

SECTION 12

USACE OVERSIGHT OF RD/RA PROJECTS

12-1. Authority. This section covers USACE oversight of RD/RA projects on non-USACE contracts. The oversight is provided to other governmental agencies such as DOE, EPA, etc. This section will focus on specifics of oversight for the EPA (under CERCLA/SARA), although it may apply to other agencies (and programs) as well. Pertinent documents relating to this subject which may be consulted for further information are as follows:

- a. OSWER Directive 9355.5.01, Feb 1990, "Interim Final Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties;" and
- b. The site-specific IAG for oversight of RA.

12-2. Enforcement. When non-Federal Potentially Responsible Parties (PRP) elect to conduct the RD/RA activities at a Superfund site, they must do so in accordance with the terms of the negotiated Settlement Agreement (either as an administrative order on consent or ordered as a judicial consent decree). These serve as legally binding documents to enforce the commitment by the PRPs (or the EPA's order) to finance and perform the RD and/or RA in accordance with the provisions set forth. To fulfill these requirements PRPs develop work plans, QA/QC plans, and/or contract documents, which are reviewed and accepted (and/or approved) by EPA prior to implementation.

12-3. Interagency Agreement (IAG). The site-specific IAG is an agreement signed by the USACE geographical district and the EPA region. It lists specific tasks and responsibilities of the parties, and provides a proposed budget for the oversight activities. Oversight tasks may include:

- a. review and evaluation of proposed plans (work plans, QA/QC plans), contract documents, design analyses, etc.;
- b. site visits and inspections;
- c. review of proposed design/construction plan changes; and
- d. oversight of RA. The specific tasks and responsibilities should be reviewed with the EPA's RPM prior to the start of an individual task identified above. A USACE work plan is recommended to document the details of the work tasks. This should include tasking details such as reporting format and period, staffing levels, etc. The reporting requirements for RA oversight should be established before the pre-construction conference.

12-4. Execution. The responsibilities of USACE officials performing oversight on behalf of EPA, on PRP enforcement projects, are very different from typical USACE contract administration. The following paragraphs outlines some of these differences:

a. The PRP is responsible for enforcement of all laws, regulations, and requirements and to meet all performance standards required by EPA. The USACE has no contractual relationship with the PRP and is limited to the role/authorities outlined in the site-specific IAG.

b. The USACE official's oversight responsibility is to provide technical support to the EPA RPM in monitoring PRP compliance with EPA requirements and report directly to the EPA RPM.

c. Construction oversight is limited to serving construction activities and comparing the work to the approved documents or applicable laws and regulations, and reporting the findings to the EPA. The necessary technical documents (i.e., IAG, plans and specifications, change orders, SSHP, etc.) must be obtained to accomplish the monitoring. The USACE representative should also attend the weekly progress meeting.

d. USACE oversight officials on PRP enforcement projects are not authorized to provide directions to the RA contractors. They only provide recommendations and evaluations to the EPA RPM. USACE oversight personnel are *not* authorized to change the contract documents or consent decree in any way; only the EPA RPM has the authority to do so.

e. Imminent safety hazards are the most controversial issue on any enforcement site. The site-specific IAG should spell out exactly what the USACE representatives should do if a safety hazard is observed. The language must be carefully crafted to ensure that a responsible PRP representative is immediately notified of the situation, and that if the representative fails to act, the EPA RPM has a contingency plan in place to provide adequate direction and to protect the USACE and EPA from potential third party liability.

f. It should be noted that the EPA RPM is not required to utilize USACE for oversight activities; the RPM may choose an A-E or an ARCS contractor for this service. For this reason, the USACE needs to "satisfy the customer" and reach agreement on what the RPM (our customer) expects.

g. Standard USACE guide specifications, the safety manual (EM 385-1-1), ERs, etc., do not apply. PRPs generally use standard commercial American Institute of Architects (AIA) contracts and are governed by OSHA and other Federal/state/local regulations. For additional guidance on compliance with SSHP requirements on PRP or technical assistance assignments,

refer to Section 4, Health and Safety.

h. Since the EPA generally seeks to recover oversight costs from PRPs, accurate and detailed records of labor and other costs are essential.