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**Analysis of Policy and Guidance Regarding
Sustainability and Environmental Considerations in
Overseas Contingency Operations in the Joint,
Interagency, Intergovernmental, and Multinational
(JIIM) Environment**

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Final report

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Abstract: The intent of this report was to analyze the links between national strategies and policies with the implementation requirements necessary to achieve sustainable contingency operations. A review of existing strategies and policies indicated, however, that none of the documents are directed at implementing or developing sustainability as a driving factor in contingency operations. Even recent attempts by the Department of the Army to implement a Strategic Sustainability Campaign Plan have left sustainability conspicuously absent when it pertains to contingency operations. Therefore, this study evolved to indentify the existing regulatory, policy, doctrinal, conceptual, or guidance documents related to sustainability or environmental considerations that could be either directly or indirectly linked to contingency operations. Environmental considerations were included in order to assure that references to environmental sustainment were not overlooked with reference to operational sustainability. Appendix A of this report lists a matrix of nearly 200 documents, developed to ascertain if their relevance could be extended to contingency operations. This report summarizes our efforts and associated findings.

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Preface

This study was conducted for the Army Environmental Policy Institute (AEPI) under the project “Future Base Camps - Virtual Capability Assessment” The technical monitor for AEPI was Dr. Marc Kodack, Senior Fellow.

The work was performed by the Environmental Processes Branch (CN-E) of the Installations Division (CN), US Army Engineer Research and Development Center – Construction Engineering Research Laboratory (ERDC-CERL). At the time of publication, Deborah R. Curtin was Chief, CEERD-CN-E; John Bandy was Chief, CEERD-CN. The Deputy Director of ERDC-CERL was Dr. Kirankumar Topudurti, and the Director was Dr. Ilker Adiguzel.

At the time of publication, COL Kevin J. Wilson was the Commander and Executive Director of ERDC, and Dr. Jeffery P. Holland was the Director.

Executive Summary

The US Army and Department of Defense (DoD) currently do not have a means or a program to adequately address the practice of sustainability as it pertains to contingency operations. The focus of the current US Army Sustainability Campaign Plan (US Army 2010a) is on the Army addressing force generation issues and the sustainable operations of Continental US (CONUS) installations or similar installations in Europe, Korea, Hawaii, and Alaska.

There currently is no concerted effort to address sustainability policy as it applies to contingency operations and their associated resource use and operation dynamics. For instance, while there are numerous ad hoc efforts to address improved energy efficiency, these efforts are not coordinated nor are they being approached in a holistic effort to address sustainability. This is primarily the result of a systemic shortfall, because no organization within the Army or DoD has been assigned responsibility to address sustainability as it pertains specifically to contingency operations.

To paraphrase the definition of sustainability from The Army Strategy for the Environment (US Army 2004), sustainability is: the ability to simultaneously meet current as well as future mission requirements worldwide, safeguard human health, improve quality of life, and enhance the natural environment.

Sustainability at the tactical level takes on different characteristics than that at the global or organizational levels. Sustainability at the tactical level should be viewed as an enhancement to military operations (offense/defense, stability operations, or providing humanitarian assistance or civil support) by increasing combat and force multiplication and reducing casualties. Tactical sustainability provides the means to balance necessary resource requirements with mission operational needs in a manner that provides the combatant commander (COCOM) with the most effective and efficient use of limited resources in order to complete the mission.

In the course of our work, we looked at hundreds of driving documents including statutory requirements, executive orders, existing DoD and Army

regulations, and doctrine. All were examined for references to both sustainability and environmental considerations. Findings showed that none of these documents addressed sustainability, and environmental considerations were addressed only as they pertained to CONUS or CONUS-like installations or from an environmental occupational health perspective. The lone exception was Field Manual (FM) 3-100.4 (US Army 2000). However, this doctrine is now outdated and has been replaced by FM 3-34.5 (US Army 2010c). This new field manual identifies and defines sustainability as it applies to operations on CONUS installation; it does not address contingency operations.

Summary results of this analysis are provided as a table in Appendix A, consisting of the relevant driving documents, their area of application, and to what extent they pertain to contingency operations.

There are many guidance documents regarding specific actions to enhance environmental situations such as *You Spill, You Dig Handbook* (US Army 1998) and the *Environmental Baseline Survey Handbook* (US Army Engineer School 2005). However, without overarching policy to pull all of this guidance together, each operational command is left to address environmental situations separately, usually on an ad hoc basis.

Sustainability during contingency operations is not addressed in any operational orders (joint- or service-specific). Annex L of the classified Joint Command Operations Orders is supposed to address the environmental requirements for any operational mission. Too often, however, this annex is either incomplete or inappropriately written to effect the conditions required. Recently COCOMs have started writing their own theater-specific environmental “regulations.” While this in a sense codifies environmental requirements, it does not provide a means or a method to integrate those requirements into the military services culture via common doctrine, organization needs, new or improved training, materiel development, leadership education, personnel requirements, or facilities development. Current mission Annex Ls are receiving more scrutiny and interest as a mission’s duration is extended. However, to date, there is little effort to establish a DoD baseline requirement for an Annex L or a guide to develop them that specifically relates to the issues associated with contingency operations.

1 Analytical Process

1.1 Background

Sustainability in contingency operations becomes a force multiplier through:

- reduced casualties associated with resource/supply movement,
- increased operational efficiencies and effectiveness,
- reduced logistical burdens, and
- reduced life-cycle costs.

In addition, sustainable operations promote the well-being of soldiers, civilians, and the host nation population through:

- enhancement of the military's relationship to host-nation communities, and
- avoidance of health hazards and post-event liabilities.

Sustainable contingency base camps must also be interoperable and interdependent within the Joint, Interagency, Intergovernmental, and Multinational (JIIM) environment and be able to exist within fragile ecosystems where populations live in marginal conditions.

The National Security Strategy, the National Military Strategy, the Quadrennial Defense Review, the Army Campaign Plan, and the Army Capstone Concept all recognize that over time, pressures such as population, resources, energy, climatic conditions, and the environment may combine with rapid social, cultural, technological, and geopolitical change to create instability that affects national security. Although laws, regulations, and policies exist to address environmental issues, most do not take into account any environmental considerations in contingency operations. Furthermore, current DoD policy and Army doctrine are not well developed and are dated, as they pertain to potential mission sustainability requirements.

The following paragraphs present an outline of the analysis of existing laws, policies, and regulations with respect to their application to overseas contingency operations. A summary of the findings is presented in the following section (Chapter 2) of the report.

Our analysis of the laws, regulations, and policies that drive any concern for sustainability and environmental considerations began with the documents listed in Annex C to the Army Sustainability Campaign Plan and included revisions to Annex C that were distributed on 01 Nov 2009. Additional information was added as the search for possible documents of interest yielded more results. Of particular importance in framing the scope of the analysis and informing its contents are:

- *Environmental Law for Department of Defense Installations Overseas* (Phelps 1998). This primer was written by LTC Richard A. Phelps when he was Chief of Environmental Law for Headquarters, United States Air Forces in Europe (USAFE).
- *Environmental Law at Overseas Locations* (McCune and Fill 2010), prepared for the 2010 Air Force Environmental, Safety, and Occupational Health Symposium when LTC John McCune was part of the Environmental Law Division in the Office of the Staff Judge Advocate for Headquarters, Air Education and Training Command; it was updated in 2010.

The McCune and Fill (2010) report is of such value that it is presented in its entirety as Appendix B.

