



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

CEMP-CEP

14 November 2012

MEMORANDUM FOR Chief, Planning and Policy Division and Chief, Programs Integration Division, Civil Works

SUBJECT: Conformance with Civil Works (CW) – EC 1165-2-209, Formerly Utilized Sites Remedial Action Plan (FUSRAP) - Review Plans (RP)

1. The Civil Works policy referenced above, requires that a review plan be in place before 2Q FY13 CW funds are distributed. Existing FUSRAP program authorities and established program guidance documents meet the substantive requirements of EC 1165-209. This memo addresses the CERCLA (Comprehensive Environmental Response Compensation and Liability Act) mandated requirements as related to the required CW reviews. This document serves as a programmatic review plan for FUSRAP projects. Project specific review information can be obtained through the CERCLA activities for the specific project. ASA(CW) has concurred with this approach, at any time.

2. The FUSRAP Program already accomplishes the intent of the Review Plan (RP) requirement based on the following analysis:

a. RP Requirement: All Civil Work Projects or activities will be covered by a Review Plan.

(1) FUSRAP Equivalent:

(a) FUSRAP has established document distribution procedures and review policies to ensure the quality of FUSRAP information and documents. This dictates the planning process for FUSRAP projects. These procedures/policies are specified in: (1) legislation (CERCLA, NCP, & Pub. L. 105-245 & 106-60), and (2) USACE regulations and guidance (ER 200-1-4, ER 5-1-11, EM 1110-1-35).

(b) USACE is required by Congress to administer and execute the cleanup of FUSRAP sites in accordance with CERCLA and the NCP. The district/MSA/HQ follow this mandate by ensuring compliance with thorough established reviews of funding justifications, legal consistency, and execution through bi-annual line item reviews (in lieu of review plans). ASA(CW) delegated decision authority for FUSRAP study phase projects to DCG-CEO which was subsequently delegated to the MSA-Commanding Generals. The MSAs already have CG approval through their own process which meets the intent of the Review Plan process.

b. RP Requirement: The Review Plan will specify when/how the public can comment.

(1) FUSRAP Equivalent:

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(a) CERCLA and the NCP requires that an administrative record provide a complete collection of documents available to the public that they can access to study and gain a better understanding of the FUSRAP site. [Section 113(k) of CERCLA.]. The NCP requires the lead agency (USACE) to comply with public participation procedures in §300.430(f)(3) and provide a public comment period so interested persons may submit comments and document such compliance in the administrative record. The lead agency must also provide for public participation and comment periods when performing removal actions as specified in §300.415(m). The NCP (§300.430(c)) requires the lead agency perform the following community relation activities prior to commencing field work for the remedial investigation: conduct interviews with local officials, residents, public interest groups and other interested affected parties. See attached summary of participation in the CERCLA process.

c. RP Requirement: All Civil Works RPs shall provide an opportunity for public comment by posting the approved RP on its public website

(1) FUSRAP Equivalent:

(a) The Civil Works RP requirement to provide public opportunity to comment by posting approved RP on website is not necessary for FUSRAP sites because all FUSRAP sites have and maintain a public website or equivalent means to inform the public, stakeholders and regulators about current and future project activities and opportunities to comment. The NCP (§300.430(c)) requires that FUSRAP perform community relation activities and have a current Community Involvement Plan (CIP) which includes project progress; what processes will be followed in execution of the program (including reviews), how information will be dissemination, and future opportunities for the public to comment on actions and documents. The CIP is reviewed both internally by the USACE and by external agencies and the public.

d. RP Requirement: All Civil Works products will undergo District Quality Control/Quality Assurance (DQC)

(1) FUSRAP Equivalent:

(a) The PM District is responsible for ensuring QC/QA for all FUSRAP documents and obtains technical support from HTRW Design Districts as needed for execution of the FUSRAP project. FUSRAP sites were assigned to the geographical Civil Works Districts in accordance with OPOD 98-1.

(b) FUSRAP has, and will continue to embrace the central Project Management Business Process (PMBP) tenet to assemble strong multi-disciplinary teams unconstrained by geography and organizational boundaries. EM 1110-35-1 contains guidance intended to assist Project Managers in the development of Project Management Plans and to ensure that the Project Delivery Team (PDT) is established with the necessary disciplines and perspectives.

