



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

JUN 02 2014

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY
(ENVIRONMENT, SAFETY, AND OCCUPATIONAL HEALTH)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ENVIRONMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(ENVIRONMENT, SAFETY, AND OCCUPATIONAL HEALTH)
STAFF DIRECTOR, DEFENSE LOGISTICS AGENCY (DS-E)

SUBJECT: Five-year Review Procedures – Update to DoD Manual (DoDM) 4715.20, “Defense Environmental Restoration Program (DERP) Management,” March 9, 2012

The Department has been working with EPA and the other Federal Agencies to streamline the five-year review process to include review and comment. This Office in collaboration with your staff developed the attached five-year review guidance to clarify: (1) the trigger date for the initial and subsequent 5-year reviews, (2) regulator review and comment requirements, (3) that the 5-year review is final upon DoD signature, and (4) that a 5-year review report is not considered a primary document, unless specified otherwise in a Federal Facility Agreement.

These procedures are effective immediately and will be included in the next update of DoDM 4715.20. My point of contact is Ms. Deborah Morefield at 703-571-9067 or deborah.a.morefield.civ@mail.mil.

Maureen Sullivan

Director

Environment, Safety, and Occupational Health

Attachment:
As stated

The following changes to the 5-year review procedures are effective immediately and will be included in the next update of DoD Manual 4715.20:

Page 38, Enclosure 3, paragraph 4.b.(8)(d)5. Describe any hazardous substances, pollutants or contaminants that will remain at the site above levels allowing for UU/UE following the remedial action, and set the schedule (which begins at the start of remedial action construction or the signature date of the ROD where construction is not required) and administrative requirements for 5-year reviews.

Page 40, Enclosure 3, paragraph 4.b.(14) 5-Year Reviews. During a 5-year review, the DoD Component shall evaluate the implementation and performance of a remedy to determine if the remedy continues to, or will meet, the remedial action objectives specified in the ROD and is, or will be, protective of human health and the environment.

Page 44-45, Enclosure 3, paragraph 5. FIVE-YEAR REVIEWS

a. Requirements

(1) Pursuant to subpart 300.430(f)(4)(ii) of the NCP, the DoD Component shall conduct a 5-year review if a selected remedial action results in any hazardous substances, pollutants or contaminants remaining at the site above levels that allow for UU/UE.

(2) If a remedial action results in UU/UE but will not achieve RC within 5 years, the DoD Component will conduct 5-year reviews during the RA-O phase, as appropriate.

(3) The law does not require 5-year reviews for removal actions.

(4) If a response is being conducted under an authority other than CERCLA, a 5-year review is not required. In these cases, the DoD Component is encouraged to coordinate with counsel and the governing authority to determine if there is another review requirement. If not, determine if a site-specific remedy would benefit from an appropriate periodic review.

b. Conducting 5-Year Reviews

(1) For the first DERP site at the installation, BRAC location, or FUDS property requiring a 5-year review, the DoD Component will complete the first 5-year review no later than 5 years after the start of remedial action construction or signature date of the ROD where construction is not required. Subsequent 5-year review reports shall be signed by the responsible DoD official no later than 5 years after the signature date of the previous 5-year review report.

(2) The DoD Component conducts, where practicable, 5-year reviews on an installation-wide basis (or BRAC location or FUDS property-wide basis), with new sites subject to 5-year review requirements incorporated into the next scheduled 5-year review. Five-year reviews should only address those sites for which remedial actions have been taken that result in hazardous substances, pollutants or contaminants remaining at the site above levels allowing for UU/UE. However, to provide the reader with a complete picture of restoration activities, the 5-year review report may include a list of all sites with restoration activities occurring on the property including those not subject to the 5-year review process at this time. If these sites are

included in the report, it should be made clear to the reader which sites are subject to the 5-year review process and which are not.

(3) During the 5-year review, the DoD Component will evaluate the effect of any newly promulgated or modified ARARs that are based on protection of human health and the environment, and changes in toxicity values or exposure assumptions affecting the protectiveness of the remedy originally selected in the DD, in accordance with subpart 300.430(f)(1)(ii)(B)(1) of the NCP.

(4) The DoD Component provides the draft 5-year review report to EPA and the state regulatory agency, as appropriate, for review and comment. Adequate time should be allowed for regulatory review. The DoD Component addresses comments received pertaining to remedy protectiveness and includes them and their disposition in the final 5-year review report. Addressing comments not pertaining to remedy protectiveness in the 5-year review report is discretionary. The responsible DoD official signs the final document no later than the dates described in paragraphs b.(1) and (2) of this section. For DoD facilities on the NPL, the FFA may contain additional requirements concerning regulatory review.

(5) Pursuant to the delegations of authority in sections 2(d) of Reference (q), DoD is the signature authority for 5-year reviews conducted pursuant to CERCLA at DERP sites where DoD is the lead agency for conducting the remedy.

(6) The DoD Component retains a copy of the completed 5-year review report in the project records and should include a copy in the information repository. In addition, the DoD Component provides copies of the report to the appropriate Federal and state environmental regulators.

(7) If 5-year reviews are required at an installation or property planned for transfer outside of DoD control to a non-Federal agency, the DoD Component remains responsible for 5-year reviews after transferring the property where DoD is the lead agency for conducting the remedy. However, the DoD Component may include procedures in the transfer documentation requiring the property owner to assist in these requirements.

(8) If the 5-year review determines that a remedy is no longer protective based on the criteria in Reference (bj), the 5-year review report shall include recommendations concerning the steps necessary to achieve protectiveness.

(9) If the 5-year review identifies a need to consider a significant change in a remedy, the DoD Component shall prepare further documentation, such as an Explanation of Significant Differences or ROD amendment, consistent with subpart 300.435 of the NCP. These activities should be accomplished separately and in no way delay completing the report within the required timeframe.

(10) Five-year reviews shall continue until UU/UE conditions are achieved at all DoD environmental restoration sites located on the property (i.e., restrictions imposed in the DD can be terminated or released). If UU/UE is achieved for any site on the property, that site no longer needs to be included in the 5-year review. Such a determination shall be documented in

the subsequent 5-year review and may also be presented in subsequent Site Closeout Documents (e.g., Remedial Action Completion Reports) for that particular site.

(11) The DoD Component may use the 5-year review process to support continually evaluating and optimizing remedies, including optimization strategies that result in a greener, more sustainable remedy.

(12) Unless specified as a primary document in an existing Federal Facility Agreement, a 5-year review report is not considered a primary document.