McCune's and Fill's summary of the sources for requirements and best practices of interest to our operators abroad is excellent (see Appendix B, p 41 of this report).

The environmental compliance, cleanup, and planning requirements for installations located in overseas areas (i.e., foreign countries) reflect a combination of law and policy from a variety of sources. The sources include federal law, international agreement obligations, Executive Branch directives, and DoD policy. Individual military service and command (e.g., major command, joint forces command, unified combatant command) policy (expressed through directives, instructions, and regulations) are additional sources. The primary source of requirements is DoD

policy because that policy incorporates rules from other sources and applies when no other rules apply.

The text of the accompanying footnote reads as follows (see Appendix B, p 41 of this report):

Federal and subordinate government laws and regulations in the countries hosting DoD installations (host nations) do not directly apply to DoD forces and installations. However, they might apply indirectly because of the terms of a binding agreement the United States entered into with the host nations. They also might apply indirectly by being incorporated into DoD policy that applies to overseas installations.

Annex L, “Environmental Considerations,” to an OPORD is the single most important source for environmental compliance obligations for US forces who are participating in OCONUS contingency operations. Its provisions typically apply to those operations, insofar as practicable, given the priority concerns of protection of human life, force protection, and mission accomplishment.

During the analysis, an Annex L (dated 2003) for contingency operations that are currently ongoing, was examined. Consistent with the Chairman of the Joint Chiefs of Staff Manual (CJCSM) 3122.03B, Joint Operation Planning and Execution System (JOPES) Volume II, Planning Formats (which contains guidance on the development of an Annex L), the document we reviewed made specific reference to the Overseas Environmental Baseline Guidance Document –OEBGD (DoD 4715.05-G) and to other DoD issuances as sources for environmental requirements. (Note: The OEBGD *specifically states it is not to be used for contingency operations*; however, due to the lack of policy and guidance specifically addressing contingency issues, it is often used as the primary source for environmental related action information by personnel developing operational orders.) All of the publications to which the Annex L and its appendices referred, however, are now out-of-date.

More details about the documents reviewed, together with a summary table of the analysis and an explanation of terms, is provided in Appendix A.

2 Findings

2.1 Summary of findings

Table 1 provides a summary of the complete table of documents that appears in Appendix A. Of the documents reviewed, 199 were found to have some reference to environmental considerations or sustainability. None of those relevant references, however, applied to sustainability at the tactical level.

Table 1. Summary of findings on environmental or sustainability requirements and their relevancy to contingency operations (details in table in Appendix A).

Document Type	Items Reviewed	Relevancy to Contingency Operation Sustainability				Degree of Relevancy			
		Directly	Indirectly	Unclear	No	High	Medium	Low	None
SOFA	2	2	0	0	0	2	0	0	0
Federal Law	34	3	1	3	27	2	1	0	31
Executive Orders	37	2	1	1	33	1	3	2	31
OSD/DoD Issuances	63	18	3	15	27	19	6	9	29
Joint Publications	3	0	2	0	1	0	0	2	1
Army Regulations	22	12	2	5	3	6	5	9	2
USAF Literature	7	3	2	0	2	3	1	1	2
NATO/UN	9	7	0	0	2	8	0	1	0
Miscellaneous	22	11	10	0	1	4	7	4	7
Total	199	58	21	24	96	45	23	28	103

A majority of the documents that directly and indirectly apply to contingency operation sustainability referred either to issues associated with environmental safety and occupational health, such as pest and vector control, or dealt with CONUS requirements that were vague in how they should be applied to contingency operations.

2.2 A note on history

With respect to the evolutionary trajectory of requirements that apply in the context of US operations overseas, it is safe to say that the level of con-

cern given to the issue of sustainability and the consequences of US military actions abroad has both increased over time and become more exacting in its particulars.

In his book, LTC Richard Phelps (1998, p 7) gives this background (emphasis added by LTC Phelps):

Presidential interest in environmental protection at federal facilities in the United States has been reflected in executive orders dating back to 1948. However, not until Executive Order 11752, signed on 19 December 1973 by President Richard M. Nixon, was a similar level of presidential interest shown regarding protection of the environment at federal facilities outside the United States. While the order's principle purpose was to mandate that federal facilities in the United States meet federal, state, and local substantive environmental protection standards, it also defined the first specific environmental compliance obligations of federal facilities overseas.

Sec. 3. (c) *Heads of Federal agencies* responsible for the construction and operation of Federal facilities outside the United States *shall assure* that such facilities are operated so as to *comply with the environmental pollution standards of general applicability* in the host country or jurisdictions concerned.

The federal government's concern about sustainability and the environmental consequences of its actions have expanded, both programmatically and topically, to the extent that a carefully articulated process now exists to ensure our respect for laws in the nations that host our forces. It is that evolution that led to the development of the Overseas Environmental Baseline Guidance Document (OEBGD) and to the process that generates the host-nation-specific Final Governing Standards (FGS) from it. This OEBGD-based process, however, was developed to articulate the obligations that apply as DoD policy to fixed, permanent installations abroad; contingency operations OCONUS are explicitly exempted from the applicability of the documents developed using this OEBGD-based process.

Most recently, a concern for activities that have an effect on the health of US forces taking part in contingency operations abroad (and on the environment in which they are operating) was articulated in the National De-

fense Authorization Act for FY 10 (US Congress 2010). Section 317 of the Act puts forth the following mandate:

...development of regulations that prohibit the disposal of covered waste in open-air burn pits during contingency operations except in circumstances in which the Secretary [of Defense] determines that no alternative disposal method is feasible. Such regulations shall apply to contingency operations that are ongoing as of the date of the enactment of this Act, including Operation Iraqi Freedom and Operation Enduring Freedom, and to contingency operations that begin after the date of the enactment of this Act.

Thus, we can track in broad strokes a movement from general to more specific sustainability requirements that apply first to fixed, permanent installations abroad. The next step in this evolution of concern began with Section 317, in which the progression of concern reaches directly into the sustainability and environmental and safety implications of the conduct of contingency operations in ways that are quite particular. Section 317 goes beyond the notions of environmental protection that are sensitive to phases of conflict and levels of hostility. Section 317 instead represents a driver for regulations that apply directly to what is happening while operations are actually underway.

2.3 The way forward

The history of DoD policy and of engagement by the executive and legislative branches of government that we have sketched above is suggestive of an increasing willingness to engage over the question of environmental considerations in OCONUS contingency operations. It is not difficult to imagine that, having now set the precedent for direct engagement that Congress is likely to engage directly again (refer to discussion above of Section 317 of the National Defense Authorization Act for FY10). In turn, this trend suggests that it is in DoD's best interest to develop proactively—on its own, and in the near term—a concrete approach to enhancing the sustainability of its OCONUS contingency operations.

Such a proactive approach will necessarily involve action at a number of levels. First, the DoD must develop a coherent policy that addresses increasing the sustainability of OCONUS contingency operations, and it must promulgate that policy in the most appropriate medium (e.g., DoD Instructions, DoD Directives). Policy that specifically addresses sustaina-

bility and environmental considerations as they pertain to contingency operations must be developed and promulgated in a manner that will encourage rapid development of necessary doctrine, organizations, training, materiel, leadership education, personnel, and facilities to implement sustainability in mission planning and execution. At both the Joint and Service levels, this policy would provide our military with the needed drivers for concrete action.

In response, the Army must develop an integrated doctrinal approach that will drive its responses to the policy promulgated by DoD. The goal of this doctrinal approach must be to integrate sustainability into the process of military decision making at every echelon and in every iteration. On the Joint level, concrete guidance must be developed that integrates sustainability directly into the production of an Annex L for operations orders.

