

DECEMBER 2008



**FINAL REPORT:**

**THE EFFECTIVENESS OF**  
**FORMERLY USED DEFENSE SITES**  
**STATEWIDE MANAGEMENT**  
**ACTION PLANS**

Results Collected and Finalized by:  
ASTSWMO State Federal Coordination Focus Group

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ASTSWMO's mission is to enhance and promote effective State and Territorial waste management programs and affect national waste management policies.

## Executive Summary

### Background

The U.S. Army Corps of Engineers (USACE) and State programs jointly developed a Formerly Used Defense Sites (FUDS) Management Action Plan (MAP) pilot program in 2001. In general, FUDS MAPs have been developed with the objective of collecting information on each FUDS within a State, including location, history, and contaminants of concern, and compiling this information into one comprehensive document in an attempt to prioritize and facilitate site clean-up. In addition, the MAPs were designed to enhance communication, coordination and document review.

Of the 57 States and Territories (States), over 30 have entered into FUDS MAPs or equivalent agreements. For example, Pennsylvania and the Department of Defense (DOD) have entered into the Cooperative Multi-Site Agreement (CMSA), which contains actions plans for over 100 FUDS in Pennsylvania. In other States, such as Rhode Island, no formal FUDS MAP has been developed; however, the State and USACE have voluntarily shared information about FUDS.

Many States that have had a MAP or equivalent document have found the documents to be ineffective due to lack of communication and coordination. As a result, in the Spring of 2008, the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) State Federal Coordination Focus Group queried the States about the effectiveness of implementing State FUDS MAPs. The results of the interviews and a summary of State responses are provided in this Report.

### Results

The State Federal Coordination Focus Group requested information from State federal facilities programs. A total of 41 States responded to ASTSWMO's request. These States are listed below, in order by USACE Military District. Please note that some States are geographically located in more than one Military District due to split responsibility.

<u>Alaska District:</u>	Alaska
<u>Baltimore District:</u>	Delaware, District of Columbia (DC), Maryland, Pennsylvania, Virginia
<u>Buffalo District:</u> <sup>1</sup>	Ohio
<u>Fort Worth District:</u>	Arkansas, Louisiana, Texas
<u>Kansas City District:</u>	Idaho, Kansas, Missouri, Nebraska, Washington
<u>Los Angeles District:</u>	California, New Mexico
<u>Louisville District:</u>	Illinois, Indiana, Michigan, Ohio
<u>New England District:</u>	Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont

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<sup>1</sup> Although the Buffalo District is involved with FUDS in Ohio, Louisville is the lead District for Ohio FUDS, and is responsible for the MAP.

<u>Omaha District:</u>	Colorado, Iowa, Minnesota, Montana, North Dakota, Nebraska, South Dakota, Wisconsin, Wyoming
<u>Sacramento:</u>	California, Utah
<u>Savannah:</u>	North Carolina, South Carolina, Tennessee
<u>Tulsa District:</u>	Oklahoma, Texas

The responses indicate that the overall effectiveness of FUDS MAPs with regard to improved communication, coordination, prioritization, and funding at FUDS sites between the States and the USACE is varied. Approximately half of the polled States that have entered into a FUDS MAP have seen improvements, while the other half have seen little to no improvements. Results tend to show that in States where improvements have been seen, the overall working relationship between the State and the USACE is “good” or better. However, in the States where little to no improvements have been seen, the overall working relationships between the State and the USACE is mixed, with some States having good working relationships, and other States having “bad” or worse relationships.

Notably, only half of the States with FUDS MAPs indicated that they have seen improvements in their working relationships with USACE. Of States that do not have formal FUDS MAPs, the majority indicated they generally have good working relationships with the USACE. The remainder of the States that do not have formal FUDS MAPs have bad overall working relationships with the USACE.

Of the States that have a FUDS MAP in place, the average period of time between MAP revisions is 3.5 years, and the range is from 1 year to 6 years. If a State’s MAP has not been revised for several years, it may no longer be an effective tool for workload prioritization and planning.

Overall, the lack of funding is a major issue for most States, and tends to impact the amount of work performed at FUDS, as well as the quality of work performed, by the USACE. In addition, most States indicate that communication between States and the USACE greatly affects coordination, prioritization, and the overall working relationship between the two parties, regardless of a State having a FUDS MAP or not. In some States where lack of funding is an issue, the working relationship with the USACE is good due to increased communication between the two parties. Specific responses to ASTSWMO’s questions are tabulated below.

ASTSWMO’s July 12, 2007, FUDS Position Paper stated that “FUDS MAPS must be used to strengthen and improve cooperation and communication between EPA, States, and the USACE.” Based on the results of this Report, it appears that FUDS MAPs overall are not accomplishing this goal. Though some States have seen improvement after developing a MAP, many more States are frustrated with the lack of communication with USACE on FUDS. Since ASTSWMO feels the early and successful collaboration with States is crucial to the success of the FUDS program, ASTSWMO recommends that USACE and DOD revisit the implementation of the FUDS MAP to improve its effectiveness as a tool in coordination and communication with States.

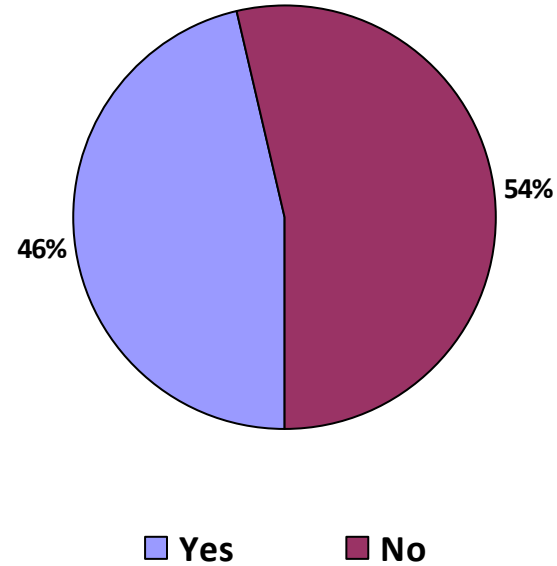
# 1. Do you have a formal/signed FUDS MAP?

**Yes (19):**

- Alaska
- California
- Colorado
- Indiana
- Kansas
- Massachusetts
- Michigan
- Missouri
- Nebraska
- New Mexico
- New York
- North Carolina
- Ohio
- South Carolina
- South Dakota
- Texas
- Virginia
- Washington
- Wyoming

**No (22):**

- Arkansas
- Connecticut
- Delaware
- District of Columbia (DC)
- Idaho
- Illinois<sup>1</sup>
- Iowa
- Louisiana
- Maine<sup>2</sup>
- Maryland
- Minnesota
- Montana
- New Hampshire<sup>2</sup>
- New Jersey
- North Dakota
- Oklahoma
- Pennsylvania<sup>3</sup>
- Rhode Island<sup>2</sup>
- Tennessee
- Utah
- Vermont
- Wisconsin



**Total Respondents: 41 States**

**Notes:**

<sup>1</sup> We have a FUDS MAP, but it has never been finalized or signed.

<sup>2</sup> State entered into FUDS MAP with USACE after ASTSWMO interviewed the States. This Report depicts the State's responses prior to entering into a MAP.

