Department of Energy
Environmental Protection Agency
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Washington, D.C.

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MEMORANDUM

SUBJECT: Joint DOE/EPA Interim Policy Statement on Leasing Under the "Hall Amendment"

FROM:

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Attached is a joint statement between the United States Environmental Protection Agency. (U.S., EPA) and the United States Department of Energy (DOE) providing interim policy on processing proposal for leasing DOE real property using the authority in 42 U.S.C. 7256 commonly referred to as the "Hall Amendment."

DOE and U.S. EPA committed to developing this draft policy in a July 30, 1997, memorandum from the DOE Acting Deputy Assistant Secretary for Environmental Restoration to the Director, U.S. EPA Federal Facilities Restoration and Reuse Office, in response to concern raised by the U.S. EPA on a number of proposed DOE leasing efforts.

The joint interim policy is the product of an interagency work group composed of representatives from Headquarters and field off-ices of both agencies. Previous drafts of this document were circulated to field and Headquarters offices of both agencies and comments were incorporated as appropriate.

DOE and U.S. EPA are also inviting comments on this interim policy from interested parties. Comments should be directed by no later than Ju1y 31 to either Rich Aiken at (202) 586-0415(fax: (202) 586-1737; E-mall: richard.aiken@hq.doe.gov) or to Tim Mott at (202) 260-2447 (fax: (202) 260-5646; E-mall: mott.timothy@epa.gov). After that date, U.S. EPA and DOE will review the comments received and modify and finalize the interim policy. In the meantime, given that leasing is actively occurring at several DOE facilities and that both agencies recognize the need to implement a mutually agreed upon process, this interim policy should be put into effect by our respective organizations immediately.

The "Hall Amendment" provides U.S. EPA with the authority to concur in the DOE determination that the terms and conditions of the lease agreement are "consistent with safety and protection of public health and the environment" for proposed leasing of real property under the "Hall Amendment" at facilities on the National Priorities List (NPL). The policy statement establishes standard procedures, applicable in such instances, for DOE notification and consultation with U.S. EPA prior to leasing to facilitate compliance with this authority. State, local, and other Federal agencies (e.g.., Nuclear Regulatory Commission) also have substantial roles in this process. However, as this policy statement is only between DOE and the U.S. EPA, it does not define the relationship between DOE or U.S. EPA, and these other entities

The intent of this policy statement is to:

- identify the information required by U.S. EPA to carryout its responsibilities at the beginning of the process and thus avoid unnecessary delays;
- provide broad guidance which allows sufficient flexibility to accommodate requirements of existing U.S. EPA Region/DOE Site processes such as Interagency Agreements; and
- facilitate the reuse of the DOE complex and to teamwork between the two agencies.

As the DOE complex continues to transition, DOE will identify additional properties that are not needed by the Department and are available for leasing.. DOE' s interest in leasing stems from its commitment to assist communities affected by the Department's mission changes in their efforts to diversify their economies and minimize their dependence upon the Department. DOE' s interest in leasing, also stems from its need to drive down overhead and other landlord costs associated with maintaining unneeded assets, thus making more of the limited Federal dollars available for direct environmental restoration mission costs.

U.S. EPA has been tasked by the legislation to concur with DOE determination and to apply its technical expertise to ensure that this leasing is protective of the environment and public health and safety. The guidance provided in this interim policy should help both agencies as they carry out their respective roles.

Attachment

Distribution:

United States Environmental Protection Agency
- Superfund/RCRA National Policy Managers, Regions I-X
- Federal Facility Leadership Council.Regions I-X
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United States Department of Energy
- DOE Program Secretarial Officers
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Community Reuse Organizations
Energy Communities Alliance
Site Specific Advisory Boards

JOINT POLICY FOR LEASING OF REAL PROPERTY AT DOE SITES USING THE HALL AMENDMENT (42 U.S.C. 7256(c))

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JOINT POLICY FOR LEASING OF REAL PROPERTY AT

DOE SITES USING THE

HALL AMENDMENT (42 U.S.C. 7256(c))

I. INTRODUCTION

This is a joint policy statement by the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Energy (DOE) establishing standard procedures for DOE notification and In consultation with EPA prior to leasing real property at DOE facilities on the National Priorities List (NPL) under 42 U.S.C. 7256(c), commonly referred to as the "Hall Amendment." State, local, and other Federal agencies (e.g., Nuclear Regulatory Commission) have substantial roles in DOE leasing. However, as this policy statement is only by DOE and the U.S. EPA, it does not try to define the relationship between DOE, EPA and these other entities.

Responsibility for final interpretation of this policy statement and resolution of conflicts that may surface in the implementation of this statement resides within DOE in the Office of Worker and Community Transition and within EPA, the Federal Facilities Restoration and Reuse Office. The parties have agreed to use the jointly-developed guidance document "Improving Communication to Achieve Collaborative Decision-Making" as a basis for resolving conflicts.

