

(2) Serve as the lead for all phases of mobilization, deployment/redeployment operations, and environmental support activities related to national emergencies.

1-20. The Commanding General, U.S. Army Forces Command

The Commanding General (CG), and U.S. Army Forces Command (FORSCOM) will—

- a. Incorporate environmental planning requirements in mobilization guidance as appropriate.
- b. Coordinate with IMCOM and DCS, G-3/5/7 on environmental support for mission activities, to include training exercises, range operations, and mission MILCON projects.
- c. Provide explosive ordnance disposal (EOD) units for emergency response activities.

1-21. The Commanding General, U.S. Army Materiel Command

The Commanding General, U.S. Army Materiel Command (CG, AMC) will—

- a. Provide technical assistance to acquisition program managers and program executive offices as required to ensure integration of environmental quality considerations in all aspects of acquisition programs and weapons system's life cycle, such as acquisition, maintenance, disposal, and demilitarization.
- b. Conduct environmental research, development, testing, and evaluation and technical investigations in support of its missions and activities.
- c. Support ASA (ALT) efforts to develop an integrated Army Environmental Quality Science and Technology program, and manage the portion of that program that supports acquisition, logistics, and industrial base user needs.
- d. Coordinate acquisition, logistics, and industrial base user needs with the USACE and the ACSIM in areas impacting installation EQT.
- e. Execute low-level radioactive waste (LLRW) management, including disposal.
- f. Ensure that contracts include provisions for operations at government-owned, contractor-operated (GOCO) facilities to meet and remain compliant with environmental legal mandates and protect the Army from liability and/or fines assessed due to contractor operations.
- g. Review and revise military specifications, standards, and drawings, when appropriate, to eliminate and/or reduce the use of extremely hazardous substances and toxic chemicals. Coordinate this effort with other program offices as required.
- h. Conduct ACOM responsibilities for installations under its purview (see para 1-19).

1-22. The Commanding General, U.S. Army Training and Doctrine Command

The Commanding General, U.S. Army Training and Doctrine Command (CG, TRADOC) will—

- a. Ensure the development and implementation of environmental training and doctrine programs and products that support military training and readiness operations are consistent with regulatory requirements and Army environmental policies.
- b. Ensure that the U.S. Army Engineer School solicits and prepares environmental training packages as required for Soldiers and makes them available on-line through Army Knowledge Online (AKO) and/or other appropriate websites.
- c. Ensure requirements documents incorporate environmental resources sustainment and lessons learned into all appropriate Army and Joint doctrinal publications and references.
- d. Ensure all training procedures, training manuals, training doctrine, and requirements documents include sound environmental practices and procedures.
- e. Coordinate with the OACSIM regarding establishment of staffing or training standards for all modified tables of organization and equipment (MTOE) and tables of distribution and allowances (TDA) unit designated environmental officers. Ensure environmental officer responsibilities are consistent with regulatory requirements and Army environmental policies.
- f. Ensure organizations/units are designed with equipment and personnel to meet established environmental requirements.

1-23. Senior mission commanders

Senior mission commanders (SMC) will—

- a. Comply with installation policies, applicable Federal, State, and local environmental laws, regulations, EOs, and overseas FGS and signed agreements.
- b. Participate in the installation's planning, sustainability efforts, and EMS.
- c. Designate a representative to the Environmental Quality Control Committee (EQCC).
- d. Ensure personnel receive appropriate environmental training.
- e. Coordinate testing and fielding of technology with the garrison commander (GC).
- f. Participate in and fully support all installation internal and external assessments and audits, and implement corrective actions.

- g. Fund environmental requirements not covered in the standard installation services or the ISSA (this does not apply to military units).
- h. Appoint trained environmental officer(s) to ensure operational compliance and coordination with installation environmental staff.
- i. Immediately report spills or releases of petroleum, hazardous substances, or hazardous waste (HW) to the GC.
- j. Participate in the development of integrated natural and cultural resources management plans to ensure they are compatible with and support the mission.
- k. In conjunction with the GC, ensure environmental requirements that impact ranges and training land are incorporated into the installation range complex master plan.
- l. Where appropriate, coordinate with JALS-EL early on all environmental agreements, including but not limited to, fine and penalty settlement agreements, prior to signing them.

1-24. Garrison commanders

Garrison commanders (GC) as used in this regulation include commanders of USAR Regional Readiness Support Commands (RRSCs), State Adjutants General relative to the concept of the State as an installation, OCONUS U.S. Army Garrisons, and GCs as appropriate as determined by the IMCOM, Headquarters NGB-ARNG, and State Adjutants General. The GC will—

- a. Ensure that Base Support activities support military training and readiness operations, enhance mission accomplishment, and are conducted in a manner conducive to environmental stewardship (see para 1-1a).
- b. Comply with applicable Federal, State, and local environmental laws, regulations, internal directives and goals, EOs, and overseas FGS.
- c. Investigate regulatory enforcement actions, complaints, and spills/releases, and correct systemic problems. Document investigation, negotiation, and resolution of enforcement actions and submit through the respective chain of command to ODEP, and through technical legal channels to JALS-EL.
- d. Ensure environmental requirements that impact ranges and training land are identified and incorporated into the installation range complex master plan. Ensure the affected SMC is made aware of these impacts.
- e. Ensure installation activities incorporate applicable environmental requirements into all procurement actions.
- f. Apply for, sign, arrange funding, and maintain all applicable Federal, State and local environmental permits. Incorporate potential mission surge conditions when applying for environmental permits.
- g. Maintain appropriate environmental records as required by law.
- h. Record enforcement actions within 48 hours via the Army Environmental Reporting Online (AERO).
- i. Coordinate with JALS-EL early on all environmental agreements, including but not limited to, fine and penalty settlement agreements, prior to signing them. GCs may not delegate approval or signature authority.
- j. Ensure that compliance agreements and consent orders that are attributable to a tenant's mission and/or operations are coordinated through applicable legal and command channels to determine the appropriate funding activity.
- k. Assess the long-term resource impacts of all environmental agreements. Coordinate resource implications for agreements through command channels to IMCOM, NGB-ARNG, ACOMs, ASCCs, or DRUs as appropriate prior to approval.
- l. Ensure that non-DOD HM (that is, HM owned and/or used by non-DOD entities) is not stored, treated, or disposed of on the installation unless approved by the ASA (I&E), his or her designee, or higher authority.
- m. Ensure that the installation strategic planning office (or equivalent) incorporates sustainability principles into strategic and other installation management plans; coordinate installation strategic plans with the SMC prior to finalization.
- n. Implement an installation-wide Hazardous Materials Management Program (HMMP).
 - a. Promote recycling/reuse programs and Green Procurement policies.
 - p. Organize and chair the installation EQCC.
 - q. Organize and chair the installation Technical Review Committee/Restoration Advisory Board (TRC/RAB), as required.
 - r. Implement and maintain a mission-focused EMS in accordance with the ISO 14001 standard. Third party registration to the standard is not required, and environmental funds will not be used for this purpose. However, GCs may pursue third party registration when it provides clear and documented mission benefits.
 - s. Champion the installation EMS and designate an EMS representative in the appropriate organizational planning cell; ensure all planning incorporates the requirements of the EMS.
 - t. Participate fully in EPAS, conduct annual internal environmental compliance assessments, and coordinate assessments with all tenants.
 - u. Prepare and execute the installation corrective action plan (ICAP); coordinate and monitor completion of installation-wide corrective actions.
 - v. Ensure all environmental program plans are completed and implemented per guidance in chapter 3.

- w. Designate personnel who are responsible and accountable for executing major program requirements as prescribed in chapters 4 through 14.
- x. Deposit all proceeds from Conservation Reimbursable Programs as outlined in Section 2665, Title 10, United States Code (10 USC 2665); Section 2667, Title 10, United States Code (10 USC 2667); and Sections 670a and 670b, Title 16, United States Code (16 USC 670a and 670b, Sikes Act).
- y. Serve as the Federal Agency Official with responsibility for installation compliance with the Native American Graves Protection and Repatriation Act (NAGPRA).
- z. Establish government-to-government relations with Federally recognized Indian Tribes and Native Alaskans.
 - aa. Maintain a public affairs program that encourages public involvement.
 - ab. Ensure that the installation master plan incorporates environmental considerations.
 - ac. Identify environmental requirements, forward through command channels, and maintain auditable records.
 - ad. Execute the environmental budget to meet critical requirements.
 - ae. Maintain an efficient and well-trained environmental staff.
 - af. Ensure that Army law enforcement personnel are trained in conservation law enforcement where appropriate.
 - ag. Ensure that sufficient numbers of professionally trained natural resource management personnel and natural resources law enforcement personnel are available and assigned the responsibility to perform tasks necessary to comply with Section 670e, Title 16, United States Code (16 USC 670e).
 - ah. Approve record of decision (ROD)/decision documents (DDs) for environmental response actions within delegated approval authority.
 - ai. Approve integrated natural resource management plans (INRMPs).
 - aj. Hold tenant units accountable for complying with the policies and standards of the installation.
 - ak. Approve annual reports of availability (ROA) for timber sales after review by higher headquarters and USAEC.
 - al. Designate an installation wildland fire program manager and approve the integrated wildland fire management plan.

1-25. Medical Department Activity/Medical Center/Health Service Support Area commanders

The Medical Department Activity/Medical Center/Health Service Support Area (MEDDAC/MEDCEN/HSSA) commanders will—

- a. Comply with applicable Federal, State, and local environmental laws, regulations, EOs, and overseas FGS.
- b. Manage and dispose of non-Resource Conservation and Recovery Act (RCRA) Subtitle C medical, dental, veterinary, pharmaceutical and regulated medical wastes in accordance with AR 40-5 and applicable regulations.
- c. Verify disposal requirements via the MIDI system updated and maintained by USACHPPM.
- d. Ensure that regulated medical waste manifests are only signed by those individuals who have been appropriately trained and are authorized in writing by the activity commander or supervisor.
- e. Appoint a trained environmental officer to ensure operational compliance and coordination with installation environmental staff, to include the coordination of medical waste management plans.
- f. Advise on health aspects of the installation environmental program, and provide technical consultation and support services.
- g. Identify environmental requirements, forward through command channels, and maintain auditable records.

1-26. Tenants

A tenant is an authorized activity located on an installation that is not part of the garrison organization. This includes, but is not limited to, military units, the Army and Air Force Exchange Service (AAFES), and the Defense Commissary Agency (DeCA). Tenants will—

- a. Comply with installation policies, applicable Federal, State, and local environmental laws, regulations, EOs, and overseas FGS.
- b. Establish an ISSA with the GC that addresses environmental oversight, to include funding responsibilities and facility access (this does not apply to military units).
- c. Participate in the installation's planning, sustainability, and EMS (note, however, that installations should evaluate their liabilities concerning non-governmental tenants to determine whether any of them can be exempted from the installation EMS).
- d. Designate a representative to the EQCC.
- e. Ensure personnel receive required environmental training.
- f. Participate in all installation internal and external assessments and audits, to include programming for corrective actions.
- g. Fund environmental requirements not covered in the standard installation services or the ISSA (this does not apply to military units).
- h. Identify and submit environmental requirements to the supporting ACOM, ASCC, DRU/higher headquarters (this does not apply to military units).

- i. Identify and coordinate non mission-specific environmental requirements with the GC.
- j. Pay environmental fines and penalties resulting from their mission activities.
- k. Immediately report spills or releases of hazardous substances to the on-scene coordinator (OSC). Pay or reimburse costs associated with cleanup and spill response if not covered in the standard installations services or the ISSA.
- l. Report all instances of non-compliance and notification of enforcement actions to the GC immediately.
- m. Ensure that non-DOD hazardous material is not stored, treated, or disposed of on the installation unless approved by the OASA (I&E), his or her designee, or higher authority.

1-27. Commanders of Government-Owned, Contractor-Operated facilities

The Commanders of Government-Owned, Contractor-Operated (GOCO) facilities will—

- a. In coordination with the contracting officer, ensure that contracts include provisions for operations at GOCO facilities to meet and remain compliant with environmental legal mandates to protect the Army from liability and/or fines assessed due to contractor operations.
- b. Comply with installation policies, applicable Federal, State, and local environmental laws, regulations, and EOs.
- c. Ensure that contractors assume responsibility for management and disposal of contractor-generated solid and HW.
- d. Ensure that non-DOD hazardous material is not stored, treated, or disposed of on the installation unless approved by the OASA (I&E), his or her designee, or higher authority.
- e. Deposit all proceeds from Conservation Reimbursable Programs as outlined in 10 USC 2665, 10 USC 2667, and 16 USC 670b.
- f. Execute EMS responsibilities in accordance with contract provisions.
- g. Assess the long-term resource impacts of all environmental agreements in coordination with the acquisition community. Coordinate resource implications for agreements through command channels as appropriate prior to approval.
- h. Ensure that all contractor personnel receive appropriate levels of training on environmental awareness, hazardous material/waste management, and the installation EMS.

1-28. Unit commanders

The unit commanders will—

- a. Instill an environmental ethic in soldiers and civilians under their command.
- b. Ensure personnel receive required environmental training.
- c. Comply with installation policies, applicable Federal, State, and local environmental laws, regulations, EOs, and overseas FGS.
- d. Report noncompliance and spills through appropriate channels to the GC.
- e. Incorporate environmental responsibilities and environmental risk management into unit SOPs and operation orders (OPORDs) as appropriate; integrate environmental considerations into the planning and execution processes in accordance with FM 3-100.4.
- f. Appoint and train environmental officers at appropriate organizational levels to ensure compliance actions take place (see FM 3-34.500 for environmental officer responsibilities).
- g. Support the installation-wide EMS.

Chapter 2

Environmental Policy

2-1. Commitment to Environmental Stewardship

- a. The Army is committed to environmental stewardship in all actions as an integral part of its mission and to ensure sustainability.
- b. This regulation supports the *Army Strategy for the Environment*, 1 October 2004, which presents the Army's environmental vision as sustainable operations, installations, systems, and communities enabling the Army mission. Under the strategy, the Army's environmental mission is to sustain the environment to enable the Army mission and secure the future. In doing so, all Army organizations and activities will—
 - (1) Foster an ethic within the Army that takes us beyond environmental compliance to sustainability.
 - (2) Strengthen Army operational capability by reducing our environmental footprint through more sustainable practices.
 - (3) Meet current and future training, testing and other mission requirements by sustaining land, air, and water resources.
 - (4) Minimize impacts and total ownership costs of Army systems, materiel, facilities, and operations by integrating the principles and practices of sustainability.

(5) Enhance the well being of our soldiers, civilians, families, neighbors, and communities through leadership in sustainability.

(6) Use innovative technology and the principles of sustainability to meet user needs and anticipate future Army challenges.

2-2. Army Environmental Policy Statement

a. All Army organizations and activities will comply with applicable Federal, State, and local environmental laws, regulations, executive orders (EOs), or overseas Final Governing Standards (FGS) (see para 15-8 for additional specific overseas requirements); develop and implement pollution prevention and control strategies; and establish environmental priorities in consideration of the benefits to the sustainment of missions and operations.

b. All Army organizations and activities will strive to achieve continual improvement in overall environmental performance and supporting management systems.

c. All Army organizations will ensure that this policy is implemented, maintained, and communicated to all military and civilian employees and supporting contractors. In addition, this policy will be made readily available to the public upon request.

d. All contracts and contract modifications will specify that contractors are liable for any enforcement actions, fines, and/or penalties resulting from their failure to comply with applicable environmental requirements.

2-3. Legal Requirements

All references to legal requirements in this regulation are intended to refer to laws, regulations, and executive orders that, in the opinion of legal counsel, are applicable to the Army. While most environmental laws apply to the Army, some include exemptions (or provisions for requesting exemptions) for military activities under certain conditions. It is essential that Army counsel, including but not limited to the Office of the Judge Advocate General, Army Environmental Law Division, JALS-EL, be consulted on the applicability of all laws, regulations, initiatives, and executive orders. Similarly, all permits, agreements, notices of violations, enforcement actions, especially reports of potential liability under paragraph 16-4, require early and close coordination with Army legal counsel that is responsible for direct support to the command or activity. As necessary, legal counsel at the installation level will coordinate issues and positions within the appropriate Army legal chain. Precedent-setting opinions, all enforcement actions, and agreements must be coordinated with JALS-EL. The requirement to consult with legal counsel supporting a command or activity is considered an essential part of effectively using this regulation. Additionally, this regulation prescribes program requirements in terms of "will" and "must", which mean that the actions are mandatory. All Army organizations will incorporate environmental considerations and requirements into all aspects of the organization's mission.

Chapter 3

Planning and Implementation

3-1. Installation strategic planning

a. Environmental considerations must be incorporated into installation plans, including installation strategic plans. Installation strategic planning incorporates the concepts and philosophy of sustainability, the ultimate objective in strategic planning, and must be applied to and supported by all functional areas within the command.

b. Installation strategic planning is the long-term planning process that establishes the baseline and direction for all other plans and planning processes, including real property master plans (RPMPs), human resource plans, information technology (IT) and knowledge management plans, environmental management plans, functional business plans, etc. Guidance for these plans is provided by Headquarters, Installation Management Command (HQ, IMCOM), National Guard Bureau - Army National Guard (NGB-ARNG), and for special installations, owning Army Commands (ACOMs), Army Service Component Commands (ASCCs) and Direct Reporting Units (DRUs). This includes synthesizing and aligning pertinent information from The Army Plan, Army strategic planning guidance, Army programming and budgeting guidance, policies, and other sources of strategic guidance with the organizational mission, vision, values, principles, strategy maps, balanced scorecards, and so forth. The garrison commander (GC) applies this guidance to his or her own operations through the installation strategic planning process.

3-2. Activities, products, and services

a. The Army mans, equips, trains, sustains, mobilizes, deploys, and demobilizes the force as needed to support the combatant commanders.

b. Achieving the foregoing requires the Army to undertake a number of activities and to provide various products and services that include, but are not limited to (listed by mission/functional area):

(1) Weapons System Acquisition - including the major systems acquisition phases of concept and technology development, system development and demonstration, production and deployment, operations and support, and demilitarization and disposal.

(2) Logistics Support - including the acquisition, storage, distribution, and recovery of all classes of supply; maintenance of materials and equipment; transportation of personnel and materiel; and provision of support services such as food, commissaries, laundries, and property disposal.

(3) Training - including providing and conducting individual, functional, and organizational (both tactical and non-tactical) training.

(4) Infrastructure Development and Maintenance - including the total system of facilities; buildings; structures; horizontal transportation facilities (roads, railroads, bridges, dams, and airfields); utility, transport, and communication systems; ranges and other training areas; ports; airfields, and associated lands and equipment; and facilities (that is, real property) operation and maintenance, to include utilities, minor construction, and general engineering support.

(5) Industrial Operations - including the manufacture of commodities, equipment, and weapons systems.

(6) Base Operations Support - including all of the activities required to accomplish the missions and functions of assigned and tenant units and activities at the installation level.

(7) Health and Medical Support - including providing general health care and medical and dental support to personnel, as well as the operation and maintenance of Army hospitals, medical centers (MEDCENS), dental and veterinary clinics, medical treatment facilities, and supporting laboratories.

(8) Transportation Equipment - including tactical and non-tactical vehicles, fixed and rotary wing aircraft, rail systems, watercraft, and supporting maintenance operations.

(9) Mobilization and Deployment - including the assembly and organization of material and personnel resources in response to war or other emergencies including low intensity conflict and military operations other than war, and the physical movement of those resources to the theater of operations.

(10) Research, Development, Test, and Evaluation (RDT&E) - including the demonstration/validation and technology transfer of materiel, equipment, and weapons systems at Army proving grounds, laboratories, and related facilities.

3-3. Important environmental aspects

a. Environmental aspects are elements of products, activities, or services that interact with the environment. Important environmental aspects are those that result in mission or environmental impacts, and may include, but are not limited to:

(1) Air emissions (fugitive or from stacks), including but not limited to, Clean Air Act criteria pollutants (carbon dioxide, nitrous oxides, sulfur oxides, ozone, particulates, and lead), combustion gases, volatile organic compounds (VOCs), and hazardous air pollutants (HAPs).

(2) Generation of noise, vibration, odor, dust, heat, mold, light, radiation, and other nuisance activities.

(3) Discharges and disposals (point and non-point), spills, or other releases to soil or ground and/or surface waters, including sewage, sediment, or solid, hazardous, and other wastes.

(4) Natural resource alteration (that is, consumption or conservation), including water, timber, minerals, soil, and so forth. This includes the acquisition of goods and services that affect the consumption of natural resources.

(5) Ecological resource alteration, including wetland and endangered species protection or destruction.

(6) Cultural resource alteration, including historic properties; archeological sites; sacred sites, and properties of traditional cultural or religious importance to American Indians, Alaska Natives, and Native Hawaiians.

(7) Energy consumption or conservation, including electricity, fossil, alternative fuels, and renewable energy, such as solar energy.

b. All appropriate facilities (see glossary) will establish and maintain procedures to identify the environmental aspects of their operations, activities, products, or services that they can control and over which they can be expected to have an influence, to determine which have or can have impacts on the mission and/or the environment. This will include maintaining scientifically defensible information and inventories of facilities, resources, and environmental aspects, including geospatial information where the spatial location and extent of these affects their impact to mission and/or the environment. Installations must evaluate their liabilities concerning non-governmental tenants to determine whether any of them can be exempt from the installation EMS.

c. The aspects related to those important impacts will be considered in setting environmental objectives at all appropriate organizational levels. Additionally, appropriate facilities will consider processes for external communications on their important environmental aspects and document their decision regarding external communications.

d. Acquisition program managers should ensure that weapons systems are designed so that they can be tested, operated, maintained, repaired, and disposed of in accordance with applicable environmental, safety, and occupational health statutes, regulations, policies, and environmental treaties and agreements. (see PD: DODD 5000.1)

3-4. Environmental objectives and targets

a. An environmental objective is an overall environmental goal, arising from the environmental policy, which an organization sets for itself to achieve, and which is quantified where practicable (for example, reduce hazardous waste (HW) disposal by a certain amount). An environmental target is a detailed performance requirement, quantified where practicable, applicable to the organization or parts thereof, that arises from the environmental objectives and that needs

to be set and met to achieve those objectives (for example, reduce HW disposal by a certain amount by a certain point in time). Environmental objectives and targets will be developed in consideration of impacts on Army operations.

b. Installations/activities will establish and maintain environmental objectives and targets for all operations and activities having the potential for important mission and/or environmental impact. Objectives and targets will be established at each relevant function and level within the organization, will be documented, and will meet DOD Measures of Merit (MOMs), Army-level program goals, objectives, and targets; long-term strategic goals; legal and other requirements; important environmental aspects; technological options; financial and operational requirements; and the views of interested parties, as appropriate.

c. Headquarters, Department of the Army (HQDA) will disseminate detailed Army-level program goals, objectives, and targets through periodic publication and update of appropriate plans, directives, and guidance documents.

3-5. Operational controls

a. Installations/activities will identify those operations and activities that are associated with important environmental aspects (see para 3-3a) and manage them consistent with established policies, objectives, and targets.

b. Installations/activities will establish and maintain documented standing operating procedures (SOPs) to avoid unacceptable environmental impacts from these operations and activities.

c. Contracting officers should ensure that contract provisions are consistent with SOPs.

3-6. Emergency preparedness and response

a. Installations/activities will establish and maintain procedures to identify the potential for and to respond to accidents and emergency situations, and for preventing and mitigating the environmental impacts that may be associated with them. These procedures will be tested periodically.

b. Installations/facilities will review and revise, where necessary, emergency preparedness and response procedures. In particular, critical reviews and revisions should be conducted after any occurrence of accidents or emergency situations.

3-7. Management programs

a. Appropriate facilities will establish and maintain management programs (see chaps 4 -14) for achieving objectives and targets, and will track and measure progress toward achieving them.

b. As a minimum, management programs will designate responsibility for achieving objectives and targets at each relevant function and organizational level, and specify the means and timeframe by which they are to be achieved.

c. Appropriate facilities will track their targets and objectives to measure continual improvement.

Chapter 4

Environmental Asset Management

Environmental assets entrusted to the Army's care include, but are not limited to, air, water, land, and natural and cultural resources. Specific DOD and Army policies, legal and other requirements, major program goals, and program requirements associated with environmental resources are presented in this section. The Office of the Assistant Chief of Staff for Installation Management (OACSIM) and the Office of the Director of Environmental Programs (ODEP) are responsible for environmental program policy implementation and Headquarters, Department of the Army (HQDA) level program oversight. The Installation Management Command (IMCOM) and National Guard Bureau - Army National Guard (NGB-ARNG) are responsible for executing environmental program requirements prescribed herein in accordance with this regulation and applicable federal, state, and local requirements. Technical support for addressing the various requirements prescribed in this section is the responsibility of the appropriate program offices within the U.S. Army Environmental Command (USAEC), U.S. Army Center for Health Promotion and Preventive Medicine (USACHPPM), Assistant Secretary of the Army for Acquisition, Logistics, and Technology (ASA (ALT)) Environmental Support Office (ESO), and the Military Programs Directorate of the U.S. Army Corps of Engineers (USACE).

4-1. Air resources

a. Policy.

(1) Comply with applicable Federal, State and local air quality regulations, permit requirements, and overseas Final Governing Standards (FGS).

(2) Identify and implement cost-effective pollution prevention measures that will reduce toxic or criteria air emissions.

(3) Eliminate dependency on ozone depleting substances (ODS).

b. Legal and other requirements. Section 7401, Title 42, United States Code (42 USC 7401, et seq., Clean Air Act (CAA), as amended); Section 6901, Title 42, United States Code (42 USC 6901, et seq., the Resource Conservation

and Recovery Act of 1976 (RCRA), as amended; the Energy Policy Act of 2005; applicable State and local requirements; or country-specific FGS requirements.

c. Major program goal. Achieve and maintain air quality standards to protect human health and the environment, while minimizing mission impacts.

d. Program requirements.

(1) Assess the need for and obtain necessary CAA Title V Operating Permits and all other applicable permits. (LD: 40 CFR 71.1)

(2) Update existing or obtain new permits as needed when planning to modify, construct, install, or remove from service an emissions source that is, or should be, regulated under a Title V or other permit. (LD: 40 CFR 71.6)

(3) Perform air emissions inventories as required by statute, regulation, permit, or country-specific FGS. (LD: 40 CFR 51; 40 CFR 70.6; 40 CFR 71.6; FGS)

(4) Determine the need to comply with New Source Performance Standards, New Source Review for Non-attainment, or for Prevention of Significant Deterioration (PSD). In addition, determine the need to perform a Conformity Determination. (LD: 40 CFR 51.307)

(5) Cooperate with Federal, State, and local authorities to achieve the goals of implementation plans. (LD: 40 CFR 51)

(6) Perform technology, permitting, and preconstruction assessments as required before beginning construction or reconstruction of air emissions sources. (LD: 40 CFR 51.160 and related State regulations)

(7) Establish a Risk Management Program and develop and maintain a risk management plan (RMP) when required under Section 112(r) of the CAA. (LD: 40 CFR 68.150–195)

(8) Implement and maintain plans to eliminate dependency on commercial acquisition of Class I ODS. (LD: 40 CFR 82)

(9) Reduce all ODS use to zero as cost-effective substitutes that meet applicable standards become available. (LD: 40 CFR 82)

(10) Recovered Class I ODS cannot be bartered, sold, or traded. Return recovered ODS that are excess to installation needs to the DOD ODS Reserve. (LD: 40 CFR 82)

(11) Coordinate natural resources activities having potential air quality impacts (for example, prescribed burning) with appropriate State and local officials.

(12) Comply with applicable Standards of Performance for New Stationary Sources and corresponding monitoring requirements. (LD: 40 CFR 60)

(13) Comply with all air toxics regulations, to include, but not limited to, applicable National Emission Standards for Hazardous Air Pollutants (NESHAP) maximum achievable control technology (MACT) requirements for regulated sources of hazardous air pollutants (HAPs). (LD: 40 CFR 63)

(14) Overseas installations will comply with permits obtained on their behalf in accordance with the FGS.

4-2. Water resources

a. General policy.

(1) Comply with applicable Federal, State, and local laws and regulations regarding water resources management and permitting. Overseas, the Army will comply with country-specific FGS requirements.

(2) Obtain and comply with all required Federal, State, and local Clean Water Act (CWA), Coastal Zone Management Act (CZMA), and Safe Drinking Water Act (SDWA) permits (includes wastewater and storm water permits, operational permits for drinking water systems, groundwater discharge permits, wetland 404/401 permits, septic system permits, underground injection control, and so forth).

(3) Overseas installations will comply with permits obtained on their behalf in accordance with the FGS.

(4) Identify and implement pollution prevention initiatives.

(5) Participate with regional authorities in the development and implementation of water resource initiatives and plans.

(6) Mitigation wetlands are wetlands that replace the functions performed by drained, filled, or degraded wetlands on installation project sites. They should, whenever possible, be sited within the same watershed as the affected installation wetlands and outside installation boundaries so installations can retain maximum land-use flexibility.

b. Recreational waters. Management of recreational waters at military installations will be in accordance with AR 40-5, TB MED 575, and TM 5-662.

c. Water resource protection and management.

(1) All Army organizations and activities will comply with legally applicable Federal, State, and local regulations, executive orders (EOs), and FGS to conserve, protect and restore surface water resources (including wetlands, estuaries, streams, lakes and so forth), and groundwater (wells and aquifers).

(2) Executive Order 11988 and EO 11990 address the actions Federal agencies take to identify and protect flood plains and wetlands, respectively.

(3) The CZMA requires that activities within the coastal zone of any state must be consistent with the state's coastal zone management plan.

d. Watershed management.

(1) *Policy.* Installations use a watershed management approach when evaluating projects and programs to satisfy environmental regulations, facility projects, and master planning that may impact the quality of water resources. Using a watershed approach means that installations should develop a framework or plan for coordinating, integrating and managing their mission activities that impact the quality of water resources located on (and those that migrate off) their installation. This approach also requires a strong commitment to involving stakeholders, both internal and external, in the management of these water resources. To implement applicable total maximum daily load (TMDL) regulations, all Army facilities will:

(a) Initiate and maintain contact with Federal and State water regulators concerning the process of setting TMDLs and allocations for water bodies located on or passing through Army installations.

(b) Integrate all aspects of CWA requirements, programs and available information (for example, the National Pollutant Discharge Elimination System (NPDES) program, 404 wetlands program, wellhead protection, storm water plans/projects, storm water construction permits, spill prevention, control, and countermeasures (SPCC) plans/projects, State CWA 319 requirements (State plans & strategies for reducing non-point source runoff) with TMDL development and future planning. Ensure all of these programs are consistent with, and work together to attain compliance under, TMDL allocations once they are set by states.

(c) Ensure that activities required to meet other environmental legal requirements, like RCRA, that impact water quality in an impaired water or are impacted by an impaired water (for example, Chapter 35, Title 16, United States Code (16 USC Chapter 35)) are informed of CWA requirements. These non-CWA activities should be integrated into the management plan.

(d) Ensure other programs that are or may have their activities affected by identification of impaired waters and new TMDL allocations are informed of the impacts and requirements (for example, facilities construction, master planning, National Environmental Policy Act (NEPA) requirements).

(e) Ensure that watershed assessments and management plans are integrated with the installation master plan, integrated natural resources management plan (INRMP), and other plans as appropriate.

(f) Establish and integrate environmental education and participation programs required by CWA/SDWA/the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)/ESA and so forth for all Army personnel and their families based on watershed concepts and requirements to restore impaired waters and maintain designated uses of local water bodies.

(g) Ensure that mission and non-mission activities and construction designs utilize best management practices (BMPs) to minimize TMDL impacts.

(2) *Legal and other requirements.* The principal applicable laws governing water resource protection and management are the CWA, SDWA, and related Federal, State, and local implementing regulations; and for overseas installations, the country-specific FGS requirements.

(3) *Major program goal.* Implement the "Unified Federal Policy for a Watershed Approach to Federal Land and Resource Management". (PD: Unified Federal Policy for a Watershed Approach to Federal Land and Resource Management, 65 FR 62565-62572, 18 October 2000).

(4) Program requirements.

(a) Assess installation watershed impacts as appropriate, considering upstream and downstream water quality data or other background levels, proximity to potentially designated impaired waters, and any effects on mission activities. (PD: Unified Federal Policy for a Watershed Approach to Federal Land and Resource Management, 65 FR 62565-62572, 18 October 2000)

(b) Carry out Army activities consistent with EPA/State approved plans/strategies to restore impaired or threatened water bodies to their designated use. (LD: 40 CFR 130.12)

(c) Control soil erosion in accordance with applicable and appropriate Federal, State, or local requirements. (LD: 40 CFR 122.26)

(d) Comply with all applicable and appropriate State Source Water Assessment and Protection Program requirements as they relate to ground water (for example, wellhead protection plans) (LD: SDWAA 1996, PL 104-182, Sections 1428 and 1453), (LD: 40 CFR 144-148), and (LD: 40 CFR 149).

e. Wastewater and stormwater.

(1) Policy.

(a) Comply with facilities policy concerning use of wastewater collection/treatment systems that are owned and operated by public or private entities when economically feasible and when security is not compromised.

(b) Comply with all requirements, substantive and procedural, for control and abatement of water pollution, as outlined in the CWA that require Army compliance.

(c) Control or eliminate sources of pollutants and contaminants to protect water bodies and groundwater.

(d) Employ abatement measures for non-point source runoff from construction, facility operations, and land management activities.

(e) Encourage reuse or recycling of wastewater, sewage sludge, wash rack sediment, greases or oils, and other wastes whenever economically feasible and environmentally beneficial.

(2) *Legal and other requirements.* Applicable laws are Chapter 26, Title 33, United States Code (33 USC Chapter 26, as amended; Section 108 of Section 6961, Title 42, United States Code (42 USC 6961); Section 1401, et seq., Title 33, United States Code (33 USC 1401); Section 2701, Title 33, United States Code (33 USC 2701); and State and local laws; and for overseas installations, the country-specific FGS requirements.

(3) *Major program goals.* The Army's wastewater and stormwater management goals are to reduce the pollutant loadings in point source and non-point source discharges and to ensure efficient water reuse.

(4) *Program requirements.*

(a) Obtain and comply with NPDES and/or State discharge permits, to include all required plans. (LD: 40 CFR 122)

(b) Ensure that discharges from industrial activities to Federally-owned Treatment Works (FOTWs) and Publicly-owned Treatment Works (POTWs) comply with the substantive pretreatment requirements applicable to POTWs under the CWA. (LD: 40 CFR 403)

(c) Develop pretreatment programs as required to ensure FOTWs meet NPDES permit requirements and to improve opportunities for reuse of wastewater effluent and sewage sludge. (LD: 40 CFR 403)

(d) Develop and implement a stormwater management plan for a regulated Municipal Separate Stormwater Sewer System (MS4) as required in accordance with the installation's general permit. (LD: 40 CFR 122.26)

(e) Develop and implement a Stormwater Pollution Prevention Plan(s) (SWPPP) as required, in accordance with the installation's industrial, construction, or Municipal Separate Storm Sewer (MS4) storm water permit(s). (LD: 40 CFR 122.26)

(f) Develop and implement a spill prevention, control, and countermeasures plan (SPCCP), as required. (LD: CWA Section 311(j), 40 CFR 112.3)

(g) Perform shipboard or shore-side oil/water separation before the discharge of ballast water from watercraft. Effluent limitations from watercraft are prescribed by the U.S. Coast Guard (USCG) (LD: 33 CFR 151-158) EPA; (LD: 40 CFR 110); individual states; and TB 55-1900-206-14.

(h) Coordinate proposed military activities involving the discharge of fill material into waters of the United States, including wetlands, with, and if necessary, secure a permit from the local U.S. Army Corps of Engineers (USACE) district and appropriate State agency. (LD: 33 CFR 323; 40 CFR 230)

(i) Ensure that operators of wastewater (including industrial) treatment plants and wastewater collection systems have necessary training and certification. (LD: 42 USC 300g-8)

(j) Use analytical laboratories that are certified per applicable Federal, State, local or host nation (HIN) requirements, as appropriate. (LD: 40 CFR 136; 40 CFR 141.28)

(k) Follow State approved plans and local permit requirements for non-point source water pollution control where applicable. (LD: 40 CFR 123)

f. Drinking water.

(1) *Policy.*

(a) Provide drinking water to fixed facilities in accordance with the requirements of the SDWA and applicable State and local regulations. Overseas, all Army organizations and activities will comply with country-specific FGS.

(b) Comply with Army facilities policy to transfer ownership and operation of water supply treatment systems to public and private entities when economically feasible and when security is not compromised.

(2) *Legal and other requirements.* Applicable laws are the SDWA, as amended; PL 109-58 (Energy Policy Act of 2005); and State and local laws; and for overseas installations, the country-specific FGS requirements.

(3) *Major program goals.* The Army's drinking water resource management goals are to consistently provide safe, aesthetically pleasing drinking water at adequate pressures and quantities to protect the health and quality of life of people living and working on our installations; and to better manage the cost of drinking water programs.

(4) *Program requirements.*

(a) Obtain and comply with all necessary water appropriation and use permits, National Pollutant Discharge Elimination System (NPDES) permits for wastewater discharges from drinking water treatment plants, or other permits that are required for operation of drinking water treatment systems at both fixed and field facilities. (LD: 40 CFR 122; 40 CFR 141-143)

(b) Comply with the provisions of the SDWA as implemented by State and local regulations which include, but are not limited to the following: (LD: 42 USC 300g-8; 40 CFR 136; 40 CFR 141.28)

1. Primary and Secondary drinking water standards.

2. Training and operator certification requirements.

3. Lead contamination control act requirements.

4. Public notification and consumer confidence reporting requirements.

5. Water system vulnerability assessment and emergency response plan requirements.

6. Certified laboratory requirements:

(c) Provide copies of annual Consumer Confidence Reports (CCRs) to the Installation Management Command (IMCOM) and State Adjutants General (where appropriate) by the end of each fiscal year.

(d) Perform a lifecycle cost analysis whenever the upgrade or construction of a new water supply facility is considered. Guidelines for military installations to perform the cost analysis are contained in AR 420-49, section 4-1.

(e) Monitor and upgrade Army water supply, treatment, distribution, and storage systems as needed to comply with environmental requirements. Routine operation, maintenance, and repair of Army water systems will be in accordance with AR 40-5; AR 420-49; AR 700-136; TB MED 576; TB MED 577; UFC 3-230-02; TM 5-810-5; TM 5-813-1 through TM 5-813-9; and USACHPPM TG 179.

(f) After consultation with supporting legal counsel, comply with applicable additional State and local drinking water regulations not covered under the SDWA.

4-3. Land resources

Land resources are the ranges, cantonment areas, and associated natural resources (to include soils and the biota they support).

a. Policy.

(1) Comply with applicable Federal, State, and local regulations regarding land resources management and permitting where applicable. Overseas, all Army organizations and activities will comply with applicable country-specific FGS.

(2) Provide for the conservation and rehabilitation of natural resources on Army lands.

(3) Integrate training and testing range operations and support activities within the installation environmental management system (EMS).

(4) Ensure that all management plans address range operations and activities as appropriate.

(5) Quantify environmental encroachment vulnerabilities and assess the feasibility of using external buffer zones to enhance testing and training capabilities. Where warranted, work with private landowners and eligible entities through the Army Compatible Use Buffer (ACUB) process.

(6) The management and conservation of natural and cultural resources under Army control, including planning, implementation, and enforcement functions, are inherently governmental functions that will not be contracted. Components that have contractor-operated installations or facilities will ensure that contract instruments clearly address contractor and government functions as they relate to natural and cultural resources.

b. Legal and other requirements. Principal statutes, regulations, and guidance applicable to the Army Natural Resources Management Program include:

(1) 16 USC 670a and 670b.

(2) 16 USC 35.

(3) 50 CFR 401-453, implementing regulations of the U.S. Fish and Wildlife Service (USFWS) and National Oceanic and Atmospheric Administration (NOAA) - Fisheries.

(4) Sections 1801-1882, et seq., Title 16, United States Code (16 USC 1801-1882).

(5) 10 USC 2665.

(6) 10 USC 2667(d).

(7) Section 2671, Title 10, United States Code (10 USC 2671).

(8) Section 2684a, Title 10, United States Code (10 USC 2684a).

(9) Section 2694a, Title 10, United States Code (10 USC 2694a).

(10) Sections 1361-1407, Title 16, United States Code (16 USC 1361-1407).

(11) Sections 4701-4751, et seq., Title 16, United States Code (16 USC 4701-4751).

(12) Sections 661-667d, United States Code (16 USC 661-667d).

(13) Section 701, Title 16, United States Code (16 USC 701).

(14) Sections 703-712, Title 16, United States Code (16 USC 703-712).

(15) Sections 3371-3378, Title 16, United States Code (16 USC 3371-3378).

(16) Part 13, Title 50, Code of Federal Regulations (50 CFR 13).

(17) Part 21, Title 50, Code of Federal Regulations (50 CFR 21).

(18) Part 190, Title 32, Code of Federal Regulations (32 CFR 190).

(19) Parts 10-16, Title 50, Code of Federal Regulations (50 CFR 10-16).

(20) EO 13186.

(21) EO 13112.

(22) EO 13423.

(23) EO 11990.

(24) PL 108-136, sections 312, 319.

(25) DODD 4715.1E.

- (26) DODI 4715.3.
- (27) DODI 4715.5.
- (28) Memorandum, Deputy Under Secretary of Defense for Installations and Environment (DUSD (I&E)), 10 October 2002, subject: Implementation of Sikes Act Improvement Act: Updated Guidance.
- (29) Applicable FGS and any legally binding international agreements.
- c. Major program goals.* The Army's land resources management goals are to:
 - (1) Integrate natural resources stewardship and compliance responsibilities with operational requirements to help achieve sustainable ranges, training areas, and other land assets.
 - (2) Develop, initiate, and maintain programs for the conservation, utilization, and rehabilitation of natural resources on Army lands.
- d. Program requirements.*
 - (1) *Integrated natural resources management.*
 - (a) Develop and implement an integrated natural resources management plan (INRMP) in accordance with 16 USC 670a in cooperation with the USFWS and the State fish and wildlife agency unless significant natural resources are absent. OCONUS installations will develop and implement an INRMP in consonance with FGS requirements. Significant natural resources are present if one or more of the following criteria apply: (LD: 16 USC 670a).
 - 1. Federally listed, proposed, or candidate species are onsite, or critical habitat has been designated or proposed on the installation, and on-installation conservation measures are necessary to conserve the federally listed species.
 - 2. Conservation reimbursable forestry or agricultural outleasing activities consist of 100 acres or more.
 - 3. Hunting and/or fishing takes place for which special State permits are issued by the installation in accordance with 16 USC 670a(b)(3).
 - 4. The installation conducts intensive, on-the-ground military missions that require conservation measures to minimize impacts (for example, soil erosion control, prescribed fire) and sustain natural resources. Installations designated by the DCS, G-3/5/7 for management under the ITAM program meet this criterion.
 - 5. Unique biological resources, wetlands, species at risk, or ecological issues require a level of planned management that can only be addressed by an INRMP.
 - 6. In some cases, it may be difficult to determine whether an installation has significant natural resources. In these cases the ACSIM is delegated the authority to determine whether significant natural resources are present, and, therefore, whether an INRMP is required.
 - (b) Implement the INRMP by:
 - 1. Actively requesting, receiving, and using funds for priority projects and activities.
 - 2. Ensuring that sufficient numbers of professionally trained natural resources management personnel are available to perform the tasks required by the INRMP.
 - 3. Coordinating annually with all cooperating offices.
 - 4. Documenting specific INRMP action accomplishments undertaken each year.
 - (c) Prepare INRMPs that include components addressing specific natural resources (for example, endangered species, forests, flora, fauna, soil, wetlands) and their interdependency.
 - (d) Review the INRMP with regard to operation and effect by the parties thereto on a regular basis, but not less often than every 5 years. Update the INRMP as appropriate in concert with installation needs to obtain mutual agreement in coordination with the USFWS, State fish and game agency(ies), and other internal and external stakeholders. A 5-year update is not required if circumstances have not changed. (LD: 16 USC 670a).
 - (e) Use the INRMP, range complex master plan, and ITAM 5-year plan as the garrison commander's (GC) tools for planning and integrating land resources compliance and management activities with the military mission.
 - (f) Provide access to training and testing ranges through sustainment of installation land resources and in compliance with natural resources laws, regulations, EOs, and Army policies.
 - (g) To the extent appropriate and applicable, provide for no net loss in the capability of the installation lands to support the military mission. Identify and address threats to mission land use and give high priority to management objectives that protect mission capabilities of installation lands. (LD: 16 USC 670a).
 - (h) Designate and ensure that the installation has ready access to a qualified military, Department of the Army (DA) civilian, or State Army National Guard (ARNG) staff member (or ARNG contractor) to serve as installation natural resources coordinator.
 - (i) Assure NEPA requirements are satisfied when preparing the INRMP. (LD: 50 CFR 402.06; 42 USC 4331).
 - (j) Conduct appropriate internal and external coordination prior to GC approval of INRMPs and revisions (for example, with Director of Plans, Training, Mobilization, and Security (DPTMS); Staff Judge Advocate; Morale, Welfare, and Recreation; Provost Marshall, and so forth). INRMPs will meet the following conditions (note that 2-5 do not apply to overseas installations):
 - 1. Concurrence from the installation's next higher headquarters, and coordination with affected Army Commands (ACOMs), Army Service Component Commands (ASCCs), Direct Reporting Units (DRUs), NGB-ARNG, and tenants.

2. Agreement from the Regional Directors of the USFWS concerning aspects within the scope of their authority. (LD: 16 USC 670a(a)(2)).
3. Coordination with NOAA–Fisheries in those instances where INRMPs include TES or critical habitat within the scope of their authority.
4. Concurrence from land management agencies exercising jurisdiction over installation property.
5. Agreement from the Director of the State fish and wildlife agency concerning aspects within the scope of their authority. (LD: 16 USC 670a(a)(2)).
6. Opportunity for public comment provided (minimum of 30 days). (LD: Section 2905, PL 105–85).
- (k) Coordinate the draft INRMP with the Office of the Director of Environmental Programs (ODEP) when requested.
- (l) Integrate the INRMP with the installation master plan, range plans, training plans, integrated cultural resources management plans (ICRMPs), integrated pest management plans (IPMPs), cleanup installation action plans (IAPs), and other appropriate plans to ensure consistency.
- (m) For installations that have training or testing missions, ensure the DPTMS (or Range Control staff or equivalent) provides a description of optimum mission landscape requirements (current and future (next 5 years)) to include recommendations for improving the capability, availability and accessibility of land.
- (n) Establish specific goals and measurable objectives for all components of the INRMP. (LD: 16 USC 670a(b)) Establish metrics and measure progress towards achieving the objectives.
- (o) Prioritize projects and required resources necessary to achieve the objectives of the INRMP and its components.
- (p) Make unclassified portions of INRMPs available to the public through electronic format (for example, world wide web, compact disk, and so forth.) All INRMPs will undergo DPTMS security review prior to being made available. This requirement does not apply to overseas installations.
- (q) Accurately report INRMP data using the metrics in the Army Environmental Data Base - Environmental Quality (AEDB-EQ) Report and the Reimbursable Programs Tracking System (RPTS).
- (r) Conduct Planning Level Surveys (PLSs) and data analysis as the foundation for effective planning and decision-making. PLSs, with the exception of flora, will be maintained electronically as geospatial data, and will be submitted to the GIS Repository as they are updated. Existing Army scopes of work will be used when available. PLSs should be kept current according to an installation's specific needs, but at a minimum, will be reviewed and updated if necessary prior to the INRMP's revision. PLSs include as a minimum:
 1. *Topography*. A map with elevation, elevation contours, and associated data consistent with U.S. Geological Survey (USGS) standards and topographic map products.
 2. *Wetlands*. A description and map of the distribution and extent of wetlands consistent with the statement of work as defined in the Army/USFWS Memorandum of Agreement (MOA).
 3. *Surface waters*. A survey that describes and maps the distribution and extent of surface waters, and is consistent with USGS standards.
 4. *Soils*. A survey that classifies, categorizes, describes, and maps soils by map unit, and meets current National Cooperative Soil Survey standards and procedures.
 5. *Flora*. An installation-wide vascular plant survey that produces a list of plant species with verified nomenclature, classification and annotation compatible with the Natural Resources Conservation Service's (NRCS) Plant List of Accepted Nomenclature, Taxonomy, and Symbols (PLANTS).
 6. *Vegetation communities*. A survey, including field data, which describes and maps the distribution and extent of dominant and co-dominant plant communities (alliances).
 7. *Threatened and endangered (T&E) species*. A survey that maps and shows the occurrence, habitat distribution, and habitat management areas of Federally endangered, threatened, proposed, candidate, and species at risk occurring on the installation.
 8. *Fauna*. A survey, including field data, that describes and maps the distribution and extent of animals.
- (s) Ensure that turbidity and sediment levels do not irreparably degrade aquatic biota and habitat from an ecosystem perspective, or significantly impact shallow ground water aquifers.
- (t) Evaluate the feasibility and potential impacts of operating motorized off-road vehicles (ORVs) and non-motorized vehicles (for example, mountain bikes) on the military mission and natural and cultural resource management. If determined feasible, develop procedures for operating motorized ORVs and non-motorized vehicles that will protect resource values; preserve public health, safety, and welfare; and minimize use conflicts. (LD: EO 11644).
- (u) Obtain ACSIM approval prior to setting aside areas for an exclusive use that might constrain future land use decisions. Obtain supporting ACOM, ASCC, DRU, or NGB-ARNG concurrence before submitting request to ACSIM.
- (2) *Leases, easements, and other special land uses*.
 - (a) Address leases, easements, and other special land uses within the INRMP.
 - (b) Ensure all conditions of leases and easements are consistent with the military mission and natural resources conservation and protection.
 - (c) Follow the policies set forth in AR 405–80 regarding rights-of-way or easements.

