

Office of the Secretary, Interior

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APPENDIX I TO PART 11—METHODS FOR ESTIMATING THE AREAS OF GROUND WATER AND SURFACE WATER EXPOSURE DURING THE PREASSESSMENT SCREEN

APPENDIX II TO PART 11—FORMAT FOR DATA INPUTS AND MODIFICATIONS TO THE NRDAM/CME

APPENDIX III TO PART 11—FORMAT FOR DATA INPUTS AND MODIFICATIONS TO THE NRDAM/GLE

AUTHORITY: 42 U.S.C. 9651(c), as amended.

SOURCE: 51 FR 27725, Aug. 1, 1986, unless otherwise noted.

Subpart A—Introduction

§ 11.10 Scope and applicability.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9601 *et seq.*, and the Clean Water Act (CWA), 33 U.S.C. 1251-1376, provide that natural resource trustees may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance covered under CERCLA or the CWA and may seek to recover those damages. This part supplements the procedures established under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, for the identification, investigation, study, and response to a discharge of oil or release of a hazardous substance, and it provides a procedure by which a natural resource trustee can determine compensation for injuries to natural resources that have not been nor are expected to be addressed by response actions conducted pursuant to the NCP. The assessment procedures set forth in this part are not mandatory.

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However, they must be used by Federal or State natural resource trustees in order to obtain the rebuttable presumption contained in section 107(f)(2)(C) of CERCLA. This part applies to assessments initiated after the effective date of this final rule.

[53 FR 5171, Feb. 22, 1988]

§ 11.11 Purpose.

The purpose of this part is to provide standardized and cost-effective procedures for assessing natural resource damages. The results of an assessment performed by a Federal or State natural resource trustee according to these procedures shall be accorded the evidentiary status of a rebuttable presumption as provided in section 107(f)(2)(C) of CERCLA.

[53 FR 5171, Feb. 22, 1988]

§ 11.12 Biennial review of regulations.

The regulations and procedures included within this part shall be reviewed and revised as appropriate 2 years from the effective date of these rules and every second anniversary thereafter.

§ 11.13 Overview.

(a) *Purpose.* The process established by this part uses a planned and phased approach to the assessment of natural resource damages. This approach is designed to ensure that all procedures used in an assessment, performed pursuant to this part, are appropriate, necessary, and sufficient to assess damages for injuries to natural resources.

(b) *Preassessment phase.* Subpart B of this part, the preassessment phase, provides for notification, coordination, and emergency activities, if necessary, and includes the preassessment screen. The preassessment screen is meant to be a rapid review of readily available information that allows the authorized official to make an early decision on whether a natural resource damage assessment can and should be performed.

(c) *Assessment Plan phase.* If the authorized official decides to perform an assessment, an Assessment Plan, as described in subpart C of this part, is prepared. The Assessment Plan ensures that the assessment is performed in a planned and systematic manner and

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that the methodologies chosen demonstrate reasonable cost.

(d) *Type A assessments.* The simplified assessments provided for in section 301(c)(2)(A) of CERCLA are performed using the standard procedures specified in subpart D of this part.

(e) *Type B assessments.* Subpart E of this part covers the assessments provided for in section 301(c)(2)(B) of CERCLA. The process for implementing type B assessments has been divided into the following three phases.

(1) *Injury Determination phase.* The purpose of this phase is to establish that one or more natural resources have been injured as a result of the discharge of oil or release of a hazardous substance. The sections of subpart E comprising the Injury Determination phase include definitions of injury, guidance on determining pathways, and testing and sampling methods. These methods are to be used to determine both the pathways through which resources have been exposed to oil or a hazardous substance and the nature of the injury.

(2) *Quantification phase.* The purpose of this phase is to establish the extent of the injury to the resource in terms of the loss of services that the injured resource would have provided had the discharge or release not occurred. The sections of subpart E comprising the Quantification phase include methods for establishing baseline conditions, estimating recovery periods, and measuring the degree of service reduction stemming from an injury to a natural resource.

(3) *Damage Determination phase.* The purpose of this phase is to establish the appropriate compensation expressed as a dollar amount for the injuries established in the Injury Determination phase and measured in the Quantification phase. The sections of subpart E of this part comprising the Damage Determination phase include guidance on acceptable cost estimating and valuation methodologies for determining compensation based on the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, plus, at the discretion of the authorized official, compensable value, as defined in § 11.83(c) of this part.