II. PROGRAM SCOPE

The following policy is only applicable to the leasing of real property at DOE NPL facilities under the leasing authority provided by the "Hall Amendment" (42 U.S.C. 7256(c)). The policies are designed to fulfill EPA and DOE obligations under the "Hall Amendment" (42 U.S.C. 7256(c)).

A. Authority Under the "Hall Amendment"

Section 3154 of the Fiscal Year (FY) 1994 National Defense Authorization Act, entitled Lease of Property at Department of Energy Weapon Production Facilities, amended Section 646 of the Department of Energy Organization Act (42 U.S.C. 7256) to allow the Secretary of Energy to lease unneeded property under the' control of DOE at DOE facilities that are to be closed or reconfigured. At NPL sites, EPA was given the authority to concur in the DOE determination that the terms and conditions of the lease agreement are "consistent with safety and protection of public health and the environment."

B. General Responsibilities Under the "Hall Amendment"

When using the authority of Section 3154 of the FY 1994 National Defense Authorization Act, the Secretary of Energy must consult with and request the concurrence of the Administrator of the EPA for proposed leases that are on the National Priorities List. The Secretary, following such consultation, will make a determination as to whether the environmental conditions of the

property are such that leasing the property, considering the terms and conditions of the lease agreement, is consistent with safety and the protection of public health and the environment, and the Secretary shall seek the concurrence of the Administrator as to any affirmative determination. The Secretary may enter into a lease without obtaining concurrence from the Administrator if, within 60 days of the Secretary's request for concurrence, the Administrator fails to submit a notice of concurrence with, or rejection of, the Secretary's determination.

C. Applicable Sites

The policy applies to leasing actions for acquired real property and related personal property that is located at a DOE facility to be closed or reconfigured, is not needed by DOE at the time the lease is entered into, is under the control of DOE, and is on the NPL.

D. Roles and Responsibilities

1. The Secretary of Energy

The Secretary is responsible for delegating to DOE field organizations the authority contained in the "Hall Amendment" to make a protectiveness determination and to lease Department of Energy acquired real property and related personal property.

2. The Environmental Protection Agency

EPA's authority to review and concur under the "Hall Amendment" has been delegated to the Assistant Administrator for Solid Waste and Emergency Response and to Regional Administrators by delegation 1200 TN 449 -- "Lease of Property at Department of Energy Weapon Productions Facilities". The Assistant Administrator may re-delegate such authority to the Office Director level. The Regional Administrators may re-delegate this authority to the Division Director level, or equivalent; and/or the Associate Director for the Office of Superfund Programs in Region 3, the Deputy Director for the Waste Management Division in Region 4, and the Chief of the Federal Facilities Cleanup Branch in Region 9. This authority may not be further delegated.

3. DOE Field Organizations

The DOE field organizations may lease, upon terms and conditions that the Field Office Manager Consider appropriate to promote national security or the public interest, acquired real property and related personal property using the "Hall Amendment" authority. Such leasing shall be in accordance with the guidance and direction contained herein.

The DOE field organizations shall consult with the EPA Regional Administrator (or the office delegated the responsibility) to determine whether the environmental conditions of the property are such that leasing the property, considering the terms and conditions of the lease agreement, are consistent with safety and the protection. of public health and the environment.

Before entering, into a lease, the Field Office Manager shall obtain the concurrence of the EPA Regional Administrator (or the office delegated the responsibility) in the determination that the environmental conditions of the property, and the terms and conditions of the lease agreement, are consistent with safety and the protection of public health and the environment. However, the Field Office Manager may enter into a lease without obtaining concurrence from the EPA Regional Administrator (or the office delegated the responsibility within 60 days of the DOE Field Office Manager's request for concurrence, the EPA Regional Administrator fails to submit a notice of concurrence with, or rejection of, the DOE field organization's determination. Additionally, each DOE site should have an approved contact list to whom the official leasing data packages are distributed.

The DOE field organizations are responsible for making determinations as to whether the environmental conditions of the property are such that leasing the property, and the terms and conditions of the lease agreement, are consistent with safety and the protection of public health and the environment, and to seek the concurrence of the EPA Regional Administrator (or the office delegated the responsibility) as to any affirmative determination.

To the extent provided in advance in appropriations acts, the Field Office Manager may retain and use money rentals from a lease using the "Hall Amendment" authority to cover the administrative expenses of the lease, the maintenance and repair of the leased property, or environmental restoration activities at the facility where the leased property is located.

The DOE field organizations are responsible for the day-to-day administration, monitoring" enforcement, and execution of leases using the authority available in the "Hall Amendment." Responsibilities for lease execution, including signature authorities, can not be delegated to U.S. DOE contractors or consultants.

III. LEASING POLICIES

A. Leasing Process Overview

The following is a diagram of leasing Activities that require agreed upon policies between DOE and EPA.

