

US EPA ARCHIVE DOCUMENT

# Federal Facilities

Kathleen Johnson  
U.S. EPA, Region 9  
(415) 972-3873



# Federal Agencies and Superfund

- CERCLA section 120 addresses how CERCLA applies to federal agencies, both as PRPs at private sites and at facilities owned or operated by the federal government. Clarify section 104/106's role when federal PRPs are at private sites as opposed to using a federal facility agreement under section 120
- Subpart K of the NCP was reserved for regulations implementing section 120 – but regulations were never finalized
- Executive Order 12580 (January 1987) divides responsibility for Superfund implementation among various agencies within the Executive Branch

# Federal Agencies as PRPs at Privately-Owned Sites

- CERCLA 120(a) declares that the U.S. shall comply with CERCLA to the same extent as private parties
- The Unitary Executive Theory bars EPA litigation against federal PRPs
- Typical enforcement procedures apply, e.g., issuance of 104(e) letters, general and special notice letters
- Most typically, the federal PRP will enter into a cash-out settlement, with funds derived from the Judgment Fund.
- CERCLA 106 UAOs require DOJ concurrence
- Formerly Used Defense Sites (FUDS)

# Remediation Process at a Federal Facility

- Federal Agency Hazardous Waste Compliance Docket (section 120(c))
- E.O. 12580 designates Executive Branch agencies as the lead agency jurisdiction, for cleanups at facilities under their custody or control
- Deadlines for investigatory and remedial activities at listed sites
- Interagency agreements
- Where the Head of the Federal agency disagrees with EPA on the selected remedial action, the EPA Administrator selects the remedy (section 120(e)(4))

# Base Closure

- CERCLA contains numerous significant requirements for the U.S. to cleanup facilities it is transferring to private hands
- For contaminated parcels, the U.S. must provide a covenant in the deed
- Special rules apply in the event the parcel is transferred prior to clean up

# Federal Resource Managers Use of CERCLA 106 Order Authority

- E.O. 13016 amended E.O. 12580 to authorize certain Federal Resource Managers to utilize CERCLA 106 order authority
- Allows Federal Resource Managers to require private party cleanup for contamination affecting facilities within their custody or control or natural resources under their trusteeship
- Requires the concurrence of the Director, OSRE or Coast Guard