UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Federal Facility Site Definition

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A number of questions have arisen recently regarding the way in which federal facilities are defined for purposes of NPL listing. In particular, I have received a memorandum from Richard McAllister, of the Office of Regional Counsel in Region X, asking about how federal facilities may be described in listing packages to ensure that all the potential sources that EPA considers appropriate to include in the NPL site are in fact included. This memorandum responds to that from Region X, and somewhat more generally to other questions that have arisen about federal facility site definition.

Federal facilities are often very large and encompass multiple potential sources of contamination arising out of a variety of different activities. Because of their size, and the fact that site investigations are not conducted under direct EPA supervision, it is not always possible to ensure that all areas of contamination within the facility boundaries have been identified at the time the facility is considered for NPL listing. While these features are not unique to federal facilities, they tend to arise most frequently at such facilities. These features of federal facilities have given rise to a number of problems for the site listing process.

The NPL is, according to section 105(a)(8)(B) of CERCLA a list of the nation's highest priority "releases." An NPL site therefore consists of a release (or releases), not (as is sometimes believed) a geographic unit defined by property lines.[1]

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[1] Section 105(a)(8)(B) also refers to "facilities" on the NPL. In general, EPA uses the term "facility" interchangeably with the termms "release" and "site". The term "facility" as defined in section 101(9) of CERCLA includes any "area where a hazardous substance has been deposited, stored, disposed of, or placed", and that area could extend beyond the area that is actually contaminated. However, the term "facility" as used in CERCLA is not necessarily equivalent to what is commonly meant in referring to a "federal facility" -- i.e. an entire military or other government installation.

While geographic terms are often used to designate the site (e.g., the "Jones Co. plant site"), and listing packages sometimes describe the site in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The precise nature and extent of the site are typically not known at the time of listing. The full extent of the site, including areas to which contamination has "come to be located", and sources not identified at listing, will be further delineated in the course of the RI/FS and the remedial action although in many cases the precise extent of contamination is never known. See 55 Fed. Reg. 35504-05 (August 30, 1990).

What the site consists of depends on how the listed release (or group of releases) is described in the listing package. In some cases this is straightforward, as where there is a known source and a groundwater plume. In other cases, the release may be defined in terms of an ongoing activity, such as the disposal of wastes generated by a particular company. In other cases, the site may consist of an identified area of known contamination with the sources less than fully specified.[2] Where a disposal unit such as a lagoon or landfill is involved, the location of that unit will also help to define the site. (For example, where a site is described as the "X Landfill", the site would include (but not necessarily be limited to) the landfill and any migration or releases from it). Finally, the site may be defined by reference to geographic boundaries for listing purposes, with the "site" ultimately consisting of any contamination within those boundaries (and any other areas to which such contamination has come to be located).

These general rules apply to federal facilities as well as other NPL sites.[3] When a site is listed as "Smith Air Force Base", the site is not necessarily coextensive with the boundaries of the base. Rather, it is defined by the listing package. Where there are multiple sources or areas of known contamination, all sources and contaminated areas referred to in the package are included in the site. In addition, the site may be defined in such a way as to include any contaminated areas within the facility boundaries but not specifically identified as of the listing date. (If this approach is used, it is recommended that the method of defining the site is made very clear in the listing package to avoid misunderstandings later in the process.) Alternatively, EPA could choose to define the site to include only portions of a particular facility, either if it concludes that other portions are clean or if it concludes that it does not make sense administratively to address all contamination within the facility boundaries as part of one site.

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[2] See Washington State Department of Transportation v. EPA , 917 F. 2d 1309 (D.C. Cir. 1990) (source not mentioned in the listing package could later be treated as part of the site when it was found to be contributing to the listed contamination).

[3] Region X's memo correctly notes that for purposes of listing federal "facilities" on the Federal Agency Hazardous Waste Compliance Docket under section 120(c) of CERCLA, EPA has said that it uses the RCRA definition of "facility", which is based on property boundaries. Thus, on the docket, each facility is listed only once, even if it contains multiple areas of contamination. For NPL listing purposes, however, the CERCLA definition of "facility" applies.

