Department of Defense

INSTRUCTION

NUMBER 4715.5

April 22, 1996

USD(A&T)

SUBJECT: Management of Environmental Compliance at Overseas Installations

References: (a) DoD Directive 6050.16, "DoD Policy for Establishing and Implementing Environmental Standards at Overseas Installations," September 20, 1991 (canceled)
(b) DoD Directive 4715.1, "Environmental Security," February 24, 1996
(c) Section 342(b) of Public Law 101-510, "National Defense Authorization Act Fiscal Year 1991," November 4, 1990, referred to in 10 U.S.C. 2701, note
(d) Executive Order 12344, "Naval Nuclear Propulsion Program," February 1, 1982
(e) through (m), see enclosure 1

1. PURPOSE

This Instruction:

1.1. Replaces reference (a), which was canceled by reference (b).

1.2. As required by reference (c), implements policy, assigns responsibilities, and prescribes procedures under reference (b), establishing environmental compliance standards for protection of human health and the environment at DoD installations in foreign countries.

1.3. Provides for designation of DoD Environmental Executive Agents in accordance with subsection 6.1., below.

2. APPLICABILITY AND SCOPE

2.1. This Instruction:

2.1.1. Applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is operating as a Military Service in the Navy), the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities, including any other integral DoD organizational entity or instrumentality established to perform a governmental function (hereafter referred to collectively as "the DoD Components").

2.1.2. Applies to the actions of the DoD Components at installations outside the United States, its territories, and possessions.

2.1.3. Does not apply to DoD installations that do not have the potential to affect the natural environment (e.g., offices whose operations are primarily administrative, including defense attaché offices, security assistance offices, foreign buying offices, and other similar organizations) or for which the DoD Components exercise control only on a temporary or intermittent basis.

2.1.4. Does not apply to the operations of U.S. military vessels, to the operations of U.S. military aircraft, or to off-installation operational and training deployments. Off-installation operational deployments include cases of hostilities, contingency operations in hazardous areas, and when United States forces are operating as part of a multi-national force not under full control of the United States. Such excepted operations and deployments shall be conducted in accordance with applicable international agreements, other DoD Directives and Instructions and environmental annexes incorporated into operation plans or operation orders. However, it does apply to support functions for U.S. military vessels and U.S. military aircraft provided by the DoD Components, including management or disposal of off-loaded waste or material.

2.1.5. Does not apply to facilities and activities associated with the Naval Nuclear Propulsion Program, which are covered under E.O. 12344 (reference (d)) and conducted under 42 U.S.C. 7158 (reference (e)).

2.1.6. Does not apply to the determination or conduct of remediation to correct environmental problems caused by the Department of Defense's past activities.

2.1.7. Does not apply to environmental analyses conducted under E.O. 12114 (reference (f)).

2.2. Nothing in this Instruction shall create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

3. DEFINITIONS

Terms used in this Instruction are defined in enclosure 2.

4. POLICY

It is DoD policy under reference (b) that:

4.1. The Department of Defense shall establish, maintain, and, as described in subsection 6.3., below, comply with Final Governing Standards (FGS) to protect human health and the environment for each foreign country where the Department of Defense maintains substantial installations. Using the procedures described in section 6., below, the FGS will reconcile the requirements of applicable international agreements, applicable host-nation environmental standards under E.O. 12088 (reference (g)), and the Overseas Environmental Baseline Guidance Document (OEBGD).

4.2. The DoD Components shall not dispose of wastes overseas that are generated by overseas DoD actions and that are considered hazardous under either U.S. law or host-nation standards without concurrence, as set out in subsection 6.4., below, of the nation where the disposal takes place.

4.3. Pollution prevention shall be the preferred means for attaining compliance, where economically advantageous and consistent with mission requirements.

4.4. The DoD Components shall use cooperative solutions for environmental facilities or services (e.g., waste storage and disposal facilities, solid waste collection and disposal services, water or wastewater treatment works), where economically advantageous and consistent with mission requirements, to include the use of acquisition authority and cross-servicing agreements negotiated under DoD Directive 2010.9 (reference (h)).

4.5. The DoD Components should use commercially proven solutions, where possible, to achieve, maintain, and monitor compliance.