<sup>3</sup> Yes and No. Pennsylvania does not have a separate FUDS agreement; however the CMSA contains all FUDS as well as Army, Navy, Air Force and Defense Logistics Agency sites known to exist within the State. The CMSA effectively functions as a MAP. It contains action plans for over 106 FUDS initially identified in Pennsylvania. The CMSA contains an inventory of all known FUDS within the State, utilizes a Master Plan for scheduling work at all FUDS, and measures progress through annual updates and reports.

**1a. If yes, when did your agency first begin developing a MAP and when was the latest version of the MAP completed?**

**Alaska:** November 2002

**California:** August 29, 2006

**Colorado:** March 2006

**Indiana:** Indiana's MAP was signed in 2006. It was supposed to be updated annually, but it has not been updated.

**Kansas:** The first MAP was prepared jointly by USACE, Kansas Department of Health and Environment (KDHE), and U.S. Environmental Protection Agency (EPA), and issued in September 2004. KDHE submitted the most recent update to USACE in May 2007.

**Massachusetts:** February 22, 2002

**Michigan:** Our MAP was finalized in 2003. We started updating it this year, and are still working on it.

**Missouri:** First developed by signed Memorandum of Understanding (MOU), March 1998.

**Nebraska:** We have had MAPs dating back to the early 1980s. The most recent MAP took almost two years to complete and the final document is dated August 2007. We are planning on doing an annual update, with changes being made primarily to the planning, project tracking/status reports, and project prioritization documents.

**New Mexico:** We developed the initial FUDS MAP about 3 years ago, and have not revised it since.

**New York:** April 2004

**North Carolina:** July 2006

**Ohio:** The first MAP was signed in May 2002. Since that time, the document has been revised, but the revisions have never been finalized. The document has never been updated. The original plan was for Ohio's MAP to be updated annually.

**South Carolina:** July 1, 2003

**South Dakota:** Late 1990s

**Texas:** June 16, 2003

**Virginia:** February 2003  
**Washington:** 2005; modeled after Alaska's MAP.  
**Wyoming:** September 2004

**1b. If no, has the U.S. Army Corps of Engineers asked your agency to enter into a MAP?**

**Arkansas:** Arkansas is not intending to pursue a MAP with the USACE since we do not have a Defense State Memorandum of Agreement Cooperative Agreement (DSMOA/CA) and therefore have limited resources for FUDS project oversight.

**Connecticut:** No

**Delaware:** Yes

**DC:** No

**Idaho:** We have a draft that we have been jointly working on with USACE. While the current draft includes information about FUDS in Idaho, Idaho believes document needs to better show how the FUDS strategy translates to FUDS sites in Idaho. The MAP needs to be a management plan for Idaho, not simply a discussion of the federal approach to decision making and priority setting at the federal level. Idaho has made both the Seattle District and Kansas City program office aware of our concerns. How annual priorities will be set and schedule will be established in the current year and out years needs to be established.

Idaho is pleased with the efforts currently being undertaken at FUDS Military Munitions Response Program (MMRP) sites to date, but State review of Inventory Project Reports (INPRs) using federal funding continues to be limited to five sites per year. This is a significant constraint on our ability to fully evaluate the universe of FUDS in Idaho. USACE is aware of this problem and the funding constraints imposed by the DOD policy on INPR review by the States, but there are no specific proposals on the table to address this issue. Idaho would like to open this issue up for discussion with DOD and USACE so that we have some reasonable end point for INPRs where Idaho can agree with the no further action determination for these sites or developing a path forward for those sites where Idaho has concerns.

Despite these concerns, Idaho believes the MAP concept is a good one because it is the only State specific management plan where issues can be identified, resolved or elevated for resolution. Idaho has also found the process helpful in getting site specific information such as specific location and maps of each site.

**Illinois:** Yes. A MAP has been under development for several years. We first started working on it 3 years ago.

**Iowa:** No

**Louisiana:** Yes, Louisiana is in the process of developing a MAP.

**Maine:** Yes

**Maryland:** Yes, a MAP is proposed for the next CA.

**Minnesota:** I remember the MAP issue coming up a few years ago, but I don't remember if the USACE approached us about entering into a MAP.

**Montana:** Yes. The State is providing regulatory oversight of one FUDS. The USACE approached the State approximately two years ago about doing a MAP, but the State declined.

**New Hampshire:** No, although New Hampshire asked the USACE for a MAP.

**New Jersey:** Yes. A MAP was proposed to the State of New Jersey several years ago, however the decision by the State was not to enter into a MAP. The rationale behind this decision included the fact that within New Jersey there is no section dedicated to solely handling Federal Facilities. The technical case manager caseload includes various types of cases, which may in turn drive differing priorities thereby affecting deadline agreements. New Jersey currently has a CA in place which essentially lists the cases that we are going to be working on. The CA is revisited every 2 years.

**North Dakota:** The State contact does not recall USACE having approached them about it.

**Oklahoma:** Yes, but Oklahoma does not believe a MAP is necessary since we have a good working relationship with the USACE District.

**Pennsylvania:** Currently, all military cleanup sites in Pennsylvania have either been resolved under the CMSA, deferred to other compliance programs, or are still on the Scheduled List of Sites to be addressed under the CMSA. Approximately 40 FUDS remain on the active Scheduled List of Sites. Some consideration has been given to turning the CMSA into a FUDS only agreement since all the other services activities have been completed.

**Rhode Island:** Yes

**Tennessee:** No. We are working with them on several sites through DSMOA.

**Utah:** Yes

**Vermont:** No

**Wisconsin:** No, not to my knowledge.

## **2. What is the scope of your MAP? Please explain:**

**Alaska:** The MAP was developed and signed by the USACE Alaska District, Alaska Department of Environmental Conservation (ADEC), and EPA. The goals include:

- Establish a team of personnel from the USACE Alaska District, the ADEC, and EPA Region 10 to coordinate FUDS restoration activities.
- Establish a framework to coordinate priorities for future remediation activities among the agencies.
- Present a list of FUDS properties and project categories.
- Develop a coordinated long-range plan for environmental remediation at FUDS properties
- Provide a summary of the Defense Environmental Restoration Program (DERP)-FUDS program within the State that may be made available to all stakeholders
- Summarize and forecast future activities and associated costs.

The MAP describes each agency's roles and responsibilities with respect to the FUDS Program. It includes tables (from FUDSMIS) listing all FUDS properties and projects in Alaska, and a map showing the locations of FUDS properties. A joint prioritization process was developed that incorporates USACE, ADEC, and EPA input. The MAP also calls for semiannual meetings to review the status and update the document.

**California:** We actually signed two documents: the California Statewide Management Action Plan (CASMAP) and the Statement of Intent. The CASMAP was produced to improve communications and coordination between United States staff, EPA staff, and the State regulatory staff, to verify the FUDS California property inventory, and to determine a statewide clean-up priority. The CASMAP will become the formal reference document concerning FUDS information and FUDS project status in California. The CASMAP is designed to promote involvement of the State regulatory agencies, EPA, and other stakeholders in the planning, programming, budgeting and execution of projects necessary to clean up FUDS properties identified in California's inventory. The CASMAP is a living document that should be updated annually.

**Colorado:** The MAP basically has three parts:

- A list of FUDS in the State;
- Detailed information for each site; and
- A description of the known funding requirements.

