



DERP FORUM

Achieving Greater Success Through Strong Partnerships

November 14-17, 2023 • Kansas City, MO

Defense Environmental Restoration Program (DERP) 101

November 14, 2023

Agenda

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- DERP Eligibility
- DERP Funding and Progress
- Scope of the Program
- DERP Process
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History

DoD started identifying, characterizing, and cleaning up environmental contamination
1970s

Congress passed the Superfund Amendments and Reauthorization Act
-Extended CERCLA to Federal facilities
-Established the DERP including funding accounts
1986

Federal Facilities Environmental Restoration Dialogue Committee report provided recommendations aimed at improving the process of making cleanup decisions and priorities at federal facilities
1996

1980s
Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) for the identification, investigation, and cleanup of hazardous substances resulting from past practices

1987
The President signed Executive Order 12580, *Superfund Implementation*, which delegated certain CERCLA authorities to the Secretary of Defense

2001
DERP amended to include the Military Munitions Response Program (MMRP)

DERP Overview

- DoD is committed to protecting human health and the environment by conducting cleanup under federal law.¹
- The DERP addresses cleanup at active installations, Formerly Used Defense Sites (FUDS) properties,² and Base Realignment and Closure (BRAC) locations³ in the United States.
- DoD addresses hazardous substances, pollutants or contaminants, and munitions under the DERP.⁴
- Response actions pursuant to DERP must be in accordance with CERCLA.
- DoD conducts cleanup under CERCLA and its DERP authorities (e.g., as a lead agency).
- DoD may conduct environmental restoration pursuant to other applicable federal laws addressing environmental restoration (i.e., Resource Conservation and Recovery Act (RCRA) Corrective Action).

¹ DERP (10 USC sections 2700-2711) and CERCLA (42 USC sections 9600-9675).

² FUDS are properties that were formerly owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary of Defense prior to October 17, 1986.

³ BRAC locations were authorized for closure or realignment by Congress under one of the five BRAC rounds.

⁴ Munitions are addressed at closed (non-operational) ranges under the MMRP.

DERP Eligibility

- DERP includes response actions undertaken by a DoD Component to address releases caused by past DoD activities within the United States that include:
 - A release of a hazardous substance or pollutant or contaminant.
 - A release of petroleum, oil, or lubricants.
 - A release of hazardous waste or a hazardous waste constituent.
 - Unexploded ordnance (UXO), discarded military munitions (DMM), or munitions constituents (MC) at munitions response sites (i.e., former ranges).

DERP Eligibility (continued)

- DERP environmental restoration does NOT include:
 - Closure of treatment, storage, and disposal units regulated by a RCRA permit or operating under interim status.
 - Routine operation, management, or maintenance at an operating DoD facility or site that is not part of an environmental restoration activity, including routine operational range maintenance and sustainment activities.
 - Activities to terminate a Nuclear Regulatory Commission license under the Atomic Energy Act.
 - Immediate, short-term response required to limit, address, or mitigate a spill or release
 - Explosives or munitions emergency responses.
 - Responses at contractor-owned and-operated facilities.
 - Removal of aboveground storage tanks or underground storage tanks and associated piping
 - Responses to address releases that are solely the result of an act of war.
 - Responses at State National Guard properties except for perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA) per the Fiscal Year (FY) 2020 National Defense Authorization Act (NDAA).
 - Responses at locations outside of the United States.
 - Responses at Defense Plant Corporation and similar properties (e.g., other defense-related Reconstruction Finance Corporation entities such as the Defense Supplies and War Asset Corporations) for which successor agencies and departments other than the DoD are responsible for environmental restoration activities.

DERP Eligibility (continued)

- DERP environmental restoration does NOT include:
 - Responses to UXO, DMM, or MC on operational ranges, operating storage or manufacturing facilities, or facilities that are used or were permitted for the treatment or disposal of military munitions.
 - Responses to asbestos and lead-based paint that have not been released to the environment.
 - Activities that duplicate a response that was completed under another environmental restoration authority.
 - Activities that are subject to a legal agreement or property transfer document that assigns environmental restoration responsibility to a party other than the DoD.
 - Responses at facilities for which there are no records showing that the property is currently or was formerly under the jurisdiction of the Secretary of Defense at the time of actions leading to contamination.
 - Activities funded by a specific appropriation.

