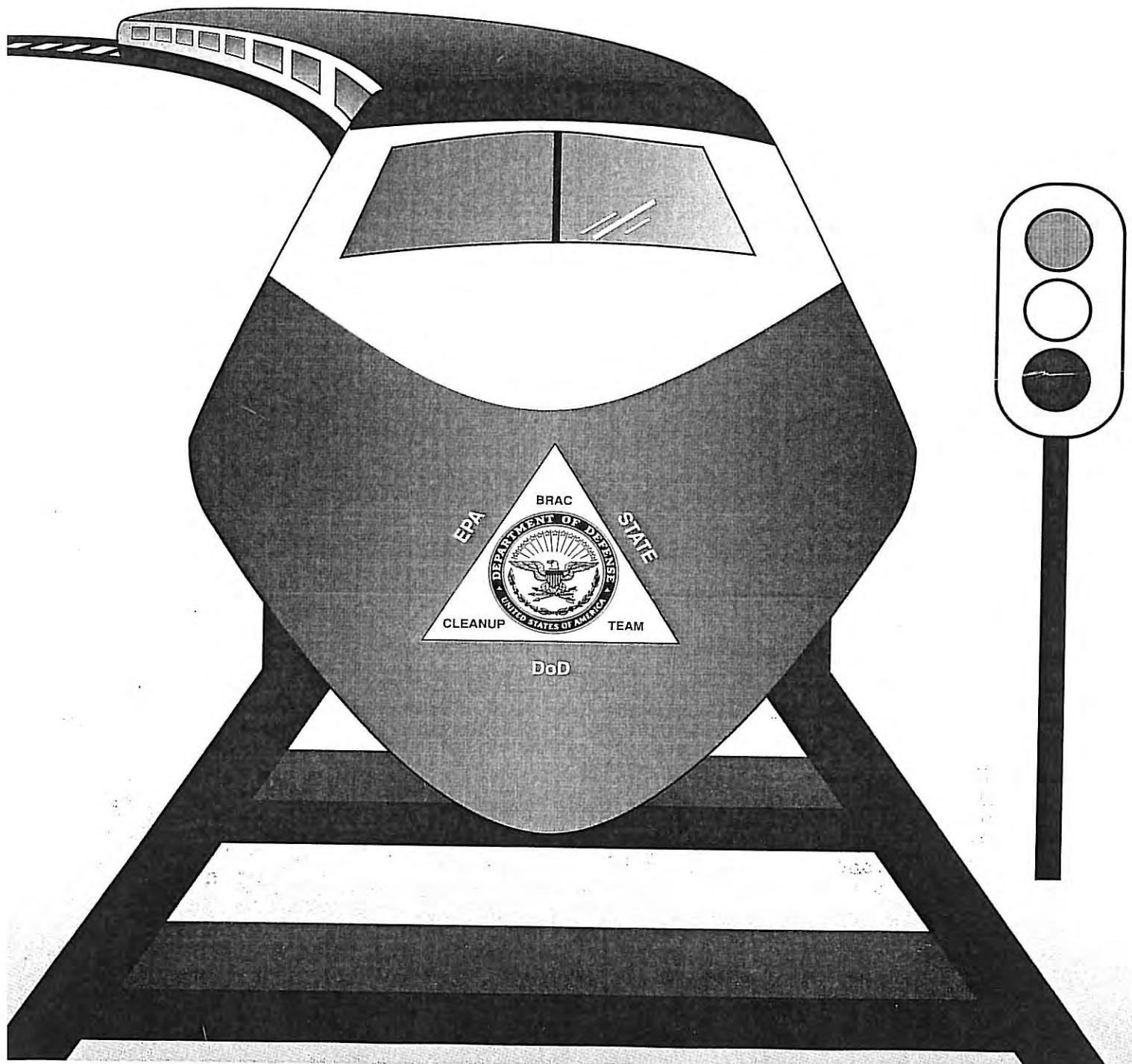


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# FAST TRACK TO FOST

**A GUIDE TO DETERMINING IF PROPERTY IS  
ENVIRONMENTALLY SUITABLE FOR TRANSFER**

**INTERIM FINAL, FEBRUARY 1995**



This guide was prepared by a joint work group made up of representatives from the Office of the Secretary of Defense, the Military Services, the U.S. Environmental Protection Agency, and the California Environmental Protection Agency. *Fast Track to FOST* is published by the Office of the Deputy Under Secretary of Defense (Environmental Security) and is endorsed by the Defense Environmental Response Task Force. This document is published as an interim final version.



The office of the DUSD(ES) invites comments on this document that will help enhance the final version. Please send comments no later than September 30, 1995, to the following address:

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# FAST TRACK TO FOST

## A GUIDE TO DETERMINING WHETHER PROPERTY IS ENVIRONMENTALLY SUITABLE FOR TRANSFER

On September 9, 1993, the Department of Defense (DoD) issued its policy on fast-track cleanup at closing installations. The policy is part of DoD's implementation of the President's program to revitalize communities in which DoD installations are closing through accelerated cleanup and reuse of property. In June 1994, DoD issued guidance on the environmental review process to reach a finding of suitability to transfer (FOST) for real property made available under the base realignment and closure (BRAC) process (DoD FOST guidance). This guide, *Fast Track to FOST*, highlights the administrative procedures prescribed in DoD's FOST guidance. It is not designed to provide definitive interpretations of the laws governing transfer of property by federal agencies.

