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HTRW Center of Expertise Information - Fact Sheets

Fact Sheet 12-01

The Federal Agency Hazardous Waste Compliance Docket As it Applies to USACE Civil Works

Purpose of this Fact Sheet

The purpose of this Fact Sheet is to explain the significance of a Civil Works site being listed on the Federal Agency Hazardous Waste Compliance Docket (a.k.a. “The Docket” or “The Federal Facilities Docket”), when to expect it, and actions to be taken in response to the listing.

Background

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 120(c) requires the Environmental Protection Agency (EPA) to establish a Docket of Federal facilities that manage hazardous waste or from which a hazardous substance has been or is suspected of being released. The Docket identifies Federal facilities to be evaluated for threats to public health, welfare, or the environment. Civil Works properties, being Federal agency owned, are sometimes placed on the Docket. When this occurs, USACE must conduct a Preliminary Assessment (PA) as required by CERCLA 120(d). The PA is a compilation of existing information and does not require site sampling. The PA Report is submitted to EPA. After receipt of the PA Report, EPA may update the site status to indicate “no further remedial action planned (NFRAP)” or if further action is warranted, the next step in the remedial action process is to conduct a Site Inspection (SI). The SI involves site sampling to confirm whether contamination is present. EPA may choose to use data in the SI to evaluate whether to place the site on the National Priorities List (NPL). NPL sites must continue with the CERCLA remedial process and proceed to the Remedial Investigation/Feasibility Study phase. In the absence of other regulatory or statutory drivers, USACE sites on the Docket that are not placed on the NPL would proceed beyond the SI only at the discretion of USACE.

What Gets On the Docket?

The Docket is periodically updated by EPA and published in the Federal Register. Sites reported under the following Resource Conservation and Recovery Act (RCRA) or CERCLA mechanisms are placed on the Docket:

- RCRA 3005, 3010, and 3016. Under these authorities, Federal facilities are placed on the Docket because of certain hazardous waste activities. The Docket includes large quantity generators of hazardous waste; facilities permitted to treat, store, or dispose of hazardous waste; and sites at which hazardous waste was stored, treated, or disposed of at any time. Therefore, when a USACE facility becomes a large quantity generator of hazardous waste and submits a corresponding “Notice of Hazardous Waste Activity” form to EPA, the facility should expect to be placed on the Docket.
- CERCLA 103(a) and 103(c). Under these authorities, areas suspected of having new or old releases of hazardous substances are placed on the Docket. Thus, when a release or suspected release of hazardous substance occurs on USACE property and is reported to the National Response Center or to EPA, the facility should expect to be placed on the Docket.

Lessons Learned

Avoiding placement on the Docket is not always possible. Here are some lessons learned from previous listings.

Lower Granite Dam

Waste from a one-time event was presumed to be hazardous waste. Due to the volume of waste generated and this presumption, the facility became a large quantity generator (LQG) for a short period of time. The facility was placed on the Docket, and a PA was required under CERCLA 120(d) even though there had been no release of hazardous waste. See <http://www.gpo.gov/fdsys/pkg/FR-2008-11-25/pdf/E8-27972.pdf> for the Docket listing.

Lesson learned –Try to avoid becoming a LQG. Maintain small quantity generator or conditionally exempt small quantity generator status whenever possible. If LQG status is unavoidable, ensure detailed records of waste generation, management, and disposal are maintained to support preparation of the PA and ensure a smooth transition to NFRAP status.

Bourne Bridge

A lead abatement project at the Cape Code/Bourne Bridge caused the facility to become a LQG for a short period. The facility was placed on the Docket, and a PA was required under CERCLA 120(d) even though all wastes were properly collected, characterized, and disposed of at a permitted facility. See <http://www.gpo.gov/fdsys/pkg/FR-2008-11-25/pdf/E8-27972.pdf> for the Docket listing.

Lesson learned – Explore hazardous waste minimization options to avoid becoming a LQG. For example, evaluate whether abrasives blasting media can be reused to generate smaller volumes of waste; consider use of products that bind lead to avoid

hazardous waste generation; and consider scheduling activities to spread waste generation over different calendar months to prevent exceeding LQG thresholds.

Lock and Dam 12

EPA was notified of suspected lead contaminated soil at a storage yard. The site was placed on the Docket. See <http://www.gpo.gov/fdsys/pkg/FR-2008-11-25/pdf/E8-27972.pdf> for the Docket listing. Investigation confirmed the contamination, and a remedial action removed lead contaminated soil.

Lesson learned – Listing on the Docket requires a PA and if warranted SI, but it can also lead to full-scale cleanup.

