |
| EDD | Electronic Data Deliverable |
| EE/CA | Engineering Evaluation and Cost Analysis |
| EIS | Environmental Impact Statement |
| ELR | Environmental Liability Report |
| EM | Engineer Manual |
| EO | Executive Order |
| EOD | Explosive Ordnance Disposal |
| EP | Engineering Pamphlet |
| EPA | U.S. Environmental Protection Agency |
| ER | Engineer Regulation |
| ER | Environmental Restoration |
| ER-FUDS | Environmental Restoration – Formerly Used Defense Sites |
| ESD | Explanation of Significant Differences |
| ESS | Explosives Safety Submission |
| F&A | Finance and Accounting |

| Acronym | Meaning |
|---|---|
| FAD | Funding Authorization Document |
| FAR | Federal Acquisition Regulation |
| FDD | Funding Distribution Document |
| FDE | Findings and Determination of Eligibility |
| FFID | Federal Facility Identification |
| FFMIA | Federal Financial Management Improvement Act |
| FGDC | Federal Geographic Data Committee |
| FMR | Financial Management Regulation |
| FOA | Field Operating Activity |
| FPMI | FUDS Program Management Indicators |
| FPS | FUDS Property Screening |
| FS | Feasibility Study |
| FSP | Field Sampling Plan |
| FUDS | Formerly Used Defense Sites |
| FUDSMIS | Formerly Used Defense Sites Management Information System |
| FY | Fiscal Year |
| FYDP | Future Years Defense Plan |
| GIS | Geographic Information System |
| GMRA | Government Management Reform Act |
| GPRA | Government Performance and Results Act |
| GOCO | Government Owned/Contractor Operated |
| GSA | General Services Administration |
| HQ | Headquarters |
| HQDA | Headquarters, Department of the Army |
| HQUSACE | Headquarters, USACE |
| HRS | Hazard Ranking System |
| HTRW | Hazardous, Toxic, and Radioactive Waste |
| HTRW CX | HTRW Center of Expertise |
| IAG | Interagency Agreement |
| IC | Institutional Control |
| IDW | Investigation Derived Waste |
| IGE | Independent Government Estimate |
| INPR | Inventory Project Report |
| IR | Installation Restoration |
| IRA | Interim Removal Action |
| IRP | Installation Restoration Program |
| ITR | Independent Technical Review |
| LCP | Life-Cycle Plan |
| LDR | Land Disposal Restriction |

| Acronym | Meaning |
|---|---|
| LTM | Long-Term Management |
| LUC | Land Use Control |
| M&S | Management and Support |
| MAP | Management Action Plan |
| MC | Munitions Constituents |
| MCACES | Micro Computer Aided Cost Engineering System |
| MEC | Munitions and Explosives of Concern |
| MFR | Memorandum for Record |
| MM | Military Munitions |
| MM CX | Military Munitions Center of Expertise |
| MMRP | Military Munitions Response Program |
| MOA | Memorandum of Agreement |
| MoM | Measures of Merit |
| MPF | Migration Pathway Factor |
| MTS | Matter Tracking System |
| NCP | National Oil and Hazardous Substance Pollution Contingency Plan (a.k.a., National Contingency Plan) |
| NDAI | No DoD Action Indicated |
| NEPA | National Environmental Policy Act |
| NOFA | No Further Action |
| NPL | National Priority List |
| NR | Not Required |
| NRI | Natural Resource Injury |
| NTCRA | Non-Time-Critical Removal Action |
| O&M | Operations and Maintenance |
| OADUSD (CL) | Office of the Assistant Deputy Under Secretary of Defense (Environmental Cleanup) |
| OC | Office of Counsel |
| OCONUS | Outside Continental United States |
| ODEP | Office of the Director of Environmental Programs |
| ODUSD(I&E) | Office of the Deputy Under Secretary of Defense (Installations and Environment) |
| OE | Ordnance and Explosives |
| OMA | Operations and Maintenance Appropriation |
| OMB | Office of Management and Budget |
| OSD | Office of the Secretary of Defense |
| OSWER | Office of Solid Waste and Emergency Response |
| OTSG | Office of the Surgeon General |
| PA | Preliminary Assessment |
| PAO | Public Affairs Officer |
| PBC | Performance Based Contract |
| PCB | Polychlorinated Biphenyls |

| Acronym | Meaning |
|---|---|
| PCO | Project Closeout |
| PDI | Program Development Instruction |
| PDM | Program Decision Memorandum |
| PDR | Programming Data Requirements |
| PDT | Project Delivery Team |
| PEAR | Project Execution Accounting Report |
| PgDT | Program Delivery Team |
| PgM | Program Manager |
| PgMP | Program Management Plan |
| PIP | Public Involvement Plan |
| PIRS | Project Information Retrieval System |
| PL | Public Law |
| PLANCOR | Defense Plant Corporation (also called DPC) |
| PM | Project Manager |
| PMP | Project Management Plan |
| PN | PRP Negotiations |
| POC | Point of Contact |
| POL | Petroleum, Oils, and Lubricants |
| POM | Program Objective Memorandum |
| PP | Proposed Plan |
| PP&E | Property, Plant, and Equipment |
| PPBES | Planning, Programming, Budgeting, Execution System |
| PRB | Project Review Board |
| PRESBUD | President's Budget |
| PRG | Preliminary Remediation Goal |
| PROMIS | Project Management Information System |
| PROSPECT | Proponent Sponsored Engineer Corps Training |
| PRP | Potentially Responsible Party |
| PRSC | Post Removal Site Control |
| PSM | Program Support Managers |
| QA | Quality Assurance |
| QAPP | Quality Assurance Project Plan |
| QC | Quality Control |
| QMP | Quality Management Plan |
| QSM | Quality System Manager |
| RAB | Restoration Advisory Board |
| RAC | Risk Assessment Code |
| RA-C | Remedial Action Construction |
| RACER | Remedial Action Cost Engineering and Requirements |