*Fast Track to FOST*, as well as DoD's FOST guidance, was prepared by a joint work group composed of representatives from the Office of the Secretary of Defense (OSD), the Military Services, the U.S. Environmental Protection Agency (EPA), and the California Environmental Protection Agency. DoD's FOST guidance provides a framework for documenting the conclusion that real property made available through the BRAC process is environmentally suitable for transfer by deed under Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Nothing in DoD's policy or in this guide negates the requirement to comply with the National Environmental Policy Act (NEPA).

*Fast Track to FOST* will assist the BRAC environmental coordinator (BEC), the other members of the BRAC cleanup team (BCT), and other individuals in the chain of command in expediting the transfer of property on which hazardous substances or petroleum products may have been stored, released, or disposed of. Key citations of CERCLA and key definitions pertinent to this guide are included in Figure 1. In addition for easy reference, Section 120(h) of CERCLA is included as an insert to this guide.

*Fast Track to FOST* is a guide to organizing and coordinating the evaluation of the environmental condition of real property to determine the property's suitability for deed transfer. The process of completing an environmental review to reach a FOST should be a coordinated effort among the DoD, EPA, and state members of the BCT. The steps outlined in *Fast Track to FOST* will guide the BCT through the administrative and environmental review process to

reach a FOST. The process begins when a party, usually through the local redevelopment authority (LRA), expresses firm interest in obtaining a deed to real property from the closing installation or when the DoD Component begins planning a transfer of property. The LRA must coordinate with the BCT on the schedule and priority of such property to be reviewed for a FOST. The base transition coordinator (BTC) should assist in the transfer of information between the BCT and the LRA. When property is first identified for transfer, it is time to get on the Fast Track to FOST!

The DoD FOST guidance sets forth specific requirements for notifying regulatory agencies and the public during the environmental review process. In addition, for property on which any hazardous substances have been stored for one year or more or are known to have been released or disposed of, Section 120(h) of CERCLA requires that notice of such storage, including the types and quantities of hazardous substances, be given, both in deeds and in contracts for sale. Section 120(h) of CERCLA also requires that deeds contain certain covenants with respect to actions necessary to protect human health and the environment.

The time required to complete a FOST (that is, one that is approved and signed by the appropriate DoD Component) will vary, depending on the complexity of the environmental condition of the property to be transferred. Close coordination between the DoD Component and regulatory agencies is essential to obtain consensus on the notification requirements and covenants for the FOST. If the property to be transferred previously had been identified by the DoD Component as uncontaminated according to criteria established under the Community Environmental Response Facilitation Act (CERFA) and the appropriate regulatory agencies had concurred with the identification, much of the environmental review process for that property will have been done. However, all notifications of the regulatory agencies and the public describing the particular transfer continue to be a crucial part of the FOST process. Requirements for such notifications should not be neglected.

This guide outlines in six steps the process identified in DoD's FOST guidance. Following the six steps will help to accelerate the environmental review process to reach a FOST, putting that process on the Fast Track.


Figure 1. Key Citations and Definitions

<p><b>KEY CITATIONS:</b></p> <p>Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) is codified 42 U.S.C. §§9601–9675.</p> <p>Community Environmental Response Facilitation Act (CERFA) amended §120(h)(3) of CERCLA and added new §120(h)(4) and (h)(5), and is codified 42 U.S.C. §9620(h)(3)–(5).</p> <p><b>The following definitions are excerpts from 40 Code of Federal Regulations (CFR) Part 373 – Reporting Hazardous Substance Activity When Selling or Transferring Federal Real Property:</b></p> <p><b>§373.2 APPLICABILITY.</b></p> <p>(b) The notice required by 40 CFR 373.1 for the storage for one year or more of hazardous substances applies only when hazardous substances are or have been stored in quantities greater than or equal to 1000 kilograms or</p>	<p>the hazardous substance's CERCLA reportable quantity found at 40 CFR 302.4, whichever is greater. Hazardous substances that are also listed under 40 CFR 261.30 as acutely hazardous wastes, and that are stored for one year or more, are subject to the notice requirement when stored in quantities greater than or equal to one kilogram.</p> <p>(c) The notice required by 40 CFR 373.1 for the known release of hazardous substances applies only when hazardous substances are or have been released in quantities greater than or equal to the substance's CERCLA reportable quantity found at 40 CFR 302.4.</p> <p><b>§373.4 DEFINITIONS.</b></p> <p>(a) <b>Hazardous substances</b> means that group of substances defined as hazardous under CERCLA §101(14), and that appear at 40 CFR 302.4.</p>	<p>(b) <b>Storage</b> means the holding of hazardous substances for a temporary period, at the end of which the hazardous substance is either used, neutralized, disposed of, or stored elsewhere.</p> <p>(c) <b>Release</b>, including disposal, spills, and leaks is defined in CERCLA §101(22).</p> <p>(d) <b>Disposal</b> means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous substance into or on any land or water so that such hazardous substance or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground-water.</p>
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*Note: Section 120(h) of CERCLA is included as an insert to this guide.*