At the level of operational planning, a meaningful response to DoD-, Joint-, and Service-level guidance on furthering the sustainability of its contingency operations will be the development of robust Annexes L to its OPORDs and operations plans (OPLANs). A new Annex L will need to:

- take a long-term, context-dependent view of the life of the operation and its evolution in time and space, and
- concretely address minimization of energy and water use and waste generation as ways to manage environmental considerations upfront.

Annex L represents the most immediate way of integrating sustainability actions and environmental considerations. A robust Annex L should be viewed as a living document and regularly updated via fragmentary orders (FRAGOs) to ensure that the guidance it provides is:

- consistent with the state of current operations in the full spectrum, and
- updated with respect to relevant DoD publications.

It would be particularly helpful if the guidance for the development of Annex L could be made to contain a robust set of fundamental requirements such that making direct reference to the OEBGD in the Annex becomes

unnecessary. The OEBGD was developed with fixed, permanent installations in mind; for that reason, the OEBGD itself is unlikely to contain requirements that are achievable in the context of contingency operations, unless the bases that support those contingency operations are very mature indeed.

2.4 Additional steps

While sustainability and environmental considerations are linked, they should not be confused with one another. Sustainability has a broader scope throughout contingency operations. However, it should be recognized that, as sustainability solutions are implemented, environmental considerations are being managed simultaneously (e.g., waste management, water management, and energy management, to name the most obvious).

A definition of tactical sustainability that will resonate with COCOMs needs to be developed and incorporated into Army and Joint doctrine. This definition is necessary to expedite and support the efforts required to incorporate sustainability into mission planning and execution.

This definition also should make clear that increased sustainability enhances military operations (such as offense/defense, stability operations, and providing humanitarian assistance or civil support) through:

- increased combat and force multiplication,
- reduction of casualties,
- reduced resource requirements, and
- increased flexibility of operations.

Sustainability should be identified further as the means for balancing resource requirements and mission operational needs in such a way that it provides the COCOM with the most effective and efficient use of limited resources in order to accomplish the mission.

Both the application of sustainability and the inculcation of environmental considerations in contingency operations will need to be treated as a multi-organizational effort with coordination at the appropriate levels. A

holistic systems approach must be applied in order to advance interoperable solutions for our services and our allies/coalition partners.

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Appendix A: Summary Matrix of Relevant Driving Documents Regarding Sustainability of Environmental Considerations

The table that follows captures the results of our analysis of the following categories of literature: Army Regulations (ARs), Executive Orders (EOs), Department of Defense (DoD) issuances, Status of Forces Agreements (SOFAs), federal legislation, some Air Force literature, joint publications, and miscellaneous documents. Documents produced by the North Atlantic Treaty Organization (NATO) and by the United Nations' (UN) Department of Field Support of the Department of Peacekeeping Operations (DPKO/DFS) were also reviewed due to the implications for NATO-led or UN peacekeeping coalitions. (At present, only one UN policy document is included in the listing, the 19 July 2010, DPKO/DFS Environmental Guidelines, to which one sees occasional references when reviewing available literature.)

The spreadsheet includes the following columns for data:

- name or number of the document
- short title
- year in which the document was promulgated/released
- type of document
- application of document OCONUS operations
- application of document to OCONUS contingency operations
- comments on the document and/or quotations from it that speak to its applicability
- author's estimate of the document's relative importance to OCONUS contingency operations (L = low, M = medium, H = high)

Most of the table's headings are self explanatory, but several are qualitative terms that need some explanation here:

- *Policy*: those documents which lay out the intent of the action in an overarching manner, but do not provide the specifics for implementation. Policy documents articulate approaches to issues or concerns that, in their turn, may drive the promulgation of regulations
- *Regulatory*: those documents that have the force of law; they are requirements that an organization must follow.
- *Guidance*: those documents that do not have regulatory force but instead are best practices (i.e., suggestions on how best to operate).
- *Conceptual*: those documents that articulate high-level views of possible futures as articulated by the Joint Chiefs of Staff or the Army. They are broadly thematic in nature and are without force in directing specific actions that persons must carry out.
- *Strategy*: a prudent idea or set of ideas for employing the instruments of national power in a synchronized and integrated fashion to achieve theater, national, and/or multinational objectives (DoD 2001); to NATO, strategy is presenting the manner in which military power should be developed and applied to achieve national objectives or those of a group of nations (NATO 2007).
- *Study*: an analysis of international environmental requirements that might apply in time of war; it has no force with respect to directing peoples' actions but instead discusses the overarching contexts in which those actions take place.

The labels used to designate the nature of a document's applicability OCONUS and its applicability to OCONUS contingency operations are the following:

- *No*: the document does not apply in the specified context (OCONUS or OCONUS Contingency Operations).

- *Directly*: the document contains a statement(s) of applicability that clearly articulates its applicability in the specified context.
- *Indirectly*: the document applies by virtue of some other document's authority or it applies if a higher authority (e.g., SecDef, POTUS) explicitly makes it applicable.
- *Unclear*: the document does not contain statements that are clearly enough articulated to allow the careful lay reader to come to a conclusion about their applicability in the specified context; an opinion on the question of such a document's applicability will need to be rendered by a competent authority.

If the information does apply, its importance is designated by the following terms:

- *High*: the information has a direct application to *sustainability or environmental considerations* and should be followed based on direction of theater command element priorities.
- *Medium*: the information has a direct or indirect application to *sustainability or environmental considerations*. The relevance may be mission-dependent and could be elevated to high or be demoted to low based on mission dynamics and theater command elements priorities.
- *Low*: the information has indirect application to *sustainability or environmental considerations*; most likely the information will not apply to contingency operations, but may apply in some cases.
- *None*: the information has no application to contingency operations, sustainability, or environmental considerations; application is either entirely CONUS or specifically does not apply to contingency operations.

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M – Medium L – Low none
<i>Army Regulations</i>							
AR 11-2	Management Control	1994	Policy	Directly	Directly		L
AR 200-1	Environmental Protection and Enhancement	2002	Policy	Directly	No	Installations and facilities in foreign countries will comply with requirements of this regulation that specifically prescribe overseas requirements....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 L to the operation plan (OPLAN)).	L
AR 210-20	Real Property Master Planning	2005	Policy	Unclear	Unclear	Per AR 405-45, para 1-5(b), the real property inventory does not include (1) Property in and officially designated a combat zone. (2) Property acquired in support of peacekeeping missions. (3) River, harbor, and flood control property under jurisdiction of the Assistant Secretary of the Army for Civil Works...(5) Property acquired or constructed for contingency operations.	M
AR 350-1	Army Training and Leader Development	2007	Policy	Directly	Directly		L
AR 350-19	Army Sustainable Range Program	2005	Policy	Directly	Indirectly	This regulation is advisory for deployed units engaged in combat operations.	H
AR 360-1	Army Public Affairs Program	2000	Policy	Directly	Directly	Overseas commanders are responsible for the conduct of public affairs activities within their commands and will be guided by the policies of the Department of the Army and of the commanders of unified commands. In the event of conflict, the policies of the unified command will govern. During mobilization, chapters and policies in this regulation may be modified by the proponent [Chief of Public Affairs].	H
AR 37-49	Budgeting for BASOPS	1978	Policy	Directly	Unclear	Predominantly applies to installations.	L

