

memorandum

DATE: September 8, 1997

REPLY TO:
ATTN OF: EM-75 (M. Crosland, 6-5793)

SUBJECT: Subject: Policy on Integration of Natural Resources Concerns into Response Actions

TO: Distribution

The purpose of this memorandum is to establish an Environmental Management policy to address the Department of Energy's responsibilities under Executive Order 12580 and subpart G of the National Contingency Plan (40 CFR Part 300) as both a natural resource trustee and lead agency for response actions at sites under its jurisdiction, custody and control. This policy requires heads of field organizations and program and project managers to consider natural resource risk issues and, when appropriate, seek to resolve them with the other natural resource trustees, such as States and Tribes. The objectives of this policy are to promote more complete consideration of the risks associated with cleanup alternatives, lower the total life-cycle costs of the program, and minimize potential claims against the Department. This policy applies to response actions under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and, to the extent the actions involve release of hazardous substances, the Resource Conservation and Recovery Act.

When planning response action investigations and risk assessment studies, such as site characterizations and baseline risk assessments, initial scoping of conceptual models and data quality objectives should include, in addition to human health risks, any foreseeable potential risks to natural resources or the services they provide. An appropriate mechanism for early and ongoing consultation with natural resource trustees (e.g., a natural resource trustee council) should be established. In addition, trustees should be either represented on the Site Specific Advisory Board, or have an opportunity to present their views on natural resource risk issues to the Board. Early consultation is intended to provide an opportunity for trustees to review the Department's plans for studies and investigations and allow time to incorporate their concerns into the data quality objectives program for the site investigation and risk assessment and later, into development of response action alternatives. CERCLA grant monies may be available to the trustees to fund natural resource damage activities (see August 2, 1994, Thomas Grumbly memorandum "Funding for Natural Resource Trustee Activities").

Throughout the remedy selection process, project managers should coordinate and maintain an ongoing dialogue with the trustees on potential natural resource injuries. Information provided by the trustees should be reviewed carefully by project and program managers to learn about any potential risks to existing natural resources which might result from implementation of response action remedies, including whether any additional or life-cycle costs could result. Strong consideration should be given to the selection of response actions that minimize or mitigate adverse impacts to natural resources, and DOE should seek to obtain, where possible covenants not to sue for

natural resource damages from trustees that may file claims against DOE. A CERCLA Record of Decision or applicable license or permit should specifically identify any injuries to natural resources that may result from implementing the selected response actions, including any irreversible and irretrievable commitments of natural resources that are made clear to the public in accordance with statutory requirements as part of an Environmental Impact Statement or comparable environment analysis.

At portions of specific sites, the Department's stewardship has resulted in environmental benefits, such as enhanced biodiversity and habitat protection for wildlife, which should be taken into account when considering opportunities to reduce or offset the Department's potential natural resource damage liabilities.

The Department's Natural Resource Trustee Steering Committee, sponsored by the Office of Environmental Policy and Assistance, should be used as a resource for sites implementing this policy. This policy is not intended to require the reopening of previous response action decisions.

This policy supersedes the Interim Policy released on February 5, 1997, and reflects comments received on that policy. Questions or comments regarding this policy should be directed to Martha Crosland of the Office of Site Operations at (202) 586-5793, Claude Magnuson of the Office of Environmental Restoration at (301) 903-765 1, or John Bascietto of the Office of Environmental Policy and Assistance at (202) 586-7917.

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