DERP Funding

- Funding for DERP activities comes from six accounts, which are subject to congressional funding:
 - **Environmental Restoration (ER) accounts (five accounts)**
 - ER-Army
 - ER-Navy
 - ER-Air Force
 - ER-FUDS
 - ER-Defense-wide
 - Includes non-BRAC funding for the Office of the Deputy Assistant Secretary of Defense for Environment and Energy Resilience, the Defense Logistics Agency, and the Defense Threat Reduction Agency
 - **BRAC account**
 - Legacy BRAC and BRAC 2005 accounts combined in FY 2013 NDAA

Scope of the Program

- DERP sites fall into three categories:
 - **Installation Restoration Program (IRP)**
 - Addresses the release of hazardous substances or pollutants or contaminants, including per- and polyfluoroalkyl substances (PFAS)
 - Excludes immediate response to releases or spills and solid or hazardous waste storage or disposal
 - **Building Demolition and Debris Removal (BD/DR)**
 - Building demolition and debris removal of unsafe buildings/structures
 - Most BD/DR activities are on FUDS properties
 - **MMRP**
 - Manages environmental responses to UXO, DMM, or MC
 - Does not include operational ranges, operating storage or manufacturing facilities, or permitted facilities for the treatment or disposal of military munitions

Quick Check-in

1. Why is 1986 an important date in the DERP Program?

- (a) This is when the first environmental database was created
- (b) Brian finally made it to high school
- (c) SARA was passed by Congress

2. How many funding accounts pay for DERP activities?

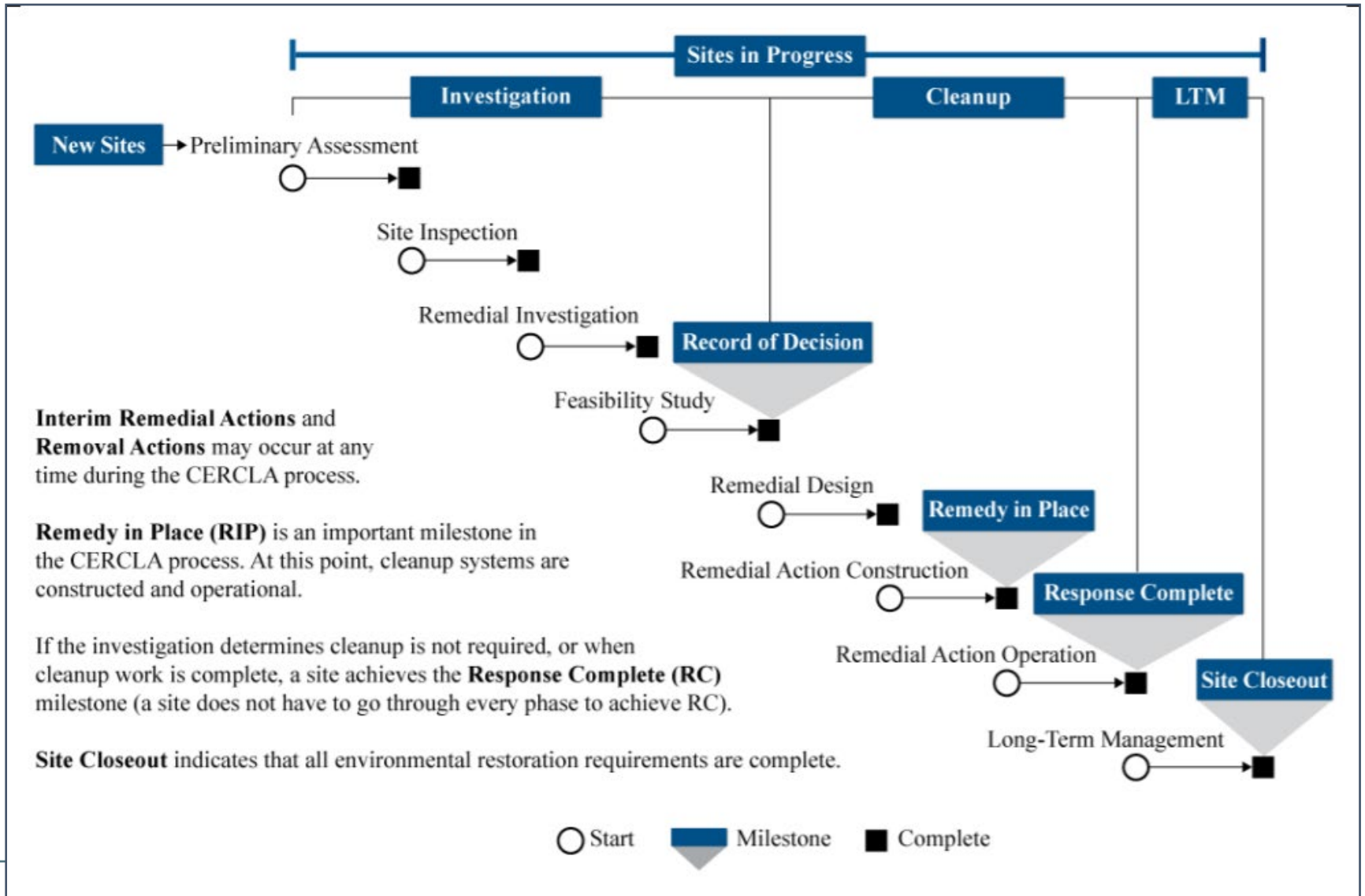
- (a) One
- (b) Four
- (c) Six
- (d) Ten

Questions?

