



CERCLA Warranty Protections and Army Responsibilities

[The purpose of this module is to familiarize participants with the legal and policy bases for FORA's Long-term environmental obligations.]



CERCLA Warranty Protections and Army Responsibilities

- CERCLA warranty protections – statutory authority of Army
- Long-term environmental obligations
- Army responsibilities
- Jurisdictional risks and responsibilities





CERCLA Warranty Protections

- All action necessary to protect human health and environment has been taken
- Can be deferred if remediation is ongoing and interim use will not interfere
- ESCA property is subject to deferral because FORA is performing remedial work
- Army obligation is to:
 - Give notice of past environmental issues, uses, etc.
 - Warrant that they have completed remedial obligations, unless deferred
 - Return to address pre-existing hazardous substances discovered after transfer

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Long-term Environmental Obligations

- FORA agreed pursuant to the ESCA and AOC to be responsible for:
 - Performing inspections
 - Reporting
 - Monitoring enforcement
 - Training
 - Permitting of remedial obligations incorporated in deeds

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Army Responsibilities

- Respond to MEC
- Address pre-existing unknown hazardous substance discoveries

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Jurisdictional Responsibilities

- Current authority for jurisdictional responsibilities:
 - 2007 MOA with DTSC
 - Municipal codes
 - MOA binds all parties
 - Jurisdictional responsibilities include:
 - Enforcing Digging and Excavation Ordinance
 - Maintain and enforce deed restrictions
 - Annual LUC monitoring and reporting
- Future jurisdictional authorities that don't currently exist but could in the future:
 - Additional or other agreements between responsible parties
 - LAFCO process
 - General exercise of governmental police power

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Jurisdictional Risks

- DTSC and EPA have remedy enforcement authority
- Failure on the part of jurisdictions to maintain the LUCs can result in the following:
 - Private Owner-loss of CERCLA Warranty if you become a potentially responsible party (PRP)
 - Applies to current owner/operator of property
 - Liability to third parties for loss, damage, or injury
 - Cost recovery
 - Remedy could be declared a failure and a more restrictive remedy imposed
 - Determination made by EPA, DTSC, and Army
 - Example: change to a more restrictive land use

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Next Steps & Feedback





Next Steps & Conclusion

- Seminar Review
- Future Trainings
- Major Resources
- Next-steps
- Questions