## STEP 1

### NOTIFY STATE AND FEDERAL REGULATORY AGENCIES OF THE INTENT TO INITIATE THE FOST PROCESS



The DoD Component must notify federal and state regulatory agencies of its intent to transfer a specific parcel of property at the initiation of the environmental review process to reach a FOST for that property. The BEC should notify the members of the BCT and the members of the BCT representing regulatory agencies, who should serve as the points of contact for notification of other representatives of regulatory agencies, as appropriate. At this point, the BEC also should notify all other members of the BCT project support team who may have roles in the process. That team includes the BTC, who should assist the BCT in coordinating FOST actions with the LRA. Where multiple transfers and associated FOSTs are anticipated, the BCT should establish and maintain a schedule that reflects the order of priority.


Notification of regulatory agencies serves two purposes. It invites the agency representatives to participate in the environmental evaluation of the property, and it provides them the opportunity to express their views on the property's suitability for transfer.

#### SUMMARY OF STEP 1

- Notify regulatory agencies of the initiation of the FOST process.
- Begin to coordinate the full participation of regulatory agencies in the environmental review process.

## STEP 2

### EVALUATE THE PROPERTY FOR TRANSFER



The BCT should evaluate all relevant information about the property to be transferred. The team should start by reviewing the installation's CERFA environmental baseline survey (CERFA EBS). The CERFA EBS (or basewide EBS) is designed to determine or discover the presence or likely presence of a release of hazardous substances. Therefore, it may be a key source of information to be used in determining the suitability of property for

transfer. The BCT should review the CERFA EBS and all existing information about the storage, release, or disposal of hazardous substances or petroleum products on the property proposed for transfer. If information in the CERFA EBS requires updated or additional information to support the FOST, it may be necessary that the BCT prepare a stand-alone EBS document (or a FOST EBS) to support the FOST.

Based on the environmental review process described in the DoD FOST guidance, the property proposed for transfer must be in one of the first four of the seven categories of environmental condition of property identified in DoD's *BRAC Cleanup Plan Guidebook*, published in Fall 1993. Figure 2 describes the seven categories, provides the reference citations for notification and covenant requirements, and identifies the relevant DoD FOST guidance. Note that storage or release of petroleum products is evaluated as part of the FOST EBS, but storage or release of petroleum products only does not prohibit the property's transfer under CERCLA Section 120(h).

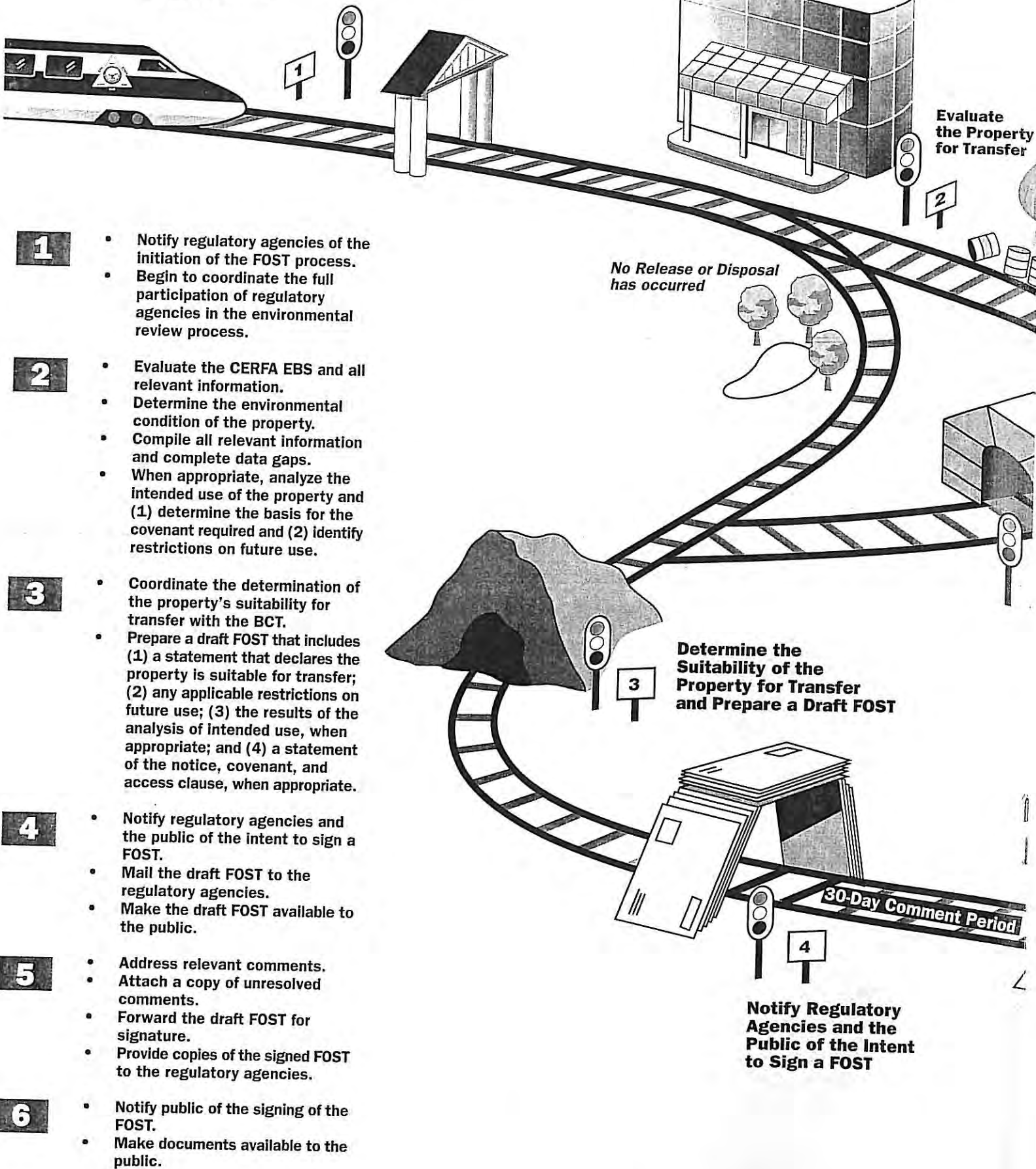
Throughout this step, the members of the BCT (led by the BEC) should work together to compile information, identify data gaps, and update information as

