

primary consideration in determining whether scrap metal will be removed should be the safety of persons coming on the land in question and, secondarily, the prevention of accidents resulting from the sale and/or use of the scrap metal subsequent to the land passing from the jurisdiction of the Department. The DE will insure the removal or destruction, by using command, of all military scrap and scrap metal from lands suitable for cultivation or other subsurface operations. In the case of land unsuitable for cultivation or other subsurface operations, all military scrap will be removed or destroyed and scrap metal removed, if it is reasonably possible to do so. Cases where it is considered impracticable to remove the scrap metal, will be reported to DAEN-REM for final decision. In such instances, pertinent data and the recommendation of the DE will be furnished. Disposition of military scrap or scrap metal by dumping into inland waters or by land burial in other than an approved landfill is prohibited.

§644.523 Restricting future of artillery and other ranges.

Experience indicates that, on ranges where high explosive projectiles have been fired or dropped, such as artillery, bombs, mortars, rockets, grenades, and the like, it is impossible to make certain that land in impact areas is absolutely safe for unrestricted use. Such impact areas receive a high concentration of fire, and the properties of these projectiles are such that many duds are deeply buried. Depth of burial, as well as the concentration of fragments or components, will affect the dependability of mine detectors. Since there is no known definite period within which such projectiles will become inert through weathering and corrosion, such contaminated areas can be safely released for restricted use only, even after decontamination work has been carried to its practicable limit. Such restrictions will usually be in the form of a recommendation that the land be restricted to surface use only. Restrictions will be based solely on the type and/or extent of contamination. If land is contaminated to such a degree that it is considered it cannot be rendered safe for any use, disposal action

will be suspended and the facts will be reported to DAEN-REM-C with the DE recommendations.

§644.524 Reporting contaminated land to the General Services Administration.

Contaminated areas, except industrial properties as covered by §644.520 will not be included in a Report of Excess to GSA until such time as the affected areas have been cleared by the using command to the satisfaction of the DE and a Statement of Clearance has been received. If an exception is granted and the Department of the Army, with the concurrence of GSA, reports contaminated nonindustrial property excess, the report of excess will include statements concerning:

- (a) The extent and type of such contamination;
- (b) Plans for decontamination, if any; and
- (c) The extent to which the property may be excessed without future decontamination.

§644.525 Statement of clearance in reporting excess property to GSA.

The Report of Excess will include the Statement of Clearance furnished by the using command (§644.517). The record of the clearance work performed by the using command will not be included in the Report of Excess but will be preserved in the permanent records of the DE. It is anticipated in these cases that the disposal agency (GSA) will, at the time the land is offered for sale of lease, give public notice of the circumstances surrounding its past and future restricted use. Included in such notice will be the statement that the Department of the Army is willing to remove or destroy any potentially dangerous materials discovered at any time in the future, subject to the availability of funds for this purpose.

§644.526 Reporting target ranges.

All Reports of Excess to GSA covering lands which have been used as target ranges of any kind will contain an affirmative or negative statement in regard to contamination. This will be by appropriate schedule and reference thereto in the following manner:

(a) If the statement is negative, it will declare that no explosive or other contaminating materials were used or stored on any portion of the installation.

(b) If the statement is affirmative, reference will be made to appropriate schedules of the Report of Excess containing statements of clearance on the installation, or portions thereof.

§ 644.527 Recording Statements of Clearance.

On property disposals for which the Corps of Engineers is the disposal agency, the DE will have the Statement of Clearance recorded, if possible, as part of the permanent history of the property involved, with the proper county land record office. A copy of the report of clearance work performed will be furnished DAEN-REM and DAEN-REP.

§ 644.528 Return of contaminated leased land to owners.

Where leased land has been contaminated, whether excess to military requirements or being used, it may often prove advisable and economical to acquire the fee to such properties. Prior to considering the return of contaminated leased land to owners, District Engineers will assist installation commanders in preparing an analysis as a basis for recommendation to acquire or not acquire such areas. In the case of recommended restriction of use, notice should be given the lessor as described in § 644.525.

(a) Where such a restriction reduces the value of the land, the Department will, if consistent with the terms of the lease, pay damages equal to the reduction in value as of the effective date of termination.

(b) As stated in § 644.525, the owner should be advised that the Department is willing to remove or destroy any potentially dangerous materials that may be discovered in the future, subject to the availability of funds.

§ 644.529 Supplemental agreement with owner of contaminated leased land.

In the event that it becomes necessary to pay damages to a lessor in lieu of restoration i.e., decontamination, the following clause, appropriately modified to fit the circumstances, will be made a part of the supplemental agreement terminating the lease and effecting monetary settlement in lieu of restoration. Additionally, in order to protect the Government from possible claims for damages from future purchasers, the executed supplemental agreement will, in those jurisdictions permitting recordation, be recorded by the DE thus providing legal notice to subsequent purchasers of the condition of the premises.

Whereas, by reason of the use made of the premises by the Government it is impossible to ascertain after completion of decontamination operations by the Government that the following described portion of land is safe for unrestricted use by the lessor (or state because of use made by Government that use of land must be restricted to grazing, etc.):

SUGGESTED CLAUSES FOR USE IN SUPPLEMENTAL AGREEMENT

(Legal Description; utilize hachured/annotated map(s) as attachment plus legal description.)

Now, therefore, in consideration of the payment by the Government of the United States to the lessor, (Name of Lessor) , of dollars (\$), representing the estimated compensation to which the lessor is entitled by reason of the loss of the unrestricted use of the above described property, the lessor hereby releases the Government from all claims for damages to property and/or injury to persons which may arise out of the existence on the premises of unexploded ammunition or chemical/biological agents. It is mutually understood, however, that for a period of 25 years from the date hereof, the Government shall, upon request of the lessor, remove or destroy any potentially dangerous materials that may be discovered on the land, provided that adequate appropriations are available to cover the cost of such service. (If use of the land is restricted to surface use, the lessor should agree and covenant, in consideration of the payment, to use the land for such purposes only.)

§ 644.530 Conditions in conveying land suspected of contamination.

The following conditions, appropriately modified to conform to local law, will be included in deeds conveying land which is, or is suspected of being, contaminated with explosive or toxic materials and is restricted to surface use: (GSA should be requested to