4.6. The DoD Components shall establish and conduct a program for regular assessment of environmental compliance at installations overseas.

5. RESPONSIBILITIES

5.1. The Under Secretary of Defense for Acquisition and Technology, in coordination with the Chairman of the Joint Chiefs of Staff and the Under Secretary of Defense for Policy, shall have authority and responsibility for DoD environmental policy for overseas installations and shall coordinate DoD environmental policy for overseas installations with the other DoD Components, the Department of State, and other Federal Agencies, as appropriate.

5.2. The Deputy Under Secretary of Defense for Environmental Security shall implement this Instruction on behalf of the Under Secretary of Defense for Acquisition and Technology and shall:

5.2.1. Designate DoD Environmental Executive Agents as set out in subsection 6.1., below.

5.2.2. Resolve issues raised by environmental policy principals of the DoD Components under subsection 6.9., below.

5.2.3. Provide policy and guidance, oversight, advocacy, and representation for environmental security compliance programs.

5.2.4. Monitor compliance with this Instruction, including development of appropriate Measures of Merit and periodic review of the compliance programs of the DoD Components.

5.3. The Heads of the DoD Components shall:

5.3.1. Ensure actions at installations in foreign countries, including administration and support under 10 U.S.C. 165 (reference (i)) of forces assigned to the Unified Combatant Commanders, as well as planning, budgeting, programming, and execution, comply with the applicable standards described in subsections 4.4. and 4.5., above.

5.3.2. Carry out the responsibilities of Executive Agents for particular nations when designated by the Department of Defense or delegate such authority as provided in paragraph 5.3.5., below, including the following:

5.3.2.1. Plan, budget, and program for preparation and maintenance of the FGS.

5.3.2.2. Identify applicable host-nation environmental standards, monitor regulatory trends, and maintain copies of applicable host-nation environmental documents, standards, and regulations.

5.3.2.3. Consult with host-nation authorities on environmental issues, as required, to maintain effective cooperation on environmental matters.

5.3.2.4. Consult with the Chief of the U. S. Diplomatic Mission in the host nation, the affected Military Service through the chain of command, and the geographic Unified Combatant Command on significant issues arising from DoD environmental policy in that country.

5.3.2.5. Prepare and maintain the FGS for the designated host nation, technical, legal and programmatic support to the process.

5.3.2.6. Resolve requests for waivers from the DoD Components under subsection 6.4., below.

5.3.2.7. Keep DoD Components informed of current environmental developments and trends.

5.3.3. Provide technical, legal and programmatic support to the process for maintenance of the OEBGD.

5.3.4. Establish and implement an environmental compliance assessment program for overseas installations that will include internal and external environmental assessments. Conduct internal self-assessments at least annually. Conduct external compliance self-assessments at least once every three years at all major installations.

5.3.5. Designate Component Commanders or other officials who are authorized to apply for waivers under subsection 6.6., below, or to initiate appeals under subsection 6.9., below.

5.3.6. Promptly notify the Deputy Under Secretary of Defense for Environmental Security (DUSD(ES)) and all affected elements of command of significant environmental events.

5.3.7. Coordinate with, cooperate with, and provide timely notice to each

other regarding environmental items of common interest affecting overseas installations.

5.4. The Secretary of the Air Force shall have lead responsibility for maintaining the OEBGD, including printing and distribution of any revisions.

5.5. The Commanders of the Unified Combatant Commands shall:

5.5.1. Coordinate and approve implementation of this Instruction by the DoD Environmental Executive Agents in their geographic areas of responsibility, as necessary, to carry out their mission.

5.5.2. Resolve disputes between the DoD Components and the Executive Agent as provided in subsection 6.9., below.

6. PROCEDURES

6.1. Designation of DoD Environmental Executive Agents

6.1.1. The DUSD(ES) shall designate a DoD Component as the DoD Environmental Executive Agent for environmental matters in foreign countries where DoD installations are located and where the DUSD(ES) determines that the level of DoD presence justifies establishment of FGS. Current designations are listed in enclosure 3.

6.1.2. Military Departments, the Unified Combatant Commander or an appropriate component or subunified commander may be designated as DoD Environmental Executive Agent. When a Military Department is designated as Executive Agent, the Department should delegate authority via the chain of command to an appropriate general or flag-level commander.