Step in Leasing Process	Comment/Section Reference
DOE, working with existing public participation mechanisms and EPA, identifies property for potential lease.	DOE will interact primarily with Community Reuse Organizations and local site-specific advisory boards, where such bodies exist. Early involvement of regulators is preferable. (Section III.B.6)
DOE consults with EPA on the data and analyses necessary for leasing data package.	DOE should ensure that leasing actions will not impact milestones in the IAG unless such impact s are agreed to by EPA and the State as appropriate. (Section III.B1)
DOE develops, in consultation with EPA, a leasing data Package containing site characterization data and other required information.	(Section III.B.2)
DOE may negotiate with the lessee to perform cleanup.	DOE, not the tenant, retains ultimate responsibility for compliance with the IAG. DOE will ensure that all cleanup actions are consistent with the IAG and will not interfere with planned IAG activities. For activities such as certain Decontamination and Decommissioning (D&D) activities not governed by lessees will be conducted in accordance with DOE policy and guidance pursuant to the lease agreement, and made available to the public in accordance with applicable law and regulations. (Section III.B.4)

DOE may need to review its environmental permits and initiate modification to those permits. The lessee may have to acquire its own permits and/or licenses.	DOE' s preferred approach to commercialization is to not subsidize the commercial entity by including it within DOE' s environmental permits New permitting activities may require specific public participation requirements pursuant to the permit program involved. (Section III.B.7.b)
DOE develops terms and conditions for lease including, in consultation with EPA, those terms and conditions necessary to provide appropriate environmental and safety assurance	In the event of lessee obligations of if use restrictions are needed, DOE will need to specify how lease contract provisions will be monitoring DOE will need to include a long term DOE access clause or have servicing arrangements where lessee agrees to conduct monitoring. (Section III.B.7.)
DOE makes a determination that the proposed lease is consistent with safety and the protection of public health and the environment and submits the determination, together with the applicable lease terms and conditions (above) and the rest or the leasing data package to EPA and formally requests concurrence.	(Section III.B.2 and III.B.8a)
Not later than the submittal to EPA, DOE notifies public of proposed leasing action, and the availability of the relevant leasing document for review.	(Section III.B.6.b)
DOE provides public comments and any DOE responses to EPA in a timely manner.	(Section III.B.6.c)
EPA concurs with, or rejects, the DOE determination.	(Section III.B.8.c)

As the DOE defense complex continues to transition, DOE can expect to identify an increasing

number of properties that are not needed by the Department and are available for leasing. In many instances, future leasing efforts under the "Hall Amendment" would benefit by applying a two step approach as described below.

Step l: Early identification-and-assessment potential lease sites. Buildings and lands that are reasonably expected to be offered for lease- should have a site characterization performed in the early stages following their identification for possible future leasing. Existing data may be used to characterize the potential lease property and to identify additional site characterization data needed. In addition to the site characterization, projected possible lease use(s) should be determined for the parcel or facility. This will accomplish two goals. First, early characterization will provide ample opportunity for regulator participation in the development of the characterization effort and review of characterization data. Second, after a range of potential leasing opportunities or use(s) is identified, community stakeholders will be notified and brought into the discussion to obtain their ideas, concerns, and inputs with respect to the possible outcomes being proposed for the property as well as the scoping of and findings resulting from the site characterization.

Step 2: Specific lease proposals. After the characterization and future use planning efforts are complete, a parcel or facility can be held in inventory until a leasing opportunity arises. Should an appropriate leasing opportunity that is consistent with the range of leasing options be identified, the specific leasing terms and conditions will be developed and a determination that the proposed leasing is consistent with safety and the protection of public health and the environment will be developed and submitted to EPA for concurrence. This would be consistent with "Hall Amendment" provisions that EPA render its concurrence after consideration of the terms and conditions of the lease. The final concurrence can move forward without any further characterization or stakeholder participation requirements unless either:

- stakeholder involvement mechanisms are no longer useful(e.g., too much time has elapsed)
- the characterization data are no longer up-to-date or satisfactory and, therefore, do not provide a description of the site's current conditions; or
- a change in land use scenario or length of use is proposed for the land or facility fro that presented in the earlier work.

B. Leasing Process Elements

1. Early Coordination Between Agencies

Early regulator involvement in leasing decisions is critical to success. A team approach involving DOE, EPA, and, as appropriate, the State environmental agency is one method for ensuring that all parties understand each other's informational and process needs. This approach would help ensure a timely decision on the proposed leasing action.

The regulator(s) and DOE, as well as stakeholders, should understand the anticipated future use of the facility prior to the lease. Future use restrictions will be a condition of the lease and are an enforceable aspect of all leases. In EPA's review of the DOE protectiveness determination, future use scenarios will be considered to determine whether, based on the anticipated use, the level of contamination present w ' ill be within acceptable risk levels for public health and the environment (i.e. sufficient levels of cleanup have been achieved for those uses.)

2. Insurance of Leasing Data Package and Protectiveness Determination

U.S. EPA requires certain information for review and evaluation before concurrence can be given. This information should be submitted in the form of a leasing data package. After DOE develops, in consultation with EPA, a leasing data package, DOE will submit a formal request for EPA concurrence which contains the complete leasing data package together with DOE's statement that the Secretary (or the office delegated the authority) has determined that the environmental conditions of the property are such that leasing the property, considering the terms and conditions of the lease agreement, are consistent with safety and the protection of public health and the environment. A cover letter from DOE to the U.S. EPA Administrator, or appropriate delegated authority, should also include a description of any unusual circumstances involving disposition of the property and request formal concurrence with DOE's determination. Once the completed leasing data package is submitted to EPA, the 60 day clock will start.