- Illinois:** **NOTE: FUDS MAP not yet signed.** The MAP covers the same information as our semi-annual program meetings. It discusses funding, prioritization, site points of contact for both the State and USACE, and what work has been completed. According to the EPA Region 5 contact, Illinois' 2006 MAP looks like all the other ones he has seen.
- Indiana:** It provides an inventory of properties and projects, discusses how all the agencies interact, the project priorities for Indiana FUDS, and provides estimates for what the USACE will accomplish this year and in future years.
- Kansas:** Kansas receives site-specific management action plans from USACE, updates current and planned State activities for each site, and submits the updated MAPs to USACE.
- Maine:** To make sure the State's list of FUDS corresponds to USACE's list, to prioritize sites, and to establish a working relationship.
- Massachusetts:** To identify FUDS universe in Massachusetts, evaluate for imminent hazards, review No Further Action (NOFA)/USACE recommendations, and gather information to assist in developing priorities.
- Michigan:** The MAP covers all known sites, categories sites, and tries to identify what sites need projects/investigations and what site we should work on.
- Missouri:** Within the DERP-FUDS program, the MAP is used as a tool to provide a team of personnel from USACE, EPA and Missouri a resource to quickly and effectively evaluate the status of the DERP-FUDS program at Missouri FUDS properties. This MAP is developed for the 89 properties located in the State of Missouri. As directed by the current MAP guidance, the Missouri MAP summarizes the current status of environmental restoration programs at each of these properties. Past project costs combined with estimated future project costs also are compiled and summarized to provide a reference to evaluate state-wide site specific expenditures for the DERP-FUDS program.
- The MAP provides concise site summaries for each site and is formatted to include information from the existing DERP-FUDSMIS, a USACE system. The MAP describes the DERP-FUDS program, and describes each agency's roles and responsibilities with respect to the program.
- Nebraska:** The MAP has site descriptions, historical information and site maps for the various FUDS throughout the State. It has separate sections for active and inactive FUDS (including narrative descriptions of Nebraska Department of Environmental Quality's (NDEQ's) involvement with the

site, USACE site assessment activities, and EPA involvement). The MAP contains recent Two-Year Joint Execution Plans (JEPs) (JEP forms; and recent Performance Reports can be added behind that tab for easy access), a list of Superfund site investigations that have been accomplished by the State and by Region 7 EPA, a list of FUDS-eligible sites (known as Attachment A to the DSMOA/CA, and several USACE-generated FUDSMIS status reports.

**New Hampshire:** To identify all the FUDS in the State, and to have USACE provide documentation for all FUDS for which they say are NOFA where New Hampshire has not yet agreed to a NOFA (New Hampshire at infancy of this step).

**New Mexico:** The State has found it has not served its original purpose which was to prioritize execution of FUDS projects. The New Mexico MAP does include a list of projects and their priority. However, in lieu of following that prioritization scheme the USACE is executing projects based on their own priorities, which is implementation of the MMRP Preliminary Assessments and Site Investigations (PA/SIs). New Mexico also indicated that prior to the MAP they had already established a list of priority projects with the USACE, so the MAP provided little added value to the process. The State noted that if they believe there is a FUDS project that needs a time critical action then they would push the USACE to implement action and believe USACE would agree to do so.

**New York:** The purpose of the MAP is to identify contacts/funding, as well as prioritization. The MAP outlines the universe of cases and includes fact sheets and location maps, which help prioritize this universe of cases.

**North Carolina:** Our MAP has a purpose instead of a scope. It is to list all FUDS in the State along with a project category and summary of current project status and phase. The MAP also allows us to assist in site prioritization, involves the State in property cleanup planning and decision making, and to help develop a coordinated long range plan (subject to funding) and to develop a forum to coordinate all activities.

**Ohio:** When Ohio entered into the MAP, there was supposed to be a companion document [a Memorandum of Agreement (MOA)] that outlined the working relationships and responsibilities of both agencies. The MAP was supposed to be an annual update of the priorities, points of contact, planned work, and completed work in the Ohio FUDS program. However, though we successfully negotiated the MOA, the USACE never signed the document, and now has stated that they cannot enter into an MOA because it would set a precedent with other States.

- Pennsylvania:** **NOTE: CMSA is Pennsylvania’s equivalent of a MAP.** This CMSA sets forth a comprehensive process which includes a framework to collectively and creatively address the assessment and appropriate remediation of certain sites on the Inventory of Sites List. Specific objectives of the agreement are to:
- (a) Protect human health and the environment;
  - (b) Use public participation and sound science in the decision-making process to accomplish outreach and risk reduction;
  - (c) Ensure prompt compliance with applicable remediation requirements;
  - (d) Return sites to productive non-military uses, as appropriate, to the benefit of the communities in which they are located,
  - (e) Prioritize and effectively manage the Military Components’ and Pennsylvania’s resources by implementing a comprehensive environmental site assessment and remediation program for a certain Inventory of Sites in Pennsylvania;
  - (f) Minimize the Military Components’ liability through the Resolution of Sites within Pennsylvania by the year 2010.
- Rhode Island:** Rhode Island views the main purpose of the MAP is to set priorities for the investigation and, if necessary, the remediation of FUDS. A secondary consideration would be to better define the working relationship between our two agencies, though this has not really been an issue.
- South Carolina:** Evaluate and prioritize all FUDS properties within South Carolina, review, comment, and concur with removal/remedial work plans, and upfront involvement on all aspects of the FUDS program to insure that South Carolina interests are accounted for and USACE goals and milestones are met.
- South Dakota:** The MAP identifies all FUDS in the State, contacts, action plans, maps, funding needs, and schedules.
- Texas:** Overall the Texas MAP was comprehensive in scope and goes far beyond providing a list of projects and an agreed upon priority for those projects. The Texas MAP team agreed on the following goal statement: “To promote closure of FUDS properties through effective communications and partnership among all stakeholders.” The overarching objective of the Texas MAP is to establish streamlined processes for managing and executing key elements of the FUDS program. Additional objectives include: to accelerate project execution and property closeout through

upfront regulatory involvement, integrating regulatory processes (standardization of work plans and approaches), etc.; defining agency roles and responsibilities; project prioritization, promoting redevelopment opportunities; establishing one database for FUDS project status reports; and updating the MAP annually.

**Virginia:** FUDS and MAP history; DERP-FUDS objectives and program summary; Consideration for new/additional properties and categorical exclusions for ineligible properties; Property/project No DOD Action Indicated (NDAI) agreement; Virginia priority sites; Community relations.

**Washington:** Washington's MAP was modeled after Alaska's. The goals include:

1. Establish a team of personnel from the USACE, Washington Dept of Ecology, and EPA Region 10 to coordinate FUDS restoration activities.
2. Establish a framework to coordinate priorities for the future remediation activities among the agencies.
3. Present a list of FUDS properties and project categories.
4. Develop a coordinated long-range plan for environmental remediation at FUDS properties.
5. Provide a list of FUDS properties and project categories.
6. Develop a coordinated long-range plan for environmental remediation at FUDS properties.
7. Provide a summary of the DERP-FUDS program within Washington that may be made available to all stakeholders.
8. Summarize and forecast future activities and associated costs.
9. Describe roles and responsibilities of each agency with respect to the FUDS program.

**Wyoming:** The MAP has tables showing the status of each site. For example, NDAI, or eligible or ineligible for project and cost to complete. Action plans summarizing the work done at the sites, and the work to be done are also included.