6.1.3. Each Unified Combatant Commander with a geographic area of responsibility encompassing foreign countries may recommend changes adding, substituting or eliminating DoD Environmental Executive Agents. Such recommendations shall be submitted to the Chairman of the Joint Chiefs of Staff for coordination with the Military Departments prior to submittal to DUSD(ES).

6.1.4. The DUSD(ES) shall coordinate with the Chairman of the Joint Chiefs of Staff and any affected DoD Components before adding, substituting, or eliminating DoD Environmental Executive Agents.

6.2. Maintenance of the Overseas Environmental Baseline Guidance Document

6.2.1. The Department of Defense shall establish, maintain, and, as described in subsection 6.3.8., below, comply with the OEBGD. The OEBGD shall be designed to protect human health and the environment; shall consider generally accepted environmental standards applicable to DoD installations, facilities, and actions in the United States; and shall incorporate requirements of U.S. law that have extraterritorial application to the Department of Defense.

6.2.2. The OEBGD shall be reviewed as needed, but at least biennially, to ensure that it protects human health and the environment, and reflects consideration of current, generally accepted environmental standards applicable to similar DoD installations and actions in the United States, and incorporates requirements of U.S. law that have extraterritorial application.

6.2.3. The Department of the Air Force shall conduct the OEBGD review process, chairing a multidisciplinary committee consisting of, at a minimum, representatives of the Military Departments, the Chairman of the Joint Chiefs of Staff, and the Defense Logistics Agency. Field comments will be solicited during the review process.

6.2.4. Revisions to the OEBGD proposed by the committee shall be forwarded to DUSD(ES) for coordination, final approval, and distribution, in accordance with DoD 5025.1-M (reference (j)), to the DoD Components and DoD Environmental Executive Agents.

6.3. Development and Maintenance of Final Governing Standards for Overseas Installations

6.3.1. The DoD Components in a foreign nation shall consult with other DoD Components with similar environmental issues and shall coordinate environmental matters with the environmental executive agent designated under this Instruction.

6.3.2. The DoD Environmental Executive Agent shall identify applicable host nation environmental standards. In identifying these standards, the DoD Environmental Executive Agent shall:

6.3.2.1. Identify published host-nation law, including transnational enforceable standards, and applicable international agreements for the protection of

human health and the environment within the host nation.

6.3.2.2. Determine the extent to which the host-nation environmental standards are adequately defined and generally in effect and enforced against host-government and private sector activities. Laws of local governmental units are not included unless they implement national laws that delegate authority to, or recognize the authority of, the local governmental unit.

6.3.2.3. Consider whether responsibility for construction, maintenance, and operation of the installation rests with the United States or the host nation.

6.3.3. The DoD Environmental Executive Agent shall determine the Final Governing Standards as follows:

6.3.3.1. The DoD Environmental Executive Agent shall use the OEBGD to establish the FGS unless the OEBGD is inconsistent with applicable host-nation environmental standards or standards under applicable international agreements and these other applicable standards provide more protection to human health and the environment. In case of inconsistency, the DoD Executive Agent shall normally use the more protective standard to establish the FGS unless a specific international agreement with the host nation establishes a different standard applicable to U.S. installations.

6.3.3.2. The DoD Environmental Executive Agent normally should base the comparison of standards on individual standards. Where, however in the judgment of the Executive Agent, a standard cannot be considered individually because it is part of a comprehensive regulatory regime for a particular environmental subject, the comparison may be made on a broader scope. In such cases, the Executive Agent may compare the overall regulatory regime for the threat to human health or the environment in the OEBGD with the corresponding regulatory regime of the applicable host nation environmental standards or standards under applicable international agreements. The more protective regime normally shall then be used to establish the FGS.

6.3.3.3. If a particular environmental threat is not addressed by the OEBGD but is addressed by relevant host-nation environmental standards or standards under applicable international agreements, the DoD Environmental Executive Agent shall consider the applicable host-nation environmental standards or standards under applicable international agreements to establish the FGS. Until the DoD Environmental Executive Agent establishes a standard for that threat in the FGS, the host nation or international agreement standard shall apply.