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(2) The Environmental and Munitions Center of Expertise (EM CX) provides mandatory review of various FUSRAP documents as specified in the FUSRAP Approval Matrix. The mandatory legal review responsibility is the MSC. The EM CX counsel review all FUSRAP documents prior to HQ legal review and the MSC is responsible to resolve all comments prior to the HQ review.

e. RP Requirement: All Civil Works products will undergo Agency Technical Review (ATR)

(1) FUSRAP Equivalent:

(a) CECW-BA Mandatory Review and Approval Authority Matrix (see attached) for FUSRAP specifies document approval authorities, legal review requirements and the use of the Environmental and Munitions Center of Expertise (EMCX) for agency technical reviews.

(b) Use of the EMCX for ATR functions ensures that appropriate technical disciplines (i.e., SME's) are performing the reviews and that evaluations are consistent with applicable regulations and guidance. The EMCX generates written comments and, as required in EC 1165-2-209, the PDT prepares responses to comments. HQ is involved in conflict resolution.

f. RP Requirement: Independent External Peer Review (IEPR) requirements must be met.

(1) FUSRAP Equivalent:

(a) State Cooperative Agreements and/or Federal Facility Agreements are in place at all FUSRAP Sites. These agreements dictate that appropriate state regulators will review FUSRAP project documents in planning, design, and construction phases thereby fulfilling the requirement for Independent External Peer Review. In addition, state and federal agencies are provided an opportunity to collect verification samples or be present when samples are collected. State agencies, through the Cooperative Agreements, are funded by FUSRAP to perform reviews and to collect/analyze samples. These agreements are reviewed annually.

3. The point of contact for this action is Ms. Nicki Fatherly (CEMP-CEP/761-0629).

Encl


Chief, Environmental Division
Directorate of Military Programs

CF:
FUSRAP Account Manager 
Counsel 

Summary of Public Participation in the CERCLA Process

Community Relations Activities	Remedial Response Phases						Source
	PA/SI	RI	FS	Proposed Plan	ROD	RD/RA O&M	
Contact State/Local Officials	R	R	R		D	D	NCP 40 CFR 300.300(e)
News Releases	D	D	D	D			
Community Interviews		R					NCP 40 CFR 300.430(e)(2)(i)
Community Relations (Involvement) Plan		R	R	R	R	R	NCP 40 CFR 300.430(e)(2)(ii)(A-C)
Determine Need for RAB/ TAG		R					32 CFR 202/ NCP 40 CFR 300.430(e)(2)(iv)
Establish and Maintain Information Repository/ Administrative Record		R	R	R	R		CERCLA 117(d) & 113(k) NCP 40 CFR 300.430(e)(2)(iii) & 300.815 (a-c)
Inform Public of Administrative Record		R	R	R	R		NCP 40 CFR 300.815(a)
Fact Sheets	D	D	D	R		R	NCP 40 CFR 300.435(c)(3)
Public Notice		R		R	R		CERCLA 117(a) & (d) NCP 40 CFR 300.430(f)(3)(i)(A) & 300.430(f)(6)
Public Meeting (1)				R			CERCLA 113 & 117(a)(2) NCP 40 CFR 300.430(f)(3)(i)(D)
Public Comment Period (30-60 days)				R			CERCLA 117(a)(2) NCP 40 CFR 300.430(f)(3)(c)
Responsiveness Summary					R		CERCLA 113 & 117(b) NCP 40 CFR 300.430(f)(3)(i)(F)
Revise Proposed Plan(2)					R		NCP 40 CFR 300.430(f)(3)(ii)(B)
Second Comment Period (30-60 days) (2)					R		NCP 40 CFR 300.430(f)(3)(ii)(B)
Revise Community Relations Plan		R	R	R	R	R	NCP 40 CFR 300.435(c)(1)

R – Required D -- Desirable

- (1) An opportunity for a public meeting is required. If such a meeting is held, then a transcript must be kept and available to the public.
- (2) Revise proposed plan and provide second comment period if significant changes are made to remedy selection.
- (3) Any actions deemed desirable by the PM or customer may be taken in addition to what is indicated on the table.

Reference for Table. PROSPECT CCN 356, CERCLA/RCRA Remediation Workshop, Table 10-1.



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MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Revised Mandatory Review Requirements for the Formerly Utilized Sites Remedial Action Program (FUSRAP)

1. References

a. Memorandum ASA(CW), 21 Jul 1998, Subject: Delegation of Authority for Approval and Signature of Decision Documents, Including Records of Decision (RODs) and Agreements, for the Formerly Utilized Sites Remedial Action Program (FUSRAP)

b. Memorandum HQUSACE, CECW-BA, dated 19 November 2001, Subject: Revised Delegation of Approval Authorities Under the Formerly Utilized Sites Remedial Action Program

2. The purpose of this memorandum is to advise you that a change has been made to the Mandatory Review and Approval Authority Matrix for FUSRAP. The responsibility for the mandatory legal review is now delegated to MSCs rather than the Hazardous, Toxic, and Radioactive Waste Center of Expertise (HTRW-CX). This change allows the Legal Community of Practice to utilize all of its resources while still ensuring a quality product in a timely manner. Document approval and signature authorities remain unchanged.

