

# FACT SHEET

## Effective Strategies for Incorporating Applicable or Relevant and Appropriate Requirements (ARARs)



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### Introduction

The Department of the Navy (DON) manages cleanup sites in compliance with applicable or relevant and appropriate requirements (ARARs). The objective of this fact sheet is to support DON Remedial Project Managers (RPMs) and other environmental restoration (ER) professionals in improving the identification, documentation, and implementation of ARARs for DON Environmental Restoration Program (ERP) sites. This fact sheet answers several frequently asked questions regarding ARARs and provides practical tips for implementation.

### What are ARARs?

ARARs were developed within the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) to ensure that environmental cleanup actions at Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or Superfund sites adhere to relevant environmental regulations. Under CERCLA, ARARs are environmental standards, requirements, criteria, or limitations that remedial actions must achieve. These requirements or cleanup standards originate from existing federal laws (e.g., the Clean Water Act) or more stringent state laws. The goal of complying with ARARs is to ensure the protection of human health and the environment in accordance with established legal standards.

### What are policy requirements for ARARs?

Policy requirements differ between remedial actions and removal actions.

- For remedial actions, the statutory basis is established in CERCLA §121(d)(2), which stipulates that chosen remedies must achieve any applicable federal environmental standard or any more stringent state environmental or facility siting law. This obligation is reinforced in NCP 40 C.F.R. §300.430(F)(1)(ii)(B), which specifies that on-site remedial actions must attain the ARARs documented in a Record of Decision (ROD) unless a valid waiver is justified. Additionally, compliance with ARARs is considered a threshold requirement per NCP 40 C.F.R. §300.430(F)(1)(i)(A) for selecting any remedial action.
- For removal actions, which are immediate responses to hazardous substance releases, the NCP recognizes that factors such as the urgency of the threat and scope of the removal action impact the feasibility of meeting ARARs. In addition, the Navy Environmental Restoration Program (NERP) Manual (2018) recommends that removal actions should be compatible with potential future remedial efforts while striving to meet ARARs. For example, removal actions may focus on source control or exposure limitation rather than achieving definitive cleanup levels, whereas the permanent remedy would achieve ARARs. This requires compatibility of an interim removal action with the permanent remedy or be considered cost-effective enough to be a reasonable short-term measure. For example, providing bottled water as an interim measure is not intended to be a permanent remedy. However, it is an effective interim response for removing a direct exposure pathway via drinking water and for rapidly attaining compliance with the Safe Drinking Water Act. Whether or not ARARs can be attained as a result of a removal action depends on the intended scope of the removal action.

### What is the difference between “applicable” and “relevant and appropriate” requirements?

*Applicable* requirements are those requirements that legally and directly apply to hazardous substances, pollutants, contaminants, remedial actions, locations, or other circumstances found at a CERCLA site. The determination of applicability is largely factual, requiring one-to-one correspondence between the requirement and the site circumstances.

# Effective Strategies for Incorporating ARARs (Continued)



If a requirement is not applicable, it may still be considered relevant and appropriate. This determination relies on professional judgment to assess whether a requirement addresses problems or situations sufficiently similar to those at the site and whether its use is “well-suited to the particular site” according to United States Environmental Protection Agency (EPA’s) eight-factor test defined under the NCP (see Table 1).

## How are state standards incorporated as ARARs?

Per CERCLA, only state standards, requirements, criteria or limitations under an environmental or facility siting law that are *more stringent* than their federal counterparts

and *identified in a timely manner* may be considered as potential ARARs. Additionally, state standards must be promulgated and applied consistently. For example, requirements specific to a particular CERCLA site, nonbinding advisories, and guidance documents are not considered ARARs. Most importantly, when a state standard is identified as an ARAR, *only the state standard should be included in the ARARs table*, and the federal counterpart should not be included in the ARARs table.

