



Resolution 15-5
September 2, 2015
Newport, Rhode Island

Revised August 30, 2018
Stowe, Vermont

Revised September 16, 2021
Via Zoom Meeting

As certified by
Donald Welsh
Executive Director

ON THE DEPARTMENT OF DEFENSE ENVIRONMENTAL RESTORATION PROGRAM

WHEREAS, the U.S. Department of Defense (DoD) is responsible for thousands of contaminated sites at active facilities and on properties no longer owned by, under the control of, or managed by DoD, in accordance with the Defense Environmental Restoration Program (DERP) (10 U.S.C. 2701), and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 U.S.C. 9601 et seq.); and

WHEREAS, many of these sites contain uncontrolled releases of hazardous substances, petroleum, radioactive and mixed wastes, historic disposal areas, and building debris that may pose threats to public health and the environment; and

WHEREAS, many of these sites contain or are suspected to contain unexploded ordnance, munitions chemical constituents, and discarded military munitions referred to as munitions and explosives of concern (MEC), and exposure to MEC poses an unacceptable risk and danger to human health, safety, and the environment; and

WHEREAS, the U.S. Government Accountability Office continues to label the increase in DoD's environmental liability as a "high risk area," and estimates that liability to be \$75 billion in Fiscal Year (FY) 2020; and

WHEREAS, to address the contamination at these sites, DoD needs adequate funding for its environmental restoration programs including the Formerly Used Defense Sites (FUDS) program which, based on current funding levels, will need to continue beyond 2050 to complete its work; and

WHEREAS, the U.S. Congress provides appropriations to the DERP through annual National Defense Authorization Acts (NDAA); and

WHEREAS, DoD provides funding for state oversight of cleanup activities at DoD sites and participation of state staff in the national workgroups through the Defense State Memorandum of Agreement (DSMOA) program, and the NDAA for FY 2020 requires DoD to finalize cooperative agreements or amend existing cooperative agreements with states to address contamination by PFAS; and

WHEREAS, contaminated DoD sites are located in all 50 states and six territories, so all states have an interest in cleanup of these sites; and

WHEREAS, states, territories, and federal agencies have found helpful regular interactions to exchange views, information, and advice to facilitate response actions at these sites; and

WHEREAS, states have supported the creation of state-federal groups to foster communication and collaboration, evaluate policy issues, and work toward mutually acceptable solutions related to cleanup of these sites such as the Munitions Response Dialogue, the FUDS Forum, and the DSMOA Steering Committee (national workgroups); and

WHEREAS, state-DoD cooperation and coordination through these national workgroups has supported the ability of states and DoD to promote streamlined investigative techniques and implement protective remedies, which has saved DoD hundreds of millions of dollars and expedited implementation of remedies; and

WHEREAS, as successful as these state-DoD cooperative activities have been, there remain issues to be addressed; and

WHEREAS, ECOS Resolution 00-9, Clarification of CERCLA Sovereign Immunity Waiver for Federal Facilities and Federal Lands, requests that Executive Order 12580 be revised to clarify that federal facilities and federal lands are subject to appropriate state regulations and are not unduly shielded by sovereign immunity and lead agency authority, and encourages Congress to pass legislation acknowledging state authority for oversight of cleanup at federal facilities and on federal lands; and

WHEREAS, ECOS Resolution 15-2, Supporting Work on Emerging Contaminants, recognizes the collaborative work by states, DoD, U.S. EPA, and other federal agencies on emerging contaminant issues and remediation, and requests that DoD expedite hazard communications, site assessments, remediation, and drinking water treatment for PFAS contamination; and

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES:

Commends DoD for its commitment to funding state involvement in the cleanup of its sites through the DSMOA and for working with states to improve the state-DoD relationship and supporting state involvement in national workgroups;

Requests that DoD continue to engage regularly with all states and territories regarding investigation and cleanup at all potentially contaminated current and former DoD sites;

Requests continued collaboration and cooperation among states, territories, ECOS, the state environmental media associations, and DoD regarding DERP programmatic and policy changes through national workgroups, and that DoD improve its communication with all states and territories regarding the discussions and outcomes of the national workgroups;

Requests that DoD seek adequate baseline funding for all environmental response programs, fully implement all requirements of the NDAA relevant to the DERP and other environmental protection programs including those specific to addressing PFAS, and work with states to prioritize sites for funding based on risk;

Encourages the U.S. Congress to appropriate as much funding as possible for DoD environmental response programs through the NDAA and other environmental protection funding authorizations;

Expects DoD to comply with environmental and public health laws, including CERCLA, the Resource Conservation and Recovery Act, and all state environmental laws and regulations to the same extent as non-federal entities do; and

Strongly encourages DoD to continue to work with states and territories to address outstanding issues including:

- Implementing appropriate remedial actions consistently across the DoD cleanup programs;
- Recognizing and complying with all state cleanup standards and addressing exposures when site contamination exceeds these standards including those established for emerging contaminants that are more stringent than federal standards;
- Responding to emerging contaminant releases in a prompt and proactive manner;
- Developing risk management and communication methods at DoD sites, particularly sites contaminated with MEC and emerging contaminants;
- Ensuring that remedies that do not achieve unrestricted use/unlimited exposure remain protective by conducting timely five-year reviews and implementing other long-term stewardship activities; and
- Resolving program and site-specific challenges to help expedite the cleanup of FUDS.