**3. Has the MAP been effective in improving the following (check all that apply):**

State	Communication	Coordination	Prioritization	Funding
Alaska	Yes	Yes	Yes	No
California	Yes	Yes/No	Yes/No	No
Colorado	Yes	Yes	Not significantly yet	Not significantly yet
Indiana	No	No	No	No
Illinois	No	No	No	No
Kansas	Yes	Yes	Yes	Yes
Massachusetts	Yes	Yes	Yes	No
Michigan	Yes	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	Yes
Nebraska	No	No	Yes	No
New Mexico	No	No	No	No
New York	Yes	Yes	Yes	Yes
North Carolina	Yes	Yes	Yes	No Response
Ohio	No	No	No	No
South Carolina	Yes	Yes	Yes	Other
South Dakota	No Response	No Response	No Response	No Response
Texas	No	Somewhat	No	No
Virginia	No	No	No	No
Washington	Yes	Yes	Yes	No
Wyoming	No	No	Somewhat	Somewhat

**Additional Comments and Issues:**

**Alaska:** MAP has not affected funding other than through changing priorities amongst projects.

**California:** The MMRP was initiated out of Army Headquarters. This MMRP push has removed some FUDS sites from the NDAI status by the local USACE district offices. There were several questions the local USACE could not answer so more site specific work was needed.

Communication is **improving**. We did receive the anticipated work plan for Fiscal Years 08/09 and 09/10, which had not occurred up front for several years. The USACE Grants Officer has not been as proactive and several sites continue to remain on our Attachment A, which the USACE will not work on this grant cycle.

We have had some additional coordination meeting. The dispute resolution process is allusive. It is still unclear how the State and/or EPA can affect a change to a work plan in a timely manner.

Prioritization is currently up for discussion.

No new funding is anticipated.

**Colorado:** FUDS MAP is a good baseline for discussion and a starting point, but has not resulted in higher funding or prioritization.

**Connecticut:** No funding for FUDS.

**Indiana:** The MAP is vague and general. In addition, after the MAP was finalized, updating it was not a priority for the USACE. It has never been updated or revised. We would like to do site visits to several FUDS, but that is not a priority for the USACE.

**Illinois:** What is in the MAP reflects the same information that is discussed during our semi-annual program meetings with the USACE. The MAP really is no longer necessary because of these meetings. The FUDS Program meetings (held every 6 months) cover changes in work assignments, prioritization of sites, funding, communication and coordination issues, and other issues (such as the Government Owned/Contractor operated potentially responsible party (PRP), property transfer liability issues). We also discuss NDAI determinations made by the USACE and the status of State concurrence, and what sites we feel will need PAs. We also discuss State specific program issues (e.g. risk screening eliminating sites during the SI phase, the MMRP) and site specific updates and issues.

**Massachusetts:** Despite entering into the MAP, which included prioritization, projects are still underfunded.

**Michigan:** Although funding of FUDS is nebulous, the MAP has played a role in helping determine funding needs/issues. It also has helped focus the FUDS program, helped better understand the DSMOA program and scope of issues. We feel it is a valuable educational tool.

**Nebraska:** So far, the MAP has been in the process of development. We have not yet started to use it routinely as a tool that is was geared to be. We hope to start using it more in the coming year after the next round of revisions.

**Ohio:** Our MAP is outdated, our communication and coordination is bad, and we have no idea of the planned work in Ohio for the next year. The USACE

also has stated at meetings with Ohio EPA that, as lead agency, they can proceed with projects without addressing Ohio EPA's concerns.

**Pennsylvania:**

Cleanups that would not have happened or would not have happened with the limited funding available/low priority by the USACE have been completed due to the CMSA. Good communication, increased coordination, voluntary compliance, cooperation between State and federal agencies and creative funding arrangements has pushed lower priority or unfunded sites not normally scheduled for cleanup before 2010 into a removal or remedial action much quicker. In many cases, these accelerated cleanups were based on State priorities, not USACE.

Communication has been the major advantage of Pennsylvania's CMSA. All services have noted increased communication with associated DEP Central and Regional offices necessary to move forward with site assessment and remediation. There is a central point of contact for DEP and DOD, as well as a point of contact for each DEP regional office and DOD military components.

Concerning Coordination, this Agreement sets forth incentives and uses clear, flexible cleanup standards, site assessment procedures, and site specific, risk-based approaches of Act 2 (voluntary cleanup program). Other factors are also considered to provide a "faster track" approach to better protect the environment, and return properties to productive use. A Master Plan, based on the site prioritization factors is utilized to achieve the goals and objectives of the Agreement. The components of the Master Plan are the Master Schedule and the Site Narratives. The Master Plan lists each of the Scheduled Sites and indicates approximately when the necessary investigation and cleanup work will take place.

Parties agree to use the DOD Relative Risk Site Evaluation ("RRSE") system as the initial step for setting priorities for cleanup action. While the Parties agree that the comparison of human health and environmental risk and risk reduction potential is appropriate in setting priorities, they are not the only factors. Risk should be viewed in the context of other social values, environmental goals, and economic benefits. The Parties will consider other factors in setting priorities.

State activities in the CMSA are funded through the State DSMOA Program. However, some FUDS activities have been wholly or partially funded as well through the State's Hazardous Sites Cleanup Program

**South Carolina:** While we have obtained some limited funding to research and prioritize FUDS sites within the State, the overall FUDS budget does not allow for much progress.

**South Dakota:** It's nice having one document with summary information in it.

**Texas:** I have used the MAP to review internal coordination on review of INPRs. It is also useful for explaining our work relationship with EPA Region 6.

Regarding prioritization, nothing has been done that was not being done prior to having a map.

The State and USACE also disagree on cleanup standards and requirements including fulfilling State institutional controls requirements.

It should be noted that due to State workload issues, the Texas MAP has long been overdue for updating. Nevertheless, fundamental aspects of the MAP such as respective roles and responsibilities would/should not be substantively affected by this update. Since the USACE now considers the FUDS Policy (ER 200-3-1) to have precedence over State MAPs, it would appear MAPs may no longer serve as the key management tool for effective program management. With respect to the FUDS Program Policy, it should be noted that in several significant instances the USACE responses conflict with the requirements of ER 200-3-1.

**Virginia:** For 2003-04 "yes" for all categories, but since 2005 the MAP has not been a directing document for our program. It has not been updated nor have meetings regarding the MAP occurred during the last couple of years. Since 2007 it has not served as a guide or roadmap.

**Washington:** Communication improved with the Seattle District for the last 5 to 6 years. However, the USACE recently moved its office to Kansas City, and coordination and communication have become a challenge.

Funding is becoming a problem. While prioritization has worked reasonably well, with a limited budget, prioritization is starting to become an issue.

**Wyoming:** The MAP is useful for outside entities such as legislators.

#### **4. How would you rate your working relationship with your USACE rep/district?**

##### **Alaska District:**

Alaska: Good.

##### **Baltimore District:**

Delaware: Generally good.

DC: Very poor – Limit contact with the person in charge of FUDS for the USACE Baltimore District. Out-reach efforts need to be improved.

Maryland: Spotty at best.

Pennsylvania: Excellent in most cases. Occasionally, there have been disputes that have been effectively resolved under the terms of the CMSA.

Virginia: We have good communications and working relationship with the Baltimore District and Jack Butler, our representative. He has been very responsive. However, see response below to question 5.