(3) *Soil resources.*

(a) Use the INRMP for the planned management of soil resources across the entire installation. The Soil Erosion and Sediment Control Component (SESCC) to the INRMP will address the following soils policy.

(b) Keep soil erosion from water within tolerance limits as defined in soil surveys prepared by the U.S. Department of Agriculture (USDA), NRCS or as required by FGS or host nation authorities.

(c) Keep soil sediment, as a pollutant, in wetlands and waterways within compliance limits.

(d) Minimize the impact of land uses on soil erosion and sedimentation when and where possible, to include:

1. Locating physically intensive land disturbing activities on the least erodible soils.
2. Using climatic/seasonal changes in soil erosion as a factor in scheduling intensive mission operations and real property management activities.
3. Identifying and rehabilitating land disturbed by operations and real property management activities.

(4) *Flora and fauna.*

(a) Promote biodiversity and ecosystem sustainability on Army lands and waters consistent with the mission and INRMP objectives.

(b) Manage flora and fauna consistent with accepted scientific principles and in accordance with applicable laws and regulations, and, where lands and waters are suitable, for conservation of indigenous flora and fauna.

(c) Manage habitat to conserve and enhance existing flora and fauna consistent with the Army goal to conserve, protect, and sustain biological diversity while supporting the accomplishment of the military mission.

(d) Introduce or reintroduce any species only upon approval of the USFWS, the State, higher headquarters, and HQDA and include in the installation INRMP. In those instances where the training mission may be impacted, coordinate with the supporting ACOM, ASCC, DRU, or NGB-ARNG and secure joint approval from the OACSIM and the Office of the DCS, G-3/5/7, DAMO-TRS. (LD: EO 11987)

(e) Consult with NOAA-Fisheries on actions authorized, funded, or undertaken that may adversely impact fisheries or marine mammals. (LD: 16 USC 1801).

(5) *Threatened and endangered (T&E) species.*

(a) Prepare and implement an Endangered Species Management Component (ESMC) to the INRMP consistent with current policy and guidance.

(b) Carry out mission requirements in compliance with 16 USC 35.

(c) Integrate endangered species management and installation planning functions to ensure compliance with 16 USC 35. (LD: 50 CFR 402)

(d) In accordance with ACSIM guidance, take appropriate actions to preclude critical habitat designation.

(e) Assess all activities (to include Military Construction (MILCON)) at the earliest opportunity to determine whether they may affect listed species or critical habitat.

(f) Coordinate T&E actions or issues with ACOM, ASCC, and DRU commanders and other tenants that may be affected by them.

(g) Conduct biological assessments for activities that may have an effect on listed species or critical habitat where they are present or may be present in the action area. (LD: 50 CFR 402).

(h) Informally consult with the USFWS or NOAA-Fisheries, document the results in writing, and if necessary, conduct a biological assessment or biological evaluation (see glossary) to assess whether an action may affect a listed species or critical habitat. If the action is likely to adversely affect the listed species or its habitat, formal consultation is required. (LD: 50 CFR 402).

(i) Coordinate with affected installation organizations and the higher headquarters prior to initiating formal consultation. HQDA may identify proposed formal consultations that require higher level review. Installations will provide the proposal and supporting documentation as requested. ODEP, in coordination with JALS-EL, will review proposals and provide comments.

(j) Formally consult with the USFWS or NOAA-Fisheries when it is determined an action "may affect" a listed species or critical habitat. If the action is not likely to adversely affect the listed species or its habitat, and the USFWS or NOAA-Fisheries concur in writing, formal consultation is not required. (LD: 50 CFR 402).

(k) Confer with the USFWS or NOAA-Fisheries on any action that is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat. (LD: 50 CFR 402.10).

(l) Review all ongoing and proposed actions immediately upon listing of a threatened or endangered species or designation of critical habitat to determine if formal consultation is necessary (even if a conference has previously occurred). (LD: 50 CFR 402).

(m) Complete a Biological Evaluation before initiating formal conference on actions affecting a proposed species or proposed critical habitat. (LD: 50 CFR 402.10).

(n) Develop and implement strategies to promote, in cooperation with other landowners, the use of conservation banking and/or ACUB initiatives to minimize impacts of an action on T&E species and/or critical habitat.

- (o) Within 24 hours report 16 USC Chapter 35 (ESA) violations, by telephone or electronic means, through the chain of command to HQDA (ODEP and JALS-EL). Submit a followup written report within 7 days.
- (p) Coordinate with higher headquarters and HQDA (ODEP and JALS-EL) in taking final action to correct any endangered species management problems contributing to the 16 USC 35 (ESA) violation(s).
- (q) Ensure that T&E awareness is included in unit training for personnel who may come in contact with listed species and/or their habitats or critical habitat. Coordinate training with the installation engineer, environmental directorate, and ITAM sustainable range component.
- (r) Obtain HQDA approval before supporting USFWS's or NOAA-Fisheries' introduction and/or reintroduction of Federal and State listed, proposed, and candidate species on Army lands.
- (s) Protect the water rights necessary for the survival and recovery of listed, proposed, or candidate aquatic or riparian species. Coordinate all water rights issues with appropriate legal counsel.
- (t) Participate in the listing/delisting process, recovery plan development, and critical habitat designation where the species in question may impact installation military missions.
- (u) Cooperate with State and local authorities in the management of ACSIM-designated Army species at risk and habitats with the goal of avoiding listings that could adversely affect military readiness.
- (v) Participate in regional/habitat-wide efforts to conserve candidate and ACSIM-designated Army species at risk and habitats when it has the potential to benefit the Army.
- (w) Include State-listed species in the installation INRMP.
- (6) *Species at risk*
 - (a) In accordance with ACSIM guidance, manage species at risk and habitats to prevent listing that could affect military readiness.
 - (b) Program and plan for environmental conservation critical funding for designated Army species at risk and coordinate Real Property Services funding opportunities for other species at risk.
 - (c) Incorporate species at risk management in the INRMP.
 - (d) Implement management plans for species at risk to include, but not limited to, survey, monitoring, habitat enhancement, and protection.
- (7) *Forest management*. Practice responsible stewardship of forested lands to support the mission.
- (8) *Conservation reimbursable agricultural/grazing/outleasing and forestry programs*
 - (a) Conduct programs that are compatible with mission operations and that support conservation compliance, sustainability, and natural resources stewardship.
 - (b) Routinely examine Army land to determine what areas, if any, are available for outleasing and/or forest management. (PD: AR 405-80 and AR 405-90)
 - (c) Coordinate with DPTMS to establish needed doctrinal terrain and ground cover requirements.
 - (d) Maintain Conservation Reimbursable Programs where these provide a direct benefit to the mission and environmental goals.
 - (e) Deposit all revenues from agriculture and grazing outleases, forest product sales, or sale of equipment procured with Conservation Reimbursable funds into the Army Forestry Account or the Army Agricultural/Grazing Account per DFAS-IN Manual 37-100.**.
 - (f) Sell no forest products nor outlease land for agricultural or grazing purposes unless the effects of the sale or lease are compatible with the INRMP. (LD: 16 USC 670a)
 - (g) Ensure that equipment procured with Conservation Automatic Reimbursable Authority is not transferred to tables of distributions and allowances (TDAs) outside of the programs or Federal Government ownership. Salvage value for equipment procured with Conservation Automatic Reimbursable Authority (Forestry or Agricultural/Grazing Outlease) will be deposited into the Army timber or agricultural/grazing outlease proceeds accounts.
 - (h) Ensure that outleases do not grant offsets that exceed the total amount of outlease value. At a minimum, revenues must cover the costs of administering the installation lease. (LD: 10 USC 2667).
 - (i) Continue Conservation Reimbursable Programs on excess or base realignment and closure (BRAC) lands until title is no longer held by the Army. Clear-cuts on excess or BRAC lands are prohibited unless approved by ODEP.
 - (j) Use revenues generated from the reimbursable programs to maintain, improve, or rehabilitate previously degraded ecosystems on the installation.
 - 1. Use revenues from agricultural/grazing outleases only for reimbursement of administrative costs of outleasing and other expenses incurred in support of multiple-land use management of natural resources.
 - 2. Use revenues from forest product sales only for management of forests and natural resources that support forest stewardship on land affected by conservation reimbursable forestry programs.
 - 3. Do not use automatic reimbursable authority to augment general operating expenses of the installation as overhead.
 - (k) Prepare determinations of availability (agricultural/grazing) and reports of availability (ROA) (Forestry) as required by AR 405-80 and 405-90.
 - (l) Enter annual requirements into the Reimbursable Program Tracking System (RPTS).

(m) Assure that agricultural and forest products are not given away, abandoned, carelessly destroyed, used to offset contract costs or traded for services, supplies, or products or otherwise improperly removed.

(n) Assess lands to assure they are safe for nonmilitary purposes before outleasing. Document the environmental condition in a finding of suitability to lease (FOSL), Environmental Condition of Property (ECP) Report. (LD: 42 USC 4321).

(o) When disposing of forest products from Army land by any means other than a commercial sale, the fair market dollar value will be used. This amount will be deposited in the Army Forestry Account by the proponent. Forest products may be used to directly assist the military mission without payment.

(p) Account for all forest products and complete all commercial harvests before starting any construction that may impact forest resources.

(q) Ensure all Army solicitations and contracts for timber sales affected by Sections 620–620j, Title 16, United States Code (16 USC 620–620j) contain a provision restricting the export of unprocessed timber procured on Army land.

(9) *Hunting, Fishing, and Trapping.*

(a) Support the Provost Marshal in enforcement of State and Federal laws pertaining to hunting, fishing, and trapping.

(b) Coordinate with morale, welfare, and recreation (MWR) for the management and collection of fees for hunting, fishing and trapping. Do not expend environmental appropriated funds for non-appropriated fund (NAF) administration of hunting, fishing, and trapping activities.

(c) Deposit collected fees from the sale of Special State Licenses into the Army Fish and Wildlife Conservation Fund (21X5095). GCs are authorized to provide no-cost Special State Licenses for junior enlisted soldiers (pay grade E4 and below) and to institute a sliding fee schedule for enlisted soldiers based on ability to pay.

(d) Provide for controlled recreational access where feasible at Army installations containing land and water areas suitable for recreational use. (LD: 16 USC 670a).

(e) Provide access to uniformed personnel, family members, and the public to hunting, fishing, and trapping, consistent with security requirements and safety concerns. Membership in an organization, including rod and gun clubs, has no bearing on receiving access. Exceptions to the above include specific access rights protected by treaties with or retained by American Indian and Alaska Native Tribes (see also para 6–4).

(f) Provide access to disabled veterans, military dependents with disabilities, and other persons with disabilities when public access is available and when topographic, vegetative, and water resources allow access for such persons without substantial modification to the natural environment. Coordinate actions and solutions with appropriate organizations within the Army, OSD, and the Access Board as appropriate.

(g) Hunting, fishing, and trapping plans will be included in the INRMP for installations that have such programs.

(10) *Noxious weeds and invasive species management.* The Director of Public Works is the proponent for noxious weeds and invasive species management.

(a) Prepare and implement an invasive species management component (ISMC) of the INRMP consistent with specific Federal or State initiatives. (LD: EO 13112).

(b) Where applicable, synchronize invasive species management practices with objectives of the installation ITAM program.

(c) Conduct mission activities in a manner that precludes the introduction or spread of invasive species. (LD: EO 13112).

(d) Do not use invasive species in installation landscaping or land rehabilitation and management projects. (LD: EO 13112).

(e) Use the most effective and environmentally sound approach for controlling invasive species, to include the use (or reduction in use) of pesticides. (PD: DODI 4150.7).

(f) Assure that installation INRMP and pest management plan are in concert regarding noxious weeds management. (PD: DODI 4150.7).

(11) *Migratory birds.*

(a) Consistent with HQDA endorsement, implement conservation measures identified in the memorandum of understanding (MOU) between DOD and the USFWS pursuant to EO 13186.

(b) Obtain appropriate authorization (that is, take permit) from the USFWS before intentionally and directly taking any migratory bird species. Record any birds purposefully and intentionally taken under the authorization and provide an annual report to the USFWS. (LD: 16 USC 703–712).

(c) Establish procedures to avoid the unintentional take of migratory birds, including nests and eggs. (LD: 16 USC 703–712).

(12) *Wildland fire management.*

(a) Reduce wildfire potential using appropriate management practices such as prescribed burning, firebreak maintenance/construction, etc.

(b) Installations with unimproved grounds that present a wildfire hazard and/or installations that utilize prescribed

burns as a land management tool will develop and implement an integrated wildland fire management plan (TWFMP) that is compliant and integral with the INRMP, the installations' existing fire and emergency services program plan(s), and the ICRMP.

(c) Assure that all civilian, contractor, and emergency services personnel involved in wildland fire management possess the level of training and physical fitness needed for their expected level of involvement.

(d) Ensure that only qualified personnel conduct prescribed burns.

Chapter 5

Pest Management

5-1. Policy

a. Protect real property and the health of soldiers, civilians, and family members from pests through use of integrated pest management (IPM) strategies.

b. Reduce the use of chemical pesticides.

c. Reduce environmental risks from pesticides through proper storage, handling, application, and disposal of pesticides.

5-2. Legal and other requirements

Listed below are statutes, laws, regulations applicable to the Army Pest Management Program.

a. Section 136, Title 7, United States Code (7 USC 136).

b. DODI 4150.7.

c. DOD 4150.7-M.

d. DOD 4150.7-P.

e. DODI 4715.5.

f. AR 40-5.

g. AR 420-10.

h. AR 385-10.

i. AR 210-50.

j. For overseas installations, the country-specific FGS requirements.

5-3. Major program goals

a. Monitor and control pests that pose a threat to the health and safety of the installation population.

b. Maintain current pest management plans at all installations.

c. Minimize the use of pesticides through appropriate surveillance methods and programs.

d. Ensure that all pesticide applicators are appropriately trained and certified.

e. Develop and enforce measures to properly store and safeguard pesticides and pesticide application equipment for installation pesticide security.

f. Ensure all pesticide waste is properly disposed.

5-4. Program requirements

a. Prepare an integrated pest management plan (IPMP) that defines pest management requirements, responsibilities, and resources needed to correct pest problems at each installation. Coordinate the IPMP with all affected parties. (PD: DODI 4150.7)

b. Conduct IPM programs in accordance with plans approved by garrison commander (GC), National Guard Bureau - Army National Guard (NGB-ARNG), Installation Management Command (IMCOM)-Korea, or IMCOM-Europe, as appropriate.

c. Establish procedures to store, secure, handle, apply, dispose, and manage pesticides that are consistent with Army safety and security requirements (PD: DODI 4150.7)

d. Conduct periodic program reviews at the installation using pest management professionals to ensure regulatory compliance and correct any deficiencies (PD: DODI 4150.7)

e. Ensure Army military and civilian personnel who apply or supervise application of pesticides on Army facilities or installations or during military contingencies, will be trained and certified in accordance with DOD certification standards. Non-DOD personnel (including State employees and contractors) who apply or supervise application of pesticides on Army facilities or installations will be trained and certified by the State where the Army facility or installation is located. Quality assurance evaluators that develop or review pest management contract specifications, or assess performance of those contracts will be trained in accordance with DOD policy and guidance. (PD: DODI 4150.7)

f. Maintain and archive records and reports on all pesticide applications and operations made to all facilities and grounds to include those performed under contract by tenant and supported activities, by lessees per formal agreements, those installations and facilities in the base realignment and closure (BRAC) cleanup program, and for closing overseas installations. (PD: DODI 4150.7)

g. Ensure installation self-help programs are cost-effective and promote IPM approaches for control of minor nuisance pests through use of authorized pest management materiel, equipment, awareness training, and record keeping requirements. (PD: DODI 4150.7)

h. Ensure requirements for aerial pesticide applications over Army lands to control pests of medical, economic, or other emergencies or urgencies of military significance are addressed in an aerial spray statement of need (ASSON) and submitted to the U.S. Army Environmental Command (USAEC), NGB-ARNG, IMCOM-Korea, or IMCOM-Europe as appropriate. (PD: DODI 4150.7)

i. Ensure pest management commercial solicitations incorporate Army requirements for the application and safe handling of pesticides and are forwarded to USAEC, NGB-ARNG, IMCOM-Korea or IMCOM-Europe as appropriate for technical review prior to solicitation. (PD: DODI 4150.7; DOD 4150.7-M; DOD 4150.7-P)

j. Appoint an installation pest management coordinator (IPMC). (PD: DODI 4150.7)

Chapter 6

Cultural Resources

6-1. Policy

Ensure that installations make informed decisions regarding the cultural resources under their control in compliance with public laws, in support of the military mission, and consistent with sound principles of cultural resources management.

6-2. Legal and other requirements

Statutes, laws, regulations, and other guidance applicable to the Army Cultural Resources Management Program include:

- a.* Section 470, Title 16, United States Code (16 USC 470).
- b.* Section 1996, Title 42, United States Code (42 USC 1996) and Executive Order (EO) 13007.
- c.* Section 3001, Title 25, United States Code (25 USC 3001).
- d.* Section 470aa-470mm, Title 16, United States Code (16 USC 470); Sections 431-433, Title 16, United States Code (16 USC 431-433); and Section 469, Title 16, United States Code (16 USC 469).
- e.* Part 79, Title 36, Code of Federal Regulations (36 CFR 79).
- f.* Part 800, Title 36, Code of Federal Regulations (36 CFR 800).
- g.* Part 229, Title 32, Code of Federal Regulations (32 CFR 229).
- h.* Part 10, Title 43, Code of Federal Regulations (43 CFR 10).
- i.* DOD American Indian and Alaska Native Policy Memorandum, 20 October 1998.
- j.* Presidential Memorandum for Heads of Executive Departments and Agencies, Government-to-Government Relations with Native American Tribal Governments, 29 April 1994.
- k.* EO 13175.
- l.* EO 13287.
- m.* For overseas installations, the country-specific FGS requirements.

6-3. Major program goal

Develop and implement procedures to protect against encumbrances to mission by ensuring that Army installations effectively manage cultural resources.

6-4. Program requirements

- a. General program management.*
 - (1) Develop integrated cultural resources management plans (ICRMPs) for use as a planning tool.
 - (2) Develop NHPA programmatic agreements (PAs) and memorandums of agreement (MOAs), Army alternate procedures (AAP) historic property component (HPC) plans, NAGPRA Comprehensive Agreements (CAs) and Plans of Action (POA), Cooperative Agreements, and other compliance documents as needed.
 - (3) Appoint a government (that is, Federal or State Army National Guard (ARNG)) employee as the installation cultural resources manager (CRM).
 - (4) Establish a government-to-government relationship with Federally recognized Indian Tribes, as needed. Initial formal government-to-government consultation with Federally recognized Indian Tribes will occur only between the

garrison commander (GC) or the Adjutant General (TAG) of an ARNG and the heads of tribal governments. Follow-on activities may be accomplished by staff.

(5) Establish a process that effects early coordination between the CRM and all staff elements, tenants, proponents of projects and actions, and other affected stakeholders to allow for proper identification, planning, and programming for cultural resource requirements.

b. National Historic Preservation Act compliance.

(1) Ensure that the GC functions as the agency official with responsibility for installation compliance with the National Historic Preservation Act (NHPA).

(2) Establish a historic preservation program, to include the identification, evaluation, and treatment of historic properties in consultation with the Advisory Council on Historic Preservation (ACHP), State Historic Preservation Officer (SHPO), local governments, Federally recognized Indian Tribes, Native Hawaiian organizations, and the public as appropriate. Document historic properties that will be substantially altered or destroyed as a result of Army actions. (LD: Section 110, NHPA; 36 CFR 800)

(3) Identify, evaluate, take into account, and treat the effects of all undertakings on historic properties. If an Army undertaking may affect properties of traditional religious or cultural significance to a Federally-recognized Indian Tribe, initiate consultation on a government-to-government basis. (LD: Section 106, NHPA; 36 CFR 800)

(4) Prepare and implement, as required, an NHPA Section 106 MOA, PA, or HPC, to address NHPA compliance for undertakings. Coordinate all NHPA compliance documents (for example, MOAs, PAs, HPCs) through the chain of command to obtain HQDA technical and legal review prior to execution. (LD: 36 CFR 800)

(5) Ensure that efforts to identify, evaluate, and treat historic properties consider the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, and are conducted under the supervision of personnel who meet applicable professional qualifications for undertaking such work. (LD: 36 CFR 61; Section 112, NHPA)

(6) Maintain an up-to-date listing of all historic properties, and where applicable, maintain historic status in conjunction with real property inventory and reporting guidelines. (LD: EO 13287)

(7) Withhold from public disclosure information about the location, character, or ownership of a historic property when the GC determines that disclosure may cause risk of harm to the historic property or may impede the use of a traditional religious site by practitioners. (LD: Section 304, NHPA)

(8) Consider alternatives for historic properties, including adaptive reuse, that are not needed for current or projected installation mission requirements. (LD: Section 111, NHPA)

(9) Nominate to the National Register of Historic Places (NRHP) only those properties that the Army plans to transfer out of Federal management through privatization efforts. Nominate other properties only when justified by exceptional circumstances. Avoid adversely affecting properties that are 50-years old or older that have not been evaluated for eligibility against NHPA criteria. Treat (assume) that all historic sites are eligible (that is, off-limits) until the SHPO concurs with the federal finding of non-eligible.

(10) Where disagreement occurs with the SHPO regarding the eligibility of a historic property for the NRHP, where applicable obtain a "Determination of Eligibility" from the Keeper of the National Register, National Park Service (NPS). (LD 36 CFR 800, 36 CFR 63)

(11) Undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected as a result of Army actions. (LD: 36 CFR 800)

c. AIRFA, Executive Order 13007 and Executive Order 13175 compliance.

(1) Consult with Federally recognized Indian Tribes to provide access to sacred sites on Army installations. Consistent with appropriate health, safety mission constraints provide access to allow the practice of traditional religions, rights and ceremonies. The GC will maintain the appropriate confidentiality of sacred site locations. The GC may impose reasonable restrictions and conditions on access to sacred sites on Army installations for the protection of health and safety, or for reasons of national security. (LD: EO 13007)

(2) Avoid adversely affecting the physical integrity of sacred sites. Ensure reasonable notice is provided to Federally-recognized Indian Tribes when proposed actions may adversely affect or restrict access to the ceremonial use of, or the physical integrity of, sacred sites. (LD: EO 13007)

(3) Consult with tribal governments before taking actions that affect Federally recognized Indian Tribes. Assess the impact of Army plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs and activities. (LD: EO 13175)

d. Native American Graves Protection and Repatriation Act compliance.

(1) Designate the GC as the Federal agency official with responsibility for installation compliance with Native American Graves Protection and Repatriation Act (NAGPRA). (LD: 43 CFR 10)

(2) Prepare CAs and POAs in coordination with Federally recognized Indian Tribes and Native Hawaiian organizations. Coordinate all NAGPRA CAs through the chain of command to obtain HQDA technical and legal review prior to execution. (LD: 43 CFR 10)

(3) Absent a CA, take reasonable steps to determine whether a planned activity (including MILCON) may result in the intentional excavation or inadvertent discovery of cultural items from Federally-owned or controlled Army lands. When cultural items may be encountered, the GC will implement consultation procedures and planning requirements of Section 3 and Section 5 of NAGPRA prior to issuing approval to proceed with the activity. (LD: 43 CFR 10.3 and 43 CFR 10.5)

(4) Establish initial communication with Federally recognized Indian Tribes via written correspondence between the GC and heads of tribal governments. Formally document all resulting agreements. (LD: 43 CFR 10)

(5) Inventory, summarize, and repatriate cultural items that are in existing collections under Army possession or control. Where there is a dispute as to the affiliation of cultural items, safeguard the cultural items until the dispute is resolved. (LD: 43 CFR 5, 6, 7, and 10)

e. ARPA and AHPA Compliance.

(1) Ensure the GC serves as the Federal land manager with responsibility for installation compliance with ARPA. (LD: 32 CFR 229)

(2) Ensure the GC serves as the Federal agency official with management authority over archeological collections and associated records. (LD: 36 CFR 79)

(3) Establish and include installation policy for management of, and for limitation of collection and removal of, paleontological resources in ICRMPs. Address known paleontological resources in any NEPA documentation prepared for actions that may impact or cause irreparable loss or destruction of such resources.

(4) Prohibit searching for or collection of historic properties (including archaeological resources) on Army installations except when authorized by the GC and pursuant to a permit issued under ARPA.

(5) Minimize the amount of archeological material remains permanently curated by reserving such treatment for diagnostic artifacts and other significant and environmentally sensitive material that will add important information to site interpretation.

(6) Curation of archeological materials from Army lands will occur only in 36 CFR 79-compliant repositories. Maximize use of off-installation facilities that are better able to provide for adequate long-term curatorial services.

(7) Do not disclose to the public information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under ARPA or under any other provision of Federal law. (LD: Section 9a, ARPA 1979)

Chapter 7

Pollution Prevention

7-1. Policy

a. Pollution prevention is the Army's preferred approach, where timely and cost-effective, to achieve and maintain compliance with environmental laws and regulations.

b. Prevent pollution from all sources to the extent practicable by:

(1) Reducing pollutants at the source.

(2) Modifying manufacturing, packaging, and shipping processes, maintenance or other industrial practices.

(3) Modifying product designs.

(4) Developing and modifying acquisition systems.

(5) Recycling/reuse (to include implementing water and energy conservation measures), especially in closed-loop processes.

(6) Preventing disposal and transfer of pollution between media.

(7) Meeting affirmative procurement requirements and promoting the acquisition and use of environmentally preferable products and services.

(8) Promoting use of nontoxic substances.

c. Use pollution prevention to complement, and where practicable, replace traditional pollution control approaches.

d. Incorporate pollution prevention planning throughout the mission, operation, or product life cycle.

7-2. Legal and other requirements

a. 42 USC 6901, (RCRA).

b. PL 109-58.

c. Sections 6901-6992k, Title 42, United States Code (42 USC 6901-6992k).

d. Sections 13101-13102, Title 42, United States Code (42 USC 13101-13102).

e. EO 13423.

f. DODI 4715.4.

g. AR 70-1.

7-3. Major program goals

- a. Reduce use of products or processes that degrade the environment.
- b. Invest in pollution prevention in all mission and support areas, as applicable.
- c. Minimize the use of toxic and hazardous materials and processes in all life cycle phases of acquisition programs, logistics support, modification of existing weapons systems, and installation management.
- d. Implement pollution prevention initiatives to reduce life cycle costs of military missions and improve demilitarization and disposal of systems.
- e. Disseminate pollution prevention opportunities and lessons learned across the Army.
- f. Incorporate a Hazardous Materials Management Program (HMMP) into logistics business practices to reduce hazardous material inventory and hazardous waste (HW) disposal.

7-4. Program requirements

- a. Periodically review operations and conduct pollution prevention opportunity assessments. Maintain an updated installation pollution prevention plan. Implement cost-effective pollution prevention opportunities identified by the assessments.
- b. Develop and implement a Green Procurement Program with emphasis on the mandatory purchasing preference programs (Affirmative Procurement for all designated Environmental Protection Agency (EPA) and DOD guidelines). (LD: EO 13423; 40 CFR 247)
- c. Address environmental concerns throughout the acquisition life cycle. (PD: AR 70-1)
- d. Emergency Planning and Community Right-to-Know Act (EPCRA).
 - (1) Army activities within the United States will comply with EPCRA. Army activities will prepare and maintain an inventory of hazardous substances present at the activity. (LD: EO 13423)
 - (2) Activities will submit EPCRA reports to Local Emergency Planning Committees (LEPC), State Emergency Response Commissions (SERC), local fire departments with jurisdiction over the activity, and EPA if they exceed reporting threshold quantities. Tier I and Tier II reports are due by 1 March in each calendar year. An activity may be a LEPC when appointed by a SERC. (LD: EO 13423)
 - (3) Activities will submit draft electronic Toxic Release Inventory (TRI) Form R reports to the U.S. Army Environmental Command (USAEC) via chain of command by 1 May of each calendar year. After review and comment from USAEC, activities will provide final report to the EPA by 1 July, with copy to USAEC. (LD: EO 13423)

Chapter 8 Munitions Use on Ranges

8-1. Policy

This chapter applies to operational ranges, which are defined as ranges that are under the jurisdiction, custody, or control of the Secretary of Defense and that are used for range activities; or, although not currently being used for range activities, that are still considered by the Secretary to be a range and have not been put to a new use that is incompatible with range activities. In managing operational ranges, all Army organizations and activities will—

- a. Consider demilitarization, constituent migration, and range cleanup and clearance in the weapons systems total lifecycle cost.
- b. Manage the Army munitions inventory to achieve and maintain compliance with the Military Munitions Rule (or applicable Final Governing Standards (FGS) overseas).
- c. Whenever practicable, recycle obsolete, excess, or unserviceable munitions and munitions residue.
- d. Incorporate environmental considerations into sustainable range designs to support mission requirements.
- e. Coordinate with the Headquarters, Department of the Army, Deputy Chief of Staff, G-3/5/7 before closing an operational range.

8-2. Legal and other requirements

- a. Section 9601, Title 42, United States Code (42 USC 9601); Section 300f, Title 42, United States Code (42 USC 300f); Section 26, Title 33, United States Code (33 USC 26); Section 7401, Title 42, United States Code (42 USC 7401); FGS requirements; and other regulations that apply to soil, water, and air.
- b. Sections 200 to 206, Part 266, Title 40, Code of Federal Regulations (40 CFR 266.200 to 40 CFR 266.206) or applicable State versions.
- c. DODD 4715.11 and DODD 4715.12.
- d. DODI 4140.62.

8-3. Major program goals

Identify and address environmental issues that impact the use of Army ranges.

8-4. Program requirements

a. Munitions management.

(1) Train munitions managers and handlers on the Munitions Rule and related State requirements (or applicable FGS requirements overseas). (PD: Munitions Action Plan)

(2) Audit for compliance with the Munitions Rule and related State requirements (or applicable FGS requirements overseas). (PD: Munitions Action Plan)

b. Environmental support to range operations.

(1) Prepare an annual Toxic Release Inventory (TRI) Form R for operational ranges as required and submit with the installation's TRI report to the U.S. Army Environmental Command (USAEC) via chain of command by 1 May of each calendar year (this does not apply overseas). After review and comment from USAEC, facilities will provide final report to the Environmental Protection Agency (EPA) by 1 July, with copy to USAEC (see para 7-4d).

(2) Respond to a release or substantial threat of release of munitions constituents (MC), munitions and explosives of concern (MEC), or unexploded ordnance (UXO) from an operational range to off-range areas, when such release poses or may pose an imminent and substantial threat to human health or the environment.

(3) Where practicable, maintain records of the historical uses of operational ranges, and retain environmental cleanup investigations, hydro-geologic, geologic, and soil surveys, and other environmental documents that support sustainable range planning.

(4) Maintain and sustain ranges in an environmentally compliant manner, and undertake emergency response action when appropriate.

c. Response to munitions and explosives of concern.

(1) Investigate and address, as appropriate, the explosives safety, human health, or environmental risks presented by MEC. (This can be as simple as a notification to the community with an education program about the hazards posed by military munitions and how to avoid them, or as complicated as a long-term response action involving sophisticated technology, specialized expertise, and significant resources.)

(2) Maintain permanent records of the coordinates of all areas known or suspected to contain MEC.

(3) Maintain permanent records of all MEC clearance operations, explosive ordnance disposal (EOD) incidents, and open burn/open detonation operations conducted on the range.

d. Chemical warfare agent wastes. Storage and disposal of chemical warfare agent waste and related agent-contaminated material may be subject to the requirements of RCRA or applicable State regulations (this does not apply overseas). Generators of chemical warfare agent waste and agent-contaminated material are responsible for ensuring proper storage and for paying disposal costs (this does not apply to Defense Environmental Restoration Program (DERP)-eligible sites).

Chapter 9

Materials Management

9-1. Hazardous materials

a. Policy.

(1) Follow approved standardized hazardous material management business practices as specified by the Deputy Chief of Staff, G-4 (DCS, G-4) and the Office of the Assistant Chief of Staff for Installation Management (OACSIM) to implement the Hazardous Material Management Program (HMMMP).

(2) Review and approve hazardous material (HM) usage and track usage to using processes and work centers.

(3) Reduce the acquisition and use of hazardous materials and the generation of solid or hazardous wastes (HW) through centralized inventory control, best management practices (BMPs), pollution prevention actions, improved procurement practices, material re-use, recycling, and enhanced shelf-life management. HMs should be procured through the standard Army supply system. Use of government IMPAC credit cards to purchase HM is generally prohibited, and may only be allowed on a case-by-case basis by Garrison Commanders or their designated representative.

(4) Manage and dispose of pesticides, residues, and their containers in an environmentally safe manner.

(5) Do not allow the transport, storage, or disposal of non-DOD hazardous materials on Army installations unless approved by the Office of the Assistant Secretary of the Army for Installations and Environment (OASA (I&E)), his or her designee, or higher authority.

b. Legal and other requirements. Section 11011, Title 42, United States Code (42 USC 11011); Section 302-313, Title 33, United States Code (33 USC 26); and Executive Order (EO) 13423.

c. Major program goals. The goals of the HMMMP are to reduce risk to public health and the environment by

employing management controls and pollution prevention initiatives to comply with regulations and executive orders and to support sustainability.

d. Program requirements.

(1) Follow Army logistics policy for identifying, storing, and transporting hazardous materials as specified by the DCS, G-4. Related policy guidance can be found in safety, medical, acquisition and logistics regulations. Installation supplements involving any hazardous material management should be coordinated with the installation environmental coordinator, safety coordinator, and installation medical officer.

(2) Record, review, and analyze HM and HW operational data as a source of information to measure HMMP effectiveness.

9-2. Toxic substances

a. General. As used in this regulation, toxic substances include asbestos, polychlorinated biphenyls (PCBs), and lead-based paints (LBP). Generators will pay disposal costs for toxic substances (except that the installation will pay disposal costs for toxic substances that are also classified as a RCRA-C hazardous waste).

b. Asbestos management.

(1) *Policy.* The Army proponent for asbestos hazard management is the Assistant Chief of Staff for Installation Management (ACSIM), Directorate of Facilities and Housing. Army facility policy and guidance on asbestos management is provided in AR 420-70, chapter 3. The Army's medical policy related to asbestos is found in AR 40-5.

(2) *Legal and other requirements.* Applicable legal and other requirements for asbestos management include Section 2651, Title 15, United States Code (15 USC 2651); Section 1801, Title 49, United States Code (49 USC 1801); Section 2601, Title 15, United States Code (15 USC 2601); 42 USC 7401, as amended; Section 1001, Part 1910, Title 29, Code of Federal Regulations (29 CFR 1910.1001); Section 1101, Part 1926, Title 29, Code of Federal Regulations (29 CFR 1926.1101); for overseas installations, the country-specific FGS requirements.

(3) *Major program goals.* Prevent human exposure to asbestos hazards on Army-owned property and maintain compliance with all pertinent regulations. This also applies to accommodations made available to the Army for its exclusive use overseas.

(4) Program requirements.

(a) Comply with Sections 140-156, Part 61, Title 40, Code of Federal Regulations (40 CFR 61.140-156) requirements regarding fees and notification. (LD: 40 CFR Part 61.140-156; 40 CFR 70)

(b) Ensure that all workers in facilities where asbestos exposure may occur are trained under Environmental Protection Agency (EPA) and Occupational Safety and Health Administration (OSHA) regulations and asbestos safe work practices requirements. (LD: 40 CFR 763)

(c) Ensure that all workers that perform OSHA asbestos work are trained, equipped, and supervised according to EPA abatement and respiratory protection requirements. (LD: 29 CFR 1926.1101; 40 CFR 763)

(d) Use only laboratories accredited under the National Voluntary Laboratory Accreditation Program or host nation (HN) accredited laboratories for overseas installations for the quantitative measurement of bulk and air asbestos samples. (LD: 40 CFR 763.87)

(e) Remove/abate asbestos-containing material only when it:

1. Can no longer be managed in place.
2. Will be disturbed during maintenance, repair, or construction projects.
3. Is friable or will become friable during demolition of a facility.
4. Is economically justified to be removed during building deconstruction.
5. Has been identified to be a hazard and the Army is transferring ownership of the facility to a non-federal entity.

c. Polychlorinated biphenyl management.

(1) *Policy.* Army policy is for generators of polychlorinated biphenyl (PCBs) to manage them in place unless operational, economic, or regulatory considerations justify removal. Economic analyses include potential environmental damage.

(2) *Legal and other requirements.* Requirements for PCB management are found in 15 USC 2601, and applicable State and local requirements; and for overseas installations, the country-specific FGS requirements.

(3) *Major program goals.* Prevent human exposure to PCB hazards on Army-owned property and maintain compliance with pertinent regulations.

(4) Program requirements.

(a) Ensure that the inventory, management, reporting, storage, disposal, and cleanup of PCBs comply with Federal, State, and local regulations. (LD: 40 CFR 761)

(b) Require generators, commercial storers, transporters, and disposers of PCBs to have an EPA identification number. (LD: 40 CFR 761.20, 761.60(b), 761.202 through 761.205)

(c) Train personnel who handle or may potentially be exposed to PCBs to perform PCB-related responsibilities in a safe and environmentally sound manner. (LD: 29 CFR 1910.1200; 29 CFR 1910.120(q))

(d) Prohibit the new use or introduction of PCBs at Army facilities.

d. Lead-based paint management.

(1) *Policy.* The Army proponent for lead-based paint (LBP) management is the ACSIM, Directorate of Facilities and Housing. Army facility policy and guidance on LBP management is provided in AR 420-70, chapter 3.

(2) *Legal and other requirements.* Requirements for LBP management are found in 15 USC 2601; Section 1025, Part 1910, Title 29, Code of Federal Regulations (29 CFR 1910.1025); Section 62, Part 1926, Title 29, Code of Federal Regulations (29 CFR 1926.62); Part 745, Title 40, Code of Federal Regulations (40 CFR 745); AR 420-70, chapter 3; and applicable State and local requirements; for overseas installations, the country-specific FGS requirements.

(3) *Major program goals.* Prevent human exposure to LBP hazards on Army-owned property and maintain compliance with pertinent regulations.

(4) *Program requirements.*

(a) Ensure that all workers that perform lead abatement work in child occupied facilities and target housing are trained, equipped, and supervised according to EPA lead-based paint abatement requirements and OSHA requirements for lead in construction. (LD: 40 CFR 745 and 29 CFR 1926.62, respectively). Construction work impacting lead-based paint that is not considered abatement of lead-based paint in target housing or child occupied facilities need only comply with OSHA requirements. (LD: 29 CFR 1926.62)

(b) Per facility and housing BMPs, manage LBP and lead-contaminated soil in place unless operational, economic, and/or regulatory requirements dictate its removal.

(c) Disclose known LBP hazards in Army housing. (LD: 40 CFR 745)

(d) Ensure that disposal of LBP complies with Federal, State, and local regulations.

Chapter 10 Waste Management

10-1. Hazardous waste

a. Policy.

(1) Hazardous waste disposal costs are those costs associated with the collection, treatment, storage, transportation and disposal of hazardous wastes. This includes all Defense Reutilization and Marketing Service (or other contract agent) costs directly related to the packaging and offsite shipment of the wastes. It does not include the disposal of special wastes defined as non-hazardous unless otherwise defined as hazardous by State and local regulations, or country-specific Final Governing Standards (FGS); asbestos; chemical and biological agent waste; radioactive waste; and regulated medical wastes (RMW).

(a) Garrisons must directly charge or seek reimbursement from non-Army tenants and activities funded through an operating fund (Defense Business Operating Fund and Army Working Capital Fund), a procurement fund (Procurement of Ammunition, Army), a research and development fund (Research, Development, Test, and Evaluation and Army Test and Evaluation Command activities), and other DOD funded activities (primarily Defense Logistics Agency, Medical Command, and Defense Commissary Agency). Though appropriated funds can be used for a non-appropriated fund activity (Category C), it is subject to the availability of funds of HQ, IMCOM. Special installations will pay for hazardous waste disposal. Excess or expired hazardous materials must be handled in accordance with AR 710-2 and garrison procedures.

(b) Hazardous wastes generated under service, facility, maintenance or construction contracts (construction demolition debris, paints, soil disposal, disposal of sand from ranges, sludge from wash racks, oil/water separators, water treatment plants, and so forth,) should not be a separate cost and funded as part of the original contract.

(c) The Garrison environmental office will be considered the generator, for funding purposes, of orphan wastes found on post, and wastes from a household hazardous waste collection program.

(2) Comply with all applicable Federal, State, and local HW regulations, and FGS.

(3) Effectively manage HW and reduce its generation.

(4) Minimize the need for Army-owned or operated permitted HW treatment, storage, and disposal facilities.

(5) Minimize HW generation through pollution prevention actions, for example, source reduction, material substitution, and recycling/reuse. Where cost effective and timely, implement pollution prevention solutions to reduce or eliminate compliance requirements.

(6) Prohibit the storage of HW in underground storage tanks (USTs), except where allowed by FGS.

b. Legal and other requirements. 42 USC 6901, Subtitle C; Parts 260-279, Title 40, Code of Federal Regulations (40 CFR 260-279); DOD 4500.9-R, chapter 204; Parts 171-178, Title 49, Code of Federal Regulations (49 CFR 171-178); for overseas installations, the country-specific FGS requirements.

c. Major program goals. Continually reduce the volume of HW generated by Army installations, and maintain compliance with pertinent HW regulations.

d. Program requirements.

- (1) Systematically evaluate waste streams to ensure all potential hazardous or special wastes are properly identified and characterized. (LD: 40 CFR 262.11; 40 CFR 264.13)
- (2) Ensure that all persons handling or managing HW are provided with appropriate training.
- (3) Develop and implement a hazardous waste management plan (HWMP) or other comparable document appropriate to the size and complexity of the operation. The HWMP (or other comparable document) should include, at a minimum, written procedures for all aspects of HW management, to include the identification, storage, and transporting of HW; training of personnel; tracking manifests; and maintaining required records.
- (4) Maintain appropriate records in accordance with RCRA and applicable State or FGS requirements.
- (5) Complete State/EPA or applicable FGS annual or biennial reporting requirements.
- (6) Ensure that HW manifests are only signed by those individuals who have been appropriately trained, and are authorized in writing by the garrison commander (GC). (LD: 49 CFR 172.700–704 (Subpart H); DOD 4500.9–R, chapter 204)
- (7) Ensure that the GC signs the RCRA HW permit applications for the installation, sub-installations, and supported facilities as the facility “owner.” This responsibility cannot be delegated.
 - (a) Officials in charge of tenant activities will sign the permit application as the “operator.”
 - (b) For the Defense Logistics Agency, the DRMS Commander will sign as the “operator.”
 - (c) For Army Reserve facilities, the Reserve Readiness Command (RRC) Commander will sign as the facility “owner.”
 - (d) For Army National Guard (ARNG) facilities, the Adjutant General (TAG) of the respective State or territory will sign as the facility “owner.”
 - (e) For closed, transferred, or transferring facilities, the GC of the receiving installation will sign as “owner,” and the agency maintaining control and influence over the closed or transferring facility’s HW management program will sign the permit as “operator.”
 - (f) For installations not under the purview of the IMCOM, the senior mission commander (SMC) will sign as the facility “owner.”
- (8) If non-DOD tenants require HW treatment, storage, and disposal facility permits, ensure that the contract, lease, or agreement with the non-DOD tenant holds the Army harmless and contains specific language regarding the operation of the facility, access, damages, and environmental liability in strict accordance with permit conditions. The GC will sign permit applications as the “owner,” and the tenant will sign as the “operator” of the facility.
 - (9) Use the Defense Reutilization Marketing Office (DRMO) for HW disposal with the following exceptions:
 - (a) When DRMO has indicated or demonstrated the inability to provide the service, and only when a waiver has been approved in writing by the next higher echelon on a case-by-case basis. Waivers will be renewed in writing every 5 years.
 - (b) Hazardous waste generated incidental to the execution of service or construction contracts should be disposed of by the contractor performing the basic contract, at the contractor’s expense, using the installation’s generator identification number on the manifest. Such actions must be coordinated with the installation environmental coordinator and documented in writing. The GC remains the “owner” of the waste.
 - (c) Ensure that all contracts for HW disposal are reviewed by the installation environmental coordinator and the Director of Contracting, and approved by the GC. Such contracts must comply with contract standards in DOD 4160.21–M, chapter 10.

10–2. Solid waste

a. Policy. The Army proponent for solid waste management is the Assistant Chief of Staff for Installation Management (ACSIM), Directorate of Facilities and Housing. Army facility policy and guidance on solid waste management is provided in AR 420–49, chapter 3.

(1) Comply with legally applicable Federal, State, and local requirements, both substantive and procedural, for managing solid waste, including generation, collection, storage, and disposal. This includes the terms and conditions of State and Federal solid waste permits. Overseas, all Army organizations and activities will comply with country-specific FGS and any permits obtained on behalf of the installation by the host nation.

(2) Emphasize integrated solid waste management, pollution prevention, and individual participation to achieve compliance.

(3) Minimize solid waste generation and disposal, and maximize recovery, recycling, and reuse through pollution prevention actions.

(4) Integrate the management of wastes into construction and demolition (C&D) activities such that a significant amount of the materials generated can be reused in their original form with little or no processing, through systematic disassembly or deconstruction, more careful handling, segregating, and making them available to specialized markets.

(5) Ensure that waste accumulation, storage, or transfer facilities are designed and constructed to prevent releases to the environment.

b. Legal and other requirements.

(1) 42 USC 6901, Subtitle D (as amended); PL 98-616; Paragraph a, Sections 6941-6949, Title 42, United States Code (42 USC 6941-6949a, Subtitle D; as amended; Parts 239-258 and Part 261, Title 40, Code of Federal Regulations (40 CFR 239-258 and 261); applicable FGS; and EO 13423.

(2) AR 420-49, chapter 3 defines the Army's policy for managing solid waste. This section of AR 200-1 supplements AR 420-49 by identifying environmental aspects of solid waste management.

(3) AR 415-15, appendix F, Item F-37, Army Disposal/Demolition Program, describes the Army requirement to dispose of one square foot of facilities to offset each square foot of new construction added to the real property inventory.

(4) DA Pam 40-11, chapter 4, Section 4-11 defines the Army's policy for managing regulated medical wastes.

c. Major program goals. The environmental goals of the Army's solid waste management program are to protect public health and the environment by increasing solid waste diversion, minimizing the generation of solid wastes, and increasing the program's economic benefit by investing in pollution prevention initiatives and better managing costs associated with disposal and diversion.

d. Program requirements. Army installations with Army-owned landfills will operate under 42 USC 6941-6949a and meet the criteria of a municipal solid waste landfill (MSWLF) as defined by Federal regulation or State-approved program. Installations may also operate landfills specifically for construction and demolition debris, and/or non-hazardous industrial process wastes, as determined by their mission. These landfills will be operated in accordance with applicable Federal, State, and local regulations. (LD: 40 CFR 257, 258)

Chapter 11

Storage Tank Systems/Oil and Hazardous Substances Spills

11-1. Policy

Manage tank systems used to store oil and hazardous substances in an environmentally safe manner, prevent spills of these substances, and rapidly respond to spills.

11-2. Legal and other requirements

a. 42 USC 9601; 42 USC 11011; 33 USC 26, as amended to include Part 112, Title 40, Code of Federal Regulations (40 CFR 112); Part 300, Title 40, Code of Federal Regulations (40 CFR 300); 42 USC 6901, as amended to include Part 280, Title 40, Code of Federal Regulations (40 CFR 280) and Part 281, Title 40, Code of Federal Regulations (40 CFR 281); 33 USC 2701; 15 USC 2601, as amended; Public Law (PL 109-58), Sections 1521-1532; and AR 50-6. Related Federal laws and regulations are referenced in appendix A.

b. Overseas, all Army organizations and activities will comply with applicable Final Governing Standards (FGS).

11-3. Major program goal

Storage tanks used to transport, store, and handle oil and hazardous substances will be managed to protect the environment and public health.

11-4. Program requirements

a. Storage Tank Systems.

(1) Provide leak detection for regulated underground storage tanks (UST) by retrofit or inventory control procedures. (LD: 40 CFR 280.43)

(2) Provide leak detection, overfill protection, and cathodic protection for aboveground storage tanks (ASTs) as required. (LD: 40 CFR 112.8)

(3) Use double wall construction with interstitial monitoring on all new regulated USTs.

(4) Ensure that all UST systems are cathodically protected or constructed of non-metallic material to meet corrosion protection requirements. (LD: 40 CFR 280.20)

b. Oil and hazardous substance spills.

(1) Develop and implement a spill prevention, control, and countermeasures plan (SPCCP), as required. (LD: CWA Section 311(j), 40 CFR 112, and OPA)

(2) Ensure that the SPCCP addresses secondary containment (or lack thereof) at oil and hazardous material storage facilities. (LD: 40 CFR 112.7)

(3) Develop and implement a facility spill contingency plan (SCP) for each oil and hazardous material storage facility that does not have adequate spill prevention structures in place. (LD: 40 CFR 112.7)

(4) Ensure secondary containment is provided for oil and hazardous material storage facilities, including piping. If it is determined that secondary containment is impracticable, the installation must address this in the SPCCP and facility SCP (an SCP is only required if adequate spill prevention structures are not in place). (LD: 40 CFR 112.7)

(5) Ensure the SPCCP is reviewed at least once every 5 years. Amend the plan within 6 months of a change that

materially affects its potential for discharge. If technical changes have been made, the plan must be signed by an individual with authority to commit the necessary resources to respond to a release, and certified by a professional engineer familiar with installation operations. (LD: 40 CFR 112.5)

(6) Use the Environmental Quality Control Committee (EQCC) to coordinate the SPCCP with affected installation elements.

