

FEDERAL FACILITIES RESTORATION AND REUSE OFFICE

SUMMARY:

The Office of Land and Emergency Management's (OLEM) Federal Facilities Restoration and Reuse Office (FFRRO) manages the national implementation of the Comprehensive Environmental Response, Compensation and Liability Act's (CERCLA, a.k.a. Superfund) remedial provisions for Federal Facilities. EPA advances its mission to protect human health and the environment by addressing releases or threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. FFRRO works closely with the Office of Enforcement and Compliance Assurance's Federal Facility Enforcement Office (FFEO) to support the 10 regional Federal Facilities programs.

EPA oversees cleanups at federal Superfund sites on the National Priorities List (NPL), a list of prioritized contaminated facilities throughout the United States and its territories primarily intended to assist EPA in determining which sites warrant further investigation. FFRRO works with the U.S. Department of Defense (DoD), the Department of Energy (DOE), and other federal entities to address releases or threatened releases of hazardous substances, pollutants, or contaminants on federal NPL properties. EPA has listed 175 Federal Facilities as final to the NPL, with 18 of those deleted from the NPL. These 175 sites have 2520 operable units (OUs), distinct areas at a site created to facilitate efficient site management and cleanup. While only about 10% of NPL sites are Federal Facilities, more than 40% of Superfund OUs are at Federal Facilities and they deliver up to 40% of some of the Superfund programs key accomplishments each year, such as decision documents and remedial action completions.

Additionally, FFRRO is responsible for managing the Federal Agency Hazardous Waste Compliance Docket (Docket). The Docket identifies all Federal Facilities that have had reportable releases and must be evaluated to determine if they pose enough risk to warrant inclusion on the NPL. The Docket currently has almost 2,400 sites. There is a large universe of non-NPL sites, and the states are typically the lead regulatory agency for those sites (see CERCLA Section 120(a)(4)). EPA is generally not involved with remediation at non-NPL Federal Facilities or non-NPL Federal agency-led sites.

Differences in Federal Facilities Work Compared to Private Sites. Federal Facilities and private sites are subject to CERCLA, National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and associated EPA guidance documents and policies. Federal Facilities are also subject to CERCLA Section 120-specific requirements. EPA, coordinating with the appropriate state, oversees the CERCLA work private parties at private sites and other federal agencies at federal NPL sites. Key differences between Federal Facilities and private sites are:

- **Numerous Large, Complex Sites:** Federal Facilities are generally much larger in size and more complex than private Superfund sites. Federal Facility NPL sites average over 6,000 acres in size,

typically contain dozens of OUs and often include contaminants like per- and polyfluoralkyl substances (PFAS) and munitions.

- Radiation: Radioactive waste cleanup is challenging due to large volumes and extremely long half-lives of the radionuclides associated with the development of nuclear weapons. Currently, there are limited methods to treat radioactive waste; cleanup remedies focus on immobilization and isolation to prevent interaction with the environment. As a result, cleanup remedies generally rely on institutional controls and long-term stewardship.
- Large/Numerous Releases of Chemicals Impacting Groundwater: Large volumes or multiple area releases of hazardous substances, pollutants, or contaminants are often associated with Federal Facilities. Historical use of a wide variety of contaminants (e.g., jet fuel, radioactive materials, munitions) and disposal practices can pose threats to groundwater and drinking water resources. Common constituents of concern include degreasing agents, surfactants and PFAS releases associated with use of Aqueous Film-Forming Foam (AFFF) or other potential sources.
- Munitions and Explosives Constituents: Millions of acres of former munitions ranges have been transferred from the military to communities or local entities for redevelopment. Environmental regulators overseeing response actions dealing with military munitions have independent authority and/or responsibility to evaluate the public safety and environmental aspects of these response actions. DoD uses various unique technologies to characterize munitions response sites, but these sites are subject to the same statutory and regulatory requirements as other Superfund sites. Former ranges and other sites contaminated with military munitions may potentially have soil, groundwater and surface water contamination from munitions residues.
- CERCLA Lead Agency: At private Superfund sites, EPA is the lead agency which implements response actions in accordance with CERCLA and consistent with the NCP. Executive Order 12580 delegates certain presidential CERCLA authorities to the heads of federal agencies for responding to releases at facilities under their jurisdiction, custody, or control, and the federal agency serves as the lead agency. The lead agency consults with EPA on remedial actions taken at federal NPL sites throughout the response process and facilitates government-to-government coordination and consultation with Federally Recognized Tribes when appropriate. EPA oversees clean-ups at federal NPL sites.

