

**DOE ORDER 5400.4 COMPREHENSIVE
ENVIRONMENTAL RESPONSE, COMPENSATION,
AND LIABILITY ACT REQUIREMENTS**

10/06/89

**OR N 5400.4
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DOE ORDER**

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NOTICE

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**EXPIRES: 12/6/89
12/6/90**

SUBJECT: DOE ORDER 5400.4, COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT REQUIREMENTS

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Any questions concerning the application or interpretation of the DOE Order should be referred to Larry Sparks, 6-9428.

Please maintain this Notice with DOE 5400.4 until the OR supplementation has been distributed. This DOE Order is applicable to contractors.

Margaret Wilson

M. Wilson, Acting Director
Environmental Protection Division

DISTRIBUTION: Principal Staff and Contractors

INITIATED BY: Environmental Protection Division

U.S. Department of Energy

Washington, D.C.

ORDER

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DOE 5400.4

10-6-89

SUBJECT: COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION,
AND LIABILITY ACT REQUIREMENTS

1. PURPOSE. To establish and implement Department of Energy (DOE) Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) policies and procedures as prescribed by the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and under the authorities of Executive Order 12580 within the framework of the environmental programs established under DOE 5400.1.
2. CANCELLATION. DOE 5480.14, COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT PROGRAM, of 4-26-85; DOE N 5400.4, INTEGRATION OF ENVIRONMENTAL COMPLIANCE PROCESSES, of 8-2-88; and DOE N 5400.5, of 8-9-89.
3. SCOPE. The provisions of this Order apply to all Departmental Elements and contractors performing work for the Department as provided by law and/or contract implemented by the appropriate contracting officer.
4. EXCLUSION.
 - a. Any release of source, special nuclear or byproduct material, as those terms are defined in the Atomic Energy Act (AEA) of 1954, in compliance with a legally enforceable license, permit, regulation, or order (including DOE Orders) issued under the AEA, is considered by definition a federally permitted release. Therefore, releases of source, special nuclear, or byproduct material under DOE Orders are considered federally permitted releases. Federally permitted releases are exempt from the notification requirements in CERCLA sections 103(a) and 103(b). However, all relevant reporting requirements established by DOE Orders are applicable.
 - b. This Order does not address Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986, which is also known as the Emergency Planning and Community Right-to-Know Act of 1986.
5. REFERENCES.
 - a. DOE 5400.1, GENERAL ENVIRONMENTAL PROTECTION PROGRAM REQUIREMENTS, of 11-9-88, which establishes the environmental protection program for DOE operations.
 - b. DOE 5400.2A, ENVIRONMENTAL COMPLIANCE ISSUE COORDINATION, of 1-31-89, which sets forth policy, direction, and procedures for coordinating environmental issues that are of significance to DOE.

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and Health

- c. DOE 5400.3, HAZARDOUS AND RADIOACTIVE MIXED WASTE PROGRAM, of 2-22-89, which establishes and implements DOE's hazardous waste and radioactive mixed waste program.
- d. DOE 5440.1C, NATIONAL ENVIRONMENTAL POLICY ACT, of 4-9-85, which establishes procedures for implementing a DOE National Environmental Policy Act (NEPA) program.

- e. DOE 5480.1B, ENVIRONMENT, SAFETY AND HEALTH PROGRAM FOR DEPARTMENT OF ENERGY OPERATIONS, of 9-23-86, which outlines environmental protection, safety and health protection policies and responsibilities.
- f. DOE 5482.1B, ENVIRONMENT, SAFETY AND HEALTH APPRAISAL PROGRAM, of 9-23-86, which establishes the DOE environmental protection, safety and health protection appraisal program.
- g. DOE 5484.1, ENVIRONMENTAL PROTECTION, SAFETY, AND HEALTH PROTECTION INFORMATION REPORTING REQUIREMENTS, of 2-24-81, which establishes the requirements and procedures for reporting and investigating matters of environmental protection, safety, and health protection significance to DOE operations.
- h. DOE 5700.6B, QUALITY ASSURANCE, of 9-23-86, which establishes DOE's quality assurance program.
- i. DOE 5820.2A, RADIOACTIVE WASTE MANAGEMENT, of 9-26-88, which establishes policies and guidelines by which the Department manages its radioactive waste, waste byproducts, and radioactively contaminated surplus facilities.
- j. DOE 4220.4, ORGANIZATIONAL CONFLICT OF INTEREST PROCESSING PROCEDURES, of 5-19-86, which establishes processing procedures for implementing the policy of the Department as expressed in DOE Acquisition Regulation (DEAR) 909.5 to identify and avoid organizational conflicts of interest before entering into contracts, agreements, and other arrangements.
- k. Title 2 U.S.C. 9615, et seq., The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, which requires the identification and cleanup of inactive hazardous waste sites by responsible parties; and, imposes certain response and reporting requirements for releases of hazardous substances.
- l. Executive Order 12344, "Naval Nuclear Propulsion Program," of 2-1-82, which establishes an integrated Naval Nuclear Propulsion Program to be carried out by two organizational units, one in the U.S. Department of the Navy and one in the U.S. Department of Energy.
- m. Executive Order 12580, "Superfund Implementation," of 1-23-87, which delegates to various federal officials the responsibilities vested in the President for implementing CERCLA as amended by SARA.