(7) Maintain an accurate inventory of SPCCP applicable containers, including the location and/or spatial extent of such containers. (LD: 40 CFR 112.7)

(8) Prepare spill response plans and notification procedures, to include a facility response plan, as needed, for spills caused by Army actions, including coordination with local emergency planning authorities. (LD: 40 CFR 300.211; 40 CFR 112.20; 33 CFR 154; 49 CFR 130; 49 CFR 171–172)

(9) Conduct training to ensure proper response to spills or releases. This includes annual spill response exercises for the spill response organization. (LD: 29 CFR 1910.120 (e), (p), (q); 40 CFR 112.21)

(10) Ensure the garrison commander (GC) designates, in writing, a qualified on-scene coordinator (OSC) responsible for executing spill response. The local commander will designate in writing the OSC at USAR maintenance facilities. The State Adjutants General will designate in writing the OSC at Army National Guard (ARNG) maintenance facilities. (LD: 40 CFR 300.120)

(11) Ensure that facility operators and OSC understand and comply with Federal and State reportable quantity requirements.

(12) When a spill occurs, immediately report the spill or release to the OSC and implement the SCP and/or SPCCP. The OSC will determine if it exceeds reportable quantities and will notify regulatory authorities as required. Any spill that requires notification of regulatory authorities will be reported to the next higher headquarters. (LD: 40 CFR 112.4; 40 CFR 300.125; 33 CFR 153, Subpart B; 40 CFR 302)

(13) Assist Federal or State agencies in response to spills outside the Army property where practicable in accordance with AR 75–15.

(14) For outside the continental United States (OCONUS) installations, provide response assistance for spills off Army property in accordance with their applicable FGS and garrison SPCCP.

(15) For further guidance in managing ASTs and equipment subject to 40 CFR 112, refer to the 2 April 2004, DOD Joint Services Spill Prevention, Control, and Countermeasure (SPCC) Guidance.

Chapter 12

Environmental Cleanup

12–1. Policy

a. Comply with applicable Federal, State, local, and Department of Defense (DOD) requirements for the cleanup of contamination on Army installations and formerly used defense sites (FUDS). Figure 12–1 depicts the differences and commonalities among the various cleanup program areas. For overseas installations, only the Compliance-related Cleanup (CC) Program applies.

b. Accomplish early and continued public involvement in the cleanup programs.

c. Keep State regulatory agencies and the U.S. Environmental Protection Agency (EPA) informed of cleanup program activities, as appropriate.

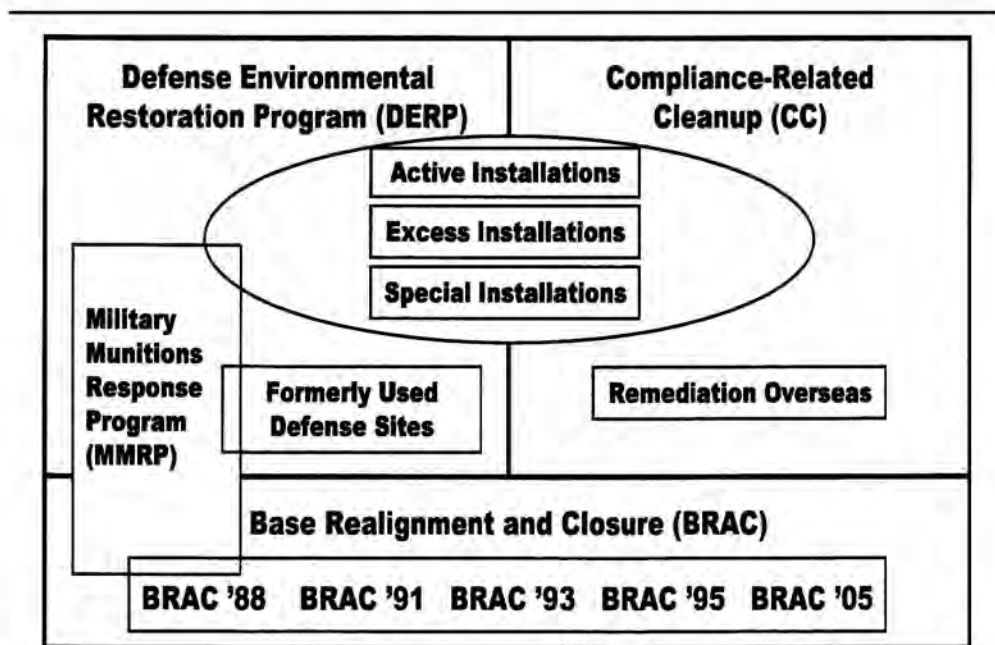


Figure 12-1. Army Environmental Cleanup Program Areas

12-2. Legal and other requirements

The following list of statutory requirements apply to environmental cleanup:

a. 42 USC 9601; 40 CFR 300; Section 120, Part 1910, Title 29, Code of Federal Regulations (29 CFR 1910.120); Executive Order (EO) 12580; and 42 USC 6901, Sections 3004u, 3004v, and 3008h; Section 2701, Title 10 United States Code (10 USC 2701); DOD 7000.14-R; DODI 4715.7, for all but overseas installations; DODI 4715.8; Engineer Regulation (ER) 200-3-1, formerly Used Defense Site (FUDS) Program Policy; Charter for the Formerly Used Defense Sites Program, 31 October 2003; and Office of the Assistant Secretary of the Army for Installations and Environment (OASA (I&E)) Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) (DASA (ESOH)) memorandum, 18 June 2004, subject: The Army Environmental Compliance-related Cleanup Program Eligibility. The Army environmental cleanup programs include the Army DERP at active, closing, and realigning installations; DERP at FUDS properties; and compliance-related cleanup (CC) at active and excess installations, including those overseas. Regulations that pertain to the Army's environmental cleanup programs are referenced in appendix A.

(1) Defense Environmental Restoration Program (DERP) cleanups (Installation Restoration Program (IRP), Military Munitions Response Program (MMRP), base realignment and closure (BRAC), FUDS) address hazardous substances, pollutants and contaminants, and military munitions sites, consistent with the provisions of 42 USC 9601, et seq. (CERCLA); 40 CFR 300 (National Oil and Hazardous Substances Pollution Contingency Plan); EO 12580; and 42 USC 6901, Sections 3004u, 3004v, and 3008h for activities that resulted in contamination prior to 17 October 1986 at non-permitted sites.

(2) Compliance related cleanup (CC) addresses cleanup requirements that are legally mandated but not eligible for funding under the Army DERP. The program focuses on the remediation of contamination at Army overseas facilities (it does not include actions to remedy contamination that are covered by environmental annexes to operations orders and similar operational directives), and on the cleanup of contamination resulting from operations that have occurred since 17 October 1986. This includes sites at Active Army, Army Reserve, Army National Guard (ARNG) Federally-owned facilities, as well as cleanup at non-Federally-owned, Federally-supported (State-owned, State-operated) ARNG

facilities. CC does not include initial response actions to address spills, but does include follow-on response action, if required.

b. The DERP is supplemented by the *DOD Management Guidance for the Defense Environmental Restoration Program (DERP)*, September 2001. The DERP Management Guidance defines eligibility and addresses sites in the following three program categories:

(1) The IRP includes response actions to address releases of hazardous substances, pollutants and contaminants (as defined in CERCLA); petroleum, oil, lubricants (POL); DOD-unique materials; hazardous wastes (HW); and low-level radioactive materials or low-level radioactive wastes (LLRW). The IRP also includes military munitions (including munitions and explosives of concern (MEC), see glossary) or munitions constituents (MC) at a relatively small number of sites where the following three conditions all exist:

(a) The release occurred prior to 30 September 2000.

(b) The release is at a site that is not an operational range, an active munitions demilitarization facility, an active waste military munitions (WMM) treatment or disposal unit, or FUDS.

(c) The site was identified or included in the Army Environmental Data Base-Restoration (AEDB-R) or Formerly Used Defense Sites Management Information System (FUDSMIS) prior to 30 September 2000, and was not classified as "response complete."

(2) The MMRP addresses munitions responses at active or BRAC installations where the release occurred prior to 30 September 2002, and the release is at a site that is not a FUDS, an operational range, an active munitions demilitarization facility, or an active WMM treatment or disposal unit that operated after 30 September 2002, and the site was not identified or included in the AEDB-R prior to 30 September 2000.

(3) Building demolition/debris removal (BD/DR) addresses the demolition and removal of unsafe buildings and structures at facilities or sites that are or were owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the DOD.

12-3. Major program goals

Perform appropriate, cost-effective cleanup so that property is safe for Army use (or transfer as appropriate), sustains operations and training, and protects human health and the environment.

12-4. Program requirements

a. *Cleanup program areas.* All cleanup program areas must:

(1) Identify cleanup requirements at the site level using the more stringent of current or projected future land use as documented in the installation master plan, develop a reasonable schedule and cost to complete cleanup, record liabilities in a database of record, and pursue cleanup until regulatory agreement with site closure.

(2) Provide site-level data in response to Assistant Chief of Staff for Installation Management (ACSIM) data calls for updates to the databases of record.

(3) Develop and maintain an administrative record for National Priorities List (NPL) sites or similar documentation for non-NPL sites on the installation or U.S. Army Corps of Engineers (USACE) District responsible for FUDS.

(4) Prepare annual cost-to-complete estimates for each site in the program that reflect the environmental strategy and sequence as presented in the installation action plan (IAP), BRAC IAP, or FUDS management action plan (MAP). Maintain an audit trail for changes that occur in a fiscal year (FY) that reflects actions taken, change in estimates, and new or deleted requirements. Estimates must be based on reliable, complete and fully documented data and will be in constant year dollars. (LD: PL 101-576)

(5) Determine contamination migration. Garrison commanders (GCs) must approve off-site data collection and any off-post monitoring to ensure that contamination has not migrated off-site. (LD: EO 12580 at CERCLA sites; PD at other sites)

(6) Notify the DASA (ESOH) through the chain-of-command prior to initiating any off-site response actions. The Army has the authority to conduct response actions outside the installation boundary, however, the lack of Army control over this off-installation property, potential legal and technical complexity, sensitivity, and the necessity for increased public involvement requires additional oversight on these responses. This notification requirement does not apply to FUDS.

(7) Maintain a permanent document repository to ensure cleanup information is available to protect future Army liability at any date in the future.

(8) Document environmental response decisions in a CERCLA record of decision (ROD) or an equivalent decision document (DD) or action memorandum prior to conducting removal or remedial actions.

(9) Coordinate remedial documents with Natural Resource Trustees.

(10) Work cooperatively with regulatory agencies to ensure that the Army's cleanup goals are accomplished cost-effectively, and in accordance with applicable laws and regulations.

(11) Fully support public involvement in cleanup programs where there is potential impact on the health, environment, and economic well being of the local community.

- (12) Maintain an inventory and maps of land use controls (LUCs) resulting from response decisions, and at active installations, integrate them into the installation master plan.
- (13) Establish procedures for evaluating implemented remedies that:
 - (a) Optimize the overall performance and effectiveness of the remedy.
 - (b) Control the operation and maintenance cost of remedies in the remedial operations phase.
 - (c) Assess whether remedial action objectives specified in the ROD/DD for the site are being achieved and whether treatment systems are still needed.
 - (d) Determine whether different remedial action objectives or different technologies are more appropriate.
- b. Army Defense Environmental Restoration Program.* The DERP addresses sites at real property under U.S. jurisdiction, custody, and control of the Army to include: (LD: 10 USC 2701(c))
 - (1) Active and excess U.S. Army and U.S. Army Reserve installations and facilities.
 - (2) Federally owned or leased ARNG installations, activities, and properties.
 - (3) Contractor activities, lessees, and other tenants on Army installations or facilities.
 - (4) The Army DERP addresses contamination at sites on active installations in the three categories described previously: IRP, MMRP, and BD/DR. The Army funds the DERP at active installations with Environmental Restoration, Army (ER, A) funds authorized and appropriated specifically to execute the DERP at active installations. ER, A is "fenced" and must be used for the restoration projects in the approved IAP for sites included in AEDB-R. (LD: 10 USC 2703)
 - (5) For IRP category sites:
 - (a) Conduct screening for past use of hazardous substances, pollutants and contaminants and the potential for contamination (or reassessment, if appropriate) at active Army and Federally-owned NGB-ARNG installations and sub-installations. (LD: 10 USC 2701)
 - (b) Conduct studies and response actions in accordance with the annual IAP approved by the GC (or equivalent).
 - (c) Establish an information repository and administrative record to provide public access to information about the cleanup activities at the installation. (LD: 42 USC 9613 and 9620)
 - (d) Establish an effective community involvement program, to include a community relations plan (CRP) at NPL sites (LD: 40 CFR 300.155) or public involvement and response plan for Army installations with an active cleanup program.
 - (e) Negotiate a Federal Facilities Agreement/Interagency Agreement at NPL sites complying with the DOD approved model agreement. (LD: CERCLA Section 120(e)(2) and 120(e)(4))
 - (f) Establish a Technical Review Committee (TRC) or Restoration Advisory Board (RAB) when applicable to allow the local community an opportunity to participate in the remedy selection process. Form a RAB at all BRAC installations where closure involves the transfer of property to the community, unless otherwise determined by the ACSIM. At installations on the NPL, a RAB will meet the requirements of paragraph c, Section 2705, Title 10, United States Code (10 USC 2705(c)) for a TRC. (LD: 10 USC 2705(d))
 - (g) Initiate action to have the site expeditiously deleted from the NPL by EPA once all site completion criteria are met, or request partial delisting of specific operable units, as appropriate. (LD: 40 CFR 300.425)
 - (6) For MMRP category sites: conduct response actions to address military munitions or the chemical residues of munitions at active installations.
 - (7) For BD/DR: BD/DR program category responses for buildings unused since 17 October 1986 may be undertaken when the requirement to demolish the building(s) is an integral part of activities under an IRP or MMRP category response. Any other ER, A funded BD/DR program category response for buildings unused since 17 October 1986 may only be undertaken when specifically authorized by the Assistant Deputy Undersecretary of Defense (Environment, Safety, and Occupational Health) (ADUSD (ESOH)).
- c. Base realignment and closure.*
 - (1) The Base Realignment and Closure (BRAC) cleanup program addresses sites at installations designated for closure or realignment by Base Closure legislation and is funded from the Base Closure Account (BCA) using DOD's DERP authority. At closing installations, cleanup requirements consist of previously identified IRP and MMRP category requirements plus those closure related compliance actions required for property transfer. The BRAC cleanup program may address BD/DR category requirements for unsafe buildings or structures unused since 17 October 1986, where the activities are an integral part of actions under the IRP or MMRP category responses.
 - (2) Army activities will—
 - (a) Update BRAC IAPs annually.
 - (b) Ensure that BRAC cleanup activities comply with the ADUSD(E) policy guidance for Fast Track Cleanups and the Base Redevelopment and Realignment Manual.
 - (c) Strive to transfer BRAC property to productive reuse.
- d. Compliance-related cleanup.*
 - (1) The CC includes actions to address contamination at Army facilities overseas; contamination resulting from

operations that have occurred since October 1986 (that is, non-DERP) at Army Active, Excess, and Special installations, and ARNG Federally owned facilities; and contamination at non-Federally-owned, Federally-supported ARNG facilities.

(2) The CC projects are projects needed to further investigate, and if necessary, conduct response actions to address contaminants that present an imminent and substantial threat to human health and/or the environment.

(3) Undertake CC projects when needed to address the following requirements:

(a) Releases under CERCLA or RCRA corrective action that are not eligible for funding under the DOD Management Guidance for the DERP (for example, releases that occurred on or after 17 October 1986).

(b) Cleanup mandated under authority of Federal and/or State environmental laws that are not being addressed under other cleanup programs (for example, DERP, BRAC, and so forth).

(c) Releases from HW treatment, storage, or disposal facilities (TSDF) or solid waste landfills that are undergoing RCRA closure.

(d) Releases from a RCRA underground storage tank (UST) if it was in service as of 17 October 1986.

(e) Army contamination beyond the installation boundary where necessary to protect human health and the environment (and not eligible for DERP funding).

(f) Contamination at overseas installations in accordance with DODI 4715.8.

(g) Contamination at non-Federally-owned, Federally-supported ARNG sites, regardless of date.

(h) Munitions responses at ranges closed after 30 September 2002.

(i) Response actions outside the boundaries of operational ranges required as a result of the Range Assessment Program established in accordance with DODD 4715.11.

(j) Non-DERP environmental liabilities at excess installations.

(k) Army Commands (ACOMs), Army Service Component Commands (ASCCs), and Direct Reporting Units (DRUs) with special installations will program and budget mission or working capital fund resources to address non-DERP, CC eligible releases. Special installations are eligible for Army DERP consistent with DERP eligibility requirements.

e. *Other.*

(1) *Formerly used defense sites (FUDS).*

(a) Under the DERP, the FUDS Program addresses properties that were under the jurisdiction of the Secretary of Defense and owned by, leased by, or otherwise possessed by the United States, or otherwise under the operational control of the Secretary of Defense or the military components that were transferred from DOD control prior to 17 October 1986. The FUDS program addresses sites in the following program categories: IRP, MMRP, and BD/DR. Also eligible are former DOD sites that were transferred after 17 October 1986, but that have a completed Findings and Determination of Eligibility (FDE) and a final inventory project report (INPR), signed prior to 30 September 2000 stating that the property was FUDS eligible, and that were listed in Restoration Management Information System (RMIS) as a FUDS property prior to 30 September 2000.

(b) The ADUSD (ESOH) establishes overall FUDS program policy and budget guidance. Regardless of which military service formerly controlled the property, the Army is the executive agent (EA) to administer the FUDS program. General policy on management and execution of the FUDS program is provided in the DOD Management Guidance for the DERP and the FUDS Program Charter. The ASA (I&E) and ACSIM are, respectively, the Army Secretariat and Army Staff (ARSTAF) proponents for the FUDS program. The USACE is responsible for management and execution of the FUDS Program.

(c) Specific FUDS execution guidance and procedures are provided in USACE's Engineer Regulation (ER) 200-3-1.

(2) *Defense and State Memoranda of Agreement/Cooperative Agreement (CA).*

(a) DOD, through the Defense and State Memoranda of Agreement/Cooperative Agreement (DSMOA/CA) program, involves State/Territorial governments in the environmental restoration of DOD installations including FUDS properties. The Office of the Secretary of Defense (OSD) has given the Army the authority to negotiate DSMOAs and recommend approval of DSMOAs to the ADUSD (ESOH). USACE executes the DSMOA/CA Program for all military services.

(b) Authority for this program is contained in 10 USC 2701(d) which allows the Secretary of Defense to enter into agreements on a reimbursable basis with states/territories to support DERP cleanup efforts at DOD installations. The DSMOA/CA program does not apply to compliance-related cleanup (CC). Specific criteria, funding information, and services eligible for State reimbursement for this program are contained in Part 28835, Title 57, Federal Register (57 FR 28835), dated 29 June 1992.

(c) Funding for the Army's contribution to the DSMOA/CA Program will be provided by the Army from the ER, A; Environmental Restoration, FUDS (ER, F); and BCA accounts.

(3) *Memorandum of Understanding between DOD and the Agency for Toxic Substances and Disease Registry.*

(a) DOD has entered into a MOU with ATSDR that delineates the responsibilities and procedures under which

Agency for Toxic Substances and Disease Registry (ATSDR) and DOD will conduct activities mandated in CERCLA. The MOU is the single document governing the relationship between DOD and ATSDR.

(b) Funding for the ATSDR to conduct Army-related studies under the MOU with DOD is provided by the Army from the ER, A; ER, F; and BCA accounts. Each military component funds its own ATSDR services.

(c) Refer to the U.S. Army Environmental Restoration Programs Guidance Manual and the Guidelines for the Coordination of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Activities Between Agency for Toxic Substances and Disease Registry and Department of Defense for additional information about the roles of ATSDR and DOD components in DOD cleanup activities.

(4) *Exemptions.* The above guidance for environmental cleanup does not apply to:

(a) Contractor-owned and contractor-operated facilities that are not on real property controlled by the Army.

(b) Properties that are not on real property that is or was owned, controlled, or otherwise under the jurisdiction of DOD (that is, a third-party site).

(c) Responses to releases that occur solely as a result of an act of war.

(d) Emergency response to and cleanup of a release from any routine operation, management, or maintenance at an operating Army facility or site that does not become a cleanup project.

(e) Routine range maintenance and sustainment activities at operational ranges.

Chapter 13

Environmental Quality Technology

The Environmental Quality Technology (EQT) effort is planned, programmed, and budgeted for at Headquarters, Department of the Army (HQDA) level. It focuses investments on the Army's most pressing needs and provides visibility of the Army's environmental research, development, test, and evaluation (RDT&E) efforts. EQT requirements are identified and validated through the Army Environmental Requirements and Technology Assessments (AERTA). The AERTA requires a review of new and existing requirements to determine if changes in doctrine, organization, training, materiel, leadership and education, or personnel and facilities (DOTMLPF) will resolve the requirement(s). Only those requirements requiring a materiel solution will be included in the AERTA. Requirements with other than materiel solutions will be forwarded to the appropriate proponent/organization for action. The EQT Program Operating Principles, October 2001, provide detailed guidance.

13-1. Environmental Technology Technical Council

a. The Army established an Environmental Technology Technical Council (ETTC) to provide management oversight and endorsement of the EQT programs formulation process. The Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) (DASA (ESOH)) and the Director, Research and Laboratory Management, Office of the Assistant Secretary of the Army for Acquisition, Logistics, and Technology (OASA (ALT)) co-chair the ETTC.

b. The ETTC consists of members representing the operational, logistics, scientific and engineering, planning, resource management, infrastructure, and medical interests of the Army. The ETTC consolidates and prioritizes Army environmental technology needs, and articulates the requirements to the appropriate proponent.

c. The ETTC establishes technology teams as needed to carry out its assigned functions.

d. The ETTC meets as needed to endorse new programs and to review technology priorities and program execution.

13-2. Policy

Provide environmental quality RDT&E and technology transfer to resolve the Army's EQT requirements. EQT efforts are integrated and coordinated with other Defense RDT&E initiatives, such as the National Defense Center for Environmental Excellence (NDCEE), Strategic Environmental Research and Development Program (SERDP), the Environmental Security Technology Certification Program (ESTCP), and Federal and State government and international forums, to leverage their technology output, reduce total life-cycle costs, and resolve these EQT requirements in a timely manner.

a. Focus efforts on high priority user defined requirements.

b. Implement technology development when technology is not commercially available.

c. Provide an adequate science and engineering base to sustain future technology needs.

d. Focus efforts of the Army EQT program to support and enhance technology transfer of validated capabilities and processes.

13-3. Legal and other requirements

10 USC 160, Sections 2706 and 2709.

13-4. Major program goals

The Army goal for EQT is to enable mission readiness through the development and exploitation of technology that provides sustainable installations, training lands, and weapons systems.

13-5. Major requirements

- a. Identify and document user requirements and invest in high priority environmental requirements providing validated solutions to the end-user for qualification, production, or fielding.
- b. Leverage other DOD and Congressionally-directed initiatives to help resolve Army environmental requirements.
- c. Use the EQT requirements to prioritize the Army funded efforts at the NDCEE.

Chapter 14

Operational Noise

14-1. Policy

- a. Evaluate and document the impact of noise produced by ongoing and proposed Army actions/activities and minimize annoyance to humans to the extent practicable.
- b. Develop installation noise management plans as appropriate.
- c. Reduce noise to acceptable levels in on-post noise sensitive locations (for example, medical treatment, education, family housing) through appropriate land use planning and/or architectural and engineering controls.
- d. Monitor, record, archive and address operational noise complaints.
- e. Develop and procure weapons systems and other military combat equipment (for example, electrical generators, etc.) that produce less noise, when consistent with operational requirements. Measure the noise emitted by all combat equipment and weapons systems to be used in training before deployed to units.
- f. Procure commercially manufactured products, or those adapted for general military use that produce less noise, and comply with regulatory noise emissions standards.
- g. Acquire property only as a last resort to resolve off-post noise issues.
- h. Manage operational noise issues and community relations to maintain sustainable testing and training capabilities and prevent encroachment.

14-2. Legal and other requirements

Property and tort law; Noise Control Act of 1972; Quiet Communities Act of 1978; AR 95-1; AR 210-20; AR 350-19; and applicable State and local laws.

14-3. Major program goals

- a. Control operational noise to protect the health and welfare of people, on- and off- post, impacted by all Army-produced noise, including on- and off-post noise sources.
- b. Reduce community annoyance from operational noise to the extent feasible, consistent with Army training and materiel testing mission requirements.
- c. Actively engage local communities in land use planning in areas subject to high levels of operational noise and a high potential for noise complaints.

14-4. Program requirements

- a. Noise descriptors (metrics) appropriate for determination of compatible land use, and assessment procedures will be based on the best available scientific information.

(1) The day-night level (DNL) is the primary descriptor for military noise, except small arms, see table 14-1. The DNL is the time weighted energy average sound level with a 10-decibel (dB) penalty added to the nighttime levels (2200 to 0700 hours). The DNL noise metric may be further defined, as appropriate, by the installation with a specific, designated time period (for example, annual average DNL, average busy month DNL). The typical assessment period over which the noise energy is averaged is 250 days for Active Army installations and 104 days for Army Reserve and National Guard installations. The use of average busy month DNL is appropriate when the OPTEMPO is significantly different during certain peak periods of the year. For future land use planning and encroachment assessment purposes, a reasonable annual growth factor in activity (for example, 10 or 15 percent) may be assumed.

(2) Supplemental metrics, such as single event noise data (for example, Peak, PK 15(met) or CSEL), may be employed where appropriate to provide additional information on the effects of noise from test and training ranges. A-weighted maximum noise levels will be used to assess aviation low level military training routes (MTRs) and/or flight tracks.

(3) The use of average noise levels over a protracted time period generally does not adequately assess the probability of community noise complaints. Assess the risk of noise complaints from large caliber impulsive noise

resulting from testing and training activities, ex. armor, artillery, mortars and demolition activities, in terms of a single event metric, either peak sound pressure level (PK 15(met)) or C-weighted sound exposure level (CSEL). The metric PK 15(met) accounts for statistical variation in received single event peak noise level that is due to weather. It is the calculated peak noise level, without frequency weighting, expected to be exceeded by 15 percent of all events that might occur. If there are multiple weapon types fired from one location, or multiple firing locations, the single event level used should be the loudest level that occurs at each receiver location.

(4) Assess noise from small arms ranges using a single event metric, either PK 15(met) or A-weighted sound exposure level (ASEL).

(5) Use the land use planning zone (LUPZ) contour to better predict noise impacts when levels of operations at airfields or large caliber weapons ranges are above average.

(6) Use available DOD noise assessment software as the primary means of operational noise assessment.

(7) Prepare noise maps showing noise zones and limits as defined in tables 14-1 and 14-2.

(8) Manage noise-sensitive land uses, such as housing, schools, and medical facilities as being acceptable within the LUPZ and noise zone I, normally not recommended in noise zone II, and not recommended in noise zone III. These noise zones are defined in table 14-1.

(9) Single event noise limits in table 14-2 correspond to areas of low to high risk of noise complaints from large caliber weapons and weapons systems. These should be used to supplement the noise zones defined in table 14-1 for land use decisions. Noise sensitive land uses are discouraged in areas where PK 15(met) is between 115 and 130 dB; medium risk of complaints. Noise sensitive land uses are strongly discouraged in areas equal to or greater than PK 15(met) = 130 dB; high risk of noise complaints. For infrequent noise events, installations should determine if land use compatibility within these areas is necessary for mission protection. In the case of infrequent noise events, such as the detonation of explosives, the installation should communicate with the public.

(10) Transportation and industrial noise will be assessed on a case by case basis using appropriate noise metrics, including U.S. Department of Transportation guidelines.

b. Address issues concerning building vibration and rattle due to weapons blast through the appropriate subject matter experts and legal counsel.

c. Address noise impacts on domestic animals and wildlife, as required, through the study of each species' response or a surrogate response to noise. The noise levels set forth herein apply to humans only and do not apply to domestic animals or wildlife.

Table 14-1
Noise Limits for Noise Zones

| Noise zone | Noise limits (dB) | Noise limits (dB) | Noise limits (dB) |
|------------|-------------------|-------------------|----------------------------|
| | Aviation ADNL | Impulsive CDNL | Small arms — PK 15(met) |
| LUPZ | 60 - 65 | 57 - 62 | N/A |
| I | < 65 | < 62 | <87 |
| II | 65 - 75 | 62 - 70 | 87 - 104 |
| III | >75 | >70 | >104 |

Legend for Table 14-1:

dB=decibel

LUPZ=land use planning zone

ADNL=A-weighted day-night levels

CDNL=C-weighted day-night levels

PK 15(met)=Single event peak level exceeded by 15 percent of events.

<=less than

>=greater than

N/A=Not Applicable

Table 14-2
Risk of Noise Complaints by Level of Noise

| Risk of Noise complaints | Large caliber weapons noise limits (dB) PK 15(met) |
|---|--|
| Low | < 115 |
| Medium | 115 - 130 |
| High | 130 - 140 |
| Risk of physiological damage to unprotected human ears and structural damage claims | > 140 ¹ |

Legend for Table 14-2:

dB = decibel

PK 15(met) = Single event peak level exceeded by 15 percent of events

Notes:

¹ Although local conditions regarding the need for housing may require noise-sensitive land uses in Noise Zone II, on or off post, this type of land use is strongly discouraged. The absence of viable alternative development options should be determined and an evaluation should be conducted locally prior to local approvals indicating that a demonstrated community need for the noise-sensitive land use would not be met if development were prohibited in Noise Zone II.

² Where the community determines that these uses must be allowed, measures to achieve an outdoor to indoor noise level reduction (NLR) of at least 25 dB to 30 dB in Noise Zone II, from small arms and aviation noise, should be incorporated into building codes and be in individual approvals. The NLR for communities subject to large caliber weapons and weapons system noise is lacking scientific studies to accomplish the recommended NLR. For this reason it is strongly discouraged that noise-sensitive land uses be allowed in Noise Zone II from large caliber weapons.

³ Normal permanent construction can be expected to provide a NLR of 20 dB, for aircraft and small arms, thus the reduction requirements are often stated as 5, 10 or 15 dB over standard construction and normally assume mechanical ventilation, upgraded Sound Transmission Class (STC) ratings in windows and doors and closed windows year round. Additional consideration should be given to modifying NLR levels based on peak noise levels or vibrations.

⁴ NLR criteria will not eliminate outdoor noise problems. However, building location and site planning, and design and use of berms and barriers, can help mitigate outdoor noise exposure NLR particularly from ground level aircraft sources. Barriers are generally not effective in noise reduction for large arms such as artillery and armor, large explosions, or from high-level aircraft sources.

Chapter 15 Program Management and Operation

15-1. Structure and resourcing

a. Army Environmental Funding Policy.

(1) Army organizations are responsible for addressing environmental requirements for activities under their purview to ensure timely compliance with legal mandates, and for sustaining environmental stewardship.

(2) Environmental requirements must be funded from the appropriate account of the proponent who has the responsibility for the action, not necessarily the Installations Program Evaluation Group (II PEG) environmental program accounts. For example, in accordance with the Army Program Guidance Memorandum (APGM), hazardous material and hazardous waste management are funded within MDEP QLOG (Logistics), while asbestos, lead-based paint and solid waste management are funded within MDEP QDPW (Public Works - Facilities Operations).

b. Programming and budgeting. Commensurate with their responsibilities, Army organizations (to include tenants) will plan, program, budget, and execute resources to:

(1) Mitigate actual or imminent health and environmental hazards.

(2) Comply with Federal, State and local statutes, regulations, agreements, and other judgments, applicable executive orders (EOs), Final Governing Standards (FGS), and legally-binding international agreements at overseas installations.

(3) Sustain the quality and continued availability of lands for essential operations, training, and testing by protecting natural and cultural resources.

(4) Maintain an adequately trained and staffed organization for environmental monitoring and program management.

(5) Employ cost-effective pollution prevention and reuse/recycle-based solutions in all mission areas as the preferred approach for meeting compliance requirements, reducing operating costs, and maintaining environmental stewardship.

(6) Focus environmental quality technology (EQT) research and innovative applications to achieve program goals and reduce program costs.

(7) Address environmental quality costs associated with weapons system life cycle within the context and requirements of the life cycle cost estimate, and adequately assess these costs in the acquisition milestone review process.

c. Investment strategy. Army organizations will make prudent investments in environmental initiatives that support mission accomplishment, enhance readiness, reduce future funding needs, prevent or mitigate pollution, improve compliance, and reduce the overall cost of compliance with applicable environmental requirements.

d. Payment of fines and penalties for environmental violations. Fines, penalties, and supplemental environmental

project (SEP) costs will be paid by the organization against which the fine or penalty has been assessed, using applicable Army appropriations unless otherwise required by law. Payment of fines and penalties will be charged to the funding account of the operation causing the violation. Contracting Officers will ensure that contracts require contractors to pay fines or penalties resulting from their operations.

e. Compliance agreements and consent orders. Compliance agreements and consent orders attributable to a tenant's mission and/or operations will be financed with mission funds and must be coordinated through the mission chain of command.

15-2. Environmental Quality Control Committee

a. Installations will establish Environmental Quality Control Committees (EQCCs) chaired by the Garrison Commander (GC). In overseas areas, the EQCC may be organized at the appropriate military community level. The EQCC will include major and sub-installations and tenant activities. EQCCs will meet at least quarterly and document decisions.

b. The EQCC should consist of members representing the operational, logistics, engineering, planning, resource management, legal, medical, environmental, morale, welfare, and recreation (MWR), commissary, exchange service, and safety interests of the command, including military installation tenant activities.

c. The EQCC will help to plan, execute, and monitor actions and programs with environmental implications. The committee will identify issues, make recommendations, and advise the GC.

15-3. Environmental training, awareness, and competence

a. All personnel who perform tasks that can cause significant environmental impacts will be competent on the basis of appropriate education, training, and/or experience.

b. Personnel in non-environmental managerial functions will receive appropriate technical and/or awareness training.

c. All organizations will identify training needs (including legally mandated training), document training taken, and evaluate effectiveness.

d. Supervisors are responsible to ensure their employees are properly trained.

e. Organizations should use the most effective and efficient education and training sources available, such as academia, private vendors, Federal or State agencies, workshops and conferences, and distributive training. Army organizations will develop training courses only when such training courses do not exist. Proposals to develop training courses will be coordinated with higher headquarters and Training and Doctrine Command (TRADOC).

f. The U.S. Army Engineer School (USAES) is responsible for developing and integrating environmental considerations into personnel training.

g. All organizations will ensure applicable personnel at all levels conform to a single installation-wide environmental management system (EMS).

15-4. Communications

a. Internal. Organizations at all levels will establish and maintain procedures for internal communication among all their levels and functions and report environmental incidents.

b. External.

(1) Organizations at all levels will establish and maintain procedures for receiving, documenting, and responding to communication from external interested parties in coordination with the Public Affairs staff.

(2) Organizations will only provide information on publicly accessible, non-restricted Army environmental Web sites that have been properly cleared for release by the appropriate Public Affairs Office (PAO).

(3) Information available to the public through the Internet will be consistent with guidance issued by the Army Chief Information Officer/G-6 (CIO/G-6).

(4) All environmental agreements must be reviewed and approved by the next higher echelon. Proposed agreements and their review will include consideration of long-term Army resource commitments. In addition, environmental agreements with regulatory agencies will be forwarded through command channels to the JALS-EL for review prior to signature, and those resulting from tenant activities will be coordinated with the tenant, the Army Commands (ACOMs), Army Service Component Commands (ASCCs), Direct Reporting Units (DRUs), National Guard Bureau-Army National Guard (NGB-ARNG), and the Installation Management Command (IMCOM), if applicable.

(5) Army elements will include public involvement as a component of the decision making process to build mutual understanding with interested parties through two-way communication. Dialogue will strive to reduce miscommunication and foster a mutually beneficial exchange of information.

15-5. Real property acquisition, leases, outgrants, and disposal transactions

a. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requires the Army to perform certain actions to assess the environmental condition of property prior to entering into designated real property transactions. These transactions include fee acquisition of real property on behalf of the United States, deeds divesting

title from the United States, transfers of jurisdiction between federal agencies, and leases of Army-controlled real property to non-Army entities.

b. This section is not applicable to reassignments within Army or DOD elements; to acquisition of less than fee; or to other outgrants (license, easement, or permit). However, the Environmental Condition of Property (ECP) requirements of this section apply, as a matter of policy, to DA licenses to the National Guard Bureau (NGB), licenses for State National Guard Components, and to state land acquisition where the land will be provided for federally funded construction. Army proponents will conduct these transactions in accordance with the procedures found in AR 405-10; AR 405-80; AR 405-90; Section 2688, Title 10, United States Code (10 USC 2688); 32 CFR 651; and Part 800, Title 36, Code of Federal Regulations (36 CFR 800). Base Realignment and Closure (BRAC) actions will comply with DODI 4165.66M, or its successor. The Army proponent may elect to perform an environmental site assessment for the inapplicable transactions. (LD: 42 USC 9620(h))

c. Except as noted in *b.* above, Army will assess, determine, and document the environmental condition of transferable property in an ECP Report. The ECP Report will summarize historical, cultural, and environmental conditions and include references to publicly available and related reports, studies, and permits. The report will provide an accurate summary of the environmental condition of the property. If the property will be deeded or leased, the site may require additional site characterization to meet applicable regulatory requirements or to help value the property. (Note: The GC/Army proponent is responsible for initiating the ECP Report.)

(1) An ECP Report will normally result in a conclusion regarding the advisability of the transaction and forms the basis for Findings of Suitability, if applicable to the transaction. Environmental contamination and potential environmental liabilities associated with properties being considered for acquisition, lease, and disposal will be determined prior to completing the transaction. The ECP Report and, if applicable, the Findings of Suitability, are an integral part of the Report of Availability or the Disposal Report which form the basis for the Army official with delegated authority to approve the real property transaction and for USACE to prepare the required legal documents, land use controls and covenants. (Note: Findings of Suitability are required for BRAC disposals, both transfers and leases, but are not required for active installation leases.) (LD: 42 USC 9620(h))

(2) Content of the ECP Report depends upon the nature of the transaction and the proposed transferee/lessee. Transfers or leases between the Army and non-federal entities will require at a minimum, a Phase I ECP Report. Where conditions indicate uncertainty regarding the condition of property, a Phase II ECP Report is also required.

(3) The ECP Report will comply with applicable American Society for Testing and Materials ("ASTM") Standards, such as ASTM E1527, E1903, and D6008 and will be consistent with the DOD Base Redevelopment and Realignment Manual (BRRM) for BRAC actions.

(4) An ECP Report is optional for reassignments within the Army and between Army and another DOD component depending on whether the HQDA approval authority deems it necessary. Those reassignments without an ECP Report should have a statement describing the environmental condition with the package forwarded to HQDA for approval. (PD)

(5) For non-BRAC actions, the ECP report will be attached to the environmental section of the Report of Availability or Disposal Report (AR 405-80 and AR 405-90) that is submitted to the Army decision-making official.

(6) Fee acquisitions and fee acquisition by State Guard components for land that will be provided for federally funded construction require an ECP Report to comply with EPA's "All Appropriate Inquiry" rules under CERCLA prior to obtaining title to the real property so as to preserve defenses to CERCLA liability as an innocent land owner, bona fide prospective purchaser, or contiguous property owner and to reduce risk to Army and ensure that Army pays appropriate consideration for the property. The Army component will perform due diligence in determining the environmental condition of the property using applicable Environmental Protection Agency guidelines and applicable American Society for Testing and Materials ("ASTM") Standards on real property acquisition (ASTM E 1527). (LD: 42 USC 9620)

(7) The activity initiating the property transfer or lease will include the ECP Report with the Disposal Report or Report of Availability for the transaction.

d. Active installation leases and non-lease outgrants (easements, license, permit):

(1) The environmental section of the Report of Availability (ROA) (AR 405-80) will be used to document the environmental condition of the property being leased by active installations. There is no requirement to prepare a FOSL. The non-BRAC ECP included with the ROA will include, as an appendix, the appropriate environmental protection provisions necessary for continued human health and environmental protection.

(2) The GC (or equivalent) or the NGB having accountability for the real property at the installation may determine that the environmental section of the ROA alone may be sufficient to document environmental requirements for permits, licenses, easements, and similar real estate actions where environmental concerns are very minor. Under these circumstances an ECP report would not be required.

(3) An ECP report will be done as an exception to this section when licenses are issued to state National Guard components, when hazardous materials will be stored for one year or more or disposed on Army property except when authorized by 10 USC 2692 (as amended); and where the authorized use of Army lands and facilities poses a hazard to

human health or the environment. Leasing space to others for trailer sites or automatic teller machines (ATMs) does not require an ECP Report except where extraordinary circumstances exist.

e. The GC (or equivalent) is responsible for determining the appropriate ECP category (ASTM D5746) for a property being transferred based on the results of the ECP Report and actions taken to address contamination. (PD)

f. For real property transactions initiated by non-Army parties: (PD)

(1) The party initiating the transaction is responsible for funding and completing the ECP Report.

(2) The GC/Army proponent should approve the ECP Report.

(3) The Army may prepare the ECP Report, even though others initiated the transaction, if it has demonstrable benefit to the Army.

g. For non-BRAC transfers when GSA is the disposal agent, Army prepares the ECP Report. However, disposal by GSA is not considered a transfer of jurisdiction to GSA. The level of detail for the ECP Report will be coordinated with GSA. (PD)

h. Findings of Suitability are listed below:

(1) The Finding of Suitability to Transfer (FOST) / Finding of Suitability for Early Transfer (FOSET)/or BRAC Finding of Suitability to Lease (FOSL) will certify that the property is compatible with the proposed use and that the use restrictions or remedies in place (if any) are protective of human health and the environment. (PD)

(2) Deeds divesting title or leases executed under BRAC or other special legislative authority will proceed only after a FOST/FOSET/FOSL.

(3) A FOSET is required when transferring title to property pursuant to the provisions of CERCLA 120(h)(3)(c) (early transfer authority), when remedial action has not been completed prior to transfer. (LD: CERCLA 120(h)(3)(c)) (PD)

(4) A FOST is not required for deeds divesting title when disposed by the General Services Administration (GSA).

(5) Responsibility for environmental remediation for transfers or interchanges between the Army and other federal entities will be addressed in the Memorandum of Agreement between the Army and the transferee. The Army requires an ECP Report which will be initiated per paragraph *f.* above and provided to the transferee.

(6) The BRAC FOST/FOSET/FOSLs will be coordinated with regulators and made available to the public for their review. (PD)

i. Review and approval authorities are listed below:

(1) The IMCOM, Army commands or service component commands and direct reporting units with special installations, or Army National Guard (NGB-ARNG) will review and approve ECP Reports in coordination with the affected organizations. (PD)

(2) Approval authorities for ECP Report, FOST, FOSET, and BRAC FOSL documents for property disposals are in table 15-1 below. (PD)

(3) The Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) (DASA (ESOH)) will—

(a) Recommend approval for fee acquisition of property with an ECP Category designation of 5 or above or with known or suspected munitions and explosives of concern (MEC);

(b) Recommend approval for proceeding with the transfer to non-DOD federal agencies for properties with known or suspected MEC;

(c) Approve the FOSTs/BRAC FOSLs and approve the ECP report for non-BRAC leases for properties with known or suspected munitions and explosives of concern (MEC); and

(d) Approve all FOSETs.

(4) The approving official will ensure that the document(s) receive appropriate legal and environmental professional review prior to approving the document(s).

j. Real property transactions require preparation of appropriate National Environmental Policy Act (NEPA) documentation per 32 CFR Part 651. (LD: 32 CFR 651)

k. Lease Termination. Upon termination of any lease, the Army proponent and lessee may jointly conduct a final lease close out using the ECP Report funded by the lessee to ascertain any changes in the environmental condition of the subject property. If the lessee refuses to participate, the GC/Army proponent will conduct the final assessment at the lessee's expense and provide a copy to the grantee. If an environmentally significant change has occurred, it will be documented as an amendment to the ECP Report, or a previous environmental site assessment report, if one was done, and the lessee will be required to make suitable compensation. The lessee will be made aware of these requirements and procedures in the original lease document. (PD)

l. Lease Renewals. ECP requirements must be met before renewing existing leases. If the lease did not have an environmental site assessment performed originally, an ECP must be done prior to renewal. For renewal of existing leases that have previously had an ECP, or other versions of site assessment documents, the GC/Army proponent must ascertain if environmental conditions have changed. If an environmentally significant change has occurred, it will be documented as a supplement or amendment to the original assessment report. An environmentally significant change involves the storage of a hazardous substance for a year or more, a known release of such substance, or its disposal on

the property. The revised report will be processed in accordance with paragraph 15-5c above. A copy of the ECP report and/or any supplements or amendments will be provided to the grantee. (PD)

m. See also Leases, Easements, and Other Special Land Uses, paragraph 4-3d(2) and Conservation Reimbursable Agricultural/Grazing Outleasing and Forestry Programs, paragraph 4-3d(8).

n. Table 15-2 summarizes the documents required for the various types of real property acquisition, leases, and disposal transactions.

Table 15-1
Property disposal approval authorities^{1, 3}

| DOCUMENT | PROGRAM | | |
|---------------------------------------|-----------------------------|------------------------------|-----------------------------|
| | ACTIVE | LEGACY BRAC | BRAC 05 |
| ECP Category Designation ² | Garrison Commander | Garrison Commander | Garrison Commander |
| ECP Report | IMCOM ⁴ | BRAC D | IMCOM ⁴ |
| FOST ⁵ | ECP 1-4; IMCOM ⁴ | ECP 1-4; BRAC D ⁴ | ECP 1-4; IMCOM ⁴ |
| | ECP 5-7; N/A | ECP 5-7; N/A | ECP 5-7; N/A |
| FOSET ⁵ | ECP 5-7; DASA (ESOH) | ECP 5-7; DASA (ESOH) | ECP 5-7; DASA (ESOH) |
| FOSL | Not Required | ECP 1-7; BRAC D ⁴ | ECP 1-7; IMCOM ⁴ |

Notes:

¹ The approving official will ensure that the document(s) receive appropriate legal and environmental professional review prior to approving the document(s).

² DOD ECP Designation (ASTM D5746).

³ Transactions with known or suspected MEC require DASA (ESOH) approval.

⁴ Army commands or service component commands and direct supporting units with special installations and NGB exercise this authority for their installations. Approval authority may delegate ECP 1-2 to installations.

⁵ Documents are not required for GSA transfers; refer to AR 405-90.

Table 15-2
Documents required

| DOCUMENT | ECP Report ² | FINDING OF SUITABILITY |
|---|-------------------------|-------------------------|
| ACQUISITION | | |
| Fee title for USA | Yes | No |
| Less than Fee (easement, permit, license) | No | No |
| Inlease ¹ | No | No |
| DISPOSAL DOCUMENTS | | |
| Deed divesting title from USA | Yes | FOST/FOSET |
| Report as Excess to GSA ² | Yes | No |
| Transfer to another Fed Agency | Yes | No |
| Reassignment within DA or DOD ³ | Optional | No |
| Release or termination of less than fee estate ⁴ | No | No |
| OUTGRANTS | | |
| Lease Documents | Yes | No, use ROA to document |
| Other outgrants (license, easement, permit) | No, use ROA to document | No, use ROA to document |

Table 15-2
Documents required—Continued

| License to NGB | Yes | No |
|----------------|-----|----|
|----------------|-----|----|

Notes:

¹ Type of less than fee; however, an ECP may be done for large, long-term leases.

² Reporting as Excess to GSA is not a transfer or reassignment to GSA.

³ Within DoD elements, doing an ECP Report is optional for those reassignments requiring HODA approval (see para 15-5(c)(4) above). The Army proponent will consult the HODA activity requiring approval prior to initiating a Report of Availability without an ECP Report.

⁴ Release, Affidavit, or other non-deed document – if a deed is required, then follow deed policy.

⁵ The ECP Report will be forwarded with the ROA or Disposal Report.

15-6. Military construction and Morale, Welfare, and Recreation Construction on Army installations

Military Construction (MILCON) includes major and minor construction projects funded by Military Construction, Army (MCA); Military Construction, Army Reserve (MCAR); Military Construction, National Guard (MCNG); Army Family Housing (AFH); Defense MILCON; and Tenant Service MILCON. For specific guidance for MILCON planning and environmental/safety remediation see AR 415-15, and AR 210-20. Morale, Welfare, and Recreation (MWR) construction includes Army appropriated fund (APF) and non-appropriated fund (NAF) construction depending on the type of facility (see AR 215-1).

a. *Pre-construction site selection.* Preparation of environmental documentation and site survey is considered advance planning and will be funded from other than MILCON or NAF. The project proponent at the installation is responsible for funding and executing the environmental survey, unexploded ordnance survey, and associated documentation of a proposed MILCON/MWR construction site before site selection. Installations will coordinate site selection activities with the supporting IMCOM Regional Office.

