

*Amendment #1
RW 9792276901-01*

**AMENDMENT #1
TO THE
MEMORANDUM OF UNDERSTANDING
BETWEEN THE
U.S. ENVIRONMENTAL PROTECTION AGENCY
AND THE
U.S. DEPARTMENT OF DEFENSE
OF FEBRUARY 20, 2008
RELATING TO SUPPORT FOR DEPARTMENT OF DEFENSE (DoD) CLEANUP
IMPLEMENTATION FOR BASE REALIGNMENT AND CLOSURE (BRAC)
INSTALLATIONS ROUNDS I – IV**

1. The Memorandum of Understanding is amended as follows:
 - a. In section 1 on Purpose, strike “the Economy Act, 31 U.S.C § 1535,”.
 - b. In section 1 on Purpose, strike “10 U.S.C § 2667(f)” and insert the following “10 U.S.C § 2667(g)(3)”.
 - c. In section 1 on Purpose, strike “and transfer” in its last sentence.
 - d. In section 2 on Scope, strike “10 U.S.C § 2667(f)” and insert the following “10 U.S.C § 2667(g)(3)”.
 - e. In section 4.a. on Program Funding, strike “(e.g., GS-13-09 grade level)”.
 - f. In section 4 on Program Funding, insert the following new subsection after subsection 4.e: “4.f. Once the remedy for a site on a DoD BRAC installation designated for closure is determined to be operating properly and successfully (OPS), as defined in EPA’s Guidance for Evaluation of Federal Agency Demonstrations, or a portion of the installation is transferred, DoD will discontinue funding EPA’s assistance and support under this MOU in accelerating environmental restoration and cleanup decisions on those portions of the installation that are OPS or transferred.”.
 - g. In subsection 5.b on Reporting, strike the first sentence and insert the following: “The EPA will provide semi-annual program progress and review reports to DoD via electronic mail.”.
 - h. In subsection 6.a on Installation Appraisals Completed prior to Spring Management Review, strike paragraph (2).
 - i. In section 7 on MOU duration and termination, strike “2011” and insert “2016.”.
 - j. In Attachment A, Part II, Installation Summary, insert the following new section after section 4: “5. MOU Support Update”.
 - k. Delete Attachment C, Installation Appraisal Form.

2. All other parts of the MOU remain unchanged.
3. These amendments take effect on the latest of the dates below.

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Principal Deputy Assistant Administrator
Office of Solid Waste and Emergency
Response
U.S. Environmental Protection Agency

Date: 12/23/2010

John Conger

John Conger
Assistant Deputy Under Secretary of
Defense
(Installations and Environment)
U.S. Department of Defense

Date: 11-10-2010

Michelle Meacock
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Office of Administration and Resources Management
Action Official on Behalf of the
U.S. Environmental Protection Agency

Date: 2/28/11

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
U.S. ENVIRONMENTAL PROTECTION AGENCY
AND THE
U.S. DEPARTMENT OF DEFENSE**

Subject: Support for Department of Defense (DoD) Cleanup Implementation for Base Realignment and Closure (BRAC) Installations Rounds I - IV

This is an agreement between the Department of Defense and the United States Environmental Protection Agency, hereinafter also referred to as the "parties".