- n. Title 33 U.S.C. 1251, et seq., The Federal Water Pollution Control Act of 1972, as amended (known as the Clean Water Act), which provides requirements to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.
- o. Title 40 Code of Federal Regulations, Part 300, "National Oil and Hazardous Substances Pollution Contingency Plan," which provides the organizational structure and establishes procedures to prepare for and respond to discharges and threats of discharges of oil and releases or threats of releases of hazardous substances or pollutants and contaminants. Appendix A of the NCP, "Uncontrolled Hazardous Waste Site Ranking System: A Users Manual," describes the hazard ranking system to be used in evaluating the relative potential of uncontrolled hazardous substance facilities to cause health or safety problems, or ecological or environmental damage.
- p. Title 42 U.S.C. 2011, et seq., The Atomic Energy Act of 1954, as amended, which authorizes the conduct of atomic energy activities.
- q. Title 42 U.S.C. 4321, et seq., The National Environmental Policy Act of 1969, as amended, which establishes broad national environmental policy.
- r. Title 42 U.S.C. 6901, et seq., The Resource Conservation and Recovery Act (RCRA) of 1976, as amended, which authorizes the Environmental Protection Agency (EPA) and the States to regulate hazardous and solid wastes.
- s. Title 42 U.S.C. 7901, et seq., The Uranium Mill Tailings Radiation Control Act of 1978, which provides for the assessment of uranium mill tailings sites, stabilization by the Department of Energy of listed inactive sites, assessment of radiation health hazards, and regulation of mill tailings during uranium and thorium ore processing at active mill operations.
- t. Title 43 Code of Federal Regulations, Part 11, "Natural Resource Damage Assessments," which describes the procedures to be used by Federal and State agencies who are authorized to act as trustees of natural resources in their assessment of damages to natural resources resulting from a discharge of oil or a release of hazardous substances covered under CERCLA or the Clean Water Act.
- u. DOE NEPA Guidelines for Compliance with the National Environmental Policy Act, as amended 12-15-87 (52 FR 47662), which establishes Departmental guidelines for implementation of the procedural provisions of NEPA under Council on Environmental Quality (CEQ) Regulations.
- v. DOE Acquisition Regulation 909.5, which establishes policy for the avoidance of organizational conflicts of interest.

