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**US Army Corps
of Engineers.**

FUSRAP *Fact Sheet* **CERCLA/Superfund**

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This is one in a series of fact sheets that provides information about regulatory, technical, and other issues considered in decision-making within the Formerly Utilized Sites Remedial Action Program (FUSRAP). This fact sheet discusses the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or Superfund. The Department of Defense's hazardous waste cleanup activity responsibilities are derived from CERCLA; the Resource Conservation and Recovery Act (RCRA); state and local requirements; standards, and guidance documents.

What is CERCLA?

CERCLA (or Superfund, as it is more commonly known) was passed in December 1980 in response to the discovery in the late 1970s of a large number of abandoned, leaking hazardous waste dumps that posed a serious threat to both human health and the environment. CERCLA was designed to impose cleanup and reporting requirements on the private sector, as well as federal facilities, by:

- identifying those sites where releases of hazardous substances had occurred or might occur, and pose a serious threat to human health, welfare, or the environment;
- taking appropriate action to remedy those releases; and
- seeking that the parties responsible for the releases pay for the cleanup activities.

It is important to note that, unlike other environmental laws, CERCLA is a response and reporting act rather than an extensive regulatory act. However, CERCLA responsibilities do overlap with the Resource Conservation and Recovery Act (RCRA), the Clean Water Act, the Clean Air Act, and the Safe Drinking Water Act.

CERCLA has two elements: response actions and the Superfund Amendments and Reauthorization Act (SARA), which includes the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and the Community Right-to Know Act. The original National Contingency Plan (1985) detailed the specific steps involved in cleanup activities, but after the passage of SARA, it also set applicable or relevant and appropriate requirements for remedial action. The National Contingency Plan revision also requires the Environmental Protection Agency to maintain the National Priorities List, a list of the nation's most environmentally contaminated sites.

CERCLA and RCRA share authority with respect to underground storage tanks containing petroleum products and hazardous substances. Guidelines for these tanks are contained in Subtitle I of the 1984 Hazardous and Solid Waste Amendments to RCRA, but the types of waste regulated are outlined by CERCLA.

What does CERCLA do?

CERCLA authorizes cleanup responses when there is a release or threat of a release of a hazardous substance into the environment and sets a framework for accomplishing those actions. Two types of response actions are authorized: removal and remedial action. Removal actions are undertaken to immediately abate, prevent, minimize, stabilize, mitigate or eliminate the release or threatened release that may pose a threat to public health or welfare or the environment. Such events concern not only listed hazardous substances but also any pollutants or contaminants with the exception of oil and gas. Remedial actions provide a more permanent solution to hazardous substance threats and generally involve a more extensive study and action period.

In many cases, the United States Environmental Protection Agency (USEPA) attempts to identify the party(s) responsible for the contamination before taking any response actions itself.

Responsible parties can be any of the following: past and present site owners; generators of hazardous substances found at the site; or transporters of hazardous substance to the site. If these parties are able and willing to undertake the response task, the USEPA either negotiates a legal agreement with them or unilaterally orders them to do so. Should they be unable due to bankruptcy, or refuse to comply with the order altogether, the USEPA can undertake the response actions itself.

What is SARA?

The Superfund Amendments and Reauthorization Act (SARA), passed in 1986, was the first major revision of CERCLA since its inception. One year prior, the National Contingency Plan had been created to establish a blueprint for cleanup activities in response to released to the water, land, or air. The SARA expanded the 1985 National Contingency Plan to include the provision that remedial actions must at least attain applicable or relevant and appropriate requirements (ARARs).

ARARs determine the technical standards for cleanup activities at a CERCLA site. The applicable requirements are federal or state environmental or public health laws and regulations or cleanup standards specific to a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site. If a requirement is not directly applicable, it may still be relevant and appropriate. Those requirements may address problems or situations sufficiently similar to those encountered at the CERCLA site that their use may be well-suited to the particular site. A relevant requirement, however, may or may not be considered appropriate.

Another important element contained is SARA gave the states a greater role than they enjoyed under the previous version. The states' roles are now to join the USEPA in all stages of identifying National Priority List sites and the appropriate cleanup remedy.

What is Community Right-to-Know?

Contained in the 1986 SARA was the Emergency Planning and Community Right-to-Know Act. The Right-to-Know Act creates emergency planning, reporting, and notification requirements intended to protect the public in the event of a release of a hazardous substance. Facilities are required to report the presence of hazardous chemical substances in addition to those listed as extremely hazardous.

Emergency release notice is only required by the act if the release is of an USEPA-listed substance extending beyond the facility's boundaries. The Right-to-Know Act also includes a system of administrative, civil, and criminal penalties to enforce notification requirements. USEPA may order governments and commercial facilities into compliance. In addition, both USEPA and private citizens may bring a civil action against them and request that a court impose monetary penalties for violations or the USEPA may seek criminal sanctions.

How do I get more information?

To learn more about CERCLA and other aspects of the Formerly Utilized Sites Remedial Action Program, please contact the U.S. Army Corps of Engineers FUSRAP Public Information Center at (716) 879-4438. Or you may call the toll-free public access line at: 1-800-833-6390.

FUSRAP also has a home page on the Internet at <http://www.lrb.usace.army.mil>

Or visit the Information Center at:

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