DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
441 G Street, NW
Washington, D.C. 20314-1000

* ER 200-3-1

CEMP-CED

Regulation
No. 200-3-1

01 September 2020

Environmental Quality
FORMERLY USED DEFENSE SITES (FUDS) PROGRAM REGULATION

1. Purpose. This Engineer Regulation (ER) provides specific requirements for management and execution of the Formerly Used Defense Sites (FUDS) Program in accordance with the Defense Environmental Restoration Program (DERP) statute (10 United States Code (USC) 2700 et seq.). This regulation supersedes the previous United States Army Corps of Engineers (USACE) FUDS Program regulation and associated guidance.

2. Applicability. This ER applies to all USACE elements engaged in FUDS Program activities. This ER does not apply to USACE Civil Works properties. This ER is for the internal management use of the USACE and does not create any independent right enforceable against the USACE, the United States, or their officers, agents, or employees.

3. Distribution Statement. Approved for public release; distribution is unlimited.

4. References. See Appendix A.

5. Records Management (Recordkeeping) Requirements. The records management requirement for all record numbers, associated forms, and reports required by this regulation are addressed in the Army Records Retention Schedule—Army (RRS-A). Detailed information for all related record numbers are located in ARIMS/RRS-A at https://www.arims.army.mil. If any record numbers, forms, and reports are not current, addressed, and/or published correctly in ARIMS/RRS-A, see Department of the Army (DA) Pamphlet 25-403, Guide to Recordkeeping in the Army.

6. Availability. Access this regulation on the official USACE publications web page at http://www.publications.usace.army.mil/.

7. Policy. The USACE must comply with the DERP statute (10 USC 2700 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 USC 9601 et seq., Executive Orders (EOs) 12580 and 13016, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and all applicable Department of Defense (DoD) and Army policies in managing and executing the FUDS Program. Other policies are identified herein, where applicable.

This ER supersedes ER 200-3-1, dated 10 May 2004

8. Discussion. This regulation provides requirements for USACE planning, programming, budgeting, execution, management, and reporting activities associated with FUDS Properties and Projects. A FUDS is defined as real property that was owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary[1] that was transferred from DoD control prior to 17 October 1986. This definition applies to all former DoD property, including property that is the current responsibility of another Federal agency, unless impacted by the terms and conditions of transfer.

9. Responsibilities. All Headquarters elements and command echelons will implement the requirements contained in this regulation. See Chapter 2 for a detailed discussion of roles and responsibilities.

FOR THE COMMANDER

1 Appendix
(See Table of Contents)

JOHN P. LLOYD
COL, EN
Chief of Staff

[1] The term "Secretary" means the Secretary of Defense as well as the Secretaries of any predecessor departments or agencies of DoD.

SUMMARY of CHANGE

Engineer Regulation ER 200-3-1,

ENVIRONMENTAL QUALITY – FORMERLY USED DEFENSE SITES PROGRAM REGULATION

This revision, dated 01 September 2020

- Defines the Formerly Used Defense Sites (FUDS) program, goals and regulatory context.

- Defines the roles and responsibilities of the USACE organizations charged with FUDS mission execution.

- Removes the internal USACE business processes and procedures, previously contained in Chapters 3-9 and the appendices, and incorporates them into the FUDS Handbook.

File this Summary Sheet in front of the publication for reference purposes.

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Regulation
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Environmental Quality
FORMERLY USED DEFENSE SITES (FUDS) PROGRAM REGULATION

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Chapter 1
Program Overview and Regulatory Context

1.1. Introduction.

1.1.1. This regulation provides policy and guidance within the USACE for the execution of the FUDS Program. The Secretary of Defense, under 10 USC 2700 et seq., has established the FUDS program to carry out responsibilities under that statute. USACE provides support to the Army and the DoD consistent with the guidance and delegations established in Department of Defense Instruction (DoDI) 4715.07, Subject: Defense Environmental Restoration Program (DERP).

1.1.2. Implementing guidance and internal business practices for executing the FUDS mission as defined in this Engineer Regulation (ER) are contained in the FUDS Handbook. The Handbook provides specific guidance regarding: property and project eligibility; the environmental response process; planning, programming, budgeting and execution; program performance and quality management; public involvement activities; and regulatory coordination.

1.2. Formerly Used Defense Site. A FUDS is defined as real property that was owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary[2] that was transferred from DoD control prior to 17 October 1986. This definition applies to all former DoD property, including property that is the current responsibility of another Federal agency, unless impacted by the terms and conditions of transfer.

1.3. Defense Environmental Restoration Program (DERP).

1.3.1. USACE must comply with the DERP statute 10 USC 2700 et seq., the CERCLA 42 USC 9601 et seq., Executive Orders (EOs) 12580 and 13016, the NCP (40 CFR Part 300), and applicable DoD policies in managing and executing the FUDS Program. In accordance with 10 USC 2701(c)(1)(B), the Secretary of Defense shall carry out in accordance with DERP and CERCLA, response actions with respect to releases of hazardous substances or pollutants or contaminants from each site which was under the jurisdiction of the Secretary and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances or pollutants or contaminants. This revision of ER 200-3-1 is based on Department of Defense Manual, (DoDM) 4715.20, Subject: Defense Environmental Restoration Program (DERP) Management, 09 March 2012, as updated, hereafter referred to as the DERP Manual.

1.3.2. In instances where a regulatory agency seeks to use an authority other than DERP and CERCLA to address a CERCLA Response Requirement[3] or where a USACE district seeks to voluntarily pursue a CERCLA Response Requirement pursuant to an authority other than DERP

[2] The term "Secretary" means the Secretary of Defense as well as the Secretaries of any predecessor departments or agencies of DoD.

[3] Refer to paragraph 1.6 for a discussion of the phrase "CERCLA Response Requirement".

and CERCLA, the USACE district shall first seek formal approval from Headquarters USACE (HQUSACE) and if approved the process shall proceed in accordance with the DERP Manual. This approval process is not required when conducting cleanup actions for Containerized Hazardous, Toxic, and Radioactive Waste (CON/HTRW) projects not involving hazardous substances or at Building Demolition/Debris Removal (BD/DR) projects.

1.3.3. In accordance with 10 USC 2701(b), DERP includes:

1.3.3.1. The identification, investigation, research and development, and cleanup of contamination from a hazardous substance or pollutant or contaminant.