| Acronym | Meaning |
|---|---|
| RA-O | Remedial Action Operation |
| RC | Response Complete |
| RCRA | Resource Conservation and Recovery Act of 1976 |
| RCWM | Recovered Chemical Warfare Materiel |
| RD | Remedial/Removal Design |
| RDX | Royal Dutch Explosive |
| RF | Receptor Factor |
| RFC | Reconstruction Finance Corporation |
| RI | Remedial Investigation |
| RI/FS | Remedial Investigation/Feasibility Study |
| RIP | Remedy-in-Place |
| RMIS | DoD Restoration Management Information System |
| ROD | Record of Decision |
| ROE | Right of Entry |
| RRSE | Relative Risk Site Evaluation |
| RmA-C | Removal Action – Construction |
| RmD | Removal Design |
| RSE | Remedial System Evaluation |
| S&A | Supervision and Administration |
| SAF | Subject to Availability of Funds |
| SARA | Superfund Amendments and Reauthorization Act of 1986 |
| SBCCOM | US Army Soldier and Biological Chemical Command |
| SEDD | Staged Electronic Data Deliverable |
| SEP | Supplemental Environmental Program |
| SFFAS | Statement of Federal Financial Accounting Standards |
| SI | Site Inspection |
| SMAP | Statewide Management Action Plan |
| SOL | Statute of Limitations |
| SOOH | Site Ownership and Operation History |
| SOP | Standard Operating Procedures |
| SOW | Scope of Work |
| SPCC | Spill Prevention, Containment, and Countermeasures |
| S&R | Supervision and Review |
| SSHP | Site Safety and Health Plan |
| TAG | Technical Assistance Grant |
| TAPP | Technical Assistance for Public Participation |
| TBC | To-be-Considered |
| TCRA | Time-Critical Removal Action |
| TI | Technical Impracticability wavier |

| Acronym | Meaning |
|---|---|
| TNT | Tri-Nitro-Toluene |
| TOSC | Technical Outreach Services to Communities |
| TPP | Technical Project Planning |
| TPS | Third-Party Site |
| TRC | Technical Review Committee |
| TSCA | Toxic Substances Control Act |
| TSG | The Surgeon General |
| UPB | Unit Price Book |
| USACE | U.S. Army Corps of Engineers |
| USACHPPM | U.S. Army Center for Health Promotion and Preventive Medicine |
| USAESCH | U. S. Army Engineering and Support Center, Huntsville |
| USATCES | U.S. Army Technical Center for Explosives Safety |
| USC | United States Code |
| USO | United Services Organization |
| UST | Underground Storage Tank |
| UU/UE | Unrestricted Use/Unlimited Exposure |
| UXO | Unexploded Ordnance |
| VE | Value Engineering |
| VV&A | Verification, Validation, and Accreditation |
| XML | eXtensible Mark-up Language |

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## Glossary-2 Terms.

### Action Memorandum.
Approves time-critical removal action and concludes the engineering evaluation/cost analysis. Provides a concise, written record of the decision to select an appropriate removal action. As the primary decision document, it substantiates the need for a removal action, identifies the proposed action, and explains the rationale for the removal action selected.

### Administrative Record.
The body of documents that "forms the basis" for the selection of a particular response at a site. Documents that are included are relevant documents that were relied upon in selecting the response action as well as relevant documents that were considered but were ultimately rejected. Until the Administrative Record is certified, it shall be referred to as the "Administrative Record file".

### Applicable or Relevant and Appropriate Requirements (ARARs).
Applicable requirements are cleanup standards, standards of control, and other substantive environmental protection requirements promulgated under Federal or state environmental law that specifically address a hazardous substance, pollutant, contaminant, remedial action, location or other circumstance found at a CERCLA site. Relevant and appropriate requirements are cleanup standards that, while not "applicable", address situations sufficiently similar to those encountered at a CERCLA site that their use is well suited to the particular site.

### Approval Memorandum.
Documents the decision to perform a removal action based on an evaluation of the NCP factors contained in 40 CFR 300.415(b). Secures management approval and funding to conduct the engineering evaluation/cost analysis.

**Biological Warfare Materiel (BWM).** BWM is any item configured as a munition containing an etiologic agent that is intended to kill, seriously injure, or incapacitate a person through physiological effects; includes biological agent identification sets. BWM can also include etiological agents that are designed to damage or destroy crops that are intended for human consumption. (CESO Memorandum, 13 April 1998, Subject: Applicability of Biological Warfare Material and Non-Stockpile Chemical Warfare Response Activity Interim Guidance)

### Beneficial Use.
The use of a FUDS eligible real property or appurtenance for any purpose by an individual or non-DoD entity subsequent to DoD ownership, use, or control.

### Budget Estimate Submission (BES).
This is each service's 2-year budget proposal based on PDM. The first two budget years of the POM are the service's budget estimate submission, although all other POM years' fiscal data are summarized and included.

