



ASSISTANT SECRETARY OF DEFENSE

3500 DEFENSE PENTAGON
WASHINGTON, DC 20301-3500

September 29, 2020

SUSTAINMENT

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (INSTALLATIONS,
ENERGY AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE AIR FORCE
(INSTALLATIONS, ENVIRONMENT AND ENERGY)
DIRECTOR, NATIONAL GUARD BUREAU (JOINT STAFF, J8)

SUBJECT: Guidance for Including Certain National Guard Sites in the Defense Environmental Restoration Program

The Department of Defense (DoD) issued a memorandum on November 28, 2017, clarifying its legal position on and restricting the use of Environmental Restoration Account (ERA) funds at National Guard bases where DoD was not the "owner or operator" at the time of a release. Section 316 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 provides DoD with new authority to use ERA funds to carry out cleanup of perfluorooctane sulfonate (PFOS) or perfluorooctanoic acid (PFOA) releases resulting from National Guard activities. Because this new authority is limited to the cleanup of PFOS and PFOA, the November 28, 2017, memorandum still applies for situations other than those covered by section 316 of the NDAA for FY 2020.

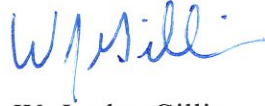
In accordance with section 316 of the NDAA for FY 2020, the DoD Component Heads with Defense Environmental Restoration Program (DERP) responsibilities, as identified in DoD Instruction 4715.07, *DERP*, may begin transferring and adding newly authorized National Guard PFOS/PFOA sites to the DERP in FY 2021. The Army and Air National Guard will work through their respective DoD Component Heads to ensure that these sites meet the DERP eligibility requirements in DoD Manual 4715.20, *DERP Management* (section 2. of Enclosure 3 (excluding section 2.d.(9))) prior to transferring and adding them to the DERP. The procedures (attachment 1) provide guidance for moving and adding newly authorized National Guard PFOS/PFOA sites to the DERP inventory and ensuring they are reported appropriately.

The Deputy Assistant Secretary of the Army for Installations, Energy and Environment and the Deputy Assistant Secretary of the Air Force for Environment, Safety and Infrastructure (DASs of the Army and Air Force) will use the attached template (attachment 2) and spreadsheet (attachment 3) to certify the eligibility of and identify the National Guard sites they transition and add to the DERP. The template and spreadsheet will only be used to transfer and add sites where there are releases of PFOS and/or PFOA. If PFOS and/or PFOA is commingled with another contaminant at a National Guard site, the DAS of the Army or Air Force will contact my office to discuss the details. My office will decide on a case-by-case basis whether the Army and Air Force can transition or add commingled sites to the DERP.

My expectation is that the Army and Air Force will transfer and add the majority of the newly authorized National Guard PFOS/PFOA sites to the DERP inventory by the end of FY 2021, and that they will incorporate the anticipated funding associated with these sites into the

Planning, Programming, Budgeting, and Execution process for their respective ERAs by the Programming Objective Memorandum for the FY 2023 – FY 2027 Program Review.

My point of contact for this matter is Ms. Deborah Morefield, at 703-571-9067 or deborah.a.morefield.civ@mail.mil.



W. Jordan Gillis

Attachments:

As stated

Procedures for Transitioning and Adding Newly Authorized National Guard Sites to the Defense Environmental Restoration Program

Introduction

Section 316 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 provides the Department of Defense (DoD) with new authority to use Environmental Restoration Account (ERA) funds to carry out cleanup of perfluorooctane sulfonate (PFOS) or perfluorooctanoic acid (PFOA) releases resulting from National Guard activities. Because this authority is limited to PFOS and PFOA cleanup, the memorandum DoD issued on November 28, 2017, which restricts the use of ERA funds at National Guard bases where DoD was not the “owner or operator” at the time of a release, still applies for situations other than those covered by Section 316 of the NDAA for FY 2020.

In accordance with Section 316 of the NDAA for FY 2020, the DoD Component Heads with Defense Environmental Restoration Program (DERP) responsibilities, as identified in DoD Instruction (DoDI) 4715.07, *DERP*, may begin transitioning and adding newly authorized National Guard PFOS/PFOA sites to the DERP in FY 2021. These sites must meet all DERP eligibility requirements in DoD Manual (DoDM) 4715.20, *DERP Management* (section 2. of Enclosure 3 (excluding section 2.d.(9))).

The Office of the Deputy Assistant Secretary of Defense for Environment (ODASD(Env)) developed these procedures to help the Army and Air Force transition and add newly authorized sites where there are PFOS and/or PFOA releases resulting from National Guard activities to the DERP inventory and ensure they are reported appropriately. The procedures provide guidance to the Army and Air Force on:

- Determining whether they can transition and/or add National Guard sites to the DERP;
- Notifying ODASD(Env) that they are transferring and/or adding newly authorized National Guard PFOS/PFOA sites to the DERP;
- Integrating newly authorized National Guard PFOS/PFOA sites into the DERP inventory; and
- Reporting newly authorized National Guard PFOS/PFOA sites on the ENV30 budget exhibit and in the Knowledge-Based Corporate Reporting System (KBCRS).

