

Department of the Interior Departmental Manual

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Series: Environmental Quality Programs

Part 521: Natural Resource Damage Assessment and Restoration

Chapter 2: Responsibilities

Originating Office: Office of Restoration and Damage Assessment

2.1 **Purpose.** This chapter identifies responsibilities of Department of the Interior (Department) officials who carry out Natural Resource Damage Assessment and Restoration (NRDAR) activities.

2.2 **Definitions.** The following definitions are for the purposes of this chapter.

A. Coordination. Ensuring that all parties with an interest are informed and notified in a timely manner and provided the opportunity for involvement and response.

B. Consultation. Seeking comments and advice, and considering views, although concurrence is not required.

C. Concurrence. Providing documents for agreement and signature, without which action cannot take place, as defined in 521 DM 3.

2.3 **Responsibilities.**

A. Assistant Secretaries.

(1) Ensure that Bureaus/Offices under their jurisdiction implement NRDAR activities in compliance with this Part.

(2) Provide NRDAR Program representation to elected officials, Federal and State agencies, Tribal governments, other public and private organizations, and the general public.

B. Assistant Secretary – Policy, Management and Budget (AS – PMB). In addition to the responsibilities identified in paragraph 2.3A above, the AS – PMB: oversees and manages Department-wide NRDAR activities with the assistance of the Deputy Assistant Secretary – Policy and Environmental Management (DAS – PEM); Director, Office of Restoration and Damage Assessment (ORDA); and the Executive Committee.

C. DAS – PEM.

- (1) Provides oversight, direction, guidance, and metrics for the NRDAR Program.
- (2) Proposes new NRDAR regulations as appropriate.
- (3) Provides economic expertise to the Office of Policy Analysis for policy and regulation development and develops economic guidance for preparing natural resource damage claims.
- (4) Provides expertise to the Office of Environmental Policy and Compliance (OEPC) on coordination between NRDAR and OEPC Programs (including tracking time required for National Environmental Policy Act and other environmental compliance for restoration).

D. Director, ORDA. The Director provides leadership and management for the NRDAR Program and serves as the Department's principal contact for NRDAR policy and program issues. The Director seeks the advice of the Executive Committee on program management and policy issues. The Director is responsible for:

- (1) Identifying and prioritizing NRDAR Program needs and developing policy and guidance in conjunction with the Technical Support Group (as defined in paragraph 2.3H) for approval by the Executive Committee.
- (2) Evaluating NRDAR Program effectiveness, including tracking and trending of program activities and individual matters (including final assessment and restoration documents).
- (3) Preparing an annual *Performance Report on Implementation of NRDAR Activities*.
- (4) Developing and managing the NRDAR Program budget and NRDAR Fund, managing financial operations, ensuring fiscal accountability, and producing regular financial reports for review by the DAS – PEM.
- (5) Coordinating development and promulgation of the Department's Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) NRDAR regulations and working with the Office of the Solicitor (SOL) to monitor developments in NRDAR law and practice that may affect the regulations.
- (6) Chairing and calling meetings for the Technical Support Group and the Executive Committee; and based on Technical Support Group suggestions, developing NRDAR case funding recommendations for review and approval by the Executive Committee.
- (7) Providing support and assistance in restoration planning, implementation, and monitoring for case teams through the Restoration Support Unit.

(8) Developing and maintaining Department-wide information management systems and databases (for legally sensitive material) in support of the NRDAR Program.

(9) Coordinating among Bureaus/Offices to ensure consistency in implementing NRDAR policies.

(10) Overseeing the following steps for designating an Authorized Official (AO):

(a) Nomination by a Bureau utilizing the ORDA information management system.

(b) Consensus of other Bureaus on the proposed nomination. If consensus cannot be reached, the dispute resolution procedures described in paragraph 2.5 below will be followed. A designation may be modified by consensus of the affected Bureaus through the preparation of a revised AO nomination.

(c) Acceptance by the designated AO.

(11) Furthering the mission of the NRDAR Program through collaboration with elected officials, Federal and State agencies, Tribal governments, non-governmental organizations, academic institutions, professional societies, other public and private organizations, and the general public.