it becomes available. The effort should be aimed at developing a draft FOST. To facilitate the process, three worksheets are included in *Fast Track to FOST* to be used as tools in gathering the information needed to support the FOST. The BCT should work together to complete each worksheet with information on the release, storage, or disposal of CERCLA hazardous substances and petroleum products pertinent to the property proposed for transfer. Completing the worksheets may lead to the identification of data gaps. The BCT should gather additional data or conduct surveys or inspections necessary to fill data gaps and reach a consensus on the current environmental condition of the property and, ultimately, determine the property's suitability for transfer. Figure 3 provides helpful hints for evaluating the property's environmental condition and preparing the FOST.

**Figure 2. Finding of Suitability to Transfer (FOST) Requirements for Notification, Covenants, and Access**

ENVIRONMENTAL CONDITION OF PROPERTY	NOTIFICATION REQUIREMENTS	COVENANT AND ACCESS REQUIREMENTS	RELEVANT DoD FOST GUIDANCE
<b>CATEGORY 1</b> Areas where no storage, release, or disposal of hazardous substances or petroleum products has occurred	No notification required; may be identified under CERCLA §120(h)(4) as "CERFA-uncontaminated"	Covenant and access clauses as prescribed in CERCLA §120(h)	<i>DoD Guidance on the Environmental Review Process to Reach a FOST for Property Where No Release or Disposal Has Occurred</i>
<b>CATEGORY 2</b> Areas where only storage (less than one year) of hazardous substances has occurred, but no release or disposal has occurred	No notification of storage required	Covenant and access clauses as prescribed in CERCLA §120(h)	
Areas where only storage (one year or more) of hazardous substances has occurred, but no release or disposal has occurred	Notification of storage, release, or disposal as prescribed in CERCLA §120(h)(1) for contracts for sale and (3) for deeds		
<b>CATEGORY 3</b> Areas where storage or release of hazardous substances has occurred, but at concentrations that do not require a removal or remedial response			<i>DoD Guidance on the Environmental Review Process to Reach a FOST for Property Where Release or Disposal has Occurred</i>
<b>CATEGORY 4</b> Areas where storage or release of hazardous substances has occurred, and all removal or remedial actions to protect human health and the environment have been taken			
<b>CATEGORY 5</b> Areas where storage or release of hazardous substances has occurred, and removal or remedial actions are underway, but all required remedial actions have not yet been taken	Not eligible for transfer by deed		
<b>CATEGORY 6</b> Areas where storage or release of hazardous substances has occurred, but required actions have not yet been implemented			
<b>CATEGORY 7</b> Areas that are not evaluated or require additional evaluation			

**Notify State and Federal Regulatory Agencies of the Intent to Initiate the FOST Process**



**1**

- Notify regulatory agencies of the initiation of the FOST process.
- Begin to coordinate the full participation of regulatory agencies in the environmental review process.

**2**

- Evaluate the CERFA EBS and all relevant information.
- Determine the environmental condition of the property.
- Compile all relevant information and complete data gaps.
- When appropriate, analyze the intended use of the property and (1) determine the basis for the covenant required and (2) identify restrictions on future use.

**3**

- Coordinate the determination of the property's suitability for transfer with the BCT.
- Prepare a draft FOST that includes (1) a statement that declares the property is suitable for transfer; (2) any applicable restrictions on future use; (3) the results of the analysis of intended use, when appropriate; and (4) a statement of the notice, covenant, and access clause, when appropriate.

**4**

- Notify regulatory agencies and the public of the intent to sign a FOST.
- Mail the draft FOST to the regulatory agencies.
- Make the draft FOST available to the public.

**5**

- Address relevant comments.
- Attach a copy of unresolved comments.
- Forward the draft FOST for signature.
- Provide copies of the signed FOST to the regulatory agencies.