Procedures

1. The Army and Air National Guard, working through their respective DoD Component Heads, will evaluate each National Guard site that could transition or be added to the DERP to determine if the site meets the eligibility requirements in DoDM 4715.20, *DERP Management* (section 2. of Enclosure 3 (excluding section 2.d.(9))).
2. The Army and Air National Guard, working through their respective DoD Component Heads, must confirm that there was a release of PFOS and/or PFOA through validated data resulting from Army and Air National Guard activities at each site that could transition or be added to the DERP.

Procedures for Transitioning and Adding Newly Authorized National Guard Sites to the Defense Environmental Restoration Program

- a. The Army and Air Force may conduct a preliminary assessment/site inspection (PA/SI)¹ to determine whether there is a PFOS and/or PFOA release resulting from National Guard activities using DERP program management funding. They will report the funding associated with these activities on the ENV30 budget exhibit and in KBCRS as appropriate.
 - b. The Army and Air Force may only include a site in the DERP inventory and continue through the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process if:
 - i. Based on sampling data from the PA/SI phases, 1) there is a confirmed PFOS and/or PFOA release resulting from National Guard activities, and 2) the PFOS and/or PFOA exceeds site-specific regional screening levels in accordance with the ASD(Sustainment) (ASD(S)) Memorandum, *Investigating Per- and Polyfluoroalkyl Substances (PFAS) within the DoD Cleanup Program*, dated October 15, 2019, or
 - ii. The site was previously funded using non-ERA funds and PFOS and/or PFOA poses an unacceptable risk to human health or the environment based on the risk assessment conducted in accordance with the ASD(S) Memorandum, *Investigating PFAS within the DoD Cleanup Program*, dated October 15, 2019.
 - c. For sites impacted solely by PFOS and/or PFOA, the Deputy Assistant Secretary of the Army for Installations, Energy and Environment and Deputy Assistant Secretary of the Air Force for Environment, Safety and Infrastructure (DASs of the Army and Air Force) will send the DASD(Env) a memorandum certifying that the sites are DERP eligible and meet the requirements in Section 316 of the NDAA for FY 2020 using the attached template. They will also use the attached spreadsheet to provide the DASD(Env) with a list of the sites they are transitioning and/or adding to the DERP. The DASs of the Army and Air Force will provide this information to the DASD(Env) each time they transfer and/or add sites to the DERP, prior to obligating any site-level ERA funding at the sites.
 - d. For sites where PFOS and/or PFOA is commingled with another contaminant, the DASs of the Army and Air Force will contact my point of contact within ODASD(Env) to discuss the site-specific details. ODASD(Env) will determine if the Army and Air Force can transition and/or add these sites to the DERP on a case-by-case basis.
3. The Army and Air Force will transition and/or add newly authorized National Guard PFOS/PFOA sites to their DERP inventories using the same procedures they follow when adding newly-identified DERP sites to their inventories. They may transfer and/or add newly authorized National Guard PFOS/PFOA sites to the DERP at any time during the FY.

¹ The Army and Air Force may not use ERA funds for “mitigation” (e.g., providing bottled water) as part of the PA/SI phases. While the Army and Air Force may conduct “mitigation” concurrent with the PA/SI phases, “mitigation” is a removal action that is conducted in the interim remedial action (IRA) phase. IRA phases and the associated funding must be reported at the site level on the ENV30 budget exhibit and in KBCRS.

Procedures for Transitioning and Adding Newly Authorized National Guard Sites to the Defense Environmental Restoration Program

4. After transitioning and/or adding newly authorized National Guard PFOS/PFOA sites to the DERP, the DoD Component Heads must:
 - a. Follow the cleanup process and procedures in accordance with title 10, United States Code, sections 2700 – 2711; DoDI 4715.07; DoDM 4715.20; and supplemental policies and guidance issued by ODASD(Env). This includes:
 - i. Using the Relative Risk Site Evaluation to evaluate and sequence the sites for response actions with all other Army and Air Force DERP sites, as appropriate;
 - ii. Requesting funding for and including the sites in the ERA, Army and ERA, Air Force budget exhibits, as appropriate. The environmental liabilities associated with the sites will be documented and reported in the same manner as other DERP cleanup liabilities; and
 - iii. Reporting the sites in KBCRS in accordance with the KBCRS reporting instructions issued for each data submission and the instructions provided in Step 6 below.
 - b. Stop requesting funding for the sites on the Compliance Cleanup line on the PB28 budget exhibit.
5. The Army and Air Force may only use the authorities provided under the DERP (e.g., use of ERA funds, cooperative agreement authority such as the Defense and State Memorandum of Agreement) at National Guard sites after the sites are officially transferred and/or added to the DERP and reported on the ENV30 budget exhibit and in KBCRS.
6. Reporting:
 - a. Include newly authorized National Guard PFOS/PFOA sites on the first ENV30 budget exhibit following their transition and/or addition to the DERP.
 - b. Report the required installation-level data in KBCRS for the National Guard bases in the first submission following the transition and/or addition of newly authorized PFOS/PFOA sites to the DERP. This includes, but is not limited to, reporting data in the KBCRS Installation (INST) and Restoration Advisory Board (R_A_B) tables.
 - c. Report the required site-level data in KBCRS for the newly authorized National Guard PFOS/PFOA sites in the first submission following their transition and/or addition to the DERP. This includes, but is not limited to, reporting data in the following KBCRS tables:
 - i. The Site table (ENV_REST_SITE);
 - ii. The Cleanup Driver table (ENVST_CLEANUP_DRVR);
 - iii. The Munitions Response Area table (MRA_AREA);²
 - iv. The Munitions Response Site table (MMR_CHAR);²

² This table does not apply to Installation Restoration Program sites.