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M - Medium L - Low none
AR 385-10	Army Safety Program	2009	Policy	Directly	Directly	See especially Ch 12 (Force Mobilization) and Ch 13 (Tactical Safety)	H
AR 385-63	Range Safety	2003	Policy	Directly	Indirectly	This regulation is advisory for deployed units engaged in combat operations	H
AR 40-10	Health Hazard Assessment	2007	Policy	Directly	No	Typically irrelevant; the regulation states: "This regulation applies to all the Active Army elements involved with the Army acquisition process."	none
AR 40-5	Prevent Med	2007	Policy	Directly	Directly		H
AR 405-10	Acquisition of Real Property	1970	Policy	Unclear	Unclear	Unlikely to apply, given the definition of 'real estate' in AR 405-90: "Real estate [is defined as] Real property owned by the United States and under the control of the Army."	L
AR 415-18	Military Construction Responsibilities	1982	Policy	Directly	Unclear	Answer depends upon whether or not CONOPs include "military construction projects that are authorized and funded in the annual military construction authorization and appropriation acts to support DoD components." Facility-dependent. Hard-stand hospitals.	M
AR 420-1	Army Facilities Management	2009	Policy	Directly	Directly	In areas outside the United States, Status of Forces Agreements or other country-to-country agreements may take precedence over this regulation.	M
AR 420-41	Acquisition and Sale of Utility Services	1990	Policy	Directly	Unclear	Consistent with relevant SOFA for installations/communities outside CONUS 1-4(2)(c) and 2-1(c).	M
AR 700-136	Tactical Land-based Water Resource Management	2009	Policy	Directly	Directly	This regulation sets policy for tactical water resources management. It defines the Army's responsibilities for tactical water support. This regulation does not apply to fixed installation water support operations or civil works emergency water management.	H

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M - Medium L - Low none
AR 70-1	Army Acquisition Policy	2003	Policy	Unclear	No	Typically irrelevant; the regulation "governs research, development, acquisition, and life-cycle management of Army materiel to satisfy approved Army requirements. It applies to major weapon and command, control, communications, and computers/information technology systems, nonmajor systems, highly sensitive classified acquisition programs, and clothing and individual equipment."	none
AR 710-1	Cent Inventory Management of Army Supply System	2007	Policy	Directly	Directly	This regulation prescribes Department of the Army (DA) policies, responsibilities, and procedures for integrated inventory management of Army materiel. It covers the management of secondary and major items and conventional ammunition.	L
AR 710-2	Supply Policy Below the National Level	2008	Policy	Directly	Directly	AR 710-2 updates supply policy below the national level throughout the US Army. It is used in both automated and manual supply operations. In an automated supply operation, this regulation is used in conjunction with the appropriate automated procedural publication for the system being used. In a manual supply operation this regulation is used in conjunction with DA Pam 710-2-1 and DA Pam 710-2-2.	L
AR 710-3	Inventory Management Asset and Transaction Reporting System	2008	Policy	Directly	Directly	Asset tracking and transaction reporting systems and procedures	L
AR 725-50	Requisitioning, Receipt, and Issue System	1995	Policy	Directly	Directly	Procedural	L

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M - Medium L - Low none
AR 750-1	Army Materiel Maintenance Policy	2007	Policy	Directly	Directly	Policy for general maintenance operations, commodity-oriented maintenance operations, maintenance management systems, and interservice and contract maintenance support, Sustainment maintenance including national maintenance, maintenance support during acquisition, maintenance programs, and depot maintenance. It also addresses Prognostics and Health Management and Condition-Based Maintenance.	M
<i>Executive Orders</i>							
EO 11593	Protection and Enhancement of the Cultural Environment	1971	Regulatory	No	No	Applies CONUS only	none
EO 11990	Wetlands	1977/ 1987	Regulatory	No	No	Applies CONUS only	none
EO 12088	Pollution Control Standards	1978	Regulatory	Directly	No	Applies CONUS only	none
EO 12092	Energy Efficiency and Water Conservation	1994	Regulatory	No	No	Revoked by EO 13123	none
EO 12114	Environmental Effects Abroad of Major Federal Actions	1979	Regulatory	Directly	No	Does not apply to (among other things) to actions taken by or pursuant to the direction of the President or cabinet officer when the national security or interest is involved, or when the action occurs in the course of an armed conflict, or to disaster and emergency relief actions.	none
EO 12844	Alternative Fueled Vehicles	1993	Regulatory	No	No	Superseded by EO 13031	none
EO 12845	Energy efficient computers	1993	Regulatory	No	No	Revoked by EO 13123	none
EO 12969	Federal Acquisition	1995	Regulatory	No	No	Revoked by EO 13148	none
EO 13007	Indian Sacred Sites	1996	Regulatory	No	No	Applies only to federal lands, i.e., "any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands"	none

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M – Medium L – Low none
EO 13031	Alternative Fueled Vehicles	1996	Regulatory	No	No	Vehicles acquired and used for military purposes, that the Secretary of Defense has certified must be exempt for national security reasons, are exempt.	none
EO 13101	Green the Gov't	1998	Regulatory	No	No	Revoked by EO 13423	none
EO 13112	Invasive Species	1999	Regulatory	Directly	Directly	An exemption for national security reasons is possible. "The requirements of section 2(a)(3) of this order shall not apply to any action of the Department of State or Department of Defense if the Secretary of State or the Secretary of Defense finds that exemption from such requirements is necessary for foreign policy or national security reasons."	M
EO 13123	Energy Management	1999	Regulatory	No	No	Revoked by EO 13148	none
EO 13126	Child Labor	1999	Regulatory	Directly	Unclear	Labor rights are typically considered part of sustainability via social responsibility, so this EO is included here.	M
EO 13134	Biobased Products and Bioenergy	1999	Regulatory	No	No	Revoked in part by EO13225 and by EO 13423	none
EO 13139	Health Protection of Military Personnel	1999	Regulatory	Directly	Directly	See: Food and Drug Administration rule of May 25, 1999 (64 FR 54180)	H
EO 13148	Greening through Environmental Management	2000	Regulatory	No	No	Revoked by EO 13423	none
EO 13149	Greening through Fleet and Transportation	2000	Regulatory	No	No	Revoked by EO 13423	none
EO 13150	Workforce Transportation	2000	Regulatory	No	No	Commuting is not a base camp issue	none
EO 13158	Marine Protected Areas	2000	Regulatory	No	No	Applies to US system of marine protected areas	none
EO 13175	Consultation with Indian Tribal Governments	2000	Regulatory	No	No	Indian tribal government is not an OCONUS issue	none

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M - Medium L - Low none
EO 13178	Hawaiian Islands Coral Reefs; see EO 13196	2000	Regulatory	No	No	Consistent with applicable law, nothing in this order is intended to apply to military activities (including those carried out by the United States Coast Guard), including military exercises, conducted within or in the vicinity of the Reserve, consistent with the requirements of Executive Orders 13089 of June 11, 1998, and 13158 of May 26, 2000. Further, nothing in this order is intended to restrict the Department of Defense from conducting activities necessary during time of war or national emergency, or when necessary for reasons of national security as determined by the Secretary of Defense, consistent with applicable law. In addition, consistent with applicable law, nothing in this order shall limit agency actions to respond to emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution.	none
EO 13186	Migratory Birds	2001	Regulatory	Unclear	No	Requires MOUs with US Fish and Wildlife Service, whose reach does not extend abroad; however, DoD's MOU could include requirements for international cooperation, and it could include migratory bird concerns in the scope of OCONUS environmental assessments, etc.	none
EO 13196	Hawaiian Islands Coral Reefs	2001	Regulatory	No	No	Amends EO 13178	none
EO 13212	Expedite Energy-Related Projects	2001	Regulatory	No	No	Base camps do not have responsibilities for executing energy-related projects.	none
EO 13221	Standby Power Devices	2001	Regulatory	No	No	Applies to acquisition of energy efficient standby power devices.	none
EO 13257	Human Trafficking	2002	Regulatory	No	No	Sets up a task force overseeing implementation of Trafficking Victims Protection Act of 2000.	none
EO 13287	Preserve America	2003	Regulatory	Unclear	No	Base camps do not have historic properties that belong to the federal government.	none