##### **Buffalo District:**

Ohio: Bad. The USACE do not follow through on commitments, and my staff does not know what is going on. Documents come in and they want our reviews completed within 12 days of receipt. On the MMRP sites, we were told that the work was performance based, so if we had a problem with the scope, there was nothing they could do but address it during future investigations. We also had the PRP/liability issue stop work at several critical projects in Ohio.

##### **Fort Worth District:**

Arkansas: No response (see response to Question 5).

Louisiana: Overall the State has a good working relationship with the USACE, although there have been instances where projects have been unexpectedly added, and the State has had to scramble to add the sites to the attachment A, and develop JEPs and funding estimates for State oversight.

Texas: Within the past 6 months the working relationship between Texas Commission on Environmental Quality (TCEQ) Project Managers (PMs) and their respective USACE PM for hazardous, toxic and radioactive waste (HTRW) projects has significantly deteriorated due to both technical and regulatory disagreements. TCEQ has had continuing disagreement concerning technical requirements at several sites and will likely pursue dispute resolution to resolve these issues. The Texas MAP is

of no use in resolving either technical or regulatory issues. For instance, in response to a TCEQ comment that referenced Section 4.4.1 of the Texas MAP which states that "... the [USACE] will satisfy all applicable TCEQ regulations, policies and guidelines for sites which have had a release..." the USACE responded as follows: "The current Defense Environmental Restoration Program Guidance Document (ER 200-3-1, dated 10 May 2004) takes precedence in FUDS Program Management and supersedes State Action Management Plans signed prior to the date of this guidance." It should be noted that TCEQ is currently conducting an in-house review of its regulatory authority at FUDS in response to the USACE assertion that under CERCLA the State does not have jurisdiction to order compliance with the administrative or procedural requirements of the Risk Reduction Standard (RRS) or Texas Risk Reduction Program (TRRP).

### **Kansas City District:**

- Idaho: Working together better than in previous years but some of that may be from the USACE MMRP work, which is directed by congressional action where the USACE is coordinating reasonably well with Idaho.
- Kansas: Our working relationship with district staff is very positive and professional. Lines of communication are always open, and the district is responsive to the State's concerns and priorities.
- Missouri: Very Good.
- Nebraska: We have a good working relationship with the various USACE District programs and project managers, with the exception of a couple sites and/or USACE project managers.
- Washington: Our working relationship was really good when the USACE office was in Seattle. Now that they have moved to Kansas City, it is much more difficult to get meetings scheduled and coordination has become more challenging.

### **Los Angeles District:**

- California: USACE is not a dynamic organization able to timely address changes or agencies concerns regarding health and safety at FUDS properties as issues arise which makes for a contentious relationship. Both the State and USACE are trying to make the best of a difficult situation.
- Case in point: Several projects have stopped due to USACE reluctance to address releases by the DOD where USACE believes others may have contributed, no matter how little their contamination contribution might have been. For the MMRP sites the USACE is trying to narrow the search area based on file searches and no field or limited field information too early in the SI process. Additionally, the chemical sampling for munitions

and explosives of concern (MEC) constituents is extremely limited and tries to accomplish a NOFA determination without understanding the heavy areas of ordnance use. Basically the USACE is trying to do too much with limited data.

New Mexico: Very good. Our relationship was very good prior to entering into the FUDS MAP.

**Louisville District:**

Illinois: Good. We feel we have an excellent FUDS Program Manager for Illinois who is committed to the program. We have concerns over what may happen when he retires. Other USACE staff may not be as committed to making the FUDS program work.

Indiana: Our working relationship with the USACE staff on projects is good. They are responsive to our comments and want to address State concerns. Our interaction with the FUDS Program Manager is non-existent. He does not seem to know the status of the work. We also had to teach him on how to use the DSMOA JEP portal, which made more work for us.

Michigan: Excellent.

Ohio: Bad. The USACE do not follow through on commitments, and my staff does not know what is going on. Documents come in and they want our reviews completed within 12 days of receipt. On the MMRP sites, we were told that the work was performance based, so if we had a problem with the scope, there was nothing they could do but address it during future investigations. We also had the PRP/liability issue stop work at several critical projects in Ohio.

**New England District:**

Connecticut: N/A. Not working on any FUDS at this time.

Maine: Good, but don't always see eye to eye on project goals.

Massachusetts: Good.

New Hampshire: Adequate. We could use more frequent communication.

New Jersey: Generally, New Jersey has a very positive working relationship with the USACE.

New York: New York has a very good working relationship with the USACE.

Rhode Island: In general, a productive relationship.

Vermont: Very good.

### **Omaha District:**

- Colorado: Excellent.
- Iowa: Poor. In general, the USACE has shown an unwillingness to work on projects in Iowa, citing lack of resources as the reason. Although all sites are on 12-year outlook schedules for completion of major milestones, each year the USACE pushes these schedules back.
- Minnesota: Okay. It has taken a while to get the current projects to where they are today. It also takes a long time to hear back. We feel that our FUDS projects take way too long to accomplish anything, which may be because of funding issues.
- Montana: No Response.
- North Dakota: Good on other issues. The State has not had major issues with them on FUDS.
- Nebraska: We have a good working relationship with the various USACE District programs and project managers, with the exception of couple sites and/or USACE project managers.
- South Dakota: Very good.
- Wisconsin: Generally pretty good. Our FUDS Omaha Point of Contact is pretty good – reasonable and responsive to our concerns.
- Wyoming: Contentious.

### **Sacramento District:**

- California: USACE is not a dynamic organization able to timely address changes or agencies concerns regarding health and safety at FUDS properties as issues arise which makes for a contentious relationship. Both the State and USACE are trying to make the best of a difficult situation.
- Case in point: Several projects have stopped due to USACE reluctance to address releases by the DOD where USACE believes others may have contributed, no matter how little their contamination contribution might have been. For the MMRP site,s the USACE is trying to narrow the search area based on file searches and no field or limited field information too early in the SI process. Additionally, the chemical sampling for MEC constituents is extremely limited and tries to accomplish a NOFA determination without understanding the heavy areas of ordnance use. Basically the USACE is trying to do too much with limited data.
- Utah: The working relationship has generally been pretty good.

### **Savannah District:**

North Carolina: Very good, in part due to our USACE point of contact.

South Carolina: A change in USACE reps over the past year has made a tremendous improvement in communication, partnership, and accountability. We now have a contact that is responsive to our concerns and is willing to accept input on future prioritization of sites.

Tennessee: Most of the sites are doing okay. Some sites, however, are not receiving adequate funding.

### **Tulsa District:**

Oklahoma: The State believes that based on sufficient communication (annual meetings), a good work relationship, and JEPs (which provide sufficient details regarding projects), that a MAP with the USACE is not necessary.

Texas: Within the past 6 months the working relationship between TCEQ PMs and their respective USACE PM for hazardous, toxic and radioactive waste (HTRW) projects has significantly deteriorated due to both technical and regulatory disagreements. TCEQ has had continuing disagreement concerning technical requirements at several sites and will likely pursue dispute resolution to resolve these issues. The Texas MAP is of no use in resolving either technical or regulatory issues. For instance, in response to a TCEQ comment that referenced Section 4.4.1 of the Texas MAP which states that "... the [USACE] will satisfy all applicable TCEQ regulations, policies and guidelines for sites which have had a release..." the USACE responded as follows: "The current Defense Environmental Restoration Program Guidance Document (ER 200-3-1, dated 10 May 2004) takes precedence in FUDS Program Management and supersedes State Action Management Plans signed prior to the date of this guidance." It should be noted that TCEQ is currently conducting an in-house review of its regulatory authority at FUDS in response to the USACE assertion that under CERCLA the State does not have jurisdiction to order compliance with the administrative or procedural requirements of the RRS or TRRP.