DERP Process: General

- DoD must follow the CERCLA cleanup process to identify, investigate, and respond to releases.
 - Cleanups under CERCLA or RCRA Corrective Action will substantively satisfy the requirements of both programs.
- All cleanup actions are prioritized using a long-standing nationwide risk-based approach.
- DoD works with federal, state and local governments and the public to select its cleanup actions.
- Removal Action can occur at any point throughout the cleanup process for a situation requiring a more immediate response.
 - Typically a removal action does not provide a final cleanup response action and the site returns to the CERCLA remedial process.

DERP Process Phases & Milestones



DERP Process: Investigation

- Preliminary Assessment (PA)
 - Review historic operations, documents, and maps, and conduct interviews to gain information on a potential release and identify sites that may require a CERCLA response action.
- Site Inspection (SI)
 - Sample, collect, and analyze data to determine the need for further action at sites identified in the PA.
- Prioritization & Sequencing
 - Use data gathered in the PA/SI to prioritize sites that require further action.
 - Prioritize sites for Remedial Investigation (RI) using a risk-based process focusing on highest risk category sites first – essentially “worst first.”
 - Relative Risk Site Evaluation methodology evaluates the relative risk to human health and the environment posed by contamination at IRP sites.
 - Munitions Response Site Prioritization Protocol evaluates the potential risk to human health and the environment posed by past munitions activities at Munitions Response Sites.

DERP Process: Investigation (continued)

- RI/Feasibility Study (FS)
 - Collect detailed information through field investigations to characterize site conditions and determine the nature and extent of the contamination, and evaluate risks to human health and the environment posed by the site conditions by conducting a baseline ecological and human health risk assessment.
 - If there is an unacceptable risk to human health or the environment, DoD will develop, screen, and evaluate remedial alternatives; assess their performance; and select a permanent solution that is protective of human health and the environment.
- Proposed Plan
 - Summarize the RI/FS, provide a brief description of each remedial alternative, and highlight the key factors that led to identifying the preferred alternative.
 - Make the Proposed Plan available for public comment, provide an opportunity for a stakeholder meeting, and include the proposed plan in the information repository and the administrative record.
- Record of Decision (ROD)/Decision Document (DD)
 - Identifies the final selected cleanup remedy, including cleanup levels, and considers public comments and community concerns. Regulators review the ROD/DD. For sites on the national priority list, regulatory concurrence on the ROD is required.⁵
 - Once signed, publish a notice of availability in a major local newspaper of general circulation and make it available for public inspection and copying.

⁵ DoD typically obtains state concurrence on RODs for non-National Priority List (NPL) sites although it is not required.

DERP Process: Cleanup

- Remedial Design (RD)
 - Develop design plans and specifications of the selected cleanup remedy.
- Remedial Action Construction
 - Construct and implement the selected cleanup remedy.
- Remedial Action Operation (RA-O)
 - Operate, maintain, and monitor the cleanup system and site, until the RA-Os are achieved.

DERP Process: Cleanup

- RIP
 - Achieved when the remedy has been constructed, is functional, is operating as planned in the RD, and would be expected to meet the remedial action objectives detailed in the ROD/DD.
- RC
 - DoD measures cleanup progress against the RC milestone, which occurs when the cleanup activities are complete (although there may be a continuing responsibility to monitor the site).
 - Formal documentation for the RC milestone is essential to ensure that completion of RA-Os is recognized.
- For information about cleanup progress view the DERP “fast facts” here:
<https://www.denix.osd.mil/derp/derp/archives/fast-facts-progress/facts/>.

DERP Process: Long Term Management (LTM)

- LTM
 - Monitor site conditions, implement and manage land-use controls, and perform 5-year reviews when the site cleanup levels do not allow for unlimited use and unrestricted exposure (UU/UE) of the property.
- Site Closeout
 - When DoD has completed the required response actions at an environmental restoration site, and it will not expend additional environmental restoration funds at the site (i.e., no further LTM is required).
 - Not all DERP sites can achieve UU/UE and may remain in LTM for perpetuity.

Environmental Restoration Documentation

- Cleanup records are maintained in the:
 - Administrative Record and
 - Information Repository

Partnerships and Transparency

- Partnering with environmental regulators and maximizing transparency, public participation, and collaboration are vital to ensuring cleanup decisions are protective by:
 - Involving federal and state regulators in DERP
 - Defense and State Memorandum of Agreement Steering Committee, Munitions Response Dialogue, and FUDS Forum Working Group
 - Quarterly meetings with U.S. Environmental Protection Agency (EPA)
 - DERP Forum (2023) and National FUDS Forum (2023)
 - Involving the public throughout the cleanup process
 - Community Involvement Plan (formerly Community Relations Plan)
 - Restoration Advisory Boards, Technical Review Committee, Technical Assistance for Public Participation
 - Public Meetings

Quick Check-in

1. Which of the following groups is NOT a partner with DERP cleanup?

- (a) Sierra Club
- (b) FUDS Forum
- (c) DSMOA SC
- (d) MRD

2. Which of the three categories that DERP sites fall into will most likely have an extended long term management component ?

- (a) IRP
- (b) BD/DR
- (c) MMRP

Questions?

For more information, visit:

<https://www.denix.osd.mil/derp/>



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