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M - Medium L - Low none
EO 13302	Energy-Related Projects	2003	Regulatory	No	No	Amends EO 13212, which has no applicability to base camp issues.	none
EO 13327	Real Prop Asset Mgt	2004	Regulatory	Directly	No	For the purpose of this executive order, federal real property is defined as any real property owned, leased, or otherwise managed by the federal government, both within and outside the United States, and improvements on federal lands.	none
EO 13333	Human Trafficking	2004	Regulatory	No	No	Amends EO 13333, which does not apply to base camp issues.	none
EO 13352	Cooperative Conservation	2004	Regulatory	No	No	Typically irrelevant; intent is to "ensure that the Departments of the Interior, Agriculture, Commerce, and Defense and the Environmental Protection Agency implement laws relating to the environment and natural resources in a manner that promotes cooperative conservation."	none
EO 13423	Environmental, Energy, and Transportation Management	2007	Regulatory	Indirectly	No	At discretion of SecDef: "The head of an agency may provide that this order shall apply in whole or in part with respect to the activities, personnel, resources, and facilities of the agency that are not located within the United States, if the head of the agency determines that such application is in the interest of the United States. The head of an agency shall manage activities, personnel, resources, and facilities of the agency that are not located within the United States, and with respect to which the head of the agency has not made a determination under subsection (a) of this section, in a manner consistent with the policy set forth in section 1 of this order to the extent the head of the agency determines practicable."	L
EO 13443	Hunting Heritage and Wildlife Conservation	2007	Regulatory	No	No	Typically irrelevant	none
EO 13449	Striped Bass and Red Drum Fish	2007	Regulatory	No	No	Typically irrelevant	none
EO 13514	Fed Leadership	2009	Regulatory	Indirectly	Indirectly	At discretion of SecDef	M

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M – Medium L – Low none
EO 13547	Stewardship of the Ocean, Our Coasts, and the Great Lakes	2010	Regulatory	Indirectly	No	Establishes the National Ocean Council, of which SecDef will be a member. Any implications for operations will come via DoD policy.	L
<i>DoD Issuances</i>							
DoD 4150-7-M	Pest Management	1997	Regulatory	Directly	Directly	Specifically, Chapters 5 and 6 and Appendix 4. In effect until replaced by Vols 2 & 3 of DoD Manual 4150.07-M	H
DoD 4150.07-M, Volume 1	Pest Management	2008	Regulatory	Directly	No	Applies to DoD employees applying any pesticides on DoD land or property under DoD administrative control and located within the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, or American Samoa.	none
DoD 4160.21-M	Defense Materiel Disposition Manual	1997	Regulatory	Directly	No	Especiallly Ch 10. With respect to OCONUS, the document appears to envisage applicability only in contexts where OEBGD or derivative FGS apply; thus it appears NOT to apply to contingency operations.	none
DoD 4715.05-G	Overseas Environmental Baseline Guidance Document (OEBGD)	2007	Guidance	Directly	No	Does not apply to operations of US military vessels or the operations of US military aircraft, or off-installation operational and training deployments. Off-installation operational deployments include cases of hostilities, contingency operations in hazardous areas, and when US 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 (DoDD) and DoDIs, and environmental annexes incorporated into operation plans or operation orders.	none
DoD 6055.09-STD	Explosives Safety	2008/ 2009	Regulatory	Directly	Directly	Chapter 10: Contingencies, Combat Operations, Military Operations Other than War (MOOTW), and Associated Training	H
DoD 6060.1-M-18	Prevention of Child Abuse	1988	Regulatory	Directly	No	No children in base camps	none

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M – Medium L – Low none
DoD 6400.1-M	Family Advocacy Program	1992	Regulatory	Directly	No	Not a base camp issue.	none
DoD 6400.1-M-1	Child Maltreatment and Domestic Abuse Reporting	2005	Regulatory	Directly	No	Not a base camp issue.	none
DoD 7000.14-R (Many volumes)	DoD Financial Mgt	Various	Regulatory	Directly	Directly	Not topically relevant to base camp sustainability.	L
DoDD 3200.15	Ranges and Operating Areas	2003	Regulatory	Directly	Directly	Applies to all, but subject to the terms of all international agreements, land use agreements, and treaties.	M
DoDD 4140.25	Energy Commodities and Related Services	2004	Regulatory	Directly	Directly		H
DoDD 4165.06	Real Property	2004/ 2008	Regulatory	Directly	Unclear	Of dubious relevance, since it addresses “the acquisition, management, and disposal of DoD real property.”(But the hard-stand hospital comes to mind.)	L
DoDD 4270.5	Military Construction	2005	Regulatory	Directly	Unclear	Applies to DoD emergency, contingency, and other unprogrammed construction projects not specifically authorized by military construction authorization or appropriation acts, but authorized pursuant to other laws	L
DoDD 4705.1	Water & Contingency Operations	1992	Regulatory	Directly	Directly	Applies to all aspects of land-based water support for the US Armed Forces during contingency operations, including water detection, pumping, purification, storage, distribution, cooling, consumption, water source intelligence, research and development (R&D), acquisition of water support equipment, water support operations doctrine, human factors requirements, training, and water support force structure.	H
DoDD 4715.1E	ESOH	2005	Regulatory	Directly	Unclear	“For overseas installations, commanders shall implement this policy to the extent possible under stationing and international agreements.”	H

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M - Medium L - Low none
DoDD 4715.11	Environmental & Explosives Safety Mgt on Operational Ranges within US	2004	Regulatory	No	No	Applies only within the United States	none
DoDD 4715.12	Environmental & Explosives Safety Mgt on Operational Ranges outside the US	2004	Regulatory	Directly	Unclear	Do contingency bases include operational ranges other than indoor ranges? If so, this would apply.	H
DoDD 5000.01	Defense Acquisition System	2003	Regulatory	No	No	Neither OCONUS installations nor base camps are responsible for acquisition programs.	none
DoDD 6050.7	Environmental Effects Abroad of Major DoD Actions	1979	Regulatory	Directly	No	Does not apply to deployment of ships, aircraft, or other mobile military equipment, which do not count as major action for purposes of this Directive. Does not apply to "Actions taken by or pursuant to the direction of the President or a cabinet officer in the course of armed conflict. The term "armed conflict" refers to: hostilities for which the Congress has declared war or enacted a specific authorization for the use of armed forces; hostilities or situations for which a report is prescribed by section 4(a)(1) of the War Powers Resolution, 50 USC.A. § 1543(a)(1) (Supp. 1978); and other actions by the Armed Forces that involve defensive use or introduction of weapons in situations where hostilities occur or are expected. This exemption applies as long as the armed conflict continues."	none
DoDD 6200.04	Force Health Protection	2004	Regulatory	Directly	Directly		H
DoDD 6205.02E	Immunizations	2006	Regulatory	Directly	Directly		H
DoDD 6490.02E	Comprehensive Health Surveillance	2004/ 2009	Regulatory	Directly	Directly		H
DoDD 6490.5	Combat Stress Control Programs	1999	Regulatory	Directly	Directly		H