(1) When selecting a proposed site, the installation should consider locations that avoid unnecessary environmental remediation and/or mitigation costs. However, installations should consider using all existing infrastructure wisely, to include locations that may require some degree of remediation and/or mitigation. A final determination should be based on sound economic and relative risk analysis.

(2) If a proposed project must be sited in a known environmentally sensitive area where an Army cleanup program has already cleaned to current or reasonably anticipated future land use, the cost of design and construction of mitigation measures required as a direct result of MILCON or NAF projects may be paid from MILCON funds if included in the cost estimate and description of work on the DD Form 1391, FY Military Construction Project Data. AR 415-15 and DA Pam 415-15 provide detailed guidance for completing DD Form 1391 for MILCON and NAF.

(3) Non-Army tenants on Army installations are responsible for funding environmental surveys and associated documentation of proposed MILCON or NAF construction sites where they are the user.

b. *Site categorization.* The IMCOM/ACOM/ASCC/DRU/NGB-ARNG is responsible for certifying the site categorization. Sites are classified into the three following categories.

(1) Category I - There is no reason to expect contamination will be encountered during the construction.

(2) Category II - There is no known contamination, there remains some potential that contamination may be encountered during construction.

(3) Category III - The site is known to be contaminated or there is strong suspicion contamination will be encountered during construction.

c. *Site clearance standards.* Site categorizations will be completed in accordance with:

(1) ASTM D6008-96: Standard Practice for Conducting Environmental Baseline Surveys.

(2) ASTM E1527-00: Environmental Site Assessments: Phase I Site Assessment Process.

(3) ASTM E1903-97: Environmental Site Assessments: Phase II Site Assessment Process.

d. *Discovered contamination.* The installation or MILCON proponent is responsible for the remediation/cleanup of environmental contaminants discovered during the execution of a MILCON or NAF construction project.

(1) If removal of discovered contamination adequately addresses the environmental condition of the property for construction and a decision of no further action is secured by the installation, the project should proceed.

(2) If initial response activities are not adequate and additional remediation/cleanup is required, the project proponent is responsible for identifying the environmental requirements and securing funds.

(3) Construction contractor costs (such as direct delays costs and unabsorbed or extended overhead) incidental to discovery, remediation and cleanup, however, will be MILCON funded or APF or NAF funded as appropriate for MWR projects to the extent it is determined that the Army is responsible and liable for such costs.

15-7. National security emergencies and exemptions/waivers

a. In conducting their mission, GCs should anticipate and allow for mission surge conditions that could result during times of national security emergencies, including but not limited to contingency operations, suppression of insurrection, humanitarian and civic assistance, peace-keeping activities, and disaster relief. In cases where mission surge conditions

could potentially exceed permit limitations or other environmental requirements, the GC should request an exemption in accordance with this section.

b. In evaluating possible courses of action, the GC will consult with legal counsel and determine the appropriateness of seeking an environmental exemption or waiver.

c. In national security emergencies, the requirements of this regulation remain in effect unless waived by the ACSIM.

d. If a GC anticipates that surge conditions could result in a violation of Federal or State environmental law or regulation, as soon as practicable, the GC should consult with the appropriate Federal, State, or local authorities on a mutually agreeable course of action. If a satisfactory resolution cannot be agreed upon, the GC will submit a request for a national security exemption to HQDA, DAIM-ED through the chain of command. The request must include:

- (1) Identification of the action prompting need for exemption;
- (2) The statute(s) from which an exemption is sought;
- (3) The applicable statutory exemption provision(s);
- (4) Adequate supporting information and justification for the exemption; and
- (5) Alternatives considered and the reasons they were not adopted.

e. ACSIM will coordinate with other Army staff (ARSTAF) elements and will forward the request with a recommendation to the Assistant Secretary of the Army (Installations and Environment) (ASA (I&E)), who may transmit the request to the Office of the Secretary of Defense (OSD) for disposition.

f. In the event an exemption is denied or cannot be granted in a timely manner, the ACSIM will provide specific guidance on the resolution of the conflicts identified in the request.

15-8. Army Environmental Program in Foreign Countries

a. Policy. This section clarifies environmental policy and requirements applicable to permanent installations or facilities located in foreign countries. This section does not apply to training, off-installation deployments, contingency operations, or those locations for which no DOD Environmental Executive Agent (EEA) has been designated.

(1) Army policy in foreign countries is to comply with applicable standards, criteria and regulations that preserve, protect, and enhance environmental quality and human health. These standards, criteria, and regulations include the country-specific FGS, DODI 4715.5, DODI 4715.8, EO 12088, and EO 12114.

(2) The FGS define the environmental standards for Army permanent installations in foreign countries. The FGS take precedence over requirements of this regulation unless otherwise specifically noted in this section. Army facilities in a foreign nation with no FGS will comply with DOD 4715.05-G and applicable international agreements.

(3) Only the designated DOD EEA can revise an FGS. In cases where it is necessary to comply with more protective criteria than the FGS prescribes, the GC must consult with the EEA.

(4) Waivers to an FGS may be granted only by the DOD-designated EEA or the Unified Command (combatant commanders) in accordance with the country-specific FGS and DOD designated EEA waiver policy.

(5) Hazardous waste (HW) that cannot be disposed of in accordance with the FGS will be returned to the United States or another location where the disposal criteria can be met. In addition to compliance standards for disposal, all Army organizations and activities will comply with the provisions of any applicable Status of Forces Agreement (SOFA) or other legally-binding international agreements respecting the shipping and storage of HW.

(6) An external Environmental Performance Assessment System (EPAS) assessment will be conducted at overseas installations in accordance with DODI 4715.5 and the country-specific FGS (generally this will be every 3 years).

(7) Environmental remediation at overseas installations is addressed in paragraph 12-4, and will be conducted in accordance with DODI 4715.8.

b. Program requirements. Program requirements for overseas activities are addressed throughout this regulation. Additionally:

(1) Army ACOMs, ASCCs, DRUs, IMCOM, and installations will comply with the provisions of DODI 4715.5, DODI 4715.8, and appropriate country-specific implementing guidance per the DOD designated EEA.

(2) GCs will consider the adverse impacts of installation activities on a property listed on the World Heritage List, European Union natural conservation site of importance, or a host nation's (HN) equivalent of the U.S. National Register of Historic Places (NRHP). Reasonable effort will be made to avoid or mitigate any adverse effects.

(3) GCs will consider the adverse impacts of installation activities on internationally protected animal and plant species and their habitat, to include flora and fauna in a HN's equivalent of the Endangered Species Act (16 USC 35 (ESA)). Reasonable effort will be made to avoid or minimize adverse effects on such resources.

(4) Army components (that is, Active, Reserve, ARNG) participating in joint operations will comply with the environmental annex as specified by combatant command plans (for example, an annex I to the operation plan (OPLAN)).

(5) Army commanders will report overseas violations through command channels to DAIM-ED, with a courtesy copy to JALS-EL.

15-9. Environmental Management System documentation and document control

a. Installations will establish and maintain information in paper or electronic form to describe the core elements of the management system and their interaction, and provide direction to related documentation.

b. Installations will establish and maintain procedures for controlling all documents required by the ISO 14001 standard to ensure that: they can be located; they are periodically reviewed, revised as necessary, and approved for adequacy by authorized personnel; the current versions of relevant documents are available at all locations where operations essential to the effective functioning of the EMS are performed; obsolete documents are promptly removed from all points of issue and points of use, or otherwise assured against unintended use; and any obsolete documents retained for legal and/or knowledge preservation purposes are suitably identified.

c. Documentation will be legible, dated (with dates of revision), and readily identifiable, maintained in an orderly manner and retained for a specific period. Procedures and responsibilities will be established and maintained concerning the creation and modification of the various types of documents.

Chapter 16

Checking and Corrective Action

16-1. Environmental performance assessments and Environmental Management System audits

a. General.

(1) Garrison commanders (GCs) should maintain an inventory of compliance sites and activities with potential to impact the environment.

(2) Audits conducted under the Environmental Performance Assessment System (EPAS) will include all operations and activities within the installation boundary (including operational ranges, and other training areas), or a representative sample of similar activity types, and will evaluate overall environmental program performance and conformance with ISO 14001.

(3) Assessments will include tenant activities, outgrants, leases, and other activities under the purview of the Army.

(4) Generally, assessments will not include privatized facilities. However, special circumstances related to facility and/or associated land lease or ownership status could warrant their inclusion. Accordingly, installations will report the status of their privatized facilities to the U.S. Army Environmental Command (USAEC) EPAS Program Manager as soon as possible after being notified of a scheduled EPAS audit so that a determination regarding inclusion/exclusion can be made.

b. External assessments.

(1) CONUS external performance assessments are scheduled based on risk analysis and in consultation with HQDA and appropriate commands. Outside the continental United States (OCONUS) external assessments are conducted every three years in accordance with DODI 4715.5.

(2) External assessments will be conducted using a team of independent assessors not associated with the installation and having the necessary organizational and subject matter expertise. This expertise will include the requisite environmental media and regulatory expertise as well as expertise in the functional mission areas that are the subject of the assessment.

(3) External assessments will be conducted using Headquarters, Department of the Army (HQDA) approved protocols. OCONUS, these protocols will be based on the country-specific final governing standards (FGS).

(4) Individuals performing external assessments will provide required assessment data into the Army approved application/database (AEDB-EPAS) to assist in producing the draft and final Environmental Performance Assessment Report (EPAR) and the draft installation corrective action plan (ICAP).

(5) Army installations will prepare the draft ICAP, identify corrective actions, and secure resources for correction through the chain of command.

(6) Assessment results and ICAP will be made available to the Environmental Quality Control Committee (EQCC).

(7) Draft ICAP will be forwarded to affected units, Army Commands (ACOM), Army Service Component Commands (ASCC), Direct Reporting Units (DRU), and/or tenants for review.

c. Internal assessments.

(1) Internal assessments will be conducted annually, at a minimum, by installation personnel as part of their regular management, checking, and corrective action functions, unless an external assessment is conducted that calendar year.

(2) Army installations will provide required internal assessment data into the Army approved application/database (AEDB-EPAS) to assist in producing the draft ICAP.

(3) Internal assessments will include a review of previous assessments and draft ICAP, review corrective actions not completed, assess compliance with any new regulatory requirements, and address areas specified by higher command.

(4) Installations will notify their respective command when their internal assessment has been completed.

(5) Assessment results and ICAP will be made available to the Environmental Quality Control Committee (EQCC).

d. Installation Corrective Action Plan (ICAP).

- (1) Each installation will prepare or revise a draft ICAP in accordance with Army requirements.
- (2) The ICAP will track externally and internally reported compliance and program performance deficiencies.
- (3) The ICAP will remain in draft.

e. Releasability. All draft assessment reports and supporting papers are internal working documents. The draft documents must be marked "for official use only" (FOUO) and distribution will be handled accordingly. All requests for release of reports will be referred to the appropriate installation Freedom of Information Act (FOIA) Officer.

f. Environmental Performance Assessment System (EPAS) in-progress review (IPR). The Director of Environmental Programs (DEP) may convene an IPR as necessary to review the performance of the program and to identify and resolve issues.

16-2. Monitoring and measurement

a. Installation Management Command (IMCOM), National Guard Bureau-Army National Guard (NGB-ARNG), Army Commands (ACOMs), Army Service Component Commands (ASCCs), Direct Reporting Units (DRUs), installations, and tenants will establish and maintain documented procedures to monitor and measure, on a regular basis, the key characteristics of those operations and activities that can have an impact on the environment. This will include the recording of information to track performance, relevant operational controls, and conformance with the organization's environmental objectives and targets.

b. Monitoring equipment will be calibrated and maintained and records of this process will be retained according to installation standard operating procedures.

16-3. Army environmental information and reporting

a. Army Environmental Information Policy. Army environmental information is an asset that will be managed as part of the Army I&E information technology (IT) portfolio management. Environmental information investments will meet the Chief Information Officer (CIO)/Deputy Chief of Staff, G-6 (DCS, G-6) Army Knowledge Management (AKM) goals, adhere to the I&E IT domain governance process, and be incorporated into the Office of the Assistant Chief of Staff for Installation Management (OACSIM) Business Enterprise Architecture (BEA) strategy and plan.

b. Program goal. Army environmental information will facilitate planning, execution, monitoring, and reporting of programs at all activity levels in support of the Army mission. Environmental information and information tools will be built in standardized formats and incorporated into the Army enterprise architecture.

c. Coordination requirements. Army environmental reporting systems will be coordinated with the OACSIM Business Transformation Board of Directors (BT BOD).

- (1) The DEP represents functional environmental information requirements at the BT BOD.
- (2) USAEC represents technical environmental information requirements at the BT BOD.
- (3) Environmental reporting systems will be executed in accordance with the OACSIM BEA Strategy and plan.

d. Primary Systems. The following are the Army's primary systems for data collection and reporting:

(1) *Army Environmental Data Base - Environmental Quality (AEDB-EQ).* The AEDB-EQ serves as a primary source of information for reporting the Army's environmental status to Senior Army Leadership, DOD, and Congress. AEDB-EQ tracks Army compliance with environmental laws (to include permits and enforcement actions) and regulations to determine Army progress towards meeting the DOD Measures of Merit (MOMs), and allows the Army to populate other required reports.

(2) *Environmental Restoration Information System (ERIS).* ERIS and ERIS Range document the Army environmental restoration and range program field data to support a central repository for Army installation chemical, geological, and remedial action data.

(3) *Army Environmental Data Base-Restoration (AEDB-R).* This is the database of record for collecting and reporting data for sites being cleaned up under the purview of Environmental Restoration, Army (ER, A) or Base Closure Account (BCA).

(4) *Army Environmental Data Base-Compliance-Related Cleanup (AEDB-CC).* This is the database of record that identifies and documents requirements for the cleanup of contamination at Army sites that are not eligible for the Defense Environmental Restoration Program (DERP).

(5) *Reimbursable Programs Tracking System (RPTS).* RPTS stores data used to report the financial elements of the agricultural grazing, reimbursable forestry, hunting, fishing and trapping fees, the DOD Forestry Reserve Account, and the Army Wildland Fire programs.

(6) *Army Environmental Data Base - Environmental Performance Assessment System (AEDB-EPAS).* The AEDB-EPAS serves as a primary source of information for reporting, collecting, tracking, and analyzing the Army's environmental compliance and conformance data from external and internal audits.

(7) *Installation Status Report, Natural Infrastructure.* The ISR-NI collects and reports on the readiness of Army installations. The information is collected annually based upon 18 media within the Army Environmental Program (AEP).

(8) *Toxic release inventory (TRI).* Installations meeting established threshold criteria are to submit an annual TRI

report as required by the *Emergency Planning and Community Right-to-Know Act* (EPCRA) and Executive Order (EO) 13423.

(9) *Solid Waste Annual Reporting-Web (SWARWeb) System*. SWARWeb is a web-based system to support integrated solid waste management at the installation level. It allows the tracking of solid waste and construction and deconstruction debris waste generation and costs as well as waste diversion through recycling and reuse.

(10) *Hazardous Substance Management System (HSMS)*. HSMS is an installation centric client-server software system to support the integrated management of hazardous materials. It is capable of tracking the authorized ordering, issue and return of hazardous material as well as the disposal of hazardous waste (HW).

16-4. Reporting violations

a. Installation Commanders will enter enforcement actions (ENF) using official electronic Army Environmental Quality Reporting System ((for example, Army Environmental Data Base - Environmental Quality (AEDB-EQ)) reporting mechanisms with verification/confirmation through proper Command channels (for example, ACCS, DRUs, MSCs, regional offices, ACOMS) to the AEC. Initial reports for ENFs must be reported in accordance with current Army environmental quality reporting policy requirements as published and updated by the HQDA. Initial reports will be entered via the Army Environmental Quality Reporting System within 48 hours (2 business days) for any ENF involving:

- (1) Criminal enforcement;
- (2) A fine, penalty, fee, or tax;
- (3) Installation-wide (show stopper or major mission restriction), Army-wide, or DOD-wide impact, media attention, or community (on/off post) impact; or,
- (4) Third party fault (that is, a non-Army entity is responsible in whole or part for the alleged violation(s)).

b. All other ENFs will be reported/entered into the AEDB-EQ within 7 business days through proper Command channels.

c. The aforementioned 48 hours (2 business days) reporting includes notification to HQDA (DAIM-ED (ODEP) & JALS-ELD (Army Legal Office) through proper Command channels. Additionally, coordinate with JALS-ELD (Army Legal Office) in writing, through technical legal channels, regarding litigation, administrative proceedings, and settlement negotiations.

16-5. Nonconformance and corrective and preventive action

a. All Army facilities identified by HQDA for environmental management system (EMS) implementation will accomplish the following in accordance with the ISO 14001 standard:

- (1) Establish and maintain procedures for defining responsibility and authority for handling and investigating nonconformance with the facility's EMS requirements and procedures.
- (2) Implement and record any changes in the documented procedures resulting from corrective and preventive action.

b. Any corrective or preventive action taken to eliminate the causes of actual or potential nonconformance will be appropriate to the magnitude of problems and commensurate with the environmental impact encountered, if any.

16-6. Environmental records

a. General.

(1) IMCOM, NGB-ARNG, ACOMs, ASCCs, DRUs, installations, and tenants will establish and maintain procedures for identification, maintenance, and disposition of environmental records, to include training records and the results of audits and reviews.

(2) Environmental records will be legible, identifiable and traceable to the activity, product, or service involved, and will contain the name and office symbol of the point of contact for that record.

(3) Environmental records will be stored and maintained (in hard copy or electronic format) in such a way that they are readily retrievable and protected against damage, deterioration, or loss.

b. *Recordkeeping guidelines*. Environmental records will be maintained, as appropriate, to demonstrate conformance to ISO 14001, and requirements set forth in AR 25-400-2.

c. *Environmental cleanup documents*. All installations and facilities will provide copies of environmental cleanup documents to the electronic permanent repository at USAEC. Environmental cleanup documents that should be submitted are detailed in the Army Environmental Cleanup Program Permanent Document Repository Guidance, which was issued 29 Sep 2004. Copies of the guidance are available from the USAEC Cleanup Division.

Chapter 17

Management Review

17-1. Environmental Management System management reviews

a. Installations will establish written procedures for conducting recurring management reviews of their environmental management system (EMS).

b. At least annually, Garrison commanders (in conjunction with the Environmental Quality Control Committee (EQCC) or equivalent) of all appropriate facilities will conduct a management review of their respective environmental management system (EMS) to ensure its continuing suitability, adequacy, and effectiveness.

c. The management review process will ensure that the necessary information is collected to allow management to carry out this evaluation.

d. The management review, which will be documented, will address the possible need for changes to policy, objectives, and other elements of the EMS in light of EMS audit results, changing circumstances, and the commitment to continual improvement.

17-2. Headquarters, Department of the Army environmental program reviews

HQDA will conduct periodic program reviews to ensure adequate oversight, program effectiveness, and proper resource allocation and execution.

Appendix A References

DOD Directives are available at www.dtic.mil/whs/directives. United States Codes (USC) are available at www.gpoaccess.gov/uscode/. Executive Orders are available at www.archives.gov/federal_register/executive_orders/disposition-tables.html. Code of Federal Regulations (CFR) are available at www.gpoaccess.gov/cfr/index.html.

Section I Required Publications

AR 11-2

Management Control. (Cited in para 1-4.)

AR 25-400-2

Army Records Information Management System (ARIMS). (Cited in para 16-6.)

AR 40-5

Preventive Medicine. (Cited in paras 1-25, 4-2, 5-2, 9-2.)

AR 50-6

Chemical Surety. (Cited in para 11-2.)

AR 70-1

Army Acquisition Policy. (Cited in paras 7-2, 7-4.)

AR 75-15

Policy for Explosive Ordnance Disposal (O). (Cited in para 11-4.)

AR 95-1

Flight Regulations. (Cited in para 14-2.)

AR 210-20

Real Property Master Planning for Army Installations. (Cited in paras 14-2, 15-6.)

AR 210-50

Housing Management. (Cited in para 5-2.)

AR 350-19

The Army Sustainable Range Program. (Cited in para 14-2.)

AR 385-10

The Army Safety Program. (Cited in para 5-2.)

AR 405-10

Acquisition of Real Property and Interests Therein. (Cited in para 15-5.)

AR 405-80

Management of Title and Granting Use of Real Property. (Cited in paras 4-3, 15-5.)

AR 405-90

Disposal of Real Estate. (Cited in paras 4-3, 15-5.)

AR 415-15

Army Military Construction and Nonappropriated Fund Construction Program Development and Execution. (Cited in paras 10-2, 15-6.)

AR 420-10

Management of Installation Directorates of Public Works. (Cited in para 5-2.)

AR 420-49

Utility Services. (Cited in paras 4-2, 10-2.)

AR 420-70

Buildings and Structures. (Cited in para 9-2.)

AR 700-136

Tactical Land-Based Water Resources Management. (Cited in para 4-2.)

AR 710-2

Supply Policy Below the National Level. (Cited in paras 1-10, 10-1.)

U.S. Army EMS Aspects and Impact Methodology for Army Training Ranges

Implementation Guidance. (Cited in para 1-1.) (Available at www.sustainability.army.mil.)

U.S. Army EMS Commanders Guide

Implementation Guidance. (Cited in para 1-1.) (Available at www.sustainability.army.mil.)

U.S. Army EMS Implementer's Guide

Implementation Guidance. (Cited in para 1-1.) (Available at www.sustainability.army.mil.)

Army Strategy for the Environment

Brochure, 1 Nov 04. (Cited in para 2-1.) (Available at www.asaie.army.mil.)

ASTM D6008-96 (2005)

Standard Practice for Conducting Environmental Baseline Surveys. (Cited in para 15-6.) (Available for ordering at www.webstore.ansi.org.)

ASTM E1527-00

Standard Practice Environmental Site Assessments: Phase I Environment Site Assessment Process. (Cited in para 15-6.) (Available for ordering at www.webstore.ansi.org.)

ASTM E1903-97 (2002)

Standard Guide for Environmental Site Assessments: Phase II Environment Site Assessment Process. (Cited in para 15-6.) (Available for ordering at www.webstore.ansi.org.)

DA PAM 40-11

Preventive Medicine. (Cited in para 10-2.)

DA PAM 415-15

Army Military Construction Program Development and Execution. (Cited in para 15-6.)

DFAS-IN Manual 37-100-**

Financial Management - The Army Management Structure FY04. (Cited in para 4-3.) (Available at www.asafm.army.mil.)

DOD American Indian and Alaska Native Policy Memorandum

Policy Document, 20 Oct 1998. (Cited in para 6-2.) (Available at www.denix.osd.mil.)

DOD Management Guidance for the Defense Environmental Restoration Program (DERP)

Guidance Document, September 2001. (Cited in para 12-2.) (Available at www.denix.osd.mil.)

DOD 4150.7-M

DOD Pest Management Training and Certification. (Cited in paras 5-2, 5-4.)

DOD 4150.7-P

DOD Plan for the Certification of Pesticide Applicators. (Cited in paras 5-2, 5-4.)

DOD 4160.21-M

Defense Material Disposition Manual. (Cited in para 10-1.)

DOD 4500.9-R

Defense Transportation Regulation. (Cited in para 10-1.)

DOD 4715.5-G

Overseas Environmental Baseline Guidance Document. (Cited in para 15-8.)

DOD 7000.14-R

DOD Financial Management Regulation (FMRS). (Cited in para 12-2.)

DODD 4715.1

Environmental Security. (Cited in para 4-3.)

DODD 4715.11

Environmental and Explosives Safety Management on Operational Ranges Within the United States. (Cited in paras 8-2, 12-4.)

DODD 4715.12

Environmental and Explosives Safety Management on Operational Ranges Outside the United States. (Cited in para 8-2.)

DODD 5000.1

The Defense Acquisition System. (Cited in paras 1-7, 3-3.)

DODI 4150.7

DOD Pest Management Program. (Cited in paras 4-3, 5-2, 5-4.)

DODI 4715.3

Environmental Conservation Program. (Cited in para 4-3.)

DODI 4715.4

Pollution Prevention, Jun 1996. (Cited in para 7-2.)

DODI 4715.5

Management of Environmental Compliance at Overseas Installations. (Cited in paras 4-3, 5-2, 15-8, 16-1.)

DODI 4715.7

Environmental Restoration Program. (Cited in para 12-2.)

DODI 4715.8

Environmental Remediation for DOD Activities Overseas. (Cited in paras 12-2, 12-4, 15-8.)

EO 11988

Floodplain Management, 42 FR 26951. (Cited in para 4-2.)

EO 11990

Protection of Wetlands. (Cited in paras 4-2, 4-3.)

EO 12580

Superfund Implementation, 52 FR 2923. (Cited in paras 12-2, 12-4.)

EO 13007

Indian Sacred Sites, 61 FR 26771. (Cited in para 6-4.)

EO 13112

Invasive Species (Cited in para 4-3.)

EO 13175

Consultation and Coordination with Indian Tribal Governments, 65 FR 67249. (Cited in paras 6-2, 6-4.)

EO 13186

Responsibilities of Federal Agencies to Protect Migratory Birds, 66 FR 3853. (Cited in para 4-3.)

EO 13287

Preserve America. (Cited in paras 1-5, 6-2, 6-4.)

EO 13423

Strengthening Federal Environmental, Energy, and Transportation Management. (Cited in paras 4-3, 7-2, 7-4, 9-1, 10-2, 16-3, B-2.)

ER 200-3-1

Formerly Used Defense Sites Program Policy. (Cited in paras 12-2, 12-4.)

Field Manual (FM) 3-100.4

Environmental Considerations in Military Operations. (Cited in para 1-28.)

ISO 14001 (also known as ANSI/ISO 14001-2004)

Environmental Management System Requirements - Specifications with Guidance for Use (Cited in paras 1-1, 1-13, 1-24, 15-9, 16-1, 16-5, 16-6.) (Available for ordering at www.webstore.ansi.org.)

Memorandum, DUSD (I&E), 10 October 2002

Implementation of Sikes Act Improvement Act: Updated Guidance. (Cited in para 4-3.) (Available at www.aec.army.mil/usaec/natural/.)

PL 108-136

National Defense Authorization Act FY04. (Cited in para 4-3.)

PL 109-58

Energy Policy Act of 2005 (Cited in paras 4-2, 11-2.)

TB MED 575

Swimming Pools and Bathing Facilities. (Cited in para 4-2.)

TB MED 576

Occupational and Environmental Health: Sanitary Control and Surveillance of Water Supplies at Fixed Installations. (Cited in para 4-2.)

TB MED 577

Occupational and Environmental Health: Sanitary Control and Surveillance of Field Water Supplies. (Cited in para 4-2.)

TB 55-1900-206-14

Control and Abatement of Pollution by Army Watercraft. (Cited in para 4-2.)

TM 5-662

Swimming Pool Operation and Maintenance. (Cited in para 4-2.)

TM 5-813-1

Water Supply: Sources and General Considerations. (Cited in para 4-2.) (Available at www.usace.army.mil.)

TM 5-813-3

Water Supply: Water Treatment. (Cited in para 4-2.) (Available at www.usace.army.mil.)

TM 5-813-4

Water Supply: Water Storage. (Cited in para 4-2.) (Available at www.usace.army.mil.)

TM 5-813-5

Water Supply: Water Distribution. (Cited in para 4-2.) (Available at www.usace.army.mil.)

TM 5-813-7

Water Supply: Special Projects, Volume 7. (Cited in para 4-2.) (Available at www.usace.army.mil.)

TM 5-813-8

Water Supply: Water Desalination. (Cited in para 4-2.) (Available at www.usace.army.mil.)

TM 5-813-9

Water Supply: Pumping Stations. (Cited in para 4-2.) (Available at www.usace.army.mil.)

UFC 3-230-02

Unified Facilities Criteria - Operation and Maintenance: Water Supply Systems. (Cited in para 4-2.) (Available at wbdg.org/ccb/.)

USACHPPM TG-179

Guide for Providing Safe Drinking Water at Army Installations. (Cited in para 4-2.) (Available at chppm-www.apgea.army.mil.)

5 USC 552

Freedom of Information Act, as amended (FOIA) (Cited in paras 1-8, 16-1.)

7 USC 136, et seq.

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. (Cited in para 5-2.)

10 USC 2665

Sale of Certain Interest in Lands; Logs. (Cited in paras 1-24, 1-27, 4-3.)

10 USC 2667

Leases: Non-excess Property of Military Departments. (Cited in paras 1-24, 1-27, 4-3.)

10 USC 2671

Military Reservations and Facilities, Hunting, Fishing, and Trapping. (Cited in para 4-3.)

10 USC 2684a

Agreements to Limit Encroachment and other Constraints on Military Training, Testing, and Operations. (Cited in para 4-3.)

10 USC 2688

Utility Systems: Conveyance Authority. (Cited in para 15-5.)

10 USC 2694a

Conveyance of Surplus Real Property for natural resource conservation. (Cited in para 4-3.)

10 USC 2701, et seq.

Defense Environmental Restoration Program (DERP). (Cited in paras 12-2, 12-4.)

15 USC 2601, et seq.

Toxic Substances Control Act (TSCA), as amended. (Cited in paras 9-2, 11-2.)

15 USC 2651, et seq.

Asbestos Hazard Emergency Response Act (AHERA). (Cited in para 9-2.)

16 USC 31

Marine Mammal Protection Act. (Cited in para 4-3.)

16 USC 35

Endangered Species Act of 1973 (ESA). (Cited in paras 4-2, 4-3, 15-8.)

16 USC 431

Antiquities Act of 1906. (Cited in para 6-2.)

16 USC 432

Permits to examine ruins, excavations, and gathering of objects; regulations. (Cited in para 6-2.)

16 USC 433

American antiquities. (Cited in para 6-2.)

16 USC 469

Archeological and Historic Preservation Act of 1974 (AHPA), as amended. (Cited in paras 6-2, 6-4.)

16 USC 470

National Historic Preservation Act of 1966 (NHPA), as amended. (Cited in paras 1-5, 6-2, 6-4.)

16 USC 620-620j

Forest Resources Conservation and Shortage Relief Act of 1990. (Cited in para 4-3.) (Available at www.fws.gov/laws/.)

16 USC 661-667e

Fish and Wildlife Coordination Act. (Cited in para 4-3.) (Available at www.fws.gov/laws/.)

16 USC 670a-670b

Sikes Act. (Cited in paras 1-24, 4-3.) (Available at www.fws.gov/laws/.)

16 USC 670a

Program for Conservation and Rehabilitation of Natural Resources on Military Installations. (Cited in para 4-3.)

16 USC 670b

Migratory Game Birds; Permits; Fees; Stamp Act and State Law Requirements (Sikes Act). (Cited in paras 1-24, 1-27.)

16 USC 670e

Applicability to Other Laws; National Forest Lands. (Cited in para 1-24.)

16 USC 701

Games and wild birds; preservation. (Cited in para 4-3.)

16 USC 703-712

Migratory Bird Treaty Act (MBTA). (Cited in para 4-3.)

16 USC 1801-1882

Magnuson Fishery Conservation and Management Act. (Cited in para 4-3.)

16 USC 3371-3378

Lacey Act. (Cited in para 4-3.)

16 USC 4701-4751

Aquatic Nuisance Prevention and Control. (Cited in para 4-3.)

25 USC 32

Native American Graves Protection and Repatriation Act of 1990 (NAGPRA). (Cited in paras 1-24, 6-2, 6-4.)

29 CFR 1910.120

Occupational Safety and Health Standards, Hazardous Waste Operations and Emergency Response. (Cited in para 12-2.)

29 CFR 1910.1001

Occupational Safety and Health Standards, Asbestos. (Cited in para 9-2.)

29 CFR 1910.1025

Occupational Safety and Health Standards, Lead. (Cited in para 9-2.)

29 CFR 1910.1200

Occupational Safety and Health Standards, Hazard Communication. (Cited in para 9-2.)

29 CFR 1926.1101

Safety and Health Regulations for Constructions. (Cited in para 9-2.)

29 CFR 1926.62

Safety and Health Regulations for Construction, Lead. (Cited in para 9-2.)

32 CFR 190

Office of the Secretary of Defense (OSD), Natural Resources Management Program. (Cited in para 4-3.)

32 CFR 651

Environmental Analysis of Army Actions. (Cited in paras 1-1, 15-5.)

33 USC 26

Clean Water Act (CWA). (Cited in paras 4-2, 8-2, 9-1, 11-2, 11-4.)

33 USC 1401

Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), as amended (Ocean Dumping). (Cited in para 4-2.)

33 USC 2702 to 2761

Oil Pollution Act of 1990 (OPA). (Cited in para 3-14.)

42 USC 300f

Safe Drinking Water Act (SDWA), as amended. (Cited in paras 4-2, 8-2, 12-2.)

42 USC 1996

American Indian Religious Freedom Act of 1978 (AIRFA). (Cited in paras 6-2, 6-4.)

42 USC 4321-4347

National Environmental Policy Act of 1969, as amended (NEPA). (Cited in paras 1-1, 4-2, 4-3, B-4.)

42 USC 6901

Resource Conservation and Recovery Act (RCRA), as amended. (Cited in paras 1-25, 4-1, 4-2, 7-2, 8-2, 8-4, 10-1, 10-2, 11-2, 12-2.)

42 USC 4901

Noise Control Act of 1972. (Cited in para 14-2.)

42 USC 6901-6992k

Hazardous and Solid Waste Amendments of 1984 (HSWA). (Cited in para 7-2.)

42 USC 6941-6949a

Subtitle D, the Resource Conservation and Recovery Act (RCRA). (Cited in para 10-2.)

42 USC 6961

Federal Facility Compliance Act of 1992. (Cited in paras 4-2, 10-1.)

42 USC 7401

Clean Air Act, as amended (CAA). (Cited in paras 4-1, 8-2, 9-2, 11-2.)

42 USC 9601

Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). (Cited in paras 4-2, 8-1, 11-2, 12-2, 12-4, 15-5.)

42 USC 11011

Emergency Planning and Community Right-to-Know Act (EPCRA). (Cited in paras 7-5, 9-1, 11-2.)

42 USC 13101-13102

Pollution Prevention Act of 1990 (PPA). (Cited in paras 7-2, 11-2.)

36 CFR 79

Curation of Federally-Owned and -Administered Archeological Collections. (Cited in paras 6-2, 6-4.)

36 CFR 800

Protection of Historic Properties. (Cited in paras 6-2, 6-4, 15-5.)

40 CFR 61

National Emission Standards for Hazardous Air Pollutants (NESHAP). (Cited in paras 4-1, 9-2.)

40 CFR 112

Oil Pollution Prevention. (Cited in paras 11-2, 11-4.)

40 CFR 260-279

Hazardous Waste. (Cited in para 10-1.)

40 CFR 261

Identification and Listing of Hazardous Waste. (Cited in para 10-2.)

40 CFR 266.200-206

EPA's Military Munitions Rule. (Cited in para 8-2.)

40 CFR 280

Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks. (Cited in para 11-2.)

40 CFR 281

Approval of State Underground Storage Tank Programs. (Cited in para 11-2.)

40 CFR 300

National Oil and Hazardous Substances Pollution Contingency Plan. (Cited in paras 11-2, 11-4, 12-2.)

40 CFR 302

Designation, Reportable Quantities, and Notification. (Cited in para 11-4.)

40 CFR 403

General Pretreatment Regulations for Existing and New Sources of Pollution. (Cited in para 4-2.)

40 CFR 745

Lead-based Paint Poisoning Prevention in Certain Residential Structures. (Cited in para 9-2.)

43 CFR 5

Making Pictures, Television Productions or Sound Tracks on Certain Areas Under the Jurisdiction of the Department of the Interior (Cited in para 6-4.)

43 CFR 6

Patent Regulations - Table of Contents (Cited in para 6-4.)

43 CFR 7

Protection of Archeological Resources (Cited in para 6-4.)

43 CFR 10

Native American Graves Protection and Repatriation Regulations. (Cited in paras 6-2, 6-4.)

43 CFR 10.3

Native American Graves Protection and Repatriation Regulations - International Archeological Excavations. (Cited in para 6-4.)

43 CFR 10.5

Native American Graves Protection and Repatriation Regulations - Consultation. (Cited in para 6-4.)

49 USC 1801

Federal Hazardous Materials Transportation Law. (Cited in para 9-2.)

50 CFR 10-16

Taking, Possession, Transportation, Sale, Purchase, and Barter, Exportation and Importation of Wildlife and Plants. (Cited in para 4-3.)

50 CFR 13

US Fish and Wildlife Service (USFWS) General Permit Procedures (Cited in para 4-3.)

50 CFR 21

and Migratory Bird Permits. (Cited in para 4-3.)

50 CFR 402

Endangered Species Act of 1973, as amended. (Cited in para 4-3.)

57 FR 28835

DOD - Office of the Secretary of Defense Environmental Restoration Program. (Cited in para 12-4)

Section II

Related Publications

A related publication is a source of additional information. The user does not have to read it to understand this regulation. DOD Directives are available at www.dtic.mil/whs/directives. United States Codes (USC) are available at www.gpoaccess.gov/uscode/. Executive Orders are available at www.archives.gov/federal_register/executive_orders/disposition_tables.html. Code of Federal Regulations (CFR) are available at www.gpoaccess.gov/cfr/index.html. Public laws are available at <http://thomas.loc.gov/bss/>. EPA publications are available at <http://www.epa.gov/epahome/publications.htm>. Military standards are available at <http://assist.daps.dla.mil/quicksearch/>.

AR 1-1

Planning, Programming, Budgeting, and Execution System

AR 5-4

Department of the Army Productivity Improvement Program.

AR 5-20

Competitive Sourcing Program

AR 10-87

Major Army Commands in the Continental United States

AR 11-9

Army Radiation Safety Program

AR 11-27

Army Energy Program

AR 25-55

The Department of the Army Freedom of Information Act Program

AR 37-49

Budgeting, Funding, and Reimbursement for Base Operations Support of Army Activities

AR 40-7

Use of Investigational Drugs and Devices in Humans and the Use of Schedule I Controlled Drug Substances

AR 40-13

Medical Support-Nuclear/Chemical Accidents and Incidents

AR 50-5

Nuclear Surety

AR 50-7

Army Reactor Program

AR 56-9

Watercraft

AR 70-65

Management of Controlled Substances, Ethyl Alcohol and Hazardous Biological Substances in Army Research, Development, Test, and Evaluation Facilities

AR 75-1

Malfunctions Involving Ammunition and Explosives

AR 75-14

Interservice Responsibilities for Explosive Ordnance Disposal

AR 350-1

Army Training and Leader Development

AR 360-1

The Army Public Affairs Program

AR 385-16

System Safety Engineering and Management

AR 385-40

Accident Reporting and Records

AR 385-64

US Army Explosives Safety Program

AR 420-90

Fire and Emergency Services

AR 700-141

Hazardous Materials Information Resource System (RCS DDFM&P (A,Q,&AR)1486)

AR 725-50

Requisitioning, Receipt, and Issue System

AR 750-1

Army Material Maintenance Policy

DA PAM 40-8

Occupational Health Guidelines for the Evaluation and Control of Occupational Exposure to Nerve Agents GA, GB, GD, AND VX

DA PAM 40-501

Hearing Conservation Program

DA PAM 200-1

Environmental Protection and Enhancement

DASA (ESOH) Directive, 13 Jul 01

HQDA Memorandum, Army Environmental Management System - Action Memorandum

DODD 3200.15

Sustainment of Ranges and Operating Areas (OPAREAs)

DODI 4000.19

Interservice and Intragovernmental Support

DODI 4715.10

Environmental Education, Training and Career Development

DODI 6055.6

DOD Fire and Emergency Services (F&ES) Program

EM 385-1-1

Safety and Health Requirements (Available at www.usace.army.mil/publications/)

EO 11514

Protection and Enhancement of Environmental Quality

EO 11644

Use of Off-Road Vehicles in the Public Lands

EO 12114

Environmental Effects Abroad of Major Federal Actions

EO 12759

Federal Energy Management

EO 12844

Federal Use of Alternately Fueled Vehicles

EP 1130-2-540

Environmental Stewardship Operations and Maintenance Guidance and Procedures (Available at www.usace.army.mil/publications/)

EPA-340/1-90-018

Asbestos/NESHAP Regulated Asbestos Containing Materials Guidance

EPA-560/5-85-024

Guidance for Controlling Asbestos-Containing Materials in Buildings

EPA-600/4-85-049

Measuring Airborne Asbestos Following an Abatement Action

EPA-600/9-79-045

National Pollutant Discharge Elimination System (NPDES) Best Management Practices Guidance Document

EPA-560-OPTS-86-001

A Guide to Respiratory Protection for the Asbestos Abatement Industry

ER 200-3-1

FUDS Program Policy

FM 5-19

Composite Risk Management

JP Publication 4-04

Joint Doctrine for Civil Engineering Support

MIL-STD-3007

Standard Practice for Unified Facilities Criteria and Unified Facilities Guide Specifications (Available at <http://assist.daps.dla.mil/quicksearch/>)

MIL-STD-129P

Military Marking for Shipment and Storage

MIL-STD-1474D

Department of Defense Design Criteria Standard, Noise Limits

NEPA 295

Standard for Wildlife Control. (Available for ordering at www.webstore.ansi.org.)

NEPA 299

Standard for Protection of Life and Property from Wildfire (Available for ordering at www.webstore.ansi.org.)

NEPA 1051

Standard for Wildland Fire Fighter Professional Qualifications (Available for ordering at www.webstore.ansi.org.)

OMB Circular A-95

Evaluation, Review, and Coordination of Federal and Federally Assisted Programs and Projects. (Available for ordering at the Office of Management and Budget's information line.)

PL 99-145, section 1412

National Defense Authorization Act of 1986 - Destruction of Existing Stockpile of Lethal Chemical Weapons

PL 101-576

Chief Financial Officers Act of 1990.

PL 101-637

Asbestos School Hazard Abatement Reauthorization Act

PL 102-484

National Defense Authorization Act for FY93

PL 102-550

Residential Lead Based Paint Hazard Reduction Act 1992

PL 105-85

National Defense Authorization Act for FY98

PL 106-065

National Defense Authorization Act for FY00

PL 107-188

Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Title IV-Drinking Water Security and Safety

PMS 310-1/NFES 1414

National Wildfire Coordinating Group Wildland Fire and Prescribed Fire Qualification System Guide, Jan 2000

SB 8-75 - medcase

Army Medical Department Supply Information

TB MED 513

Guidelines for the Evaluation and Control of Asbestos Exposure

TC 25-1

Training Land

TM 3-250

Storage, Shipment, Handling and Disposal of Chemical Agents and Hazardous Chemicals

TM 3-261

Handling and Disposal of Unwanted Radioactive Material

TM 5-629

Weed Control and Plant Growth Regulation

TM 5-630

Natural Resources - Land Management

TM 5-632

Military Entomology Operational Handbook

TM 5-633

Natural Resources - Fish and Wildlife Management

TM 5-635

Natural Resources - Outdoor Recreation and Cultural Values

TM 5-814-5

Sanitary Landfills

TM 38-250

Preparing Hazardous Materials for Military Air Shipment

TM 38-410

Storage and Handling of Hazardous Materials

USACHPPM TG No. 135

Data Base for Assessing the Annoyance of the Noise of Small Arms (Available at chppm-www.apgea.army.mil.)

USACHPPM TG No. 177

Commander's Guide to Regulated Medical Waste Management at Army Medical Treatment Facilities (Available at chppm-www.apgea.army.mil.)

USACHPPM TG No. 197

Guide for Developing an Integrated Solid Waste Management Plans at Army Installations (Available at chppm-www.apgea.army.mil.)

USACHPPM TG No. 198

Childhood Lead Poisoning Prevention/Lead-Based Paint Management Program on DOD Installations (Available at chppm-www.apgea.army.mil.)

10 CFR 20

Nuclear Regulatory Commission - Standards for Protection Against Radiation

14 CFR 150

Federal Aviation Administration, Department of Transportation - Airport Noise Compatibility Planning

24 CFR 51

Office of the Secretary, Department of Housing and Urban Development - Environmental Criteria and Standards

29 CFR 1910.120e, p, q

Occupational Safety and Health Administration (OSHA), Department of Labor (DOL) - Occupational Safety Health Standards - Hazardous Waste Operations and Emergency Response.

29 CFR 1926

Occupational Safety and Health Administration (OSHA), Department of Labor (DOL) - Safety and Health Regulations for Construction

32 CFR 229

Office of the Secretary of Defense - Protection of Archeological Resources: Uniform Regulations

32 CFR 651.18

Department of the Army - Environmental Analysis of Army Actions - Introduction.

33 CFR 153

Coast Guard (CG), Department of Homeland Security (DHS) - Control of Pollution by Oil and Hazardous Substances, Discharge Removal

33 CFR 154

CG, DHS - Facilities Transferring Oil or Hazardous Material in Bulk

33 CFR 159

CG, DHS - Marine Sanitation Devices

33 CFR 209

Corps of Engineers, Department of the Army, DOD - Administrative Procedure

33 CFR 320

Corps of Engineers, Department of the Army, DOD - General Regulatory Policies

36 CFR 60

National Park Service (NPS), Department of the Interior (DOI) - National Register of Historic Places

36 CFR 61

NPS, DOI - Procedures for State, Tribal, and Local Government Historic Preservation Programs

36 CFR 63

NPS, DOI - Determinations of Eligibility for Inclusion in the National Register of Historic Places

40 CFR 51

EPA - Requirements for the Preparation, Adoption, and Submittal of Implementation Plans

40 CFR 51.1

EPA - Requirements for the Preparation, Adoption, and Submittal of Implementation Plans - Who is Responsible for Actions Described in this Subpart?

40 CFR 51.307

EPA - Requirements for the Preparation, Adoption, and Submittal of Implementation Plans - New Source Review

40 CFR 63

EPA - National Emission Standards for Hazardous Air Pollutants for Source Categories

40 CFR 68

EPA - Chemical Accident Prevention Provision

40 CFR 70

EPA - State Operating Permit Programs.

40 CFR 70.6

EPA - State Operating Permit Programs - Permit Content

40 CFR 71

EPA - Federal Operating Permit Programs.

40 CFR 71.1

EPA - Federal Operating Permit Programs - Program Overview.

40 CFR 71.6

EPA - Federal Operating Permit Programs - Permit Content.

40 CFR 82

EPA - Protection of Stratospheric Ozone

40 CFR 112.3

EPA - Oil Pollution Prevention - Requirement to Prepare and Implement a Spill Prevention, Control, and Countermeasure Plan

40 CFR 112.4

EPA - Oil Pollution Prevention - Amendment of Spill Prevention, Control, and Countermeasure Plan by Regional Administrator.

40 CFR 112.5

EPA - Oil Pollution Prevention - Amendment of Spill Prevention, Control, and Countermeasure Plan by Owners or Operators.

40 CFR 112.7

EPA - Oil Pollution Prevention - General Requirements for Spill Prevention, Control, and Countermeasure Plans

40 CFR 112.8

EPA - Oil Pollution Prevention - Spill Prevention, Control, and Countermeasure Plan Requirements for Onshore Facilities (excluding production facilities).

40 CFR 112.20

EPA - Oil Pollution Prevention - Facility Response Plans.

40 CFR 112.21

EPA - Oil Pollution Prevention - Facility Response Training and Drills/Exercises

40 CFR 122

EPA - EPA Administered Permit Programs: The National Pollutant Discharge Elimination System (NPDES).

40 CFR 122.26

EPA - EPA Administered Permit Programs - The National Pollutant Discharge Elimination System (NPDES) - Storm Water Discharges

40 CFR 123

EPA - State Program Requirements

40 CFR 125

EPA - Criteria and Standards for the National Pollutant Discharge Elimination System (NPDES)

40 CFR 130.12

EPA - Water Quality Planning and Management - Coordination with Other Programs

40 CFR 136

EPA - Guidelines Establishing Test Procedures for the Analysis of Pollutants

40 CFR 140

EPA - Marine Sanitation Device Standard

40 CFR 141

EPA - National Primary Drinking Water Regulations

40 CFR 141.28

EPA - National Primary Drinking Water Regulations - Certified Laboratories

40 CFR 142

EPA - National Primary Drinking Water Regulations Implementation

40 CFR 143

EPA - National Secondary Drinking Water Regulations

40 CFR 144

EPA - Underground Injection Control Program.

40 CFR 146

EPA - Underground Injection Control Program: Criteria and Standards

40 CFR 147

EPA - State Underground Injection Control Programs

40 CFR 148

EPA - Hazardous Waste Injection Restrictions

40 CFR 149

EPA - Sole Source Aquifers.

40 CFR 202

EPA - Motor Carriers Engaged in Interstate Commerce

40 CFR 204

EPA - EPA Noise Emission Standards for Construction Equipment

40 CFR 205

EPA - Transportation Equipment Noise Emission Controls

40 CFR 225

EPA - Dredged Material Permits

40 CFR 230

EPA - Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material.

40 CFR 239

EPA - Requirements for State Permit Program Determination of Adequacy

40 CFR 240

EPA - Guidelines for the Thermal Processing of Solid Wastes

40 CFR 243

EPA - Guidelines for the Storage and Collection of Residential, Commercial, and Institutional Solid Waste

40 CFR 246

EPA - Source Separation for Materials Recovery Guidelines

40 CFR 247

EPA - Comprehensive Procurement Guideline for Products Containing Recovered Materials.

40 CFR 257

EPA - Criteria for Classification of Solid Waste Disposal Facilities and Practices.

40 CFR 258

EPA - Criteria for Municipal Solid Waste Landfills.

40 CFR 262

EPA - Standards Applicable to Generators of Hazardous Waste

40 CFR 262.11

EPA - Standards Applicable to Generators of Hazardous Waste - Hazardous Waste Determination.

40 CFR 264.13

EPA - Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities - General Waste Analysis.

