Department of Defense
INSTRUCTION

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USD(A&T)

SUBJECT: Environmental Remediation for DoD Activities Overseas

References: (a) Deputy Secretary of Defense Memorandum, "Environmental Remediation Policy for DoD Activities Overseas," October 18, 1995
(b) DoD Instruction 4715.5, "Management of Environmental Compliance at Overseas Installations," April 22, 1996
(c) DoD Directive 5530.3, "International Agreements," June 11, 1987

1. PURPOSE

This Instruction:

1.1. Implements policy, assigns responsibilities and prescribes procedures under reference (a) for remediation of environmental contamination on DoD installations or facilities or caused by DoD operations outside the United States.

1.2. Is for the internal management of the Department of Defense and does not create any independent right enforceable against the Department of Defense, the United States, or their officers, agents, or employees.

1.3. Supersedes previous guidance that is inconsistent with its provisions.

1.4. Does not supersede or amend any existing agreement respecting remediation of DoD environmental contamination outside the United States.

2. APPLICABILITY AND SCOPE

2.1. This Instruction applies to:

2.1.1. 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 Combatant Commands, the Office of 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 government function (hereafter referred to collectively as "the DoD Components").

2.1.2. Remediation of environmental contamination on DoD facilities or installations outside the United States, including DoD activities on host-nation installations or facilities.

2.1.3. Remediation of environmental contamination caused by current DoD operations, including training, that occur off a DoD installation or facility outside and the United States. Such operations do not include operations connected with actual or threatened hostilities, security assistance programs, peacekeeping missions, or relief operations. Such operations also do not include logistics, maintenance, or administrative support functions provided by a contractor off base.

2.2. This Instruction does not apply to:

2.2.1. Actions to remedy environmental contamination that are covered by requirements in environmental annexes to operation orders and similar operational directives, or to requirements issued under DoD Instruction 4715.5 (reference (b)), either in country-specific Final Governing Standards or, where no Final Governing Standards have been issued, in the Overseas Environmental Baseline Guidance Document.

2.2.2. The civil works function of the Department of the Army.

2.3. For purposes of this Instruction, "United States" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of Northern Marianas, any other territory or possession over which the United States has jurisdiction, and associated navigable waters, contiguous zones, and ocean waters of which the natural resources are under the exclusive management authority of the United States.

3. POLICY

The DoD Components shall, in accordance with the specific limitations contained in Sections 5 and 6 of this Instruction, remedy known environmental contamination caused by DoD operations outside the United States.

4. RESPONSIBILITIES

4.1. The Deputy Under Secretary of Defense for Environmental Security, under the Under Secretary of Defense for Acquisition and Technology, shall:

4.1.1. Provide guidance on policy for remediation of overseas environmental contamination.

4.1.2. Resolve a DoD Component's objections to a Combatant Commander's resolution of a dispute between the DoD Component and the Executive Agent if such objection is properly referred to the Deputy Undersecretary of Defense for Environmental Security.

4.2. The Heads of the DoD Components shall:

4.2.1. Remedy known environmental contamination to the extent required by this Instruction and the country-specific policy established by Environmental Executive Agents as set out in paragraph 4.2.3.1., below.

4.2.2. Resolve site-specific issues such as approving strategies for remediation and determining how best to use DoD Component resources.

4.2.3. Carry out or delegate the responsibilities of Environmental Executive Agents for particular nations when designated by the Department of Defense under DoD Instruction 4715.5 (reference (b)), including the following:

4.2.3.1. Establish country-specific remediation policy to ensure consistent remediation of DoD-contaminated sites in the host nation. Consistent with this Instruction and subject to the specific limitations contained in Sections 5 and 6, below, the country-specific policy shall:

4.2.3.1.1. Define, or provide procedures to define, the appropriate level of remediation at contaminated sites;

4.2.3.1.2. Provide procedures for negotiating the scope of any

required remedial measures with the host nation that are consistent with the policy and procedures for negotiating and concluding international agreements in DoD Directive 5530.3 (reference (c)); and

4.2.3.1.3. Provide procedures for furnishing documentation to the host government.

4.2.3.2. Negotiate, or coordinate and approve the negotiations of the DoD Components, with host nations on implementation of this Instruction, and regularly inform the cognizant Combatant Commander of such negotiations.