**6**

- Notify public of the signing of the FOST.
- Make documents available to the public.

**Evaluate the Property for Transfer**

*No Release or Disposal has occurred*

**Determine the Suitability of the Property for Transfer and Prepare a Draft FOST**

**30-Day Comment Period**

**Notify Regulatory Agencies and the Public of the Intent to Sign a FOST**

# FAST TRACK TO FOST

## A GUIDE TO DETERMINING IF PROPERTY IS ENVIRONMENTALLY SUITABLE FOR TRANSFER

INTERIM FINAL, FEBRUARY 1995

Release or Disposal  
has occurred



Determine whether all remedial action necessary to protect human health and the environment has been taken

Analysis of  
Intended Use

This guide highlights the administrative procedures prescribed in DoD's FOST guidance. It is not designed to provide definitive interpretations of the laws governing transfer of property by federal agencies. DoD's FOST guidance provides a framework for documenting the conclusion that real property made available through the BRAC process is environmentally suitable for transfer by deed under CERCLA Section 120(h).

Nothing in DoD's policy or in this guide negates the requirement to comply with NEPA.

Complete and  
Sign the FOST

5

Notify the Public of the  
Signature of the FOST

6

Proceed with Deed Transfer

Figure 3. Helpful Hints

- The BCT, led by the BEC, should evaluate the CERFA EBS and all other relevant documents prepared after the CERFA EBS. The information obtained during the evaluation should be used to support the FOST. Because of the information available in a CERFA EBS (that is, basewide EBS) and subsequent documents, preparation of a "stand-alone" EBS document to support the FOST (a FOST EBS) may not be necessary. Documentation to support the FOST may consist of updated portions of the CERFA EBS, including the most recent information.
- Because the information to support the FOST is time-sensitive in relation to current conditions of the property, verification of dated EBS documents and other information and data sources might be necessary. The BCT should review reports and information from studies completed since the CERFA EBS or any other FOST EBS. Visual inspections are a quick and easy way to verify current conditions of concern on the property, such as the status of areas where hazardous substances have been stored.
- Inspections and photographs can help in documenting changes in conditions; the team also can ask experts on the staffs of federal and state regulatory agencies for help in conducting visual inspections.
- During the environmental review process, it is important to review all relevant data, including reports of the most recent environmental compliance inspections by regulatory agencies, as well as those of cleanup studies and actions.
- The BCT should refer to EPA's guidance, *Military Base Closures: Guidance on EPA Concurrence in the Identification of Uncontaminated Parcels Under CERCLA Section 120(h)(4)* April 19, 1994, for assistance in determining if a parcel can be categorized as uncontaminated.
- Categorize installation restoration program (IRP) sites and other areas where release or disposal of CERCLA hazardous substances has occurred into the appropriate category of environmental condition of property. Next, estimate the boundaries associated with the extent of contamination from those sites and areas of concern to identify a reasonable area that falls into that category.
- Work to resolve comments, as any unresolved comments submitted by the regulatory agencies or the public will be attached to the FOST.
- **Remember that areas that fall into categories 5, 6, or 7 are not suitable for transfer by deed until the required investigations or remedial actions have been completed and the property has been reclassified.**

#### ANALYSIS OF INTENDED USE

The analysis of the intended use (or most probable reuse) is a component of a FOST for property on which release or disposal has occurred and serves two purposes. First and foremost, the analysis of the intended use provides the basis for giving the covenant required by CERCLA Section 120(h)(3) regarding hazardous substances. The basis will be either (1) a determination has been made that no remedial action is required or (2) a determination has been made that all remedial action necessary to protect human health and the environment has been taken. The determination that no remedial action is required may be supported by appropriate documentation under applicable environmental regulatory programs, or may be based on consensus of the members of the BCT. Such documentation may include a CERCLA record of decision (ROD); a decision of no further response action planned (NFRAP); or other such similar decision documents under DERP, RCRA, Underground Storage Tank (UST) programs, or state law. The intent is to use the processes set forth under existing cleanup authorities and programs to determine whether property requires remedial action or can be transferred as is.

For parcels that require remedial action (rather than corrective action or removal action), the covenant that all remedial action has been taken may be made only after demonstration to EPA that an approved remedy has been installed and is operating properly and successfully; whether or not the installation is included on EPA's National Priorities List (NPL). Note that the authority to approve a remedy may rest with the state regulatory agency; in that case, the state regulatory agency would be involved independently in evaluating the performance of the remedy.

Second, the analysis of intended use allows the identification of restrictions on future use of the property that may have been adopted in remedial decision documents. The BCT must analyze the reuse capacity of the property by (1) comparing the type of intended use, if known, with the environmental condition of the property and (2) documenting the rationale for determining that the property is suitable for the intended use, if known. Property may be determined suitable for a particular reuse or for general types of reuse. General types of reuse can be identified from information on current use of property in the vicinity of the subject property, zoning laws, and proposed revisions of those laws, and municipal or community development plans.



When analyzing the suitability of the property for its intended use, the BCT should identify any restrictions on the use of the property necessary to protect human health and the environment or to allow continuation of the environmental restoration process. For remediated property, such restrictions include those documented in a ROD or equivalent decision document. Any such restrictions should be stated in the FOST.