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M – Medium L – Low none
DoDI 3000.05	Stability Operations	2009	Regulatory	Directly	No	Requirements are not operational in nature but have instead to do with doctrine, organization, training, materiel, leadership and education, personnel and facilities (DOTML-PF) issues. Direct applicability with OCONUS implications is to US Joint Forces (JFCOM) and COCOMs.	none
DoDI 3110.06	War Reserve Materiel Policy	2008	Regulatory	No	No	Service-level and higher; direct applicability with OCONUS implications is to Joint Chiefs of Staff (JCS) and COCOMs.	none
DoDI 3200.16	Operational Range Clearance	2005	Regulatory	No	No	For operational ranges outside the United States, comply with applicable DoD policy (including DoDD 3200.15 and DoD Directive 4715.12) and with all international agreements and use agreements. Where these conflict, the more stringent applicable requirement shall be followed.	none
DoDI 4000.19	Interservice / Intergovernment Support	1995	Regulatory	Directly	Unclear	MOAs, MOUs, MIPRs; (Unsure whether or not these mechanisms are used on base camps.)	L
DoDI 4001.01	Installation Support	2008	Regulatory	Directly	Unclear	Appears to address fixed, permanent installations rather than contingency bases. "Deliver installation support outside the United States consistent with US Government policy, international law, and applicable agreements with host nations."	none
DoDI 4140.66	Registration and Monitoring of Defense Articles	2009	Regulatory	Directly	Unclear	Concerns control of export and/or transfer of defense articles to Iraq/Afghanistan and/or to other groups, organizations, citizens, or residents of those countries; these activities seem to be government-to-government functions, not base camp functions.	M

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M – Medium L – Low none
DoDI 4150.07	Pest Management	2008	Regulatory	Directly	Directly	OCONUS, applies where consistent with applicable international agreements, status of forces agreements, FGS issued for the host nations, or, where no such FGS have been issued, the criteria in the OEBGD. Applies to all DoD vector control and pest management operations performed worldwide during peacetime, wartime, and military deployments, including those performed under formal or informal contract and those procured using the Government Purchase Card.	H
DoDI 4165.3	Facility Classes and Construction Categories	1978/ 1979	Regulatory	Directly	Directly	"This Instruction does not apply...to emergency construction accomplished by armed forces in direct support of combat operations."	M
DoDI 4165.14	Real Property	2006	Regulatory	Directly	Unclear	Assigns responsibilities and prescribes procedures for collecting, submitting, and forecasting the DoD real property inventory. Does not apply to construction outside the United States in which the United States retains no interest under law or international agreement. Classified RPI data is exempt from the reporting and forecasting requirements.	L
DoDI 4165.56	Relocatable Buildings	1988	Regulatory	Directly	Directly		M
DoDI 4165.57	Air Installations Compatible Use Zones	1977	Regulatory	No	No	Applies only to air installations of the military departments located within the United States, its territories, trusts, and possessions.	none
DoDI 4165.63	DoD Housing	2008	Regulatory	Directly	No	Concerned with housing on fixed, permanent installations.	none

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M – Medium L – Low none
DoDI 4165.69	Realignment of DoD sites Overseas	2005	Regulatory	Directly	No	“Does not apply to realignment of temporary DoD facilities or sites acquired or controlled by DoD in areas with no long-term US presence during the conduct or in support of planned or on-going contingency operations; realignment of temporary facilities or sites used while US forces are operating as part of a multi-national force...Realignment of DoD facilities and sites under the foregoing circumstances, including documentation of relevant environmental conditions at such facilities and sites, shall be accomplished in accordance with relevant US law, regulations, and international law, including relevant international agreements, applicable property leases, DoD policy, and specific annexes (e.g. Environmental) incorporated into operations plans, operations orders, or similar operational directives.”	none
DoDI 4165.70	Real Property Mgt	2005	Regulatory	Directly	Indirectly	Cf. the hospital case; may be facility-dependent.	L
DoDI 4165.71	Real Property Acquisition	2005	Regulatory	Directly	Unclear	Appears to be irrelevant in that it is procedural in nature.	none
DoDI 4165.72	Real Property Disposal	2007	Regulatory	Directly	Unclear	Does not apply to DoD real property holdings OCONUS with regard to those provisions of law not having extraterritorial application. (The authors take this odd turn of phrase to mean that if the US law does apply extraterritorially, it will apply OCONUS.) As to base camps, applicability may also be facility-dependent.	L
DoDI 4170.10	Energy Management Policy	1991	Regulatory	Directly	Indirectly	“Pertains to all phases of administration, operations, maintenance, training, material acquisition and research and development (R&D) activities that affect the supply and consumptions of facilities energy or mobility fuels.”	L

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M - Medium L - Low none
DoDI 4170.11	Installation Energy Management	2009	Regulatory	Indirectly	Indirectly	"This Instruction, including the principles in References (c), (d), and (e), [Public Law 110-140, "Energy Independence and Security Act of 2007," December 19, 2007; Public Law 109-58, "Energy Policy Act of 2005," August 8, 2005; and Executive Order 13423, "Strengthening Federal Environmental, Energy, and Transportation Management," January 24, 2007, respectively] shall be applied to all facilities that use US funding, both appropriated and non-appropriated, for construction, sustainment, renovation, maintenance, or operation, without regard to the location of those facilities."	M
DoDI 4715.02	Regional Environmental Coordination	2009	Regulatory	No	No	Apparently CONUS only	none
DoDI 4715.3	Environmental Conservation Program	1996	Regulatory	No	No	Outside the United States, DoDD 6050.16 (cancelled 02/24/1996) shall apply, consistent with international agreements, status of forces agreements, final governing standards (FGS) issued for host nations, or where no FGS have been issued, the criteria under the OEBGD.	none
DoDI 4715.4	Pollution Prevention	1996/ 1998	Regulatory	Directly	Unclear	Outside the United States, section 4 and paragraph 6.2.3. of this Instruction shall apply, consistent with DoDI 4715.5 (see below), international agreements, status of forces agreements, and Final Governing Standards (FGS) issued for host nations (or the OEBGD where no FGSs have been issued).	M

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M – Medium L – Low none
DoD 4715.5	Environmental Compliance at Overseas Installations	1996	Regulatory	Directly	No	Does not apply to the operations of US military vessels, to the operations of US 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 US 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 US military vessels and US military aircraft provided by the DoD Components, including management or disposal of off-loaded waste or material.	none
DoDI 4715.6	Environmental Compliance	1996	Regulatory	No	No	Overseas compliance issues are addressed in DoDI 4715.5 (see above).	none
DoDI 4715.7	Environmental Restoration	1996	Regulatory	No	No	Applies only to facilities or installations within the United States and its territories and possessions.	none
DoDI 4715.8	Environmental Remediation Overseas	1998	Regulatory	Directly	No	Applies to 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. Does not apply to 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 DoDI 4715.5 (see above).	none