3. Site Characterization

Site characterization is conducted to identify the contaminated condition of environmental media or facility structures . Site characterization is accomplished as a routine part of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), and Department of Energy Deactivation and Decommissioning (D&D) processes. Under CERCLA, site characterization is accomplished through the Preliminary Assessment/Site Investigation (PA/SI) and the Remedial Investigation and Feasibility Study (RI/FS) phases of CERCLA remedial investigation and action activities. Under RCRA, site characterization is accomplished through the RCRA Facility Assessment (RFA) and the RCRA Facility Investigation (RFI) work that is directed in permit language. The characterization of DOE facility structures is accomplished following the joint DOE and EPA Deactivation and Decommissioning Policy, dated May 22, 1995. Whenever the characterization requirements of D&D extend outside the facility structure to the surrounding environment, the appropriate CERCLA or RCRA requirements are followed.

There are three types of property conditions that may be considered for leasing. These three conditions are:

i. Uncontaminated-Property (also referred to as CERCLA 120(h)(4) property): Property where no hazardous substances and no petroleum products or their derivatives were known to have been released or disposed of

ii. Remediated Property: Property that was contaminated and has been cleaned up under the CERCLA or RCRA process (remedial, removal, corrective action, etc.)and where EPA and/or the state) was involved in setting cleanup levels were achieved, and a post-remediation report was review and approved by EPA and the state.

iii. Remediated Property: Property on which a hazardous substance was stored for one year or more, known to have been released, or disposed of, and where a requirement exist for investigation of clean-up actions under either CERCLA or RCRA.

There are two types of facility conditions that may be considered for leasing. These two conditions are

i. Uncontaminated Facility: A facility where no decontamination activities are necessary following inspection for the presence of radiological or hazardous material on or within the structural components of the facility

ii. Contaminated Facility: A facility where contamination is present following an inspection for the presence of radiological or hazardous material on or within the structural components of the facility that requires decontamination.

In each condition described above, leasing activities can be carried out. Clean-up actions necessary for remedial action properties or contaminated facilities do not necessarily preclude the leasing of such a parcel or such a facility, so long as adequate site characterization has been done to assess the risk to human health and the environment with respect to the proposed lease uses. In some instances, DOE and EPA may agree to include some characterization as part of the leasing arrangement. In fact, some leasing activities may be for the direct purpose of accomplishing additional characterization and cleanup or decontamination activities.

Since leasing related decisions are made by both agencies, DOE and EPA must determine what types of site characterization data are necessary through a collaborative process. Recognizing that, in some cases, the CERCLA or RCRA process may be ongoing, it is not essential that all I., the work encompassed by either process be completed prior to making a determination of the suitability of leasing a parcel or facility. It is essential that sufficient information about the site and facility condition be available so that safety, health and environmental judgments can be adequately determined as it pertains to the proposed leasing activities under consideration.

Much of the information for uncontaminated parcels is typically contained in an American Society of Testing & Materials (ASTM) Phase I Environmental Assessment or other process that fulfills the requirements for identifying such parcels as contained in CERCLA 120(h)(4)(A)(i)(vii). Additional characterization data and sampling may be necessary to sufficiently address possible release or exposure scenarios that may be unique to the leasing activity proposed for the parcel or facility.

Data needs must be mutually determined by both the DOE and EPA team members responsible for characterizing and reviewing the environmental condition of the property. A similar approach must be used for the characterization of DOE facilities. In either case, whether assessing property or facilities, the end goal is that both DOE and EPA have sufficient understanding regarding the environmental condition of the property and any controls or restrictions that may be necessary, so that appropriate safety, health, and environmental judgements can be made with respect to property access, building occupancy, and appropriate operations to be conducted by a prospective lessee during the lease term.

4. Leases Which Involve Cleanup by Lessee

In some cases, DOE may negotiate with the lessee to perform cleanup. DOE, not the tenant, retains ultimate responsibility for compliance with the IAG. DOE will ensure that all cleanup actions are consistent with the IAG.

For D&D activities not governed by an 1AG, activities performed by lessees will be conducted in accordance with DOE policy and guidance' pursuant to the leases agreement, and made available to the public in accordance with applicable law and regulations.

5. Risk Management/Risk Analysis

a. General: For EPA to concur on DOE's determination, EPA must determine that the intended use, given the environmental condition of the property and considering controls and restrictions, is consistent with safety and the protection of public health and the environment. The risk evaluation will be consistent with the lease duration to include any options which are specifically included in the negotiations. In discussing risk management, it is necessary to distinguish three categories of DOE parcels of property at the site"7

i. parcels that were never contaminated;
ii. parcels cleaned up as part of a CERCLA (IAG) or Resource Conservation and Recovery Act (RCRA) permit process; and
iii. parcels that have not been assessed for contamination, parcels that are being assessed,and parcels that are in process of being cleaned up.