#### SUMMARY OF STEP 2

- Evaluate the CERFA EBS and all relevant information.
- Determine the environmental condition of the property.
- Compile all relevant information and complete data gaps.
- When appropriate, analyze the intended use and (1) determine the basis for the covenant required and (2) identify restrictions on future use.

### STEP 3

#### DETERMINE THE SUITABILITY OF THE PROPERTY FOR TRANSFER AND PREPARE A DRAFT FOST

The property is determined suitable for transfer because (1) no hazardous substances or petroleum products are known to have been released or disposed of on the property (see “no release” FOST guidance, Section III.C) or (2) the requirements of CERCLA Section 120(h)(3) have been met for the property (see “release” FOST guidance, Section III.B.4 and III.C). If there is residual contamination, the potential effect on the future liability on the part of the DoD Component should be considered in determining the suitability of the property for transfer.

After all information about the property has been gathered and analyzed, the DoD Component determines whether the property is suitable for transfer. The determination is based on the findings of the FOST EBS evaluation and the analysis of the suitability of the property for its intended use. Section 120(h) of CERCLA requires that notice be given, both in deeds and contracts for sale, of the storage, release, or disposal of hazardous substances. In some cases, it may be required that certain hazards not regulated under CERCLA be **disclosed**, according to the policies of the particular DoD Component, and that **restrictions on use** related to those hazards be stated in the deed of transfer. Although they are above and beyond those required by the provisions under CERCLA Section 120(h) concerning notice, such disclosures and restrictions should be discussed in the FOST.

If the property is found suitable for transfer, the DoD Component prepares a draft FOST that describes why the property is suitable for transfer; sets forth any disclosures of hazards or restrictions on use; and presents the results of the analysis of the intended use, if appropriate. When appropriate, the draft FOST also should contain a statement of the notice, covenant, and access clause (See Figure 2). Storage of petroleum products only does not prohibit transfer and should be disclosed to the transferee. No covenant is required. The BCT should work closely together in determining whether the property is suitable for transfer.

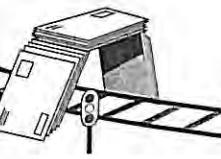
#### SUMMARY OF STEP 3

- Coordinate the determination of the property’s suitability for transfer with the BCT.
- Prepare a draft FOST that includes (1) a statement that declares the property is suitable for transfer; (2) any applicable restrictions on future use; (3) the results of the analysis of the intended use, when appropriate; and (4) a statement of the notice, covenant, and access clause, when appropriate.



## STEP 4

### NOTIFY REGULATORY AGENCIES AND THE PUBLIC OF THE INTENT TO SIGN A FOST



Regulatory agencies and the public are notified, at the earliest possible time, of the intent to sign a FOST. This notice must take place no later than 30 days before the transfer of the property by deed. The notification also begins the 30-day comment period required by the DoD FOST guidance. The notification must be mailed to the regulatory agencies and must include the draft FOST. A copy of the draft FOST and the findings of the evaluation of the EBS must be mailed to the regulatory agencies and made available to the public for review and comment. The installation's restoration


advisory board (RAB) also should be kept informed of FOST actions and be provided with copies of EBS and FOST documents, as requested. The regulatory agencies and the public are allowed 30 days to submit comments to the DoD Component.

#### SUMMARY OF STEP 4

- Notify the regulatory agencies and the public of the intent to sign a FOST.
- Mail the draft FOST to the regulatory agencies.
- Make the draft FOST available to the public.

## STEP 5

### COMPLETE AND SIGN THE FOST



The BCT will review and address all relevant comments received within the 30-day comment period. Efforts should be made by the BCT to resolve any issues raised. The BCT should allow time to review and resolve the comments. Any unresolved comments from the regulatory agencies must be included as attachments to the FOST EBS or the draft final FOST. The BEC should forward the draft final FOST to the installation or base commander, who then will forward it to the appropriate senior service official for signature. Copies of the signed FOST should be provided to the regulatory agencies promptly.


In most cases, the FOST is a one- or two-page document. Supporting documents should be attached to the FOST. A recommended outline of the FOST supporting documentation can be found in DoD's FOST guidance, Section III.B.3.

#### SUMMARY OF STEP 5

- Address relevant comments.
- Attach a copy of unresolved comments.
- Forward the draft final FOST for signature.
- Provide copies of the signed FOST to the regulatory agencies.

## STEP 6

### NOTIFY THE PUBLIC OF SIGNATURE OF THE FOST



After the FOST has been signed and distributed to the federal and state regulatory agencies, the BEC must provide notice to the public that the FOST has been signed. The FOST, along with any unresolved comments from the regulatory agencies, is made available to the public upon request. The notice to the public is best accomplished by publishing a notice, such as a display advertisement, in local newspapers. The

notice also should include the location where the documents are available for public review, such as the local public library.

#### SUMMARY OF STEP 6

- Notify the public of the signing of the FOST.
- Make documents available to the public.