6.3.4. The DoD Environmental Executive Agent shall issue the FGS after consultation with the appropriate in-country or theater representatives of the other DoD Components operating in the country, approval of the Unified Combatant Commander, and notification to the U.S. Diplomatic Mission.

6.3.5. The DoD Components in a foreign nation for which FGS have been established shall comply with the FGS established for that country.

6.3.6. The DoD Environmental Executive Agent shall revalidate and update the FGS on a periodic basis, but at least every two years.

6.3.7. The DoD Environmental Executive Agent shall forward a copy of the new or revised FGS for each country via the Unified Combatant Commander and the Chairman of the Joint Chiefs of Staff to the Military Departments and DUSD(ES) for information.

6.3.8. The DoD Components in a foreign nation for which no FGS have been established shall comply with applicable international agreements, applicable host nation environmental standards under E.O. 12088 (reference (g)), and the OEBGD, and in cases of conflicting requirements, shall comply with the standard that is more protective of human health or the environment. Such DoD Components shall consult with the DoD Environmental Executive Agent (or if no Executive Agent has been designated, with the Unified Combatant Commander) on actions that involve a substantial commitment of funds or that could set a precedent.

6.3.9. The Reserve component commander, in consultation with the DoD Environmental Executive Agent, shall establish an awareness and training package instructing Reserve component units on Final Governing Standards (FGS) or other standards described in paragraphs 6.3.5. and 6.3.8., above, as appropriate.

6.4. Additional Procedures for Hazardous Wastes In addition to the FGS or OEBGD (where no FGS have been issued), the following additional procedures shall be followed for the disposal of hazardous waste:

6.4.1. The DoD Components shall not dispose of wastes in a foreign nation that are generated by DoD actions and that are considered hazardous under either U.S. law or applicable host-nation standards, unless the disposal complies with either the OEBGD or FGS (under paragraphs 6.3.5. and 6.3.8., above, as appropriate) and is in accordance with any applicable international agreement. Absent an applicable international agreement that grants disposal authority, explicit or implicit concurrence

is required by the appropriate authorities of the nation where the disposal takes place.

6.4.2. When the requirements of paragraph 6.4.1., above, cannot be met, the hazardous waste shall be disposed of in the United States or in another foreign nation where the applicable conditions can be met, unless other disposal arrangements are approved by DUSD(ES).

6.4.3. The determination of whether a DoD-generated hazardous waste may be disposed of in a foreign nation shall be made by the DoD Environmental Executive Agent, in coordination with the applicable Unified Combatant Commander, Director of the Defense Logistics Agency (DLA), the other relevant DoD Components, and the Chief of the U.S. Diplomatic Mission. If there is no DoD Environmental Executive Agent, the determination shall be made by the Director of the DLA in coordination with the other relevant DoD Components, and the Chief of the U.S. Diplomatic Mission.

6.4.4. In addition to compliance with the applicable standards described in paragraphs 6.3.5. and 6.3.8., above, the DoD Components must comply with provisions of the Status of Forces Agreement (SOFA) and other applicable international agreements on the shipping and storage of hazardous wastes.

6.5. Planning, Programming, Budgeting of Funds and Execution Planning, programming and budgeting of funds and other resources required for compliance with this Instruction shall be accomplished in accordance with DoD procedures generally applicable to environmental compliance and the following:

6.5.1. For planning, programming, and budgeting, the DoD Components shall treat the applicable set of environmental compliance standards for the host nation under paragraphs 6.3.5. or 6.3.8., above, as validated budgetary requirements and the functional equivalents of generally accepted environmental standards for similar installations, facilities, and operations in the United States. The DoD Components shall plan, program and budget for these requirements over the length of the first Program Objectives Memorandum (POM) cycle following the effective date of this Instruction or, for modifications to the applicable set of environmental compliance standards, the effective date of the modification.

6.5.2. Standards contained in the FGS or OEBGD shall be given the highest priority for funding and execution and shall be funded in the current or the immediately following fiscal year if leaving them unremedied would result in one or more of the following:

6.5.2.1. An imminent and substantial threat to human health;

6.5.2.2. A direct threat to ongoing U.S. operations or U.S. access to an overseas base or installation; or

6.5.2.3. A U.S. default on a standard made directly applicable to U.S. overseas operations in a basing agreement, SOFA or other international agreement.