## 5. What other issues are working well/aren't working well, in the FUDS universe (please explain)

### Alaska District:

Alaska: Semi-annual review and updates to the MAP have been challenging due to turnover within the USACE and time/workload issues. Using the joint prioritization process has been successful in changing which sites are currently being addressed.

### Baltimore District:

Delaware: The priority of completing MMRP SI's seems to outweigh HTRW issues.

DC: EPA Region III sponsors an annual Region III/States/FUDS meeting. There was agreement within the group that coordination efforts would be shared, not all parties lived up to their commitments. Poor coordination resulted in limited State participation.

Maryland: The USACE continues to focus on meeting goals based on available funding rather than addressing risk or 'buying out sites.' Six small projects are better than getting one site done right and closed out. Their time frames are often unrealistic and their coordination regarding sampling events is generally poor.

The USACE believes that they are the lead agent for FUDS, but consistently does not act like a lead agent. They are reluctant to sample off site. PRP sites are quickly dropped from their active sites list. At PRP sites, the USACE refers any claims to the Department of Justice's (DOJ's) settlement fund rather than acting as EPA would: to assemble a PRP group to complete needed work at the site. The USACE also has a tendency to stretch the interpretation of "beneficial use" to avoid responsibility. While the "where is, as is" transfer documentation issue has not been raised in Maryland, it would certainly seem to be counter to concept of "strict, joint and several liability" under CERCLA.

Pennsylvania: WELL: The CMSA has been effective in accelerating resolution of sites not scheduled or funded by the military components. Many of these sites, once identified as priorities by the Pennsylvania, have been remediated and resolved by the military components much sooner than they normally would have been.

NOT SO WELL: FUDS funding has, and will continue to be an issue in Region 3 States. Also, the USACE Reorganization has added more responsibilities and oversight to the Baltimore District which was already

overworked before. A few project managers have complained their workload has increased as a result.

#### FRUSTRATING THINGS ABOUT THE FUDS PROGRAM:<sup>2</sup>

- The “beneficial use” issue has caused a lot of concern with cleanups. If the USACE decides that something has been beneficially reused by a party other than DOD, they no longer accept responsibility for cleanup actions. One example was a pole-mounted transformer at which they heard “buzzing” during a site visit. The USACE decided the transformer was beneficially reused and was ineligible for cleanup funding.
- PRP Sites – A “PRP” decision effectively derails the entire cleanup process at the site. The State is expected to pursue the responsible parties rather than the USACE for cleanup responsibility. The State can’t issue an order to the USACE because it will violate DSMOA and the current land owner in many cases wasn’t the party responsible for the contamination, so it falls into a crack in the system. The USACE will cash out of their “share” with the PRP(s) but will not take any remedial actions.
- “Fluid funding” – funds availability within the USACE District seems to shift between projects, usually without any advanced notice. If you are given notice, it’s merely notification that it WILL occur. While remedial action at any FUDS is always welcome, the State would like some input in the process. While the actions may complete a USACE project, it may not be a very high priority cleanup in the State’s perspective.
- Projects without notice. Occasionally, through shifting of available funds within the USACE Districts, funding will become available to complete a project within a definitive period – usually by the end of the fiscal year. This causes new, unplanned work not scheduled on the DSMOA and possibly even a new site altogether. This requires a new Attachment A, a JEP and DSMOA funding. Additional State resources may be required but may not be readily available.

Virginia:

While we have a good working relationship with the district office and staff, USACE efforts, resources, and certain approaches are inadequate and disappointing. This includes the following:

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<sup>2</sup> These comments apply to the FUDS Program in general, not to the USACE, Baltimore District.

- USACE performed/contracted PAs and SIs have been inadequate and not of the requisite quality.
- Water ranges are not being addressed by the USACE despite their importance and obvious Army and/or DOD contributions to contamination, unexploded ordnance (UXO), and other concerns.
- USACE too quickly tries to absolve itself of responsibility for sites based on inadequate assessment and investigation, and also by attributing responsibility to PRPs even when Army and/or DOD activities are most likely sources of contamination and risk (e.g., disqualifying a site used by the Army for many years because the military did not have formal title to the real estate; or disqualifying a facility used for many years for defense/military purposes but was used for a short period by a non-defense federal agency, thus labeled as having undergone non-defense “beneficial use”).
- Underfunding/under-resourcing; at current levels of effort, FUDS in our State will remain unaddressed or under-addressed, with consequent environmental and health risks and economic and natural resource losses for decades or generations.

### **Buffalo District:**

Ohio: One issue going well is some of the recent work concerning the FUDS inventory. One of the two Army Corps Program Managers has been working with the State to obtain concurrence on NDAI determinations on some properties to better define the amount of work in Ohio.

The issues not working well are the PRP/liability issue, problems with MMRP investigations and scopes of work, the lack of responsiveness for the USACE to respond to issues in a timely manner, their attitude about working with States to address our regulatory concerns.

### **Fort Worth District:**

Arkansas: Arkansas does not have a MAP and is not involved with the USACE with any FUDS projects since Arkansas does not have a DSMOA and the USACE is not willing to provide oversight reimbursement through another mechanism. As a result, the USACE executes FUDS projects with no State oversight.

Louisiana: Louisiana does not have a MAP although they are interested in having one. The local USACE district has postponed development of a MAP for Louisiana without much explanation for the delay. The State believes a

MAP will be useful in generating a complete inventory of State FUDS sites/projects, including agreeing upon future project priorities.

Texas: One area of recent improvement with the USACE concerns State involvement with the MMRP PA/SI projects. TCEQ had a number of issues with the USACE concerning these projects including: failure of the USACE to respond to TCEQ technical comments, inadequate regulatory review times, lack of agreement on regulatory screening criteria and other decision making criteria. TCEQ held a conference call with the USACE and EPA Region 6 representatives to resolve these issues and generally found agreement on how to resolve/minimize these issues. Note that this was achieved without the need for, or use of, the Texas MAP. However, the MAP would be a good document to memorialize what was agreed to.

Oklahoma: Overall work relationship is good. No additional comments.

**Kansas City District:**

Idaho: The INPR process—Idaho has not agreed on many of those decisions but the USACE presents them as if Idaho was involved. Idaho would like to go back and revise some of the INPRs but the DSMOA process makes it very difficult to coordinate with the USACE on which sites to reopen. Coordination with the USACE on MMRP sites is going well.

Kansas: Overall, the program is working well. An issue of concern is limitations on utilizing DSMOA funding at sites where remedial activities are being transferred from USACE to another party (i.e., BRAC sites, “PRP” sites).

Missouri: No Response.

Nebraska: - Progress is being made with the FUDS MMRP site investigations.

- Progress has resumed at two new FUDS in 2007.

- The latest efforts to develop JEPs and prepare other funding documents, on-line, using the DSMOA Community Portal demonstrated the ability to save NDEQ staff time and effort. However, there were considerable problems in having the components complete their portions of the JEP correctly and in a timely fashion. There were other minor technical glitches in the system, which we expect will be worked out by the USACE by the next time around.