1.3.3.2. Correction of other environmental damage (such as detection and disposal of unexploded ordnance) which creates an imminent and substantial endangerment to the public health or welfare or to the environment. Response actions taken to address munitions and/or their constituents that are the result of DoD activities shall be conducted in accordance with CERCLA, NCP, and EO 12580.

1.3.3.3. Demolition and removal of unsafe buildings and structures, including DoD buildings and structures at sites formerly used by or under the jurisdiction of the Secretary of Defense.

1.3.4. Response actions shall be carried out in accordance with DERP and CERCLA.

1.3.5. Response actions taken to correct other environmental damage which create an imminent and substantial endangerment to the public health or welfare or the environment (e.g., CON/HTRW) shall be carried out in accordance with applicable law, DoD policy, and as described in this Engineer Regulation (ER).

1.4. DERP Program Categories. Consistent with the statutory program goals of the DERP, DoD has established three program categories which classify activities at FUDS properties and projects: Installation Restoration Program, Military Munitions Response Program, and Building Demolition/Debris Removal Program.

1.4.1. Installation Restoration Program (IRP). The IRP category is defined as the conduct of response actions (i.e., the identification, investigation, and remedial actions, or a combination of removal and remedial actions) to address releases as discussed in the following paragraph. For FUDS, the IRP category includes the Hazardous, Toxic, and Radioactive Waste (HTRW) and Containerized HTRW (CON/HTRW) project categories.

1.4.1.1. Hazardous, Toxic, and Radioactive Waste (HTRW) projects address:

- Hazardous substances or pollutants or contaminants (as defined in CERCLA).
- Hazardous wastes or hazardous waste constituents.
- Low-level radioactive materials or low-level radioactive wastes.

- Explosive compounds released to soil, surface water, sediment, or groundwater as a result of ammunition or explosives production or manufacturing at ammunition plants.

- Munitions and Explosives of Concern (MEC) or Munitions Constituents (MC) that are incidental to an existing FUDS HTRW project.

1.4.1.2. Containerized HTRW (CON/HTRW) Projects that address Petroleum, Oil, and Lubricants (POL). CERCLA contains a petroleum exclusion, so it may not be used to address certain releases of POL. POL releases that create an imminent and substantial endangerment to the public health or welfare or to the environment [10 USC 2701(b)(2)] may be addressed under other applicable authorities consistent with DERP, such as RCRA.

1.4.2. Military Munitions Response Program (MMRP). The MMRP category was established to meet the DERP goals in sections 2710 and 2701(b)(2) of the DERP statute. MMRP consists of response actions (i.e., the identification, investigation, and remedial actions, or a combination of removal and remedial actions) to address the explosive or chemical agent hazards posed by MEC or MC. The FUDS Program shall include Munitions Response Areas (MRAs) and Munitions Response Sites (MRSs) that require a munitions response in the MMRP. An MRS shall represent a discrete location within an MRA that is known or suspected to require a munitions response.

1.4.3. Building Demolition and Debris Removal (BD/DR) Program. This program category is based on the statutory authority in sections 2701(b)(3) and 2701(f) of the DERP statute. Demolition and removal of unsafe buildings and structures, including DoD buildings and structures at sites formerly used by or under the jurisdiction of the Secretary of Defense. The demolition and removal of unsafe buildings and structures are not subject to CERCLA.

1.5 Delegation of Authorities Associated with DoD Lead Agent Responsibilities for the FUDS Program.

1.5.1. The DoDI 4715.07 designates the Secretary of the Army as Lead Agent for the FUDS Program. The Secretary of the Army delegates and assigns the FUDS Lead Agent responsibilities to the Assistant Secretary of the Army (Installations, Energy and Environment) (ASA(IE&E)) and authorizes the subsequent re-delegation of authorities. The ASA(IE&E) delegates and assigns mission execution authority for the FUDS Program, subject to the authority, direction, and control of the ASA(IE&E), to the USACE Commanding General.

1.5.2. Subsequently, the USACE Commanding General re-delegates the FUDS mission execution authority to the Deputy Commanding General for Military and International Operations (DCG-MIO). The DCG-MIO re-delegates specified FUDS mission execution and decision-making authorities to the Chief, Environmental Programs, Directorate of Military Programs, and to division commanders for divisions assigned a FUDS mission.

1.5.3. The DCG-MIO re-delegation authorizes division commanders, for divisions assigned a FUDS mission, the authority to render FUDS property and project eligibility determinations, approve decision documents for selection of CERCLA response actions up to a specified cost, and make other necessary project execution decisions. The DCG-MIO re-delegation authorizes

division commanders to further re-delegate within their command the FUDS decision making authorities to a grade no lower than General Officer or to the civilian SES-level Program Director having FUDS program responsibility.

1.6. Nomenclature for FUDS Environmental Restoration Response Actions Addressing HTRW and MMRP Projects. For consistency of use throughout this regulation, the phrase "DERP-eligible CERCLA contamination for execution by the FUDS program" will be used to describe hazardous substances or pollutants or contaminants as defined in CERCLA (42 USC 9601) and the NCP (40 CFR Part 300.5) and/or military munitions, including MEC and MC, as defined by 10 USC 2710(e) that are released to the environment and that satisfy the FUDS eligibility requirements. DERP-eligible CERCLA contamination for execution by the FUDS program does not include POL-only contamination as petroleum is excluded, by definition, from being a CERCLA hazardous substance or pollutant or contaminant, nor unsafe conditions associated with a BD/DR project.

1.7. FUDS Program Goals and Objectives.

1.7.1. To meet the DoD Goals established for the FUDS Program, USACE develops an execution strategy that reduces risk to human health and the environment through implementation of effective, legally compliant, and cost-effective response actions. Additional objectives, targets, and success indicators may be established by the Army.

1.7.2. HTRW projects will be evaluated using the DoD Relative Risk Site Evaluation (RRSE) method to assign a relative priority for action. Projects conducted under the MMRP will be evaluated using the Munitions Response Site Prioritization Protocol (MRSPP) (32 CFR Part 179) to determine a relative priority for response actions.

1.8. Funding Eligibility. Use of ER-FUDS funding is limited to eligible activities in accordance with the DERP Manual for releases or unsafe conditions that occurred prior to 17 October 1986, while under DoD control, and DoD is the sole source of the release. DoD policy precludes the use of ER-FUDS funds to be used to pay settlement or litigative awards (e.g. PRP or third-party site resolution).