1. **Purpose:** The purpose of this Memorandum of Understanding (MOU) is to establish responsibilities and funding for the US Environmental Protection Agency's (EPA's) assistance and support in accelerating environmental restoration and cleanup decisions in support of reuse at selected Department of Defense (DoD) Base Realignment and Closure (BRAC) installations. Funds provided through this MOU shall not be used to support EPA enforcement actions at a BRAC installation. The EPA and DoD enter into this MOU pursuant to the Economy Act, 31 U.S.C. § 1535, Section 2905(a) (l) (E) of the Defense Base Closure and Realignment Act of 1990, which states that DoD may reimburse other Federal agencies for assistance in the base closure process, and 10 U.S.C. § 2667(f) which requires an MOU to establish procedures for DoD consultation with EPA on environmental suitability for leasing and transfer of BRAC property pursuant to that subsection.
2. **Scope:** As the lead agency for environmental restoration at DoD installations, DoD requires EPA assistance to expedite a number of activities related to Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) response actions, including work to support community involvement, facilitate property transfer, implement remedies as soon as practicable, and maintain remedies that protect human health and the environment. The DoD Components (hereinafter Components) conduct environmental restoration to protect human health and the environment at BRAC installations in concert with efforts supporting economic revitalization of surrounding communities. The DoD will make funds available annually to EPA for the types of activities described above at selected 1988, 1991, 1993, and 1995 BRAC installations (BRAC Rounds I - IV). This MOU also satisfies the requirement in 10 U.S.C. § 2667(f) for DoD consultation with EPA on environmental suitability for leasing property made available by the 1988, 1991, 1993, and 1995 BRAC rounds. The scope of this MOU includes environmental restoration activities in support of reuse at BRAC installations under statutes, regulations, and other authorities including, but not limited to, the following:
 - The Defense Environmental Restoration Program, Chapter 160 of title 10, United States Code.
 - The Base Realignment and Closure Acts (1988 and 1990).
 - The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), Chapter 103 of title 42, United States Code.
 - The Solid Waste Disposal Act, also known as the Resource Conservation and Recovery Act (RCRA), Chapter 82 of title 42, United States Code.

3. EPA Responsibilities: In support of the DoD and its BRAC environmental restoration and reuse efforts, EPA will provide necessary resources, as appropriate, to accelerate environmental restoration activities, maintain remedies that protect human health and the environment, support public participation, and facilitate property transfer at selected BRAC installations. The EPA will make resources readily available for actions such as, but not limited to, streamlining decision-making, performing concurrent document review, participating in face-to-face meetings with other BRAC Cleanup Team (BCT) members, and providing technical assistance to DoD by making the greatest use of environmental restoration tools and promoting innovative practices. Such actions will typically be conducted by the EPA Remedial Project Manager (RPM) assigned to the installation. The EPA RPM will be supported by EPA technical experts such as community relations coordinators, hydrologists, risk assessors, and toxicologists. The EPA RPM will represent EPA on the BCT and coordinate the EPA team that works across the installation to support the BRAC process and participate in communications and interaction with community representatives, depending on the needs at the installation at a given time. Through close coordination and discussion throughout the BRAC process, EPA and DoD are looking for opportunities to streamline documents, decision making, and response actions. Areas in which the EPA RPM and support team will work closely with DoD to support cleanup and property transfer acceleration include, but are not limited to:

- Supporting up-front planning and scoping.
- Providing assistance to DoD, and to the States, in implementing all environmental cleanup programs related to closure in an expeditious and cost effective manner in accordance with applicable laws and regulations.
- Assisting in the preparation of and jointly reviewing documents related to environmental restoration or that support the lease or transfer of property within the timeframe agreed upon by the BCT to support DoD real property leasing or transfer actions. Examples of such documents are: the sampling and analysis plan, baseline risk assessment, the Remedial Investigation/Feasibility Study (RI/FS), proposed plan, record of decision, remedial design, remedial action plan, study and sampling data, Finding of Suitability to Transfer (FOST), Finding of Suitability to Lease (FOSL), Finding of Suitability for Early Transfer (FOSET), and Operating Properly and Successfully (OPS) determinations.
- Participating, in conjunction with the BCT members, on the community's Restoration Advisory Board (RAB), reviewing environmental matters, as well as coordinating and exchanging cleanup and reuse information with the Local Redevelopment Authority.
- Participating in the identification of clean parcels under the Community Environmental Response Facilitation Act (CERFA), if DoD deems any additional CERFA identification beneficial to property transfer and reuse.
- Supporting and facilitating restoration privatization efforts.