- The NDEQ and Kansas City District have disagreements regarding the applicability of portions of the State ground water regulations as Applicable or Relevant and Appropriate Requirement (ARARs). Dispute resolution is under progress.

Washington: Funding needs to improve. Also, the DSMOA program is not effective. The DSMOA program is too time consuming to be worth the effort for the small amount of DOD sites in the State.

**Los Angeles District:**

California: The FUDS program lacks oversight from EPA or State agencies similar to the oversight that occurs at open and closed military installations. Insufficient funds have caused the USACE to skew the use of limited resources towards at best conservative site investigation activities and more of a defensive posture. Most HTRW FUDS work has stopped for two reasons: one reason is so USACE can better determine site conditions as per the FUDS program Policy or ER 200-3-1; another is to implement the MMRP SI program. ER 200-3-1 contradicts CERCLA in several key areas. The Beneficial Reuse and/or PRP determination under ER 200-3-1 brings the site work to a halt until such time as the USACE determines if these conditions exist. Other parts of the same site USACE continues to investigate and maybe remediate, but due to limited funds this situation is prolonging work from being started at the other potential PRP or Beneficially Used areas. Add this aspect to the DSMOA grants office approach of allowing USACE to add known or suspected PRP properties to the grant, and it is extremely difficult to get a project moving on former large facilities where DOD may not be the sole entity that had a release.

Additionally, USACE uses several approaches for site evaluations, such as early in the process making a site determination (SI stage or earlier), and then matching the future work to support that position regardless of site conditions. They do not waiver much from the initial position throughout the limited investigation process. This leads to difficulty for the regulatory agencies in agreeing with the final conclusions (NDAI, PRP, or Beneficial Reuse) or NOFA. PRP (suspected DDD release) or Beneficial Reuse (site was used similarly) determinations are just another way to say DOD may have contributed. By ER 200-3-1, USACE may negotiate a settlement with the current property owner/operator to relieve them of future responsibility. If there is no viable property owner the USACE will not proactively address the area.

Additionally, due to limited funds, USACE does not want to thoroughly investigate beneficial reuse sites since they may uncover the fact that they are a PRP. Also by ER 200-3-1, once a site is in the PRP universe the site can not have any money planned to be spend from DSMOA or DERP until the PRP work is settled. This is another reason why USACE is reluctant to define PRP properties. The USACE basically does not make the PRP determination so they can continue to spend on DOD only releases on large sites, and try and force the regulators to not enforce against DOD in the other areas.

Another area of differences is the follow through with Administrative controls. USACE believes since they are not the property owner then residual risk through administrative controls (Deed Restrictions, land use covenants, operation and maintenance agreements) are not part of their responsibility under the chosen remedy.

We are looking to work within the USACE staff to move toward a closer relationship and discuss issues in a positive way. Closing out properties as soon as possible and remediating as much of a property as possible without resorting to administrative controls appears to be the only way the USACE wants to proceed. The down side is complete remediation to unrestricted use is expensive and thus the lack of funds impacts their decision authority.

New Mexico: Despite the lack of effectiveness of the MAP, overall FUDS project execution in New Mexico is going well. The State is managing to keep apace of the MMRP PA/SI workload, the Technical Project Planning (TPP) meetings are effective, and the USACE public meetings to disseminate information regarding multiple MMRP PA/SI projects are an effective communication tool.

### **Louisville District:**

Illinois: The Illinois FUDS Program Semi-annual Meetings are working very well. We have open dialogue and discussions, and they ARE listening to our issues and concerns. They have changed priorities and decided to do PA/SIs on site where they had proposed NDAI. These meetings have made the need for a MAP obsolete. We also have a very good FUDS PM for Illinois.

What is not working are the PRP/liability issues, and the interpretation at MMRP sites that the hazardous waste/solid waste rules do not apply (the USACE has interpreted that MEC material is not a waste even though the range is closed the property was transferred).

Indiana: Biggest issue for us is the lack of funding. None of Indiana's FUDS are high priority for funding for the USACE. When the work is funded, it goes well. However, funding is sporadic and much of the project work listed in the JEPs does not happen. We also want to do the site visits to help define work in the MAP.

Michigan: One issue working well is the great working relationship we have with the Louisville District. We feel we are really making progress, getting sites off the inventory, having removal actions to address contamination, and categorizing sites.

What is not working well is the USACE turn-over in staff. They still have good people, but they cannot keep the staff assigned, which causes disruption in work at sites. We also are frustrated because they will not proceed with work on sites until they find property records. Some of the sites were leased, and leases can be very difficult to find. For prisoner-of-war (POW) camps, the legal documentation is not there. We also have concerns about a State forest that was a World War II bombing range and the potential issues there.

Ohio: One issue going well is some of the recent work concerning the FUDS inventory. One of the two USACE PMs has been working with the State to obtain concurrence on NDAI determinations on some properties to better define the amount of work in Ohio.

The issues not working well are the PRP/liability issue, problems with MMRP investigations and scopes of work, the lack of responsiveness for the USACE to respond to issues in a timely manner, their attitude about working with States to address our regulatory concerns.

### **New England District:**

Connecticut: USACE INPRs without conferring and coordinating with the State, and the lack of coordination with the State on work done in State.

Maine: USACE follow through on action and lack of funding. In spite of constraints, USACE staff is easy to work with.

Massachusetts: Lack of USACE's ability to respond to emergencies and inability to fund even top priority sites. USACE needs to put plan in place to address hazards at FUDS for which they will not be able to remediate within a reasonable period.

New Hampshire: Use of CERCLA to avoid State regulations, lack of progress at PRP sites to resolve legal issues also not DSMOA eligible meaning cost recovery necessary, and lack of resources to complete projects in timely manner.

New Jersey: USACE sets its own site priorities based on funding. In addition, there is a current issue at dispute regarding New Jersey's Indoor Air Guidance. Since the document is considered guidance, USACE's position is that it does not need to comply with the State Indoor Air numbers. This issue is currently in dispute resolution. The USACE and NJDEP differ in the interpretation and approach to when monitoring and/or installation of an indoor air remediation system may be necessary.

New York: One issue which New York contends with is that there are so many sites to address and the USACE can only fund a certain number of these sites. Basically the USACE does not always have the funding to address

everything that New York believes should be addressed (i.e. some priority sites). In some instances State funding had to be used.

Rhode Island:

- a. The universal lack of funding for the USACE.
- b. On MMRP sites, USACE is producing final documents without responding to comments sent on draft documents. This creates problems if we do not agree with the response.
- c. Performance based contracts establish obstacles to fully investigating and/or remediating sites because additional work directly reduces contractor profits.
- d. USACE follows CERCLA disregarding State regulatory requirements.
- e. Implementation of work without telling State or provide work plan without adequate time for review prior to implementation of work.
- f. Funding “magically” appears and must be used or it is lost which is corollary to item e, above.
- g. USACE, in general, does not provide all available historical and technical information on sites unless specifically requested.

Vermont:

Small universe of sites, therefore few problems, thus the working relationship seems to work quite well. It was noted that funding for clean-ups is not a problem.

**Omaha District:**

Colorado:

DSMOA; obtaining timely and adequate funding of all projects/sites.

Iowa:

Things have become a little better recently due to completion of the DSMOA cooperative agreement for 2008-2010.