### Budget Year (BY) Annual Workplan (AWP).
This is CEMP-DE's draft work directive for BY execution. The draft quarterly obligation or execution plan of the PRESBUD (BY program of the Future Years Defense Plans [FYDP]) is the initial draft BY AWP. This BY AWP will be updated each time the POM and BES are updated. Upon HQDA approval in October after Congressional authorization and appropriation of the PB, this becomes the Current Year (CY) annual workplan.

### Buy-out Agreement.
Buy-out agreement means an agreement under which terms of the settlement provide a final fixed cash amount from the Judgment Fund in exchange for a negotiated release and no further technical participation by USACE. One or more of the other PRPs are lead for response actions.

### Categorically Excluded Properties.
Those properties are those at which, by the nature of operation or control that occurred, environmental restoration activities under the FUDS program are not required. Categorically excluded properties include United Services Organization (USO) properties, recruiting centers, and cemeteries.

### Center of Expertise (CX).
A CX is a USACE organization that has been approved by HQUSACE as having a unique or exceptional technical capability in a specialized subject area that is critical to other USACE commands. These services may be reimbursable or centrally funded.

### Chemical Warfare Materiel (CWM).
An item configured as a munition containing a chemical substance that is intended to kill, seriously injure, or incapacitate a person through its physiological effects. Also includes V- and G- series nerve agent, H- series blister agent, and lewisite in other-than-munition configurations. Due to their hazards, prevalence, and military-unique application, chemical agent identification sets (CAIS) are also considered CWM. CWM does not include: riot control agents, chemical herbicides, smoke and flame producing items, or soil, water, debris or other media contaminated with chemical agent.

### Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
Congress enacted CERCLA, commonly known as Superfund, on 11 December 1980. This law created a tax on the chemical and petroleum industries and provided broad Federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment.

### Conceptual Site Model (CSM).
A description of a FUDS and its environment that is based on existing knowledge. It describes sources of military munitions or HTRW at a property; actual, potentially complete, or incomplete exposure pathways; current or reasonably anticipated future land use; and potential receptors. The source

### Contribution Agreement.
Contribution agreement means an agreement under which the settlement terms provide for "pay-as-you-go" reimbursement from the Judgment Fund to the other PRPs or from other PRPs to the United States on a percentage basis as costs are incurred and paid. The USACE PRP District may have a continued technical participation role or cost monitoring role as laid out in the agreement. Typically, the contribution agreement includes a clause allowing for buy-out settlement at an appropriate point in the response actions. One or more of the other PRPs are lead for response actions.

### Corps of Engineers Financial Management System (CEFMS).
CEFMS is a Windows-based relational database system to be used as a financial execution and management tool at the District level. It records the project funding, obligation, expenditures, and disbursements for authorized projects. It shares financial data with P2. It supports the preparation of the Project Execution Accounting Report (PEAR) and other financial reports for management use.

### Cost-to-Complete (CTC).
This is an estimate of current and future costs of a project using the appropriate cost-to-complete software, such as RACER or MCACES.

### Cost Recovery.
Cost recovery involves money received from private parties to compensate DoD for its costs in response action activities for which the private party bears some responsibility. Cost recovery amounts involve completed response action activities and are available for redeposit to the ER-FUDS account for use on other FUDS projects.

### Cost Sharing.
Cost sharing involves amounts contributed by a private party to DoD to compensate it for response action activities being planned or currently being conducted by DoD for which the private party bears responsibility. Cost sharing amounts are available to be used by DoD in its performance of response action activities at the particular site involved.

### Current Liability.
These are liabilities incurred that will be covered by available budgetary resources (i.e., current year and six prior years) encompassing not only new budget authority but also other resources available to cover liabilities for specified purposes in a given year which includes unliquidated obligations."

### Current Year (CY) Annual Workplan (AWP).
This is CEMP-DE's official work directive based on the CY appropriated budget for Divisions and Districts to execute. It consists of all CY line items in the official FYDP.

### Data Quality Objective (DQO).
A Data Quality Objective is a qualitative and quantitative statement developed to clarify study objectives, define the type of data needed, and specify the tolerable levels of potential decision errors. A DQO is used as the basis for establishing the type, quality, and quantity of data needed to support the decisions that will be made. (EM 1110-1-4009)

### Decision Document.
The Department of Defense has adopted the term Decision Document for the documentation of remedial action (RA) decisions at non-National Priorities List (NPL) FUDS Properties. The decision document shall address the following: Purpose, Site Risk, Remedial Alternatives, Public/Community Involvement, Declaration, and Approval and Signature. A Decision Document for sites not covered by an interagency agreement or Federal facility agreement is still required to follow a CERCLA response. All Decision Documents will be maintained in the FUDS Property/Project Administrative Record file. An Action Memorandum is the decision document for a removal response action.

### Defense Environmental Restoration Program (DERP).
Congressionally authorized in 1986, DERP promotes and coordinates efforts for the evaluation and cleanup of contamination at Department of Defense installations and Formerly Used Defense Sites. (10 USC 2701 et. seq.)

### DoD Goals for the DERP.
Formerly called the Defense Planning Guidance (DPG), the DoD Goals for DERP contains the Secretary of Defense's long-range goals and fiscal guidance. It is a major link between Planning and Programming.

### Design Center.
A specified USACE field office assigned a singular technical mission that is permanent and USACE-wide in scope. The designated office is to be considered the "lead activity" in a specialized area where capability needs to be concentrated for maximum effectiveness, economy, and efficiency. The MM Design Center (in coordination with the District PM) will execute all phases of the MMRP response project after the approval of the INPR, unless the removal action is transferred to an approved District. (ER 1110-1-8153)

### Determination of Eligibility.
This is an activity conducted by USACE exclusively to determine if a property and project are eligible under the FUDS Program. Information gathered during the determination of eligibility, along with recommendations for further action, if appropriate, is reported in the Inventory Project Report (INPR).