4. Program Funding: In accordance with this MOU, the DoD shall make resources available annually to EPA to help expedite environmental restoration and property transfer at selected BRAC installations. The source of funds shall be the Department of Defense Base Closure Account, 1990. The full-time equivalent (FTE) and funding ceilings will be agreed to by DoD and EPA prior to the start of the fiscal year (FY). Nothing in this MOU shall be interpreted to require an obligation or payment in violation of the provisions of the Anti-Deficiency Act (31 U.S.C. § 1341) or Purpose Statute (31 U.S.C. § 1301(a)) or affect EPA's obligation to meet its statutory and regulatory responsibilities.

a. To determine the appropriate number of FTEs funded by DoD, EPA will make its best effort to provide DoD, on or about each February 15, EPA's annual FTE/funding estimates for the upcoming two FYs following the current FY for each supported BRAC installation. The annual EPA request shall include the makeup (e.g., payroll, travel) and basis (e.g., GS-13-09 grade level) of the per FTE cost for the upcoming two FYs, based on anticipated workload at a given installation. Prior to providing DoD with these estimates, EPA will develop its estimates through its Regions, coordinating anticipated FTE needs with the supported installation. Any differences or unresolved FTE issues will be highlighted in EPA's annual request to DoD. DoD will evaluate the EPA funding request and make its best effort to provide a written FTE and funding ceiling for the upcoming FY and a planning estimate for the subsequent FY (i.e., current FY + 2) on or about July 31 of each year. On or about July 1, EPA will make its best effort to provide the cost per FTE value for its budget request along with the methodology used in determining the cost. In DoD's review and evaluation of EPA's request, Components will consult with EPA Regions on changes to EPA's request which may have an impact on future EPA FTE requirements. Major issues regarding projected FTE levels will be highlighted at the Spring DoD-EPA Management Review (See Section 6).

b. EPA will make its best effort to provide DoD on or about July 1 of each year, EPA's projection of unexpended balance, expenditure rate, and carryover of funds into the upcoming FY. DoD will use this information to determine the DoD funding to be transferred via a Military Interdepartmental Purchase Requisition (MIPR) to EPA during the upcoming FY. DoD will make its best effort to inform EPA on or about July 31 of the resource level EPA can expect to receive during the upcoming FY.

c. If, during the term of this MOU, it is determined that DoD is not legally able to pay for some or all of the costs DoD currently pays for, then such payment shall be discontinued. DoD will make its best effort to provide EPA with a 45 day written notification of this action. In the absence of funding from DoD, EPA is under no obligation to conduct the actions described in this MOU that will no longer be funded by DoD. Once related internal EPA billings have cleared, the remaining BRAC funds will be returned to DoD.

d. The annual funding, as approved by the Assistant Deputy Under Secretary of Defense (Environment, Safety and Occupational Health) (ADUSD(ESOH)), shall be provided to EPA in semi-annual payments through the issuance of MIPRs by the Department of the Army (Army). The Army is DoD's lead for transferring and managing funding pursuant to this MOU. The Army will make its best effort to transfer the first half of the BRAC resources to EPA within 30 days of the Army's receipt of funds and obligation authority. The Army will make its best effort to transfer the final distribution of BRAC resources to EPA on or about April 15 of each year. Funds are to be used for EPA personnel only, and may not be used for contractor support.

e. The Components and EPA Regions have the flexibility to use available resources from one installation to satisfy emerging requirements at another BRAC installation. The adjustment of funds will not result in delays in cleanup progress or property transfer, and will not change the total FTE level for the Component. If it is determined that there is a need to

adjust funds, the Component BRAC Manager and EPA Federal Facilities Restoration and Reuse Office (FFRRO) must agree in writing.

5. Reporting:

a. The EPA will provide, at a minimum, quarterly billing statements by installation and funds received, expended, and remaining by funding document. The financial reports must comply with the financial management requirements provided to EPA by the Army in order to maintain accountability of funds. In the event that the financial reports are not deemed sufficient, EPA and the Army will work together to meet the requirements. The EPA will send these reports to the Army (specific office will be designated by the Army in funding documents) with a copy to the ADUSD(ESOH).

b. The EPA will provide semi-annual program progress and review reports to DoD via a searchable database of a design agreed to by DoD and EPA. These reports will be provided no later than 45 days after the mid-year and the end of the fiscal year. These reports will include regional summaries and installation specific reports (Attachment A). An EPA Headquarters mid-year and end-of-year summary report will also be provided (Attachment B). DoD expects that EPA's reports will include, at a minimum, the following: identification of issues that require higher headquarters attention, a discussion of accomplishments, a discussion of schedule delays or other issues impeding progress at installations; and any other pertinent information of which BRAC managers should be made aware. Expenditure reports will be provided to the Army under separate cover. EPA will provide to each Component, reports tailored to the DoD Component and a complete copy of the report to the ADUSD(ESOH).

