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Department of Energy
Washington, DC 20585

JM CHRONOLOGY
JM RECEIVED – 8/26/11
OUT FOR REVIEW – 12/9/11
DRB DISCUSSION – 12/15/11

MEMORANDUM FOR: INGRID KOLB
DIRECTOR, OFFICE OF MANAGEMENT

THROUGH: FOR KEVIN T. HAGERTY
DIRECTOR, OFFICE OF INFORMATION RESOURCES

FROM: DAVID HUIZENGA
ACTING ASSISTANT SECRETARY FOR
ENVIRONMENTAL MANAGEMENT

SUBJECT: Notice of Intent to Develop an Order on Natural Resource Damage Assessments at Department of Energy Facilities

PURPOSE: To establish a consistent departmental approach to conducting natural resource damage assessments at facilities undergoing environmental cleanup, thereby reducing both life-cycle costs and the risks of litigation.

JUSTIFICATION: While the Department of Energy (DOE) has a well-established and extensive formal program for cleaning up the environmental legacy of past operations at DOE facilities, it does not have a consistent approach to dealing with the associated natural resource damage (NRD) liability. As a result, it has missed opportunities to integrate the NRD assessment process with cleanup activities, and thus missed opportunities to realize significant cost savings. In addition, DOE has repeatedly missed opportunities to resolve the NRD claims of state and tribal authorities through a cooperative, administrative process, resulting in prolonged and costly litigation. This order will create a clear and consistent approach to resolving NRD claims as quickly and as cost-effectively as practical. It will apply to all DOE program offices that manage DOE facilities where cleanup is, or may in the future, be required, and to the National Nuclear Security Administration. It will also fulfill perennial requests from state and tribal stakeholders to establish a DOE-wide NRD directive.

The Office of Environmental Management (EM) has already prepared a draft order, which has been shared with technical and legal staff both in the field and at Headquarters who have expertise in or responsibility for NRD-related issues. These staff members represent multiple DOE program and staff offices, including the Offices of Science, Nuclear Energy, General Counsel, Legacy Management, and Environmental Management. EM has also shared a draft informally with the NRD leads at the Departments of Justice, Defense and the Interior, as well as with the Environmental Protection Agency. EM next shared a draft with interested stakeholders from state and tribal governments involved in cleanup activities at DOE sites around the country. Finally, EM shared a revised draft with the field managers at all departmental cleanup sites for formal review and comment. EM made substantial revisions to the draft in response to the comments received at each stage of this preliminary review process.

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Justification Memorandum (Continued)

Based on extensive experience with NRD assessments at multiple sites over the past two decades, EM believes that resolving potential NRD claims cooperatively, and integrating the assessment of such claims with ongoing cleanup actions, will result in substantial cost savings and avoid unnecessary distractions from DOE's commitment to restoring and preserving the unique natural environments at many DOE facilities.

There are no valid external, consensus or other Standards (e.g., ISO, VPP, etc.) available that can be used in place of this directive.

IMPACT: The proposed order does not duplicate existing laws, regulations, or national standards and does not create undue burden on DOE. Ultimately, implementation of the order is expected to result in cost savings by integrating where practicable two processes that have substantial similarities but are currently carried out separately. Because the processes are not identical, integration could require incurring certain costs sooner than they would be incurred if the two processes were executed serially. However, the directive is explicitly drafted to favor integration only when integration is practicable and defines practicability to include the availability of adequate appropriations.

WRITER: Matthew Duchesne, (202) 586-6540

OPI/OPI CONTACT: Office of Environmental Management, Matthew Duchesne, (202) 586-6540.

Ingrid Kolb, Director, Office of Management (MA-1):

Concur: _____ Nonconcur: _____ Date: 1-19-12

EM agreed to develop a policy not an order.

Standard Schedule for Directives Development	Days
Draft Development	Up to 60 days
Review and Comment (RevCom)	30
Comment Resolution	30
Final Review	30

(X) using expedited schedule.

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- Redline/strikeout posted in RevCom for communication purposes only
- Redline-strikeout distributed to the DRB
- One week for DRB members to review, prior to meeting
- DRB meeting
- Week to prepare approval or impasse package

(NOTE: The standard schedule of up to 150 days will be used unless otherwise specified by the Directives Review Board.)

Revised Path Forward

PURPOSE: To establish a consistent departmental approach to conducting natural resource damage assessments at facilities undergoing environmental cleanup, thereby reducing both life-cycle costs and the risks of litigation.

JUSTIFICATION: While the Department of Energy (DOE) has a well-established and extensive formal program for cleaning up the environmental legacy of past operations at DOE facilities, it does not have a consistent approach to dealing with the associated natural resource damage (NRD) liability. As a result, it has missed opportunities to integrate the NRD assessment process with cleanup activities, and thus missed opportunities to realize significant cost savings. In addition, DOE has repeatedly missed opportunities to resolve the NRD claims of state and tribal authorities through a cooperative, administrative process, resulting in prolonged and costly litigation. This Policy will create a clear and consistent preference for integrating the natural resource damage assessment process with the cleanup process, and conducting such assessments in cooperation with the state and tribal authorities authorized to bring NRD claims against the Department, thus resolving those claims as quickly and as cost-effectively as practicable. It will apply to all DOE program offices that manage DOE facilities where cleanup is, or may in the future, be required, and to the National Nuclear Security Administration. It will also fulfill perennial requests from state and tribal stakeholders to establish a DOE-wide NRD integration and cooperation policy.

The Office of Environmental Management (EM) has already prepared a draft Policy and is in the process of developing implementing guidance.

Based on extensive experience with NRD assessments at multiple sites over the past two decades, EM believes that resolving potential NRD claims cooperatively, and integrating the assessment of such claims with ongoing cleanup actions, will result in substantial cost savings and avoid unnecessary distractions from DOE's commitment to restoring and preserving the unique natural environments at many DOE facilities.

There are no valid external, consensus or other Standards (e.g., ISO, VPP, etc.) available that can be used in place of this directive.

IMPACT: The proposed Policy does not duplicate existing laws, regulations or national standards and does not create undue burden on DOE. Ultimately, implementation of the Policy is expected to result in cost savings, by integrating where practicable two processes that have substantial similarities but are currently carried out separately. Because the processes are not identical, integration could require incurring certain costs sooner than they would be incurred if the two processes were executed serially. However, the directive is explicitly drafted to favor integration only when integration is practicable, and defines practicability to include the availability of adequate appropriations.

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