	Characteristics of Requirement	Characteristics of CERCLA Site/Action
1	Purpose	Purpose
2	Medium regulated	Medium present
3	Substances regulated	Substances present
4	Activities regulated	Remedial action considered
5	Any variances, waivers, or exemptions of the requirement	Availability of such variances, waivers, or exemptions based on site circumstances
6	Type of place regulated	Type of place affected
7	Type/size of structure or facility regulated	Type/size of structure or facility affected
8	Any consideration of use or potential use of affected resources	Use or potential use of the affected resource at the site

Table 1. Eight Factors for Consideration of Requirements [Modified from 40 CFR 300.400(g)(2)]



## Pro Tip

When assessing the applicability of requirements, remember sovereign immunity, which means that the federal government cannot be sued, regulated, or taxed unless there is a waiver. When considering the applicability of state laws in CERCLA, the federal government has waived its immunity for facilities not on the National Priorities List (NPL). However, if a federal facility is on the NPL, then state cleanup laws are not “applicable,” but would likely be “relevant and appropriate.”

## What is the difference between substantive and administrative requirements?

ARARs consist of substantive and administrative requirements. Substantive requirements pertain to actual cleanup standards, control technologies, and other environmental protection measures necessary at a CERCLA site. They define the level of cleanup, and the methods used to achieve it. In contrast, administrative requirements govern the implementation and enforcement of these substantive requirements, including permitting, reporting, and monitoring procedures. At a CERCLA site, on-site actions are exempt from the administrative requirements of environmental laws but must comply with the substantive requirements. It is important to note that in the NCP, “on-site” refers to the areal extent of the contamination and the area in close proximity to the contamination necessary for implementing the response action.

## How are permits connected to ARARs?

As permits are administrative in nature, “on-site” portions of CERCLA response actions are exempt from needing permits. However, the substantive requirements that a permit would otherwise address must be complied with. Monitoring wells are an example where substantive requirements must be met, however obtaining the permit is not required. When assessing the need for permits, revisit the definition of on-site—the areal extent of the contamination and the area in close proximity to the contamination necessary to implement the response action. Note, “on-site” is not about the property boundary. As such, the decision to obtain a permit should not be determined by the property boundary but rather whether the location in question is on-site. Additionally, this exemption includes investigative activities performed on-site prior to remedial or response actions, such as pump tests during the Remedial Investigation/ Feasibility Study (RI/FS).

# Effective Strategies for Incorporating ARARs (Continued)



## What are the different categories of ARARs?

ARARs are categorized into three types that are equally valid and important:

- Chemical-specific ARARs: Usually health- or risk-based numerical values or methods, defining acceptable concentrations of chemicals allowed to remain in or be discharged to the environment (e.g., maximum contaminant levels [MCLs]).
- Location-specific ARARs: Restrictions placed on activities or contaminant concentrations due to the special characteristics of a location (e.g., wetlands, historic places, or sensitive ecosystems).
- Action-specific ARARs: Technology- or activity-based requirements or limitations that apply to specific actions taken during the remedial process (e.g., standards for disposal or air emissions).



### Pro Tip

The “to be considered” or “TBC” category includes non-promulgated criteria or advisories that can be consulted along with and in addition to ARARs. When considering TBCs, use professional judgement on their relevance and applicability, and only include the substantive (and specific) portions of the TBCs that help to inform or support the response action’s protectiveness of human health and the environment.

## When should a waiver be considered?

Although uncommon, waivers are invoked when an ARAR cannot be attained. The ROD must discuss and justify the waiver. CERCLA provides the following six instances when ARAR waivers are appropriate:

1. Interim Measures: not the final remedy
2. Greater Risk to Health and the Environment: as a result of complying with the ARAR
3. Technical Impracticability: technical rationale that the remedial action objectives cannot be achieved
4. Equivalent Standard of Performance: already using an equivalent standard
5. Inconsistent Application of State Requirements: as discussed in the state ARARs question above
6. Fund Balancing: specific to prioritizing Superfund financed remedies (not applicable to DON)

## When should ARAR determinations be conducted?

EPA expects that ARARs will begin to be developed early in the CERCLA process—often before the RI/FS, not when the ROD is written. Early identification enables ER staff to coordinate with resource agencies (e.g., the U.S. Fish and Wildlife Service) to develop specific substantive requirements and identify whether triggering facts such as endangered species, wetlands, and historic properties are present. Then, specific items the remedy must address or avoid are documented in the ROD, along with the specific citation.

Investigative activities can also trigger ARARs. A recommended best practice is to include ARARs in earlier CERCLA documents as part of the discussion, documenting and identifying ARARs and complying with the substantive portion. In addition, RPMs and installation staff can improve their understanding of underlying requirements during development of these earlier documents. Permit exemptions for monitoring wells are an example of this situation.

