United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

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PEP - ENVIRONMENTAL COMPLIANCE MEMORANDUM NO. ECM07-3

To: Heads of Bureaus and Offices

From: Willie R. Taylor, Director
Office of Environmental Policy and Compliance

Subject: Statement of Principles for Collaborative Decision Making at Mixed Ownership Sites

This Environmental Compliance Memorandum (ECM) is issued under the authority provided to the Office of Environmental Policy and Compliance (OEPC) by 381 Departmental Manual Chapter 4.5B, to convey instructions and guidance through the Environmental Memoranda Series. This ECM establishes the Statement of Principles for Collaborative Decision Making at Mixed Ownership Sites (Statement of Principles) as Departmental instructions and guidance. The Statement of Principles serves as a foundation for agreement between the Federal Land Management Agencies (FLMs) and the U.S. Environmental Protection Agency (EPA) to more effectively and efficiently conduct response actions at mixed ownership sites consistent with the authorities and responsibilities delegated in Executive Order 12580, as amended. Mixed ownership sites are sites where releases, or potential releases, of hazardous substances, pollutants, or contaminants are located partially on private property or State land and partially on federal land under the jurisdiction, custody or control of an FLM. Mixed ownership sites may encompass a geographic area, such as a watershed, and may include a number of source areas.

The EPA worked with the Department of the Interior (DOI), and the Department of Agriculture to develop the Statement of Principles to improve federal coordination and decision-making at mixed ownership sites. OEPC coordinated with the affected DOI bureaus and the Office of the Solicitor in negotiating the Statement of Principles. The Statement of Principles sets forth commitments made by both DOI and EPA for coordination and consensus-building to expedite response actions at mixed ownership sites. Under the Statement of Principles, the EPA and DOI will share plans for on-going and future activities at mixed ownership sites. The EPA and DOI also acknowledge the importance of identifying each agency's roles and responsibilities, key documents for review and comments, documents that require each other's concurrence or signature, milestones and schedules, and obligations with respect to cost accounting, cost recovery and reimbursement. Stronger partnerships with EPA promote remedy selection decisions consistent with current and future land use. If DOI and the EPA cannot reach agreement on significant cleanup decisions, the Statement of Principles provides a framework for dispute resolution. The Statement of Principles does not supersede or replace any existing agreements for response actions at mixed ownership sites.

DOI bureaus should use this Statement of Principles as a foundation for agreement during negotiations with the EPA involving assessment, investigation and cleanup at mixed ownership sites. Additional agreements between DOI bureaus and the EPA governing coordination at mixed ownership sites should be consistent with the Statement of Principles.

Attachment

STATEMENT OF PRINCIPLES FOR COLLABORATIVE DECISION MAKING AT MIXED OWNERSHIP SITES

PREAMBLE

The U.S. Department of Agriculture and the U.S. Department of the Interior (Federal Land Management Agencies or FLMAs) and the U.S. Environmental Protection Agency (EPA) seek to improve the coordination of their respective roles and authorities for response actions[1] conducted at mixed ownership sites[2] under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The Federal Environmental Work Group, established under the One Cleanup Program Initiative, has developed this Statement of Principles to increase the efficiency and effectiveness of CERCLA response actions at mixed ownership sites.

PURPOSE

EPA and FLMAs have developed this Statement of Principles to more efficiently and effectively conduct response actions at mixed ownership sites consistent with the authorities and responsibilities delegated in Executive Order 12580, as amended. EPA and FLMAs recognize that the coordinated use of authorities and available resources is desirable and may often be necessary to conduct response actions at mixed ownership sites. These general principles facilitate a collaborative approach that is intended to assist in expediting assessments, investigations, cleanups, or other response actions at mixed ownership sites.

COORDINATION PRINCIPLES

A. EPA and FLMAs acknowledge the importance of jointly participating in the identification and prioritization of mixed ownership sites for assessment, investigation, and cleanup. EPA and FLMAs also recognize the importance of determining the appropriate agency to take the lead in addressing human health or environmental concerns associated with contamination at mixed ownership sites. EPA and FLMAs should meet at least annually for this purpose.