1.9. Regulatory Context.

1.9.1. CERCLA, as Amended by the Superfund Amendments and Reauthorization Act (SARA). Per the DERP Manual, HTRW and MMRP activities under the FUDS Program must be conducted in accordance with the provisions of CERCLA §120. As such, these actions are conducted in accordance with the delegation of certain Presidential authorities under CERCLA (delegated via EO 12580, Superfund Implementation, and the NCP [40 CFR Part 300]). Under CERCLA, other Federal and State laws may be Applicable or Relevant and Appropriate Requirements (ARARs). The PM district shall provide adequate opportunity for timely review and comment to the U.S. Environmental Protection Agency (EPA) and the appropriate State and local officials as provided in 10 USC 2705 (a) and (b). Consistent with CERCLA §126, notifications will be extended to tribal authorities. Pursuant to EO 12580, DoD is the lead agency at FUDS Properties when executing a DoD response action associated with DoD hazards.

1.9.1.1. National Priorities List (NPL) Properties. EPA may evaluate FUDS using the Hazard Ranking System for possible inclusion on the NPL. DoD retains lead agency authority when executing response actions on NPL sites. EPA generally is the lead regulator for projects on the NPL. Since a FUDS is not a DoD owned facility, a Federal Facility Agreement cannot be signed at a FUDS. However, if appropriate, the USACE Office of Counsel (CECC-E) is responsible for negotiating Interagency Agreements (IAG) with EPA and the state or states in which the property is located, in coordination with the Army Office of General Counsel. Army will follow the DERP Manual process for having IAGs reviewed within DoD similar to a FFA. Where Army and EPA have entered into an IAG for an NPL site, USACE will execute the response in accordance with the IAG.

1.9.1.2. Non-NPL Properties. Response actions at FUDS properties not on the NPL addressing DERP eligible CERCLA contamination for execution by the FUDS Program must be conducted subject to and in a manner consistent with CERCLA (42 USC 9620). States are generally the lead regulator for environmental investigations and responses at non-NPL FUDS. In certain circumstances, EPA may serve as lead regulator when the state or tribe requests that EPA assume the lead or when EPA chooses to exert its lead regulator role. In instances where EPA exerts or assumes lead regulatory agency authority, the specific roles and responsibilities of the regulatory agencies involved should be discussed and decided upon by the State and EPA, in accordance with relevant trust agreements and regulations. DoD maintains lead agency authority at all FUDS when response actions are performed under the FUDS Program, coordinates project activities with the lead regulatory agency, and provides adequate opportunity for timely review and comment to the EPA and appropriate state, tribal, and local authorities.

1.9.2. The Resource Conservation and Recovery Act (RCRA) Corrective Action Process. A RCRA Corrective Action can be triggered by either submitting a RCRA Part A or Part B permit application, or both, or by the issuance of a compliance order under RCRA. As DoD does not own FUDS Properties, a RCRA corrective action associated with a RCRA permit would be the responsibility of the owner. However, EPA or the State may undertake enforcement actions at FUDS Properties under RCRA. Upon receiving notice of such action, USACE Project Managers shall contact their Office of Counsel and elevate through the programmatic chain of command to HQUSACE. Refer to paragraph 1.3.2 above.

1.9.3. National Environmental Policy Act (NEPA) and Other Similar Laws Requiring Consultation.

1.9.3.1. NEPA. Consistent with the DERP Manual, compliance with NEPA's procedural requirements is not necessary when undertaking a response action that complies with CERCLA and the NCP. The overall NEPA mandate for a fully informed and well-considered decision that includes considerations of alternatives and environmental impacts will be achieved through adherence to the DERP, CERCLA, and the NCP. Similar analysis applies to response actions under RCRA, which also makes NEPA compliance unnecessary for those actions. (Refer to 32 CFR 651.5(l)).

1.9.3.2. Consultation and Other Laws.

1.9.3.2.1. The administrative requirements of other statutes do not apply for the portion of a CERCLA response action conducted entirely on-site as defined in the NCP. The non-applicability of administrative requirements applies to the whole of the National Environmental Policy Act, as well as consultation and approval requirements under the Endangered Species Act, the National Historic Preservation Act, the Magnuson-Stevens Fishery Conservation and Management Act and similar statutes. The CERCLA process is all-encompassing in order to avoid duplicative administrative actions and to integrate substantive concerns in the response action decisions.

1.9.3.2.2. Although CERCLA exempts on-site activities from administrative requirements, substantive standards that apply to the action must still be met. Federal agencies conducting CERCLA cleanups have flexibility in determining how to meet such substantive standards. The appropriate Office of Counsel shall determine what substantive standards apply to a particular action. While USACE cannot be required to submit to consultation or any equivalent process for on-site activities, it will coordinate with the appropriate agencies to ensure substantive requirements are satisfied.

Chapter 2
Organizational Responsibility

2.1. Authorities. In accordance with DoDI 4715.07, DoD has designated the Secretary of the Army as the lead agent charged with meeting applicable environmental restoration requirements at FUDS, regardless of which DoD component previously had jurisdiction of the property. The Secretary of the Army further delegated the mission execution for FUDS to the Commanding General, USACE. A schematic of the organizational structure for FUDS is shown in Figure 2-1. Responsibilities of major organizations involved in FUDS Program activities are described in the following paragraphs.

2.2. Responsibilities.

2.2.1. Department of Defense.

2.2.1.1. The Assistant Secretary of Defense for Sustainment (ASD(S)) has oversight, including policy, planning, programming, and budgeting responsibility for FUDS. The ASD(S), under the authority, direction, and control of the Under Secretary of Defense for Acquisition & Sustainment responsibilities are as assigned in the Department of Defense Instruction (DoDI) 4715.07 and the DERP Manual.

2.2.1.2. The DoD Explosives Safety Board (DDESB), under the authority, direction, and control of the ASD(S), shall review and, if appropriate, approve in writing required safety submissions in accordance with DoDI 6055.16 and DoDM 6055.09.

2.2.2. Secretary of the Army. The Secretary of the Army responsibilities are as assigned in DoDI 4715.07 and the DERP Manual. The Secretary of the Army is the:

2.2.2.1. DoD Lead Agent for DERP responsibilities, including FUDS, the Defense and State Memorandum of Agreement (DSMOA) Program, and DoD's interaction with the Agency for Toxic Substances and Disease Registry (ATSDR).

2.2.2.2. DoD Executive Agent responsible for the Recovered Chemical Warfare Materiel Program within the United States, including for DERP-eligible sites.