Although ARARs are fixed at the time that the ROD is signed according to 40 C.F.R. § 300.430(f)(1)(ii)(B), the Five-Year Review includes a remedy protectiveness evaluation with questions about any changes since the remedy was implemented, including updates to ARARs. If it is concluded that the remedy is not protective, a change will be recommended; depending on the scope of the change, an Explanation of Significant Differences (ESD) or ROD Amendment will be completed. During this process, EPA guidance ([EPA Office of Solid Waste and Emergency Response \[OSWER\] 9200.1-23P](#)) has indicated to only revisit ARARs associated with the updated portion of the remedy. Do not revisit all of the ARARs.

# Effective Strategies for Incorporating ARARs (Continued)



## Why is proper documentation of ARARs important?

Thorough and transparent documentation of ARARs is crucial for several reasons. It ensures compliance with statutory and regulatory requirements, provides a clear administrative record of the decision-making process, and facilitates understanding for all involved parties, including regulatory agencies, stakeholders, and the public. Specific documentation is necessary, including exact citations to the relevant statutory or regulatory sections. Simply listing entire statutes or regulations (i.e., a “laundry list” approach) is insufficient and considered unacceptable by EPA. Proper documentation of ARARs helps to ensure the rationale behind the chosen remedy is clear and meets the necessary environmental standards.

## What are tips for determining and documenting ARARs?

- Stop recreating a laundry list of statutes and regulations. Instead focus on regulations and statutes specific to the scope of the response action for the location and media being addressed. Note: additional ARARs may be included for contingency actions identified in the ROD.
- Identify and cite the specific section of a regulation or statute that constitutes the ARAR(s). Do not cite entire blocks of statutes and regulations.
- Do not include citations to regulations and laws that include administrative requirements.
- Regulatory standards for “aesthetic purposes” (e.g., secondary MCLs based on taste, odor, or color alone) are generally not considered chemical-specific ARARs because they are not based on health standards.
- Non-environmental regulations do not qualify as ARARs under CERCLA 121(d)(2).
- Executive orders (EOs) are generally not included in the ARARs table. Rather, discuss compliance with EOs under protectiveness criterion. Note: limited situations have identified an EO’s substantive provisions as TBC guidance, with a footnote explaining the EO status.
- Permits are not ARARs and are considered administrative in nature.
- State ARARs citations should only include the section(s) of the state regulation or statute more stringent than federal standards.
- Only when a state’s regulation or statute extensively incorporates federal citations by reference or where a state requirement is substantially the same as a federal one, the table may include both state and federal regulation citations.
- Specific TBCs may be included but should be identified as TBC.

## Where can I obtain more information on ARARs documentation?

Although EPA has issued various guidance over time related to ARARs, the documents below are highly recommended for DON RPMs to consult for more information:

- “Documenting ARARs in CERCLA Response Action Decisions” was released in March 2023 as the EPA Office of Land and Emergency Management [OLEM] Directive 9234.0-07. This memo provides a foundation for determining and documenting ARARs under CERCLA. Practice tips are discussed, and an example ARARs table is provided (Appendix B). RPMs can refer to Appendix B as a template when developing an ARARs table. Link [here](#) to view the OLEM Directive 9234.0-07.
- *CERCLA Compliance with Other Laws Manuals I and II* were released in 1988 and 1989, respectively. These manuals provide a more in-depth discussion of ARARs and are still referenced today. They list specific federal statutes and discuss their substantive and administrative parts, helping identify what parts should be considered as potential ARARs. Additionally, the manuals review the role of state ARARs. Link [here](#) for access to these manuals on the EPA ARARs web page.
- The *NAVFAC Toolkit for Identifying ARARs* (2014) provides eight key concept exhibits containing information to aid in identifying and documenting ARARs. Link [here](#) to view the Toolkit.

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## Disclaimer

This fact sheet provides an overview of ARARs and should not be misconstrued as legal advice. DON RPMs must be aware that each site is different and will include its own unique set of ARARs. Consult a DON legal representative for questions and clarifications.

For more information, please visit the  
NAVFAC Environmental Restoration and BRAC website:  
<https://exwc.navy.mil/go/erb>