



EPA's Federal Facilities Restoration and Reuse Office

EPA's Involvement in BRAC, Performance-Based Contracting, & NPL Deletions

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Overview

- History: BRAC Rounds I-IV
- BRAC 2005
 - Early Transfer
 - Privatization
- Observations and Lessons Learned
- Performance-Based Contracting
- NPL Deletions



BRAC Rounds I-IV

- EPA participates, or has participated, in the cleanup of at least **107 BRAC I – IV sites**
 - 35 National Priorities List (NPL)
 - 72 non-NPL
- EPA worked at 73 BRAC I – IV facilities in FY 2006
- How has EPA participated?
 - Memorandum of Understanding (MOU) with DoD
 - BRAC Cleanup Teams (BCTs) formed with assistance from DoD
 - Activities: Clean parcel determinations, NEPA reviews, EBS reviews, cleanup oversight, supporting state and local governments, property transfer reviews and concurrence, community involvement, etc.



BRAC 2005

- Of the more than 800 active, National Guard and Reserve facilities affected by an action in BRAC 2005, 72 also have NPL status:
 - 6 are base closures
 - 33 are realignments (lose functions and/or personnel)
 - 33 will have a net gain in personnel and/or functions



EPA's Role in BRAC 2005

- EPA has statutory obligations related to the cleanup and property transfer of installations on the NPL
 - CERCLA Section 120
- EPA anticipates a lesser role at non-NPL BRAC bases
 - Statutory requirements will still be fulfilled



BRAC 2005 Tools

- The use of select tools for BRAC 2005 closures and realignments will require more EPA involvement:
 - Disposal of property through the Early Transfer provisions
 - Privatization of environmental cleanup by the early transfer property recipient



Early Transfer Authority

- EPA Administrator (and Governor of the State) required to approve the covenant deferral request for all NPL early transfers
 - Service may retain cleanup responsibility
 - Transferee may take cleanup responsibility
- Use of Public Sale in disposing of contaminated property
 - Has never been done at a NPL facility
 - Regulators role where multiple bidders agree to take on cleanup responsibility?



Privatization of Cleanup

- Privatization is expected to be used more frequently for environmental cleanup
 - DoD believes privatization is a better way of doing business (e.g., NTC Orlando = Baldwin Park, a 2006 Phoenix Award winner)
 - To date, early transfer with privatization has **only** been done at non-NPL facilities
 - NPL sites differ significantly from non-NPL sites because:
 - EPA must approve the early transfer
 - NPL sites generally will have a Federal Facility Agreement (FFA) in place
 - Certain provisions of CERCLA specifically apply to NPL sites, such as EPA and DoD joint selection of cleanup remedy
 - NPL sites may have greater contamination



Current Cleanup Privatization Approach at NPL Bases

- Military Service transfers the property to transferee under CERCLA 120(h)(3)(C)
 - EPA and Governor provide concurrence on covenant deferral based on findings
- Transferee agrees to complete response action remaining
 - Military Service may enter into an Environmental Services Cooperative Agreement (ESCA) with Local Reuse Authority (LRA)
 - LRA, or Developer, conducting the cleanup may enter into an enforceable agreement with EPA



Current Cleanup Privatization Approach at NPL Bases

- Possible agreements among parties trying to move forward on privatization:
 - ESCA negotiated between LRA and Military
 - FFA between EPA and Military, amended
 - Enforceable agreement negotiated between party conducting cleanup, EPA, and possibly the state; DOJ also wants to be signatory
 - Property transfer agreement between Military and LRA



NPL Privatization Projects

Current Status

- **South Weymouth Naval Air Station**
 - Privatization on hold due to ongoing land transfer negotiations
- **McClellan AFB**
 - An Administrative Order on Consent (AOC) will be entered into with third-party conducting cleanup on 61-acre parcel
- **Fort Ord**
 - An AOC will be entered into with party conducting MEC cleanup on 3,000-acre parcel



EPA Observations

- It's not easy!
- Negotiating the cost of remaining work to be done can be time consuming for DoD and transferee; negotiations may be time consuming for state and EPA also
- Changes in reuse plans can disrupt the path forward
- All parties involved will need to give and take to make the deal work
- Privatized cleanups need to recognize the need for community involvement
 - CERCLA Section 117 requirements will still apply



EPA Lessons Learned

- Privatization is not one size fits all
- Labor intensive for regulators to negotiate and revise all appropriate enforceable documents
- Privatizations at NPL facilities are probably more difficult
- Regulators play a critical role in the process
- Without sufficient resources, regulators will be challenged to meet the faster pace of cleanup
- At the right site, with the right parties, privatization can be a success
- Know the rules of Performance-Based Contracting