B. EPA and FLMAs acknowledge the importance of determining the party or parties, if any, responsible for the contamination of a mixed ownership site. If EPA

[1] For the purposes of this Statement of Principles, "response actions" means those actions defined in 42 U.S.C. § 9601(25).

[2] For the purposes of this Statement of Principles, mixed ownership sites are sites where releases or threatened releases of hazardous substances, pollutants, or contaminants (contaminant releases) are located partially on private property or state land and partially on Federal land under the jurisdiction, custody, or control of an FLMA. A mixed ownership site may encompass a geographic area, such as a watershed, and may include a number of source areas or operable units.

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believes that an FLMA may potentially be responsible, EPA should inform the FLMA that it may be responsible or may share responsibility for contamination at a mixed ownership site.

C. EPA and FLMAs recognize that most States have statutory and regulatory authorities that address assessments, investigations, cleanups, or other appropriate response actions at mixed ownership sites with respect to contaminant releases and determination of responsible parties. These authorities may apply to releases and cleanup activities on private property or State land. As appropriate, EPA and FLMAs should coordinate with the appropriate State regulatory agency.

D. EPA should inform the appropriate FLMA and the appropriate State regulatory agency when EPA plans to conduct a site assessment or any other investigation to respond to a release where a portion of the release is on or is affecting Federal land under the jurisdiction, custody, or control of the FLMA. Likewise, FLMAs should inform EPA and the appropriate State regulatory agency when the FLMA plans to conduct a site assessment or any other investigation at a mixed ownership site where a portion of the release is on or is affecting private property or state land. In either case, EPA and FLMAs should coordinate efforts and consult on the division of responsibilities. This may include encouraging a State to use its regulatory authority, such as through a State Voluntary Cleanup Program, on private or State portions of a mixed ownership site.

E. EPA and FLMAs should share plans for ongoing and future activities at mixed ownership sites requiring investigations or other response actions. EPA and FLMAs should consider each other's priorities for mixed ownership sites during internal agency priority-setting processes. If the parties do not agree on the priorities assigned to a mixed ownership site, they should attempt to reconcile their differences. If either EPA or the FLMA does not agree with the other's priority for the mixed ownership site, then EPA and/or the FLMA may explore mechanisms by which either party may conduct response activities at the site.[3] EPA and FLMAs, along with the affected State, should consider joint exercise of enforcement authorities where appropriate to address releases within the jurisdiction of both EPA and FLMAs.

F. For mixed ownership sites where a joint effort is appropriate, EPA and FLMAs acknowledge the importance of identifying each agency's roles and responsibilities, key documents for review and comment, documents that require each other's concurrence or signature, milestones and schedules, and dispute resolution processes; this should include coordinating with the State regulatory agency, when appropriate. EPA and FLMAs also should discuss each party's obligations with respect to cost accounting, cost recovery, and reimbursement.

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[3] Such mechanisms may include Economy Act Agreements and the co-signing of decision documents, or the issuance of separate, coordinated decision documents for the Federal and private/State portions of a mixed ownership site. They also may include encouraging a State to use its regulatory authority, such as through a State Voluntary Cleanup Program, on private or State portions of a mixed ownership site.

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Site-specific agreements may provide an effective means to document each agency's roles, responsibilities and obligations at mixed ownership sites.

G. Federal land management statutes establish the general purposes for which certain Federal lands are to be administered. FLMA land and resource management plans are developed and implemented in accordance with statutory and regulatory requirements and generally specify the range of reasonably anticipated future land uses. EPA and FLMAs recognize that these reasonably anticipated future land uses on Federal lands should be considered when selecting a response action at a mixed ownership site. Similarly, EPA and FLMAs recognize that reasonably anticipated future land use of private property or state land should be considered in the response action.