2.2.3. U.S. Army Corps of Engineers (USACE). Table 2-1 indicates the functional responsibilities at each level of USACE for mission execution. The discussions that follow provide narrative descriptions of the activities associated with each functional responsibility.

2.3. USACE Mission Execution.

2.3.1. Headquarters (HQUSACE). Acting on behalf of the Commanding General, USACE, the DCG-MIO at HQUSACE is responsible for FUDS mission execution by USACE. The HQUSACE Environmental division (CEMP-CE) carries out assigned FUDS responsibilities. CEMP-CE responsibilities for the FUDS program include the following:

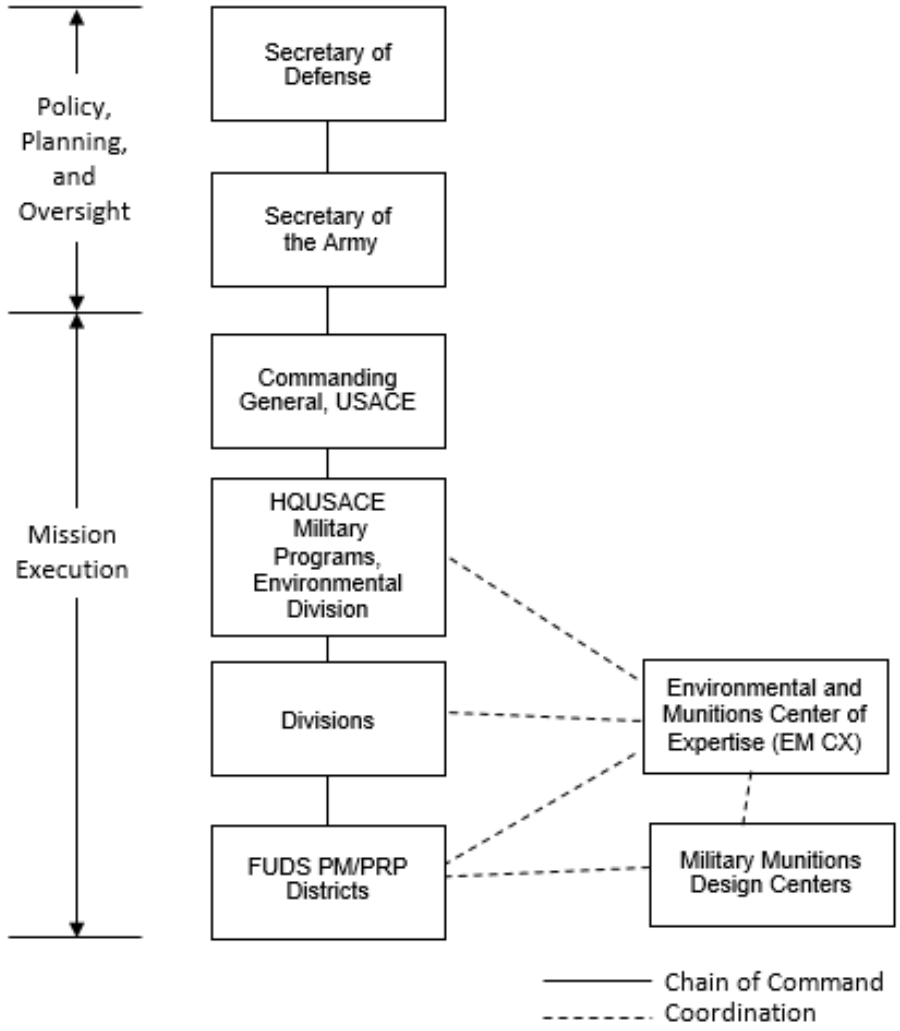

Figure 2-1. Schematic of the Organizational Structure for the FUDS Program

2.3.1.1. Guidance Formulation (HQUSACE).

- Issue guidance and publications pertaining to USACE mission execution. Provide consultation on policy matters.

- Provide, through the CECC-E (Office of Chief Counsel), guidance, and consultation on legal matters, including questions of regulatory/statutory authority or requirements.

- Issue instructions containing program goals and objectives, fiscal guidance, and the program prioritization process for divisions and districts to update Life-Cycle Plans (LCPs) and Annual Workplans (AWPs) in the FUDS Management Information System (FUDSMIS).

- Provide planning guidance on financial management and resource allocation for current and future FUDS program mission executions.

- Review and approve the FUDS Annual Training Plan.

Table 2-1. Functional Responsibility FUDS Organizational Elements

Functional Responsibility	HQ USACE	Division	PM District (1)	PRP District	MM or CWM Design Center (2)	EM CX
Guidance Formulation	P	S				A
Execution Planning	P	P	P	P	S	A
Execution Oversight	P	P				A
Project Execution			P	P	S/P	A
Reporting	P	P	P	P		A
Coordination (3)	P	P	P	P		A

Notes:

1. Except as authorized by HQUSACE, the Project Management (PM) district shall perform project management for FUDS Properties and for the identified HTRW, CON/HTRW, MMRP, and BD/DR Projects. For Potentially Responsible Party (PRP) projects, the assigned PRP district shall be the PM district.

2. The Military Munitions Design Centers (MMDC) or the Chemical Warfare Materiel Design Center (CWM DC) assists the PM district in their execution of response actions at MRSs.

3. Coordination for this chart indicates engagements with entities outside of USACE.

Legend: P = Performs function; S = Supports in performing functions; A = Assists HQ, division, or district in performing assigned functions.

2.3.1.2. Execution Planning (HQUSACE).

- Manage FUDS execution in coordination with Department of the Army (Army) and DoD.

- Issue annual Program Development Instructions (PDI) to divisions.

- Review and adjust division LCP data in the FUDSMIS submission data set at the time of preparation for Program Objective Memorandum (POM) exhibits, President's Budget (PRESBUD), Budget Estimate Submission (BES), Environmental Liability Report (ELR), Defense Environmental Programs Annual Report to Congress (DEP ARC), and Budget Year (BY) AWP.

- Prepare and post in FUDSMIS both the BY AWP and the Current Year (CY) AWP updates for use by divisions and districts at each official LCP assemblage.

- Program and budget for ATSDR and for the DSMOA Program. Determine Management and Support (M&S) requirements and monitor in-house project-specific requirements as defined in the CY AWP.

- Adjust and reallocate funds between ongoing program and project activities as necessary to ensure the efficient use of funds.