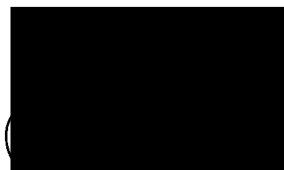
3. Although the responsibility for conducting the mandatory legal review is transferred from the HTRW-CX to the MSCs, the MSCs still have the option to utilize the HTRW-CX or other resources to perform the legal review as the MSC Counsel deems appropriate.

4. The attached matrix has been revised to show an "RT" for mandatory technical review, an "RL" for a mandatory legal review, and an "RP" for a mandatory policy review. The RT, RL, and RP are the mandatory review responsibility for the HTRW-CX, the MSCs, and HQ respectively.

5. I commend your effective use of the horizontal and vertical project management teams in the past and encourage you to continue this practice. I remind you that Districts must provide justification if they decline to accept significant recommendations of the HTRW-CX or HQUSACE FUSRAP teams.

6. The change in the approval matrix mandatory legal review responsibilities is effective immediately.

Encl



Major General, US Army
Director of Civil Works

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CELRD-PDM [REDACTED]
CDR, US ARMY ENGR DIV, MISSISSIPPI VALLEY, ATTN: CEMVD-RB-M [REDACTED]
CDR, US ARMY ENGR DIV, NORTH ATLANTIC, ATTN: CENAD-MT [REDACTED]

FUSRAP REVIEW AND APPROVAL AUTHORITY MATRIX

Document/Activity	MSC	HTRW-CX Technical	HTRW-CX Legal	HQ	DOE
Determination of Site Eligibility					D
Addition/Elimination of Eligible Site to/from FUSRAP	D	I	I	A	I
Determination and Designation of Vicinity Property	D, A	I	I	I	
Preliminary Assessment/Site Inspection	D, A, RL	RT	I	I	
Remedial Investigation	D, A, RL	RT	I	I	
Non-Time Critical Removal (EE/CA) Documents:					
- \$5M and less	D, A, RL	RT	I		
- Over \$5M	D, A, RL	RT	I	RP	
Time Critical Removal Document	D, A, RL	RT	I	I	
Feasibility Study	D, A, RL	RT	I	RP	
Proposed Plan	D, A, RL	RT	I	RP	
Record of Decision/Decision Document	D, A, RL	RT	I	RP	I
Disposal Strategy	D, A, RL	RT	I		
Land Use Implementation Plan	D,A, RL	RT	I	RP	I
Federal Facility Agreement	D, A, RL	RT	I	RP	
Declaration of Response Complete	D, A, RL	RT	I	I	I
Site Closeout Report	D, A, RL	RT	I	RP	I
No Further Action (NOFA)	D, A, RL	RT	I	RP	I
Regulatory Manifests	D, A				
Grants and Cooperative Agreements	D, A		I	I	
Operation and Maintenance (O&M) Plan	D, A, RL	RT		I	I
O&M Records/Reports:					
- First 2 Year O&M	D, A				
- Year 3 and On	I				D
- 5 Year Reviews before Transfer to DOE	D, A	RT	I	I	R
- Second 5 Year Review and On					D
Project Coordination/Transmittals to DOE	D,A	I	I	I	I

Concept: FUSRAP functions with vertical and horizontal teams. This table identifies responsibilities of vertical team members and assumes that the HQ, MSC and HTRW-CX are involved throughout the process with the district during project execution and the development of documents. The MSC may delegate the mandatory legal review to the HTRW-CX or other appropriate legal resource, but the MSC remains responsible ensuring for the legal review is accomplished and for the quality of the overall document.

Legend:

A – Approval/Signature

D – Develop/Execute

I – Information Copy

RT - Mandatory Technical Review; RL - Mandatory Legal Review; and RP: Mandatory Policy Review.

FUSRAP – Formerly Utilized Sites Remedial Action Program

MSC – Major Subordinate Command (included the Regional Integration Team and the districts)

HTRW-CX – Hazardous, Toxic and Radioactive Center of Expertise

HQ – HQUSACE

DOE – Department of Energy