### Discarded Military Munitions (DMM).
Military munitions that have been abandoned without proper disposal or removed from storage in a military magazine or other storage area for the purpose of disposal. The term des not include unexploded ordnance, military munitions that are being held for future use or planned disposal, or military munitions that have been properly disposed of consistent with applicable environmental laws and regulations. [10 USC 2710(e)(2)]

### DoD Relative Risk Site Evaluation Primer.
The *DoD Relative Risk Site Evaluation Primer* issued in the summer 1997 provides information and guidance on the relative risk site evaluation framework used by DoD, in concert with stakeholders, to help sequence environmental work at projects at FUDS.

### DoD's Updated BES and the President's Budget (PRESBUD).
BES will be updated based on the Program Budget Decision. The first budget year of the updated BES is the PRESBUD. OMB assembles the one-year PRESBUD to be submitted to Congress.

### Engineering Evaluation/Cost Analysis (EE/CA).
An EE/CA is prepared for all non-time-critical removal actions as required by Section 300.415(b)(4)(i) of the NCP. The goals of the EE/CA are to identify the extent of a hazard, to identify the objectives of the removal action, and to analyze the various alternatives that may be used to satisfy these objectives for cost, effectiveness, and implementability. (EP 75-1-3)

### EE/CA Approval Memorandum.
Secures management approval and funding to conduct the engineering evaluation/cost analysis.

### Explosive compounds.
As used in the phrase "explosive compounds released to soil, surface water, sediments, or groundwater as a result of ammunition or explosives production or manufacturing at ammunition plants", explosives compounds such as the trinitrotoluene found in "red water" or "pink water" from TNT manufacturing. (*DoD Management Guidance for the DERP*)

### Explosives of Munitions Emergency Response.
All immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in-place render-safe procedures, treatment, or destruction of the explosives or munitions, and/or transporting those items to another location to be rendered sate, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives of munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at RCRA facility. [Munitions Rule, 40 CFR 260.10]

### Five-Year Reviews.
Reviews conducted no less often than every 5 years after the start of the remedial action or more frequently if required by the ROD/DD for remedial actions that do not allow unlimited use and unrestricted exposure. These reviews are conducted to ensure that the remedial actions are still protective of human health, safety, and the environment.

### Formerly Used Defense Sites (FUDS) Property.
A FUDS is defined as a facility or site (property) that was under the jurisdiction of the Secretary of Defense and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances. By the Department of Defense Environmental Restoration Program (DERP) policy, the FUDS program is limited to those real properties that were transferred from DoD control prior to 17 October 1986. FUDS properties can be located within the 50 States, District of Columbia, Territories, Commonwealths, and possessions of the United States.

### FUDS Accrued Environmental Restoration Liability.
Cost to conduct environmental restoration activities to correct past contamination problems at Formerly Used Defense Sites properties.

### FUDS Charter.
The FUDS Charter designates the Secretary of the Army as Executive Agent for the FUDS program and designates the Chief of Engineers the full responsibility for FUDS program management and execution. It further designates the Director of Military Programs (CEMP) of Headquarters U.S. Army Corps of Engineers (HQUSACE), acting on behalf of the Chief of Engineers, to accomplish FUDS programming, to develop program workplans, and to approve project priorities for funding considerations. Within CEMP, the Chief of the HQUSACE DoD Team (CEMP-DE) is assigned all management and execution responsibilities of the FUDS program. Much of the execution responsibilities have been re-delegated from CEMP to USACE Divisions and Districts.

### FUDS Project.
A FUDS Project is a unique name given to an area of an eligible FUDS property containing one or more releases or threatened releases of a similar response nature, treated as a discrete entity or consolidated grouping for response purposes. This may include buildings, structures, impoundments, landfills, storage containers, or other areas where hazardous substance are or have come to be located, including FUDS eligible unsafe buildings or debris. Projects are categorized by actions described under installation restoration (HTRW and CON/HTRW), military munitions response program, or building demolition/debris removal. An eligible FUDS Property may have more than one project.

### FUDSMIS.
The FUDS Management Information System (MIS) is the corporate information system that supports planning, programming, budgeting, annual workplan development, execution, and reporting requirements for the FUDS program.

### Future Years Defense Plans (FYDP).
This contains executable project actions to match available dollars provided in the POM for the current year and subsequent six program years. The FYDP is a series of proposed annual funded workplans that contains all eligible projects and all phases of work identified by Divisions and Districts for all eligible FUDS properties. It is also DoD's master plan database. It contains resourcing decisions made through PPBS. DoD uses it for internal analysis and Congress uses it during review of budget requests. FYDP is a continuous process and is constantly updated based on POM Exhibits, BES, and PRESBUD. However, regularly scheduled updates occur three times during each PPBS cycle:

- After the submission of the services' POM.
- After the submission of the services' BES.
- After the President submits his budget to Congress reflecting any final adjustments made to the DoD budget.

### Hazardous Waste Constituent.
A hazardous waste constituent is the specific substance in a hazardous waste that makes it hazardous and, therefore, subject to regulation under Subtitle C of RCRA. 40 CFR Part 260.10 defines the term hazardous waste constituent as a constituent that caused the (EPA) Administrator to list the hazardous waste in Part 261, Subpart D, of this chapter, or a constituent listed in Table 1 of Part 261.24 of this chapter.