- Ensure divisions distribute funds in accordance with the approved CY AWP.

- Examine the use of prior-year funds for prior-year contract modifications and provide the funds as they become available.

- Provide approval to advertise contracts for which award is scheduled after the third quarter.

- Sign decision documents within the delegated responsibility of HQUSACE and negotiate and sign agreements with other Federal, state or local agencies or private entities relating to the execution of the FUDS program, as appropriate and within delegated authorities.

- Pursue cost recovery in accordance with the DERP Manual and recovered funds are appropriately credited to the ER-FUDS transfer account for future use by the FUDS program.

- Transfer authorized payments to other Federal agencies, if authorized and required.

- Manage the development and enhancement of the FUDSMIS for use as the sole information management system for FUDS mission execution.

- Prepare the annual USACE FUDS Program Management Plan (FUDS PgMP).

2.3.1.3. Execution Oversight (HQUSACE).

- Ensure that FUDS Program mission execution throughout USACE is consistent with applicable legal requirements and with DoD program policies,

- Ensure compliance with DoD, Army, and USACE fiscal policies. Accounting, financial reporting, and procurement procedures shall be based on standard Army procedures used by USACE.

- Analyze the FUDS Program mission execution in light of DoD's goals for DERP and ensure funds are properly allocated to meet those goals.

- Communicate mission execution metrics to divisions and monitor division progress. Conduct periodic program, legal, and focus reviews with divisions and districts to ensure division and district compliance with applicable FUDS execution guidance and evaluate program execution status and progress through HQUSACE Command Management Review (CMR)/Directorate Management Review (DMR).

- Provide administrative, legal, and technical support, as required, and resolve issues or conflicts affecting mission execution.

- Act, through the CECC-E (Office of Chief Counsel), as the lead office on all FUDS legal issues, including compliance in project execution, interagency agreements or disputes, real

estate legal issues, fiscal issues, PRP negotiations, settlements, Department of Justice coordination, and matters involving litigation or preparation for possible litigation.

- Establish and develop guidance for FUDS quality management processes, including FUDSMIS, FUDS Records Management, Cost-To-Complete (CTC), etc.

- Approve the annual FUDS Quality Management Plan.

2.3.1.4. Reporting (HQUSACE).

- Prepare and submit information to the Army Secretariat in support of the ASD(S) POM, BES, PRESBUD, ELR, and DEP ARC, based on the official LCP in the FUDSMIS submission data set.

- Prepare and submit FUDS Program, property, or project reports as requested by DoD, Army, and stakeholders.

- Prepare program, property, or project reports as requested by Congress, coordinating those reports through the chain of command to DoD prior to submittal.

2.3.1.5 Coordination (HQUSACE).

- Coordinate with DoD, Army, congressional staff, Federal agencies, State and Local Governments, regulators, auditors, stakeholders, divisions, and districts on FUDS Program, property, and project matters, as required.

- Conduct periodic coordination meetings with the Army and DoD.

- Coordinate with Army, draft responses prepared by divisions for congressional inquiries received from DoD or Army.

2.3.2. Divisions. USACE FUDS divisions have regional mission execution responsibility for the FUDS Program. Table 2-2 identifies the seven FUDS divisions. Divisions shall not change assignments from those indicated in Table 2-2 without approval from the HQUSACE Director of Military Programs for PM district assignments and the HQUSACE Office of Chief Counsel for PRP district assignments. Divisions may assign certain division activities to a PM district. Divisions are accountable for the activities summarized in the following paragraphs.

2.3.2.1. Guidance Formulation (Division).

- Provide comments to HQUSACE regarding necessary improvements to existing policy and propose modifications to official USACE publications and guidance documents.

- Propose new guidance to HQUSACE to facilitate mission execution, technical competency, business efficiency, and innovation.

- 2.3.2.2. Execution Planning (Division).

- Disseminate FUDS guidance, directives, publications, and implementation guidance to districts.

- Review and approve FUDS property eligibility and provide project approvals in accordance with applicable legal requirements, DoD policy, and FUDS guidance.

- Establish division priorities for projects within each program category.

Table 2-2. Military Environmental Restoration Limits and Responsibilities (7)

Division	Restoration Boundaries	PM District	PRP District (1)
Great Lakes & Ohio River (CELRD)	IL, IN, KY, MI, OH, WV	Louisville	Louisville
North Atlantic (CENAD)	CT, MA, ME, NH, NJ, NY, RI, VT	New England	Baltimore & New England
	DC, DE, MD, PA, VA	Baltimore (2)	
Northwestern (CENWD)	CO, IA, MN, MT ND, NE, SD, WI, WY	Omaha (2)	Kansas City (4)
	ID, KS, MO, NE (3), OR, WA	Kansas City	
Pacific Ocean (CEPOD)	AK	Alaska	Alaska
	AS, CN, GM, HI	Honolulu	
South Atlantic (CESAD)	FL, PR, VI	Jacksonville (5)	Savannah
	AL, GA, MS, NC, SC, TN	Savannah	
South Pacific (CESPD)	AZ, CA (6), NM, NV (6)	Los Angeles (2)	Sacramento
	CA (6), NV (6), UT	Sacramento (2)	
Southwestern (CESWD)	AR, OK, TX (6)	Tulsa (2)	Tulsa
	LA, TX (6)	Fort Worth (2)	

1. PRP districts may execute response actions for PRP projects outside their geographic district boundaries.
2. Designated as a conventional munitions Military Munitions Design Center (MMDC) and may execute work outside their geographic district boundaries. Note, CESPD and CESWD districts operate jointly as the South Pacific Division Range Support Center.
3. Kansas City District (NWK) is the PM district for Nebraska Ordnance Plant and Blaine Naval Ammunition Depot in Nebraska.
4. NWS provides PRP support to NWK and remains the PRP district for PRP projects already established. NWS shall not initiate new PRP projects without approval from CEMP-CE and CECC-E.
5. SAJ is a Civil Works district but also manages FUDS projects by exception and follows PM district roles and responsibilities defined in text.
6. Split responsibility.
7. Huntsville Engineering and Support Center is the CWM DC and a designated MMDC supporting the PM district.

- Ensure the data in FUDSMIS is accurate at the time CEMP-CE prepares input to the POM exhibit, PRESBUD, BES, and DEP ARC submittals.

- Propose to HQUSACE the division LCP and current/budget year workplans in accordance with FUDS Program Development Instructions.