(12) Identifying and developing NRDAR Program training opportunities.

(13) Providing input to supervisors of Technical Support Group members and other personnel funded by NRDAR Program management funds for evaluating work performance pertaining to responsibilities in NRDAR Program management.

(14) Managing the dispute resolution process pursuant to paragraph 2.5.

(15) Coordinating with SOL and affected Bureaus on the Department's settlement positions on bankruptcies.

E. Solicitor. The Solicitor provides legal support and represents the interests of the Department on all matters of law regarding the Department's NRDAR activities. Responsibilities include:

(1) Providing a representative to the Executive Committee.

(2) Designating a representative to the Technical Support Group.

(3) Providing legal counsel to the AS – PMB, Executive Committee, and the Director, ORDA.

(4) Providing legal counsel to AOs and affected Bureaus.

(5) Consulting with AOs and affected Bureaus on case strategy.

(6) Obtaining AO concurrence on case resolution, including settlement positions.

(7) Representing the Department's legal position on NRDAR Program and individual case matters to the Department of Justice, other Federal and State agencies, Tribal governments, and responsible parties/potentially responsible parties (RPs/PRPs).

F. Heads of Bureaus. Heads of Bureaus as identified in 207 DM 6.4, shall:

(1) Carry out natural resource trustee responsibilities as delegated by the Secretary.

(2) Provide Executive Committee representatives for their respective Assistant Secretaries.

(3) Support the Department's NRDAR activities, including:

(a) Recommending policy issues to the Director, ORDA.

(b) Participating in NRDAR Program outreach to Bureaus/Offices; State, Federal, and Tribal trustees; and the public.

(c) Working cooperatively with Bureaus in selecting an AO.

(4) Issue Bureau policy and guidance, as necessary, to ensure consistent administration and management of the Department's NRDAR Program policy.

(5) Conduct NRDAR activities for resources within their jurisdiction, management responsibility, or areas of special expertise, and in consultation and coordination with other Bureaus/Offices, including:

(a) Serving as the AO (see paragraph I) when designated as the lead Bureau or supporting the designated AO, as described in 207 DM 6.4.

(b) Assigning an Affected Bureau Representative to support the designated AO in conducting NRDAR activities for a specific site or incident.

(c) Overseeing fiscal accountability of NRDAR funds dispersed to or controlled by their respective Bureau.

(d) Providing, if requested, a lead Department representative during time-critical NRDAR activities pursuant to paragraph 2.4C of this chapter.

(e) Providing recommendations on matters within their jurisdiction or areas of expertise in the development of a unified Department position relative to a natural resource damage assessment and restoration for a specific site or incident.

(f) Coordinating during the conduct of NRDAR activities with response agencies in accordance with the provisions of the National Contingency Plan throughout the response planning and implementation process.

(g) Working closely with response agencies, and, as appropriate, with RPs/PRPs, to promote incorporation of actions to protect and restore natural resources.

(h) Working cooperatively and in consultation with other Federal and State agencies and Tribal governments affected by discharges or releases.

G. The Executive Committee. The Executive Committee is comprised of a representative (at the Assistant or Associate Director level, or equivalent) from the Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, National Park Service, and U.S. Fish and Wildlife Service, as chosen by their respective Assistant Secretary as well as a representative from SOL. The Executive Committee is chaired by the Director, ORDA. The Executive Committee:

- (1) Approves the allocation of case funding, budget issues, and fiscal accountability of Department funds provided to Bureaus/Offices.
- (2) Participates in policy development and implementation by:
 - (a) Identifying and recommending policy needs to the Director, ORDA.
 - (b) Reviewing and approving draft policies submitted by the Director, ORDA.
- (3) Ensures Bureau/Office compliance with Department policy.
- (4) Raises policy issues to the Director, ORDA.
- (5) Resolves disputes pursuant to paragraph 2.5 of this chapter.
- (6) Assists the Director, ORDA in furthering the mission of the NRDAR Program through collaboration with elected officials, Federal and State agencies, Tribal governments, private organizations, and the general public.
- (7) Assists the Director, ORDA in addressing NRDAR Program funding and staffing needs in Bureaus/Offices.
- (8) Provides input to the DAS – PEM for the performance evaluation of the Director, ORDA.
- (9) Appoints members to the Technical Support Group to support the Department's program management as described in paragraph 2.3H of this chapter.
- (10) Participates in NRDAR's Program outreach to Bureaus/Offices; Federal, State, and Tribal trustees; and the general public.
- (11) Works cooperatively with other affected Bureaus in selecting the Department's AO.