Minnesota:

The turn-around time/response time is not good. When the local USACE office was overseeing the work, they were much more responsive to our concerns. When the work was switched to Omaha, there was a lot more lag time with work. Sites did not progress, and in some States, congressional effort was used to push funding for site work. If that did not happen, we would still be waiting for these projects to be funded.

The length of time it takes to get projects moving. It takes 2 to 3 times longer than we would like to get sites done. We would like to see if DSMOA funding could be used for the State to investigate and characterize FUDS or hire contractors to do this work. It is frustrating that we develop estimates for DSMOA based on the projected work for FUDS, the work does not get funded, and then we then have left over DSMOA

funding that cannot be used. We would like to see if FUDS could allow DSMOA funding to be used similar to how Minnesota is funded by the EPA State MOA to do site characterization. If we could use this funding to do site characterization, we could make a lot of progress on FUDS in Minnesota. We could make progress on a lot of sites, even getting a lot of them closed out.

- Montana: No response.
- North Dakota: No Response.
- Nebraska: - Progress is being made with the FUDS MMRP site investigations.  
- Progress has resumed at two new FUDS in 2007.  
- The latest efforts to develop JEPs and prepare other funding documents, on-line, using the DSMOA Community Portal demonstrated the ability to save NDEQ staff time and effort. However, there were considerable problems in having the components complete their portions of the JEP correctly and in a timely fashion. There were other minor technical glitches in the system, which we expect will be worked out by the USACE by the next time around.  
- The NDEQ and Kansas City District have disagreements regarding the applicability of portions of the State ground water regulations as ARARs. Dispute resolution is under progress.
- South Dakota: The USACE is currently spending more time and money on FUDS in the form of MMRP sites. This program has shown progress in getting FUDS investigated for munitions and in some cases has closed out some sites.
- Wisconsin: We are doing alright with the FUDS where projects have been identified. I am concerned that we have not done a lot to identify all the FUDS in Wisconsin that may need additional investigation or remediation. We really don't know the full universe of potential work that needs to be done. This is as much a workload issue for State staff as it is for the USACE.
- Wyoming: The USACE often ignores the State's input on what to do next at a site and on where to apply funding on sites. At one site in particular, that we have ranked as our highest priority site, this is the case. The USACE has spent significant time and money trying to show that the contamination is not from the FUDS site rather than taking a balanced approach to the investigation. Recently a facilitator was hired by the USACE and a meeting with the facilitator was held. However, the above problems persist at this site. The USACE has also failed to implement the public outreach agreed to in the Community Involvement Plan for this site for several years. The USACE did not participate in a recent public outreach event

and, despite requests from the public for their participation, does not plan on participating in an up-coming event.

### **Sacramento District:**

California: The FUDS program lacks oversight from EPA or State agencies similar to the oversight that occurs at open and closed military installations. Insufficient funds have caused the USACE to skew the use of limited resources towards at best conservative site investigation activities and more of a defensive posture. Most HTRW FUDS work has stopped for two reasons: one reason is so USACE can better determine site conditions as per the FUDS program Policy or ER 200-3-1; another is to implement the MMRP SI program. ER 200-3-1 contradicts CERCLA in several key areas. The Beneficial Reuse and/or PRP determination under ER 200-3-1 brings the site work to a halt until such time as the USACE determines if these conditions exist. At other parts of the same site, the USACE continues to investigate and may remediate, but due to limited funds this situation is prolonging work from being started at the other potential PRP or Beneficially Used areas. Add this aspect to the DSMOA grants office approach of allowing USACE to add known or suspected PRP properties to the grant, and it is extremely difficult to get a project moving on former large facilities where DOD may not be the sole entity that had a release.

Additionally, USACE uses several approaches for site evaluations, such as early in the process making a site determination (SI stage or earlier), and then matching the future work to support that position regardless of site conditions. They do not waiver much from the initial position throughout the limited investigation process. This leads to difficulty for the regulatory agencies in agreeing with the final conclusions (NDAI, PRP, or Beneficial Reuse) or NOFA. PRP (suspected DDD release) or Beneficial Reuse (site was used similarly) determinations are just another way to say DOD may have contributed. By ER 200-3-1, USACE may negotiate a settlement with the current property owner/operator to relieve them of future responsibility. If there is no viable property owner the USACE will not proactively address the area.

Additionally, due to limited funds, USACE does not want to thoroughly investigate beneficial reuse sites since they may uncover the fact that they are a PRP. Also by ER 200-3-1, once a site is in the PRP universe the site can not have any money planned to be spend from DSMOA or DERP until the PRP work is settled. This is another reason why USACE is reluctant to define PRP properties. The USACE basically does not make the PRP determination so they can continue to spend on DOD only releases on large sites, and try and force the regulators to not enforce against DOD in the other areas.

Another area of differences is the follow through with Administrative controls. USACE believes since they are not the property owner then residual risk through administrative controls (Deed Restrictions, land use covenants, operation and maintenance agreements) are not part of their responsibility under the chosen remedy.

We are looking to work within the USACE staff to move toward a closer relationship and discuss issues in a positive way. Closing out properties as soon as possible and remediating as much of a property as possible without resorting to administrative controls appears to be the only way the USACE wants to proceed. The down side is complete remediation to unrestricted use is expensive and thus the lack of funds impacts their decision authority.

Utah: Issues working well: We have been getting sites closed out, which has helped in securing funding.

Issues not working well: USACE and the Bureau of Land Management (BLM) have had some difficulties resolving FUDS-related issues involving compliance with the National Environmental Policy Act at BLM-owned sites. Also, EPA has placed a number of federally-owned FUDS on the Federal Facility Docket and there have been some challenges coordinating activities at these sites amongst the various stakeholders (USACE, the State, EPA, and the federal owner).

### **Savannah District:**

North Carolina: Issues working well would include the Restoration Advisory Board (RAB) and the MAP meetings. This State has only one FUDS RAB, which is for an MMRP site in a growing residential area. While the USACE does the minutes and most of the presentations, the agenda is put together by the USACE with input from the civilian co-chairman. The civilian co-chairman conducts the meetings. This RAB has resulted in good relations between USACE, State, EPA, local officials, and the public. On occasion when a local resident attends a meeting, they have expressed a very positive opinion of the USACE and how they are conducting the sampling and UXO removals. The twice-yearly MAP meetings have been the mechanism to review in detail both the current and next year FUDS cleanup program. During this presentation the State provides their input and any issues on schedule are resolved. On the negative side, the USACE is at times slow to respond to State needs, less frequently in late 2007 and 2008. The best example is it took the USACE over 9 months to sign the MAP agreement and send us back an official copy. Also the USACE sometimes provides very short notice on MMRP TPP meetings.

South Carolina: No Response.

Tennessee: No Response.

**Tulsa District:**

Oklahoma: The PRP/liability issue, problems with MMRP investigations and scopes of work, the lack of responsiveness for the USACE to respond to issues in a timely manner, their attitude about working with States to address our regulatory concerns.

Texas: One area of recent improvement with the USACE concerns State involvement with the MMRP PA/SI projects. TCEQ had a number of issues with the USACE concerning these projects including: failure of the USACE to respond to TCEQ technical comments, inadequate regulatory review times, lack of agreement on regulatory screening criteria and other decision making criteria. TCEQ held a conference call with the USACE and EPA Region 6 representatives to resolve these issues and generally found agreement on how to resolve/minimize these issues. Note that this was achieved without the need for, or use of, the Texas MAP. However, the MAP would be a good document to memorialize what was agreed to.