- Identify division and PM district M&S budget requirements and manage funds to ensure program requirements are met on time and within budget.

- Allocate distribution of funds to PM districts in accordance with the approved CY workplan and request funding from HQUSACE.

- Recommend to HQUSACE workplan substitutions and funding of emerging requirements.

- Adjust and reallocate division funds among districts as appropriate to ensure the efficient use of funds and to maximize division execution for projects and phases in the approved workplan.

- Evaluate the use of prior year funds for prior-year contract modifications and secure funds when available.

- Document unfunded requirements for future funding consideration.

2.3.2.3. Execution Oversight (Division).

- Ensure coordination of draft Inventory Project Reports (INPRs) and amendments with the EM CX prior to project approval.

- Review and prioritize district LCPs and CY or BY workplans in FUDSMIS as necessary to meet division requirements.

- Monitor and facilitate districts' progress toward achieving established mission execution metrics.

- Conduct Program Review Board (PRB) meetings to review mission execution and monitor performance. Participate in district line item reviews and PRBs.

- Participate in HQUSACE periodic program, legal, and focus reviews.

- Conduct periodic reviews with PM districts and evaluate project execution status and progress.

- Ensure districts use the MMDCs to fulfill the mandatory and technical functional roles on FUDS Munitions Response Sites (MRS) and for incidental MEC on other FUDS.

- Facilitate resolution of outstanding issues regarding the planning and execution of project response actions.

- Monitor execution of response actions at projects, especially at projects of significant interest.

- Ensure districts maintain the data completeness within FUDSMIS for the Property Specific Management Action Plans (MAPs).

- As appropriate, ensure Statewide Management Action Plans (SMAPs) are reviewed with the State and updated at a minimum of every two years.

- Ensure districts prepare and update Project Management Plans (PMPs) in accordance with ER 5-1-11.

- Ensure that PM districts submit project deliverables for Independent Technical Review (ITR).

- Periodically evaluate district quality processes for Quality Assurance (QA), including FUDSMIS, records management, CTC, etc.

- Perform QA for FUDSMIS items proposed for use in reports to higher headquarters, including the DEP ARC.

- Develop and implement the FUDS Quality Management Plan.

- Ensure division Counsel will respond to CERCLA §104(e) or other comparable information requests from EPA or a state regulator, ensuring privileged records are protected while providing documents not subject to release restrictions that are responsive to the requests.

2.3.2.4. Reporting (Division).

- Submit success stories to HQUSACE, as requested.

- Respond to issues raised at HQUSACE DMR/CMR meetings and elevate issues identified at PRBs and periodic review meetings.

- Submit current division FUDS data through FUDSMIS to HQUSACE to provide information for the POM exhibit, BES, ELR, PRESBUD Submission, DEP ARC, annual and life cycle workplans, and Army and DoD program management reviews.

2.3.2.5. Coordination (Division).

- Interact with HQUSACE, EPA, states, local stakeholders, EM CX, other divisions, and DSMOA points of contact.

- Supports regional partnering, as appropriate, with regulators and stakeholders.

- Ensure a PM district and a PRP district fully coordinate on projects associated with the same FUDS property, and that the PRP district is the lead on all FUDS actions on such a property unless an agreement is made for the PM district to take the lead on a specific project unrelated to the PRP Project. Provide timely feedback to HQUSACE requests for assistance in responding to Congressional, Army, or DoD requests for program, property, or project information.

- Coordinate with HQUSACE in response to Congressional or other correspondence regarding FUDS sent directly to the division.

- Oversee district DSMOA coordination with states.

2.3.3. Project Management (PM) Districts. The PM district is the overall manager for the entire life cycle (i.e., "cradle to grave") for approved FUDS projects (except for PRP Projects, refer to paragraph 2.3.4). Each division may have up to two PM districts. Changes in designation of PM districts must be approved by the HQUSACE Director of Military Programs. The PM district, through the PM, leads and facilitates the Project Delivery Team (PDT) toward effective project development and execution. The PM district is responsible for managing project cost, schedule, and scope to ensure quality and proper coordination with stakeholders. Specific duties include, but are not limited to, the following:

2.3.3.1. Execution Planning (PM Districts). The PM district ensures project level data is accurately developed for data calls or entered into FUDSMIS as appropriate. The primary requirements the PM district performs are:

- Ensure the data in FUDSMIS is up to date at the time CEMP-CE prepares input to the POM exhibit, PRESBUD, BES, and DEP ARC submittals.

- Ensure property or project priorities are coordinated with the lead regulatory agency, conduct local FUDS Forum meetings, and prepare and update the SMAP, as applicable.

- Update project cost estimates annually in accordance with the current USACE Cost-to-Complete (CTC) Handbook.

- Establish the CY and BY AWP in FUDSMIS by implementing the PDI issued annually by HQUSACE.

2.3.3.2. Project Execution (PM Districts). Districts will execute assigned FUDS projects in accordance with DERP, DERP policies and guidance, and consistent with applicable statutes and regulations to protect human health and the environment. The district will strive to meet established mission execution metrics. PRP Projects will be assigned to the appropriate FUDS PRP district. FUDS projects, where the probability of encountering Chemical Warfare Materiel (CWM) or Chemical Agent Identification Sets (CAIS) is likely, shall be coordinated with the CWM Design Center (CWM DC) prior to beginning on site activities. In addition, the districts will:

- Prepare Findings and Determination of Eligibility and INPRs for the division's approval. (Refer to Appendix B).

- Ensure work is conducted in accordance with the approved AWP.

- Prepare memoranda and supporting documentation for submittal through division to HQUSACE for review and elevation regarding:

(1) Considering applicability of the Act of War provision.

(2) Environmental regulators' classification of Unexploded Ordnance as a CERCLA hazardous substance, or a RCRA statutory waste, or principal threat waste, except as described in the DERP Manual or other DoD policy.

(3) An authority for environmental restoration other than CERCLA or RCRA pursuant to the DERP Manual.