6.5.2.4. All other requirements should be addressed according to a risk-based prioritization, based on local circumstances and long-term objectives.

6.5.3. This Instruction does not require or authorize the DoD Components to expend funds or use other resources to meet requirements that are the responsibility of host nations, as stipulated in applicable international agreements. Nor, however, does this Instruction restrict the authority of a commander to protect the human health and safety of the command from environmental threats.

6.6. Waivers A DoD Component may request a waiver of an otherwise applicable standard under subsections 6.3.5. or 6.3.8., above, only if compliance with the standards at particular installations or facilities would seriously impair their actions, adversely affect relations with the host nation or would require substantial expenditure of funds for physical improvements at an installation that has been identified for closure or at an installation that has been identified for a realignment that would remove the requirement. Waivers may not be granted to standards if noncompliance would constitute a breach of applicable U.S. law with extraterritorial effect or applicable international agreements.

6.6.1. A DoD Component submitting a request for waiver shall:

6.6.1.1. Identify the particular standard for which a waiver is requested;

6.6.1.2. Describe the extent of the relief requested and the period that the waiver will be in effect;

6.6.1.3. Describe the anticipated impact of the waiver, if any, on human health and the environment over the period of the waiver; and,

6.6.1.4. Describe the justification for the waiver and if a complete waiver of the standard is requested, why a partial and/or temporary deviation would not be sufficient.

6.6.2. Upon receipt of a request for waiver, the DoD Environmental Executive Agent shall consult with the relevant DoD Components and the Unified Combatant Command with geographic responsibility. Where the waiver or deviation is from a host-nation standard, the DoD Environmental Executive Agent should normally consult through the appropriate U.S. Diplomatic Mission (or other agencies established by applicable international agreements) with the responsible host-nation authority.

6.6.3. The DoD Environmental Executive Agent may grant or deny the request for waiver in whole, in part or upon conditions. Pending action by the DoD Environmental Executive Agent, the Unified Combatant Commanders may, consistent with applicable international agreements and other law, authorize temporary emergency waivers and deviations in countries in their geographic area when they determine that such a waiver or deviation is essential to the accomplishment of an operational mission directed by the National Command Authorities. Such waivers shall be no broader than appropriate to accomplish the mission.

6.6.4. If, as a result of consultation with host-nation authorities by the Executive Agent, it is determined that the waiver or deviation from the applicable host-nation standards should not be approved, the DoD Environmental Executive Agent or the DoD Component requesting the waiver may forward the request along with a complete report to the DUSD(ES), who shall attempt to resolve the issue through consultation with relevant authorities and other Federal Agencies as appropriate.

6.6.5. Where the Military Department or Defense Agency requesting the waiver is also the DoD Environmental Executive Agent, the waiver shall be referred to the Unified Combatant Commander for decision.

6.6.6. A DoD Environmental Executive Agent, Unified Combatant Commander or the DUSD(ES), as appropriate, shall maintain a written record of its decision on each waiver requested.

6.7. Pollution Prevention Guidance Additional pollution prevention guidance can be found in DoD Instruction 4715.4 (reference (k)).

6.8. Annual Information The DoD Components shall provide information to DUSD(ES) required and requested to comply with paragraphs 6.3.5. and 6.3.8., above, for each military installation. Under 10 U.S.C. 2706(b), (reference (l)), this information shall be compiled and submitted as part of the Department of Defense's

annual report to Congress on environmental quality. The DoD Components should also notify DUSD(ES) of noteworthy environmental achievements such as major environmental initiatives, milestones, and good news stories that show leadership, as appropriate.

6.9. Dispute Resolution If a DoD Component disagrees with the establishment of one or more FGS by an Executive Agent, the failure to fully approve a request for a waiver, or another determination of the DoD Environmental Executive Agent, the DoD Component may seek resolution of the disagreement directly with the applicable Unified Combatant Commander, who shall issue a decision after consultation with the DoD Environmental Executive Agent. If the DoD Component still disagrees with the resolution of the issue, the Component's senior environmental policy principal may refer the matter to the DUSD(ES) for final determination after notice to the Chairman of the Joint Chiefs of Staff.