6. DEFINITIONS. For definitions relevant to actions taken under CERCLA, see the "Definitions" section of the NCP.
- a. Natural Resource Damage Assessment means an assessment (conducted under 43 CFR Part 11), based on the results of a Natural Resource Damage Preassessment Screen of a release, that (1) establishes whether a natural resource injury has occurred and resulted from the release, (2) quantifies the effects of the release in injury, and (3) determines the financial compensation appropriate for the injury.
 - b. Natural Resource Damage Preassessment Screen means a desk-top review of existing data (conducted under 43 CFR Part 11) that is triggered when DOE is notified by an on-scene coordinator or lead agency of a potential injury due to a release to a natural resource for which DOE is a trustee. Such a review is to be completed as expeditiously as possible, with a minimal amount of field work, and provide a preliminary identification of the substance released and its source, initial estimates of the pathways for the purposes of identifying resources that may be impacted, and further identification of important resources that may justify further assessment.
 - c. Primary Document means those reports that are major, discrete portions of a remedial investigation/feasibility study or remedial design/remedial action.
 - d. Secondary Document means those reports that are discrete portions of primary documents and are typically input or feeder documents within the remedial investigation/feasibility study or remedial design/remedial action process.
7. POLICY.
- a. It is the policy of DOE to respond to releases and potentially imminent releases of hazardous substances where such releases are on, or the sole source of the release is from, any facility or vessel under DOE jurisdiction, custody or control, including vessels bareboat chartered and operated. This response shall be in accordance with the provisions of CERCLA, as amended, as well as those of the NCP and Executive Order 12580. DOE responses shall include both removal and/or remedial actions, as appropriate, to reduce adverse impacts on public health and the environment from releases regardless of whether the facility is listed on the National Priorities List (NPL).
 - b. DOE will enter into Interagency Agreements (IAGs) and/or Federal Facility Agreements (FFAs) at both NPL and non-NPL sites, as appropriate, with Federal, State, and local entities for the execution of remedial investigation/feasibility studies (RI/FS) and remedial actions under the requirements prescribed in DOE 5400.2A and under Section 120(e) of CERCLA. These agreements are subject to the Federal Budget Process and shall contain provisions that do not represent a commitment of funding beyond current public law.

- c. In some instances, corrective actions carried out under other authorities, such as Sections 3004(u) or 3008(h) of RCRA or State laws, may satisfy CERCLA requirements for response actions to a release of a hazardous substance. In these instances, DOE needs to ensure that these corrective actions are not inconsistent with the NCP in order for them to satisfy CERCLA requirements. One efficient means of accomplishing this is through the use of IAGs and FFAs to establish which authority will be used.
- d. Where DOE remedial actions under CERCLA trigger the procedures set forth in NEPA, it is the policy of DOE to integrate the procedural and documentation requirements of CERCLA and NEPA, wherever practical. The primary instrument for this integration will be the RI/FS process. This process will be supplemented, as needed, to meet the procedural and documentational requirements of NEPA. In addition, the public review processes of CERCLA and NEPA will be combined for RI/FS-NEPA documents, where appropriate. A key element of the integrated process is making a determination on the level of NEPA documentation that is required for a remedial action project prior to entering the RI/FS scoping process or as soon thereafter as is possible so that appropriate RI/FS-NEPA planning is achieved early in the process.
- e. It is intended that approval levels for RI/FS-NEPA documents will parallel those approvals required for NEPA documents in DOE 5440.1C. That is, remedial actions that require an environmental impact statement (EIS) level of NEPA documentation will require Assistant Secretary (EH-1) approvals on draft and final RI/FS-EIS documents. EH-1 will also approve RI/FS-Environmental Assessment (RI/FS-EA) documents, to be prepared no later than the conclusion of the feasibility study initial screening step. The analysis of the environmental consequences of the remedial action alternatives under consideration is necessary by that time to determine if an RI/FS-EIS will be required. EH-1 will continue to issue Findings of No Significant Impact.
- f. [RESERVED]
- g. Where DOE determines that natural resources for which DOE has been granted trusteeship may have been potentially injured by a release, DOE will implement the Natural Resource Damage Assessment process consistent with the requirements set forth in 43 CFR Part 11.

8. RESPONSIBILITIES AND AUTHORITIES.

- a. The Assistant Secretary, Environment, Safety and Health (EH-1) shall:
 - (1) Develop policies, guides, requirements, and procedures for implementing CERCLA, as amended, the NCP, and Executive Order 12580.
 - (2) Develop policies, guides, requirements, and procedures for integrating NEPA and CERCLA requirements.