Mount Morris Dam

Arsenic treated wood, which was not hazardous waste, was burned. Concern over suspected concentration of arsenic in the resultant ashes led to placement of the facility on the Docket. See <http://www.gpo.gov/fdsys/pkg/FR-2010-10-13/pdf/2010-25786.pdf> for the Docket listing. The Docket indicates the reporting mechanism as “other”. As required by CERCLA, an investigation was conducted and confirmed contamination. A removal action was conducted to address the arsenic.

Lesson learned –EPA may place a facility on the Docket even if not reported under one of the CERCLA 120(c) reporting mechanisms discussed above. Therefore, if a Civil Works facility is suspected of being contaminated, it could end up listed on the Docket.

What Action Must Be Taken If a Site is Placed on the Docket?

CERCLA 120(d) requires a CERCLA Preliminary Assessment (PA) to be completed for sites on the Docket. This is to be completed “in accordance with a reasonable schedule”.

What is a Preliminary Assessment?

A PA under CERCLA means review of existing information to determine if a release requires additional investigation or action. The PA includes information such as the source and nature of the release and pathways of exposure. If appropriate, it may also include on/off site reconnaissance.

According to the National Contingency Plan at 40 CFR 300.420(b), the PA report shall include:

- (i) A description of the release;
- (ii) A description of the probable nature of the release; and

(iii) A recommendation on whether further action is warranted, which lead agency should conduct further action, and whether an SI or removal action or both should be undertaken.

For additional information, see EPA guidance entitled “Federal Facilities Remedial Preliminary Assessment Summary Guide” at:

http://www.epa.gov/fedfac/pdf/ff_pa_guide.pdf.

If Additional Investigation is Indicated by the PA, What is the Next Step?

The next step in the CERCLA process, as outlined in the National Contingency Plan is the SI. According to the National Contingency Plan at 40 CFR 300.420(c), the SI report shall include:

- (i) A description/history/nature of waste handling;
- (ii) A description of known contaminants;
- (iii) A description of pathways of migration of contaminants;
- (iv) An identification and description of human and environmental targets; and
- (v) A recommendation on whether further action is warranted.

EPA guidance entitled “Federal Facilities Remedial Site Inspection Summary Guide” is available at: http://www.epa.gov/fedfac/pdf/ff_si_guide.pdf .

Tracking Site Status

The Docket is published in the Federal Register. To view an example of a Federal Register notice, see <http://www.gpo.gov/fdsys/pkg/FR-2010-10-13/pdf/2010-25786.pdf> to view the October 13, 2010 Federal Register which published the 24th update of the Docket.

To check site status, including the date placed on the Docket, the reporting mechanism leading to placement, and the NFRAP and NPL status, see http://www.epa.gov/fedfac/documents/docket_listings.htm. (Note: This is updated only through Docket Update #21, but there are currently 24 updates)

Additional resources regarding the Docket are available from EPA at: <http://www.epa.gov/fedfac/documents/docket.htm>. For NPL sites, EPA provides Superfund site information at: <http://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>.

Does Placement on the Docket Constitute an Environmental Liability for Financial Reporting Purposes?

The cost of conducting the PA (and if warranted the SI) may sometimes constitute an environmental liability (EL) for financial reporting purposes, but not always. In general, ELs are disclosed only when the expenditure of a future cleanup costs (including the costs of studies) is probable or reasonably probable AND reasonably estimable. Therefore, depending upon the reason for placement on the Docket, there may or may not be a reportable EL. If there is no expectation that a cleanup will be necessary (the probability is remote), then even though the facility is on the Docket, the cost of the PA would not be a reportable EL. For example, a facility placed on the Docket solely because of a large quantity generator status would not be a reportable EL because there has been no release and will require no cleanup. On the other hand, cost for conducting a PA at a facility placed on the Docket because of discovery of an old solvent disposal area may be reportable as EL if cleanup is probable and cost of PA is estimable (even if entire cleanup cost are not yet estimable). These issues should be addressed with HQUSACE when providing EL data.

If it is determined that PA costs constitute an EL, it is recommended that an explanatory remark be included to explain the estimated cost. An example remark would indicate the reason expenditure of the funds is probable, the work to be accomplished, and the estimated cost. For example, "This site requires a PA because it is on the Docket. \$50k funding for PA was received for FYXX. Work will begin in the 3rd QRT 20XX. The cost of the clean-up action, if any, is considered "not estimable" pending completion of the studies. This project is for old disposal site located at the Dam. The date of the disposal is unknown, but is suspected to have originated during the construction of the Dam."

Point of Contact

For questions regarding this Fact Sheet, contact the EMCX at 402 697-2559.