The level and scope of risk evaluation to be conducted prior to leasing will be organized according to the above three categories. These three categories form the boundaries for a graded approach, whereby professional judgement would dictate the sophistication of the evaluation and where lease restrictions are factored into the selection of the appropriate approach, beginning with a qualitative risk-based comparison of the condition of the proposed lease site against agreed upon Applicable or Relevant and Appropriate Requirements (ARARs) and then moving

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'In particular, the joint *DOE and EPA. Deactivation and Decommissioning Guidance,* issued May 22, 1995.

should be jointly decided between the EPA Regional Office, State, and the DOE site office and should not be inconsistent with that envisioned in the existing IAG. Regardless of the level of contamination at the site, DOE is also responsible for considering physical hazards and other safety issues in making its determination.

b. Parcels that were never contaminated: Some type of risk evaluation will be required in all cases. However, for sites that were never contaminated, this may consist of an affirmative statement that the site has never been contaminated nor affected by migration from adjacent contaminated areas. This statement should refer to information contained within the Leasing Data Package, including the type of data , or scope of information, outlined for clear parcel Determination in CERCLA 120(h)(4) report. This statement shall be included with the request For concurrence by EPA in the proposed leasing.

c. Parcels cleaned up as part of a IAG or RCRA Permit/Corrective Action process: Sites included within this second category include those where:

i. EPA and/or State were involved in setting cleanup standards;
ii. the cleanup was successful (i.e., cleanup levels were achieved); and
iii. the cleanup was documented in post-remediation report, and was reviewed/approved by EPA and state.

The baseline of information necessary to review a proposed lease includes:

i. the Leasing Data Package;
ii. verification that the proposed land use is consistent with the land use scenario used to develop site-specific cleanup levels;
iii. documentation of any land use restrictions or other institutional controls needed to prevent exposure to pathways which have not been remediated yet (e.g., groundwater if it wasn't addressed in the removal);
iv. documentation of any restrictions needed to ensure worker or public safety; and
V. documentation of United States government access rights, and verification of suitable ingress and egress points and restrictions to prevent interference with ongoing remediation systems or investigation actions.

d. Parcels that have not been assessed for contamination, parcels that are being assessed, and parcels that are in process of being cleaned up: In order for EPA to evaluate the DOE determination that the intended use, given the environmental condition of the parcel and considering controls and restrictions, is consistent with safety and the protection of human health and the environment, some form of risk evaluation will be required. EPA will need to review:

i. the Leasing Data Package;
ii. identification of pathways that need to be evaluated for the purpose of the lease (e.g., air, Surface soil);

iii. the assembly of all relevant sampling., data for pathways of concern;
iv. an identification of pathways which are not a concern for the purposes of the lease and the rational for this determination[2];
v. documentation of land and facility use restrictions needed to prevent exposure to pathways not addressed;
vi documentation of restrictions relied upon to mitigate/reduce exposure and risk;
vii. the completed risk evaluation; and
viii. documentation of federal access rights verification and documentation of suitable ingress ad egress and restrictions to prevent interference with on-going remediation systems or investigation actions.

DOE, in conjunction with EPA and the State, as appropriate, will need to develop and evaluate the risk data. In some cases data may already exist. In others cases, there may be a need to collect additional data or samples. Nevertheless, EPA's concurrence will be largely based on this risk evaluation.

6. Public Participation

a. General: Although there is not a requirement in the "Hall Amendment" requiring public participation in leasing decisions, there is general policy in both EPA and DOE to include some mechanism for public participation in the land and facility use decision process.[3] Public notification through newspapers or other means may be useful in soliciting public participation in the leasing process. Consistent with existing practices, DOE will consider public views on environmental and safety issues when making its determination on whether leasing the property is consistent with safety and the protection of public health and the environment. EPA will consider public comments on environmental or safety issues in making its concurrence on DOE's determination.

The Community Reuse Organizations (CROs) will be involved in public participation activities

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[2]An example of a pathway which is not a concern for the purposes of the lease and associated rationale for the determination includes the following:

- groundwater beneath and adjacent to the parcel is contaminated above drinking, water standards with lead and trichlorethylene (TCE) (provide location of plume, boundaries, if known, and range of contaminant levels);
- the risk associated with the groundwater pathway will not be quantified/evaluated for the purposes of the leasing package because groundwater use will be prohibited and thus, the exposure pathway will not be completed; and
- the lease will include the following restriction(s) against groundwater use.