6. BRAC Management Review Process: It is the intent of DoD and EPA to work together effectively and efficiently to perform their respective duties relating to the cleanup and reuse of BRAC properties. DoD and EPA will conduct joint management reviews to evaluate progress and support provided under this MOU. To this end, semi-annual Management Review meetings will be held during which DoD and EPA representatives will discuss approaches to improving the program. In preparation for, and as part of the meetings, DoD and EPA will work together to determine the focus and agendas of the Management Reviews, perform the analyses described below, and develop options for improving the program. Specifically, the Management Review execution process is:


a. Spring Management Review - Focus on Planning, Future Funding and Cleanup Progress:

(1) **EPA BRAC Reports:** DoD and EPA will analyze the EPA BRAC Reports (see section 5b), and other data as mutually agreed upon will be used to evaluate the progress made, including EPA's support, under this MOU. DoD and EPA recognize that the metrics may need to be refined based on further review and evaluation. Adjustments to the BRAC metrics will be made with mutual agreement by DoD and EPA. In addition, either DoD or EPA will propose a list of sites that should be targeted for the upcoming fiscal year in an effort to more quickly achieve Remedy In Place/Response Complete (RIP/RC) and/or property disposal. EPA and DoD will jointly discuss and agree on projections associated with activities at these sites.

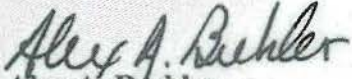
(2) **Installation Appraisals Completed prior to Spring Management Review:** DoD and EPA Headquarters require that EPA RPMs and Base Environmental Coordinators (BECs) at bases under this MOU complete an Installation Appraisal (see Attachment C). The purpose of the Appraisal is to ascertain the barriers that are preventing greater progress. An installation's RPM and BEC shall complete the installation appraisal form jointly. The RPM will submit the completed Installation Appraisal through the spring database submission process. EPA and DoD Headquarters will review this information to ascertain what assistance should be provided to the RPMs and BECs so that greater progress can be made.

b. **Fall Management Review - Focus on key issues and new approaches:** DoD and EPA will determine three to five key issues to focus on during the Fall Management Review, as well as successes and lessons learned from the implementation of new approaches to cleanup and transfer. The key issues and lessons learned will be based on the information in the EPA BRAC reports, EPA and DoD areas of interest, DoD environmental restoration program data, the Spring Management Review, as well as other mutually agreed upon sources. Also, there may be an update on installations that did not meet the previous year's goals, or discussion of potential recommendations for program improvements at installations that indicate that they are going to have difficulty meeting end-of-year goals. Prior to the Fall Management Review, DoD and EPA will research and analyze data from installations that have raised these issues. During the Management Review, DoD and EPA will present the comprehensive findings and discuss recommended options for proceeding. Management Review participants will discuss and recommend a path forward. DoD and EPA will report progress during the subsequent Spring Management Review.

7. **MOU duration and termination:** This agreement takes effect on February 20, 2008, and expires September 30, 2011, but may be extended upon the agreement of the parties to this MOU. This MOU may be amended upon the mutual agreement of the parties; however, amendments must be made in writing. Conflicts arising between the parties on the requirements or interpretation of this MOU shall be resolved administratively between the agencies. Absent agreement, dispute resolution shall be in accordance with procedures for resolving disputes between Federal agencies. The tri-party signing of this MOU supersedes the existing BRAC agreement scheduled to expire on September 30, 2008.


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Assistant Administrator
Office of Solid Waste and Emergency Response
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Date: 1-29-08


Alex A. Behler
Acting Deputy Under Secretary
of Defense (Installations and
and Environment)
U.S. Department of Defense

Date: 1/18/08

Sandra L. Waugh-Williams

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Office of Administration and Resources Management
Action Official on Behalf of the
Environmental Protection Agency

Date: *2/20/08*

Attachment A
Regional and Installation Specific Reports

Part I
REGIONAL SUMMARY

1. Hot Issues
 - Issues for HQs EPA and/or HQs DoD's attention
 - Include Congressional or High Profile Items
2. Other Regional Issues
 - Successes/achievements
 - Region-wide issues
3. Points of Contact
 - EPA point(s) of contact (HQs and Region)

Part II
INSTALLATION SUMMARY

1. Installation Name and Contact Information:
 - DoD/EPA/State BCT member contact information.
2. Significant Issues*
 - a. Congressional
 - b. High profile items
 - c. Delays in Environmental Restoration Actions**
3. Issues Impacting Reuse/Transfer
4. Staffing/Funding Issues:
 - Staffing and funding issues at the installation affecting EPA, State, and Component

* Note if item is for information or for headquarters/management attention.