7. INFORMATION REQUIREMENTS

7.1. The annual report to Congress on the Department of Defense's Environmental Quality compliance in subsection 6.8., above, has been assigned Report Control Symbol DD-ANT (A) 1997. This information is required before the President's Budget submission to Congress under reference (l).

8. EFFECTIVE DATE

This Instruction is effective immediately.

Paul Kaminski
Paul Kaminski
Under Secretary of Defense
for Acquisition and Technology

Enclosures - 3

1. References
2. Definitions
3. Designated DoD Environmental Executive Agents

E1. ENCLOSURE 1

REFERENCES, continued

(e) Section 7158 of title 42, United States Code
(f) Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions," January 4, 1979
(g) Executive Order 12088, "Federal Compliance with Pollution Control Standards," October 13, 1978
(h) DoD Directive 2010.9, "Mutual Logistic Support Between the United States and Governments of Eligible Countries and NATO Subsidiary Bodies," September 30, 1988
(i) Section 165 of title 10, United States Code
(j) DoD 5025.1-M, "DoD Directives System Procedures," August 1994, authorized by DoD Directive 5025.1, June 24, 1994
(k) DoD Instruction 4715.4, "Pollution Prevention," June 18, 1996
(l) Section 2706(b) of title 10, United States Code
(m) DoD Directive 5530.3, "International Agreements," June 11, 1987

E2. ENCLOSURE 2

DEFINITIONS

E2.1.1. Final Governing Standards (FGS). A comprehensive set of country-specific substantive provisions, typically technical limitations on effluent, discharges, etc., or a specific management practice.

E2.1.2. Installation. A base, camp, post, station, yard, center, or other activity under the jurisdicition of the Secretary of a Military Department that is located outside the United States and outside any territory, commonwealth, or possession of the United States.

E2.1.3. International Agreement. A multilateral or bilateral agreement, such as a base rights or access agreement, a status of forces agreement, including practices and standards established pursuant to such agreement, or any other instrument defined as a binding international agreement under DoD Directive 5530.3 (reference (m)).

E2.1.4. Applicable Host-Nation Environmental Standards. Either those specific management practices to control pollution or those objective, numeric or qualitative pollution control standards that are generally in effect and enforced against host-government and private sector activities. Laws of local governmental units are not included unless they implement national laws that delegate authority to, or recognize the authority of, the local governmental unit. Limitations on discharges, emissions, effluents, and disposal are included, but procedural or administrative requirements, such as permitting, licenses, fees, fines, penalties, or other sanctions, are not.

E2.1.5. Overseas Environmental Baseline Guidance Document (OEBGD). A set of objective criteria and management practices developed by the Department of Defense, pursuant to this Instruction, to protect human health and the environment. The OEBGD also contains procedures for use by the Department of Defense to establish the FGS for a particular geographic area or, as described in subsection 6.3.8., above, to provide standards for environmental compliance where no FGS have been established.

E3. ENCLOSURE 3

DESIGNATED DOD ENVIRONMENTAL EXECUTIVE AGENTS

COUNTRY	EXECUTIVE AGENT
EUROPEAN COMMAND	
United Kingdom	CINCUSAFE
Germany	CINCUSAREUR
Italy	CINCUSNAVEUR
Spain	CINCUSNAVEUR
Greece	CINCUSNAVEUR
Belgium	CINCUSAREUR
Netherlands	CINCUSAREUR
Turkey	CINCUSAFE
CENTRAL COMMAND	
All countries in Area of Responsibility	CINCCENT
ATLANTIC COMMAND	
Azores	USAF Air Combat Command
Ascension Islands	USAF Space Command
Antigua	USAF Space Command
Bahamas [1]	CINCLANTFLT
Cuba [1]	CINCLANTFLT
Greenland	USAF Space Command
Iceland	CINCLANTFLT
SOUTHCOM	
Panama and all countries in AOR	CG, USARSO
PACIFIC COMMAND	
Japan	COMUSFORJAPAN
Korea	CINCUSFORKOREA
Diego Garcia	CINCPACFLT

1 When responsibility of Cuba and the Bahamas is transferred from USACOM to USSOUTHCOM (not earlier than 01 June 1997), USSOUTHCOM shall assign Executive Agents.