

**FISH AND WILDLIFE SERVICE
POLLUTION CONTROL**

Pollution Control

Part 561 Compliance Requirements

Chapter 10 CERCLA (Site Cleanup)

561 FW 10

10.1 What is the purpose of this chapter? This chapter provides guidance for compliance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA/Superfund) of 1980, as amended.

10.2 What is the scope? This chapter refers to Docket, Superfund, and non-Docket site cleanup.

10.3 What are the authorities for this chapter?

A. Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA/Superfund) (42 U.S.C. 9601 et seq.).

B. Executive Order 12580, Superfund Implementation, January 23, 1987, as amended by Executive Order 12777, October 18, 1991, and Executive Order 13016, August 28, 1996.

C. 40 CFR 261, Environmental Protection Agency (EPA), Identification and Listing of Hazardous Waste.

D. 40 CFR 300, Environmental Protection Agency (EPA), National Oil and Hazardous Substances Pollution Contingency Plan.

E. 40 CFR 302, Environmental Protection Agency, Designation, Reportable Quantities, and Notification.

10.4 What are the definitions of terms used in this chapter?

A. Docket. The Federal Agency Hazardous Waste Compliance Docket contains certain information regarding Federal facilities managing hazardous waste or from which hazardous substances may be or have been released. The docket contains all Federal facility information submitted under Sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA) and Section 103 of CERCLA.

B. Docket Site. Sites listed on the Federal Agency Hazardous Waste Compliance Docket

C. Environment

(1) The navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson Fishery Conservation and Management Act.

(2) Any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

D. Hazardous Ranking System (HRS). A system that EPA uses to determine priorities among the various releases or threatened releases throughout the Nation and possible listing on the National Priorities List (NPL). Site listing occurs when a score is greater than 28.5.

E. Hazardous Substance. A group of substances defined as hazardous under CERCLA 101(14) and that appear in 40 CFR 302.4 that, due to exposure, could result in adverse effects on the health and safety of humans or the environment.

F. Hazardous Waste. Hazardous substances classified as unusable that must be disposed of according to Federal, State, and local regulations.

G. National Contingency Plan (NCP). Guidance document for CERCLA response actions that sets forth the procedures that EPA and private parties must follow in selecting and conducting CERCLA response actions. The NCP sets forth the responsibilities of the various organizations (e.g., National Response Teams, Regional Response Teams, On Scene Coordinators, Remedial Project Managers) that take part in responses to releases, describing how coordination among these various organizations is to occur. It also establishes methods and criteria for determining the appropriate extent of response, outlines the procedures to be followed in performing cleanups (remedial actions or removals), and establishes the method by which EPA is to prepare an administrative record to support its actions.

H. National Priorities List (NPL). EPA's list of the most serious hazardous waste sites identified for possible long-term remedial action under CERCLA. A site must be on the NPL to be eligible for funds from the Superfund for remedial action. The list is based primarily on the score a site receives from the Hazard Ranking System and listing occurs when a score greater than 28.5 is achieved. Once listed on the NPL, CERCLA's remedial process must be followed.

I. Non-Docket Site. Sites of a minor nature that do not fall under Section 120(c) of CERCLA.

J. Release. Spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes:

(1) Any release that results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons.

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(2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine.

(3) Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act, or, for the purposes of section 104 of this title or any other response action, any release of source byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978.

(4) Normal application of fertilizer.

K. Remedial Actions. Typically long-term, permanent cleanups designed to permanently eliminate any threat that a site may pose to humans or the environment.

L. Removal Actions. Under CERCLA, removal actions are undertaken to deal with environmental emergencies. Ordinarily a removal action will be completed within 1 year and costs no more than \$2 million. A removal action alleviates an immediate threat to human health or the environment.

M. Service Facility. Buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned by or constructed or manufactured and leased to the Service. This includes refuges, hatcheries, and other field stations, as well as any location where the Service occupies space.

N. Superfund Site. Sites listed on the National Priority List (NPL), which are determined by the Hazard Ranking System.

10.5 What are the program requirements?

A. CERCLA Compliance and Hazardous Waste Compliance Docket.

(1) CERCLA Section 120 provides that each department, agency, and instrumentality of the United States (including the executive, legislative, and judicial branches of Government) are subject to CERCLA requirements.

(2) CERCLA Section 121 sets forth the statutory requirements for cleanup and requires that actions be cost-effective. When hazardous substances are left onsite, all Applicable or Relevant and Appropriate Requirements (ARAR's) will be achieved. Section 121 states that the following are considered ARAR's:

(a) Any standard, requirement, criteria, or limitation under any Federal environmental law.