- Meet public participation requirements for the environmental restoration process.
- Perform ITR on project documents and/or submit project documents for ITR.
- Coordinate PDT resources, including approved MMDCs when applicable.
- Ensure the use of prior-year funding, where applicable, for modification of prior-year contracts. Districts should request CY funds for modifications to prior-year contracts only when prior-year funds are not available. Office of Counsel and Resource Management shall be consulted on fiscal law matters.
- Maintain data in USACE automated systems (e.g., P2, FUDSMIS, FUDS Document Repository, Corps of Engineers Financial Management System, FUDSCHEM, etc.), as required.
- Use technical services of an authorized MMDC on FUDS MRS or for incidental MEC on other FUDS, or the CWM DC for any phase of a FUDS CWM project (refer to paragraph 2.3.5 below).
- Pursue, as allowed by policy and law, acquisition strategies and general sequencing and execution that will increase the efficiency of the use of FUDS funding for mission execution.
- Conduct periodic line-item reviews. Evaluate program, property, and project status as part of the district PRB process.
- Ensure projects are executed to meet USACE quality expectations by reviewing and implementing the approved annual FUDS district Quality Control (QC) Plan. When necessary, implement corrective actions in accordance with the FUDS Quality Management Plan.
- Coordinate project activities with the division to propose annual funding and manpower requirements.
- Coordinate with and obtain approval from the delegated PRP district regarding Community Relations Plans and cleanup or remediation activities for non-PRP projects located on a FUDS Property with a PRP project.
- Ensure all project file documents will be uploaded to FUDS Docs to the internal access database, including all documents for a PRP Project which will be uploaded to the internal restricted section in coordination with the district Counsel, and ensure privileged documents are appropriately marked and all for official use only (FOUO) or otherwise restricted documents are maintained in the appropriate portion of the internal FUDS Docs database.
- Ensure all FUDS real estate support will be carried out with the assistance of the district Counsel and in accordance with this ER and associated FUDS guidance issued by CEMP-CE and CECC-E, considering the potential liability issues associated with the performance of response actions on land owned by other persons.

2.3.3.3. Reporting (PM Districts). The district will support the FUDS program by providing project level data necessary for effective project execution and upward reporting as requested. As a minimum, the district shall:

- Provide notification through the division to CEMP-CE of major issues impacting the FUDS Program and copies of congressional correspondence and responses, and report through the division Counsel to CECC-E all significant legal issues that arise related to a FUDS project, including the identification of PRPs, proposed regulatory agreements, disputes or the use of the template right of entry, and indemnification or responsibility issues.

- Prepare and submit program, property, and project status and issues to the division for PRB meetings and the DMR/CMR.

- Respond to division or HQUSACE data calls.

- Ensure FUDSMIS data is updated whenever changes occur so that data calls and national upward reporting contains current and correct information.

2.3.3.4. Coordination (PM Districts). The district shall involve the public and coordinate with the lead regulatory agency as required by DoD policy and USACE guidance. In addition, the district shall:

- Ensure that the DSMOA Joint Execution Plan (JEP) is consistent with the AWP and the LCP.

- Coordinate the preparation and updating of Property Specific MAPs with Stakeholders, such as the lead regulatory agency and Restoration Advisory Boards (RABs).

- Coordinate the preparation and updating of SMAPs with EPA, the states, and tribes, as appropriate, to provide a mechanism for meaningful regulator involvement in the planning and prioritization process of FUDS projects.

- Provide adequate opportunity for timely review and comment to the lead regulatory agency and other stakeholders, as appropriate, on proposed actions for approved projects in the AWP.

- Conduct periodic coordination meetings with states, EPA Regions, and other stakeholders to identify their property and project priorities.

- Ensure the PM district will coordinate with the PRP district whenever a potential PRP issue arises related to a FUDS property or project and include counsel at both districts in the coordination, and if a PRP Project is identified for a FUDS property or project, after approval by CECC-E, PRP Project will be established and the PRP Project will be assigned to the PRP district.

2.3.4. Potentially Responsible Party (PRP) Districts. The PRP district, through the CECC-E (Office of Counsel), is responsible for implementing actions associated with PRP projects, including identifying necessary internal resources and upward reporting. If the project resides in a non-PRP district's area of responsibility, the PRP district will keep the FUDS project management district informed of all activities ongoing or planned on the PRP project as appropriate. The PM will perform all functions of a PM district for a PRP Project, work with the district Counsel to identify PRPs, and the district Counsel will represent the interests of USACE for the FUDS program, in coordination with CECC-E, and DOJ as appropriate.

2.3.5. Military Munitions Design Centers (MMDC). As a member of the PDT, authorized MMDCs provide requested mission execution services to the PM districts on MRSs and for incidental MEC on other FUDS. The CWM DC, as the technical lead for CWM responses will coordinate with other PDT members on roles and responsibilities for response actions. Refer to EP 75-1-3, Recovered Chemical Warfare Materiel Response Process, for further discussion.

2.3.5.1. Execution Planning (MMDC).

- Prepare budget and schedule for work performed by the design center and provide this information to the PM district, as requested.

- Coordinate with the PM district on preparation of MMRP contract acquisition strategies and planning to ensure sufficient contract capabilities exist to execute assigned work.

2.3.5.2. Project Execution (MMDC).

- Provide resources and technical services to conduct MRS characterization through the Remedial Investigation/Feasibility Study (RI/FS) and/or Engineering Evaluation/Cost Analysis (EE/CA) phases. For CWM projects, the CWM DC is responsible for Remedial Design/Remedial Action or Interim Removal Actions.

- Provide resources and technical services for the conduct of munitions response (remedial or removal) action designs and provide input to response action designs for other FUDS where incidental MEC were encountered.

- Provide other technical support at MRS and for other FUDS with incidental MEC as requested by PM districts. For CWM projects, the CWM DC will provide technical support, to include Ordnance and Explosives Safety Specialist support, except where otherwise coordinated with the PM district.

- Prepare project-specific scopes of work or performance work statements and Independent Government Estimates for munitions response activities.

- Contract for munitions response design services or assist the PM districts in contracting for munitions response actions.

- Coordinate project and funding status to PM districts. For CWM projects, conventional DCs coordinate with the CWM DC for reporting required by the Army Interim Guidance for Chemical Warfare Materiel (CWM) Responses.

- Provide a technical lead to coordinate MRS activities with the PM district.

- Provide public affairs support to the PM district, as requested.

- Conduct QA as designated in the project specific Quality Assurance Surveillance Plan (QASP).

- Develop other QA project documents, as appropriate.

2.3.6. Environmental and Munitions Center of Expertise (EM CX). Engineer Regulation 10-1-50 defines the mission and organization of the EM CX. The ER requires the EM CX to maintain technical expertise to support USACE in performing environmental

missions, to include environmental restoration, munitions, and environmental compliance services. The FUDS Program requires the EM CX to support process development, training, and general quality oversight for FUDS mission execution.