### Ineligible Properties.
These are properties that are ineligible for action under the FUDS program. See Chapter 3 for specifics.

### Information Repository.
A repository, generally located at libraries or other publicly accessible locations in or near the community affect by the FUDS project, which contains accurate and up to date documents reflecting the on-going environmental restoration activities. This may include the EE/CA, PIP, RAB meeting minutes, public notices, public comments and responses to those comments, etc. (EP 1110-3-8)

### Integrated Command Accounting Report (ICAR).
The ICAR is the official Department of Army (DA) financial report that originates from each military District providing accounting information for each appropriation, program, and sub-program from which funds are authorized. This report extracts financial information from CEFMS finance and accounting (F&A) database and is submitted monthly from each military District and Division office to HQ, where it is consolidated (Districts and Divisions combined) and sent to DA level. Information contained in the report includes funds authorized, obligations, disbursements, unobligated balances, etc., at program and subprogram level. Army uses this report to measure execution (obligations) of the FUDS program.

### Interagency Agreements (IAG).
These are agreements set up between EPA and the DoD component that serve as the vehicle for remedy selection for all NPL properties when DoD is lead agency and addresses the completion of all necessary FUDS eligible remedial responses. This includes the review of cleanup alternatives, remedy selected, a cleanup schedule, and operation and maintenance arrangements. States can also be party to these agreements.

### Inventory Project Report (INPR).
The report resulting from the determination of FUDS eligibility. The INPR includes data as well as a recommendation for further action and guides investigators through further site studies. The INPR documents whether DoD is responsible for contamination at a FUDS.

### Landholding Agency.
A Federal department or agency with statutory authority to control real property. (GSA Federal Management Regulation, Chapter 102, Subchapter C, Part 102–75.1160)

### Land Use Controls (LUCs).
Physical, legal, or administrative mechanisms that restrict the use of, or limit access to, contaminated property to reduce risk to human health and the environment. Physical mechanisms encompass a variety of engineered remedies to contain or reduce contamination and physical barriers to limit access to property, such as fences or signs. The legal mechanisms are generally the same as those used for institutional controls (ICs) as discussed in the National Contingency Plan. ICs are a subset of LUCs and are primarily legal mechanisms imposed to ensure the continued effectiveness of land use restrictions imposed as part of a remedial decision. Legal mechanisms include restrictive covenants, negative easements, equitable servitudes, and deed notices. Administrative mechanisms include notices, adopted local land use plans and ordinances, construction permitting, or other existing land use management systems that may be used to ensure compliance with use restrictions. (*DoD Management Guidance for the DERP*)

### Lead Regulatory Agency.
States or tribes are generally the lead regulator for environmental investigations and response at non-NPL FUDS. In certain circumstances, EPA may serve as lead regulator when the state or tribe requests EPA assume the lead or when EPA chooses to exert its lead regulator role. In cases where a non-NPL FUDS is on or affecting tribal land, the lead regulator role generally falls to the affected tribe. Project-specific circumstances may warrant assumption of the lead regulator role by EPA. When a FUDS is either proposed for inclusion or listed on the NPL, EPA is the lead regulator.

### Liability.
A probable and measurable outflow of resources arising from past transactions or events. (*DoD Management Guidance for the DERP*)

### Life Cycle Cost (LCC).
CTC plus prior year actual expenditure plus prior year unliquidated obligations.

### Life-Cycle Plan (LCP).
The LCP contains all historical data (FY84 through prior year) and CTC plan (CY through Time-to-Complete [TTC]). The official LCP contains the POM balanced FYDP.

### Long-Term Management (LTM).
Term used for environmental monitoring, review of site conditions, and maintenance of a remedial action to ensure continued protection as designed once a FUDS achieves Response Complete. Examples of LTM include landfill cap maintenance, leachate disposal, fence monitoring and repair, 5-year review execution, and land use control enforcement. This term should be used until no further environmental restoration response actions are appropriate or anticipated. (*DoD Management Guidance for the DERP*)

### Military Munitions.
All ammunition products and components produced for or used by the U armed forces for national defense and security, including ammunition products or components under the control of the Department of Defense, the Coast Guard, the Department of Energy, and the National Guard. The term includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes and incendiaries, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds,

artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. The term does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components, except that the term does include non-nuclear components of nuclear devices that are managed under the nuclear weapons program of the Department of Energy after all required sanitization operations under the *Atomic Energy Act* of 1954 (42 USC 2011, et seq.) have been completed. [*10 USC 2710(e)(3)(A)*]

### Military Range.
Designated land or water area set aside, managed, and used to conduct research on, develop, test, and evaluate military munitions and explosives, other ordnance, or weapon systems, or to train military personnel in their use and handling. Ranges include firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, and buffer zones with restricted access and exclusionary areas. [Military Munitions Rule, 40 CFR. 266.201]

### Munitions and Explosives of Concern (MEC).
This term, which distinguishes specific categories of military munitions that may pose unique explosives safety risks, means:

- Unexploded ordnance (UXO), as defined in 10 USC 2710 (e)(9);
- Discarded Military Munitions (DMM), as defined in 10 USC 2710 (e)(2); or
- Munitions constituents (e.g., TNT, RDX) present in high enough concentrations to pose an explosive hazard.

### Munitions Constituents (MC).
Any materials originating from unexploded ordnance, discarded military munitions, or other military munitions, including explosive and non-explosive materials, and emission, degradation, or breakdown elements of such ordnance or munitions. [10 USC 2710(e)(4)]

### Munitions Response.
Response actions, including investigation, removal and remedial actions to address the explosives safety, human health, or environmental risks presented by unexploded Ordnance (UXO), discarded military munitions (DMM), or munitions constituents (MC).