4.2.3.3. Consult with one another to ensure in-theater consistency in implementing this Instruction.

4.3. The Commanders of the Combatant Commands shall:

4.3.1. Coordinate and approve implementation of the overall policy within their geographic areas of responsibility, as necessary, to carry out their mission.

4.3.2. Resolve disputes between a DoD Component and the Environmental Executive Agent on country-specific policy.

5. PROCEDURES

Subject to the availability of funds and the other provisions of this Instruction, the following requirements apply to remediation of environmental contamination overseas:

5.1. DoD Installations or Facilities That Are Open and Have Not Been Designated for Return

5.1.1. The DoD Components shall take prompt action to remedy known imminent and substantial endangerments to human health and safety due to environmental contamination that was caused by DoD operations and that is located on or is emanating from a DoD installation or facility.

5.1.2. After consultation with the DoD Environmental Executive Agent, if any, the in-theater commander of the DoD Component may approve additional remediation of environmental contamination if the commander determines the additional remedial measures are required to maintain operations or protect human health and safety.

5.1.3. International agreements may also require the United States to fund environmental remediation.

5.1.3.1. Such remediation may be more extensive than that necessary to remedy known imminent and substantial endangerments to human health and safety.

5.1.3.2. Before a DoD Component begins remediation under such an agreement, it shall consult with the DoD Environmental Executive Agent, if any, and shall obtain a legal determination that the requirement for environmental remediation is mandatory and arises from a binding international agreement that pertains to U.S. military operating rights in the host country.

5.1.4. Remediation beyond that specified in paragraphs 5.1.1. through 5.1.3., above, may be undertaken by the host nation using its own resources during U.S. occupancy of the installation or facility. The DoD Components shall encourage such remediation and cooperate with host-nation efforts by providing the information specified in section 6., below, and appropriate access to contaminated sites, subject to operational and security requirements.

5.2. DoD Installations or Facilities That Have Been Designated for Return or That Are Already Returned

5.2.1. The DoD Components shall take prompt action to remedy known imminent and substantial endangerments to human health and safety that are due to environmental contamination that was caused by DoD operations and that is located on or is emanating from a DoD installation or facility designated for return to the host nation.

5.2.1.1. Such remediation may be completed after return of the installation or facility to the host nation, but shall be limited to the essential elements in a remediation plan approved by the DoD Component before return. If remediation will continue after return, to ensure consistency among DoD Components before finally approving a remediation plan, the appropriate DoD Component shall consult with the DoD Environmental Executive Agent, if any.

5.2.1.2. The remediation plan is developed for a particular installation by application of this Instruction and country-specific policy to the particular circumstances of the installation, and shall include, but is not limited to sites to be remedied, areal and vertical extent of the contamination, contaminants to be addressed, and cleanup levels.

5.2.2. After consultation with the DoD Environmental Executive Agent, if any, the in-theater commander of the DoD Component may approve additional remediation of environmental contamination on installations or facilities that have been designated for return if the commander determines, in light of the projected return date, that the additional remedial measures are required to maintain operations or protect human health and safety.

5.2.3. International agreements may also require the United States to fund environmental remediation.

5.2.3.1. Such remediation may be more extensive than that necessary to remedy known imminent and substantial endangerments to human health and safety.

5.2.3.2. Before a DoD Component begins remediation under such an agreement, it shall consult with the DoD Environmental Executive Agent, if any, and shall obtain a legal determination that the requirement for environmental remediation is mandatory and arises from a binding international agreement that pertains to U.S. military operating rights in the host country.

5.2.3.3. After return of an installation or facility, the Department of Defense shall not fund any environmental remediation in excess of that required by binding international agreement or that which is pursuant to an approved remediation plan under paragraph 5.2.1., above.