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Performance-Based Contracting



Guidance on Performance Based Contracting

- OSWER Guidance 9272.0-21
- Definition of a PBC:
 - Performance requirements that define the work in measurable, mission-related terms;
 - Performance standards (i.e., quality, quantity, timeliness) tied to the performance requirements;
 - Inclusion of a Government quality assurance (QA) plan that describes how the contractor's performance will be measured against the performance standards; and
 - If the acquisition is either critical to agency mission accomplishment or requires relatively large expenditures of funds, it includes positive and negative incentives tied to the Government QA plan measurements.



Performance-Based Contracting: Guiding Principles for EPA

- The “privity of contract” is between the other federal agency and their contractor
- EPA has no responsibility or authority for the solicitation, award or direction of another federal agency’s contracts
- EPA may be able to assist the development of Statements of Work (SOW) or Statements of Objectives (SOO) to assure they properly address commitments documented in FFAs/Interagency Agreements (IAGs), Records of Decision (RODs), etc
- The ultimate authority for contract management is the Contracting Officer (CO)
- The oversight and direction of contractor performance is the responsibility of the CO



Guiding Principles for EPA, continued

- The CO may delegate certain authorities for technical direction to a Contracting Officer's Representative (COR)
- The COR may not issue direction that changes the cost of the contract (e.g., scope or schedule)
- Changes to a contract involving scope or schedule may only be made by the CO
- Unauthorized contract modifications involving changes in cost are “constructive changes”
 - Constructive changes can result from direction or recommendation to the contractor by anyone other than the CO. This can include non-CORs from the other federal agency or EPA personnel



Addendum to Guidance

- To maintain progress toward protection of human health and the environment at federal facilities while assuring integrity in contract management, the following process should be used as an alternative to the original guidance:
 - The EPA Region should execute a Memorandum of Understanding (MOU) between the Region and the federal organization responsible for environmental cleanup, defining communication protocols among the parties regarding the contractors working for the other federal organization.
 - The MOU should recognize that EPA does not have privity of contract with the other federal organization's contractors and is not directing the work of the contractor.
 - Any such meeting between EPA and the contractor, in the absence of a designated CO or COR, would be for the sole purpose of facilitating the resolution of issues related to site cleanup requirements.
- This process only is appropriate in situations where EPA consistently is asked to meet with contractors in the absence of authorized representatives of the other federal agency





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Superfund NPL Deletions and Partial Deletions

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NPL Deletions

- NCP states that a site may be deleted from the NPL where no further response is appropriate
- EPA interprets this criteria to mean that a site may be deleted when all removals and remedial actions are completed
 - all cleanup goals have been achieved, and
 - all institutional controls are in place
- Note that Operation & Maintenance (O&M) is not defined as a response by the NCP; therefore, a site with continuing O&M can be deleted.





NPL Deletions

- EPA must determine, in consultation with the State, that one of the following criteria has been met:
 - Responsible or other parties have implemented all response actions required;
 - All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
 - The remedial investigation has shown that the release(s) poses no significant threat to public health or environment, and therefore, taking of remedial measures is not appropriate.





NPL Deletion Process

- The Deletion process may begin once a site has achieved the site construction completion milestone
- Regional staff prepare a deletion docket containing all of the pertinent information supporting the deletion recommendation including the letter of concurrence from the State. ***A site can not be deleted if the state does not concur***
- Deletion dockets should be available to the public at the EPA Regional office and a local repository. Docket information should also be electronically available or referenced in the Federal Docket Management System (FDMS)
- Regions publish the Notice of Intent to Delete (NOID) in the Federal Register (FR). The NOID informs the public of EPA's intention to delete a site from the NPL. The NOID provides for a 30 day public comment period

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NPL Deletion Process

- If comments are received on the NOID, the Region prepares a responsiveness summary for all local and national comments received
- The responsiveness summary, approved by the Regional Administrator, is added to the FDMS docket, along with the Regional docket and local repository
- The Notice of Deletion (NOD)--which includes an effective date, a Regional contact, supplemental site information, and the responsiveness summary--is signed by the Regional Administrator and published in the FR





Direct Deletions

- Sites can be deleted using a direct final notice procedure
- This procedure is to publish both a NOID and NOD in the same FR Notice, and declare that the NOD will become effective unless EPA receives adverse or critical comments during the public comment period
 - Eliminates second round of reviews, thereby reducing the amount of internal time needed to finalize the deletion process
 - If adverse or critical comments are not received, the deletion becomes effective without any further EPA action
- If adverse comments are received, the Region must issue a notice in the FR withdrawing the deletion. The withdrawal notice must be published in the FR within 60 days of the original notice