H. After a response action is implemented at a mixed ownership site, there may be continuing operation and maintenance, post-removal site controls, land use controls with a significant maintenance component, or other requirements needed to maintain the protectiveness of the remedy. EPA, FLMAs and, where appropriate, the State should reach consensus on their respective responsibilities for operation and maintenance activities, and other measures, as necessary, to ensure or maintain the protectiveness of the remedy. EPA, FLMAs and, where appropriate, the State regulatory agency should coordinate on and conduct periodic reviews to consider the continuing effectiveness of the response action for the portions of the mixed ownership site under their respective jurisdictions.

I. At mixed ownership sites where EPA and FLMAs are coordinating efforts, EPA and FLMAs should mutually determine when no further response action is required and when additional response actions are warranted.

ELEVATING DISAGREEMENTS

J. EPA and FLMAs believe that disagreements on response actions should be resolved informally whenever possible. If a disagreement should arise at a mixed ownership site, EPA and FLMAs should resolve the disagreement at the lowest level possible, with elevation to successively higher levels, as necessary.

K. If disagreements cannot be settled informally, then formal dispute resolution may be appropriate, including procedures outlined in applicable Executive Orders. Where more than one agency has decision-making authority, the agencies recognize that no one agency should unilaterally make final determinations.

LIMITATIONS AND SAVINGS CLAUSE

L. EPA and FLMAs recognize that each agency must operate within the requirements of the Federal budget process and legal restrictions concerning obligations of funds. Specific work projects or activities that involve the transfer of funds, services, or property among FLMAs and EPA typically would require execution of

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a separate agreement under authorities such as the Economy Act and are contingent upon the availability of appropriated funds. Appropriate statutory authority would independently authorize such activities; this Statement of Principles does not provide such authority.

M. This Statement of Principles addresses response actions at mixed ownership sites under CERCLA Sections 104, 106 and 122 response authorities delegated by Executive Order 12580, as amended. This Statement of Principles does not affect the enforcement discretion of EPA, the FLMA, or any other agency.

N. This Statement of Principles is not intended to, and does not, create any right, benefit, or trust obligation substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person. This document does not supersede or modify in any way existing agreements between EPA and the FLMAs, including, but not limited to, memoranda of understanding or memoranda of agreement.

O. This Statement of Principles does not relate to the assessment, investigation, or mitigation of natural resource damages and does not affect the enforcement discretion of Federal Natural Resources Trustees or any other agency.

AUTHORITIES

P. Pursuant to CERCLA, the President is authorized to respond to the release or threat of release of hazardous substances, pollutants, or contaminants to protect the public health or welfare or the environment.

Q. Pursuant to Executive Order 12580, as amended by Executive Order 13016, the President delegated authority to conduct various activities under CERCLA to several executive departments and agencies, including EPA and FLMAs. The delegated authorities include performing investigations, conducting response activities, and seeking cost recovery; entering into agreements with potentially responsible parties to perform investigations and response actions; and issuing unilateral administrative orders.

R. FLMAs administer Federal lands and, with certain limited exceptions, have been delegated the President's CERCLA response action authority where a release or threat of a release is on or from a facility/site under the jurisdiction, custody, or control of the FLMAs. Subject to the delegation of authority granted to FLMAs, EPA generally has CERCLA response authority for releases from other facilities/sites.

S. EPA and the FLMAs are parties to the Memorandum of Understanding (MOU) concerning the exercise of authority under CERCLA Section 106, dated February 10, 1998. The MOU governs Federal agency implementation of the authority

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granted the President under Sections 106 and 122 of CERCLA, as further delegated by Executive Order 13016.

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U.S. DEPARTMENT OF AGRICULTURE

Boyd K. Rutherford — 8/29/2007
Boyd K. Rutherford — Date
Assistant Secretary for Administration

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U. S. DEPARTMENT OF THE INTERIOR

R. Thomas Weimer 12/5/06

R. Thomas Weimer Date

Assistant Secretary for Policy, Management and Budget

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U.S. ENVIRONMENTAL PROTECTION AGENCY

Susan Parker Bodine 11/9/06

Susan Parker Bodine
Assistant Administrator
Office of Solid Waste and Emergency Response

Date

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