- (3) Develop policies, guides, requirements, and procedures for conducting the Natural Resource Damage Assessment process for natural resources for which DOE has been granted trusteeship.
 - (4) Develop policies, guides, requirements, and procedures for the review, approval, publication, and dissemination of DOE's CERCLA-related documents.
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- (5) Advise all Program Senior Officials and Heads of Field Organizations, as those terms are defined in DOE 5400.1, of any amendments to CERCLA or the NCP applicable to DOE.
 - (6) Prepare an annual report to Congress under Section 120(e)(5) of CERCLA on progress in performing RI/FSs and remedial actions at DOE sites.
 - (7) Provide representation for DOE on the National Response Team and direct and coordinate DOE participation on appropriate Regional Response Teams.
 - (8) Advise the General Counsel, in a timely manner, of significant CERCLA legal issues which require resolution and/or consideration.
- b. The Director of the Office of Small and Disadvantaged Business Utilization shall provide information, as requested, to the EPA Administrator on minority participation in contracts carried out under CERCLA, as amended.
- c. The General Counsel (GC) shall:
- (1) Provide legal advice to EH-1, Program Senior Officials, and Heads of Field Organizations, as appropriate, in support of DOE's CERCLA program.
 - (2) Advise EH-1, in a timely manner, of significant CERCLA legal issues and related activities which require resolution and/or consideration.
 - (3) Assist EH-1 in providing representation for DOE on the National Response Team.
- d. Program Senior Officials (PSOs) shall:
- (1) Oversee the CERCLA programs and actions for which they have assigned responsibilities and request funds as they deem necessary to implement such programs.
 - (2) Oversee field organization activities under their authority for compliance with the requirements of CERCLA, as amended, the NCP, applicable DOE policies, the requirements of this Order, and the integration of the procedural and documentation requirements of CERCLA and NEPA, wherever practical.

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- (3) Identify generic issues relating to CERCLA compliance for PSO programs, coordinate with field organizations and EH, and assist in efforts to resolve the issues.
 - (4) For programs or projects with unique requirements such as Formerly Utilized Site Remedial Action Program (FUSRAP) sites or remote Surplus Facility Management Program (SFMP) sites, take such actions as they deem appropriate to assure that responsibilities normally assigned to the Heads of Field Organizations are fulfilled.
 - (5) Advise GC, in a timely manner, of significant CERCLA legal issues which require resolution and/or consideration.
- e. Heads of Field Organizations (HFOs), at the DOE Facilities for which they are responsible, shall:
- (1) Oversee all field organization response actions for compliance with applicable requirements of CERCLA, as amended, the NCP, the requirements of this Order, and applicable DOE policies, requirements, and procedures. This includes making all required notifications, preparing and submitting all required documents, and integrating the procedural and documentation requirements of CERCLA and NEPA, wherever practical, in a timely manner.
 - (2) Gather information with respect to releases and potentially imminent releases of hazardous substances and maintain a field organization-wide record of all actions taken under this Order, CERCLA, as amended, the NCP, and applicable DOE policies, requirements, and procedures related to such releases.
 - (3) Take such actions as they deem necessary to assure that all field organization personnel responsible for conducting activities under this Order have maintained contact, as necessary, with appropriate EPA, State, and local officials with regard to the need for and execution of response actions; have obtained all appropriate EPA guidance documents applicable to the CERCLA-related steps for which they are responsible; and have received training designed to ensure DOE compliance with applicable CERCLA requirements.
 - (4) Take such actions as they deem appropriate to assure adequate DOE representation and participation on appropriate Regional Response Teams.
 - (5) Prior to initiation of the remedial action process under CERCLA, as amended, determine, with advice from EH-1, the appropriate PSO, and GC, whether corrective actions carried out under Sections 3004(u) or 3008(h) of RCRA or under State law are inconsistent with the NCP and may be used to satisfy CERCLA requirements.
 - (6) Request such funds as they deem necessary to ensure that sufficient resources are included in their budgets to complete the DOE CERCLA program.

- f. Director, Naval Nuclear Propulsion Program. Executive Order 12344, statutorily prescribed by PL 98-525 (42 USC 7158 note), establishes the responsibilities and authority of the Director, Naval Nuclear Propulsion Program (who is also the Deputy Assistant Secretary for Naval Reactors within the Department) over all facilities and activities which comprise the Program, a joint Navy-DOE organization. The policy principle promoted by these executive and legislative actions is cited in the Executive Order as "... preserving the basic structure, policies, and practices developed for this Program in the past . . ." Accordingly, based on the Executive Order and this policy principle, the Naval Nuclear Propulsion Program is exempt from the provisions of this Order. The Director shall maintain an environmental protection program to ensure compliance with applicable environmental statutes and regulations. The Director and EH-1 shall cooperatively develop information exchange and other mutually beneficial programs, as appropriate, consistent with PL 98-525.

BY ORDER OF THE SECRETARY OF ENERGY:



DONNA R. FITZPATRICK
Assistant Secretary
Management and Administration