### National Oil and Hazardous Substance Pollution Contingency Plan (NCP).
Revised in 1990, the NCP provides the regulatory framework for responses under CERCLA. The NCP designates the Department of Defense as the removal response authority for ordnance and explosives hazards.

### Natural Attenuation.
The reduction of contaminant concentrations in the environment through biological processes (aerobic and anaerobic biodegradation, plant and animal uptake), physical phenomena (advection, dispersion, dilution, diffusion, volatilization, sorption/desorption), and chemical reactions (ion exchange, complexation, abiotic transformation). Terms such as intrinsic remediation or biotransformation are included within the more general natural attenuation definition. (Interim Army Policy on Natural Attenuation for Environmental Restoration)

### Natural Resource Professional.
An individual with an undergraduate or graduate degree in natural resource management sciences, and who has responsibility for supporting natural resource management on Army lands. Such individuals may be Department of the Army civilian employees, contractors, or other individuals providing natural resource management support on Army lands through interagency agreement, cooperative agreement, or similar arrangements. (Army Interim Policy For Integrating Natural Resource Injury Responsibilities And Environmental Response Activities)

### No DoD Action Indicated (NDAI).
This is a Formerly Used Defense Sites (FUDS) where USACE has made a programmatic decision that the property or project conforms to the following:

- It is not eligible for consideration under the FUDS program.
- It is categorically excluded from the FUDS program
- The hazards found were not the result of DoD actions on or before 17 October 1986, pose no threat to human health or safety or the environment and, no additional environmental restoration activities are required.

### Non-current Liabilities
These include liabilities incurred for which revenues or other sources of funds necessary to pay the liabilities have not been made available through congressional appropriations or current earnings of the reporting entity (i.e., non-current liability equals to the program CTC minus the current-year program funding).

### Non-Time-Critical Removal Action (NTCRA).
A NTCRA is an action initiated in response to a release or threat of a release that poses a risk to human health and welfare, or the environment. Initiation of removal cleanup actions may be delayed for 6 months or more.

### Performance Based Contract (PBC).
Performance-based contracting methods are intended to ensure that required performance quality levels are achieved and that total payment is related to the degree that services performed meet contract standards. Performance-based contracts: (a) Describe the requirements in terms of results required rather than the methods of performance of the work; (b) Use measurable performance standards (i.e., terms of quality, timeliness, quantity, etc.) and quality assurance surveillance plans; (c) Specify procedures for reductions of fee or for reductions to the price of a fixed-price contract when services are not performed or do not meet contract requirements; and (d) Include performance incentives where appropriate. (Federal Acquisition Regulations, part 37.601)

### Planning, Programming, Budgeting, and Execution System (PPBES).
Army's system that mirrors the DoD's PPBS.

### Potentially Responsible Parties (PRP).
A PRP is defined in CERCLA Section 107 as any person related to a property that is a:

- Current owner or operator.
- Past owner or operator at the time of disposal of any hazardous substance, pollutant, or contaminant.
- Person who arranges for disposal, treatment, or transport for disposal or treatment of hazardous substances.
- Transporter who has selected the site for the disposal of a hazardous substance.

### Potentially Responsible Party/Hazardous, Toxic, and Radioactive Waste (PRP/HTRW) Project.
A FUDS where HTRW cleanup requirements exist and parties other than DoD are potentially responsible parties for the hazardous substances, pollutants, or contaminants.

### Potentially Responsible Party/Military Munitions Response (PRP/MMRP) Project.
A FUDS where MMRP cleanup requirements exist and parties other than DoD are potentially responsible parties for disposal of the MMRP materials.

### Preliminary Assessment (PA).
The Preliminary Assessment is a limited-scope investigation that collects readily available information about a project and its surrounding area. The PA is designed to distinguish, based on limited data, between sites that pose little or no threat to human health and the environment and sites that may pose a threat and require further investigation. The PA also identifies sites requiring assessment for possible emergency response actions. If the PA results in a recommendation for further investigation, a Site Inspection is performed. Refer to the EPA publication *Guidance for Performing Preliminary Assessments Under CERCLA*, September 1991, for additional information.

### Program Budget Decision (PBD).
This is a comptroller driven, appropriation-oriented decision upon review and analysis of the services' BES.

### Program Decision Memorandum (PDM).
This is DoD's decision document designed to provide each service feedback on how closely its POM meets the DoD Goals for the DERP and to provide each service a baseline for developing BES and PB.

### Program Management.
Component of the PMBP undertaken by all USACE echelons to manage programs. It consists of the development, justification, management, defense, and execution of programs within available resources, in accordance with applicable laws, policies, and regulations, and includes accountability and performance measurements. Under program management, programs, projects, and other commitments are aggregated for oversight and direction by the organization's senior leadership. Program management takes project management to a greater level of interdependence and broadens the corporate perspectives and responsibilities.

### Program Manager.
Program managers integrate program information and facilitate management. Program managers and Program Management Team members keep higher echelons of the customer's organization updated on all work USACE is performing on their behalf, and assist customers in accessing USACE resources across organizational boundaries. Program managers are responsible for making accurate program projections necessary to support workload analysis at the local, regional, and national level. (ER 5-1-11)

### Program Objective Memorandum (POM).
This is the memorandum that documents each service's proposals for resource allocation for six program years to meet fiscal constraints contained in the DoD Goals for the DERP and each service's objectives.