5.2.4. Remediation beyond that specified in paragraphs 5.2.1. through 5.2.3., above, may be undertaken by the host nation using its own resources during U.S. occupancy of the installation or facility. The DoD Components shall encourage such remediation and cooperate with host-nation efforts by providing the information specified in section 6., below, and appropriate access to contaminated sites, subject to operational and security requirements.

5.3. Environmental Contamination Off a DoD Installation or Facility

5.3.1. The DoD Components shall take prompt action to remedy known imminent and substantial endangerments to human health and safety due to environmental contamination caused by current DoD operations at locations within the territory of a nation other than the United States and that is not located on or emanating from a DoD installation or facility.

5.3.2. After consultation with the DoD Environmental Executive Agent, if

any, the in-theater commander of the DoD Component may approve additional remediation of environmental contamination caused by current DoD operations if the commander determines the additional remediation is required to maintain operations.

5.3.3. International agreements may also require the United States to fund environmental remediation.

5.3.3.1. Such remediation may be more extensive than that necessary to remedy known imminent and substantial endangerments to human health and safety.

5.3.3.2. Before a DoD Component begins remediation under such an agreement, it shall consult with the DoD Environmental Executive Agent, if any, and shall obtain a legal determination that the requirement for remediation is mandatory and arises from a binding international agreement that pertains to U.S. military operating rights in the host country.

5.3.4. Remediation beyond that specified in paragraphs 5.3.1. through 5.3.3., above, may be undertaken by the host nation using its own resources. The DoD Components shall encourage such remediation and cooperate with host-nation efforts by providing the information specified in section 6., below, and appropriate access to contaminated sites, subject to operational and security requirements.

5.4. Determination of Known Imminent and Substantial Endangerment and Extent of Remedy

5.4.1. The decision as to whether a contaminated site poses an imminent and substantial endangerment shall be made by the in-theater commander of the DoD Component after consultation with the appropriate DoD medical authority and the DoD Environmental Executive Agent, if any, for the respective host nation.

5.4.2. The authority to make this decision may be delegated by the in-theater commander of the DoD Component to an installation or facility commander, as appropriate, but consultation as set out in paragraph 5.4.1., above, is still required.

5.4.3. Projects designed to remedy an imminent and substantial endangerment are considered complete when the contamination no longer poses an imminent and substantial endangerment to human health, environment, and safety. Commanders have the discretion to make risk-based decisions on how to carry out the remediation, ranging from institutional responses, such as restricting access, to more permanent remedies.

5.5. Residual Value Adjustment for Host-Nation Contributions. Consistent with the provisions of applicable international agreements, actual or anticipated environmental remediation costs incurred by the host nation for DoD-caused contamination on or emanating from DoD installations or facilities or caused by current DoD operations may be considered as an offset against the residual value of DoD capital improvements.

5.6. Host-Nation Contribution. To the extent consistent with applicable international agreements, the responsible official under section 4., above, shall seek host-nation or third country contribution, including assistance in kind, for remediation funded by the United States.

5.7. Negotiations With Host Nation. Negotiations with the host nation, whether by the DoD Environmental Executive Agent or DoD Component, shall be conducted in accordance with this Instruction; DoD Directive 5530.3 (reference (c)), and other applicable Directives.

6. INFORMATION REQUIREMENTS

6.1. The DoD Components may develop information, and shall maintain existing information, about environmental contamination at DoD locations for five years after the location is returned to the host nation and all claims or other issues about contamination are finally resolved.

6.2. Information on contamination not located on or emanating from a DoD installation or facility that was caused by DoD operations shall be collected and maintained for five years after issues about the contamination are finally resolved with the host nation.

6.3. Subject to security requirements, this information shall be provided, through the DoD Environmental Executive Agent and the Embassy, where required, to host-nation authorities upon request.

7. EFFECTIVE DATE

This Instruction is effective immediately.

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