** Include if any site will not meet projections and any re-opened site, reasons, and fixes to get back on track.

Attachment B
BRAC National Summary
 (Information from EPA CERCLIS database)

BRAC Summary

EPA Term	DoD Term	Planned Current FY	Accomplished Current FY	Total Planned		Total Accomplished		Actions Planned for # Sites in FY + 1*
				FY 2008 Data	Current Data	FY 2008 Data	Current Data	
Decision Documents	Decision Documents	#	#	#	#	#	#	# for # sites
RA/CMI Starts	Remedial Action-Construction (RA-C)	#	#	#	#	#	#	# for # sites
RA/CMI Completions	Response Complete (RC)	#	#	#	#	#	#	# for # sites
Site Construction Completion**	Last RIP	#	#	#	#	#	#	# for # sites
FOST/FOSL/CDR-FOSET (Parcels & Acres)	FOST/FOSL/CDR-FOSET (Parcels & Acres)	N/A	#	N/A	N/A	#	#	N/A
OPS Determination	OPS Determination	N/A	#	N/A	N/A	#	#	N/A
Active RAB	Active RAB	N/A	#	N/A	N/A	#	#	N/A

Data Source: CERCLIS (pull date)

* The first number is the number of actions planned to occur. The second number is the number of sites covered by those actions. For example, 19/6 means there are 19 actions covering a total of 6 sites.

** If there is a number, please list the names of the sites here.

**Attachment C
Installation Appraisal Form**

The BRAC Program Installation Appraisal Form will be used to inform senior leadership on potential causes for delays in cleanup and reuse of BRAC property. The Installation Appraisal Form will be administered at the base level, capturing performance data from both EPA RPMs and their DoD counterparts (BECs) at each base. The Installation Appraisal Form contains basic questions aimed at characterizing base-specific issues, budget/funding dynamics, and the level of coordination amongst stakeholders. The data will also help DoD evaluate barriers to progress at installations, and assist DoD in evaluating EPA support.

Installation Name:			
	Name	Phone	Email
EPA Remedial Project Manager:			
BRAC Environmental Coordinator:			

Question	Description
1. What were the planned milestones and goals for the past 12 months?	
2. Did you meet your planned milestones and goals for the last 12 months? <i>If "Yes", please proceed to Question 3.</i> <i>If "No", please explain why you did not meet specific milestones and goals and explain how you plan to meet these milestones and goals in the future. Reasons that may impede progress at an installation include a lack of funding; significant local, political, community, or RAB issues; lack of participation in the BCT, or other variables outside the control or influence of the BCT.</i>	Circle your answer: Yes/No
3. Did any significant issue or challenge arise over the last 12 months? If "Yes", please describe the issue or challenge.	Circle your answer: Yes/No
4. Was the funding level adequate for this site over the past 12 months? If "No", please describe.	Circle your answer: Yes/No
5. Did all BCT participants actively participate in BCT meetings as scheduled over the past year? If "No", please describe why.	Circle your answer: Yes/No/NA
6. Please describe EPA technical assistance in the past 12 months. If EPA's technical assistance helped solve or mitigate a problem or address a potential issue, please specify.	
7. Were documents prepared and reviewed in a timely manner, e.g. in accordance with agreed upon deadlines? If "No", please describe why.	Circle your answer: Yes/No
8. Are there any variables, outside the control or influence of the BCT, which have impeded progress at the installation? If "Yes", please describe.	Circle your answer: Yes/No
9. Are there significant local political or community/RAB issues that are delaying cleanup or property reuse? If "Yes", please describe.	Circle your answer: Yes/No