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M – Medium L – Low none
DoDI 4715.9	Environmental Planning and Analysis	1996	Regulatory	No	No	Limited to DoD activities and operations that may have environmental effects within the United States.	none
DoDI 4715.14	Operational Range Assessments	2005	Regulatory	No	No	Applies only to “operational ranges within the United States except for indoor ranges and small arms ranges that are being assessed as part of an existing environmental compliance program.”	none
DoDI 4715.15	Environmental Quality Systems	2006	Regulatory	Directly	Unclear	Applies to “activities and programs involving the collection, management, and use of environmental data, supporting all applicable laws and regulations, at DoD operations, activities, and installations worldwide, including Government-owned/contractor-operated facilities and formerly-used defense sites (FUDS).”	none
DoDI 4715.16	Cultural Resources Management	2008	Regulatory	No	No	Overseas operations and activities will follow the policy and guidance set forth in DoDI 4715.5 and DoDI 4715.05-G.	none
DoDI 4715.17	Environmental Management Systems	2009	Regulatory	Directly	No	Does not apply to the operations of US military vessels or aircraft, or to off-installation operational and training deployments. Off-installation operational deployments include cases of hostilities, contingency operations in hazardous areas, and when US 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 DoDDs and DoDIs, and environmental annexes incorporated into operation plans or operation orders.	none
DoDI 4715.18	Emerging Contaminants	2009	Regulatory	No	No	Applies only to “DoD operations, activities, and installations in the United States.”	none
DoDI 5200.08	Security of DoD Installations and Resources	2005	Regulatory	Directly	Directly		H

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M – Medium L – Low none
DoDI 6050.05	DoD Hazard Communication Program	2006/ 2008	Regulatory	Directly	Unclear	Applies to “DoD operations, activities, and installations worldwide including contractor employees employed at DoD-owned or operated facilities; Government-owned, contractor-operated facilities; and non-DoD activities operating on DoD installations.”	H
DoDI 6055.1	DoD Safety and Occupational Health (SOH) Program	1998	Regulatory	Directly	Directly	Encompasses all DoD personnel and operations worldwide during peacetime and military deployments. There are exemptions or exceptions from Dept of Labor oversight for military personnel, military-unique operations and workplaces, specific conditions governed by other statutory authorities, and, in certain overseas areas, conditions governed by international agreements. Includes risk management, aviation safety, ground safety, traffic safety, occupational safety, and occupational health. Excludes explosive safety covered under DoD 6055.9-STD and fire prevention and protection covered under DoD Instruction 6055.6.	H
DoDI 6055.05	Occupational and Environmental Health	2008	Regulatory	Directly	Directly	Applies within the United States and outside the United States, including contingency operations, although statutory requirements applied by this Instruction generally only apply within the United States. Applies to contractor operations and personnel associated with contingency contractors deploying to the force only in accordance with DoDI 3020.41 and contractual agreements.	H
DoDI 6055.06	DoD Fire and Emergency Services Program	2006	Regulatory	Directly	Unclear	Applies to “DoD operations, activities, and installations worldwide, including Government-owned, contractor-operated facilities and non-DoD activities operating on DoD installations.”	H
DoDI 6490.03	Deployment Health	2006	Regulatory	Directly	Directly		H

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M – Medium L – Low none
Unified Facilities Criteria (UFC) 4-030-01	Sustainable Development	2007	Regulatory	Directly	Unclear	UFC will be used for all DoD projects and work for other customers where appropriate. All construction outside of the United States is also governed by Status of Forces Agreements (SOFA), Host Nation Funded Construction Agreements (HNFA), and in some instances, Bilateral Infrastructure Agreements (BIA.) Therefore, the acquisition team must ensure compliance with the more stringent of the UFC, the SOFA, the HNFA, and the BIA, as applicable. Also: The technical requirements recommended herein may not be applicable for projects outside the United States. Requirements in requests for proposals (RFP) and bid documents for such projects should be based on the appropriate ICAO, NATO, ASCC and National criteria to assure a project can be constructed using local materials, products, and techniques.	H; note that searches for other UFC addressing sustainability that are referred to in this text have yielded no hits thus far.
DTM 09-032	Use of Open-Air Burn Pits in Contingency Operations	March 2010	Regulatory	Directly	Directly	Establishes policy to prohibit the disposal of covered wastes in open-air burn pits during contingency operations except when no alternative disposal method is feasible.	H
<i>Status of Forces Agreements</i>							
Iraq SOFA	Iraq SOFA	2008	Regulatory	Directly	Directly	See especially Articles 5 (para 5), 8, and 15 (para 2)	H
Diplomatic Note 202 of 2002/2003	Afghanistan SOFA	2002/2003	Regulatory	Directly	Directly	Extraordinarily vague; no specific provisions addressing environment or even respecting host nation law. Negotiations for a new agreement are likely underway.	H
<i>Federal Law</i>							
7 USC. §§ 136 et seq.	Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)	2008	Regulatory	No	No	Applies within the United States, District of Columbia, and US territories and possessions only.	nonw

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M – Medium L – Low none
15 USC §§ 2601 et seq.	Toxic Substances Control Act		Regulatory	No	No	Applies to federal, state, and local only. State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States.	L
16 USC. § 670-670o	Sikes Act	2003	Regulatory	No	No	Applies within the United States, District of Columbia, and US territories and possessions only.	none
16 USC. §§ 1431 et seq., §§ 1447 et seq.; 33 USC. §§ 1401 et seq., §§ 2801 et seq.	Marine Protection, Research, and Sanctuaries Act (MPRSA)	1972	Regulatory	Unclear	Unclear	It is the purpose of this Act to regulate (1) the transportation by any person of material from the United States and, in the case of United States vessels, aircraft, or agencies, the transportation of material from a location outside the United States, when in either case the transportation is for the purpose of dumping the material into ocean waters, and (2) the dumping of material transported by any person from a location outside the United States, if the dumping occurs in the territorial sea or the contiguous zone of the United States.	none
16 USC. §§ 1531-1544	Endangered Species Act	1973	Regulatory	No	No		none
16 USC. §§ 470-470-x-6	National Historic Preservation Act	1966/2006	Regulatory	Directly	Unclear	No exemption apparent	none
16 USC. §§ 470aa-mm	Archaeological Resources Protection Act	1979	Regulatory	No	No	Applies only to US public lands and Indian lands	none
16 USC. §§ 668-668d	Bald and Golden Eagle Protection Act	1940	Regulatory	No	No	Applies within the United States and to places subject to US jurisdiction	H
16 USC. §§ 703	Migratory Bird Treaty Act	1918 (as amended)	Regulatory	No	No	Applies only to migratory bird species that are native to the United States or its territories.	none
20 USC. §§ 4011-4022	Asbestos School Hazard Abatement Act	1984	Regulatory	Directly	No	No schools in base camps	none

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M – Medium L – Low none
22 USC. §§ 7101-7112	Trafficking Victims Protection Act	2000	Regulatory	Indirectly	Indirectly	Actionable issues not directly related to base camp operations	none
25 USC. §§ 3001 et seq.	Native American Graves Protection and Repatriation Act (NAGPRA)	1990	Regulatory	No	No	No Native American graves abroad	none
32 CFR 651	Environmental Analysis of Army Acts	2007	Regulatory	Directly	No	It does not apply to ... combat or combat-related activities in a combat or hostile fire zone. Operations Other Than War (OOTW) or Stability and Support Operations (SASO) are subject to the provisions of this part as specified in Subpart H of this part.	H
33 USC. §§ 1251 et seq.	Federal Water Pollution Control Act	2002	Regulatory	No	No	Applies to national waters only	none
40 CFR 112a	Oil Pollution Prevention	2002/ 2006	Regulatory	No	No	Applies to federal, state, and local only	none
40 CFR 112b	Petroleum and Non-Petroleum Oils	2002	Regulatory	No	No	Applies only to onshore production facilities and to offshore oil drilling, production, or workover facilities	none
40 CFR 112c	Animal Fats and Oils	2002/ 2006	Regulatory	No	No	Applies only to onshore facilities (excluding production facilities) and to offshore oil drilling, production, or workover facilities	none
40 CFR 112d	Response Requirements	2002	Regulatory	No	No	Applies only within the United States	none