40 CFR 264

EPA - Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

40 CFR 265

EPA - Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

40 CFR 273

EPA - Standards for Universal Waste Management

40 CFR 280

EPA - Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST)

40 CFR 280.20

EPA - Technical Standards and Corrective Action Requirements for Owners and Operators of USTs - Performance Standards for New Underground Storage Tank Systems

40 CFR 280.43

EPA - Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks - Methods of Release Detection for Tanks

40 CFR 300.120

EPA - National Oil and Hazardous Substance Pollution Contingency Plan - On-scene Coordinators and Remedial Project Managers: General Responsibilities

40 CFR 300.125

EPA - National Oil and Hazardous Substance Pollution Contingency Plan - Notification and Communications

40 CFR 300.155

EPA - National Oil and Hazardous Substance Pollution Contingency Plan - Public Information and Community Relations

40 CFR 300.211

EPA - National Oil and Hazardous Substance Pollution Contingency Plan - Facility and Vessel Response Plans

40 CFR 300.425

EPA - National Oil and Hazardous Substance Pollution Contingency Plan - Establishing Remedial Priorities

40 CFR 372

EPA - Toxic Chemical Release Reporting: Community Right-to-Know

40 CFR 503

EPA - Standards for the Use or Disposal of Sewage Sludge

40 CFR 761

EPA - Polychlorinated Biphenyls (PCB) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions.

40 CFR 761.20

EPA - Polychlorinated Biphenyls (PCB) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions - Prohibitions and Exceptions.

40 CFR 761.60b

EPA - Polychlorinated Biphenyls (PCB) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions - Disposal Requirements.

40 CFR 761.202

EPA - Polychlorinated Biphenyls (PCB) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions - EPA Identification Numbers.

40 CFR 761.205

EPA - Polychlorinated Biphenyls (PCB) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions - Notification of PCB Waste Activity (EPA Form 7710-53)

40 CFR 763

EPA - Asbestos

40 CFR 763.87

EPA - Asbestos - Analysis

43 CFR 5

Subtitle A - Office of the Secretary of the Interior - Making Pictures, Television Productions or Sound Tracks on Certain Areas Under the Jurisdiction of the Department of the Interior

43 CFR 6

Subtitle A - Office of the Secretary of the Interior - Patent Regulations

43 CFR 7

Subtitle A - Office of the Secretary of the Interior - Protection of Archaeological Resources

48 CFR 6

Federal Acquisition Regulations - Competition Requirements

49 CFR 106

Pipeline and Hazardous Materials Safety Administration, Department of Transportation - Rulemaking Procedures

49 CFR 130

Pipeline and Hazardous Materials Safety Administration, Department of Transportation - Oil Spill Prevention and Response Plans

49 CFR 171

Pipeline and Hazardous Materials Safety Administration, Department of Transportation - Subtitle B - Other Regulations Relating to Transportation - General information, regulations, and definitions

49 CFR 172

Pipeline and Hazardous Materials Safety Administration, Department of Transportation - Subtitle B - Other Regulations Relating to Transportation - Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements

49 CFR 173

Pipeline and Hazardous Materials Safety Administration, Department of Transportation - Subtitle B - Other Regulations Relating to Transportation - Shippers—General Requirements for Shipments and Packagings

49 CFR 174

Pipeline and Hazardous Materials Safety Administration, Department of Transportation - Subtitle B - Other Regulations Relating to Transportation - Carriage by Rail

49 CFR 175

Pipeline and Hazardous Materials Safety Administration, Department of Transportation - Subtitle B - Other Regulations Relating to Transportation - Carriage by Aircraft

49 CFR 176

Pipeline and Hazardous Materials Safety Administration, Department of Transportation - Subtitle B - Other Regulations Relating to Transportation - Carriage by Vessel

49 CFR 177

Pipeline and Hazardous Materials Safety Administration, Department of Transportation - Subtitle B - Other Regulations Relating to Transportation - Carriage by Public Highway

49 CFR 178

Pipeline and Hazardous Materials Safety Administration, Department of Transportation - Subtitle B - Other Regulations Relating to Transportation - Specifications for Packagings

50 CFR 222

National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC) - General Endangered and Threatened Marine Species

50 CFR 402.06

Endangered Species Act of 1973, as amended - Coordination with Other Environmental Reviews

50 CFR 402.10

Endangered Species Act of 1973, as amended - Conference on Proposed Species or Proposed Critical Habitat

65 FR 62565-62572

Unified Federal Policy for a Watershed Approach to Federal Land and Resource Management, 18 Oct 2000 (Available at www.epa.gov/Fedrgstr/search/html.)

31 USC 1341

Anti-Deficiency Act

33 USC 401

Saint Lawrence Seaway Development Corporation, Department of Transportation - Seaway Regulations and Rules

42 USC 300g-8

The Public Health and Welfare - National Drinking Water Regulations

42 USC 4331

National Environmental Policy - Congressional Declaration of National Environmental Policy

42 USC 9613

Comprehensive Environmental Response, Compensation, and Liability - Civil Proceedings

42 USC 9617

Comprehensive Environmental Response, Compensation, and Liability - Public Participation

42 USC 9620

Comprehensive Environmental Response, Compensation, and Liability - Federal Facilities

42 USC 9620h

Comprehensive Environmental Response, Compensation, and Liability - Property Transferred by Federal Agencies

49 USC 5102

Transportation - Hazardous Material Transportation Act

50 USC 1521

Lethal Chemical Agents and Munitions

Section III

Prescribed Forms

This section contains no entries.

Section IV

Referenced Forms

DA Forms are available on the Army Publishing Directorate Web site www.apd.army.mil. DD Forms are available from OSD Web site <http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm>.

DA Form 11-2-R

Management Control Evaluation Certification Statement

DD Form 1391

FY_ Military Construction Project Data

Appendix B

Installation Management Control Evaluation Checklist

B-1. Function.

The function covered by this checklist is Environmental Management.

B-2. Purpose.

The purpose of this checklist is to assist installation managers and staff in evaluating the key management controls listed below. It is not intended to cover all controls. The garrison commander (GC) or designated representative(s) will perform this checklist.

B-3. Instructions.

Answers must be based on the actual testing of Key management controls (for example, document analysis, direct observation, sampling simulation, other). Answers which indicate deficiencies must be explained and corrective action indicated in supporting documentation. These management controls must be evaluated at least every five years. Certification that this evaluation has been conducted must be accomplished on DA Form 11-2-R, Management Control Evaluation Certification Statement.

B-4. Test Questions.

a. Program Performance.

(1) Does the installation have an Environmental Quality Control Committee (EQCC), formally constituted and chaired by the garrison commander (GC), which provides a forum to enhance, address and resolve environmental issues?

(2) Is a multidisciplinary program in place to identify and proactively control environmental risks?

(3) Does the installation have pollution prevention policies and programs in place and operating to reduce pollution through source reduction, reuse, recycling, or energy/water use reduction?

(4) Does the installation have the requisite plans in place required by environmental permits?

(5) Are all personnel (including appointed environmental officers) trained and equipped sufficiently to execute their duties in an environmentally safe and compliant manner and to respond properly in case of environmental emergency?

(6) Are problems that are identified through internal audits, complaints, spills or enforcement actions (ENFs) investigated to determine systemic causes and promptly corrected? (PD/LD: DASA (ESOH) directive, 13 July 2001, and EO 13423)

(7) Does the installation have an installation internal assessment plan (IIAP)? (PD/LD: DASA (ESOH) directive, 13 July 2001, and EO 13423)

(8) Is the IIAP updated annually and included in the documentation of the installation Environmental Management System (EMS)? (PD/LD: DASA (ESOH) directive, 13 July 2001, EO 13423, and AR 11-2)

b. Environmental Condition.

(1) Are all solid waste streams systematically characterized to determine if they are hazardous? Is the basis for the determination (i.e. generator knowledge or analytical results) documented and the waste disposed of properly?

(2) Are all unit projects, activities and work requests coordinated with the environmental officer?

(3) Is adequate National Environmental Policy Act (NEPA) documentation routinely prepared and considered as an integral part of the planning process (NOTE: Overseas installations should follow the Environmental Review Guide (ERG) since NEPA does not apply overseas.)?

(4) Are Environmental Performance Assessment System (EPAS) evaluations and the corrective actions in the installation corrective action plan (ICAP) completed in a timely manner?

(5) Are deficiencies identified in the ICAP that require funds forwarded to the responsible proponent for inclusion in appropriate programming and budgeting documents?

c. Mission Impact.

(1) Are management practices in place in order to improve the C-rating of mission critical environmental areas?

(2) Does top management (that is, GC, EQCC) periodically review the IIAP?

(3) Does top management review the open findings in the ICAP and ensure that adequate efforts are being made to close them?

d. Compliance.

(1) Are required reports and records complete and accurate? Is required reporting submitted to regulators in a timely and accurate manner? Is required reporting submitted to higher headquarters in a timely and accurate manner? Does the installation and the higher headquarters review and approve environmental data reported to HQDA?

(2) Are physical inspections conducted on a regular basis? Do they detect environmental problems and are they tracked to ensure corrective action? Are environmental compliance deficiencies recorded in the ICAP?

B-5. Supersession.

This checklist replaces the checklist published in AR 200-1, dated 21 February 1997.

B-6. Comments.

Help make this a better tool for evaluating management controls. Submit comments to HQDA, Director of Environmental Programs (DEP), 600 Army Pentagon, Washington, DC 20310-0600.

Glossary

Section I Abbreviations

AAE

Army Acquisition Executive

AAFES

Army and Air Force Exchange Service

AAP

Army alternate procedures

AC

hydrogen cyanide

ACHP

Advisory Council on Historic Preservation

ACOM

Army Command

ACP

Army cost position

ACSIM

Assistant Chief of Staff for Installation Management

ACUB

Army Compatible Use Buffer

ADCON

administrative control

ADNL

A-weighted day-night level

ADUSD (E)

Assistant Deputy Undersecretary of Defense (Environment) - now ADUSD (ESOH)

ADUSD (ESOH)

Assistant Deputy Undersecretary of Defense (Environment, Safety, and Occupational Health)

AECS

Army Environmental Cleanup Strategy

AEDB

Army Environmental Data Base

AEDB-CC

Army Environmental Data Base - Compliance-Related Cleanup

AEDB-EQ

Army Environmental Data Base - Environmental Quality

AEDB-R

Army Environmental Data Base - Restoration

AEP

Army Environmental Program

AEPI
Army Environmental Policy Institute

AERO
Army Environmental Reporting Online

AERTA
Army Environmental Requirements Technology Assessment

AFH
Army Family Housing

AFJMAN
Air Force Joint Manual

AFPMB
Armed Forces Pest Management Board

AHHA
Asbestos Hazard Emergency Response Act

AHPA
Archeological and Historical Preservation Act

AIRFA
American Indian Religious Freedom Act

AKM
Army Knowledge Management

ALT
Acquisition, logistics, and technology

AMC
Army Materiel Command

AMEDD
Army Medical Department

ANSI
American National Standards Institute

APP
Affirmative Procurement Program

AR
Army regulation

ARIMS
Army Records Information Management System

ARNG
Army National Guard

AROC
Army Requirements Oversight Council

ARPA
Archeological Resources Protection Act

ARSIC

Army Range Sustainment Integration Council

ARSTAF

Army staff

ASA

Assistant Secretary of the Army

ASA (ALT)

Assistant Secretary of the Army (Acquisition, Logistics and Technology)

ASA (FM&C)

Assistant Secretary of the Army (Financial Management & Comptroller)

ASA (I&E)

Assistant Secretary of the Army (Installations and Environment)

ASARC

Army System Acquisition Review Council

ASARCCT

Army System Acquisition Review Council Coordination Team

ASC

Army senior consultant

ASCC

Army Service Component Command

ASEL

a-weighted sound exposure level

ASSON

aerial spray statement of need

AST

aboveground storage tank

ATEC

Army Test and Evaluation Command

ATSDR

Agency for Toxic Substances and Disease Registry

AWCF

Army Working Capital Fund

BCA

Base Closure Account

BCP

base realignment and closure cleanup plan

BD/DR

building demolition/debris removal

BMP

best management practice

BO
biological opinion

BOD
board of directors

BOS
base operations support

BRAC
base realignment and closure

BRAC
Base Closure and Realignment Commission

BT
Business Transformation

CA
Comprehensive Agreement

CA
Cooperative Agreement

CAA
Clean Air Act

CAIS
chemical agent identification set

CAR
Chief, Army Reserve

CBTDEV
combat developer

CC
compliance-related cleanup

CCMB
Configuration Control Management Board

CCR
Consumer Confidence Report

CEGS
Corps of Engineers guide specification

CERCLA
Comprehensive Environmental Response, Compensation, and Liability Act

CERFA
Community Environmental Response Facilitation Act

CEP
Chief of Environmental Programs

CFR
Code of Federal Regulations

CG
Carbonyl dichloride (phosgene)

CG
commanding general

CIO
Chief Information Officer

CK
cyanogen chloride

CN
m-chloroacetophenone

CONUS
continental United States

CPA
Chief of Public Affairs

CRB
Cost Review Board

CRM
cultural resources manager

CRP
community relations plan

CS
o-chlorobenzylidenemalononitrile (tear gas)

CSEL
c-weighted sound exposure level

CW
civil works

CWA
Clean Water Act

CWM
chemical warfare material

CWS
community water system

DA
Department of the Army

DA PAM
Department of the Army pamphlet

DARNG
Director, Army National Guard

DASA (ESOH)
Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health)

dB
decibel

DC
District of Columbia

DCS
Deputy Chief of Staff

DD
decision document

DeCA
Defense Commissary Agency

DENIX
Defense Environmental Network and Information Exchange

DEP
Director of Environmental Programs

DERP
Defense Environmental Restoration Program

DEAS
Defense Finance and Accounting Service

DHP
Defense Health Program

DLAPS
Defense Logistics Agency Publishing System

DMM
discarded military munitions

DNL
day-night level

DOD
Department of Defense

DODD
Department of Defense Directive

DODI
Department of Defense Instruction

DOI
Department of the Interior

DPTMS
Directorate of Plans, Training, Mobilization, and Security

DRMO
Defense Reutilization and Marketing Office

DRMS
Defense Reutilization and Marketing Service

DRU
Direct Reporting Unit

DSMOA
Defense and State Memoranda of Agreement

DUSD
Deputy Under Secretary of Defense

EA
executive agent or environmental assessment or enterprise architecture

ECP
Environmental Condition of Property

EIS
Environmental Impact Statement

EITM
Environmental Information Technology Management

ELD
Environmental Law Division

EL/RAMP
Environmental Legislative/Regulatory Analysis and Monitoring Program

EM
engineer manual

EMS
Environmental Management System

ENF
enforcement action

EO
executive order or environmental officer

EOD
explosive ordnance disposal

EP
engineer publication

EPA
Environmental Protection Agency

EPAR
Environmental Performance Assessment Report

EPAS
Environmental Performance Assessment System

EPCRA
Emergency Planning and Community Right-to-Know Act

EQCC
Environmental Quality Control Committee

EQIA

Environmental Quality Impact Analysis

EQLCCE

Environmental quality life cycle cost estimate

EQT

Environmental Quality Technology

ER

engineer regulation

ER, A

Environmental Restoration, Army

ER, F

Environmental Restoration, FUDS

ERDC

Engineer Research and Development Center

ERIS

Environmental Restoration Information System

ERP

Environmental Restoration Program

ESA

Endangered Species Act

ESMC

Endangered Species Management Component

ESO

Environmental Support Office

ESTCP

Environmental Security Technology Certification Program

ETTC

Environmental Technology Technical Council

FAD

Funding authorization document

FDE

Findings and Determination of Eligibility

FFCA

Federal Facilities Compliance Act

FGS

Final Governing Standards

FIFRA

Federal Insecticide, Fungicide, and Rodenticide Act

FM

field manual

FMR

financial management regulation

FOA

field operating agency

FOIA

Freedom of Information Act

FORSCOM

Forces Command

FOSET

finding of suitability for early transfer

FOSL

finding of suitability to lease

FOST

finding of suitability to transfer

FOTW

Federally-owned treatment works

FOUO

for official use only

FUDS

formerly used defense sites

FUDSMIS

Formerly Used Defense Sites Management Information System

FWPCA

Federal Water Pollution Control Act

FY

fiscal year

GC

garrison commander

GOCO

government-owned, contractor-operated

GPP

Green Procurement Program

GSA

General Services Administration

HAP

hazardous air pollutant

HDBK

Handbook

HM

hazardous material

HMMP

Hazardous Materials Management Program

HN

host nation

HPC

historic property component

HQ

Headquarters

HQDA

Headquarters, Department of the Army

HQ IMCOM

Headquarters, Installation Management Command

HSMS

Hazardous Substance Management System

HSSA

health service support area

HSWA

Hazardous and Solid Waste Amendments

HTRW

hazardous, toxic, and radioactive waste

HW

hazardous waste

IAP

installation action plan

IC

installation commander

ICAP

installation corrective action plan

ICE

independent cost estimate

ICRMP

integrated cultural resources management plan

IDN

initial distribution number

IAP

installation internal assessment plan

II PEG

Installations Program Evaluation Group

IMCOM

Installation Management Command

INPR
inventory project report

INRMP
integrated natural resources management plan

IPM
integrated pest management

IPMC
integrated pest management coordinator

IPMP
integrated pest management plan

IPR
in-progress review

IR
installation restoration

IR
interim reference

IRP
Installation Restoration Program

ISMC
invasive species management component

ISO
International Organization for Standardization

ISR
installation status report

ISSA
Installation Services Support Agreement

IT
information technology

ITAM
Integrated Training Area Management

IWFMP
integrated wildland fire management plan

JCS
Joint Chiefs of Staff

JFLCC
Joint Forces Land Component Command

JP
joint publication

JTF
Joint Task Force

KISE
known and imminent substantial endangerment

LBP
lead-based paint

LD
legal driver

LCTA
land condition trend analysis

LEPC
Local Emergency Planning Committee

LLRW
low-level radioactive waste

LTR
letter

LUC
land use control

LUPZ
land use planning zone

MACT
maximum achievable control technology

MAIS
Major Automated Information System

MAP
management action plan

MBTA
Migratory Bird Treaty Act

MC
munitions constituents

MCA
Military Construction, Army

MCAR
Military Construction, Army Reserve

MCNG
Military Construction, National Guard

MDAP
Major Defense Acquisition Program

MEC
Munitions and explosives of concern

MEDCEN
medical center

MEDCOM

Army Medical Command

MEDDAC

medical department activity

MIDI

Military Item Disposal Instructions

MIL

military

MMRP

Military Munitions Response Program

MOA

memorandum of agreement

MOM

measure of merit

MOU

memorandum of understanding

MPRSA

Marine Protection, Research, and Sanctuaries Act

MS4

Municipal Separate Stormwater Sewer System

MSC

major subordinate command

MSWLF

municipal solid waste landfill

MTOE

modified tables of organization and equipment

MWR

morale, welfare, and recreation

NAF

non-appropriated fund

NAGPRA

Native American Graves Protection and Repatriation Act

NDAA

National Defense Authorization Act

NDCEE

National Defense Center for Environmental Excellence

NEPA

National Environmental Policy Act

NESHAP

National Emissions Standards for Hazardous Air Pollutants

NFES

National Fire Equipment System

NFPA

National Fire Protection Association

NGB

National Guard Bureau

NGB-ARNG

National Guard Bureau - Army National Guard

NGB-DARNG

National Guard Bureau - Director, Army National Guard

NHPA

National Historic Preservation Act

NLR

noise level reduction

NOAA-Fisheries

National Oceanic and Atmospheric Administration - Fisheries

NPDES

National Pollutant Discharge Elimination System

NPL

National Priorities List

NPS

National Park Service

NRC

National Response Center

NRCS

Natural Resources Conservation Service

NRHP

National Register of Historic Places

NRT

National Response Team

NTNCWS

Non-Transient Non-Community Water System

OACSIM

Office of the Assistant Chief of Staff for Installation Management

OASA (ALT)

Office of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology)

OASA (I&E)

Office of the Assistant Secretary of the Army (Installations and Environment)

OCONUS

outside the continental United States

ODEP

Office of the Director of Environmental Programs

ODS

ozone depleting substances

OEBGD

Overseas Environmental Baseline Guidance Document

OEESCM

Operational and Environmental Executive Steering Committee on Munitions

OIPT

Overarching Integration Process Team

OMB

Office of Management and Budget

OPA

Oil Pollution Act

OPLAN

operation plan

OPORD

operation order

OPTEMPO

operating tempo

OPTS

Office of Pesticides and Toxic Substances

ORV

off-road vehicle

OSC

on-scene coordinator

OSD

Office of the Secretary of Defense

OSHA

Occupational Safety and Health Act or Occupational Safety and Health Administration

OTJAG

Office of the Judge Advocate General

PA

programmatic agreement

PAA

procurement Army ammunition

PAM

pamphlet

PAO

Public Affairs Office

PCB
polychlorinated biphenyl

PD
policy decision

Pk
peak sound pressure level

PL
public Law

PLANTS
Plant List of Accepted Nomenclature, Taxonomy, and Symbols

PLS
Planning Level Survey

PMP
program management plan

PMS
Publications Management System

POL
petroleum, oil, lubricants

POM
program objective memorandum

POTW
publicly-owned treatment works

PPA
Pollution Prevention Act

PPBE
planning, programming, budgeting, and execution

PPMP
professional pest management personnel

PSD
prevention of significant deterioration

QA/QC
quality assurance/quality control

RAB
Restoration Advisory Board

RCRA
Resource Conservation and Recovery Act

RCS
Reports Control System

RDT&E
research, development, test, and evaluation

RDX
cyclotrimethylenetrinitramine

READ
Repository of Environmental Army Documents

REC
regional environmental coordinator

REO
regional environmental office

RFP
request for proposal

RMIS
Restoration Management Information System

RMP
risk management plan

RMW
regulated medical waste

ROA
reports of availability

ROD
record of decision

RPMP
real property master plan

RPTS
Reimbursable Programs Tracking System

RRC
Regional Readiness Command

RRC
Reserve Readiness Command

RRSC
Regional Readiness Support Command

RRT
Regional Response Team

RTLA
range and training land assessment

RTLTP
Range and Training Lands Program

SA
Secretary of the Army

SARA
Superfund Amendments and Reauthorization Act

SB

supply bulletin

SCP

spill contingency plan

SDD

sustainable design and development

SDWA

Safe Drinking Water Act

SDWAA

Safe Drinking Water Act Amendments

SEP

supplemental environmental project

SERC

State Emergency Response Commission

SERDP

Strategic Environmental Research and Development Program

SESCC

Soil Erosion and Sediment Control Component

SHPO

State historic preservation officer

SMC

senior mission commander

SOFA

Status of Forces Agreement

SPCC

spill prevention, control and countermeasures

SPCCP

spill prevention, control, and countermeasures plan

SPiRT

sustainable project rating tool

SRP

Sustainable Range Program

STC

Sound Transmission Class

std

standard

SWARS

Solid Waste Annual Reporting System

SWPPP

stormwater pollution prevention plan

T&E
threatened and endangered

TAG
The Adjutant General

TB
technical bulletin

TB MED
technical bulletin, medical

TC
training circular

TDA
tables of distribution and allowances

TG
technical guide

TJAG
The Judge Advocate General

TM
technical manual

TMDL
total maximum daily load

TNCWS
Transient Non-Community Water System

TNT
trinitrotoluene

TO&E
table of organization and equipment

TRADOC
Training and Doctrine Command

TRC
Technical Review Committee

TRI
toxic release inventory

TSCA
Toxic Substances Control Act

TSG
The Surgeon General

TWCF
transportation working capital funds

USACE
U.S. Army Corps of Engineers

USACHPPM

U.S. Army Center for Health Promotion and Preventive Medicine

USAEC

U.S. Army Environmental Command

USAES

U.S. Army Engineer School

USC

United States Code

USCG

U.S. Coast Guard

USDA

U.S. Department of Agriculture

USFWS

U.S. Fish and Wildlife Service

USGS

U.S. Geological Survey

UST

underground storage tank

UXO

unexploded ordnance

VOC

volatile organic compound

WMM

waste military munitions

Section II

Terms

Acquisition, Real Estate

Obtain, use, or control real property by purchase, condemnation, donation, exchange, easement, license, lease, permit, revestment and recapture as defined in AR 405-10.

Acquisition, Life Cycle

Applies to processes and procedures by which defense services identify requirements, conduct research, development, test and evaluation; develop logistics support; field and ultimately dispose of materiel systems and equipment; and upgrade existing systems/equipment.

Action

All activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas.

Action area

All areas to be affected, directly or indirectly, by the Federal agency action and not merely the immediate area involved in the action.

Activity

A unit, organization, or installation that performs a function or mission.

Adverse effect (under NHPA)

A harmful or detrimental change in the character or use of historic properties. Adverse effects include, but are not

limited to, physical destruction, damage, or alteration; isolation from or alteration of the setting; introduction of visual, audible, or atmospheric elements that are out of character; neglect; and transfer, lease, or sale of historic property.

Aerial Spray Statement of Need

A formal document prepared by DOD pest management consultant with certification in DOD Category 11, Aerial Application. If this document states that the proposed project is justified, preparation of an environmental assessment or environmental impact statement (EIS) is initiated and prepared.

Agency official (under NAGPRA)

Any individual authorized by delegation of authority within a Federal agency to perform the duties relating to these regulations (43 CFR 10). (43 CFR 10.2 (a)(2)) For Army installations the garrison commander (GC) serves as the agency official under NAGPRA.

Agricultural lease or outlease

Use of Army lands under a lease to an agency, organization, or person for growing crops or grazing animals.

Appropriate facilities

For purposes of EMS implementation, appropriate facilities are defined as the Army major installations identified by ACSIM as having operations and activities with the potential to significantly impact human health and/or the environment. Appropriate facilities must fully comply with EMS implementation requirements specified in this regulation. ACSIM will periodically update the appropriate facilities listing and promptly advise those installations that are added or removed.

Archaeological resource (under ARPA)

Any material of human life or activities that is at least 100 years of age, and which is of archaeological interest.

Army alternate procedures (AAP)

Procedures that Army installations and facilities may elect to follow in lieu of Advisory Council on Historic Preservation (ACHP) regulations to comply with the goals and mandates of the National Historic Preservation Act (NHPA) Section 106.

Army Command (ACOM)

An Army force, designated by the Secretary of the Army, performing multiple Army Service Title 10 functions (3013b) across multiple disciplines. Command responsibilities are those established by the Secretary and normally associated with administrative control (ADCON).

Army compatible use buffer (ACUB)

Formal agreements between Army and eligible entities for acquisition by the entities of land or interest in land and water rights from willing sellers. Formal agreements include limiting encroachment through acquisition of development rights, cooperative agreements (CAs), conservation easements, and other means to support land acquisition or affect land use in accordance with applicable laws. Development and implementation of an ACUB does not constitute an acquisition of real property. Land conveyances for conservation may supplement ACUBs. Authority is 10 USC 2684a and 2694a.

Army proponent

The Army unit, element, or organization responsible for initiating or carrying out the proposed action.

Army Senior Consultant

The individual designated by the DEP, who serves as the senior Army staff officer for technical guidance and management of the Army Pest Management Program and as ACSIM representative to the Executive Council of the Armed Forces Pest Management Board.

Army Service Component Command (ASCC)

An Army force, designated by the Secretary of the Army, comprised primarily of operational organizations serving as an Army component for a combatant commander. If designated by the combatant commander, serves as a Joint Forces Land Component Command (JFLCC) or Joint Task Force (JTF). Command responsibilities are those established by the Secretary and normally associated with operational control (OPCON) and administrative control (ADCON).

Best management practice

Best management practices are methods that have been determined to be the most effective and practical means of preventing or reducing pollution and/or environmental impacts.

Biological assessment

Information prepared by or under the direction of a Federal agency using the procedures in 50 CFR 402.12 concerning listed and proposed species and designated and proposed critical habitat that may be present in the action area and the evaluation of potential effects of the action on such species and habitat.

Biological diversity

The variety of life and its processes. It includes the variety of living organisms, the genetic differences among them, and the communities and ecosystems in which they occur.

Biological evaluation

A written document setting forth an installation's biologically supportable rationale for determining the affects an action will have on a listed or proposed species or critical habitat. A biological evaluation is an informal document and is used for actions only if a biological assessment is not required.

Biological opinion (BO)

The document that states the opinion of the U.S. Fish and Wildlife Service (USFWS) or National Oceanic and Atmospheric Administration (NOAA) - Fisheries as to whether or not the Federal agency action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat; a summary of the information on which the opinion is based and a detailed discussion of the effects of the action on listed species or designated critical habitat.

Candidate species

(see species designations)

Certification as pesticide applicator

The formal recognition of training and competency to perform pesticide applications per the DOD Instruction and Plan. DOD employees certified per the DOD Plan can, without obtaining additional State certification, use and supervise the use of restricted-use pesticides while engaged in performing their official duties.

Certification official (pesticide applicators)

The DOD professional pest management personnel (PPMP) who reviews and validates the qualifications of DOD pesticide applicators to meet the standards in the DOD Plan. In the Army, certification officials are nominated by the ASC through the DEP, for approval by the Executive Director, AFPMB. See Pest management consultant.

Certified pesticide applicator

Any individual who applies pesticides or supervises the use of pesticides by others and who has been authorized to do so by successfully completing a training program approved by the Environmental Protection Agency (EPA), followed by formal certification by DOD, State or for overseas, by the Installation Management Command (IMCOM) certification official.

Chemical warfare agent

A substance which, because of its chemical properties, is used in military operations or terrorist attacks to kill, seriously injure, or incapacitate humans or animals or deny use of water, food supplies, and/or other indigenous resources to combatants or civilian populations. Some types of pesticides and herbicides (especially organophosphate-based substances) were initially developed and tested for use as chemical warfare agents, and only later adapted for non-military and agricultural applications. Chemical warfare agents are the V- and G-series nerve agents; H-series (that is, "mustard" agents) and L-series (that is, lewisite) blister agents; and certain industrial chemicals, including: hydrogen cyanide (AC), cyanogen chloride (CK), or carbonyl dichloride (called phosgene or CG)), when contained in a military munition. Chemical warfare agents do not include: riot control agents (for example, w-chloroacetophenone (CN); o-chlorobenzylidenemalononitrile ((CS) tear gas); chemical herbicides; smoke or incendiary compounds; and industrial chemicals that are not configured as a military munition.

Chemical warfare materiel

Items generally configured as a munition containing a chemical substance that is intended to kill, seriously injure, or incapacitate a person through its physiological effects. CWM includes V- and G-series nerve agent; H-series (mustard) and L-series (lewisite) blister agent, in other-than-munition configuration; and certain industrial chemicals (for example, hydrogen cyanide (AC), cyanogen chloride (CK), or carbonyl dichloride (called phosgene or CG)) configured as a

military munition. Due to their hazards, prevalence, and military-unique application, chemical agent identification sets (CAIS) are also considered CWM. CWM does not include: riot control agents; chemical herbicides; industrial chemicals (for example, AC, CK, or CG) not configured as a munition; smoke and flame producing items; or soil, water, debris or other media contaminated with chemical warfare agents.

Class I and Class II ozone depleting substances (ODS)

Class I ODS have a greater ozone-depletion potential than Class II ODS. Class II ODS are generally considered safer than Class I ODS. Class I and Class II are defined in the Clean Air Act (CAA) Amendments of 1990. (See 40 CFR 82, Appendix A and B).

Command

A unit or units, an organization, or an area under the command of one individual.

Community water system

A public water system that supplies water to the same population year-round.

Compliance agreement

Any negotiated agreement between regulatory officials and regulatee for the purpose of attaining or maintaining compliance. Regulatee must have participated and influenced the terms of the agreement.

Compliance-related cleanup

Compliance-related cleanup (CC) includes actions to address contamination at Army facilities overseas; contamination resulting from operations that have occurred since October 1986 (i.e., non-DERP) at Army Active, Excess, and Special installations, and Army National Guard (ARNG) Federally-owned facilities; and contamination at Non-Federally owned, Federally-supported ARNG facilities. As a key element of the broader Army Environmental Cleanup Strategy (AECS) and its associated Environmental Cleanup Strategic Plan, the CC mission at Army installations and facilities is to perform appropriate, cost-effective cleanup to protect human health, safety, and the environment, and to sustain operational readiness and training. Specifically, for overseas facilities, the CC mission is to address contamination that resulted from Army operations, presents a known imminent and substantial endangerment to human health and safety, and is located on or emanates from an Army facility. The CC Guidance Manual, September 2004, provides specific guidance on CC procedures and project eligibility.

Comprehensive agreement (under NAGPRA)

Agreements developed regarding the treatment and disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands.

Conference

The process which involves informal discussions between a Federal agency and the USFWS or NOAA-Fisheries regarding the impact of an action on proposed species or proposed critical habitat and recommendations to minimize or avoid the adverse effects.

Conservation

The wise use and scientific management of natural and cultural resources according to principles that provide optimum public benefit, continued productivity and sustainability for present and future generations, and support of the military mission.

Conservation law enforcement professional

A DOD law enforcement professional with additional training in natural resources and Archaeological Resources Protection Act (ARPA) law enforcement training.

Conservation Reimbursable and Fee Collection Programs

Includes the Army's proceeds generating Forestry, Fish and Wildlife, and Agricultural/Grazing Outlease programs.

Conserve/conservation (of species)

To use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to 16 USC Chapter 35 (ESA) are no longer necessary.

Construction

Any land-disturbing activity.

Consumer Confidence Report

A water quality report provided to consumers annually, as required under 40 CFR 141, Subpart O. All community water systems (CWS) are required to prepare and distribute annual CCRs that briefly summarize information regarding water sources, detected contaminants, compliance, and educational information.

Contaminant

An undesirable substance (physical, chemical, biological, or radiological) not normally present, or an unusually high concentration of a naturally occurring substance in water or soil.

Contingency plan

A document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or other accident that releases toxic chemicals, hazardous waste (HW), or radioactive materials that threaten human health or the environment.

Continual improvement

The process of enhancing the environmental management system to achieve improvements in overall environmental performance in line with the organization's environmental policy.

Critical habitat

Specific areas within the geographical area occupied by the species at the time it is listed in accordance with 16 USC Chapter 35 (ESA), on which are found those physical or biological features (1) essential to the conservation of the species, and (2) which may require special management considerations or protection. It also includes specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the 16 USC Chapter 35 (ESA), upon a determination by the Secretary of Interior or Commerce that such areas are essential for the conservation of the species. The areas formally designated as critical habitat by the USFWS or NOAA-Fisheries and listed in 50 CFR 17 and 226.

Cultural resources

Historic properties as defined by the NHPA, cultural items as defined by NAGPRA, archeological resources as defined by ARPA, sacred sites as defined in EO 13007 to which access is afforded under AIRFA, significant paleontological items as described by 16 USC 431-433 (Antiquities Act of 1906), and collections and associated records as defined in 36 CFR 79.

Curation

An integral element of the archaeological process that refers to the long term management and preservation of archaeological materials and their associated documentation.

Destruction or adverse modification

The direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining T&E habitat to be critical.

Direct Reporting Unit (DRU)

An Army organization comprised of one or more units with institutional or operational functions, designated by the Secretary of the Army, providing broad general support to the Army in a normally single, unique discipline not otherwise available elsewhere in the Army. DRUs report directly to a Headquarters, Department of the Army principal and/or Army Command and operate under authorities established by the Secretary of the Army.

Discarded military munitions

Military munitions that have been abandoned without proper disposal or removed from storage in a military magazine or other storage area for the purpose of disposal. The term does not include unexploded ordnance (UXO), military munitions that are being held for future use or planned disposal, or military munitions that have been properly disposed of consistent with applicable environmental laws and regulations. (10 USC 2710(e)(2)).

Discharge

A term that includes the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a substance into or on any land or water (40 CFR 260.10).

Discharge classifications (for oil)

The classifications of accidental discharges listed below, provided to guide the on-scene coordinator (OSC), are criteria for general response actions. They are not criteria for reporting, nor do they imply associated degrees of hazard to the

public health or welfare, nor are they measures of environmental damage. However, a discharge that is a substantial threat to the public health or welfare, or results in critical public concern, will be classed as a major discharge. Discharges are quantitatively measured as follows:

- a. Minor discharge: A discharge to the inland waters or less than 1,000 gallons of oil; or a discharge of less than 10,000 gallons of oil to the coastal waters.
- b. Medium discharge: A discharge of 1,000 gallons to 10,000 gallons of oil to the inland waters, or a discharge of 10,000 to 100,000 gallons of oil to coastal waters.
- c. Major discharge: A discharge of more than 10,000 gallons of oil to the inland waters, or more than 100,000 gallons of oil to the coastal waters.

Disposal (real property)

Any authorized method of permanently divesting DA of control of and responsibility for real property. Reference AR 405-90 for definition of real property.

Disposal (waste)

The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or HW into or on any land or water. The act is such that the solid waste or HW, or any constituent thereof, may enter the environment or be emitted into the air or discharged into any waters, including ground water (40 CFR 260.10).

Domestic sewage

Waste and wastewater from humans or from household operations that are discharged to or otherwise enter treatment works.

Ecosystem sustainability

A condition of living communities that meets, or can be manipulated to meet, current mission, compliance, stewardship and production needs without compromising the future ability to meet those needs. Compliance and stewardship include the protection of all resources, especially soil, water, threatened and endangered (T&E) species, and wildlife.

Effect (under NHPA)

Alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

Effluent limitation

Any restriction established by the EPA on quantities, rates, and concentrations of chemical, physical, biological and other constituents which are discharged from point sources, other than new sources, into navigable waters, the waters of the contiguous zone or the ocean.

Eligible entities

As it pertains to Section 2684a, National Defense Authorization Act (NDAA) fiscal year (FY) 03, an eligible entity that can enter into cooperative agreements (CAs) with the military can be a State government or political subdivision, or a private entity whose purpose is land and natural resource conservations, restoration, or preservation. As it pertains to Section 2694a, NDAA FY03, an eligible entity can be a State government or political subdivision, or a non-profit organization whose primary purpose is natural resource conservation on real property.

Emission standards

Limits on the quality of emissions that may be discharged to the atmosphere from any regulated source, established by Federal, State, local, and host nation (HN) authorities.

EMS Representative

The individual(s) appointed in writing by an organization's leadership who has defined roles, responsibilities, and authority for ensuring that EMS requirements are established, implemented, and maintained in accordance with ISO 14001 and this regulation. The EMS representative will report on the performance of the EMS to management for review and continual improvement of the EMS.

Encroachment

All external influences threatening or constraining testing and training activities required for force readiness and weapons acquisition. Such encroachment stems from environmental (for example, noise, endangered species, cultural resources, UXO, and munitions constituents (MC)), social (for example, urban sprawl), and economic (for example, changing land values) influences. Impacts include, but are not limited to, restrictions on available testing and training

locations; restrictions on available times and duration for testing and training; reduced effectiveness of testing and training activities; and restrictions on weapons systems, equipment, and munitions used during testing and training.

Enforcement action

A formal, written notification by the EPA or other authorized Federal, State, inter-state, regional or local environmental regulatory agency of violation of any applicable statutory or regulatory requirement. Enforcement action does not include warning letters, notices to comply, notices of potential liability, notices of significant noncompliance, pre-enforcement conference letters, informal notices of deficiencies, or notices of deficiencies to permit applications. One written notice, regardless of the number of individual violations, findings, or citations listed in it, counts as one enforcement action. If the enforcement action cites violations in more than one statutory requirement, then count it as multiple enforcement actions, one under each of the applicable statutory requirement categories. Items found to be out of compliance during an internal or other DOD Component review, compliance reviews, or audits are not included in this definition of enforcement action.

Environment

All of the following are elements of the natural and man-made environment:

- a. Navigable waters.
- b. Near-shore and open waters and any other surface water.
- c. Groundwater.
- d. Drinking water supply.
- e. Land surface or subsurface area.
- f. Ambient air.
- g. Vegetation.
- h. Wildlife.
- i. Humans.
- j. Noise.
- k. Cultural resources.
- l. Socioeconomics.
- m. Coastal resources.

Environmental agreement

Environmental agreements are formal agreements between the Army and other entities to address actual or potential environmental concerns, delineate roles and responsibilities related to specific actions of mutual interest, and/or to reach consensus on courses of action. Environmental agreements include but are not limited to consent orders, compliance agreements, consent agreements, settlements, Federal facility agreements, ACUB agreements, and inter-agency agreements.

Environmental aspect

An element of an organization's activities, products, or services that can interact with the environment. A priority environmental aspect is an environmental aspect that has or can have an impact on the mission and/or the environment.

Environmental audit

A systematic, documented, verification process of objectively obtaining and evaluating evidence to determine whether specified environmental activities, events, conditions, management systems, or information about these matters conform to audit criteria (for example, compliance with Federal, State, and local environmental regulations) and communicating the results of this process to management. These reviews are not audits as defined in DODI 7600.2.

Environmental awareness training

Environmental knowledge conveyed by written or on-line information, hands-on training, or formal presentations. It is often provided outside a normal school classroom or regularly-scheduled class. It has limited applicability to teaching competence in specific job skills. It is intended to promote an environmental stewardship ethic and create an understanding of the importance of performing job skills in accordance with appropriate environmental requirements. It also encourages consultation with environmental staff and Army or local compliance publications to determine specific procedures.

Environmental condition of property

The Army does not consider the transfer of property from the Army to another Federal agency for their end use to be a deed transfer. The Army must sufficiently document the environmental condition of property being transferred to another Federal agency; therefore, an Environmental Baseline Survey is required. Also, the Army requires an Environmental Condition of Property (ECP) report, a document similar to a finding of suitability to transfer (FOST).

- a. An ECP is the same as a FOST, with the following exceptions:
 - (1) Regulatory participation/review should parallel DOD finding of suitability to lease (FOSL) guidance, which does not require mandatory 30-day review, but early document sharing is encouraged.
 - (2) IMCOM Regions sign the ECP for categories 1, 2, 3, and 4 (see category descriptions below). Regions may further delegate authority for ECP categories 1 and 2 to GCs. GCs should decide on a property's suitability for lease or transfer. During staffing of the real estate action, HQDA and the Regions, as appropriate, will review the ECP for concurrence.
 - (3) CERCLA covenant and warranty are not required, since there is no deed.
 - (4) Transfer prior to all cleanup being complete is allowed and is encouraged.
 - (5) The Army should negotiate responsibility for environmental cleanup and compliance requirements with the Federal agency acquiring the property.
- b. DOD guidance defines seven categories for describing the ECP, based on the extent of environmental contamination on the property and on the status of any associated restoration activities. These categories are defined with respect to CERCLA hazardous substances:
 - c. Category 1: Areas where no release or disposal of hazardous substances or petroleum products has occurred (including no migration of these substances from adjacent areas).
 - d. Category 2: Areas where only release or disposal of petroleum products has occurred.
 - e. Category 3: Areas where release, disposal, and/or migration of hazardous substances has occurred, but at concentrations that do not require a removal or remedial response.
 - f. Category 4: Areas where release, disposal, and/or migration of hazardous substances has occurred and all removal or remedial actions to protect human health and the environment have been taken.
 - g. Category 5: Areas where release, disposal, and/or migration of hazardous substances has occurred and removal or remedial actions are under way, but where all required remedial actions have not yet been taken.
 - h. Category 6: Areas where release, disposal, and/or migration of hazardous substances have occurred, but where required actions have not yet been implemented.
 - i. Category 7: Areas that have not been evaluated or that require additional evaluation.

Environmental considerations

The spectrum of environmental media resources, or programs that may impact on, or are affected by, the planning and execution of military operations. Factors may include, but are not limited to, environmental compliance, pollution prevention, conservation, protection of historical and cultural sites, and protection of flora and fauna (Joint Publication (JP) 1-02).

Environmental enhancement

Actions taken to improve the environment. These actions include measures intended to prevent or abate environmental pollution and to meet environmental quality standards.

Environmental hazard

Environmental hazards include all activities that may pollute, create negative noise related effects, degrade archeological/cultural resources, or negatively affect threatened or endangered species habitat. They may also include environmental health related hazards. (See FM 3-100.4, chap 2).

Environmental impact

Any change to the environment, whether adverse or beneficial, wholly or partially resulting from an organization's activities, products, or services.

Environmental management system (EMS)

That part of an organization's overall management system that includes organizational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing, and maintaining the organization's environmental policy.

Environmental management system (EMS) audit

A systematic and documented verification process of objectively obtaining and evaluating evidence to determine whether an organization's environmental management system (EMS) conforms to the EMS audit criteria set by the organization, and for communication of the results of this process to management.

Environmental objective

An overall environmental goal, arising from the environmental policy, that an organization sets for itself to achieve, and which is quantified where practicable.

Environmental officer

An individual assigned to a table of organization and equipment (TO&E) or table of distributions and allowances (TDA) organization or unit to accomplish environmental compliance requirements on behalf of his or her responsible commander, director, or supervisor. Designated person also coordinates with supporting permanent installation environmental staff for requirements clarification and assistance. In the Army National Guard (ARNG), coordination is with NGB-ARNG State environmental staff; in the Reserves, with Regional Support Command environmental staff. Organizational levels, and required grade or rank, suitable for assignment of compliance officer duties will be determined by the commander. Commanders should consider mandatory Federal training requirements as well as mission workloads in determining assignment of environmental officers at Battalion and unit (Company, Battery, Troop) level.

Environmental performance

Measurable results of the environmental management system, related to an organization's control of its environmental aspects, based on its environmental policy, objective, and targets.

Environmental planning

Efforts that consider the impact of day-to-day base operations and activities, operational readiness activities, training, exercises, or weapons system introduction on the environment, and where necessary, allow decision makers to take early action to eliminate or mitigate those impacts. Additionally, environmental planning may require consultation or submission of documentation to demonstrate that environmental considerations have been taken.

Environmental policy

A statement by the organization of its intentions and principles in relation to its overall environmental performance that provides a framework for action and for the setting of its environmental objectives and targets.

Environmental pollution

The condition resulting from the presence of chemical, mineral, radioactive, or biological substances that

- a. Alter the natural environment.
- b. Adversely affect human health or the quality of life, biosystems, the environment, in structures and equipment, recreational opportunities, aesthetics, and/or natural beauty.

Environmental target

A detailed performance requirement based on ISO 14001, quantified where practicable, applicable to the organization or parts thereof, that arises from the environmental objectives and that needs to be set and met in order to achieve those objectives.

Environmental training

Instruction whose primary purpose is to provide measurable competence for doing specific environmental jobs or tasks. Some is mandated by law or regulation. Commonly taught in a classroom, by such methods as lecture, discussion, or practical exercise. However, other methods may also be used, including web-based or other "distance learning." Environmental training includes both separate environmental courses and environmental content in non-environmental courses.

Environmental stewardship

Management and oversight of environmental, natural and living resource assets including but not limited to land, air, water, soils, vegetation, and wildlife. The Army's objective is to plan, initiate, and carry out its actions and programs in a manner that minimizes adverse effects on the environment without impairing the mission and to manage impacts so as to sustain the capability of Army lands to support future as well as present mission uses of ranges and training lands. See also paragraph 1-1(a).

EPA Identification Number

The number assigned by EPA to each HW generator, transporter, and treatment, storage or disposal facility. Reference 40 CFR 260.10; 264.11; 265.11; TB 43-0244, Unit Level Procedures for Handling Service Supplies, Hazardous Materials, and Waste.

Estuary

Regions of interaction between rivers and near-shore ocean waters, where tidal action and river flow mix fresh and salt water. Such areas include bays, mouths of rivers, salt marshes, and lagoons. These brackish water ecosystems shelter and feed marine life, birds, and wildlife.

Executive agent

Executive agents (EA) are individuals designated by the Office of the Secretary of Defense (OSD) and are responsible for development, maintenance, oversight of and compliance with the Final Governing Standards (FGS) for specified foreign nations. Executive agents are also responsible for consulting with host-nation authorities on environmental issues, as required to maintain effective cooperation on environmental matters, and should coordinate with other DOD components in the specific nation.

Explosives or munitions emergency response

All immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in-place, render-safe procedures, treatment or destruction of the explosives or munitions, and/or transporting those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at Resource Conservation and Recovery Act (RCRA) facilities. (Military Munitions Rule, 40 CFR 260.10).

Extremely hazardous substance

A substance included in appendix A or B of 40 CFR 355.

Facility

Facilities include buildings, structures, public works, equipment aircraft, vessels, and other vehicles and property under control of, or constructed or manufactured for leasing to the Army.

Federal

Of or pertaining to a department, agency, or instrumentality of the Federal Government of the United States.

Federal agency official

An individual designated by the head of any department, agency, or instrumentality of the United States (excluding the Smithsonian Institution) as having specific authority to represent the organization on official matters.

Federal Land Manager

An individual having specific authority to manage any land other than tribal lands which are controlled or owned by the United States, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971.

Federally-listed Species

(see species designations)

Federally-owned treatment works (FOTW)

A facility that is owned and operated by a department, agency, or instrumentality of the Federal government treating wastewater, a majority of which is domestic sewage, prior to discharge in accordance with a permit issued under section 402 of the Federal Water Pollution Control Act (FWPCA).

Fees

Monetary charges by a regulator for some type of service. Examples include permits, registrations, and inspections.

Final Governing Standards (FGS)

The FGS are a comprehensive set of country-specific substantive environmental provisions, typically technical limitations on effluent, discharges, etc., or a specific management practice, with which all DOD components must comply in a given foreign nation. The FGS are developed by the DOD designated executive agent (EA) via a comparative analysis of standards in the Overseas Environmental Baseline Guidance Document (OEBGD), generally applicable host-nation laws, and relevant international agreements. The FGS generally include the standards determined by the EA to be more protective of human health and the environment.