The memo from Region X asked about the level of detail needed to describe sources at federal facilities in the listing package so as to make clear that they are part of the site. The Region indicated that it plans to characterize fully only those sources that drive the HRS score, and to describe other areas known or believed to be sources of contamination in a more general way. The Region asked if this would be sufficient, and if so, how to document the latter sources.

In general, the approach described by Region X should be sufficient to include all the sources within the site, including those that are not characterized in detail. If a few sources at a facility are sufficiently serious to generate an HRS score over 28.5 by themselves, it is sufficient to use those sources in scoring the site and to describe other known sources only in general terms.[4] The latter would then be part of the NPL site. The more general descriptions need not conform to any specific, uniform format; generally, the kinds of identifiers that would be useful wou1d be references to the approximate location of the source, and the kind of activity that caused the contamination (or is believed to have caused contamination). If specific contaminants can be identified, either from actual sampling or from knowledge of the activity involved, this would be helpful but is not essential. Where sources are known because they have been identified in studies such as Installation Restoration Program reports, it may be helpful to include the portion of the study identifying the source in the listing package.

In such a case, the site as listed would include all the sources identified in the package, all areas to which contamination from those sources has come to be located, and in addition (unless EPA chooses otherwise) any sources not identified at the time of listing that are later found to have contributed to contamination that was identified in the listing package. For example, if the listing package identifies groundwater contamination at some point on the facility, and one or more known sources of that contamination, and other sources are later found to have contributed to that contamination, those later-identified sources would be considered part of the site. (To avoid disagreement later, it is probably advisable to make this clear in the listing package.)

Alternatively, it is possible to score the site based on a small number of sources, and simply describe the site at listing as including those sources and all other contaminated areas within the boundaries of the facility. In that case the site would include any contamination, either known at the time of listing or discovered later, that is within those boundaries. If this approach is followed, it is recommended that the description be made very clear so that all parties potentially affected may be made aware of the scope of the site. (For example, this approach could bring within the site contamination originating outside the facility from a private source, and unless the definition is clear outside private parties might assume that the listing did not affect them.) In addition, to serve the NPL's public information function, it is generally advisable even under this approach to describe in general terms those sources that are known at the time of listing.

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[4] The converse is not true, however. It would not be appropriate to NFRAP a facility on the basis of data from only a few key sources. If the preliminary scoring of a few sources results in a score below 28.5, but other sources are known that could raise the score above 28.5, those other sources should not be ignored. (The region could use its discretion to conclude without detailed site investigation that even if all sources were scored the facility would be unlikely to qualify for the NPL, and NFRAP it on that basis.)

The fact that sources at a federal facility are not contiguous, and involve different contaminants from different activities, does not preclude grouping them together as a single site. It has been EPA's policy since the NPL was first established that noncontiguous releases may be "aggregated" as a single site in certain cases. (See 48 FR 40663 (Sept. 8, 1983)). When EPA lists a variety of unrelated sources at a federal facility as one site, it is in effect utilizing the aggregation policy (although this is not always explicit in the listing packages). The factor that makes aggregation appropriate in such cases is generally the presence of a single responsible party which will serve as lead agency for any response and with whom EPA would have to enter into an IAG. There are clear administrative advantages in dealing with such sites collectively so as to simplify the response process, typically in a single umbrella IAG. At some federal facilities, however, administrative considerations may militate in favor of disaggregation; the DOE Hanford facility, for example, includes several distinct NPL sites.

It should be noted that, even if a site is identified for listing purposes by reference to the area within the facility boundaries, the NPL "site" includes only those areas that are contaminated (including both sources and areas to which contamination has come to be located). Areas within the facility boundaries that EPA ultimately concludes are clean would thus not be considered part of the "site". Pending completion of the RI/FS and ROD, the extent of the site may be uncertain, and all portions of the facility may be considered at least potentially part of the site, except to the extent EPA is satisfied based on the available evidence that certain portions are in fact uncontaminated.[5]

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[5] The question of site boundaries pending final characterization has come up from time to time in connection with proposals to sell or lease portions of the facility. Absent some provision in the IAG restricting the freedom of the agency to transfer a portion of the site, neither NPL listing nor site definition in fact have any effect on the owner agency's ability to sell property; the ability to sell is governed primarily by section 120(h)(3) of CERCLA which is independent of NPL listing.