[3] Note that where cleanup is occurring under CERCLA, the public will have 30 days to comment on a proposed action plan. Also, in the event of RCRA permit transfer to the lessee. the public has an opportunity to comment on the proposal to modify the permit.

for leases under the "Hall Amendment." In addition, where applicable, DOE will utilize National Environmental Policy Act (NEPA)-related public participation activities and Site-Specific Advisory Boards (SSABs) and other organizations involved in site future use planning. Both the CRO and SSAB meetings are typically open to the public (although there are occasions when business-sensitive material or other reasons require a meeting to be closed to the public). The CROs are local groups focusing on economic development. Most CROs include representatives from local business and Governmental units and often interested members of the public.

b. Notices: The availability of the leasing information and where to provide comments should be made known to the general public. Public notification through newspapers or other means may be useful in soliciting public participation in the leasing process. To the extent possible, DOE should rely upon existing processes, particularly interaction with CROs and other such organizations, as a means of notifying the public of proposed leasing actions. Documents that should be made available to the general public include:

i. the Leasing Data Package;
ii. CERCLA 120(h) reports;
iii risk assessments; and
iv. any assumed land use restrictions.

In making this information available to the public, appropriate care should be taken to ensure that sensitive business decisions and proprietary data are not compromised.

Such notification should be made no later than concurrently with a request for EPA concurrence on the proposed lease. In instances which conform with the two step approach outlined in Section III.A, such notification can occur earlier as discussed in that section. All parties should be mindful of the "Hall Amendment" 60 day time frame for EPA to make its concurrence decision on the DOE determination.

c. When comments are generated: If comments are received in the course of public notification, they will be forwarded by DOE to EPA. DOE has the option to respond to issues raised in the comments but is not required to provide a detailed comment resolution. EPA will be provided the opportunity to review all of the public comments and any DOE response to comments regarding safety and the protection of public health and the environment. It is assumed that the EPA, the State, and the DOE site have been working cooperatively on the leasing package prior to formal request for EPA concurrence. Any public comments could constitute a major new piece of information at this stage. For EPA to adequately consider the public comments, EPA will need to receive a copy of all comments in sufficient time before the 60 day review period is completed.

7. Standard Lease Terms and Conditions

a. General: Since safety and health decisions are partially based on specific lease provisions, mechanisms must exist to ensure that the lease provisions will be monitored, maintained, and enforced. In addition, EPA's ability to provide oversight for ongoing cleanup activities that relate to the IAG (including access, etc.) both on the lease parcel and adjacent parcels must be preserved. When leasing property, DOE and the future tenant must provide the following assurances regarding the property through the lease clauses: the condition of the property will be maintained, the environment will be protected, and the regulator's ability to provide oversight will not be hindered. Furthermore, the lease will include assurances that the lessee's activities will not compromise the integrity or interfere with CERCLA or RCRA investigations and/or cleanup activities. Lease "flow down" terms will be included to ensure such assurances are applicable to any subleases.

b. Allocation of environmental liability: In general, DOE retains responsibility for environmental remediation efforts associated with pre-lease contamination and releases. The lessee will be responsible for releases caused by the lessee's or sub-lessee's operation. This responsibility should include a provision for either financial insurance or a performance or assurance bond. At the start of the leases term, the existing conditions of the property have to be determined and made known to the lessee. The property's physical condition and any environmental, safety and health regulatory requirements inherent in the use of the property, are included in the Leasing Data Package and are key baselines or activities which must be included in the terms of the lease. Generally, DOE expects lessees to obtain appropriate permits and licenses and to interact directly with the appropriate regulators. These requirements are designed to allow an assessment of the proposed leasing and are not to imply DOE oversight of the lessee's operations. Since leases are only temporary transfers, the lease document should specify the scope of property restoration at the end of the lease.

c. Leasing Data Package: The leasing data package must be developed and jointly agreed to by the Department of Energy and the tenant. The package will:

i. document the nature, magnitude, and extent of any environmental contamination of property or interests in property considered for lease;
ii. define environmental contamination responsibilities associated with the lease;
iii. develop sufficient information to assess the risks to safety and the protection of public health and the environment that may be caused by the projected use of the leased premises; and
iv. contain lease terms and conditions providing protective assurances and restrictions related to i-iii.

Any listing of chemicals or other hazardous substances generated through the DOE Safe Shutdown procedures or other similar procedures should also be included. This listing should include all hazardous substances stored on the parcel, including quantities and dates, and all hazardous substances released on the parcel, including dates and quantities of release, if known.

Any environmental concerns identified by DOE should be listed in a matrix provided to EPA in the Leasing Data Package. The matrix shall describe the nature of the concern, a description of how the concern was identified, and a proposed solution.

1) **Other Required Information** - Asbestos and lead surveys should also be conducted and the results placed in the Leasing Data Package for EPA review. These surveys could range from a visual inspection to actual sampling of suspected asbestos-containing, material or potential lead-based paint. The results of any radon testing should also be included in the information submitted. Inspection of all transformers or hydraulic systems which may contain polychlorinated biphenyls (PCBs) must be conducted and the results documented in the Leasing Data Package.

