

MEMORANDUM FOR USACE COMMANDS

SUBJECT: Policy Guidance Letter No. 34, Non-CERCLA Regulated Contaminated Materials at Civil Works Projects

1. Applicability. This memorandum supplements CECW-PA Memorandum, 21 March 1990, subject: Cost Sharing of Hazardous and Toxic Wastes (HTW) Activities Associated with Civil Works Projects and Studies, and applies to contaminated materials that are not regulated by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), but are subject to a validly promulgated Federal, State or local regulation and require special action.
2. Guidance. For all contaminants not regulated under CERCLA, but for which there is a validly promulgated Federal, State, or local requirement necessitating special action which would apply to the Government and others pursuing similar initiatives, the cost of the special action necessary to comply with the requirements will be included in project cost.
3. Cost Sharing. Costs for the required actions for contaminated material, not regulated by CERCLA, will be a project cost and will be shared as a construction cost. Land value credited to a sponsor will be the fair market value of the land in the condition acquired, considering any contamination that may be present. Project costs will be shared in accordance with the cost sharing provisions of the Water Resources Development Act of 1986.
4. Procedure. Investigations will be undertaken during the planning phase to indicate the presence of contaminated materials in the project area. Any required action: mediation, treatment, handling, or disposal, will be included in the design and cost estimate as part of the project cost.
5. Exception. If, prior to initiation of project construction, the sponsor wishes to accomplish the required action, the action is considered to be a separate undertaking, independent of the Civil Works project. Therefore, for project cost and economic analysis, the value of the land is the fair market value after the required action. The sponsor receives credit for the fair market value of the land after the required action, but does not receive credit for the cost of undertaking the required action.

FOR THE COMMANDER:

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Director of Civil Works