Partial Deletion

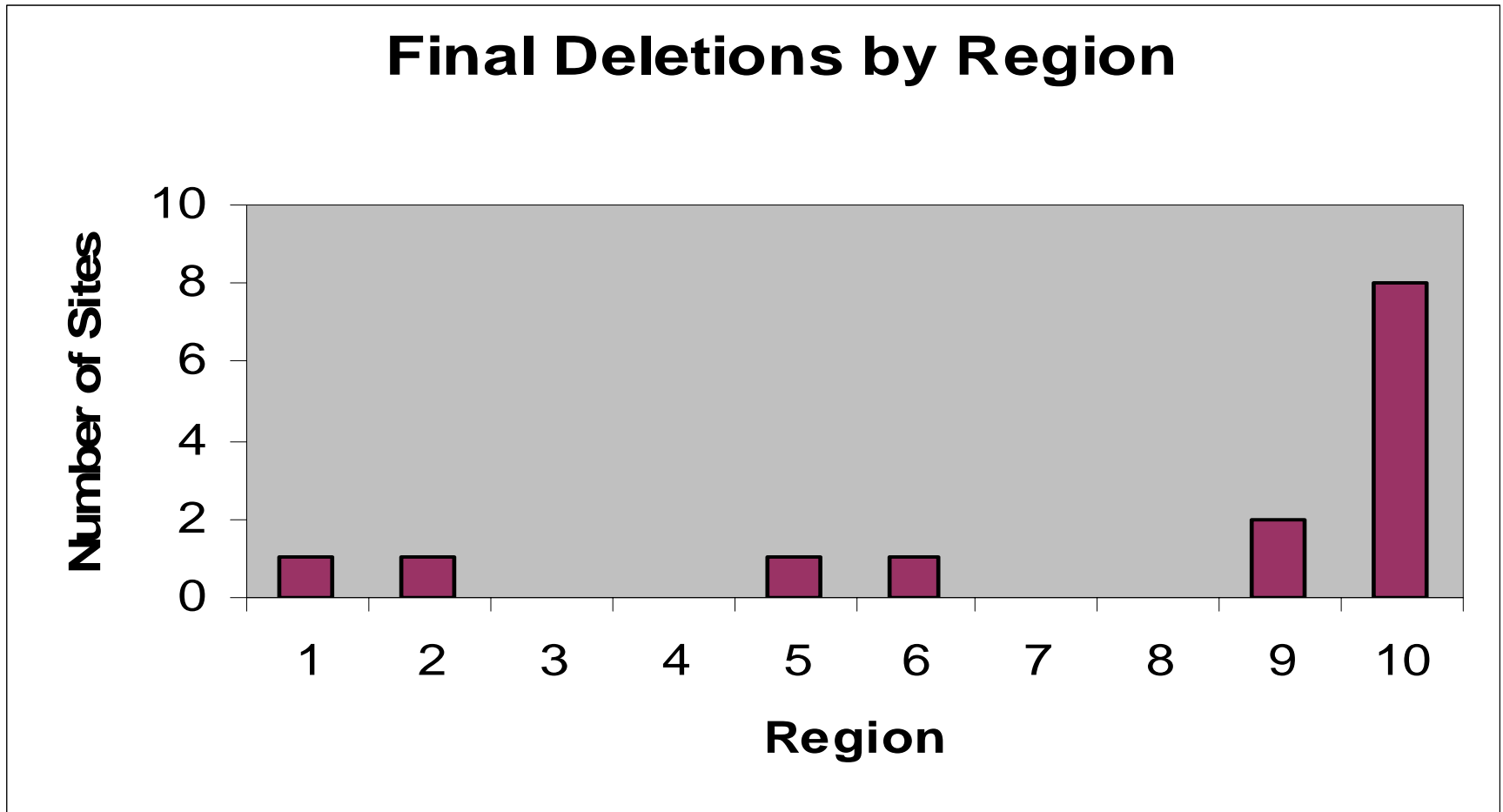
- In 1995, EPA published in the FR the Partial Deletion Rule, which allows EPA to delete portions of a NPL site
 - Total site cleanup may take years, while portions of the site may have been cleaned up and may be available for productive use
 - Deletion of an entire site does not always communicate successful cleanup of portions of those sites
- Any person, including individuals, business, entities, States, local government, and other Federal Agencies may submit a petition requesting a partial deletion
- There are specific mapping requirements for partial deletions to precisely delineate the portion of the site to be deleted
- The process for partial deletion is similar to a final deletion
 - The partial deletion is published in the FR as a Notice of Intent and then the final notice