Finding of suitability for early transfer (FOSET)

The primary purpose of a finding of suitability for early transfer (FOSET) is to document that the property is suitable for early transfer for the use intended by the transferee, and the intended use is consistent with protection of human health and the environment. A FOSET must demonstrate that the deed or other agreement proposed to govern the transfer between the United States and the transferee of the property contains the appropriate response action assurances specified in CERCLA Section 120(h)(3)(C)(ii); the Federal agency requesting the deferral has provided

notice, by publication in a newspaper of general circulation in the vicinity of the property, of the proposed transfer and of the opportunity for the public to submit, within a period of not less than 30 days after the date of the notice, written comments on the suitability of the property for transfer; and the deferral and the transfer of the property will not substantially delay any necessary response action at the property.

Finding of suitability to lease (FOSL)

A finding of suitability to lease (FOSL) is the document that conveys the result of the evaluation process used to determine that DOD property is environmentally suitable to lease. The determination of suitability to lease property is made only when the intended use of the leased property is consistent with protection of human health and the environment and will not interfere with any existing or planned environmental restoration activities. A FOSL is not required, unless deemed necessary by the DOD Component, for easements for use of real property. The FOSL and the process for preparing one are similar to the FOST and its preparation process. Similar to the FOST, preparation of a FOSL does not obviate the need to comply with the National Environmental Policy Act (NEPA).

Finding of suitability to transfer (FOST)

The primary purpose of a finding of suitability to transfer is to document that the property is environmentally suitable for transfer by deed under CERCLA and DOD FOST Guidance. The FOST process was developed to meet the statutory and regulatory requirements associated with transferring Federal real estate. A FOST must demonstrate that either the property is uncontaminated or that all necessary remediation has been completed or is in place and operating properly and successfully. These demonstrations are necessary to support the deed covenant required by CERCLA Section 120(h) that all remedial action necessary to protect human health and the environment has been taken. In addition, under CERCLA Section 120(3)(A), a deed to transfer property by the United States must contain (1) notice of the type and quantity of hazardous substances, (2) notice of the time at which such hazardous substance, storage, release, or disposal took place, and (3) a description of any remediation action taken.

Fine

Any monetary penalty or assessment levied for violation of any environmental law or regulation.

Forest management

The science, the art and the practice of managing the natural resources that occur on or in association with forest lands to achieve installation and Army goals.

Forest products

All plant materials in wooded areas that have commercial value.

Formal consultation

The process between the USFWS or NOAA-Fisheries and a Federal agency that commences with the Federal agency's written request for consultation and concludes with the issuance of a BO from the USFWS or NOAA-Fisheries.

Formerly used defense sites (FUDS)

A FUDS is defined as a facility or site (property) that was under the jurisdiction of the Secretary of Defense and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances. By DERP policy, the FUDS program is limited to those real properties that were transferred from DOD control prior to 17 October 1986. FUDS properties can be located within the 50 States, District of Columbia, Territories, Commonwealths, and possessions of the United States.

Garrison commander (GC)

The GC is a military officer, Lieutenant Colonel or Colonel, selected by the Department of the Army. The GC commands the garrison, and is responsible for day-to-day operations to maintain living and working conditions for all personnel on the installation. The GC is the lead for base support operations management for the senior mission commander/installation commander (SMC/IC). The GC is rated by the Regional Director and senior rated by the mission commander, either the IC or SMC, as applicable. The GC is IMCOM's executive agent at installation level, providing IMCOM services and obtaining resources through IMCOM channels. The GC also provides continuity of installation command during mission activity deployments. The GC may be appointed as Summary Courts Martial convening authority or Special Courts Martial convening authority for the installation and its supported area. In some cases, the senior IMCOM official on an installation may be a civilian, the Garrison Manager (GM). A GM, as the civilian equivalent of a GC, has the same responsibility and authority as the military counterpart, with the exception of Uniform Code of Military Justice (UCMJ) and command authority, as defined by AR 600-20 (para 1-5a). The GC/GM:

- a. Commands the U.S. Army Garrison.
- b. Provides IMCOM services in accordance with respective guidance and common levels of support.

- c. Coordinates and integrates the delivery of garrison support activity services.
- d. Prioritizes requirements and support operations.

Generator

See Hazardous waste generator.

Grounds

This definition is used to classify installation acreage according to the level of grounds maintenance required and includes all land and water acreage for which an installation commander has responsibility (including satellite areas). Grounds are grouped into the following three categories:

- a. Improved grounds. This category includes acreage on which intensive grounds maintenance activities must be planned and performed annually as fixed requirements. Activities include mowing, irrigation, fertilization, cultivation, aeration, seeding, sodding, spraying, pruning, trimming, weed, dust and erosion control, drainage, planting for landscape effect, wind and sound abatement, and other intensive practices.
- b. Semi-improved grounds. This category includes areas on which periodic recurring grounds maintenance is performed but to a lesser degree than on improved grounds. Practices normally include such cyclic variables such as soil sterilization, weed and brush control, drainage maintenance, mowing for fire protection and major land repair/restoration/rehabilitation that may result from mission activities. Semi-improved grounds acreage may be combined with improved grounds acreage for reporting purposes only when two categories of grounds (improved and other than improved) are used.
- c. Unimproved grounds. All other acreage (including water areas, areas under buildings and surfaced areas) not classified as improved or semi-improved. Practices and intervals of attention are generally unpredictable such as might evolve from flood, fire, insects, or disease epidemics.

Groundwater

Water contained within the earth's subsurface that is under pressure equal to or greater than atmospheric pressure.

Habitat

An area where a plant or animal species lives, grows, and reproduces, and the environment that satisfies any of their life requirements.

Harmful discharge (of oil)

Harmful discharges are such that they do at least one of the following:

- a. Violate applicable water quality standards.
- b. Cause a film or sheen upon, or discoloration of, the surface of the water or adjoining shorelines.

Hazardous chemical

A hazardous chemical is defined in 40 CFR 355 and 370 which implement the Emergency Planning and Community Right-to-Know Act (EPCRA). Those sections define hazardous chemical as defined under Paragraph (c), Section 1200, Part 1910, Title 29, Code of Federal Regulations (29 CFR 1910.1200), except that such term does not include the following substances:

- a. Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.
- b. Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.
- c. Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and used by the general public.
- d. Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.
- e. Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

Hazardous material

A material as defined by Federal Standard, Material Safety Data, Transportation Data and Disposal Data for Hazardous Materials Furnished to Government Activities ((FED-STD-313C, 3 April 96) (The General Services Administration (GSA) has authorized the use of this Federal standard by all Federal agencies)).

- a. Any item or chemical which is a "health hazard" or "physical hazard" as defined by the Occupational Safety and Health Act (OSHA) in 29 CFR 1910.1200, which includes the following:
 - (1) Chemicals which are carcinogens, toxic, or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucus membranes.

(2) Chemicals which are combustible liquids, compressed gases, explosives, flammable liquids, flammable solids, organic peroxides, oxidizers, pyrophorics, unstable (reactive) or water-reactive.

(3) Chemicals which in the course of normal handling, use, or storage operations may produce or release dusts, gases, fumes, vapors, mists or smoke which have any of the above characteristics.

b. Any item or chemical which is reportable or potentially reportable or notifiable as inventory under the requirements of the Hazardous Chemical Reporting (40 CFR 370), or as an environmental release under the reporting requirements of the Toxic Chemical Release Reporting: Community Right To Know (40 CFR 372), which include chemicals with special characteristics which in the opinion of the manufacturer can cause harm to people, plants, or animals when released by spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other receptacles).

c. Any item or chemical which, when being transported or moved, is a risk to public safety or an environmental hazard and is regulated as such by one or more of the following:

- (1) Department of Transportation Hazardous Materials Regulations (49 CFR 100-180).
- (2) International Maritime Dangerous Goods Code of the International Maritime Organization.
- (3) Dangerous Goods Regulations of the International Air Transport Association.
- (4) Technical Instructions of the International Civil Aviation Organization.
- (5) U.S. Air Force Joint Manual, Preparing Hazardous Materials for Military Air Shipments (AFJMAN 24-204).

Hazardous substance

A substance as defined by section 101(14) of CERCLA.

a. For the purposes of this regulation a hazardous substance is any of the following:

- (1) Any substance designated pursuant to section 311(b)(2)(A) of the CWA.
- (2) Any element, compound, mixture, solution, or substance designated pursuant to section 102 of the CAA.
- (3) Any HW having the characteristics identified under the RCRA.
- (4) Any toxic pollutant listed under 15 USC 2601, et seq. (TSCA).
- (5) Any hazardous air pollutant (HAP) listed under section 112 of the CAA.
- (6) Any imminently hazardous chemical substance or mixture with respect to which the EPA Administrator has taken action pursuant to subsection 7 of 15 USC 2601, et seq. (TSCA).

b. The term does not include:

- (1) Petroleum, including crude oil or any fraction thereof, which is not otherwise specifically listed or designated as a hazardous substance in paragraph a above.
- (2) Natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas usable for fuel).
- (3) A list of hazardous substances is found in Section 4, Part 302, Title 40, Code of Federal Regulations (40 CFR 302.4).

Hazardous waste (HW)

A waste identified in Section 3, Part 261, Title 40, Code of Federal Regulations (40 CFR 261.3) or applicable foreign law, rule, or regulation (see also solid waste).

Hazardous waste disposal

As defined in 40 CFR 260.10, disposal means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or HW into or on any land or water so that such solid waste or HW or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

Hazardous waste generator

The HW generator is defined in 40 CFR 260.10 and DOD 4715.5-G (OEBGD) C6.2.3. Any person or activity (unit, organization, or tenant), whose act or process produces HW identified or listed in part 261.10 or whose act first causes a HW to become subject to regulation. For reporting purposes in the Army, the GC is considered the generator. For fiscal purposes, the generator is the unit.

Hazardous waste storage

As defined in 40 CFR 260.10, the holding of HW for a temporary period, at the end of which the HW is treated, disposed of, or stored elsewhere.

Hazardous waste treatment

As defined in 40 CFR 260.10, any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any HW so as to neutralize such waste, or so as to recover

energy or material resources from the waste, or so as to render such waste non-hazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

Historic district (under NHPA)

A geographical area encompassing a number of historic properties (see historic property below).

Historic property (under NHPA)

Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places (NRHP) maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian organization and that meet the National Register criteria.

Inadvertent discovery (under NAGPRA)

Inadvertent discovery means the unanticipated encounter or detection of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of Federal or tribal lands.

Incidental take

For 16 USC Chapter 35 (ESA) incidental take is defined as "take of a listed fish or wildlife species that results from , but is not the purpose of, carrying out an otherwise lawful activity by the Federal Agency or applicant (50 CFR 402.02).

Indian Tribe

Indian Tribe means an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 USC 479a.

Inspection

Any visit by a regulatory agency, with legal authority, for the purpose of assessing regulatory compliance.

Installation

An aggregation of contiguous, or near contiguous, real property holdings commanded by a centrally-selected commander. Installations represent management organizations. An installation may be made of one or more sites. In addition, two types of "virtual" installations exist within the Army. The Army National Guard has virtual installations, identified as each state commanded by the Adjutant General, under which are Readiness Centers or sites. Each Army Reserve regional readiness command is, likewise, defined as a virtual installation under which Reserve centers are identified as sites.

Installation Commander (IC)

The IC is usually the senior mission commander (SMC) residing on the installation or in the surrounding community. The IC is responsible for mission activity services. The IC may be appointed as General Courts Martial convening authority for the installation and its support area.

a. The IC's installation management responsibilities include:

- (1) Senior rate the GC.
- (2) Act as principal customer advocate to the GC.
- (3) Serve as the senior Army spokesperson to the surrounding community.
- (4) Provide installation management services that are the responsibility of the senior mission activity.
- (5) Oversee and prioritize force protection implementation.

(6) Approve priorities for training and training support services, mission support, MCA projects, well being programs and force protection.

(7) Approve installation-level policies for Soldiers in accordance with respective Army regulations.

b. The IC's responsibilities may change in instances where the IC is remotely located away from the installation and does not have day-to-day oversight of installation activities.

Installation corrective action plan (ICAP)

A comprehensive plan developed by each installation that lists Environmental Performance Assessment System (EPAS) findings, proposed corrective actions, and the status of the findings. Installations are required to enter the ICAP in the EPAS software, and provide a copy to their commanders for review every year.

Installation Engineer

The installation level engineer responsible for the management, operation and maintenance of all real property to include: buildings, pavements, utility systems, natural and cultural resources, and environmental programs.

Installation Pest Management Coordinator

The individual officially designated by the installation commander to coordinate and oversee the installation pest management program and installation pest management plan. Pest management coordinators will be certified as pesticide applicators if their job responsibilities require them to apply or supervise the use of pesticides.

Integrated cultural resources management plan (ICRMP)

A 5-year plan developed and implemented by an installation commander to provide for the management of cultural resources in a way that maximizes beneficial effects on such resources and minimizes adverse effects and impacts without impeding the mission.

Integrated natural resources management plan (INRMP)

The installation commander's adaptive plan for managing natural resources to support and be consistent with the military mission while protecting and enhancing those resources for multiple use, sustainable yield, and biological integrity. The management of natural resources is a series of processes over a long period. The INRMP provides incremental steps to achieve those long-term goals, and normally includes a five-year schedule of activities.

Integrated pest management

Integrated pest management (IPM) is a sustainable approach to managing pests by combining biological, cultural, physical, and chemical tools in a way that minimizes economic, health, and environmental risks.

Integrated pest management plan

The IPMP is a long-range, comprehensive, planning and operational document required by DODI 4150.7 to ensure the establishment and maintenance of a safe, effective, and environmentally sound program for preventing and controlling damage to human health, facilities, infrastructure, materiel, or the environment that may be caused by problem species of insects, plants, animals, etc.

Integrated solid waste management

A practice using several alternative waste management techniques to manage and dispose of specific components of the municipal solid waste stream. Waste management alternatives include source reduction, recycling, composting, energy recovery, and land filling. (From EPA, Decision Maker's Guide, Volume II).

Integrated Training Area Management (ITAM) Program

The Army program for the management and sustainment of military training and testing lands, and other land uses which provides for: standardized range and training land assessment (RTLA) to inventory and monitor land; rehabilitation, revegetation and maintenance technologies; sustainable range awareness; decision support systems; and integration of military training requirements with land capabilities.

International agreement

An international agreement is a multilateral or bilateral treaty, a base rights or access agreement, a Status of Forces Agreement (SOFA), including practices and standards established pursuant to such agreement.

Invasive species

An alien species whose introduction causes or is likely to cause economic or environmental harm or harm to human health. Alien species means with respect to a particular ecosystem, any species, including its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem.

International Organization for Standardization (ISO) 14000/14001

ISO 14000 is a group of voluntary international standards addressing environmental management systems, environmental auditing, environmental labeling, environmental performance evaluation, and life cycle assessments. The standards were developed by the International Organization for Standardization (ISO) and are commonly referred to as the ISO 14000 series. The series provides an organization with a systematic approach to environmental management. ISO 14001 provides the detailed specifications and requirements for an environmental management system, or EMS. A complete copy of the standard is available on the Defense Environmental Network and Information Exchange (DENIX).

Jeopardize the continued existence of

To engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of

both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

Land Condition Trend Analysis (LCTA) methods

Standardized land (soil, vegetation, topographic and wildlife) inventory and monitoring procedures used for the analysis and comparability of Army lands over time.

Land management

The planning and execution of programs to improve, utilize and maintain all land and water areas for the greatest long-term net public benefit while supporting the military mission. Included are subordinate land uses that are mutually compatible and consistent with maintaining environmental qualities.

Land use planning zone (LUPZ)

A contour that is used to account for days of higher than average operations. Noise sensitive land uses are compatible within the LUPZ.

Leak (release) detection system

A system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of product waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (for example, daily visual inspections for releases into the secondary containment system of the aboveground tank) or consist of an interstitial monitoring device designed to continuously and automatically detect the failure of the primary or secondary containment structure in the presence of a release of HW into the secondary containment structure.

Lease

A written agreement which conveys a possessory interest in real property, usually exclusive, for a period of time for a specified purpose.

Lifecycle cost analysis

Determination of expenses incurred of a product or process over its entire existence. It includes all the cost of mining the raw materials to the eventual destruction and/or disposal of the product or process.

Listed hazardous substance

A substance designated under any of the following (any HW listed under or having the HW characteristics identified according to section 3001 of the RCRA & any substance listed under section 102 of CERCLA):

- a. Sections 307(a) and 311(b)(2)(A) of CWA.
- b. Section 112 of CAA.
- c. Section 7 of 15 USC 2601, et seq. (TSCA).

Listed species

Any species of fish, wildlife, or plant which has been determined to be endangered or threatened under section 4 of 16 USC 35 (ESA). Listed species are found in 50 CFR 17.11–17.12.

Low-level radioactive waste (LLRW)

Radioactive waste not classified as high level radioactive waste, transuranic waste, or a byproduct material as defined in subsection 11(i)(2) of Section 2011, Title 42, United States Code, (42 USC 2011, Atomic Energy Act). See also radioactive material below.

Materiel

All items (including ships, tanks, self propelled weapons, aircraft, etc., and related spares, repair parts, and support equipment, but excluding real property, installations, and utilities) necessary to equip, operate, maintain, and support military activities without distinctions as to its application for administrative or combat purposes.

Measure of merit (MOM)

An objective criterion used to measure progress in achieving established DOD environmental performance goals.

Memorandum of agreement (under NHPA)

The document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

Memorandum of understanding (MOU)

A written document executed by the parties which establishes policies or procedures of mutual concern. It does not require either party to obligate funds and does not create a legally binding commitment.

Military munitions

Military munitions means all ammunition products and components produced for or used by the armed forces for national defense and security, including ammunition products or components under the control of the DOD, the USCG, the Department of Energy, and the ARNG. The term includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. The term does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components, except that the term does include non-nuclear components of nuclear devices that are managed under the nuclear weapons program of the Department of Energy after all required sanitization operations under 42 USC 2011 (Atomic Energy Act) have been completed. (10 USC 2710(e)(3)(A) and (B)).

Military munitions response

DOD response actions (removal or remedial) to investigate and address the explosives safety, human health, or environmental risks presented by munitions and explosives of concern (MEC), discarded military munitions (DMM) and MC. (The response could be as simple as a notification to the community with an education program about the hazards posed by military munitions and how to avoid them, or as complicated as a long-term response action involving sophisticated technology, specialized expertise, and significant resources.)

Monitoring

The assessment of emissions and ambient air quality conditions. The following monitoring techniques are used:

- a. Emission estimates.
- b. Visible emission readings.
- c. Diffusion or dispersion estimates.
- d. Sampling or measurement with analytical instruments

Multiple use

The integrated management of all natural resources, each with the other, to achieve the optimum use and enjoyment while maintaining the environmental qualities, ecological relationships and aesthetic values in proper balance.

Municipal Separate Storm Sewer System (MS4)

Any conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels or storm drains) owned by a state, city, local municipality, or Federal government and that is designed for the collection and conveyance of storm water, which is not combined with a sanitary sewer and not part of a publicly-owned treatment works (POTW).

Munitions and explosives of concern (MEC)

This term, which distinguishes specific categories of military munitions that may pose unique explosives safety risks, means:

- a. UXO, as defined in 10 USC 101(e)(5)(A);
- b. Discarded military munitions (DMM), as defined in 10 USC 2710(e)(2); or
- c. MC (e.g., trinitrotoluene (TNT), cyclotrimethylenetrinitramine (RDX)), as defined in 10 USC 2710(e)(3), present in high enough concentrations to pose an explosive hazard.

Munitions constituents (MC)

Any material originating from UXO, discarded military munitions (DMM), or other military munitions, including explosive and non-explosive materials, and emission, degradation, or breakdown elements of such ordnance or munitions. (10 USC 2710)

Munitions response

Response actions, including investigations, removal actions, and remedial actions to address the explosives safety, human health, or environmental risk presented by MEC, DMM, or MC.

National Environmental Policy Act (NEPA)

U.S. statute that requires all Federal agencies to consider the potential effects of proposed actions on the human and natural environment.

National Pollutant Discharge Elimination System (NPDES) permit

A permit issued pursuant to section 402 of the FWPCA. A NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

National Register of Historic Places (NRHP)

The nation's inventory of known historic properties that have been formally listed by the National Park Service (NPS). The NRHP is administered by the NPS on the behalf of the Secretary of the Interior. National Register listings include districts, landscapes, sites, buildings, structures, and objects that meet the set of criteria found in 36 CFR 60.4

National Response Team (NRT)

A team of representatives from the primary and advisory agencies that serves as the national policy-making body for planning and preparedness actions to prevent and minimize accidental pollution discharges.

Native American Graves Protection and Repatriation Act (NAGPRA) Items

Human remains, funerary objects, sacred objects, or objects of cultural patrimony that are excavated intentionally from or inadvertently discovered on Federal or tribal lands.

Native Hawaiian Organization

Any organization that serves and represents the interests of, has a primary stated purpose to provide services to, and has expertise in Native Hawaiians and Native Hawaiian affairs. Such organizations must include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna 'O Hawaii Nei.

Natural resources

The viable and/or renewable products of nature and their environments of soil, air, and water. Included are the plants and animals occurring on grasslands, rangelands, croplands, forests, lakes, and streams.

Noise zones I, II, and III

Land use planning areas for the purpose of maintaining uses that are compatible with the existing and future noise environments.

Non-Federal

Any entity that is not part of a department, agency, or instrumentality of the Federal government of the United States.

Non-point source

Diffuse sources of pollution (that is, without a single point of origin or not introduced into a receiving water from a discrete conveyance). Pollutants are generally carried off the land by stormwater or snow melt. Common non-point sources include agriculture, forestry, urban, construction, dams, channels, land disposal, saltwater intrusion, and city streets.

Noxious weed

Plant species identified by Federal or State agencies as requiring control or eradication.

Off-road vehicle (ORV)

A vehicle designed for travel on natural terrain. The term excludes a registered motorboat confined to use on open water and a military, emergency, or law enforcement vehicle during use by an employee or agent of the Government or one of its contractors in the course of employment or agency representation.

Oil

Oil or petroleum products of any kind or in any form, and oil mixed with wastes other than dredged spoil.

On-scene coordinator (OSC)

The Federal official pre-designated by EPA or USCG to coordinate and direct Federal responses under subpart D, and removals under subpart E, of 40 CFR 300 (National Oil and Hazardous Substances Pollution Contingency Plan); or

- a. The DOD or U.S. Department of Energy official designated to coordinate and direct the removal actions from releases of hazardous substances, pollutants, or contaminants where either the release is on, or the sole source of the release is from, any facility or vessel under the jurisdiction, custody, or control of their departments respectively; or,
- b. The official designated by any other Federal department or agency to coordinate and direct removal actions other

than emergencies where either the release is on, or the sole source of the release from, any facility or vessel under the jurisdiction, custody, or control of those departments and agencies.

Open burning

The combustion of any material without the characteristics below:

- a. Control of combustion air to maintain adequate temperature for efficient combustion.
- b. Containment of the combustion reaction in an enclosed device to provide enough residence time and mixing for complete combustion.
- c. Control of emission of the gaseous combustion products.

Operating tempo (OPTEMPO)

Operating tempo is the pace of unit training that the Army believes it needs to conduct to maintain its fleet of tracked and wheeled vehicles at a prescribed readiness level. Stated another way, it is a resource gauge the Army measures to indicate the amount of miles or operating hours required to execute a unit commanders training strategy to achieve a given specific readiness level.

Operational noise

The outdoor noise environment consisting of the noise, including ambient noise, from all sources. The noise environment of the work place is not considered operational noise.

Operational range

A range that is under the jurisdiction, custody, or control of the Secretary of Defense and that is used for range activities; or although not currently being used for range activities, that is still considered by the Secretary to be a range and has not been put to a new use that is incompatible with range activities (10 USC 101(e)(3)(A) and (B)). Also includes "military range," "active range," and "inactive range" as those terms are defined in 40 CFR 266.201.

Operational readiness

The umbrella term and supporting program that encompasses all the resources required of a unit to maintain readiness standards.

Organization

Company, corporation, authority, or institution, or part or combination thereof, whether incorporated or not, public or private, that has its own functions and administration.

Outdoor recreation

Recreational program, activity, or opportunity that is dependent on the natural environment. Examples are hunting, fishing, trapping, picnicking, bird-watching, ORV use, hiking and interpretive trails use, wild and scenic river use, and underdeveloped camping areas. Developed or constructed activities such as golf courses, lodging facilities, boat launching ramps, and marinas are not included.

Outgrant

Reference AR 405-80 for specific definitions. A real property legal document which conveys or gives the right to use Army-controlled real property, including leases, permits, licenses, and easements.

Overseas Environmental Baseline Guidance Document (OEBGD)

A set of objective criteria and management practices developed by the DOD, to protect human health and the environment at overseas installations, and to be used by the designated EA during the comparative analysis process used to develop FGS. In addition, the OEBGD contains implementing guidance for executive agents, garrison commanders and DOD components.

Permanent installation

An aggregation of real property holdings under the jurisdiction of the DOD, controlled by and at which an Active Army unit or activity is permanently assigned.

Pest management

The prevention and control of animal and insect disease vectors and other pests that may adversely affect the DOD mission or military operations; the health and well-being of people; or structures, materiel, or property.

Pest management consultant

Personnel who meet the DOD educational and experience criteria for PPMP and who serve at IMCOM, USACHPPM regions, National Guard Bureau (NGB) and higher Army-levels of command. Pest management consultants interpret

and establish program standards for installation programs and are responsible for evaluating and providing technical guidance to support these programs.

Pest management quality assurance evaluator

Personnel technically qualified in the management and oversight of pesticide applicators and pest management contracts by training, per DOD standards, which protect the Government's interest through on-site performance evaluation of commercial contracts involving pest management or other contracts that involve the use of pesticides. See AR 5-20.

Pesticide

Any substance or mixture of substances, including chemical biological control agents, that may prevent, destroy, repel, or mitigate pests and are specifically labeled for use by the EPA. Also, any substance or mixture of substances used as a plant regulator, defoliant, desiccant, disinfectant, or biocide.

Pesticide security

The prevention of intrusion to areas used to store pesticides and other toxic chemicals to ensure that they have appropriate security protections to prevent intruder access to equipment used in mixing, loading, and applying pesticides. Pesticide applicators must have proper authorization and identification.

Pests

Arthropods, birds, rodents, nematodes, fungi, bacteria, viruses, algae, snails, marine borers, snakes, weeds, mollusks, and other organisms (except for excluding microbial/bacterial/viral disease pathogens, but including organisms that may transmit human or animal disease-causing organisms) that adversely affect readiness, military operations, or the well-being of personnel and animals; attack or damage real property, supplies, equipment, or vegetation; or are otherwise undesirable.

Point source

Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.

Pollutant (water)

Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water. A broad term which generally encompasses most material which is added to the water constitutes a pollutant.

Pollution

See environmental pollution.

Pollution prevention

Use of processes, materials, or products that avoid, reduce, or control pollution, which may include recycling, treatment, process changes, control mechanisms, efficient use of resources and material substitution.

Pollution prevention opportunity assessment

Provides the technical and economic information necessary for selecting appropriate pollution prevention techniques.

Pollution prevention plan

A plan developed and maintained by an installation commander that sets forth the installation's contribution to the goals and requirements established by EO 13423, including reductions in use and release of toxic chemicals and ODS and in the generation of HW.

Prescribed burning

Skillful application of fire to natural fuels under conditions of weather, fuel moisture, soil moisture, etc., to allow confinement of the fire to a predetermined area while producing the intensity of heat and rate of spread required to accomplish certain planned benefits. These benefits may include all or one or more objectives of silviculture, wildlife management, grazing, hazard reduction, etc. Its objective is to employ fire scientifically to realize maximum net benefits at minimum damage (if any) and acceptable cost.

Pretreatment (wastewater)

The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant

properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a treatment works.

Pretreatment standard

Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307(h) and (c) of the FWPCA, which applies to Industrial Users. This includes prohibitive discharge limits established pursuant to Section 5, Part 403, Title 40, Code of Federal Regulations (40 CFR 403.5).

Primary agencies (for NRT)

The Federal departments or agencies comprising the National Response Team (NRT); i.e., the Departments of Commerce, Interior, Transportation, and Defense; and the EPA. These agencies have primary responsibility and resources to promote effective operation of the national oil and hazardous substances pollution contingency plan.

Primary drinking water standards

Standards for those contaminants in drinking water, which may cause an adverse health effect on the consumer. In the form of maximum contaminant levels, treatment, techniques, or action levels, these standards are federally enforceable.

Proactive

Taking the initiative by acting rather than reacting to events.

Professional pest management professional

The DOD military officers commissioned in the Medical Service or Biomedical Sciences Corps or DOD civilian personnel with college degrees in biological or agricultural sciences that are in a current assignment that includes pest management responsibilities exercised regularly. The DOD civilian employees also will meet Office of Personnel Management qualification standards. Based on assignment, some PPMP are Certifying Officials.

Programmatic agreement (PA) (under NHPA)

A document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with 36 CFR 800.14(b), NHPA.

Proponent

Proponent identification depends on the nature and scope of a proposed action. Any Army organization may be a proponent (for example, for a project, program, or regulation). In general, the proponent is the unit, element, or organization that is responsible for initiating and/or carrying out the proposed action. The proponent is responsible for programming and/or securing funding for such actions.

Proposed species

A fish, wildlife, or plant species that is proposed in the Federal Register to be listed as endangered or threatened under 16 USC 35 (ESA).

Publicly-owned treatment works (POTW)

Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a State or municipality.

Public water systems

Systems that provide water for human consumption through pipes or other constructed conveyances to at least 15 service connections or serves an average of at least 25 people for at least 60 days a year. There are three types of public water systems:

- a. Community Water System (CWS): A public water system that supplies water to the same population year-round.
- b. Non-Transient Non-Community Water System (NTNCWS): A public water system that regularly supplies water to at least 25 of the same people at least six months per year, but not year-round. Some examples are schools, factories, office buildings, and hospitals which have their own water systems.
- c. Transient Non-Community Water System (TNCWS): a public water system that does not regularly supply water to at least 25 of the same persons over six months per year.

Quarantine

A restraint placed upon the activities or communication of persons or the transport of goods designed to prevent the spread of disease or pests.

Radioactive material

Any material or combination of materials that spontaneously emit ionizing radiation.

Range

A designated land or water area that is set aside, managed, and used for range activities of the DOD. The term includes firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, electronic scoring sites, buffer zones with restricted access, and exclusionary areas. The term also includes airspace areas designated for military use in accordance with regulations and procedures prescribed by the Administrator of the Federal Aviation Administration.

Range activities

Research, development, testing, and evaluation of military munitions, other ordnance, and weapons systems; and the training of members of the armed forces in the use and handling of military munitions, other ordnance, and weapons systems.

Real property

This includes the definition for real property found in the Federal Property Management Regulations, 41 CFR 101-47.103.12.

Reclamation

Regeneration of a material, or processing of a material to recover a usable product. Examples include recovery of lead from spent batteries, or the regeneration of spent solvents.

Recovery

The improvement in the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of 16 USC 35 (ESA).

Recovery plan

A plan developed by the USFWS or NOAA-Fisheries, as required by 16 USC 35 (ESA), for the conservation, survival, and recovery of a listed species.

Recreational waters

Recreational waters are water bodies that are commonly used for recreational purposes. They include, but are not necessarily limited to, swimming pools, water parks, hot tubs, lakes, rivers, and the ocean.

Recycling

The process by which materials otherwise destined for disposal are collected, reprocessed, or remanufactured, and are reused. A distinction exists between onsite recycling (that is, where a waste is discharged from a process, but not from the installation, for recycling) and off-site recycling (that is, where the waste is transported from the generating activity to an off-site recycler).

Regional administrator

The regional administrator of the EPA regional office in which the subject property is located.

Regional Response Team (RRT)

A team of regional Federal representatives of the primary or selected advisory agencies. It acts within its region as an emergency response team that performs functions like those of the NRT.

Regulated tank

A tank constructed above, below, or on the ground, which is regulated by Federal or State authorities because it contains an oil or hazardous substance. Above ground tank requirements are found at 40 CFR 110, underground storage tank (UST) requirements at 40 CFR 280. Exceptions for heating oil tanks are found at 40 CFR 280.12. State regulations may be more stringent.

Release

A discharge of one or more hazardous substances into the environment by any means. Excluded are minor releases within the workplace, emissions from engine exhaust, and normal applications of fertilizer.

Reportable spill or event

A release of a reportable quantity of oil or hazardous substance into the environment. The EPA National Response Center (NRC) is to be notified immediately.

a. For oil (defined by 40 CFR 110): A discharge of such quantities of oil into or upon the navigable waters of the United States, its adjoining shorelines, or the contiguous zone so as to meet the qualifications listed in harmful discharge (of oil) into navigable waters or into or beyond the contiguous zone above.

b. For hazardous substances: Any release of one or more reportable substances in reportable quantities into the environment.

Response action

The cleanup or removal of released hazardous substances from the environment. This includes actions necessary in the event of the threat of release of hazardous substances into the environment; such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances; the disposal of removed material; or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release.

Resource recovery

A term describing the extraction and use of materials and energy from the waste stream. The term is sometimes used synonymously with energy recovery.

Restoration Advisory Board (RAB)

A RAB is a forum of representatives of the DOD, EPA, State and local government, and public representative(s) of the potentially affected community. RAB members can provide input to the Army's environmental restoration program (ERP) at both operating and closing or realigning installations. The RAB reflects the diverse makeup of the community, gives all stakeholders the opportunity to participate in the cleanup process, and make their views known to decision makers.

Reuse

A material is used or reused if it is either:

a. Used as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as a feedstock in another process).

b. Used in a particular function or application as an effective substitute (for example, spent battery acid accumulated by the DRMO could be used in industrial waste-water treatment facilities to precipitate phosphorous, and act as a sludge conditioner).

Risk assessment

Environmental risk assessment is the formal systematic evaluation of any environmental hazard that may pose a risk to human health or the environment. It may include an on-site investigation to determine the existence, nature, severity, and location of hazards and options for reducing the hazards.

Sacred site

Any site that traditional Native American religious leaders use for the practice of traditional Native American religions by their present-day adherents.

Secondary drinking water standards

Standards for those contaminants in drinking water, which may affect the aesthetic quality of the water, but have no adverse health effects. In the form of secondary maximum contaminant levels, these standards are not federally enforceable, but may be enforced by a State regulatory agency.

Senior mission commander (SMC)

The SMC will be a General Officer and designated by Senior Army Leadership. The SMC is responsible for the primary mission activity on several installations. The SMC provides executive level oversight of installation management services to the mission activities and other customers. The SMC need not reside or work on the installation. SMC installation management responsibilities are to:

a. Assist the GC in obtaining resources by advocating priority needs through the Army Commands (ACOMs), Army Service Component Commands (ASCCs), Direct Reporting Units (DRUs), and the IMBOD.

b. Act as the principal customer advocate to the IC and GC.

c. Approve the priorities for mission support, MCA projects, well-being programs and force protection requirements.

d. Provide overall force protection guidance.

e. Senior rate the GC.

Sewage sludge

Any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage.

Significant paleontological resources

Paleontological resources (i.e., fossil remains) associated with events that have made an important contribution to the broad pattern of history or the lives of persons who were of importance in the past, or that yield or may yield information that is important to history or pre-history.

Site

A physically defined location which can be supported by a legal boundary survey which closes a polygon. It can be owned, leased, or otherwise possessed or used. A site may exist in one of three forms: land only; facility or facilities only; or land and all the facilities on it. A site is the sum of all real property at a specific location.

Sludge

Any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant (40 CFR 260.10).

Sole source aquifer

A groundwater source demonstrated to be the only or primary viable source of drinking water for a community or an aquifer that supplies 50 percent or more of the drinking water of an area.

Solid waste

Any discarded material that is not excluded by 40 CFR 261.4(a) or that is not excluded by variance granted under 40 CFR 260.30 and 260.31 (40 CFR 261.2).

Source reduction

Any practice which reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released to the environment prior to recycling, treatment, or disposal, or, any practice which reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants (Pollution Prevention Act (PPA) of 1990).

Source water

The water taken from rivers, reservoirs, or wells for use as drinking water.

Special installation

Special installations are generally very small, mostly industrial, and typically do not have a stand-alone installation staff. Command, control, manpower, and funding remain with the Army Commands (ACOMs), Army Service Component Commands (ASCCs), and Direct Reporting Units (DRUs), while traditional base operations support (BOS) oversight is provided by the IMCOM. These installations primarily use funds other than operation and maintenance funds (i.e., mission funds) to conduct traditional garrison operations in support of its primary mission. Several mission fund types are used in the operation of these installations, including: Army Working Capital Funds (AWCF); transportation working capital funds (TWCF); chemical program funds; Defense Health Program (DHP) funds; procurement Army ammunition (PAA) funds; and research, development, test, and evaluation (RDT&E) funds.

Special State (installation) license

A license prepared and issued by the installation in accordance with 10 USC 670 and the fish and wildlife cooperative plan to individuals participating in hunting, fishing, or trapping activities. It is valid only on the installation where issued. A fee is collected and used for fish and wildlife management activities in accordance with the integrated natural resources management plan (INRMP).

Species designations

The following species designations apply.

a. 16 USC Chapter 35 (ESA).

(1) Endangered species. Any species, plant or animal, which is in danger of extinction throughout all or a significant portion of its range, as listed by the U.S. Department of Interior (DOI).

(2) Threatened species. Any species, plant or animal, which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, as listed by the DOI.

(3) Candidate species. Plant or animal taxa considered for possible addition to the List of T&E Species. These are taxa for which the USFWS has on file sufficient information on biological vulnerability and threats to support issuance of a proposal to list, but issuance of a proposed rule is currently precluded by higher priority actions.

b. State listed species. Any species, plant or animal, which is listed by the appropriate State as threatened or endangered within the State. (Note: these species may not be federally listed).

c. Species At Risk or Habitats. Plant and animal species and associated habitats that are not federally listed as

threatened or endangered under 16 USC Chapter 35 (ESA), but are either federally listed as candidates or are ranked by NatureServe as critically imperiled or imperiled throughout their range.

d. Army Species At Risk or Habitats. Species at risk or habitats that could be listed in the near future and/or for which the listing could have significant impact on military readiness and which are designated by HQDA.

Spill

A generic term, as used in this regulation, which encompasses the accidental and the deliberate but unpermitted discharge or release of a pollutant. For distinction, see discharge classifications, harmful discharge and so forth, potential discharge, release, and reportable spill or event. For comparison, see discharge and federally permitted release.

State historic preservation officer (SHPO) (under NHPA)

The official appointed or designated pursuant to section 101(b)(1) of the act to administer the State historic preservation program or a representative designated to act for the SHPO.

Status of Forces Agreement (SOFA)

Agreement on the stationing or operations of forces to which the United States is a party, such as:

- a.* Multilateral or bilateral stationing or base rights agreement.
- b.* Arrangements or understanding concluded there under.

Storage

The holding of hazardous substances (as defined in this section), other than for a temporary period of less than 30 days, prior to the hazardous substance being either used, neutralized, disposed of, or stored elsewhere.

Storage tank system

Storage tank systems include the tank(s), all connected piping, any ancillary equipment, and the containment system.

Sub-Installation

A grouping of facilities that are under the control of an installation garrison, but are not physically located within the principal installation boundary.

Surface water

All water naturally open to the atmosphere (rivers, lakes, reservoirs, ponds, streams, impoundments, seas, estuaries, and so forth) and all springs, wells, or other collectors directly influenced by surface water.

Surveillance

Thorough inspections or surveys made before and after pest management treatments to determine the presence and prevalence of pests or disease vectors.

Sustainability

Meeting present needs without compromising the ability of future generations to meet their own needs.

Sustainable yield

The production of renewable resources a land or water area can maintain in perpetuity at a given intensity of management without impairment of the resource.

Take

Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. Harass is defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.

Tank

Any stationary device designed to contain an accumulation of used oil (40 CFR 279.1) or HW (260.10), oil (40 CFR 112 and 40 CFR 280.12) or regulated substance (40 CFR 280.12) which is constructed primarily of non-earthen materials (for example, wood, concrete, steel, plastic) which provides structural support.

Technical guide (TG)

Technical guidance prepared by the AFPMB on specific pest management and disease vector control topics. TMs are

available from the DOD AFPMB, Forest Glen Section, Walter Reed Army Medical Center, Washington, DC 20307-5001.

Technical Review Committee (TRC)

TRCs are established as required by CERCLA Section 211 to facilitate review and comment on response actions and proposed actions at Army installations. The Army establishes TRCs for installations where there is no community interest towards establishment of a RAB. Note, however, that the TRC is being replaced by the RAB where appropriate. Installations that already have TRCs should consider converting the committee to a RAB (see Restoration Advisory Board for additional information).

Tenant

An authorized activity located on an installation that is not part of the garrison organization. Tenants include, but are not limited to, military units, the Army and Air Force Exchange Service (AAFES), and the Defense Commissary Agency (DeCA).

Toxic chemical

A chemical listed in 40 CFR 372.65 or added to that list by the EPA and required to be reported yearly in the EPCRA Toxic Releases Inventory.

Toxic pollutant

Those pollutants or combinations of pollutants, including disease-causing agents which, after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will cause death; disease; behavioral abnormalities; cancer; genetic mutations physiological malfunctions, including malfunctions in reproduction; or physical deformations in such organisms or their offspring.

Transfer

Reference AR 405-90. Change in jurisdiction over real property from one Federal agency or department to another, including military departments and defense agencies.

Treatment

Any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any HW so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safe to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

Underground injection

Subsurface emplacement of fluids, often wastes, through a bored, drilled or driven well.

Undertaking

A project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance, and those requiring a Federal permit, license or approval.

Unexploded ordnance (UXO)

UXO are military munitions that:

- a. Have been primed, fused, armed, or otherwise prepared for action.
- b. Have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material.
- c. Remain unexploded, either by malfunction, design, or any other cause. (10 USC 101(e)(5)).

Unintentional Take

As defined for migratory birds (Migratory Bird Treaty Act (MBTA)) - take, that results from, but is not the purpose of, the activity in question, take of this type is sometimes referred to as incidental or indirect.

Unit commander

A commissioned officer of the United States armed forces designated to command a military unit.

U.S. jurisdiction

The 50 states, the District of Columbia, the commonwealths of Puerto Rico and the Northern Mariana Islands, the

territories of Guam and American Samoa, the U.S. Virgin Islands, and any other territory or possession over which the United States has jurisdiction.

Vessel

Any type of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel.

Vulnerability assessment

An assessment of elements in the community that are susceptible to damage if hazardous materials are released.

Waste minimization

Two definitions are:

a. Any source reduction or recycling activity that is undertaken by a generator that results in the reduction of the quantity of HW, or the reduction in toxicity of HW, that is either generated or subsequently treated, stored, or disposed of. Such activities must be consistent with the goals of minimizing present and future threats to human health and the environment.

b. A working definition of waste minimization reflects two types of activities, source reduction or elimination of waste at the point of generation (for example, within a process), and recycling.

Wastewater

The spent or used water from individual homes, a community, a farm, or an industry that contains dissolved or suspended matter.

Water conservation

The beneficial reduction of water uses or water losses.

Water resource

Any groundwater or surface water source and associated (lake or ocean) shoreline. See also surface water, and groundwater.

Watershed

A region or area bounded peripherally by a water parting and draining ultimately to a particular watercourse or body of water.

Waterworks permit

Any permit required to operate a drinking water treatment facility, such as a source water appropriation permit or an operating permit.

Weed

A plant growing where it is not desired.

Wellhead protection area

The surface and subsurface area surrounding a water well or well field supplying a public water system, through which contaminants are reasonably likely to move toward and reach such well or well field.

Wetlands

Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Common terms used to describe various wetlands include marshes, bogs, swamps, small ponds, sloughs, potholes, river overflows, oxbows, mud flats, and wet meadows.

Wildland fire

Any non-structural fire that occurs on unimproved grounds. This includes wildfires and prescribed fires.

Wildlife management

The practical application of scientific and technical principles to wildlife populations and habitats so as to maintain such populations essentially for ecological, recreational, and/or scientific purposes.

Section III

Special Abbreviations and Terms

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Policy Guidance for Management of Historic Properties within the Army National Guard (NGB Memorandum 29 April 2010)



NATIONAL GUARD BUREAU
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ARLINGTON VA 22204-1382

NGB-ARZ-S

29 APR 2010

MEMORANDUM FOR the Environmental Program Managers and Construction
Facilities Managers of all States, Puerto Rico, the US Virgin Islands, Guam, and The
District Of Columbia

SUBJECT: Policy Guidance for Management of Historic Properties within the Army
National Guard

1. References.

- a. AR 200-1, Environmental Protection and Enhancement (2007)
- b. 36 CFR 800, Protection of Historic Properties
- c. 16 USC 470-470w, National Historic Preservation Act of 1966
- d. NGR 415-5, Army National Guard Military Construction Program Development and Execution
- e. NG PAM 415-5, Army National Guard Military Construction Program Execution
- f. NGR 210-20, Real Property Development Planning for the Army National Guard

2. Purpose. This policy provides direction for facilities management actions relating to historic properties in order to comply with the National Historic Preservation Act (NHPA).

3. Goal. The goal of this policy guidance is to improve compliance with environmental and facilities management laws and regulations, reduce costs through proactive management, and enhance stewardship of historic properties. This will require consideration, review and coordination of pending property actions by Construction and Facility Management Officers (CFMOs) and Environmental Program Managers (EPMs)/Cultural Resources Managers (CRMs) to ensure protection of culturally and historically significant properties. Best management practices for this memorandum are included as an enclosure.

4. Policy directs that:

- a. The CRM will provide a list of properties that are eligible for or listed on the National Register of Historic Places (NRHP) to the CFMO regularly and provide updates as necessary.

NGB-ARZ-S

SUBJECT: Policy Guidance for Management of Historic Properties within the Army National Guard

- b. The CFMO will review all proposed major, minor, unspecified minor and maintenance projects and coordinate with the CRM before any allocation of funds and before construction or maintenance to any property eligible for or listed on the NRHP.
- c. The CFMO will ensure due diligence and review projects before alteration, demolition, and/or renovation actions occur.
- d. The CRM will have any building or structure 50 years of age or older evaluated for NRHP eligibility prior to design or implementation of a project and comply with consultation requirements under NHPA.
- e. The CFMO will ensure NHPA compliance is met prior to pursuing actions such as new construction or disposal of Federal property.

5. Responsibilities:

a. CFMO:

- (1) Ensure early coordination and notification of projects with the EPM/CRM's.
- (2) Review all proposed Major, Minor, Unspecified Minor and Maintenance Projects and ensure consultation with the CRM before any allocation of funding or before construction begins. Incorporate design attributes, constraints and materials commensurate with NHPA Section 106 process early to prevent project disruption and additive costs.
- (3) Incorporate design and construction into the facility, site and statewide master plan in order to assist cultural resources management.
- (4) Coordinate with the CRM to ensure compliance with State and Federal regulations for all Army National Guard actions that will remove historic property from the Facilities Inventory Support Plan (FISP), as documented in the Planning Resources for Infrastructure Development and Evaluation (PRIDE).
- (5) Ensure the CRM is provided all construction, maintenance, and repair documentation (420, 1390/91). The CRM approval concludes project review under the NHPA Section 106 process. NGB ARI recommends inclusion of the CRM for In Progress Reviews, Project Meetings or providing of minutes/notes of project meetings to ensure no changes of the project have cultural or historic environmental impacts beyond the initial approved documentation (420, 1390/91).

b. EPM/CRM:

NGB-ARZ-S

SUBJECT: Policy Guidance for Management of Historic Properties within the Army
National Guard

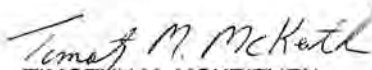
(1) Provide list of properties that are eligible for listing on the NRHP to the CFMO. As new NRHP determinations are made, the CRM will provide an updated list as soon as possible to the CFMO in order to update the PRIDE historic property codes.

(2) Set priorities based upon coordination with the State Master Planner to ensure the NHPA evaluations and inventory review support the programmed actions of Real Property and Construction programs.

(3) Provide signatures demonstrating environmental/cultural review for all construction, maintenance and repair projects requiring documentation (420, 1390/91). This signature concludes the project review under the NHPA Section 106 process. If there are additional cultural resources requirements prior to implementation of the action, a memorandum of record by the CRM will be attached to all program file documentation describing the status of necessary cultural resources compliance associated with the action.

6. The points of contact are COL Michael Bennett, Chief Environmental Programs Division, at 703-607-7768 and COL Rick Nord, Chief, Installations Programs Division, at 703-607-7900. The technical point of contact is Kristin Leahy, NGB Environmental Programs Division Cultural Resource Program Manager, at 703-607-7190.

