



ASSISTANT SECRETARY OF DEFENSE

3400 DEFENSE PENTAGON
WASHINGTON, DC 20301-3400

ENERGY, INSTALLATIONS,
AND ENVIRONMENT

8/24/23

MEMORANDUM FOR: ASSISTANT SECRETARY OF THE ARMY (INSTALLATIONS,
ENERGY AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE NAVY (ENERGY,
INSTALLATIONS AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE AIR FORCE
(INSTALLATIONS, ENVIRONMENT AND ENERGY)
DIRECTOR, NATIONAL GUARD BUREAU (JOINT STAFF, J3/4/7)
DIRECTOR, DEFENSE LOGISTICS AGENCY (INSTALLATION
MANAGEMENT)

SUBJECT: Managing Controlled Unclassified Information in Department of Defense
Environmental Cleanup Data and Reports

The Department of Defense (DoD) acknowledges that data and reports relating to the investigation and cleanup of releases at military installations or National Guard facilities may contain Controlled Unclassified Information (CUI) and must be managed accordingly. To facilitate information sharing and in response to requests from state and local agencies and the public¹ for environmental cleanup data and information that has been designated CUI, this memorandum clarifies what is considered CUI and provides DoD Components direction for ensuring consistent handling and sharing of data with state agencies.

As defined in federal regulations implementing Executive Order 13556, CUI “is information the government owns or possesses, or that an entity creates or possesses for or on behalf of the government, that a law, regulation, or government-wide policy requires or permits an agency to handle using safeguarding or dissemination controls.”² In essence, CUI is information the federal government possesses that must be safeguarded. One type of CUI is personal information about private parties (referred to as Personally Identifiable Information or PII) that is protected from public release under the Freedom of Information Act (FOIA, 5 U.S.C. § 552(b)(6)) and DoD policies. Examples of PII commonly found in cleanup sampling data DoD possesses include names and addresses of privately owned drinking water wells.

Drinking Water Wells on Private Residential Property: To ensure a consistent Department-wide approach and to maintain public trust with our community members and affected landowners, DoD Components will not release names and addresses (i.e. PII) associated

¹ As a federal agency, the Environmental Protection Agency, like DoD, has obligations to protect PII/CUI. In addition, DoD and EPA entered into an agreement on 10 February 2022 wherein it's DoD's responsibility to share PII/CUI for a lawful government purpose and EPA's responsibility to protect such information in accordance with federal requirements and EPA policy.

² Title 32, Code of Federal Regulations, Section 2002.4(h).

with privately owned residential drinking water wells sampled by DoD pursuant to federal cleanup laws without the written consent of the property owner.³

Further, the latitude/longitude of residential drinking water wells will not be released or associated with specific DoD sampling results without written permission from, or notification to, the property owner as described below.⁴ This is because the latitude/longitude can typically be linked to residential names and addresses through readily available applications.

For these locations in the future, the DoD Components will ensure that Right of Entry (ROE) agreements include a notification to the landowner that the DoD will share latitude/longitude information associated with privately owned drinking well sampling results, if permission to access the property is granted. That information may be shared with State regulatory agencies supporting DoD's cleanup and may become publicly available. The DoD Components will include the following language in ROE agreements established after September 30, 2023:

“In signing this Right of Entry, I understand that geographical information in the form of latitude and longitude coordinates of sampling locations on this property will be associated with specific sampling results shared with regulatory agencies supporting DoD's cleanup efforts and may become publicly available. Personally identifiable information (PII) such as names and addresses will not be released and remains protected from public release by the Freedom of Information Act (5 U.S.C. § 552).”

For ROE agreements that have been previously established with residential property owners DoD Components will request written permission to release latitude/longitude associated with drinking water sampling results on residential property, when requested by State regulatory agencies supporting DoD cleanup.⁵ This will also ensure continued transparency regarding the information supporting DoD decision making. DoD will document written requests to release this information and owner responses for all affected properties using the following language:

“Per the request of the [*requesting regulatory agency*], the Department of Defense is seeking permission to release geographical information in the form of latitude and longitude coordinates of the private drinking water well(s) located on this property in conjunction with previously collected sampling data.

By signing this document, I grant permission to associate the latitude and longitude coordinates of sampling results from my property with previously collected sampling data. This information will be shared with regulatory agencies supporting DoD's cleanup efforts and may be made publicly available. Personally identifiable

³ This is consistent with Section 344 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023, which amended Section 345(a)(2) of the NDAA for FY2022, and states: “The Secretary of Defense may not publicly disclose personally identifiable information in connection with the results of testing for perfluoroalkyl or polyfluoroalkyl substances conducted on private property without the consent of the property owner.”

⁴ The Department will provide the geographical information, in the form of latitude and longitude, associated with all non-drinking water cleanup data sampling results to regulators.

⁵ This requirement does not apply if the latitude and longitude was previously provided to the state regulator.

information (PII) such as names and addresses will not be released and remains protected from public release by the Freedom of Information Act (5 U.S.C. § 552).”

Operational Security Risks: There are other forms of CUI besides PII that may relate to cleanup data. Technical and geographical information, images and photographs, critical infrastructure, and geodetic data – either individually or when aggregated - that is not already publicly available and that if made public may pose operational security risks is considered CUI and will not be released. When this information does not meet CUI criteria and can support and enhance the understanding of technical cleanup documents, it should be included as part of cleanup data.

State-Specific Agreements: To ensure consistency across the Department and because state agencies do not have the same CUI protections as the federal government, Components will not enter into any state-specific agreements for sharing CUI.

The point of contact for this matter is Ms. Alexandria Long, Office of the Deputy Assistant Secretary of Defense for Environment and Energy Resilience, at 703-571-9061 or alexandria.d.long.civ@mail.mil.

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