## **WORKSHEETS TO SUPPORT THE FINDING OF SUITABILITY TO TRANSFER (FOST)**

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With the BEC as the lead, the BCT completes the environmental review process and prepares the draft FOST for the property proposed for transfer. The BCT should locate and review all documents necessary for assessing the current environmental condition of the real property to be transferred. Such documents include, but are not limited to, the EBS required under CERFA; reports of studies conducted under the IRP, CERCLA, or RCRA; compliance and inspection records of the installation; records in the possession of the regulatory agencies; records concerning USTs; and reports of asbestos, lead-based paint, radon, and radiological surveys.

The attached worksheets A, B, and C provide examples of information needed to support the FOST. Completion of the worksheets will help document the information reviewed to determine whether the property is suitable for transfer. Completion of the worksheets also will help identify data gaps where additional information may be needed. The BCT is encouraged to work as a team to fill data gaps so that an agreement can be reached on the suitability of the property for transfer. Determining the current environmental condition of the property is the key to this process. Information related to environmental studies and other hazardous conditions might have changed since conditions were last documented. In such cases, reviewing subsequent environmental studies or inspecting areas to determine current conditions will be necessary.



### **Worksheet A: Review of Storage of Hazardous Substances and Petroleum Products**

Identify areas where hazardous substances or petroleum products were stored, and list those areas on the worksheet. In addition, identify the substances that were stored, the quantity that was stored, and the length of time the substances were stored. Use the summary of information on the storage of substances to determine whether notification of storage is required under CERCLA Section 120(h)(1). Finally, determine the category of environmental condition of property. If the property does not fall into categories 1 or 2, go to Worksheet B. *Please note: the presence or storage of petroleum products does not prohibit transfer of property under CERCLA Section 120(h)(3); no covenant is required. However, disclosure of storage of petroleum products, in accordance with policies set forth by the Military Service Components, may be required.*



### **Worksheet B: Review of CERCLA, IRP, or Cleanup Sites**

Identify the sites or areas on which CERCLA hazardous substances have been released or disposed of and list them. Determine the category of environmental condition of property the sites or areas fall into, as indicated by the information gathered. Provide comments, as appropriate, to justify the placement of the site or area in the category selected.



### **Worksheet C: Review of Known or Potential Hazards not Regulated Under CERCLA**

Identify hazards associated with the property that may not be specifically regulated under CERCLA, such as the presence of lead-based paint, polychlorinated biphenyls (PCB), radon, and asbestos-containing material (ACM), as well as the presence of underground storage tanks (UST). List those hazards on the worksheet and indicate the status and description of the hazards. In addition, indicate whether disclosure of the hazards and any restrictions on use of the property related to those hazards are required, according to any policies specific to the appropriate Military Service Component.



**COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION,  
AND LIABILITY ACT (42 U.S.C. 59620)—SECTION 120(H)**

**(h) Property transferred by Federal agencies**

**(1) Notice**

After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, whenever any department, agency, or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency, or instrumentality shall include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release, or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

**(2) Form of notice; regulations**

Notice under this subsection shall be provided in such form and manner as may be provided in regulations promulgated by the Administrator. As promptly as practicable after October 17, 1986, but not later than 18 months after October 17, 1986, and after consultation with the Administrator of the General Services Administration, the Administrator shall promulgate regulations regarding the notice required to be provided under this subsection.

**(3) Contents of certain deeds**

After the last day of the 6-month period beginning on the effective date of regulations under paragraph (2) of this subsection, in the case of any real property owned by the United States on which any hazardous substance was stored for one year or more, known to have been released, or disposed of, each deed entered into for the transfer of such property by the United States to any other person or entity shall contain—

(A) to the extent such information is available on the basis of a complete search of agency files—

- (i) a notice of the type and quantity of such hazardous substances,
- (ii) notice of the time at which such storage, release, or disposal took place, and
- (iii) a description of the remedial action taken, if any;

(B) a covenant warranting that—

- (i) all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer, and
- (ii) any additional remedial action found to be necessary after the date of such transfer shall be conducted by the United States; and

(C) a clause granting the United States access to the property in any case in which remedial action or corrective action is found to be necessary after the date of such transfer.

The requirements of subparagraph (B) shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such real property. For purposes of subparagraph (B)(i), all remedial action described in such subparagraph has been taken if the construction and installation of an approved remedial design has been completed, and the remedy has been demonstrated to the Administrator to be operating properly and successfully. The carrying out of long-term pumping and treating, or operation and maintenance, after the remedy has been demonstrated to the Administrator to be operating properly and successfully does not preclude the transfer of the property.

**(4) Identification of uncontaminated property**

(A) In the case of real property to which this paragraph applies (as set forth in subparagraph (E)), the head of the department, agency, or instrumentality of the United States with jurisdiction over the property shall identify the real property on which no hazardous substances and no petroleum products or their derivatives were stored for one year or more, known to have been released, or disposed of. Such identification shall be based on an investigation of the real property to determine or discover the obviousness of the presence or likely presence of a release or threatened release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, on the real property. The identification shall consist, at a minimum, of a review of each of the following sources of information concerning the current and previous uses of the real property:

- (i) A detailed search of Federal Government records pertaining to the property.
- (ii) Recorded chain of title documents regarding the real property.
- (iii) Aerial photographs that may reflect prior uses of the real property and that are reasonably obtainable through State or local government agencies.
- (iv) A visual inspection of the real property and any buildings, structures, equipment, pipe, pipeline, or other improvements on the real property, and a visual inspection of properties immediately adjacent to the real property.
- (v) A physical inspection of property adjacent to the real property, to the extent permitted by owners or operators of such property.
- (vi) Reasonably obtainable Federal, State, and local government records of each adjacent facility where there has been a release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, and which is likely to cause or contribute to a release or threatened release of any hazardous substance or any petroleum product or its derivatives, including aviation fuel and motor oil, on the real property.