2.3.6.1. Guidance Formulation (EM CX).

- Review and maintain expertise in environmental and munitions related Federal, DoD, and Army regulations as applicable to FUDS.
- As requested, develop and propose to HQUSACE additional guidance or revisions to official USACE publications and/or implementation guidance.
- Develop the Annual Training Plan for proposal to HQUSACE.
- Identify gaps in current policy and guidance for HQUSACE consideration.

2.3.6.2. Execution Planning (EM CX).

- Develop and provide annual briefing to HQUSACE detailing EM CX accomplishments, expenditure of current year funding, and programmatic issues.
- Assist HQUSACE in development of the AWP and projection of next year funding.
- Support HQUSACE in DSMOA database management and provide assistance to districts in JEP development as requested,
- Refine CTC methodology for all categories of projects.
- Develop MMRP CTCs for MRSs that do not have decision documents.
- Support HQUSACE in FUDSMIS optimization and maintenance.

2.3.6.3. Execution Oversight (EM CX).

- Support consideration of current, innovative, and sustainable technologies for FUDS, including:

(1) Review and evaluate innovative environmental and munitions response technologies and promote innovative technology transfer.

(2) Review environmental and munitions research and development initiatives and projected USACE requirements for innovative and sustainable solutions.

(3) Develop and recommend, through HQUSACE, input for FUDS future needs.

(4) Develop and submit technology application proposals to HQUSACE.

- Support program consistency for PRP projects in accordance with HQUSACE Guidance, including:

(1) Assist HQUSACE in oversight of mission execution issues and direction for PRP projects.

(2) In coordination with CECC-E, provide technical oversight, technical review, and legal assistance to PRP districts on negotiation and litigation matters.

(3) Provide legal, technical, and programmatic assistance to the PRP districts as requested by the district, the division, or HQUSACE. Requests for expert technical or legal assistance should be directed from the legal office of the requesting organization to the Counsel for the EM CX to protect consultation privileges.

- Support mission execution consistency for FUDS MMRP, including:

(1) Perform FUDS Program QC Reviews of MRSPP worksheets prior to submittal for Army QA Panel review.

(2) Maintain technical expertise to assist HQUSACE in discussing FUDS program-wide concerns with DoD explosives safety criteria and DDESB staffing actions.

(3) Visit selected FUDS properties and projects identified through the FUDS QA process where MEC are known or suspected to be present. Such visits help ensure conformance with approved workplans and Accident Prevention Plans (APPs), applicable Site Safety and Health Plan (SSHPs), Activity Hazard Analysis (AHA), and required explosives safety submissions (RESS).

2.3.6.4. Project Execution (EM CX).

- Provide technical specialists and expertise to support PM districts in planning and execution of FUDS projects.

- Maintain expertise in current technologies and advancements in technologies as applicable to FUDS projects, in order to provide most current project specific assistance upon request.

- Visit selected projects to assist in team meetings, technical direction, or field oversight or execution, as requested.

- Develop and present areas for improvement, process issues, and lessons learned to the FUDS community.

- Assist HQUSACE and/or divisions in quality management responsibilities.

- Perform project assessments in accordance with the approved annual FUDS Quality Management Plan.

- Perform required ITR as well as other requested technical reviews of project documents.

- Conduct QA/QC and policy compliance reviews on required documents.

- Perform other program QA Reviews and Evaluations when requested by HQUSACE, division, PM district, or PDT.

2.3.6.5. Reporting (EM CX). Assists with the HQUSACE reporting requirements identified in paragraph 2.3.1.4, as requested.

2.3.6.6. Coordination (EM CX). Participate as experts in technology transfer and process initiatives for HQUSACE on behalf of FUDS, (e.g., the Interstate Technology Regulatory

Council, the Environmental Data Quality Workgroup, Remedial Action Cost Engineering and Requirements and the Technical Review Group, etc.).

Appendix A
References

Section I
Required Publications

A-1 United States Statutes

10 USC §§2700-2711
Defense Environmental Restoration Program.
https://www.gpo.gov/fdsys/pkg/USCODE-2017-title10/pdf/USCODE-2017-title10-subtitleA-partIV-chap160.pdf

42 USC §§4321-4370h
National Environmental Policy Act of 1969.
https://www.gpo.gov/fdsys/pkg/USCODE-2017-title42/pdf/USCODE-2017-title42-chap55.pdf

42 USC §§6901-6992k
Resource Conservation and Recovery Act of 1976 (RCRA).
https://www.gpo.gov/fdsys/pkg/USCODE-2017-title42/pdf/USCODE-2017-title42-chap82.pdf

42 USC §§9601-9675
Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986.
https://www.gpo.gov/fdsys/pkg/USCODE-2017-title42/pdf/USCODE-2017-title42-chap103.pdf

A-2 Executive Orders

EO 12580
Superfund Implementation, 23 January 1987, as amended.
https://www.archives.gov/federal-register/codification/executive-order/12580.html
https://www.gpo.gov/fdsys/pkg/FR-1987-01-29/pdf/FR-1987-01-29.pdf

EO 13016
CERCLA Amendments (Amends 12580), 28 August 1996.
https://www.gpo.gov/fdsys/pkg/FR-1996-08-30/pdf/96-22462.pdf

A-3 Federal Regulations

32 CFR Part 179
Munitions Response Site Prioritization Protocol
https://www.gpo.gov/fdsys/pkg/CFR-2018-title32-vol1/pdf/CFR-2018-title32-vol1-part179.pdf

32 CFR Part 651.5(l)
Army NEPA Implementation
https://www.gpo.gov/fdsys/pkg/CFR-2018-title32-vol4/pdf/CFR-2018-title32-vol4-part651.pdf

A-4 Department of Defense Instructions and Manuals

DoD Instruction 4715.07
Defense Environmental Restoration Program (DERP).
https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/471507p.pdf?ver=2017-10-25-110201-150

DoD Instruction 6055.16
Explosives Safety Management Program.
https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/605516p.pdf?ver=2018-11-20-120433-347

DoD Manual 4715.20
Defense Environmental Restoration Program (DERP) Management.
https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/471520m.pdf

Defense Explosives Safety Regulation 6055.09
https://www.denix.osd.mil/ddes/explosives-safety-issuances/

A-6 USACE Publications

ER 5-1-11
Management – U.S. Army Corps of Engineers Business Process.
https://www.publications.usace.army.mil/USACE-Publications/Engineer-Regulations/