Procedures for Transitioning and Adding Newly Authorized National Guard Sites to the Defense Environmental Restoration Program

- v. The Phase table (PHASES);
 - vi. The Remedy table (PHASES_REMEDY); and
 - vii. The Funding tables (ENVST_FND, CTC_CHG, and, as appropriate, ENVST_FND_PROJ_MGT).
- d. Only report data associated with work performed and funded under the DERP on the ENV30 budget exhibit and in KBCRS.
- i. Only report obligations of ERA funds on the ENV30 budget exhibit and in the KBCRS Funding tables.
 - ii. Only include ERA-funded future requirements in the cost-to-complete (CTC) estimates reported on the ENV30 budget exhibit and in the KBCRS Funding tables.
 - iii. Phase data reported in the KBCRS Phase table:
 - 1. Do not report phases completed using funds from the Operation & Maintenance (O&M), Army National Guard and O&M, Air National Guard accounts prior to a site's transition.
 - 2. For phases that are underway at the time of a site's transition:
 - a. Report the phase status as "underway" if you start funding the work under the DERP between the time you transition the site to the program and the end of the reporting cycle in which you transition the site. The actual start date will reflect the date you began using ERA funds, not the date the phase began.
 - b. Report the phase status as "planned" if you do not start funding the work under the DERP between the time you transition the site to the program and the end of the reporting cycle in which you transition the site. The estimated start date will reflect the date you expect to begin funding the work under the DERP.
 - 3. Report all planned phases in KBCRS with estimated start dates that reflect when you expect to begin funding the work under the DERP.
- e. For each newly authorized Air National Guard PFOS/PFOA site that transitioned out of the DERP in accordance with the DoD memorandum dated November 28, 2017, and is transitioning back into the program, the Air Force will:
- i. Include the site on the ENV30 budget exhibit in accordance with Step 6.a. above.
 - ii. Report the required installation- and site-level data in KBCRS in accordance with Steps 6.b. and 6.c. above.
 - iii. Report obligations and CTC estimates on the ENV30 budget exhibit and in the KBCRS Funding tables in accordance with Steps 6.d.i. and 6.d.ii. above.
 - iv. Remove the "IS" (ineligible site) site type (envst_type_cd) in the KBCRS Site table and report the actual site type (e.g., spill site, storage area).

Procedures for Transitioning and Adding Newly Authorized National Guard Sites to the Defense Environmental Restoration Program

- v. Continue reporting phases completed prior to the transition out of the DERP in the KBCRS Phase table.
 - vi. If the Air Force changed the phase status from “underway” to “complete” when a site transitioned out of the DERP in accordance with the transition plan dated November 20, 2017, and the phase is still underway when the site transfers back to the DERP, report the data for that site in the KBCRS Phase table as follows:
 - 1. Continue reporting the existing completed phase record with the original start and end dates; and
 - 2. Add a second record for the same phase to the KBCRS Phase table. Report the phase status as “underway” or “planned” in accordance with Step 6.d.iii.2. above.
 - vii. Report phases that are underway and planned in the KBCRS Phase table in accordance with Steps 6.d.iii.2. and 6.d.iii.3. above.
7. The procedures in Steps 1 through 6 above apply to Air National Guard sites that remained in the DERP because they had achieved site closeout as of the end of FY 2017, in accordance with the transition plan dated November 20, 2017, and that the Air Force must reopen to continue the CERCLA process per the parameters listed in Step 2.b. above.

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR
ENVIRONMENT

SUBJECT: Transferring/Adding Newly Authorized National Guard Sites to the Defense
Environmental Restoration Program Per Section 316 of the National Defense
Authorization Act for Fiscal Year 2020

I certify that the National Guard sites listed in the attached spreadsheet meet the Defense Environmental Restoration Program (DERP) eligibility requirements in DoD Manual 4715.20, *DERP Management* (section 2. of Enclosure 3 (excluding section 2.d.(9))). Additionally, I certify that we will only use Environmental Restoration Account funds to address releases of perfluorooctane sulfonate and/or perfluorooctanoic acid resulting from National Guard activities at the sites in the attached spreadsheet, in accordance with Section 316 of the National Defense Authorization Act for Fiscal Year 2020. We will follow the procedures your office provided to transfer and add the sites to the DERP inventory and ensure they are reported appropriately.

My point of contact for this matter is [insert name, phone number, and email address for the point of contact].

Sincerely,

Attachment:
As stated