- (vii) Interviews with current or former employees involved in operations on the real property.

Such identification shall also be based on sampling, if appropriate under the circumstances. The results of the identification shall be provided immediately to the Administrator and State and local government officials and made available to the public.

(B) The identification required under subparagraph (A) is not complete until concurrence in the results of the identification is obtained, in the case of real property that is part of a facility on the National Priorities List, from the Administrator, or, in the case of real property that is not part of a facility on the National Priorities List, from the appropriate State official. In the case of a concurrence which is required from a State official, the concurrence is deemed to be obtained if, within 90 days after receiving a request for the concurrence, the State official has not acted (by either concurring or declining to concur) on the request for concurrence.

(C) (i) Except as provided in clauses (ii), (iii), and (iv), the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made at least 6 months before the termination of operations on the real property.

(ii) In the case of real property described in subparagraph (E)(i)(II) on which operations have been closed or realigned or scheduled for closure or realignment pursuant to a base closure law described in subparagraph (E)(ii)(I) or (E)(ii)(II) by the date of the enactment of the Community Environmental Response Facilitation Act, the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after such date of enactment.

(iii) In the case of real property described in subparagraph (E)(i)(II) on which operations are closed or realigned or become scheduled for closure or realignment pursuant to the base closure law described in subparagraph (E)(ii)(II) after the date of the enactment of the Community Environmental Response Facilitation Act, the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after the date by which a joint resolution disproving the closure or realignment of the real property under section 2904(b) of such base closure law must be enacted, and such a joint resolution has not been enacted.

(iv) In the case of real property described in subparagraphs (E)(i)(II) on which operations are closed or realigned pursuant to a base closure law described in subparagraph (E)(ii)(III) or (E)(ii)(IV), the identification and concurrence required under subparagraphs (A) and (B), respectively, shall be made not later than 18 months after the date on which the real property is selected for closure or realignment pursuant to such a base closure law.

(D) In the case of the sale or other transfer of any parcel of real property identified under subparagraph (A), the deed entered into for the sale or transfer of such property by the

United States to any other person or entity shall contain—

(i) a covenant warranting that any response action or corrective action found to be necessary after the date of such sale or transfer shall be conducted by the United States; and

(ii) a clause granting the United States access to the property in any case in which a response action or corrective action is found to be necessary after such date at such property, or such access is necessary to carry out a response action or corrective action on adjoining property.

(E) (i) This paragraph applies to—

(I) real property owned by the United States and on which the United States plans to terminate Federal Government operations, other than real property described in subclause (II); and

(II) real property that is or has been used as a military installation and on which the United States plans to close or realign military operations pursuant to a base closure law.

(ii) For purposes of this paragraph, the term "base closure law" includes the following:

(I) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(II) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(III) Section 2687 of title 10, United States Code.

(IV) Any provision of law authorizing the closure or realignment of a military installation enacted on or after the date of enactment of the Community Environmental Response Facilitation Act.

(F) Nothing in this paragraph shall affect, preclude, or otherwise impair the termination of Federal Government operations on real property owned by the United States.

#### **(5) Notification states regarding certain leases**

In the case of real property owned by the United States, on which any hazardous substance or any petroleum product or its derivatives (including aviation fuel and motor oil) was stored for one year or more, known to have been released, or disposed of, and on which the United States plans to terminate Federal Government operations, the head of the department, agency, or instrumentality of the United States with jurisdiction over the property shall notify the State in which the property is located of any lease entered into by the United States that will encumber the property beyond the date of termination of operations on the property. Such notification shall be made before entering into the lease and shall include the length of the lease, the name of person to whom the property is leased, and a description of the uses that will be allowed under the lease of the property and buildings and other structures on the property.







### Worksheet C: Review of Other Known or Potential Hazards

Site or Area	Status and Description of Hazards		Disclosure of Hazard Required in Deed?		Restrictions on Use Required in Deed?		List of Restrictions, if Required
	Known	Potential	Yes	No	Yes	No	
	Description						
Building 391	✓		Radon mitigation in basement	✓		✓	Disclose presence of radon in FOST EBS and deed
Warehouse	✓	X	Asbestos insulation in crawl space; asbestos is not friable accessible, or damaged (FAD)	✓	P	✓	Disclose presence of asbestos in FOST EBS and deed
4600 Block (Housing area)		✓	Assumed presence of lead-based paint (LBP); in good condition	✓		✓	Disclose assumed presence of LBP in FOST EBS and deed; include health warning information required by Lead-Based Paint Poison Prevention Act