Enforcement Challenges and Opportunities. Enforcement tools for Federal Facilities are limited by the Unitary Executive Theory, which prevents EPA from bringing civil judicial suits against other Executive Branch agencies in federal court. EPA cannot issue CERCLA Section 106/104(e)(5)(A) administrative orders to another federal agency without Department of Justice concurrence.

- EPA may need to use authorities under other statutes (e.g., Safe Drinking Water Act) to address imminent and substantial endangerment at Federal Facilities.

- CERCLA Section 120(e)(2) requires the lead agency at a Federal Facility NPL site to enter into an interagency agreement (Federal Facility Agreement, or FFA) with the EPA Administrator for the expeditious completion of all necessary remedial action.
- Currently all but one Federal Facility NPL site has an FFA in place; the Redstone Arsenal site (U.S. Army) in Alabama.
- Enforcement against another federal agency, particularly under CERCLA, requires extensive consultation which may hinder the process. Despite obstacles, EPA has assessed stipulated penalties where they are appropriate to ensure that Federal Facility cleanups are timely and protective.
- One major distinction between Federal Facility and private cleanup settlements is that, to date, there has been cost recovery for EPA oversight costs under only two FFAs.

Other factors that are unique to Federal Facilities:

- Federal Facilities and the EPA Administrator's Role. Each FFA includes a procedural framework and schedule for site response actions and facilitates cooperation and exchange of information by the Parties to the agreement (EPA, the other federal agency and usually the state).
 - Remedy decisions require joint selection by EPA and the other federal agency. If there is a disagreement, the EPA Administrator selects the remedy. The state may also concur on the remedy decision, but it is not required.
 - Each FFA also includes a dispute resolution provision and process. Dispute items historically have encompassed disagreements over technical, policy and legal issues. The Administrator is the final arbiter of FFA disputes that are not resolved within the region. In general, there is language in the FFA committing the Federal agency to abide by the Administrator's decision. There have been approximately 100 FFA formal disputes, with 12 elevated to the Administrator for a decision. There is currently a dispute for the Former Mather Air Force Base site awaiting an Administrator decision.
 - Resolution of site decisions via the dispute process is labor intensive and time consuming. While this tool is useful when needed, FFRRO and FFEO recognize it is not always an efficient approach. The two offices continue to work with the regions to use tools and approaches such as partnering principles and Alternative Dispute Resolution in coordination with the FFA parties to advance sites without need to initiate the formal dispute process.
- Five-Year Reviews (FYRs) are required under CERCLA and help agencies meet their recurring obligation to review remedies and ensure ongoing protectiveness. Other federal agencies are responsible for conducting FYRs at sites where required or appropriate, including any follow-up

actions. If EPA disagrees with the other agency's protectiveness statements, EPA can issue an independent finding of protectiveness. EPA reports the results of FYRs to Congress annually.

- Budgets. Cumulative environmental cleanup budgets for the other federal agencies exceeded \$10 billion in FY 2024. EPA requests a budget from Congress for Federal Facilities CERCLA oversight. EPA's enacted FY 2024 budget for this oversight was approximately \$26 million for program work and \$8 million for enforcement. Additionally, Superfund Federal Facilities program and enforcement are eligible to request Superfund tax resources.
- Relationships with Other Federal Agencies. DoD and DOE generally have more challenging cleanup sites than the other federal agencies (e.g., DOI, NASA, USDA), which can lead to a greater number of disagreements. The higher number of disputes can be attributed to the quantity and complexity of DoD's and DOE's NPL cleanups; this sometimes results in entrenched positions on technical and policy issues.

UPCOMING MILESTONES:

HOLD

BACKGROUND:

CERCLA and the NCP established a national program to address uncontrolled hazardous waste releases. In part due to Federal agencies' lack of clarity on the applicability of CERCLA to their facilities, Congress included CERCLA Section 120 in the 1986 Superfund Amendments and Reauthorization Act.

KEY EXTERNAL STAKEHOLDERS:

☒ Congress ☒ Industry ☒ States ☒ Tribes ☒ Media ☒ Other Federal Agency
☒ NGO ☒ Other (name of stakeholder) Site-Affected Communities

LEAD OFFICE: OLEM FFRRO// OTHER KEY OFFICES: OECA FFEO, SEMD REGIONS 1-10