H. Technical Support Group. The Technical Support Group supports the Director, ORDA in accomplishing Departmental NRDAR Program goals. The Technical Support Group is comprised of representatives of the five Bureaus with delegated trustee responsibility: Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, National Park Service, and U.S. Fish and Wildlife Service, and representatives from the Office of Policy Analysis, SOL, and the U.S. Geological Survey. The Technical Support Group:

- (1) Participates in the NRDAR funding allocation process and develops funding allocation suggestions for review by the Director, ORDA.
- (2) Works cooperatively with other affected Bureaus in selecting the AOs.
- (3) Supports development of NRDAR policy, guidance, and procedures.
- (4) Assists the Director, ORDA in overseeing performance of the Department's NRDAR activities.
- (5) Assists ORDA in development and oversight of the Department's NRDAR information management systems and databases in support of the NRDAR Program and provides input into these systems through periodic updates and reviews.
- (6) Provides technical support for resolving disputes pursuant to paragraph 2.5 of this chapter.
- (7) Assists the Director, ORDA in representing the NRDAR Program to elected officials, Federal and State agencies, Tribal governments, private organizations, and the general public.
- (8) Assists the Director, ORDA in addressing NRDAR Program funding and staffing needs through their respective Bureaus/Offices.
- (9) Informs and updates their Bureaus/Offices on the Department's NRDAR Program activities, policies, procedures, and related issues.
- (10) Assists the NRDAR Program in identifying, developing, and providing training and education opportunities.
- (11) Participates in task groups, when requested.

I. AO. The AO is the Department's official delegated the authority to act on behalf of the Secretary to conduct natural resource damage assessment, restoration planning, and implementation. The AO is responsible for:

- (1) Advancing timely and cost-effective restoration.
- (2) Representing the Department in its interactions with response agencies, co-trustees, trustee councils, RPs/PRPs, other organizations, and the public.
- (3) Ensuring notification to all Department entities and assembling representatives from affected Bureaus and SOL to conduct the natural resource damage assessment.

- (4) Providing necessary information to ORDA in a timely manner to track each case in ORDA information management systems and databases.
- (5) Managing the Department's assessment and restoration case teams.
- (6) Developing unified Department positions on specific NRDAR activities by:
 - (a) Consulting, coordinating, and obtaining concurrence from Bureaus with trustee responsibilities that are involved in the assessment, restoration planning, and restoration implementation (as per 521 DM 3).
 - (b) Consulting with SOL on the legal viability of case strategy and obtaining SOL concurrence on documents (as per 521 DM 3) including, but not limited to: the Pre-Assessment Screen, Notice of Intent (NOI) to perform an assessment, Assessment Plan, Preliminary Estimate of Damages, demand for damages, NOI to conduct restoration planning, draft Restoration Plan, Restoration Plan, restoration implementation plan, and report of assessment, as well as the development of case resolution, including settlement positions and any case-specific agreements with RPs/PRPs and/or other trustees relating to the NRDAR process.
 - (c) Coordinating with Bureaus/Offices with technical expertise, as appropriate.
- (7) Resolving issues among involved Bureaus/Offices or elevating unresolved issues to their respective Executive Committee member in a timely fashion.
- (8) Entering into case-specific agreements relating to the NRDAR process, with concurrence of all affected Bureaus and SOL.
- (9) Preparing, as appropriate, pre-assessment, assessment, and restoration documents in conjunction with, and with the concurrence of (per 521 DM 3), all affected Bureaus and SOL.
- (10) Ensuring that activities in the assessment plan are implemented.
- (11) Working with SOL to ensure compliance with all applicable provisions of law, regulation, and policy, including the National Environmental Policy Act (NEPA).
- (12) Serving as the Lead AO (LAO) or Lead Administrative Trustee (LAT), when the Department is the designated LAO or LAT by action of multiple involved trustees (pursuant to 43 CFR 11.14(w) or 15 CFR 990.30).
- (13) Developing and maintaining the administrative record of the Department's NRDAR activities, including tracking, indexing, and archiving all documents, as well as ensuring the confidentiality of data and documents as necessary.
- (14) Ensuring sound financial management of all funds used to determine injury, assess damages, and plan and implement restoration, including: requesting damage