(b) Any promulgated standard, requirement, criteria, or limitation under a State environmental or facility siting law that is more stringent than any Federal standard.

(3) 560 FW 5 describes in detail the CERCLA Federal Agency Hazardous Waste Compliance Docket and provides procedural guidance for listing, investigating, cleaning up, and reporting the status of Service facilities on the Docket.

(4) State laws concerning removal and remedial actions, including State laws regarding enforcement, apply at facilities that the Service owns or operates when such facilities are not included on the NPL. State laws do not impose standards to Federal facilities that are more stringent than the standards and requirements applicable to nongovernmental owned or operated facilities.

B. Spill Release Reporting Requirements.

(1) 40 CFR 302.6 requires notification to the National Response Center (1-800-424-8802) of any release (other than a Federally permitted release or application of a pesticide) of a hazardous substance in a quantity equal to or exceeding the reportable quantity (RQ) in any 24-hour period. In the event of such a release, the facility managers will notify the National Response Center and the Regional Office as outlined in paragraph 10.7G(1), and, if required, will notify the Individual State Environmental Compliance offices. Failure to notify will be subject to all of the sanctions, including criminal penalties, set forth in section 103 of the Act.

(2) Reportable quantities for hazardous substances are listed in the column titled "Final RQ" in 40 CFR Table 302.4, or in Appendix B to Table 302.4. The RQ's in Table 302.4 are in units of pounds based on chemical toxicity, while the RQ's in Appendix B to Table 302.4 are in units of curies based on the radiation hazard. In all cases, the reportable quantity applies to the hazardous substance itself, not merely to the toxic contaminant. Whenever the RQ's in Table 302.4 and Appendix B are in conflict, the lowest RQ will apply. Unlisted hazardous substances designated by 40 CFR 302.4(b) have the reportable quantity of 100 pounds, except for those unlisted hazardous wastes that exhibit extraction procedure (EP) toxicity identified in 40 CFR 261.24. Field stations can obtain copies or consult with Regional Compliance Coordinators or the Division of Engineering for tables on reportable quantities.

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10.6 Who is responsible for CERCLA site investigation and cleanup?

A. The Chief, Division of Engineering, in coordination with the Regions, is responsible for:

(1) Investigation, site status determination, and cleanup of projects costing more than \$250,000 on Service owned lands including all projects on the Docket and on the NPL. The Division of Engineering is also responsible for requesting funding for Docket site cleanup.

(2) Providing guidance and technical assistance to the Regions for compliance with CERCLA requirements.

(3) Consolidating CERCLA and Docket site information for reporting to the Department of the Interior.

B. The Chief, Division of Environmental Quality is responsible for administering the Service pollution incident reporting program.

C. The Chief, Office of Safety, Health, and Aviation is responsible for providing assistance to Regional safety managers regarding health and safety issues related to CERCLA.

D. Regional Directors have overall responsibility for ensuring that Regional facilities fully implement CERCLA requirements.

E. Regional Engineers/Environmental Compliance Coordinators, in coordination with Environmental Contaminants Coordinators, are responsible for:

(1) All CERCLA cleanup projects less than \$250,000 not administered by the Division of Engineering.

(2) Development and implementation of actions intended to effectively minimize health risks and environmental damage as required by CERCLA.

(3) Providing technical assistance to Regional field stations on CERCLA issues.

F. Regional Safety Managers will provide information regarding Personal Protective Equipment (PPE) and any adverse health effects regarding potential exposure to identified contaminants.

G. Facility Managers:

(1) Are responsible for immediately notifying the National Response Center (1-800-424-8802), the Regional Environmental Coordinator, and the Regional Spill Response Coordinator in the event of a reportable

hazardous material spill. They may also be required to notify the State Environmental Agency, depending upon the law of each individual State. If a facility manager is uncertain whether or not a release or spill constitutes a responsible release, they must immediately receive guidance from the Regional Compliance Coordinator, or the Regional Spill Response Coordinator. If Regional contacts are not available, contact the Branch of Environmental and Facility Compliance in Denver, Colorado (303-984-6870).

(2) Under no circumstances will facility managers commence remedial action to mitigate hazardous material spills or initiate site investigations of suspected CERCLA locations prior to notifying appropriate sources or receiving authorization. There may be instances where facility managers are requested to perform cleanup or investigative services only after management has determined the hazard potential, experience of the personnel, and the required level of personal protection.