### Project Delivery Team (PDT).
The PDT is a multi-disciplined project team lead by the Project Manager with responsibility for assuring that the project stays focused, first and foremost on the public interest, and on the customer's needs and expectations, and that all work is integrated and done in accordance with a PMP and approved business and quality management processes. The PDT focuses on quality project delivery, with heavy reliance on partnering and relationship development to achieve better performance. The PDT shall consist of everyone necessary for successful development and execution of all phases of the project. The PDT will include the customers, the PM, technical experts within or outside the local USACE activity, specialists, consultants/contractors, stakeholders, representatives from other Federal and state agencies, and higher level members from Division and Headquarters who are necessary to effectively develop and deliver the project actions. The customer is an integral part of the PDT. (ER 5-1-11)

### Project Execution Accounting Report (PEAR).
The PEAR contains the same financial information as the ICAR above, except it is reported at each individual project level authorized by the Funding Authorization Document (FAD).

### Project File.
The body of documents that contains the rationale and justification for the selection of the response action and that supports FUDSMIS data and Cost-to-Complete estimates. It contains all documents in the Administrative Record file as well as additional supporting documentation not included in the Administrative Record file due to issues such as privacy, financial confidentiality, etc.

### Project Management.
The application of knowledge, skills, tools, and techniques to project activities to meet or exceed defined expectations.

### Project Management Business Process (PMBP).
The fundamental USACE business process used to deliver quality projects. It reflects the USACE corporate commitment to provide "customer service" that is inclusive, seamless, flexible, effective, and efficient. It embodies communication, leadership, systematic and coordinated management, teamwork, partnering, effective balancing of competing demands, and primary accountability for the life cycle of a project.

### Project Management Plan (PMP) (PgMP for Programs).
A living document used to define expected outcomes and guide execution and control of project (or program) actions. Primary uses of the PMP are to facilitate communication among participants, assign responsibilities, define assumptions, and document decisions. Establishes baseline plans for scope, cost, schedule, safety, and quality objectives against which performance can be measured, and to adjust these plans as actual performance dictates. The project delivery team develops the PMP.

### Project Manager (PM).
The PM is responsible for management and leadership of a project during its entire life cycle, even when more than one USACE District or activity is involved. The PM will generally reside at the geographic District but can be elsewhere as needed. The PM and PDT are responsible and accountable for ensuring the team takes effective, coordinated actions to deliver the completed project according to the PMP. The PM manages all project resources, information and commitments, and leads and facilitates the PDT towards effective development and execution of project actions. (ER 5-1-11)

### Proposed Plan.
In the first step in the remedy selection process, the lead agency identifies the alternative that best meets the requirements in CERCLA 300.430(f)(1) and presents that alternative to the public in a proposed plan. The purpose of the proposed plan is to supplement the RI/FS and provide the public with a reasonable opportunity to comment on the preferred alternative for remedial action, as well as alternative plans under consideration, and to participate in the selection of remedial action at a site.

### Public Involvement Plans (PIP)

Formerly called the Community Relations Plan, the Public Involvement Plan serves as the framework to establish a successful information exchange with the public during the Environmental Restoration Process. The PIP follows guidelines set forth under CERCLA and the SARA. Each PIP must be tailored to fit the individual site and situation and should also accommodate any site-specific agreements between the U.S. Army and the EPA or state environmental agencies. The PIP is not a static document and should be revised to reflect the development and progress of actions at the project.

### Quality Assurance (QA).
An integrated system of management activities involving planning, implementation, assessment, reporting, and quality improvement to ensure that a process, item, or service is of the type and quality needed to meet project requirements defined in the PMP.

### Quality Control (QC).
The overall system of technical activities that measures the attributes and performance of a process, item, or service against defined standards to verify that they meet the stated requirements established in the PMP; operational techniques and activities that are used to fulfill requirements for quality.

### Quality Management.
Processes required to ensure that the actions at the project would satisfy the needs and objectives for which it was undertaken, consisting of quality planning, quality assurance, quality control, and quality improvement.

### Quality Management Plan (QMP).
A document that describes a quality system in terms of the organizational structure, policy and procedures, functional responsibilities of management and staff, lines of authority, and required interfaces for those planning, implementing, documenting, and assessing all activities conducted.

### Quality System Manager (QSM).
The FUDS Program Manager at a geographic Military Division or District designated as the principal manager within the organization having management oversight and responsibilities for quality management process of the FUDS program at that level.

### Record of Decision (ROD).
The ROD is a public document that explains which alternatives will be used to clean up a Superfund site. The ROD for sites listed on the NPL is created from information generated during the RI/FS.

### Recovered Chemical Warfare Materiel (RCWM).
An item configured as a munition containing a chemical substance that is intended to kill, seriously injure, or incapacitate a person through its physiological effects. Also includes V- and G- series nerve agents, H- series blister agent, and lewisite in other-than-munition configurations. Due to their hazards, prevalence, and military-unique application, chemical agent identification sets (CAIS) are also considered CWM. CWM does not include: riot control agents, chemical herbicides; smoke and flame producing items; or soil, water, debris, or other media contaminated with chemical agent. (HQDA Interim Guidance for Biological Warfare Materiel and Non-Stockpile Chemical Warfare Materiel Response Activities). (EP 75-1-3)