Federal Facility Final Deletions

Final Deletions by Region



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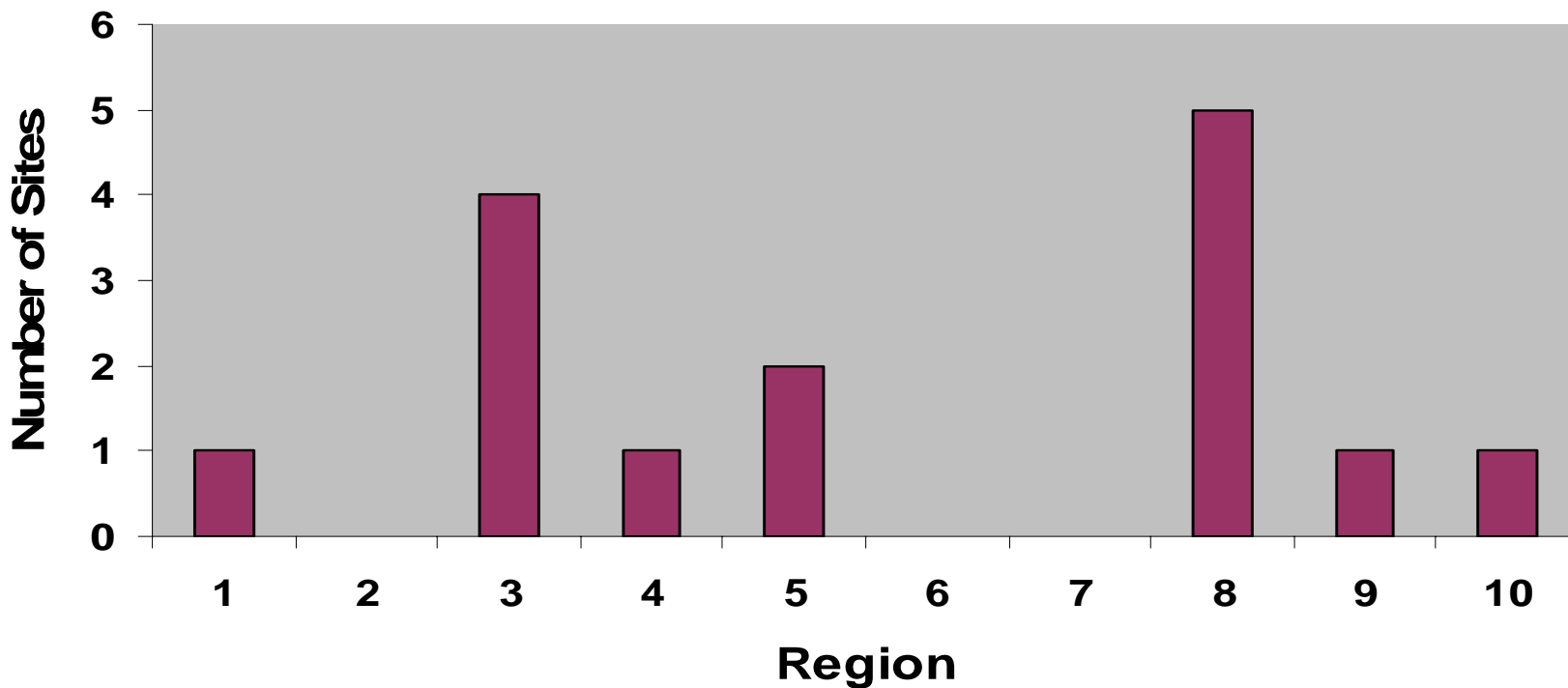
Source: CERCLIS,
October 2006





Federal Facility Partial Deletions

Partial Deletions by Region



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Source: CERCLIS,
October 2006





Contact Information

U.S. Environmental Protection Agency

Office of Solid Waste and Emergency Response
Federal Facilities Restoration & Reuse Office
Website: <http://www.epa.gov/fedfac>

Office of Superfund Remediation & Technology Innovation
Website: <http://www.epa.gov/superfund>

Office of Enforcement and Compliance Assurance
Federal Facilities Enforcement Office
Website: <http://www.epa.gov/compliance/federalfacilities>

Federal Facilities Environmental Stewardship and Compliance Assistance Center
Website: <http://www.fedcenter.gov>

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