assessment funds and the release of recovered assessment funds and restoration funds held in the Restoration Fund, ensuring accountability, tracking costs, processing bills, reporting disbursements and expenditures, and participating in audits.

(15) Ensuring that assessment activities and restoration planning are coordinated with and, to the extent practical, integrated with response actions.

(16) Ensuring that selected restoration activities are implemented in compliance with the Restoration Plan, preparing reports on progress of restoration, developing, and implementing monitoring plans to ensure that the restoration projects are successful and reporting on and certifying completion of restoration actions.

J. Affected Bureau Representative. The Affected Bureau Representative is the Bureau's designated representative who is delegated the responsibility to represent the position of the affected Bureau to the AO when participating in site-specific NRDAR activities to conduct natural resource damage assessments, restoration planning, and implementation. The Affected Bureau Representative is responsible for:

(1) Working with the AO, case manager, affected Bureaus, other trustees, and SOL to conduct the NRDAR activities.

(2) Participating in the preparation of case documents.

(3) Concurring on NRDAR documents as outlined in 521 DM 3.

(4) Ensuring NRDAR activities are implemented.

(5) Providing data and documents for the case files.

(6) Ensuring sound financial management of funds provided to the affected Bureau for conducting the NRDAR and restoration implementation.

2.4 Time-Critical NRDAR Activities.

A. Time-critical NRDAR activities include: emergency restoration as defined in the CERCLA and Oil Pollution Act of 1990 regulations, damage assessment initiation associated with emergency or time-critical response activities, and coordination of NRDAR activities with response agencies and other parties in the course of an emergency or time-critical response.

B. Whenever time-critical NRDAR activities are necessary, the first Department official on scene will act in the best interests of the Department resources and take the necessary actions, including:

(1) Ensuring that potentially affected Bureaus and SOL are notified.

(2) Coordinating and representing the Department's NRDAR interests to other trustees, response agencies, and other parties involved in the response (40 CFR 300.615), including coordination with the lead Departmental response official.

(3) Ensuring collection of samples and information that may be necessary for NRDAR activities. (43 CFR 11.22(b))

(4) Notifying ORDA.

C. Whenever time-critical NRDAR activities are necessary, affected Bureaus will designate a lead Departmental representative who will coordinate and make a request for damage assessment initiation funds from the appropriate source.

D. Department officials acting in time-critical NRDAR activities in accordance with paragraph 2.4B will act in that capacity no longer than 10 days, pending designation of an AO as outlined in paragraph 2.3I, unless the affected Bureaus agree to an extension.

2.5 Dispute Resolution.

A. If a dispute cannot be resolved, any Executive Committee member may elevate the issue by promptly referring it to the Director, ORDA, who notifies the DAS – PEM; and

(1) Convenes the Technical Support Group to provide review, analysis, options, and a recommended resolution of the issue; then

(2) Convenes the Executive Committee and makes a recommendation to the Executive Committee for resolution.

B. If the Executive Committee cannot resolve the dispute, the issue will be elevated to the Bureau Heads (see section 2.3F of this Part) for resolution.

C. If the Bureau Heads cannot resolve the dispute, the issue will be elevated to the AS/PMB in consultation with the respective Assistant Secretary from the involved Bureaus and an Associate Solicitor for a final decision.