2) **Property Inspection -** Arrangements should be made to provide EPA and State personnel an opportunity to tour the subject property so that a visual inspection of the property may be conducted. Note that, where appropriate, the effect of leasing the property on future environmental restoration projects should be considered. The property itself may not require remediation but may be in an area where it is surrounded by environmental restoration projects which must be completed according to a previously agreed upon regulatory schedule.

d. **Change in use which may affect property conditions:** Assurances that any potential lessee installation, alteration, or removal actions which could change the environmental baseline, safety and health operational requirements, or initial conditions which must be reviewed/ approved, will also have to be defined and included in the lease. Clauses requiring written approval by DOE prior to changes, operational awareness through routine inspections, access for regulatory oversight, restoration to original condition and contractual enforcement language, such as the lease termination clause to ensure that the lessee's performance remains acceptable and correctable, are some of the methods to provide this assurance. Where such changes will affect the basis for EPA's concurrence in the DOE determination, EPA must also be notified and provided an opportunity to assess the potential impact of the change on its concurrence prior to DOE action. EPA shall, in those cases, provide written comments to DOE which either affirm the earlier concurrence determination or state reasons why it objects to the change and withdraws its previous concurrence.

e. **Restricted uses:** The lease must reference those uses that may be limited restricted under identified federal, state, or local floodplain and wetland regulations. Leases should also explicitly identify any sacred sites, burial grounds, Native American subsistence areas, archeological resources, endangered species, historic properties, or other cultural resources that exist on the property, and provide for compliance with legal requirements (e.g. executive orders, regulations) protecting them.

f. **Lease Term:** The DOE field organizations may enter into a lease of up to 1O years with an option(s) to renew for a term of more than 10 years if the Field Office Manager determines that entering into such a lease will promote the national security or be in the public interest. The full lease term, including all options, will be identified in the leasing data package.

g. **Government access to property:** To ensure that the lease terms and conditions are implemented and adhered to, DOE must have mechanisms in place to inspect, monitor, and enforce the restrictions/controls. All leases which involve contaminated sites which have not completed cleanup actions, must contain language requiring right-to-access such as:

> *The Government, U.S. EPA and equivalent State agencies, and DOE and their officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to the lessee and any sublessee, to enter upon the lessee's premises for the purposes enumerated in this subparagraph and for such other purposes consistent with any provision of the IAG:*
>
> > *(a) to conduct investigations and surveys, including; where necessary, drilling,, soil and water sampling, test-pitting, testing soil borings and other activities related to the IAG;*
> >
> > *(b) to inspect field activities of the Government and its contractors and subcontractors in implementing the IAG;*
> >
> > *(c) to conduct any test or survey required by the EPA or DOE relating to the implementation of the IAG or environmental conditions at the leased premises or to verify any data submitted to the EPA or DOE by the Government relating to such conditions; and,*
> >
> > *(d) to construct, operate, maintain or undertake any other response or remedial action as required or necessary under the IAG, including, but not limited to monitoring wells, pumping wells and treatment facilities.*

8. EPA's Concurrence on DOE's Determination

a. **Request for concurrence:** Not later than 60 days prior to the date which DOE plans on entering into the lease, DOE shall request formal concurrence by EPA on DOE's determination that the environmental conditions of the property are such that leasing the property, considering the terms and conditions of the lease agreement, are consistent with safety and the protection of public health and the environment. The request shall be submitted in writing to the appropriate EPA Regional Office. Included with this request shall be: the lease with relevant terms and conditions, the affirmative DOE determination, the completed Leasing Data Package, including the appropriate risk evaluation, and any other relevant information.

b. **EPA concurrence:** The above information will be used by EPA to decide whether to concur with, or reject, DOE's determination, or whether more data is needed to make this decision. Although each agency has its own responsibilities under the Act, the decision as to whether property is environmentally protective should be considered jointly by EPA, DOE, and

the appropriate State personnel in accordance with the *Improving Communication to Achieve Collaborative Decision-Making* document (June 16, 1997) prepared by EPA and DOE.

c. Final review and decisions: *The Improving Communication to Achieve Collaborative Decision-Making* document sets out a process that, while focused on resolving disputes arising under CERCLA Section 120 agreements, is also appropriate for resolving conflicts arising in the context of leasing decisions. The emphasis is on resolving disputes informally, at a project team level whenever possible, rather than engaging in formal dispute resolution, and on resolving conflicts within a shortened time frame. The signatories of this policy statement have agreed to work within the framework of this approach to the extent possible.

There are three possible outcomes of EPA's review:

i. EPA concurs with the DOE determination that the environmental condition of the property, in conjunction with the proposed use limitations, restrictions and controls (i.e., terms and conditions of the lease), is consistent with safety and the protection of public health and the environment. In this event, no more sampling or information need be gathered for that particular parcel of property and leasing concurrence may be obtained.

ii. EPA finds that the environmental condition of the property, in conjunction with the proposed use limitations, restrictions and controls (i.e., terms and conditions of the lease), is not consistent with safety and the protection of public health and the environment and requires some remediation and, therefore, rejects DOE's determination. In this event, EPA, DOE, and/or appropriate State personnel should agree on what action should be taken and the goals of the action. If DOE intends to pursue the proposed lease, DOE will have to revise the leasing data package and other pertinent materials to reflect the actions agreed upon and submit a new request for EPA concurrence.

iii. EPA rejects DOE's determination on the basis that the leasing data package is found to contain insufficient data to determine that the condition of the property is consistent with safety and the protection of public health and the environment. In this event, the parties should then reach agreement on what uncertainties exist and what should be done to address them. If DOE intends to pursue the proposed lease, DOE will have to revise the leasing data package and other pertinent materials to reflect the actions agreed upon and submit a new request for EPA concurrence.