Encl
as


TIMOTHY M. MCKEITHEN
COL, GS
G4, Army National Guard

CF:
Each State Environmental Program Manager
Each State Cultural Resources Manager
Each State Construction Facilities Management Officer
Each State IG
Each State JA
Each State PAO
NGB-IG
NGB-JA
NGB-PAI-E

Best Management Practices for ARNG Historic Property Policy Guidance

The following are best management practices meant to ensure compliance with cultural resources regulations in long-term planning, maintenance and repair of historic properties and will assist in compliance with this policy guidance. If CRMs and CFMOs choose to utilize these best management practices, they would assist the ARNG in efficiently and effectively managing the cultural resource compliance regulations required for historic properties.

a. Maintenance and Treatment Plans – Once the state ARNG determines a building or structure is eligible for the NRHP under Section 106 or Section 110 of the NHPA, the CRM may choose to complete a Maintenance and Treatment Plan. This plan will help streamline compliance actions for regular maintenance and repair of the historic building. Specifically, a Maintenance and Treatment Plan identifies the current condition of the building and its primary systems, outlines a schedule of necessary maintenance and repairs required to maintain and/or restore the building and systems, and provides a cost analysis for client-designed options such as renovation, rehabilitation, mothballing, and demolition. The plan should include the design specifications for the rehabilitation or replacement product. Although the Maintenance and Treatment Plan contains some pre-design specifications on the building, it should not be used as a replacement for full design specifications in subsequent abatement, renovation, rehabilitation, or demolition scopes of work. Lead: CRM, as funding is available

b. CFMOs will review their Long Range Construction Plans (LRCP), Minor Construction Plans (generally up to 5 years if applicable) and Maintenance Plans (up to 5 years forecasted) in respect to deletion, demolition, transfer or non-utilization (caretaker or other non agency use) that cause and effect inventory reduction or non use. The CRM must review this information in advance of construction or real property actions to include lease, sale, excess, license, easement or demolition. Review of this information includes allocation of time to notify all appropriate parties to comply with NHPA regulations. If this review is not conducted, this may cause disruption to actions or a temporary stay or halt of the actions until compliance and notification is met. Lead: CFMO in coordination with the CRM

c. Economic Reuse - Develop a statewide plan for the economic reuse or disposal of buildings that no longer meet the State or Federal ARNG mission. This concept is an integral part of the Department of Defense's Executive Order 13423 "Strengthening Federal Environmental, Energy, and Transportation Management" which calls for proactive evaluation of mission needs relative to the condition and needs of existing assets within the installation. It is also governed by Executive Order 13514 "Federal Leadership in Environmental Energy and Economic Performance." CFMOs are encouraged to review their long-range inventory reduction plans annually with their CRMs to ensure that all appropriate compliance actions are completed in advance of excess, sale, lease, and/or demolition of any historic properties. Lead: CFMO with coordination with the CRM.

d. Sustainable Design and Historic Preservation - Preservation of buildings corresponds with the goals of the Defense's Executive Order 13423 "Strengthening Federal Environmental, Energy, and Transportation Management and Executive Order 13514 "Federal Leadership in Environmental, Energy, and Economic Performance". Some historic buildings are excellent candidates for sustainable design due to their proven longevity (age), inherent flexible use (open plans), green design (passive heating and cooling systems) and green materials (embodied energy). CFMOs are encouraged to extend application of green design principles beyond new construction to renovations of historic buildings, which have the capacity to achieve high SPIRiT ratings. Lead: CFMO

e. Education/Outreach/Standard Operating Procedures (SOPs) - CFMOs are encouraged to work with state ARNG CRMs to create educational outreach products (briefings, brochures, posters) and SOPs for facility maintenance staff, project management personnel and real property development planners. Lead: CFMO with coordination with the CRM

f. Anti-Terrorism Standards and Emergency Situations-The revised Department of Defense (DoD) Anti-Terrorism Standards for Buildings are applicable for future installation projects, whether the projects involve new construction or renovation/rehabilitation of existing facilities. In the case of renovation/rehabilitation where 50% or more of the gross area of the existing building is renovated or rehabilitated, the existing building will comply with the minimum standards of existing buildings (per UFC 4-010-01, January 2007). This is to include historic buildings or structures, the need to comply with the established standards and will probably trigger cultural resources compliance issues. The CFMO should prepare cost analysis, examine alternatives, and should maximize every effort to maintain culturally and historical attributes, design and implementation of projects to meet NHPA requirements and protect soldiers, equipment and government interests IAW Anti-Terrorism Force Protection Standards. Use of Engineering Security Force Protection Standards can meet requirements and compliance with both programs with the coordination of the State ATFP Officer, Site ATFP Coordinator and CRM. Lead: CFMO with coordination with the CRM

g. Management Controls. Master Planning and Real Property Management Controls reflect consideration of Historic Preservation under two control items: DA PAM 405-45 Appendix A (AUG 2001) items 16 and 25 which will assist Planners and Environmental staff for demolition consideration purposes and NGR 210-20 Appendix B, B-4 Test Question Item 8 which reflect NEPA for proposed actions of construction and Master Planning Program Management. A review by Master Planning staff and Environmental staff should include previous external and internal findings of Management Control compliance to ensure program is proactive and anticipating actions before they occur. Note that with compliance of this memorandum states should indicate these process and review to ensure credit of action of Management Control Program.

h. Agreement Documents. Memorandum of Agreement (MOA) – MOAs are used primarily to outline mitigation measures to be implemented when a federal undertaking will have an adverse affect to property determined eligible for the NRHP. An MOA is an agreement prepared in consultation among the state ARNG, NGB, and the SHPO. Programmatic Agreements (PA) – PAs allow agencies to collectively address a series of undertakings, as opposed to the typical case-by-case review process often dealt with in an MOA. PAs are developed by the lead agency (ARNG), with consultation with NGB. PAs may be cited in granting previous approval of projects, unless the scope or magnitude of the proposal/project action exceeds the limits, constraints or consideration of the PA. The CRM is the responsible authority to determine applicability of the PA and whether it can be cited, or if a separate review is necessary to meet compliance and requirements of NHPA. PAs are typically used to exempt certain categories of undertakings from Section 106 review on an installation, such as regular maintenance of roads, parking lots, or trails; establish an expedited review process for certain categories of repetitive undertakings, such as replacement of windows, doors, or roofs in a historic property or on an installation; or establish a program for the mitigation of adverse effects on a category of historic properties, such as the demolition of World War II temporary structures.

i. Develop an Annual Review Process. This review process between CFMO and CRM can be done via state Real Property Development Planning Boards, Facility Planning Boards, Master Planning or other review processes that incorporate information on property actions, construction and status of NHPA Section 106 projects. At a minimum the review process will consider all currently scheduled actions for the next 12 months. Known actions two years out or greater should be part of the review process and would allow for maximum consideration prior to locking in a commitment of funds, project approval or implementation of the Real Property action.

1. As part of the implementation of the State ARNG's Integrated Cultural Resource Management Plan (ICRMP), the CFMO and the Environmental Program Manager (EPM)/CRM will meet annually 90 days prior to the anniversary of the implementation of the ICRMP to review anticipated upcoming five year projects. The CFMO and CRM will identify in writing historic properties in the state that will be subject to the NHPA Section 106 process as a result of proposed undertakings and buildings that will be removed from the FISP within the next 12 month period. This information will be included in the ICRMP Annual Report, submitted to NGB-ARE, and ICRMP Revisions/Updates.

2. This annual review process between the CFMO and EPM/CRM should, at a minimum, provide the following 3 elements which will be incorporated into the ICRMP Annual Report.

- (a) The ongoing operational use of historic properties (or lands that include historic properties) as a recognized component of long range planning.

(b) An inventory and evaluation of buildings, structures, and lands within the real property inventory as funding is available. The inventories and evaluations will identify historic properties that may be affected by future undertakings and prevent further damage associated with routine maintenance and repair actions. Any building or structure which is 50 years or older must be evaluated for NRHP eligibility prior to an undertaking. Any land disturbing activities require an archaeological inventory prior to the start of an undertaking. Acreage that has not been subject to an archeological inventory should not be disturbed until such time an inventory can be conducted.

(c) The integration of the state ARNG's project programming documents (1390/91s, 420Rs, state capitol budgets, and State and Federal O&M budgets), leases, licenses, and project management documents (work orders, project planning and contracting documents, etc.) will be reviewed to ensure NHPA compliance is met prior to such actions and to ensure the CRM is aware of anticipated undertakings to historic properties.

3. Real Property Inventory (RPI) information, changes, deletions and acquisitions will be available to the CRM by the Director of Plans and Programs/CFMO and is quarterly updated into Master Planning and Real Property Database of Record information. CRMs will set priorities based on coordination with the State Master Planner. This will ensure that the inventory review and registry support the programmed actions of Real Property and Construction programs. Synchronization of effort will assist in preventing a loss of dollars and funding obligation for programmed actions.

Applicability of National Historic Preservation Act Consultation Requirements to Disposal, Change in Use or Demolition of Historic Readiness Centers (NGB Memorandum 15 Feb 2011)



NATIONAL GUARD BUREAU
111 SOUTH GEORGE MASON DRIVE
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FEB 15 2011

ARNG-ILE
ARNG-ILI

MEMORANDUM FOR the Construction Facilities Managers and Environmental Program Managers of all States, Puerto Rico, the US Virgin Islands, Guam, and The District Of Columbia

SUBJECT: Applicability of National Historic Preservation Act Consultation Requirements to Disposal, Change in Use or Demolition of Historic Readiness Centers

1. Purpose. This policy provides clarifications to the applicability of the National Historic Preservation Act (NHPA) to Readiness Centers when directly and indirectly affected by Military Construction (MILCON) projects.

2. References:

- a. AR 200-1: *Environmental Protection and Enhancement*, 13 Dec 07
- b. Advisory Council on Historic Preservation Regulations, "Protection of Historic Properties," (36 CFR 800), 05 Aug 04
- c. National Historic Preservation Act (NHPA) of 1966, as amended (16 USC 470-470w)
- d. Department of Defense Forms 1390/1391
- e. NGB-ARI Policy Memo *Disposal of Real Property and Military Construction*, 20 Feb 04
- f. NGR 415-5, Army National Guard Military Construction Program Development and Execution 18 Jul 03
- g. NGR 420-10, Construction and Facilities Management Office Operations, 11 Jul 03

3. Policy:

The Army National Guard Directorate (ARNG) provides Military Construction (MILCON) funds to state Army National Guard organizations (State ARNGs) to construct new Readiness Centers. Historically, the ARNG and State ARNGs complete NHPA Sec.106 consultation to address potential adverse effects at the new building location. However, relocation of units from one or more historic State ARNG Readiness Center(s) (those eligible for or listed on the National Register of Historic Places (NRHP)) to new Readiness Centers may be considered an indirect adverse effect of the MILCON Readiness Center project. If, per 36 CFR 800.5 (a)(1), it is reasonably foreseeable that a proposed Readiness Center will cause the disposal, change in use or demolition on a direct 1:1 basis, of an existing historic Readiness Center, then the ARNG and State ARNG must also consider the historic Readiness Center as part of the NHPA Section 106 consultation process. In cases when MILCON funds may be used for Readiness Centers intended to replace other State ARNG buildings, Section 106 consultation may be required to assess potential effects.¹

¹ State ARNGs describe current building deficiencies in DoD 1390/91 forms required in the planning stage of MILCON projects. Often, the forms specifically identify ARNG buildings planned for disposal, change in use or demolition. These State ARNG buildings, (and any other historic buildings identified at a later date) should be the subject of NHPA Sec.106 consultation.

ARNG-ILE

SUBJECT: Applicability of National Historic Preservation Act Consultation Requirements to Disposal, Change in Use or Demolition of Historic Readiness Centers

4. Background:

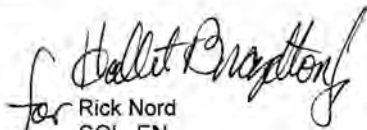
Section 6-4 b. of AR 200-1 sets forth US Army policy for meeting NHPA requirements. Federal funding (including MILCON funds) is one of the clearest examples of a federal "undertaking" (as defined in 16 USC Sec. 470w (7) of the NHPA). NGB MILCON-funded construction must comply with the NHPA. (See NGR 415-5 Sec.1-5 b.) For some time, the scope of potential effects from MILCON-funded ARNG construction projects has been disputed. To address this issue, in 2010 ARNG-ILE completed an evaluation of ARNG policy, collected data on MILCON-funded construction and Readiness Center replacement and coordinated with ARNG-ILI, the Advisory Council on Historic Preservation (ACHP) and the Department of Army, Office of the Assistant Chief of Staff for Installation Management (OACSIM). As a result of these efforts, ARNG-ILE determined that it is reasonably foreseeable that historic Readiness Centers can be affected by MILCON-funded Readiness Center construction. Analysis demonstrated that new construction of MILCON-funded Readiness Centers can result in the disposal/change in use and/or demolition of older but historic Readiness Centers following completion of the new Readiness Center's construction.² It was determined that this is "...one of the reasonably foreseeable effects caused by the undertaking..." as described at 36 CFR Sec. 800.5 (a)(1).

The need for Section 106 consultation for disposal, change in use or demolition applies to State ARNG buildings located on state real property when a federal undertaking is the underlying cause of that disposal, change in use, or demolition. In this way, the NHPA's broad definition of federal undertaking makes Section 106 consultation necessary for historic properties that are privately or State owned if MILCON-funded construction leads to disposal, change in use or demolition of historic Readiness Centers regardless of the agency or organization that carries out the disposition (such as state armory boards, etc.).

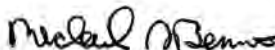
Within states, the ultimate authority to organize force structure and manage real property inventories resides with State ARNG leadership. Generally, these activities are not NHPA undertakings and Section 106 consultation requirements do not apply to them. The policy described herein is limited to specific MILCON-funded construction projects as described in 3. above.

This ARNG-ILE policy has been reviewed and approved by ARNG-ILI.

5. The point of contact is Kristin Leahy, ARNG-ILE-T Cultural Resource Program Manager, at 703-607-7190.



Rick Nord
COL, EN
Chief, Installations
Programs Division



Michael J. Bennett
COL, LG
Chief, Environmental
Programs Division

² Significantly, ARNG-ILI policy requires State ARNGs when building new facilities, to dispose of "an equivalent amount of gross area in other facilities...." See 20 Feb 04 ARNG ILI Memorandum *Disposal of Real Property and Military Construction*.³

iii. Glossary

Advisory Council on Historic Preservation (Council) - The independent Federal agency mandated to advise the President and Federal agencies regarding undertakings that may affect properties listed or eligible for listing in the National Register of Historic Places.

DD Forms 1390/1391 - The DD Forms 1390 and 1391 are the basic programming documents for all MCNG projects. These forms are the only basis for justifying MILCON projects and to receive approval and ultimately funding from NGB, DA, OSD, OMB and Congress. Once approved, these forms document the approved project scope and Federal share for each component of a project. The state may not design or construct beyond this approved level using Federal resources with NGB-ARI approval.

Historic Property - As set forth in 36 CFR Sec. 800.16 I (1), "historic property" means any prehistoric or historic district, site, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places. Includes artifacts, records, and remains related to and located within such properties.

National Historic Preservation Act (NHPA) - 42 U.S.C. 470(a-w) - Establishes historic preservation as a national policy through the protection, rehabilitation, restoration, and reconstruction of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture. The Act provides for a National Register of Historic Places and establishes the Council. Pertinent aspects of the law include Section 106 which requires Federal agencies to allow the Council an opportunity to comment whenever its projects may affect historic properties, and Section 110 which requires Federal agencies to identify, evaluate, inventory, and protect historic properties on lands they control.

Undertaking - As defined by the National Historic Preservation Act, 16 USC Sec. 470w (7) and at 36 CFR 800.16, an undertaking is a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license, or approval.

National Historic Preservation Act (NHPA) Section 106 Requirements for National Environmental Policy Act (NEPA) Record of Environmental Consideration (REC) Forms (NGB Memorandum 25 May 2012)



NATIONAL GUARD BUREAU
111 SOUTH GEORGE MASON DRIVE
ARLINGTON VA 22204-1382

ARNG-ILE

25 MAY 2012

MEMORANDUM FOR ENVIRONMENTAL PROGRAM MANAGERS

SUBJECT: National Historic Preservation Act (NHPA) Section 106 Requirements for
National Environmental Policy Act (NEPA) Record of Environmental Consideration
(REC) Forms

1. **PURPOSE.** This memorandum updates the Army National Guard Environmental Division (ARNG-ILE) guidance to the state Army National Guard (ARNG) Environmental Offices on their compliance requirements for NHPA associated with the completion of NEPA Records of Consideration (RECs).

2. **APPLICABILITY.** This policy guidance applies to all state ARNG installations using a Categorical Exclusion (CX) as a means to comply with the NEPA. This guidance will assist in the integration of the NHPA and the NEPA processes for successful completion of the NEPA checklist and REC documentation. This guidance is not applicable to projects requiring an Environmental Assessment (EA) or Environmental Impact Statement (EIS). This memorandum supersedes previous guidance issued 18 March 2009.

3. **GENERAL.** The NHPA is a separate law requiring compliance regardless of the level of NEPA. The NHPA ensures effects to cultural resources are properly considered. The NEPA is an umbrella law that ensures an agency's effect on the environment as a whole is taken into consideration prior to project implementation. Compliance with the NHPA and the NEPA are not mutually inclusive or exclusive.

4. Each state (installation) is required to designate a Cultural Resources Manager (CRM) per AR 200-1, Section 6-4a(3). If a state controls historic properties as defined by 36 CFR 800, it is highly recommended the state ensures its CRM has the appropriate experience and/or education to manage those properties in accordance with the NHPA.

5. The NHPA **applies** for actions within a NEPA REC when the following **two** criteria are met:

a. Criterion 1: When the definition of an NHPA "undertaking" is met (36 CFR 800.16(y)).

"Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval."

ARNG-ILE

SUBJECT: National Historic Preservation Act (NHPA) Section 106 Requirements for National Environmental Policy Act (NEPA) Record of Environmental Consideration (REC) Forms

Translation – This applies when the ARNG Directorate is funding or approving an action on either state-owned/state-operated (SO/SO), federally-owned property OR the state is performing an action on Federal property regardless of funding source. In addition, actions requiring Federal permits trigger NHPA compliance, including United States Army Corps of Engineers (USACE) wetlands permits.

b. Criterion 2: When an activity "*has the potential to cause effects to historic properties*" (36 CFR 800.3(a)(1)).

(1) Examples of actions (undertakings) requiring NHPA compliance:

- Ground disturbance of any kind (even if previously disturbed)
- New construction
- Any renovation/repair work to a building that is older than 50 years of age (i.e. window replacements, roof replacement, guttering, tuck-pointing, etc)
- Demolition of a building/structure
- Altering the viewshed of a historic, or eligible/listed National Register (NRHP) property

(2) If there are questions regarding what actions have the potential to cause effects to historic properties, contact an ARNG-ILE-T Program Manager.

6. When the NHPA **does not** apply:

- a. Renewal of leases (Does not meet Criterion 2 above).
- b. When the action is not within or immediately adjacent to and/or visible from other NRHP eligible/listed properties.
- c. Work to most buildings constructed less than 50 years ago (does not meet Criterion 2 above). There are exceptions to this, however: if a building meets the NHPAs "Exceptional" Criterion G.
- d. Work on buildings constructed over 50 years ago but do not meet Criterion 1 above (example – State ARNG owned/operated buildings renovated with state ARNG funds only). Note: State Preservation laws may apply.

7. The following outlines specific guidance for each question regarding Cultural Resources on the NEPA REC checklist (questions 17-26).

a. ***Question 17 – Does the project involve an undertaking to a building or structure that is 50 years of age or older?***

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SUBJECT: National Historic Preservation Act (NHPA) Section 106 Requirements for
National Environmental Policy Act (NEPA) Record of Environmental Consideration
(REC) Forms

Use definition of undertaking above in para 5.a to answer this question accurately.

b. Question 18 – Has the building or structure been surveyed for the National Register of Historic Places (NRHP)?

Evaluate for NRHP status all buildings or structures 50 years of age or older. Prior evaluations, regardless of the date of evaluation, are sufficient in most cases.

c. Question 19 – Is the building or structure eligible for or listed on the National Register of Historic Places?

If no NRHP evaluation has occurred (Question 18), the building must be considered NRHP-eligible until an official determination occurs. This determination is made in consultation with the State Historical Program Officer (SHPO).

The state ARNG is responsible for documenting that NRHP eligibility was determined and the SHPO concurred with the findings, but these consultation letters do not need to be included in the REC paperwork. This documentation must be made available upon request of the ARNG-ILE Program Manager and for Environmental Performance Assessment System (EPAS) Inspections.

d. Question 20 – Does the action involve ground disturbing activities?

Use definition of undertaking above in para 5.a to answer this question accurately. Note that previous ground disturbance is irrelevant when answering this question.

e. Question 21 – Has an archaeological inventory or research been completed to determine if there are any archaeological resources present?

The area affected by ground disturbance must be evaluated for NRHP-eligible archaeological sites. The surveys can be completed several years before the proposed action under review within the REC; however, keep in mind that NRHP determinations can change as a result of new information or changes in archaeological techniques, methodologies, and standards. **The surveys should include determinations of eligibility.**

The state ARNG is responsible for documenting that NRHP eligibility was determined and the SHPO concurred with the findings, but these consultation letters do not need to be included in the REC paperwork. This documentation must be made available upon request of the ARNG-ILE Program Manager and for EPAS Inspections.

ARNG-ILE

SUBJECT: National Historic Preservation Act (NHPA) Section 106 Requirements for National Environmental Policy Act (NEPA) Record of Environmental Consideration (REC) Forms

f. Question 22 – In reviewing the undertaking, under the National Historic Preservation Act (NHPA) (for both above and below ground resources), what determination was made by the State ARNG?

Use this question to capture the determination of effect made for this undertaking, in consultation with the SHPO. The SHPO concurrence letters do not need to be included in the REC paperwork.

(1) If the action is **not an undertaking requiring consultation under Section 106**, select "No 106 undertaking" and skip the remaining cultural resources questions (# 23-26); Section 106 does not apply to these types of actions, and no correspondence with the SHPO or the Tribes is necessary. In order for this selection to apply, the action must be of the type that has no potential to affect historic properties (i.e. no ground disturbance, no alteration of structures or landscape). New leases or lease renewals are the most common types of actions that will fall into this category.

(2) If there are **no historic properties** present within the Area of Potential Effect (APE), select "No properties affected" on the REC Checklist. Record the date that the SHPO letter concurring with this determination was sent. The SHPO concurrence letter does not need to be included in the REC paperwork.

(3) If there are historic properties present within the APE, and the State ARNG has determined that there will be **no adverse effect** to these properties as a result of this undertaking, select "No adverse effect" on the REC Checklist. Record the date that the SHPO letter concurring with this determination was sent. The SHPO concurrence letter does not need to be included in the REC paperwork.

(4) If the state ARNG determines that the undertaking will have an **adverse effect** on a historic property (above or below ground), select "Adverse effect" on the REC Checklist. Additional consultation to mitigate the adverse effects will be required in this case (see Question 23).

g. Question 23 – Has the State ARNG addressed the adverse effect?

If there is an adverse effect, a signed NHPA agreement document (Memorandum of Agreement [MOA] or Programmatic Agreement [PA]) will be required before the REC will be approved. Notify ARNG-ILE CRMs as soon as possible for assistance in developing the agreement document. Develop agreement documents in consultation with stakeholders and following applicable laws and ARNG-ILE guidance. If the agreement is to be reviewed and signed by ARNG-ILE, the State ARNG, the SHPO, and the Advisory Council on Historic Preservation (ACHP) (if they so choose) must be included in the development. Record the date of execution and a brief explanation of the agreed-upon mitigation measures in Question 23a.

ARNG-ILE

SUBJECT: National Historic Preservation Act (NHPA) Section 106 Requirements for
National Environmental Policy Act (NEPA) Record of Environmental Consideration
(REC) Forms

h. Question 24 – Per DoDI 4710.02, did the State ARNG determine that tribal consultation was necessary for this project?

Tribal consultation is required for actions that meet the criteria for an undertaking as defined above. Consultation is only required with federally recognized tribes with an interest in the project area. Consultation with tribes for the creation of Integrated Cultural Management Resource Plans (ICRMPs) and/or Integrated Natural Resource Management Plans (INRMPs) or previous EAs is not considered sufficient. **All correspondence with tribes should be captured within a Memorandum for Record (MFR);** however, MFRs do not need to be included in the REC paperwork.

(1) If the state ARNG has a signed agreement document [Memorandum of Understanding (MOU)] in place that clarifies the types of undertakings the tribes are interested in consulting, the state ARNG will follow those agreed-upon procedures. Clearly state this information in Question 24a.

(2) If the state ARNG has regular consultations with tribes and the action described within the REC is discussed with tribes during this time OR the state ARNG knows, based on these regular consultations, that the tribes are not interested in the project area or the particular type of undertaking, this consultation will suffice for the REC. Clearly state this information in Question 24a and ensure it is documented.

(3) If the state ARNG cannot document recent (within 2 years) consultation with tribes discussing the project area, then the state must consult for actions associated with RECs as stipulated within the NEPA Handbook with tribes in a minimum of one certified letter.

(4) If consultation was completed, develop an MFR capturing the process, and record the date of the MFR on the REC Checklist. Copies of the tribal letters and the MFR do not need to be included in the REC paperwork; however, they should be available upon request of the ARNG-ILE Program Manager and for EPAS Inspections.

i. Question 25 – Did the Tribes express an interest or respond with concerns about this project?

If YES, additional consultation with the tribes is required. Question 26 addresses this issue.

If NO, develop an MFR documenting that the Tribes have no interest or concerns, and record the date of the MFR on the REC Checklist. Copies of the tribal letters and the MFR do not need to be included in the REC paperwork; however, they should be available upon request of the ARNG-ILE Program Manager and for EPAS Inspections.

ARNG-ILE

SUBJECT: National Historic Preservation Act (NHPA) Section 106 Requirements for
National Environmental Policy Act (NEPA) Record of Environmental Consideration
(REC) Forms

j. **Question 26 – Has the State ARNG addressed the Tribal concerns?**

Additional consultation is required to address concerns expressed by the tribes, which may result in the development of an MOU or MOA. Notify ARNG-ILE CRMs as soon as possible if the state ARNG is pursuing this course of action with the tribe(s). ARNG-ILE CRMs as they should be a part of development of the agreement document. These concerns must be adequately addressed before the REC can be signed.

7. The point of contact is Rebecca Klein, Cultural Resources Program Manager, at (703) 607-1176 and rebecca.a.klein@us.army.mil.



BETH A. ERICKSON
Acting Chief, Environmental
Programs Division

Native American Regulations

Native American Graves Protection and Repatriation Act (25 USC 3001)

Native American Graves Protection and Repatriation Act AS AMENDED

This Act became law on November 16, 1990 (Public Law 101-601; 25 U.S.C. 3001 et seq.) and has been amended twice. This description of the Act, as amended, tracks the language of the United States Code except that (following common usage) we refer to the "Act" (meaning the Act, as amended) rather than to the "subchapter" or the "title" of the Code.

25 U.S.C. 3001, Definitions

Section 2

For purposes of this Act, the term—

(1) "**burial site**" means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited.

(2) "**cultural affiliation**" means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group.

(3) "**cultural items**" means human remains and—

(A) "**associated funerary objects**" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects.

(B) "**unassociated funerary objects**" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe,

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(C) “**sacred objects**” which shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents, and

(D) “**cultural patrimony**” which shall mean an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.

(4) “**Federal agency**” means any department, agency, or instrumentality of the United States. Such term does not include the Smithsonian Institution.

(5) “**Federal lands**” means any land other than tribal lands which are controlled or owned by the United States, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971 [43 U.S.C. 1601 et seq.].

(6) “**Hui Malama I Na Kupuna O Hawai’i Nei**” means the nonprofit, Native Hawaiian organization incorporated under the laws of the State of Hawaii by that name on April 17, 1989, for the purpose of providing guidance and expertise in decisions dealing with Native Hawaiian cultural issues, particularly burial issues.

(7) “**Indian tribe**” means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

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(8) “**museum**” means any institution or State or local government agency (including any institution of higher learning) that receives Federal funds and has possession of, or control over, Native American cultural items. Such term does not include the Smithsonian Institution or any other Federal agency.

(9) “**Native American**” means of, or relating to, a tribe, people, or culture that is indigenous to the United States.

(10) “**Native Hawaiian**” means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(11) “**Native Hawaiian organization**” means any organization which—

(A) serves and represents the interests of Native Hawaiians,

(B) has as a primary and stated purpose the provision of services to Native Hawaiians, and

(C) has expertise in Native Hawaiian Affairs, and

shall include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei.

(12) “**Office of Hawaiian Affairs**” means the Office of Hawaiian Affairs established by the constitution of the State of Hawaii.

(13) “**right of possession**” means possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object or object of cultural patrimony from an Indian tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession of that object, unless the phrase so defined would, as applied in section 7(c) of this Act [25 U.S.C. 3005(c)], result in a Fifth Amendment taking by the United States as determined by the United States Court of Federal Claims pursuant to

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28 U.S.C. 1491 in which event the “right of possession” shall be as provided under otherwise applicable property law. The original acquisition of Native American human remains and associated funerary objects which were excavated, exhumed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization is deemed to give right of possession to those remains.

(14) “Secretary” means the Secretary of the Interior.

(15) “tribal land” means—

(A) all lands within the exterior boundaries of any Indian reservation;

(B) all dependent Indian communities;

(C) any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920 [42 Stat. 108], and section 4 of Public Law 86-3 [note preceding 48 U.S.C. 491].

25 U.S.C. 3002,
Ownership

25 U.S.C. 3002(a),
Native American
human remains and
objects

Section 3

(a) The ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after November 16, 1990, shall be (with priority given in the order listed)—

(1) in the case of Native American human remains and associated funerary objects, in the lineal descendants of the Native American; or

(2) in any case in which such lineal descendants cannot be ascertained, and in the case of unassociated funerary objects, sacred objects, and objects of cultural patrimony—

(A) in the Indian tribe or Native Hawaiian organization on whose tribal land such objects or remains were discovered;

(B) in the Indian tribe or Native Hawaiian organization which has the closest cultural affiliation with such remains or objects and which, upon notice, states a claim for such remains or objects; or

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(C) if the cultural affiliation of the objects cannot be reasonably ascertained and if the objects were discovered on Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of some Indian tribe—

(1) [sic] in the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered, if upon notice, such tribe states a claim for such remains or objects, or

(2) [sic] if it can be shown by a preponderance of the evidence that a different tribe has a stronger cultural relationship with the remains or objects than the tribe or organization specified in paragraph (1), in the Indian tribe that has the strongest demonstrated relationship, if upon notice, such tribe states a claim for such remains or objects.

25 U.S.C. 3002(b),
Unclaimed Native
American remains and
objects

(b) Native American cultural items not claimed under subsection (a) of this section shall be disposed of in accordance with regulations promulgated by the Secretary in consultation with the review committee established under section 8 of this Act [25 U.S.C. 3006], Native American groups, representatives of museums and the scientific community.

25 U.S.C. 3002(c),
Intentional excavation
and removal of Native
American human
remains and objects

(c) The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study, or removal of such items is permitted only if—

(1) such items are excavated or removed pursuant to a permit issued under section 4 of the Archaeological Resources Protection Act of 1979, as amended, [16 U.S.C. 470cc] which shall be consistent with this Act;

(2) such items are excavated or removed after consultation with or, in the case of tribal lands, consent of the appropriate (if any) Indian tribe or Native Hawaiian organization;

(3) the ownership and right of control of the disposition of such items shall be as provided in subsections (a) and (b) of this section; and

(4) proof of consultation or consent under paragraph (2) is shown.

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25 U.S.C. 3002(d),
Inadvertent discovery
of Native American
remains and objects

(d)(1) Any person who knows, or has reason to know, that such person has discovered Native American cultural items on Federal or tribal lands after November 16, 1990, shall notify, in writing, the Secretary of the Department, or head of any other agency or instrumentality of the United States, having primary management authority with respect to Federal lands and the appropriate Indian tribe or Native Hawaiian organization with respect to tribal lands, if known or readily ascertainable, and, in the case of lands that have been selected by an Alaska Native Corporation or group organized pursuant to the Alaska Native Claims Settlement Act of 1971 [43 U.S.C. 1601 et seq.], the appropriate corporation or group. If the discovery occurred in connection with an activity, including (but not limited to) construction, mining, logging, and agriculture, the person shall cease the activity in the area of the discovery, make a reasonable effort to protect the items discovered before resuming such activity, and provide notice under this subsection. Following the notification under this subsection, and upon certification by the Secretary of the department or the head of any agency or instrumentality of the United States or the appropriate Indian tribe or Native Hawaiian organization that notification has been received, the activity may resume after 30 days of such certification.

(2) The disposition of and control over any cultural items excavated or removed under this subsection shall be determined as provided for in this section.

(3) If the Secretary of the Interior consents, the responsibilities (in whole or in part) under paragraphs (1) and (2) of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary with respect to any land managed by such other Secretary or agency head.

25 U.S.C. 3002(e),
Relinquishment

(e) Nothing in this section shall prevent the governing body of an Indian tribe or Native Hawaiian organization from expressly relinquishing control over any Native American human remains, or title to or control over any funerary object, or sacred object.

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18 U.S.C. 1170,
Illegal trafficking
in Native American
human remains and
cultural items

Section 4

(a) Chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new section:

Section 1170

“(a) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, or imprisoned not more than 12 months, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years, or both.”

“(b) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Grave Protection and Repatriation Act shall be fined in accordance with this title, imprisoned not more than one year, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, imprisoned not more than 5 years, or both.”

(b) The table of contents for chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new item:

“1170, Illegal Trafficking in Native American Human Remains and Cultural Items.”

25 U.S.C. 3003,
Inventory for human
remains and associ-
ated funerary objects

25 U.S.C. 3003(a),
In general

25 U.S.C. 3003(b),
Requirements

Section 5

(a) Each Federal agency and each museum which has possession or control over holdings or collections of Native American human remains and associated funerary objects shall compile an inventory of such items and, to the extent possible based on information possessed by such museum or Federal agency, identify the geographical and cultural affiliation of such item.

(b)(1) The inventories and identifications required under subsection (a) of this section shall be—

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(A) completed in consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders;

(B) completed by not later than the date that is 5 years after November 16, 1990, [the date of enactment of this Act], and

(C) made available both during the time they are being conducted and afterward to a review committee established under section 8 of this Act [25 U.S.C. 3006].

(2) Upon request by an Indian tribe or Native Hawaiian organization which receives or should have received notice, a museum or Federal agency shall supply additional available documentation to supplement the information required by subsection (a) of this section. The term “**documentation**” means a summary of existing museum or Federal agency records, including inventories or catalogues, relevant studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American human remains and associated funerary objects subject to this section. Such term does not mean, and this Act shall not be construed to be an authorization for, the initiation of new scientific studies of such remains and associated funerary objects or other means of acquiring or preserving additional scientific information from such remains and objects.

25 U.S.C. 3003(c),
Extension of time for
inventory

(c) Any museum which has made a good faith effort to carry out an inventory and identification under this section, but which has been unable to complete the process, may appeal to the Secretary for an extension of the time requirements set forth in subsection (b)(1)(B) of this section. The Secretary may extend such time requirements for any such museum upon a finding of good faith effort. An indication of good faith shall include the development of a plan to carry out the inventory and identification process.

25 U.S.C. 3003(d),
Notification

(d)(1) If the cultural affiliation of any particular Native American human remains or associated funerary objects is determined pursuant to this section, the Federal agency or museum concerned shall, not later than 6 months after the completion of the inventory, notify the affected Indian tribes or Native Hawaiian organizations.

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(2) The notice required by paragraph (1) shall include information—

(A) which identifies each Native American human remains or associated funerary objects and the circumstances surrounding its acquisition;

(B) which lists the human remains or associated funerary objects that are clearly identifiable as to tribal origin; and

(C) which lists the Native American human remains and associated funerary objects that are not clearly identifiable as being culturally affiliated with that Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the remains or objects, are determined by a reasonable belief to be remains or objects culturally affiliated with the Indian tribe or Native Hawaiian organization.

(3) A copy of each notice provided under paragraph (1) shall be sent to the Secretary who shall publish each notice in the Federal Register.

25 U.S.C. 3003(e),
Definition of
inventory

(e) For the purposes of this section, the term “**inventory**” means a simple itemized list that summarizes the information called for by this section.

25 U.S.C. 3004,
Summary for unassociated
funerary objects,
sacred objects, and
cultural patrimony

Section 6

25 U.S.C. 3004(a),
In general

(a) Each Federal agency or museum which has possession or control over holdings or collections of Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony shall provide a written summary of such objects based upon available information held by such agency or museum. The summary shall describe the scope of the collection, kinds of objects included, reference to geographical location, means and period of acquisition and cultural affiliation, where readily ascertainable.

25 U.S.C. 3004(b),
Requirements for the
summary

(b)(1) The summary required under subsection (a) of this section shall be—

(A) in lieu of an object-by-object inventory;

(B) followed by consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders; and

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(C) completed by not later than the date that is 3 years after November 16, 1990, [the date of enactment of this Act].

(2) Upon request, Indian Tribes and Native Hawaiian organizations shall have access to records, catalogues, relevant studies or other pertinent data for the limited purposes of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American objects subject to this section. Such information shall be provided in a reasonable manner to be agreed upon by all parties.

25 U.S.C. 3005,
Repatriation

25 U.S.C. 3005(a),
Repatriation of Native American human remains and objects possessed or controlled by Federal agencies and museums

Section 7

(a)(1) If, pursuant to section 5 of this Act [25 U.S.C. 3003], the cultural affiliation of Native American human remains and associated funerary objects with a particular Indian tribe or Native Hawaiian organization is established, then the Federal agency or museum, upon the request of a known lineal descendant of the Native American or of the tribe or organization and pursuant to subsections (b) and (e) of this section, shall expeditiously return such remains and associated funerary objects.

(2) If, pursuant to section 6 of this Act [25 U.S.C. 3004], the cultural affiliation with a particular Indian tribe or Native Hawaiian organization is shown with respect to unassociated funerary objects, sacred objects or objects of cultural patrimony, then the Federal agency or museum, upon the request of the Indian tribe or Native Hawaiian organization and pursuant to subsections (b), (c) and (e) of this section, shall expeditiously return such objects.

(3) The return of cultural items covered by this Act shall be in consultation with the requesting lineal descendant or tribe or organization to determine the place and manner of delivery of such items.

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(4) Where cultural affiliation of Native American human remains and funerary objects has not been established in an inventory prepared pursuant to section 5 of this Act [25 U.S.C. 3003], or the summary pursuant to section 6 of this Act [25 U.S.C. 3004], or where Native American human remains and funerary objects are not included upon any such inventory, then, upon request and pursuant to subsections (b) and (e) of this section and, in the case of unassociated funerary objects, subsection (c) of this section, such Native American human remains and funerary objects shall be expeditiously returned where the requesting Indian tribe or Native Hawaiian organization can show cultural affiliation by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion.

(5) Upon request and pursuant to subsections (b), (c) and (e) of this section, sacred objects and objects of cultural patrimony shall be expeditiously returned where—

(A) the requesting party is the direct lineal descendant of an individual who owned the sacred object;

(B) the requesting Indian tribe or Native Hawaiian organization can show that the object was owned or controlled by the tribe or organization; or

(C) the requesting Indian tribe or Native Hawaiian organization can show that the sacred object was owned or controlled by a member thereof, provided that in the case where a sacred object was owned by a member thereof, there are no identifiable lineal descendants of said member or the lineal descendants, upon notice, have failed to make a claim for the object under this Act.

25 U.S.C. 3005(b),
Scientific study

(b) If the lineal descendant, Indian tribe, or Native Hawaiian organization requests the return of culturally affiliated Native American cultural items, the Federal agency or museum shall expeditiously return such items unless such items are indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the United States. Such items shall be returned by no later than 90 days after the date on which the scientific study is completed.

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25 U.S.C. 3005(c),
Standard for
repatriation

(c) If a known lineal descendant or an Indian tribe or Native Hawaiian organization requests the return of Native American unassociated funerary objects, sacred objects or objects of cultural patrimony pursuant to this Act and presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the Federal agency or museum did not have the right of possession, then such agency or museum shall return such objects unless it can overcome such inference and prove that it has a right of possession to the objects.

25 U.S.C. 3005(d),
Sharing of informa-
tion by Federal agen-
cies and museums

(d) Any Federal agency or museum shall share what information it does possess regarding the object in question with the known lineal descendant, Indian tribe, or Native Hawaiian organization to assist in making a claim under this section.

25 U.S.C. 3005(e),
Competing claims

(e) Where there are multiple requests for repatriation of any cultural item and, after complying with the requirements of this Act, the Federal agency or museum cannot clearly determine which requesting party is the most appropriate claimant, the agency or museum may retain such item until the requesting parties agree upon its disposition or the dispute is otherwise resolved pursuant to the provisions of this Act or by a court of competent jurisdiction.

25 U.S.C. 3005(f),
Museum obligation

(f) Any museum which repatriates any item in good faith pursuant to this Act shall not be liable for claims by an aggrieved party or for claims of breach of fiduciary duty, public trust, or violations of state law that are inconsistent with the provisions of this Act.

25 U.S.C. 3006,
Review committee

Section 8

25 U.S.C. 3006(a),
Establishment

(a) Within 120 days after November 16, 1990, the Secretary shall establish a committee to monitor and review the implementation of the inventory and identification process and repatriation activities required under sections 5, 6 and 7 of this Act [25 U.S.C. 3003, 3004, and 3005].

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25 U.S.C. 3006(b), Committee membership

(b)(1) The Committee established under subsection (a) of this section shall be composed of 7 members,

(A) 3 of whom shall be appointed by the Secretary from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders with at least 2 of such persons being traditional Indian religious leaders;

(B) 3 of whom shall be appointed by the Secretary from nominations submitted by national museum organizations and scientific organizations; and

(C) 1 who shall be appointed by the Secretary from a list of persons developed and consented to by all of the members appointed pursuant to subparagraphs (A) and (B).

(2) The Secretary may not appoint Federal officers or employees to the committee.

(3) In the event vacancies shall occur, such vacancies shall be filled by the Secretary in the same manner as the original appointment within 90 days of the occurrence of such vacancy.

(4) Members of the committee established under subsection (a) of this section shall serve without pay, but shall be reimbursed at a rate equal to the daily rate for GS-18 of the General Schedule for each day (including travel time) for which the member is actually engaged in committee business. Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5 [United States Code].

25 U.S.C. 3006(c), Committee responsibilities

(c) The committee established under subsection a) of this section shall be responsible for—

(1) designating one of the members of the committee as chairman;

(2) monitoring the inventory and identification process conducted under sections 5 and 6 of this Act [25 U.S.C. 3003 and 3004] to ensure a fair, objective consideration and assessment of all available relevant information and evidence;

(3) upon the request of any affected party, reviewing and making findings related to—

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| | |
|---|---|
| | (A) the identity or cultural affiliation of cultural items, or |
| | (B) the return of such items; |
| | (4) facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable; |
| | (5) compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains; |
| | (6) consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations; |
| | (7) consulting with the Secretary in the development of regulations to carry out this Act; |
| | (8) performing such other related functions as the Secretary may assign to the committee; and |
| | (9) making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated. |
| 25 U.S.C. 3006(d), Admissibility of records | (d) Any records and findings made by the review committee pursuant to this Act relating to the identity or cultural affiliation of any cultural items and the return of such items may be admissible in any action brought under section 15 of this Act [25 U.S.C. 3013]. |
| 25 U.S.C. 3006(e), Recommendations and report | (e) The committee shall make the recommendations under paragraph (c)(5) of this section in consultation with Indian tribes and Native Hawaiian organizations and appropriate scientific and museum groups. |
| 25 U.S.C. 3006(f), Committee access | (f) The Secretary shall ensure that the committee established under subsection (a) of this section and the members of the committee have reasonable access to Native American cultural items under review and to associated scientific and historical documents. |

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25 U.S.C. 3006(g),
Duties of the
Secretary, regulations,
and administrative
support

(g) The Secretary shall—

(1) establish such rules and regulations for the committee as may be necessary, and

(2) provide reasonable administrative and staff support necessary for the deliberations of the committee.

25 U.S.C. 3006(h),
Annual report to
Congress

(h) The committee established under subsection (a) of this section shall submit an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year.

25 U.S.C. 3006(i),
Committee
termination

(i) The committee established under subsection (a) of this section shall terminate at the end of the 120-day period beginning on the day the Secretary certifies, in a report submitted to Congress, that the work of the committee has been completed.

25 U.S.C. 3007,
Penalty assessment,
museums

Section 9

(a) Any museum that fails to comply with the requirements of this Act may be assessed a civil penalty by the Secretary of the Interior pursuant to procedures established by the Secretary through regulation. A penalty assessed under this subsection shall be determined on the record after opportunity for an agency hearing. Each violation under this subsection shall be a separate offense.

25 U.S.C. 3007(a),
Penalty

25 U.S.C. 3007(b),
Amount of penalty

(b) The amount of a penalty assessed under subsection (a) of this section shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—

(1) the archaeological, historical, or commercial value of the item involved;

(2) the damages suffered, both economic and noneconomic, by an aggrieved party, and

(3) the number of violations that have occurred.

Native American Graves Protection and Repatriation Act

25 U.S.C. 3007(c),
Legal actions to
recover penalties

(c) If any museum fails to pay an assessment of a civil penalty pursuant to a final order of the Secretary that has been issued under subsection (a) of this section and not appealed or after a final judgment has been rendered on appeal of such order, the Attorney General may institute a civil action in an appropriate district court of the United States to collect the penalty. In such action, the validity and amount of such penalty shall not be subject to review.

25 U.S.C. 3007(d),
Authority to issue
subpoenas

(d) In hearings held pursuant to subsection (a) of this section, subpoenas may be issued for the attendance and testimony of witnesses and the production of relevant papers, books, and documents. Witnesses so summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

25 U.S.C. 3008,
Grants

Section 10

25 U.S.C. 3008(a),
Grants to Indian tribes
and Native Hawaiian
organizations

(a) The Secretary is authorized to make grants to Indian tribes and Native Hawaiian organizations for the purpose of assisting such tribes and organizations in the repatriation of Native American cultural items.

25 U.S.C. 3008(b),
Grants to museums

(b) The Secretary is authorized to make grants to museums for the purpose of assisting the museums in conducting the inventories and identification required under sections 5 and 6 of this Act [25 U.S.C. 3003 and 3004].

25 U.S.C. 3009,
Limitations on apply-
ing the Act

Section 11

Nothing in this Act shall be construed to—

(1) limit the authority of any Federal agency or museum to—

(A) return or repatriate Native American cultural items to Indian tribes, Native Hawaiian organizations, or individuals, and

(B) enter into any other agreement with the consent of the culturally affiliated tribe or organization as to the disposition of, or control over, items covered by this Act;

(2) delay actions on repatriation requests that are pending on November 16, 1990;

(3) deny or otherwise affect access to any court;

Native American Graves Protection and Repatriation Act

(4) limit any procedural or substantive right which may otherwise be secured to individuals or Indian tribes or Native Hawaiian organizations; or

(5) limit the application of any State or Federal law pertaining to theft or stolen property.

25 U.S.C. 3010,
Special relationship
between the Federal
Government and
Indian tribes and
Native Hawaiian
organizations

Section 12

This Act reflects the unique relationship between the Federal Government and Indian tribes and Native Hawaiian organizations and should not be construed to establish a precedent with respect to any other individual, organization or foreign government.

25 U.S.C. 3011,
Regulations

Section 13

The Secretary shall promulgate regulations to carry out this Act within 12 months of November 16, 1990.

25 U.S.C. 3012,
Authorization of
appropriations

Section 14

There is authorized to be appropriated such sums as may be necessary to carry out this Act.

25 U.S.C. 3013,
Judicial jurisdiction
and enforcement

Section 15

The United States district courts shall have jurisdiction over any action brought by any person alleging a violation of this Act and shall have the authority to issue such orders as may be necessary to enforce the provisions of this Act.

Indian Sacred Sites (EO 13007)

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

May 24, 1996

EXECUTIVE ORDER 13007

- - - - -

INDIAN SACRED SITES

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

Section 1. Accommodation of Sacred Sites. (a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this order:

(i) "Federal lands" means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;

(ii) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103-454, 108 Stat. 4791, and "Indian" refers to a member of such an Indian tribe; and

(iii) "Sacred site" means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

Sec. 2. Procedures. (a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section 1 of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management

policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments."

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things, (i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites; (ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

Sec. 3. Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, "agency action" has the same meaning as in the Administrative Procedure Act (5 U.S.C. 551(13)).

Sec. 4. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person.

WILLIAM J. CLINTON

THE WHITE HOUSE,
May 24, 1996.

Consultation and Coordination with Indian Tribal Governments (EO 13175)

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

November 6, 2000

EXECUTIVE ORDER 13175

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CONSULTATION AND COORDINATION WITH INDIAN TRIBAL GOVERNMENTS

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

Section 1. Definitions. For purposes of this order:

(a) "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) "Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. Fundamental Principles. In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance

with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. Policymaking Criteria. In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

- (1) encourage Indian tribes to develop their own policies to achieve program objectives;
- (2) where possible, defer to Indian tribes to establish standards; and
- (3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. Special Requirements for Legislative Proposals. Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

Sec. 5. Consultation. (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes

substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

- (1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or
- (2) the agency, prior to the formal promulgation of the regulation,
 - (A) consulted with tribal officials early in the process of developing the proposed regulation;
 - (B) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and
 - (C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

- (1) consulted with tribal officials early in the process of developing the proposed regulation;
- (2) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and
- (3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 6. Increasing Flexibility for Indian Tribal Waivers.

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 7. Accountability.

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. Independent Agencies. Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 9. General Provisions. (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

Sec. 10. Judicial Review. This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

WILLIAM J. CLINTON

THE WHITE HOUSE,
November 6, 2000.

