

BUREAU OF ENVIRONMENTAL REMEDIATION
Assessment and Restoration Section

POLICY

NATURAL RESOURCE DAMAGE ASSESSMENTS

BER POLICY # BER-ARS-044

DATE: April 1, 2002

PAGES: 3

Assessment and Restoration Section Chief: Leo G Henning Date: 3-26-02
Storage Tank Section Chief: Thomas W Date: 03-26-02
Remedial Section Chief: DB Date: 03-29-02
Bureau Manager: Mary Black Date: 4/01/02

REVISIONS

Revisor: _____ Date of Revision: _____

Section Chief: _____ Date: _____

Bureau Manager: _____ Date: _____

Revisor: _____ Date of Revision: _____

Section Chief: _____ Date: _____

Bureau Manager: _____ Date: _____

Revisor: _____ Date of Revision: _____

Section Chief: _____ Date: _____

Bureau Manager: _____ Date: _____

BUREAU OF ENVIRONMENTAL REMEDIATION POLICY

Natural Resource Damage Assessments

BER POLICY # BER-ARS-044

DATE: April 1, 2002

PAGES: 1 of 3

This policy establishes the use of Natural Resource Damages Assessment (NRDA) as a mechanism for restoring, replacing, or seeking compensation for injury to, destruction of, or loss of natural resources that are not adequately addressed through remedial actions of the responsible party. The intent of this policy is to provide guidance for use by the Bureau of Environmental Remediation when considering implementation of NRDA action.

The NRDA process is authorized in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9601 et seq., the Oil Pollution Act (OPA), 33 USC 2701 et seq., and the Clean Water Act (CWA), 33 USC 1321. The natural resource trustee for the State of Kansas is the Secretary of the Kansas Department of Health and Environment (KDHE). The lead federal agency that has natural resource trusteeship in the State is the Department of Interior, US Fish and Wildlife Service. Natural resources are defined in this policy as: air, soil, sediment, aquatic biota, terrestrial biota, surface water, and ground water in the State of Kansas. The Secretary of KDHE and the US Fish and Wildlife Service must consider restoration, replacement, or seek compensation for these natural resources if they were lost due to a release of a hazardous substance or oil.

If the release is a violation of the OPA or CWA there are three questions that need to be answered to determine if there is a need for a NRDA action. The three questions are:

- 1) Would have natural resource injuries occurred, or are likely to occur from the release;
- 2) Were the response actions not adequate to address the injuries resulting from the release, and;
- 3) Are there feasible, primary and/or compensatory restoration actions to address the potential injuries (can it be cleaned up and restored)?

The answer to these questions must be “Yes” in order to proceed with a NRDA action. If one of these conditions is not met, the trustees can not take any additional actions. If the answer to these questions are “YES” please contact the NRDA Coordinator and the program specific Section Chief to discuss the specifics of the site. If you do not feel comfortable answering these questions contact the NRDA Coordinator for assistance.

The best restoration is achieved early in the process of response and/or remediation by limiting the extent of the damage. Restoration of the natural resources should be considered during all phases of the response. NRDA is the final option if the initial response or cleanup is inadequate to restore the natural resources to the condition they were in prior to the release.

BER POLICY # BER-ARS-044

DATE: April 1, 2002

PAGES: 2 of 3

If the release is a violation of CERCLA there are five basic questions that must be answered to make a decision to proceed with a NRDA action. The first five questions are:

- 1) Has there been a release of a hazardous substance;
- 2) Has a natural resource been injured (“injured” means has the natural resource been harmed / reduced compared to what that resource was prior to the release);
- 3) Was the quantity of material released sufficient to cause the injury;
- 4) Is there enough data readily available to document the release and injury;
- 5) Will the remedial or removal action fail to restore all of the natural resources to the condition they were prior to the release, or will the use of the resource be limited during the implementation of the remedial or removal action?

All the answers to the first five questions above need to be “YES” in order to proceed with a NRDA action. If any of the answers to the first five questions is “NO”, then a NRDA action would not be merited. Contact the NRDA Coordinator if there is a question about how to answer any of the first five questions.

If the first five questions are answered “YES”, then there are a second series of additional questions that need to be answered before a NRDA action can be considered. They are:

- 1) Was the release permitted or according to a permit;
- 2) Did the release occur prior to the enactment of CERCLA (Dec. 11, 1980) and did not continue to impact natural resources after the enactment of CERCLA;
- 3) Was the release from the normal application of a compound registered under Federal Insecticide, Fungicide, Rodenticide Act;
- 4) Was the release permitted by some other federal permit;
- 5) Was the released material recycled oil?

All the answers to the second series of questions must be “NO” in order to proceed with a NRDA action. If any of the second series of questions are answered “YES”, a NRDA action will not be considered. If all the above questions can be answered “No”, then the site will be considered for a possible NRDA action and the site information must be forwarded to the Section Chief and NRDA Coordinator. The NRDA Coordinator in conjunction with the Bureau Director and the program specific Section Chief will determine if KDHE will proceed with a NRDA action.

KDHE and/or the US Fish and Wildlife Service will pursue NRDA actions at all sites where NRDA actions are appropriate. KDHE will consider NRDA actions when the remedial or removal response does not return the natural resources to pre-release conditions in a timely manner. KDHE will also consider NRDA actions if a responsible party files bankruptcy and contamination continues to impact a natural resource of the State. All responsible parties that declare bankruptcy prior to completion of the remedial or removal action must be identified to the NRDA Coordinator.

BER POLICY # BER-ARS-044

DATE: April 1, 2002

PAGES: 3 of 3

It will be the responsibility of the project manager to identify sites that should be considered for NRDA actions. The project manager should notify their Section Chief of the potential NRDA site, and upon approval by the Section Chief the site information should be forwarded to the NRDA Coordinator. Please contact the NRDA Coordinator if there is any question about whether a site should be considered for a NRDA action.