Within 60 days of the request for concurrence, the Regional Administrator or appropriate delegated authority of the EPA will provide the DOE Field Manager. a written notification of the concurrence or non-concurrence regarding the leasing data package. If the EPA fails to provide such notification within 60 days, the DOE Field Manager may enter into the lease without obtaining EPA concurrence.

DEPARTMENT OF ENERGY ORGANIZATION ACT

33-1. Lease of Property at Department of Energy Weapon Production Facilities

1. AUTHORITY. Pursuant to the Department of Energy Organization Act, as amended by the Defense Authorization Act of 1993, to determine whether the environmental conditions of property on the National Priorities List under the control of the Department of Energy are such that leasing the property and the terms and conditions of the lease agreement, are consistent with safety and the protection of public health and the environment.

2. TO WHOM DELEGATED. Assistant Administrator for Solid Waste and Emergency Response and Regional Administrators.

3. LIMITATIONS. Regional Administrators or their delegates must notify the Assistant Administrator for Solid Waste and Emergency Response or his/her designee prior to exercising this authority, at the time the Federal agency formally requests the concurrence under section 3154(e)(2) of the Act.

4. REDELEGATION AUTHORITY

a. The authority of the Assistant Administrator for Solid Waste and Emergency Response may be re-delegated to the Office Director level, and may not be re-delegated further.

b. The authority of the Regional Administrators may be re-delegated to the Regional Division Director level or equivalent, and/or the Associate Director for the Office of Superfund Programs in Region 3, the Deputy Director for the Waste Management Division in Region 4, the Director for the Superfund Division in Region 5, and the Chief of the Federal Facilities Cleanup Branch in Region 9, and may not be re-delegated further.

5. ADDITIONAL REFERENCES

a. Section 120 of CERCLA.

b. Section 3154 of the Defense Authorization Act of 1993.

"THE HALL AMENDMENT"

H.R. 2401 As finally approved by the House and Senate (Enrolled)

Item 661: (50) SEC. 3154 LEASE OF PROPERTY AT DEPARTMENT OF ENERGY WEAPON PRODUCTION FACILITIES.

SEC. 3154 LEASE OF PROPERTY AT DEPARTMENT OF ENERGY WEAPON PRODUCTIO FACILITIES

Section 646 of the Department of Energy Organization Act (42 U.S.C. 7256) is amended by adding at the end the following new subsections:

*(c) The Secretary may lease, Upon terms and conditions the Secretary considers appropriate to promote national security or the public interest, acquired real property and related personal property that--

*(1) is located at a facility of the Department of Energy to be closed or reconfigured;

*(2) at the time the lease is entered into, is not needed by the Department of Energy; and

*(3) is under the control of the Department of Energy.

*(d) (1) A lease entered into under subsection (c) may not be for a term of more than 10 years, except that the Secretary may enter into a lease that includes an option to renew for a term of more than 10 years if the Secretary determines that entering into such a lease will promote the national security or be in the public interest.

*(2) A lease entered into under subsection (c) may provide for the payment (in cash or in kind) by the lessee of consideration in an amount that is less than the fair market rental value of the 1easehold interest. Services relating to the protection and maintenance of the leased property may constitute all or part of such consideration.

*(e) (1) Before entering into a lease under subsection (c), the Secretary shall consult with the Administrator of the Environmental Protection Agency (with respect to property located on a site on the National Priorities List) or the appropriate State official (with respect to property located on a site that is not listed on the National Priorities List) to determine whether the environmental conditions of the property are such that leasing the property, and the terms and conditions of the lease agreement, are consistent with safety and the protection of public health and the environment.

*(2) Before entering into a lease under subsection (c), the Secretary shall obtain the concurrence of the Administrator of the Environmental Protection Agency or the appropriate State official, as the case may be, in the determination required under paragraph (1). The Secretary may enter into a lease under subsection (C) without obtaining such concurrence if, within 60 days after the Secretary requests the concurrence, the Administrator or appropriate State official, as the case may be, fails to submit to the Secretary a notice of such individual's concurrence with, or rejection of, the determination.

*(f) To the extent provided in advance in appropriations Acts. the Secretary may retain and use money rentals received by the Secretary directly

from a lease entered into under subsection (c) in any amount the Secretary considers necessary to cover the administrative expenses of the lease, the maintenance and repair of the leased property, or environmental restoration a activities at the facility where the leased property is located. Amounts retained under this subsection shall be retained in a separate fund established in the Treasury for such purpose. The Secretary shall annually submit to the Congress a report an amounts retained and amounts used under this subscription.