#

DoD Interactions with Federally-Recognized Tribes (DoDI 4710.02)



Department of Defense INSTRUCTION

NUMBER 4710.02
September 14, 2006

USD(AT&L)

SUBJECT: DoD Interactions with Federally-Recognized Tribes

- References:
- (a) DoD Directive 5134.01, "Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L))," December 9, 2005
 - (b) DoD Directive 4715.1E, "Environment, Safety, and Occupational Health (ESOH)," March 19, 2005
 - (c) DoD Instruction 4715.3, "Environmental Conservation Program," May 3, 1996
 - (d) Secretary of Defense Policy on "Department of Defense American Indian and Alaska Native Policy," October 20, 1998¹
 - (e) through (s), see Enclosure 1

1. PURPOSE

This Instruction implements DoD policy, assigns responsibilities, and provides procedures for DoD interactions with federally-recognized tribes (hereafter referred to as "tribes") in accordance with References (a) through (d), Executive Order (E.O.) 13175² (Reference (e)), and the Presidential Memorandum on "Government-to-Government Relationship with Tribal Governments"³ (Reference (f)).

2. APPLICABILITY AND SCOPE

This Instruction applies to:

2.1. The Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components").

2.2. All DoD operations, activities, and installations that require interactions with tribes.

¹ Copies may be obtained via the internet at <https://www.denix.osd.mil/denix/Public/Native/Outreach/policy.html>

² Copies may be obtained via the internet at <http://www.epa.gov/fedrgstr/eo/eo13175.htm>

³ Copies may be obtained via the internet at <http://www.whitehouse.gov/news/releases/2004/09/20040923-4.html>

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3. DEFINITIONS

3.1. Indian. A member of a tribe, as defined in subparagraph 3.5.

3.2. Indian Lands. Any lands the title to which is either held in trust by the United States for the benefit of any Indian tribe or Indian, or held by an Indian tribe or Indian subject to restrictions by the United States against alienation (Reference (d) and 32 Code of Federal Regulations (CFR) part 229 (Reference (g))).

3.3. Protected Tribal Resources. Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by or reserved by or for Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources (Reference (d)).

3.4. Tribal Rights. Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, un-extinguished aboriginal title, treaty, statute, judicial decision, Executive Order, or agreement, and that give rise to legally enforceable remedies (Reference (d)).

3.5. Tribe. A federally-recognized Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the most current Department of Interior list of tribes published in the Federal Register (Reference (c), Reference (d), and Section 1996a of 42 United States Code (U.S.C.) (Reference (h))).

4. POLICY

It is DoD policy to:

4.1. Meet its responsibilities to tribes as derived from Federal trust doctrine, treaties, and agreements between the United States Government and tribal governments, and to comply with Federal statutes, regulations, Presidential Memorandums, and Executive Orders governing DoD interactions with tribes.

4.2. Build stable and enduring government-to-government relations with federally-recognized tribal governments in a manner that sustains the DoD mission and minimizes effects on protected tribal resources in accordance with References (c) through (f) and 32 CFR part 22 (Reference (i)).

4.3. Fully integrate, down to staff officers and civilian officials at the installation level, the principles and practices of meaningful consultation and communication with tribes in accordance with References (a) through (f).

4.4. Take into consideration the significance that tribes ascribe to protected tribal resources on protected lands in accordance with References (c), (g), and (h); 36 CFR part 800 (Reference (j)); 43 CFR part 10 (Reference (k)); Sections 470, 470.1, and 470.a through 470.w of title 16 U.S.C. (Reference (l)); and E.O. 13007⁴ (Reference (m)).

⁴ Copies may be obtained via the internet at <http://web.em.doe.gov/public/tribal/eo13007.html>

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5. RESPONSIBILITIES

5.1. The Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) shall oversee DoD interactions with tribes.

5.2. The Deputy Under Secretary of Defense for Installations and Environment (DUSD(I&E)), under the USD(AT&L), shall:

5.2.1. Develop additional policy and guidance, as needed, in accordance with Reference (a).

5.2.2. Designate responsibilities and provide procedures for DoD interactions with tribes.

5.2.3. Enhance the DoD Components' understanding of tribal issues and concerns through education and training programs and outreach activities.

5.2.4. Assist the DoD Components in identifying requirements of Presidential Memorandums, Executive Orders, statutes, and regulations governing DoD interactions with tribes.

5.2.5. As requested, assist the DoD Components with consultation and government-to-government relations with tribes to implement the following:

5.2.5.1. Support and services for eligible organizations and activities outside the Department of Defense in accordance with DoD Directive 1100.20 (Reference (n)).

5.2.5.2. The DoD Office of Small Business Programs in accordance with DoD Directive 4205.1 (Reference (o)).

5.2.6. Oversee DoD Component implementation of this Instruction, compliance with the guidance for consulting with tribes set forth in Enclosure 2, and compliance with the measures of merit set forth in Enclosure 3.

5.2.7. Coordinate with other Federal Agencies and tribal organizations, as appropriate, on tribal issues of regional and national scope.

5.3. The Heads of the DoD Components shall:

5.3.1. Integrate the requirements of Presidential Memorandums, Executive Orders, statutes, and regulations regarding DoD interactions with tribes into their mission requirements.

5.3.2. Plan, program, and budget for statutory and regulatory requirements applicable to interactions with tribes consistent with DoD guidance and fiscal policies, and within available resources.

5.3.3. Develop and implement programs to monitor, achieve, and maintain compliance with this Instruction, including compliance by installations and their tenant activities.

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5.3.4. Consult with federally-recognized tribal governments on a government-to-government basis on matters that may have the potential to significantly affect protected tribal resources, tribal rights, or Indian lands in accordance with Reference (d), Enclosure 2, and the measures of merit in Enclosure 3.

5.3.5. To the extent permitted by legal authority, provide information on opportunities for tribes to compete for requests for proposals or other potential contracting, sub-contracting, and grant or cooperative agreement instruments; for surplus equipment and property; and for education, training, or employment, as appropriate.

5.3.6. Promptly notify the DUSD(I&E) of tribal issues that have the potential to be elevated to OSD for resolution.

5.3.7. Assign tribal liaison responsibilities to staff at the Headquarters level to coordinate tribal issues with the Office of the DUSD(I&E).

6. PROCEDURES

6.1. The DoD Components shall consult with tribes whenever proposing an action that may have the potential to significantly affect protected tribal resources, tribal rights, or Indian lands.

6.2. The DoD Components shall consult with tribes in accordance with the requirements specified in References (c) through (h).

6.3. Consultation required by paragraphs 6.1. and 6.2. shall apply to proposed actions that may have the potential to significantly affect tribes, including, but not limited to: land-disturbing activities, construction, training, over-flights, management of properties of traditional religious and cultural importance, protection of sacred sites from vandalism and other damage, access to sacred sites, access to treaty-reserved resources, disposition of cultural items in accordance with Reference (k), and land use decisions.

6.4. The DoD Components shall afford tribes that have a cultural or historical affiliation with the lands encompassed by the installation an opportunity to consult on the development of the Integrated Cultural Resources Management Plan (ICRMP), and, where tribal treaty rights or other rights to natural resources potentially may be affected, Integrated Natural Resources Management Plans (INRMPs).

6.5. In consultation with tribes identified in paragraph 6.4., the DoD Components shall incorporate in applicable documentation, including ICRMPs and INRMPs, a standard process for consultation whenever issues arise between the tribe and the Component.

6.6. The DoD Components shall involve tribal governments early in the planning process for proposed actions that may have the potential to affect protected tribal rights, land, or resources, and shall endeavor to complete consultations prior to implementation of the proposed action. Early involvement means that a tribal government is given an opportunity to comment on a proposed action in time for the tribal government to provide meaningful comments that may

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affect the decision. Installations should take advantage of the processes set forth in 40 CFR parts 1500-1508 (Reference (p)) and E.O. 12898⁵ (Reference (q)) to involve tribes in early planning.

6.7. The DoD Components are encouraged to use agreements such as Comprehensive Agreements, Memorandums of Agreement, or Memorandums of Understanding between the Department of Defense and tribal governments, as appropriate, on issues of common interest to each party. The primary goal of formalized agreements with tribal governments is to foster relationships that facilitate military training and readiness while addressing issues of importance to tribes.


6.8. When contacting tribes, the consultation shall be initiated by the installation commander. Follow-on consultation shall be at a level agreed to by the installation commander and tribal government leadership.

6.9. Base commanders at installations that have on-going consultation and coordination with tribes shall assign a staff member to serve as a tribal liaison.

6.10. Installation personnel who conduct activities that may have the potential to affect protected tribal rights, land, or resources shall participate in training courses and workshops to raise their awareness of tribal culture and to learn about local tribal issues, especially access, use, and privacy issues, that may be affected by military operations such as low-level flights and access to sacred sites.

7. EFFECTIVE DATE

This Instruction is effective immediately.


Kenneth J. Krieg
Under Secretary of Defense
for Acquisition, Technology, and Logistics

Enclosures – 3

- E1. References, continued
- E2. Guidance for Consultation with Tribes
- E3. Compliance Measures of Merit

⁵ Copies may be obtained via the internet at www.epa.gov/civilrights/ea12898.htm

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E1. ENCLOSURE 1

REFERENCES, continued

- (e) Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," November 6, 2000
- (f) Presidential Memorandum on "Government-to-Government Relationship with Tribal Governments," September 23, 1994
- (g) Title 32, Code of Federal Regulations, Part 229, "Protection of Archeological Resources: Uniform Regulations," current edition
- (h) Section 1996a of title 42, United States Code, American Indian Religious Freedom Act
- (i) Title 32, Code of Federal Regulations, Part 22, "DoD Grants and Agreements: Award and Administration," current edition
- (j) Title 36, Code of Federal Regulations, Part 800, "Protection of Historic Properties," current edition
- (k) Title 43, Code of Federal Regulations, Part 10, "Native American Graves Protection and Repatriation Regulations," current edition
- (l) Sections 470, 470.1, and 470.a through 470.w of title 16, United States Code, Conservation
- (m) Executive Order 13007, "Indian Sacred Sites," May 24, 1996
- (n) DoD Directive 1100.20, "Support and Services for Eligible Organizations and Activities Outside the Department of Defense," April 12, 2004
- (o) DoD Directive 4205.1, "Department of Defense Small Business and Small Disadvantaged Business Utilization Programs," September 11, 1996
- (p) Title 40, Code of Federal Regulations, Parts 1500-1508, "Council on Environmental Quality," current edition
- (q) Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994
- (r) DoD Directive 5400.07, "DoD Freedom of Information Act Program," October 28, 2005
- (s) Federal Register, Volume 48, Page 44716, "Secretary of the Interior's Professional Qualification Standards," September 29, 1983

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E2. ENCLOSURE 2

GUIDANCE FOR CONSULTATION WITH TRIBES

Consultation is always a dialog, with information and opinion respectfully exchanged in both directions. The following guidance is designed to facilitate the consultation process and to make it more productive.

E2.1. The DoD Components should identify official points-of-contact prior to initiating consultation with all tribes (or lineal descendants in the case of Reference (k) actions) that may have an interest in the matter under consultation. As tribal boundaries have shifted and tribes have migrated, tribes that seem far removed geographically may have a traditional interest in assets and actions at specific, present-day installations.

E2.2. Commanders and commanding officers play a prominent role in government-to-government consultation. Commander/commanding officer presence and signature is appropriate at significant milestones such as formal initiation of consultation, notification of final DoD decisions about proposed actions under consultation, and completion of any agreement document that may result from consultation.

E2.3. Commanders and commanding officers may delegate follow-up consultation functions. Designated DoD staff at the local or regional level may negotiate details and engage in routine consultation with tribal government staff or other tribal representatives delegated by tribal authorities.

E2.4. Consultation should take place at a time and in a location convenient for tribal representatives. DoD staff may find it necessary to negotiate the time and place for consultation, recognizing that many tribes do not have an operating budget that will pay for tribal representatives' transportation and per diem, and that tribal representatives may have existing work, community, and family commitments.

E2.5. DoD staff should consider several factors in scheduling consultation. Consultation may require multiple meetings over a period of months, or may be dependent upon culturally specific circumstances such as religious ceremonies conducted only at certain times of the year, availability of information sources, or certain natural resources cycles. DoD Components should start early and allow plenty of time. If there is an urgent need for expeditious consultation, the component must make this fact known to tribal contacts and negotiate an expedited timetable.

E2.6. Participating members of a particular culture are in the best position to provide the most up-to-date and accurate information about that culture; therefore culturally specific information obtained from a member of a particular culture is to be respected as expert testimony.

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E2.7. In participating in consultation, DoD staff should take into consideration and respect tribal protocols, such as the following:

E2.7.1. Tribal representatives may want to open a meeting with a traditional ceremony, although DoD representatives are under no obligation to participate.

E2.7.2. The installation may need to schedule meetings well in advance to enable the tribe to decide upon appropriate attendees such as tribal elders, traditional religious leaders, and translators.

E2.7.3. Tribal representatives may be reluctant to discuss culturally sensitive information outside of the tribe or at certain times of the year, or they may need to clear information with traditional religious leaders or tribal council members prior to making commitments.

E2.7.4. Tribal governments differ from each other in their organizational structures and corporate cultures. DoD representatives should be mindful that these differences may affect formal titles and forms of address (such as "Chief," "Governor," and/or "Chairman") and other forms of protocol. Tribal representatives may be female or male, elected or not elected, political or spiritual leaders, and exhibit other variations from tribe to tribe.

E2.8. Each tribe should be consulted separately, unless affected tribes choose to act collectively.

E2.9. Without including culturally sensitive information, document the consultation in writing and place it in the administrative record. Although consent, approval, or formal agreement from tribal governments is not required to conclude the consultation process and to proceed with a project on Federal land, the record must show that the Department of Defense has given careful consideration to all the available evidence and points of view before making the final decision.

E2.10. The Department of Defense recognizes that a tribe may wish to keep confidential some of the information it may provide during consultation. Tribes should be assured that the Department of Defense will make every reasonable effort, consistent with the law, to withhold from public disclosure any specific information that a tribe identifies as confidential, especially information related to sacred sites and other traditional cultural properties. Nonetheless, tribes should also understand that the Department of Defense is required to provide public access to its records under the Freedom of Information Act (Reference (r)), except to the extent that any such records are protected from disclosure by a statutory exemption or exclusion. Consequently, tribes should be encouraged to seek the advice of their own legal counsel before providing sensitive information to the Department of Defense.

E2.11. The final decision should be placed into the administrative record and circulated to all consulting parties. It should explain the reasoning as well as the data compiled, but exclude any direct reference to culturally sensitive information provided by tribes and to information sensitive to the DoD mission.

DoDI 4710.02, September 14, 2006

E3. ENCLOSURE 3

COMPLIANCE MEASURES OF MERIT

E3.1. Policy Implementation

E3.1.1. The Office of the DUSD(I&E) shall assess the number of installations that have incorporated a process for consultation with tribes either as part of an ICRMP and/or an INRMP, or as an independent process in which tribal interests have been identified.

E3.1.2. A process for consultation is required only when tribes have a cultural or historical affiliation with the lands encompassed by the installation for an ICRMP, and where tribal treaty rights or other rights to natural resources potentially may be affected, for an INRMP.

E3.2. Native American Graves Protection and Repatriation Act (NAGPRA) (Reference (k))

The Office of the DUSD(I&E) shall assess the number of installations:

E3.2.1. With possession or control of any archaeological, historic, or ethnographic collections, including items held by a DoD contractor for the installation.

E3.2.2. With possession or control of items in paragraph E3.2.1., where these items have been professionally evaluated for the presence of "cultural items" as defined in Section 2 of Reference (m). "Professionally evaluated" means the items have been examined and a finding made by a person who has professional training to make an authoritative determination. At a minimum, the person making the determination shall meet the requirements of 48 FR 44716 (Reference (s)).

E3.2.3. With professionally evaluated items that meet the definition of cultural items.

E3.2.4. Retaining possession or control of NAGPRA cultural items that do not fall within the following categories:

E3.2.4.1. The cultural affiliation cannot be determined.

E3.2.4.2. Consultation is ongoing.

E3.2.1.3. No tribes have expressed an interest in the items for repatriation purposes.

E3.2.1.4. Repatriation is pending Federal Register Notice.

American Indian and Alaska Native Policy (Army Policy on DoDI 4710.02)



SECRETARY OF THE ARMY
WASHINGTON

24 OCT 2012

MEMORANDUM FOR Principal Official of Headquarters, Department of the Army

SUBJECT: American Indian and Alaska Native Policy

1. References:

a. Department of Defense American Indian and Alaska Native Policy, 20 October 1998.

b. Department of Defense Instruction 4710.02, DoD Interactions with Federally Recognized Tribes, 14 September 2006.

2. Purpose. This memorandum establishes Department of the Army policy for interaction with Federally-recognized American Indian and Alaska Native Tribes (Federally-recognized Tribes), in accordance with references 1.a. and 1.b.

3. Policy. The Department of the Army will:

a. Meet its responsibilities to Federally-recognized Tribes as derived from the federal trust doctrine, treaties, and agreements and comply with federal statutes and regulations, presidential memoranda and executive orders governing interactions with Federally-recognized Tribes.

b. Build stable and enduring government-to-government relations with Federally-recognized Tribes in a manner that sustains the Army mission and minimizes effects on protected tribal resources. The Army will communicate with Federally-recognized Tribes on a government-to-government basis in recognition of their sovereignty.

c. Recognize, respect and take into consideration the significance that Federally-recognized Tribes ascribe to protected tribal resources when undertaking Army mission activities and when managing Army lands.

d. Fully integrate the principles of meaningful consultation and communication with Federally-recognized Tribes at all organizational levels including staff officers and civilian officials. The Army will consider the unique qualities of individual Federally-recognized Tribes when applying these principles.

4. This policy recognizes the importance of understanding and addressing the concerns of Federally-recognized Tribes prior to reaching decisions on matters that may have the potential to significantly affect tribal rights, tribal lands or protected tribal resources.

121013541

SUBJECT: American Indian and Alaska Native Policy

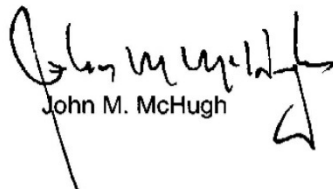
5. Definition of Key Terms:

a. Tribal rights: Those rights legally accruing to a Federally-recognized Tribes or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaties, statutes, judicial decisions, executive orders or agreement and that give rise to legally enforceable remedies.

b. Tribal lands: Any lands title to which is: either held in trust by the United States for the benefit of any Federally-recognized Indian tribe or individual or held by any Federally-recognized Indian tribe or individual subject to restrictions by the United States against alienation.

c. Protected tribal resources: Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Tribal lands, retained by, or reserved by or for, Federally-recognized Tribes through treaties, statutes, judicial decisions or executive orders.

6. This policy is not intended to, and does not grant, expand, create or diminish any legally enforceable rights, benefits or trust responsibilities, substantive or procedural not otherwise granted or created under existing law. This policy shall not be construed to alter, amend, repeal, interpret or modify tribal sovereignty, any treaty rights or other rights of any Indian tribes or to preempt, modify or limit the exercise of any such right.



John M. McHugh

DoD Annotated Policy Document for the American Indian and Alaska Native Policy

OFFICE OF THE UNDER SECRETARY OF DEFENSE

**3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000**

OCT 27 1999

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY
(ENVIRONMENT, SAFETY AND OCCUPATIONAL
HEALTH), OASA (IL&E)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(POLICY AND LEGISLATION), OASA (CIVIL WORKS)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ENVIRONMENT AND SAFETY), OASN (I&E)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(ENVIRONMENT, SAFETY AND OCCUPATIONAL
HEALTH), SAF/MIQ

SUBJECT: Annotated Policy Document for the American Indian and Alaska Native Policy

Members of your staff have actively participated on the internal DoD Indian Policy Working Group preparing the attached annotated policy to the American Indian and Alaska Native policy. The annotated policy has been formally coordinated and is now complete.

The annotated policy is intended to clarify key aspects of the recently released Indian Policy. You may choose to include the annotated policy with your Service specific guidance for implementing the Indian policy. Any questions concerning the annotated policy should be directed to your staff representative or to Mr. Bruce Beard of my staff at (703) 604-0521.

Thank you for your commitment to this effort.

(signed)

Gary D. Vest
Acting Deputy Under Secretary of Defense
(Environmental Security)

Department of Defense
American Indian and Alaska Native Policy

PREAMBLE

These principles establish the Department of Defense's (DoD) American Indian and Alaska Native Policy for interacting and working with federally-recognized American Indian and Alaska Native governments (hereinafter referred to as "tribes")¹(a). These principles are based on tribal input, federal policy, treaties, and federal statutes. The DoD policy supports tribal self-governance and government-to-government relations between the federal government and tribes. Although these principles are intended to provide general guidance to DoD Components on issues affecting tribes² (b), DoD personnel must consider the unique qualities of individual tribes when applying these principles, particularly at the installation level. These principles recognize the importance of increasing understanding and addressing tribal concerns, past, present, and future. These concerns should be addressed prior to reaching decisions on matters that may have the potential to significantly affect (c&d) protected tribal resources, tribal rights, or Indian lands³ (e).

¹As defined by most current Department of Interior/Bureau of Indian Affairs list of tribal entities published in Federal Register pursuant to Section 104 of the Federally Recognized Indian Tribe List Act.

²This policy is not intended to, and does not, grant, expand, create, or diminish any legally enforceable rights, benefits, or trust responsibilities, substantive or procedural, not otherwise granted or created under existing law. Nor shall this policy be construed to alter, amend, repeal, interpret, or modify tribal sovereignty, any treaty rights, or other rights of any Indian tribes, or to preempt, modify, or limit the exercise of any such rights.

³Definition of Key Terms:

- **Protected Tribal Resources:** *Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources.*
- **Tribal Rights:** *Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.*
- **Indian Lands (f):** *Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.*

I. TRUST RESPONSIBILITIES

DoD will meet its responsibilities to tribes. These responsibilities are derived from:

- Federal trust doctrine (g) (i.e., the trust obligation of the United States government to the tribes);
- Treaties, Executive Orders, Agreements, Statutes, and other obligations between the United States government and tribes, to include:
 1. Federal statutes (e.g., Native American Graves Protection and Repatriation Act, American Indian Religious Freedom Act, National Environmental Policy Act, National Historic Preservation Act, Alaska National Interest Lands Conservation Act, Alaskan Native Claims Settlement Act, and Archeological Resources Protection Act); and
 2. Other federal policies (e.g., Executive Order 12898, "Environmental Justice"; Executive Order 13007, "Indian Sacred Sites"; Executive Order 13021 "Tribal Colleges and Universities"; "Executive Memorandum: Government to Government Relations with Native American Tribal Governments," dated 29 April 1994; and Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments").

DoD will annually review the status of relations with tribes to ensure that DoD is:

- Fulfilling its federal responsibilities; and
- Addressing tribal concerns related to protected tribal resources, tribal rights, or Indian lands.

II. GOVERNMENT TO GOVERNMENT RELATIONS

Build stable and enduring relationships with tribes by:

- Communicating with tribes on a government-to-government basis (h) in recognition of their sovereignty;
- Requiring meaningful communication addressing tribal concerns between tribes and military installations at both the tribal leadership-to-installation commander and the tribal staff-to-installation staff levels (i);
- Establishing a senior level tribal liaison in the Office of the Secretary of Defense (j) and other appropriate points of contact within DoD to ensure that tribal inquiries are channeled to appropriate officials within DoD and responded to in a timely manner;
- Providing, to the extent permitted by DoD authorities and procedures, information concerning opportunities available to tribes to: compete for contracts, subcontracts, and

grants, and participate in cooperative agreements; 1) benefit from education and training; 2) obtain employment; and 3) obtain surplus equipment and property;

- Assessing, through consultation, the effect of proposed DoD actions that may have the potential to significantly affect protected tribal resources, tribal rights, and Indian lands before decisions are made (k);
- Taking appropriate steps to remove any procedural or regulatory impediments to DoD working directly and effectively with tribes on activities that may have the potential to significantly affect protected tribal resources, tribal rights, and Indian lands; and
- Working with other federal agencies, in consultation with tribes, to minimize duplicative requests (l) for information from tribes.

III. CONSULTATION

Fully integrate (down to staff officers at the installation level) the principle and practice of meaningful consultation and communication with tribes by:

- Recognizing that there exists a unique and distinctive political relationship between the United States and the tribes that mandates that, whenever DoD actions may have the potential to significantly affect protected tribal resources, tribal rights, or Indian lands, DoD must provide affected tribes an opportunity to participate in the decision-making process that will ensure these tribal interests are given due consideration in a manner consistent with tribal sovereign authority (m);
- Consulting consistent with government-to-government relations and in accordance with protocols mutually agreed to (n) by the particular tribe and DoD, including necessary dispute resolution processes;
- Providing timely notice to, and consulting with, tribal governments prior to taking any actions that may have the potential to significantly affect protected tribal resources, tribal rights, or Indian lands;
- Consulting in good faith throughout the decision-making process (o); and
- Developing and maintaining effective communication, coordination, and cooperation with tribes, especially at the tribal leadership-to-installation commander level and the tribal staff-to-installation staff levels.

IV. NATURAL AND CULTURAL RESOURCES PROTECTION

Recognize and respect the significance tribes ascribe to certain natural resources and properties of traditional or customary religious or cultural importance by:

- Undertaking DoD actions and managing DoD lands consistent with the conservation of protected tribal resources and in recognition of Indian treaty rights to fish, hunt, and gather resources at both on-and off-reservation locations (p);
- Enhancing, to the extent permitted by law, tribal capabilities to effectively protect and manage natural and cultural tribal trust resources (q) whenever DoD acts to carry out a program that may have the potential to significantly affect those tribal trust resources;
- Accommodating, to the extent practicable and consistent with military training, security, and readiness requirements, tribal member access to sacred and off-reservation treaty fishing, hunting, and gathering sites located on military installations; and
- Developing tribal specific protocols to protect (r), to the maximum extent practicable and consistent with the Freedom of Information Act, Privacy Act, National Historic Preservation Act, and Archeological Resources Protection Act, tribal information regarding protected tribal resources that has been disclosed to, or collected by, the DoD.

(a) This policy governs Department interactions with federally recognized tribes only; it does not govern interaction with unrecognized tribes, state-recognized tribes, Alaska Native village or regional corporations, or Native Hawaiians. [In Alaska, as a practical matter, the Department may need to discuss proposed actions with Alaska Native village or regional corporations simply because these corporate entities own and manage much of the land in Alaska. In such cases, the relationship between the Department and the corporate entity is a business relationship between the government and a private party, not a government-to-government relationship.]

(b) This policy neither enlarges nor diminishes the Department's legal obligations with respect to federally recognized tribes, nor does the policy provide an independent cause of action upon which the Department may be sued.

(c) The phrase "may have the potential to significantly affect," which appears throughout the policy, establishes the general threshold or "trigger" for consultation to be used unless a statute or other legal obligation specifically establishes a lower threshold for consultation. It is expected that DoD personnel will informally contact interested tribes whenever there is any real possibility that tribal interests may be affected by proposed DoD actions, but that continued, more formal consultation will be necessary only when it appears, from initial discussions with a tribe, that tribal interests will be significantly affected by the proposed action. In other words, the policy anticipates a two-step process designed first, to overcome the fact that, as non-Indians, we may not always recognize the effect our actions may have on tribal interests unless we ask; and second, to permit DoD to proceed without the need for further consultation unless potentially significant consequences are identified during this initial discussion. [Note: The word "significantly" is used in this policy in its ordinary dictionary sense; i.e., as a synonym for "material" or "important." It should not be interpreted in the NEPA or Council on

Environmental Quality NEPA Regulations sense, as that would set a higher threshold for consultation than is intended.]

(d) There is no obligation to consult with tribes in advance of a proposal that "may have the potential to significantly affect" tribal interests. In other words, the obligation to consult with tribes under this policy is event- or proposal-driven. Nonetheless, as a matter of discretion, general consultation may be desirable where an installation expects to have frequent interaction with a tribe and wishes to establish a stand-by protocol for consultation absent the pressures associated with a particular proposal.

(e) The phrase "protected tribal resources, tribal rights, or Indian lands," which appears throughout the policy, works in conjunction with the "may have the potential to significantly affect" trigger to determine when DoD must consult with tribes. Generally speaking, DoD must consult with tribes only when its proposed actions may have the potential to significantly affect Indian lands, treaty rights, or other tribal interests protected by statute, regulation, or executive order. [Note: Some statutes may establish a lower threshold for consultation than the default threshold established in this policy (see, e.g., 16 U.S.C. 470a(d)(6)(B)); in such cases, the Department must consult with tribes in accordance with the statutory requirements.] [Note also, that individual rural residents of Alaska, including both Natives and non-Natives, generally have a right to engage in nonwasteful subsistence uses of fish, wildlife, and other wild, renewable resources on public lands in Alaska. While this right is not a tribal right per se, installations nonetheless may find it both convenient and beneficial to consult with the appropriate Alaska Native entity whenever a proposed DoD action may have the potential to adversely affect the subsistence activities of several members of the same village or tribe.]

(f) With respect to Alaska, the term "Indian Lands" does not include lands held by Alaska Native Corporations or lands conveyed in fee to an Indian Reorganization Act entity or traditional village council; the term may include village-owned townsite lands (depending on the particular status of the village itself and upon a fact-specific inquiry into whether the area at issue qualifies as a dependent Indian community), and individual Native townsite lots and Native allotments (so long as these properties remain in either restricted fee or trust allotment form).

(g) Under the federal trust doctrine, the United States--and individual agencies of the federal government--owe a fiduciary duty to Indian tribes. The nature of that duty depends on the underlying substantive laws (i.e., treaties, statutes, agreements) creating the duty. Where agency actions may affect Indian lands or off-reservation treaty rights, the trust duty includes a substantive duty to protect these lands and treaty rights "to the fullest extent possible." Otherwise, unless the law imposes a specific duty on the federal government with respect to Indians, the trust responsibility may be discharged by the agency's compliance with general statutes and regulations not specifically aimed at protecting Indian tribes.

(h) Indian tribes have been called "domestic dependent nations"--i.e., nations within a nation. As such, consultation with tribes on a "government-to-government basis" requires a high degree of formality (see attached sample framework for consultation). Unless--or until--a tribal-specific protocol for consultation has been developed, formal contact with a tribe should be made by the

installation commander, and should be directed to the tribe's senior elected official, usually referred to as the tribal chair, governor, or president.

(i) Although communication with tribes on a government-to-government basis demands attention--at least initially--at a relatively senior level of command, the goal should be to develop mutually acceptable protocols or procedures that will allow most day-to-day liaison and work with interested tribes to be accomplished on a staff-to-staff basis. Senior commanders and tribal leaders should be kept apprised of this day-to-day interaction, but--once these protocols are in place--need act personally and directly only when requested to do so by the other party.

(j) Although the Deputy Under Secretary of Defense for Environmental Security will provide tribes with a senior-level liaison to ensure tribal inquiries are promptly addressed, DoD officials at all levels of command should strive to make it easier for tribes to receive timely answers to the questions they may have concerning DoD activities that may affect them. One way to accomplish this at the installation level could be to designate and announce a principal point-of-contact for the receipt of tribal inquiries.

(k) The single most important element of consultation is to initiate the dialogue with potentially affected tribes before decisions affecting tribal interests are made. Meaningful consultation demands that the information obtained from tribes be given particular, though not necessarily dispositive, consideration; this can happen only if tribal input is solicited early enough in the planning process that it may actually influence the decision to be made. Consultation is worth very little if decisions have already been made.

(l) Keep in mind that many tribes have relatively few enrolled members and only a limited staff to respond to your requests. This being the case, coordinate your requests for information with other federal agencies whenever doing so may reduce the administrative burden on the affected tribe.

(m) What constitutes "due consideration...consistent with tribal sovereignty" depends, in part, on the underlying law that dictates that consultation take place. "Consultation" can vary from simple notice of a pending action to negotiation to obtain the tribe's formal consent to a proposed action (the absence of which may be enough to stop that action from proceeding). The attached table summarizes the specific legal obligations owed tribes under the trust doctrine and various statutes. In general, two principles should be kept in mind. One, tribes are not just another interested party; where tribal interests may be significantly affected, tribes must be regarded as separate from the general public for the purposes of consultation. Second, in most cases, consultation should include an invitation to potentially affected tribes to provide information to DoD concerning actions that may significantly affect tribal interests; that information should be given special consideration. In some instances, e.g., where Indian lands or treaty rights may be significantly and adversely affected, tribal rights may take precedence and dictate that DoD protect these rights to the fullest extent possible.

(n) There are over 570 federally recognized Indian tribes, each with its own distinctive cultural identity. Just as is true with foreign nations, a "one-size-fits-all" prescription for consultation with Indian tribes is neither appropriate nor possible. Instead, installations should expect to have

to negotiate a mutually agreeable protocol with each separate tribe with which it must consult. While certain elements can be expected be a part of any such protocol, installations should be mindful of the fact that tribes all have different ways of controlling property, harvesting natural resources, revering the environment, and even conducting consultations.

(o) Keep it in mind that the consultation trigger contemplates a two-step process. Consultation need continue throughout the decision-making process only for those proposals that have the potential to significantly affect tribal interests.

(p) Fulfillment of the trust responsibility demands that federal agencies protect the lands and habitats that support the resources upon which the meaningful exercise of tribal hunting, fishing, and gathering rights depend. This includes actions on non-Indian-owned lands (including DoD installations) that may affect Indian lands or off-reservation treaty rights (such as reserved rights to hunt, fish, or gather on treaty-ceded lands or "usual and accustomed" grounds and stations). In addition, in Alaska, DoD must endeavor to protect the continued viability of all wild, renewable resources in order to minimize, to the extent possible, the adverse effects of its actions on rural residents who depend upon subsistence uses of such renewable resources.

(q) Where a proposed DoD action may have the potential to significantly affect tribal trust resources (i.e., Indian lands or treaty rights to certain resources) or DoD has been given express statutory authority (e.g., §8050 of the Department of Defense Appropriations Act of FY 1999), DoD may have limited authority to help develop and enhance the affected tribe's capacity to better manage these resources. This, however, is an area fraught with fiscal law pitfalls; consequently, installations are advised to consult with legal counsel before committing to expend appropriated funds for this purpose.

(r) Presently, legal authority to protect tribal information concerning sacred sites is very limited. Section 9 of the Archeological Resources Protection Act (16 U.S.C. § 470hh) and Section 304 of the National Historic Preservation Act (16 U.S.C. § 470w-3) may provide some protection from a request for such information, but may not be enough to guarantee confidentiality in the face of a Freedom of Information Act request for disclosure—especially the NHPA provision. A written consultation agreement with a tribe may be appropriate in some circumstances and permit an installation to withhold disclosure under FOIA Exemption 5, but even this tactic may prove to be ineffective. As a consequence, installations should be careful not overstate their ability to keep sensitive tribal information confidential.

Consultation with Native Hawaiian Organizations (DoDI 4710.03)



Department of Defense INSTRUCTION

NUMBER 4710.03

October 25, 2011

USD(AT&L)

SUBJECT: Consultation With Native Hawaiian Organizations (NHOs)

References: See Enclosure 1

1. PURPOSE. This Instruction:

- a. Reissues Directive-Type Memorandum 11-001 (Reference (a)) as a DoD Instruction in accordance with the authority in DoD Directive 5134.01 (Reference (b)).
- b. Establishes policy and assigns responsibilities for DoD consultation with NHOs when proposing actions that may affect a property or place of traditional religious and cultural importance to an NHO.
- c. Provides the DoD Components in Hawaii with a framework to develop localized processes to facilitate consultation.

2. APPLICABILITY. This Instruction:

- a. Applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the DoD (IG DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD with consultation responsibilities to NHOs (hereinafter referred to collectively as the "DoD Components").
- b. Is intended only to improve the internal management of the DoD Components regarding their consultation responsibilities and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the DoD, its Components, officers, or any person.

3. DEFINITIONS. See Glossary.

DoDI 4710.03, October 25, 2011

4. POLICY. It is DoD policy that:

a. The DoD respects the traditions and cultures of all native peoples of the United States as well as the strong desire of Native Hawaiians to maintain their rich history and tradition amidst other prevalent influences in American society.

b. The DoD recognizes the special status afforded NHOs by the U.S. Government through various Federal laws, regulations, and policy. The Military Services' long presence in Hawaii has provided the DoD with a strong appreciation for the importance of consultation when proposing actions that may affect a property or place of traditional religious and cultural importance to an NHO.

c. The DoD shall conduct meaningful consultation for the purpose of avoiding or minimizing, to the extent practicable and consistent with law, the effects of DoD Component actions on a property or place of traditional religious and cultural importance to an NHO.

5. RESPONSIBILITIES. See Enclosure 2.

6. PROCEDURES. Enclosure 3 provides procedures and requirements for when, with whom, and how to consult with NHOs, including considerations for natural and cultural resources.

7. RELEASABILITY. UNLIMITED. This Instruction is approved for public release and is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

8. EFFECTIVE DATE. This Instruction is effective upon its publication to the DoD Issuances Website.



Frank Kendall
Acting Under Secretary of Defense for
Acquisition, Technology, and Logistics

Enclosures

1. References
2. Responsibilities
3. Procedures
4. Compliance Measures of Merit

Glossary

DoDI 4710.03, October 25, 2011

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DoDI 4710.03, October 25, 2011

ENCLOSURE 1

REFERENCES

- (a) Directive-Type Memorandum 11-001, "Consultation with Native Hawaiian Organizations," February 3, 2011 (hereby cancelled)
- (b) DoD Directive 5134.01, "Under Secretary of Defense for Acquisition, Technology and Logistics (USD(AT&L))," December 9, 2005
- (c) Sections 691-716 of title 48, United States Code (also known as "The Hawaiian Homes Commission Act, as amended")
- (d) Public Law 86-3, "The Admission Act," March 18, 1959
- (e) Sections 4321-4370f¹ and 2000bb-1² of title 42, United States Code
- (f) Sections 470-470x-6 of title 16, United States Code (also known as "The National Historic Preservation Act of 1966 (NHPA), as amended")
- (g) Sections 3001-3013 of title 25, United States Code (also known as "The Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), as amended")
- (h) DoD Instruction 4710.02, "DoD Interactions with Federally-Recognized Tribes," September 14, 2006
- (i) Public Law 103-150, "Overthrow of Hawaii," November 23, 1993 (also known as "The Apology Resolution")

¹ Also known as "The National Environmental Policy Act of 1969, as amended"

² Also known as "The Religious Freedom Restoration Act of 1993, as amended"

DoDI 4710.03, October 25, 2011

ENCLOSURE 2

RESPONSIBILITIES

1. UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY AND LOGISTICS (USD(AT&L)). The USD(AT&L) shall establish DoD policy for interactions with federally recognized tribes and requirements for DoD consultation with NHOs.

2. DEPUTY UNDER SECRETARY OF DEFENSE FOR INSTALLATIONS AND ENVIRONMENT (DUSD(I&E)). The DUSD(I&E), under the authority, direction, and control of the USD(AT&L), shall:

- a. Develop policy and guidance for interactions with federally recognized tribes and for consultation with NHOs.
- b. Designate responsibilities and provide procedures for DoD consultation with NHOs.
- c. Enhance DoD Component understanding of NHO issues and concerns through education and training programs and outreach activities.
- d. Assist the DoD Components in identifying requirements of Presidential Memorandums, Executive orders, statutes, and regulations governing DoD consultations with NHOs.
- e. Designate an NHO liaison within the Office of the DUSD(I&E) (ODUSD(I&E)) to coordinate DoD consultation activities.
- f. As requested, assist the DoD Components with consultation with NHOs.

3. HEADS OF THE DoD COMPONENTS WITH CONSULTATION RESPONSIBILITIES TO NHOs. The Heads of the DoD Components with consultation responsibilities to NHOs shall:

- a. Ensure compliance with the applicable requirements of Presidential Memorandums, Executive orders, statutes, and regulations regarding DoD consultations with NHOs, and integrate required consultation activities into mission activities in order to facilitate early and meaningful consultation.
- b. Plan, program, and budget for Presidential Memorandum, Executive order, statutory, and regulatory requirements applicable to consultation with NHOs consistent with DoD guidance and fiscal policies, and within available resources.
- c. Ensure that consultation with NHOs occurs in accordance with Enclosure 3 of this Instruction.

DoDI 4710.03, October 25, 2011

- d. Notify the DUSD(I&E) of NHO issues that are controversial, cannot be resolved at the DoD Component level, and have the potential to be elevated to the USD(AT&L) for resolution.
- e. Assign NHO liaison responsibilities to staff at the headquarters level to coordinate NHO consultation issues with ODUSD(I&E).
- f. Assign a point of contact in Hawaii to ensure that NHO inquiries are channeled to appropriate officials and responded to in a timely manner.
- g. Develop consultation procedures and provide cultural communications training for military and civilian personnel with consultation responsibilities.

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ENCLOSURE 3

PROCEDURES

1. WHEN TO CONSULT

a. The DoD Components shall consult with NHOs:

(1) When proposing an undertaking that may affect a property or place of traditional religious and/or cultural importance to an NHO.

(2) When receiving notice of or otherwise becoming aware of an inadvertent discovery or planned activity that has resulted or may result in the intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal lands or lands administered for the benefit of Native Hawaiians pursuant to sections 691-716 of title 8, United States Code (U.S.C.) (also known as “The Hawaiian Homes Commission Act, as amended”) (Reference (c)) and section 4 of Public Law 86-3 (Reference (d)).

(3) When proposing an action that may affect a long term or permanent change in NHO access to a property or place of traditional religious and cultural importance to an NHO.

(4) When proposing an action that may substantially burden a Native Hawaiian’s exercise of religion (as defined in the Glossary).

(5) When proposing an action that may affect a property or place of traditional religious and cultural importance to an NHO or subsistence practices, and for which the DoD Components have an obligation to consult pursuant to sections 4321-4370f of title 42, U.S.C. (also known as “The National Environmental Policy Act of 1969, as amended” (Reference (e))) or any other statute, regulation, or Executive order.

b. The DoD Components shall conduct their consultation activities early enough in the DoD project planning process to allow the information provided to be meaningfully considered by DoD project planners and decision makers.

c. Recognizing that consultation is most effective when conducted in the context of an ongoing relationship, the DoD Components are encouraged to, insofar as practicable, establish and maintain relationships with NHOs separate from consultations related to specific actions. As part of this effort, the DoD Components and NHOs may exchange information related to operational and mission requirements, concerns about stewardship of important cultural resources and culturally-important natural resources, procedures to streamline action-specific consultations, and long-term planning.

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2. WHOM TO CONSULT

a. The DoD Components shall make a reasonable and good faith effort to contact and consult with NHOs whose members perform cultural, religious, or subsistence customs and practices in an area that may be affected by a proposed DoD Component activity in Hawaii.

b. As a State of Hawaii organization established to promote the interests of Native Hawaiians, the Office of Hawaiian Affairs (OHA) (see <http://www.oha.org/>) may provide the DoD Components with up-to-date information and recommendations for appropriate contacts relative to a particular proposed action. OHA may also assist the DoD Components with consultation through dissemination of notices and announcements of proposed DoD Component actions that may affect resources of religious and cultural importance to NHOs.

c. As a practical matter, the DoD Components may find it helpful to contact:

(1) Individual Native Hawaiians and others who may have specific knowledge about the history and culture of an area that may have the potential to be adversely affected by a proposed DoD Component action.

(2) Individual Native Hawaiians and others who live near an area that may be affected by a proposed DoD Component activity and who regularly use the area for cultural, religious, or subsistence purposes.

(3) The U.S. Department of Interior, Office of Hawaiian Relations, which maintains an NHO Notification List at <http://www.doi.gov/ohr/nativehawaiians/list.html>.

(4) The Hawaii State Historic Preservation Officer at <http://hawaii.gov/dlnr/hpd/hpgreeting.htm>.

3. HOW TO CONSULT. The DoD Components shall fully integrate, including staff officers at the installation level, the principles and practices of meaningful consultation and communication with NHOs by:

a. Providing interested NHOs an opportunity to participate in pre-decision consultation that will ensure that NHO concerns are given due consideration whenever a DoD Component proposes an action that may affect historic properties or places of traditional religious and cultural importance to an NHO as defined by sections 470-470x-6 of title 16, U.S.C. (also known and hereinafter referred to as "The National Historic Preservation Act of 1966 (NHPA), as amended" (Reference (f))).

b. Considering the advice and recommendations of OHA to facilitate effective consultation between NHOs and DoD Components, with the understanding that no single NHO is likely to represent the interests of all NHOs.

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c. Consulting in good faith, whenever a DoD Component proposes an action that may adversely affect resources of traditional religious or cultural importance to NHOs, and for which the DoD Components have an obligation to consult under any Presidential Memorandum, statute, regulation, or Executive order.

d. Initiating and maintaining effective communication with NHOs using tools and techniques designed to facilitate greater understanding and participation.

e. Providing continuity by ensuring new commanders are provided, as soon as possible, information regarding existing written agreements between the installation and NHOs, points of contact, and NHO areas of special interest concerning installation activities.

f. Recognizing the importance of improving communication between the DoD Components and NHOs by establishing a process for outreach regarding DoD activities that may have an effect on a property or place of traditional religious and cultural importance to an NHO or subsistence practices on each island to foster a positive relationship between the DoD Components in Hawaii and NHOs.

g. Involving the Hawaii State Historic Preservation Officer in consultations in accordance with NHPA, and, with respect to sections 3001-3013 of title 25, U.S.C. (also known and hereinafter referred to as "The Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), as amended" (Reference (g))), appropriate Burial Councils.

4. **CULTURAL AND NATURAL RESOURCE CONSIDERATIONS.** The DoD Components shall recognize and respect the significance that NHOs give to resources of traditional religious and cultural importance by:

a. Undertaking DoD Component actions and managing DoD lands and water resources so as to protect and preserve, to the extent practicable and consistent with the law and operational and readiness requirements, places that NHOs have identified, consistent with law, as being of particular significance to Native Hawaiian traditional religious and/or cultural practices.

b. Enhancing the ability of NHOs to help the DoD Components protect and manage a natural resource that is also a property or place of traditional religious and cultural importance to an NHO on DoD lands, through NHO participation in the development of Integrated Cultural Resource Management Plans (ICRMP).

c. Accommodating, to the extent practicable and consistent with the safety of NHO representatives, military training, security, and readiness requirements, NHO access to a property or place of traditional religious and cultural importance to an NHO for religious or cultural activities.

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d. Developing written agreements to the extent practicable, appropriate, or required, among the DoD Components, the Secretary of the Interior, and NHOs to protect confidential information regarding a property or place of traditional religious and cultural importance to an NHO.

e. Developing written agreements, to the extent practicable, appropriate, or required, between the DoD Components and the Hawaii State Historic Preservation Officer, in consultation with NHOs, to address the effects of proposed DoD undertakings on a property or place of traditional religious and cultural importance to an NHO.

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ENCLOSURE 4

COMPLIANCE MEASURES OF MERIT

1. POLICY IMPLEMENTATION. The ODUSD(I&E) shall assess the number of DoD Components that have incorporated a process for consultation with NHOs as part of an ICRMP when a property or place of traditional religious and cultural importance to an NHO has been identified.
2. NAGPRA. The ODUSD(I&E) shall assess compliance with NAGPRA in accordance with the compliance measures of merit included in DoDI 4710.02 (Reference (h)).

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GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

| | |
|------------|---|
| DUSD(I&E) | Deputy Under Secretary of Defense for Installations and Environment |
| ICRMP | Integrated Cultural Resource Management Plans |
| NAGPRA | Native American Graves Protection and Repatriation Act of 1990 |
| NHOs | Native Hawaiian Organizations |
| NHPA | National Historic Preservation Act of 1966 |
| ODUSD(I&E) | Office of the Deputy Under Secretary of Defense for Installations and Environment |
| OHA | Office of Hawaiian Affairs |
| U.S.C. | United States Code |
| USD(AT&L) | Under Secretary of Defense for Acquisition, Technology and Logistics |

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purpose of this Instruction.

consultation. Seeking, discussing, and considering the views of other participants and, when feasible, seeking a mutually acceptable understanding regarding the matters at hand. As appropriate to the circumstances, consultation may include, but is not limited to, the exchange of written communications, face-to-face discussions, and telephonic or other means of exchanging information and ideas.

cultural patrimony. Defined in section 2(3)(D) of Reference (g).

culturally affiliated. Defined in section 2(2) of Reference (g).

exercise of religion. Defined in section 2000bb-1 of Reference (e) (also known as “The Religious Freedom Restoration Act of 1993, as amended”).

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human remains, funerary objects, sacred objects, or objects of cultural patrimony. Defined in Reference (g).

Native Hawaiian. Defined in Public Law 103-150 (also known as “The Apology Resolution” (Reference (i))).

NHOs. Organizations that serve and represent the interests of Native Hawaiians have a primary and stated purpose of providing services to Native Hawaiians, and have expertise in Native Hawaiian affairs. Pursuant to NHPA and NAGPRA, NHOs include OHA and Hui Malama I Na Kupuna ‘O Hawai’i Nei (see <http://huimalama.tripod.com/>). The DoD Components may identify any other organization as an NHO if they determine that the organization meets the criteria in this definition.

Government-to-Government Relations with Native American Tribal Governments (29 April 1994 Presidential Memorandum)

59 FR 22951
1994 WL 163120 (Pres.)

Memorandum

Government-to-Government Relations With Native American Tribal Governments

April 29, 1994

Memorandum for the Heads of Executive Departments and Agencies

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of

59 FR 22951

Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM CLINTON
THE WHITE HOUSE,
Washington, April 29, 1994.

59 FR 22951, 1994 WL 163120 (Pres.)