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RESPONSE

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MEMORANDUM

SUBJECT: Military Base Closures: Guidance on EPA Concurrence in the Identification of Uncontaminated Parcels under CERCLA Section 120(h)(4)

FROM: Elliott P. Laws /s/
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TO: Waste Management Division Directors, Region I-X
Regional Counsels, Regions I-X
Federal Facilities Leadership Council

This memorandum is intended to provide guidance concerning the implementation of CERCLA Section 120 (h)(4). Specifically, it addresses the approach EPA should use in determining whether to concur that a parcel has been properly identified by the military service as "uncontaminated" and therefore transferrable pursuant to CERCLA Section 120(h)(4).

I. Background

In October 1992, Congress enacted the Community Environmental Response Facilitation Act (CERFA) which, among other things, added a new subsection (4) to CERCLA Section 120 (h). Congress found that the closure of Federal facilities is having adverse effects on the economies of local communities and that environmental remediation requirements are frequently a constraint to the reuse of the facilities. The Act further states that Federal agencies should "expeditiously identify real property that offers the greatest opportunity for reuse and redevelopment...". CERCLA 120 (h)(4) directs federal agencies with jurisdiction over real property on which federal government operations are to be terminated to identify parcels of the real property:

"on which no hazardous substances and no petroleum products or their derivatives were stored for one year or more, known to have been released, or disposed of."

CERFA and this policy refer to such parcels as "uncontaminated". The identification must be based on an investigation of the property including minimum requirements set forth in CERCLA Section 120 (h)(4)(A). For parcels of property that are part of a facility on the National Priorities List, the identification is not complete until the EPA concurs in the results. For any other parcels, the identification is not complete until the appropriate State official concurs in the results.

The identification of a parcel is based on a review of available information. The military service remains obligated to address any contamination found to pose a threat to human health or the environment. Although parcels that are identified as satisfying the CERCLA Section 120 (h)(4) requirements can be sold or otherwise transferred expeditiously, any such transfer **must** include a covenant committing the United States to perform any remedial action or corrective action found to be necessary after the date of the transfer.

For real property that is part of a military base which was slated for closure prior to CERFA's enactment, the identification and concurrence is to be completed within 18 months of CERFA's enactment. The mandated period for these installations to identify parcels expires April 19, 1994, but the obligation to obtain concurrence continues beyond that date. For property on military bases designated for closing subsequent to CERFA, the identification and concurrence is to be completed within 18 months of designation.

II. Purpose

In meeting its obligation under CERCLA Section 120 (h)(4), EPA is concerned with both protecting human health and the environment and achieving Congress' goal of expeditiously transferring uncontaminated real property to communities for economic redevelopment. Interpreting CERCLA Section 120 (h)(4) to allow the expeditious transfer of parcels where there is no indication that the storage, release or disposal of hazardous substances or petroleum products poses a threat to human health or the environment would aid Congress' intent by increasing the

amount of property which would be available for expedited reuse.

EPA believes that there may be instances in which it would be appropriate to concur with the military service that certain parcels can be identified as uncontaminated under CERCLA Section 120 (h)(4) although some limited quantity of hazardous substances or petroleum products have been stored, released or disposed of on the parcel. If the information available indicates that the storage, release or disposal was associated with activities which would not be expected to pose a threat to human health or the environment, such parcels should be eligible for expeditious reuse.

III. Guidance

The determination of whether to concur in the identification of an uncontaminated parcel, where the information provided by the military service reveals some level of storage, release, or disposal of hazardous substances or petroleum products, should be made on a case-by-case basis. The decision-maker should apply best professional judgement based on the available information in making determinations under CERCLA Section 120 (h)(4). The objective should be to include parcels where there is no indication that the storage, release or disposal of hazardous substances or petroleum products has resulted in an environmental condition that poses a threat to human health or the environment. The decision-maker should assume that the property may be transferred to the private sector without any environmental response action being taken on the property.

EPA's ability to concur with the identification of parcels will depend on the information available concerning the current and historical uses of the parcel, the proximity of the parcel to sources of contamination requiring response actions and the nature of the threat, if any, reasonably associated with the type of activity or contamination associated with the parcel.

The following are examples of three categories of parcels where EPA would generally concur:

Housing: In housing areas it is likely that hazardous substances and petroleum products contained in heating oil and household products have been stored, released or disposed of; but it is unlikely that, in the absence of evidence of significant fuel spills, such materials would pose a threat to human health

or the environment.

Stained Pavement: There may be evidence of incidental releases of petroleum products on roadways and parking lots, but no indication that such releases pose a threat to human health or the environment.

Pesticides: In the absence of evidence indicating a threat to human health or the environment, e.g., contamination of surface or groundwater, or proximity to sensitive habitat, the routine application of pesticides in a manner consistent with the standards for licensed application should not disqualify a parcel under CERCLA Section 120 (h)(4). If information concerning the use of the parcel indicates extensive application of pesticides, EPA may determine that the particular circumstances require that its concurrence be conditioned on further information concerning the nature and quantities of pesticides applied or the results of confirmatory sampling to assure that residual levels do not pose a threat to human health or the environment.

The examples described above are intended to provide assistance to the decision-maker, but not to strictly limit the application of the policy. The authority to make these determinations has been delegated to the Regions. For questions or further information concerning this revised guidance please contact Bob Carr at 202/260-2035.

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