

13 July 1999

Re: NEPA Technical Inquiry 0551 - GSA Guidance for Disposing of Property with Environmental Contamination

Dear NEPA Call-In User:

This letter is in response to your June 24, 1999 request for guidance on the General Services Administration's (GSA's) existing policy regarding disposing of property with environmental contamination, specifically property with soil contamination.

SUMMARY OF FINDINGS

NEPA Call-In determined that the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), Section 120(h)(3) "Contents of Certain Deeds" (enclosed) requires full disclosure of all known hazardous substance activity and specifies covenants be provided in deeds for disposal of Federal property. Also, the Community Environmental Response Facilitation Act (CERFA), requires Federal agencies to identify uncontaminated parcels of land prior to terminating Federal Government operations and to include specific covenants in deeds used to transfer property.

The Office of Property Disposal's "Environmental Guidebook for Realty Specialists" (the Guidebook) (enclosed), states that it is necessary when disposing of a property with environmental contamination to make a statement indicating whether or not, during the time the property was owned by the United States, any hazardous substance activity took place. NEPA Call-In is currently awaiting further information from the Redeplo Service Division of GSA with regard to your inquiry. Our detailed findings are provided

DETAILED FINDINGS

NEPA Call-In reviewed the GSA Intranet document library on "Insite" and found one document pertaining to disposing of property with environmental contamination (including soil contamination): GSA Order PBS P 4001.1, "Excess and Surplus Real Property," Chapter "Environmental, Historic, and Coastal Zone Management Considerations" (enclosed). This document references CERCLA Section 120(h)(3), created by the Superfund Amendments and Reauthorization Act (SARA). SARA requires full disclosure of all known hazardous substance activity and specifies covenants be provided in deeds for disposal of Federal property. If the proposed property disposal action is from GSA to another Federal Agency no deed is involved and Section 120(h)(3) "Contents of Certain Deeds" does not apply. For all transfers CERCLA Section 120(h)(1) "Notice" and (2) "Form of notice; regulations" requires that a notice regarding hazardous substance activity be provided in any contract for the sale or transfer of real property.

PBS 4000.1 also references the Community Environmental Response Facilitation Act (CEFA) enacted on October 18, 1992, which amended paragraph (4) to Section 120(h) of CERCLA. This new paragraph requires Federal agencies to identify uncontaminated parcels of land prior to terminating Federal Government operations, and to include specific covenant deeds used to transfer property. The law also details a process for agencies to follow in order to accomplish this identification.

NEPA Call-In then searched its files and found the Office of Property Disposal's "Environmental Guidebook for Realty Specialists." The Guidebook states that in regard to Reports of Excess (ROEs), Title 41 Code of Federal Regulations (CFR) Part 101-47 requires that each ROE include a statement indicating whether or not, during the time the property was owned by the United States, any hazardous substance activity took place on the property. If such activity took place, the holding agency must include information to GSA on the

and quantity of such hazardous substance and the time at which such storage, release disposal took place.

The holding agency must also advise GSA if all remedial action necessary to protect health and the environment with respect to the hazardous substance activity has taken place before the date the property was reported as excess. If such action has not been taken, the holding agency must advise GSA when the action will be completed. If no hazardous substance activity took place then the reporting agency must include a statement stating as such.

If the hazardous substance activity has been brought to the attention of GSA, GSA will incorporate the information into the "Invitation for Bid" and include a statement that describes the type and quantity of hazardous substances; the time at which storage, or disposal took place; a description of the remedial action taken; and a statement that the action has been completed. This statement is outlined in the Guidebook. The Guidebook states that GSA's current reading of CERCLA places the burden of performing the cleanup identification on the holding agency.

NEPA and other environmental statutes may also apply to real property disposal in the future. The PBS NEPA Desk Guide provides guidance on NEPA analysis. The Desk Guide can be found on the website at www.gsa.gov/pbs/pt/call-in/erl/deskref/deskref.htm.

Finally, to determine if any other applicable guidance or policy documents exist, NEPA Call-In contacted the Director, Redeployment Service Division, GSA National Office for additional information regarding your inquiry. At this time, NEPA Call-In is awaiting response from the Director and will forward to you any information as soon as it is received and reviewed.

The materials in this TI have been prepared for use by GSA employees and contractors and are made available at this site only to permit the general public to learn more about NEPA. The information is not intended to constitute legal advice or substitute for obtaining legal advice from an attorney licensed in your state and may or may not reflect the most current legal developments. Readers should also be aware that this response is based upon laws, regulations, and policies in place at the time it was prepared and that this response will not be updated to reflect changes to those laws, regulations and policies.

Sincerely,

(Original Signed)

NEPA Call-In Researcher