### Remedial or Remedial Action (RA).
Those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health, welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage; confinement; perimeter protection using dikes, trenches, or ditches; clay cover; neutralization; cleanup of released hazardous substances and associated contaminated materials; recycling or reuse; diversion; destruction; segregation of reactive wastes; dredging or excavations; repair or replacement of leaking containers; collection of leachate and runoff; on-site treatment or incineration; provision of alternative water supplies; and any monitoring reasonably required to assure that such actions protect the public health, welfare, and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities where the President determines that, alone or in combination with other measures, such relocation is more cost-effective and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition off-site of hazardous substances, or may otherwise be necessary to protect the public

health or welfare. The term includes off-site transport and off-site storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials. (*DoD Management Guidance for the DERP*)

### Remedial Action-Construction (RA-C).
The period during which the final remedy is being put in place. The end date signifies that the construction is complete, all testing has been accomplished, and that the remedy will function properly. (*DoD Management Guidance for the DERP*)

### Remedial Action-Operations (RA-O).
The period during which the remedy is in place and operating to achieve the cleanup objective identified in the Record of Decision or equivalent agreement. Any system operation or monitoring requirements during this time shall be termed RA-O. (*DoD Management Guidance for the DERP*)

### Remedial Design (RD).
A phase of remedial action that follows the remedial investigation/feasibility study and includes development of engineering drawings and specifications for a site cleanup.

### Remedial Investigation/Feasibility Study (RI/FS).
An in-depth study designed to gather the data necessary to determine the nature and extent of known contamination at a site, assess risk to human health and the environment, and establish criteria for cleaning up the site. During the FS, the RI data are analyzed and remedial alternatives are identified. The FS serves as the mechanism for the development, screening, and detailed evaluation of alternative remedial actions.

### Remedy In Place (RIP).
Designation that a final remedial action has been constructed and implemented and is operating as planned in the remedial design. An example of a remedy in place is a pump-and-treat system that is installed, is operating as designed, and will continue to operate until cleanup levels have been attained. Because operation of the remedy is ongoing, the site cannot be considered Response Complete. (*DoD Management Guidance for the DERP*)

### Removal or Removal Action.
The cleanup or removal of released hazardous substances from the environment. Such actions may be taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 9604(b), and any emergency assistance which may be provided under the *Disaster Relief and Emergency Assistance Act* [42 USC 5121 et seq.] The requirements for removal actions are addressed in 40 CFR §§300.410 and 300.415. The three types of removals are emergency, time-critical, and non time-critical removals. (*DoD Management Guidance for the DERP*)

### Resource Conservation and Recovery Act (RCRA).
Enacted in 1976, RCRA promotes the protection of health and the environment. It regulates waste generation, treatment, storage, transportation, and disposal for facilities currently in operation.

### Response Action.
A CERCLA-authorized action involving either a short-term removal action or a long-term removal response. This may include, but is not limited to, removing hazardous materials, containing or treating the waste on-site, and identifying and removing the sources of ground water contamination and halting further migration of contaminants.

### Response Complete (RC).
The remedy is in place and required remedial action-operations (RA-O) have been completed. If there is no RA-O phase, then the remedial action-construction end date will also be the RC date. (*DoD Management Guidance for the DERP*)

### Restoration Advisory Board (RAB).
A Restoration Advisory Board (RAB) is a forum for the discussion and exchange of information between representatives of the Department of Defense (DoD), regulators, state and local governments, tribal governments, and the affected community. RABs provide an opportunity for stakeholders to have a voice and actively participate in the review of technical documents, to review restoration progress, and to provide individual advice to decision makers regarding restoration activities at FUDS Properties and Projects.

### Risk Assessment Code (RAC).
An expression of the risk associated with a hazard. The RAC combines the hazard severity and accident probability into a single Arabic number on a scale from 1 to 5, with 1 being the greatest risk and 5 the lowest risk. The RAC is used to prioritize response actions.

### Site Inspection (SI).
Activities undertaken to determine whether there is a release or potential release and the nature of associated threats. The purpose is to augment the data collected in the PA and to generate, if necessary, sampling and other field data to determine the presence, type, distribution, density, and location of hazardous substances or military munitions.

### Stakeholder.
Stakeholders include Federal, state, and local officials, tribal officials, community organizations, property owners, and others having a personal interest or involvement or having a monetary or commercial involvement in the FUDS Property that is to undergo a remedial/response action.

### Technical Assistance for Public Participation (TAPP).
The TAPP is a DoD program that allows USACE to contract for independent technical assistance to Restoration Advisory Boards and Technical Review Committees based on community member requests for assistance in interpreting scientific and engineering issues related to FUDS property restoration activities.

### Technical Project Planning (TPP).
The process for designing data collection programs at FUDS properties. The TPP process helps ensure that the requisite type, quality, and quantity of data are obtained to satisfy project objectives that lead to informed decisions and project/property closeout.

### Third-Party Site (TPS).
A TPS is neither an active nor a former DoD property. It is a site where the source for contamination originated from a FUDS property and DoD is a potentially responsible party under CERCLA. Under the DERP FUDS program, on a PRP project is authorized for a TPS.

### Time-Critical Removal Action (TCRA).
A TCRA is a response to a release or threat of release that poses such a risk to public health (serious injury or death), or the environment, that clean up or stabilization actions must be initiated within 6 months.

### Tribes.
Federally recognized American Indian and Alaskan Native governments.

### Unexploded Ordnance (UXO).
Military munitions that:

- Have been primed, fused, armed, or otherwise prepared for action;
- Have been fired, dropped, launched, projected or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material; and
- Remain unexploded either by malfunction, design, or any other cause. [10 USC 2710 (e)(9)]

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