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M - Medium L - Low none
40 CFR 262ff (75 Federal Register 1236ff)	Transboundary Shipment of Hazardous Waste between OECD Member Countries	2010	Regulatory	Directly	Directly	These provisions would apply to contracts for the recycling of those wastes that count as hazardous under US national procedures when those contracts are managed by DRMO, and/or when those contracts are independently procured. The provisions apply only to the extent that wastes that count as hazardous under US national procedures are being shipped for recycling TO or FROM countries that are members of OECD (i.e., Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, South Korea, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.) The provisions do not apply to export to or import from an OECD country for purposes other than recovery (e.g., incineration, disposal).	M
40 USC. §§ 601a	Public Buildings Cooperative Use Act	1976	Regulatory	No	No	Applies within the United States, District of Columbia, and US territories and possessions only.	none
42 USC. §§ 13101 et seq.	Pollution Prevention Act	1990	Regulatory	Unclear	Unclear	Appears to apply within the United States, District of Columbia, and US territories and possessions only.	none
42 USC. §§ 1996 and 1996a	American Indian Religious Freedom Act	1978	Regulatory	No	No	No evidence of extraterritorial application.	none
42 USC. §§ 300f et seq.	Safe Drinking Water Act	2002	Regulatory	No	No	Applies within the United States, District of Columbia, and US territories and possessions only.	none
42 USC. §§ 4321-4370f	National Environmental Policy Act	1969/2006	Regulatory	Directly	No	For OCONUS, applies to Antarctica only	none
42 USC. §§ 6901 et seq.	Solid Waste Disposal Act		Regulatory	No	No	Applies to federal, state, and local only. State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.	none

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M – Medium L – Low none
42 USC. §§ 7401-7671q	Clean Air Act (CAA)	2004	Regulatory	No	No	Applies to federal, state, and local only	none
42 USC. §§ 9601 et seq.	Comprehensive Environmental Response, Compensation, and Liability Act Of 1980 (Superfund) (CERCLA)	2002	Regulatory	No	No	Applies only within or under the jurisdiction of the United States	none
42 USC. §§ 8251 et seq.	National Energy Conservation Policy Act (NECPA)	1992	Regulatory	No	No	Does not apply abroad	none
Public Law 101-510, Title XXIX, November 5, 1990	Defense Base Closure and Realignment Act (BRAC)	1990	Regulatory	No	No	Applies to military installations inside the United States	none
Public Law 102-386, title I, Oct. 6, 1992	Federal Facility Compliance Act	1992	Regulatory	No	No	No evidence of extraterritorial application.	none
Public Law 109-58, Aug. 8, 2005	Energy Policy Act	2005	Regulatory	No	No	Applies within the United States, District of Columbia, and US territories and possessions only.	none
Public Law 110-140, Dec. 19, 2007	Energy Independence and Security Act(EISA)	2007	Regulatory	No	No	No evidence of extraterritorial application.	none
Public Law 110-417, Oct 14, 2008	National Defense Authorization Act for Fiscal Year 2009	2008	Regulatory	Directly	Directly	Allows MILCON OCONUS (see Sec. 2101)	none

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M – Medium L – Low none
Public Law 111-84, 28 Oct 09	National Defense Authorization Act for FY10, Sec. 317 (Open-air Burn Pits)	2009	Regulatory	Directly	Directly	Mandates development of regulations that prohibit the disposal of covered waste in open-air burn pits during contingency operations except in circumstances in which the Secretary determines that no alternative disposal method is feasible. Such regulations shall apply to contingency operations that are ongoing as of the date of the enactment of this Act, including Operation Iraqi Freedom and Operation Enduring Freedom, and to contingency operations that begin after the date of the enactment of this Act.	none
<i>OSD Policy</i>							
OSD Sustainable Planning Guide	Sustainable Planning: A Multi-Service Assessment	1999	Study	No	No		L
<i>Air Force Literature</i>							
Sustainable Development Policy		2001	Regulatory	No	No	Superseded by 2007 SDD Policy below	none
AF Sustainable Design and Development (SDD) Policy		2007	Regulatory	Indirectly	No	Host Nation, NATO-funded, and temporary facilities projects are not required to be capable of achieving Leadership in Energy and Environmental Design (LEED) certification but should incorporate sustainable concepts to the maximum extent possible. These projects shall use a Host Nation equivalent, sustainable design green building rating system where it exists in lieu of LEED.	L
AF Handbook 10-222, Volume 4	Environmental Guide for Contingency Operations	1997	Regulatory	Directly	Directly	Emphasis on environmental annex to OPLAN as controlling document for compliance; also emphasizes and provides a framework for risk management during contingency operations.	H

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M - Medium L - Low none
AFI 32-1023	Design and Construction Standards and Execution of Facility Construction Projects	1994	Guidance	Indirectly	Indirectly	Rescinded	None
AFD-071130-075 Final Performance-Based Mgt Master Guidance	Air Force Performance-Based Management (PBM) initiative	2005	Guidance	Directly	Directly	This guide was issued by the Air Force Center for Environmental Excellence (AFCEE) to support environmental project teams responsible for implementing the Defense Environmental Restoration Program (DERP). Process applies regardless of environmental arena.	M
Air Force Policy Directive 32-70	Environmental Quality	1994	Regulatory	Directly	Indirectly	The Air Force will conduct its activities according to national environmental policy. Commanders at all levels are responsible for full compliance with national and Air Force environmental policy. All Air Force employees, including military, civilian, and contractor personnel, are accountable for the environmental consequences of their actions.	H

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M - Medium L - Low none
USAFE Instruction 32-7068	Environmental Baseline Surveys for Deployed Operations	2004	Regulatory	Directly	Directly	This instruction implements Air Force Policy Directive 32-70, Environmental Quality, and Annex L, Environmental Considerations, to the European Command (EUCOM) Operations Plan. This instruction defines the responsibilities and procedures for performing an Environmental Baseline Survey (EBS) in conjunction with pre- and post-deployment operations. This instruction applies to all United States Air Force in Europe (USAFE) units, personnel and resources involved in overseas, operational and training deployments over 30 days. This instruction applies to the extent it does not either conflict with requirements imposed by international agreements or cause degradation to mission capability. Also: This instruction outlines the procedures for identifying and recording sensitive and or protected natural and cultural resources (protected plants, animals, archeological or historical sites), and contaminated sites either existing before deployment or occurring during deployment operations. This information will be used to protect sensitive environmental areas from deployment operations. It will also alert deployed personnel to contaminated sites and facilitate beddown planning.	H
<i>Joint Publications</i>							
JCS Publication 4-04	Joint Doctrine for Civil Engineering Support	2001	Regulatory	No	No	Rescinded.	none
Joint Operating Environment		2008	Conceptual	Indirectly	Indirectly	This document attempts to discern the challenges that the Joint Force faces on the operational level and explores their implications. Focused on threats, most of which are a result of the funnel that puts rising needs and desires and diminishing resources together to converge at a squeeze point. Thus, it is relevant to sustainability but does not in any way consider that the military needs to find a way to operate sustainably.	L

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M - Medium L - Low none
Capstone Concept for Joint Operations, Version 3.0		2009	Conceptual	Indirectly	Indirectly	This document takes the implications uncovered in JOE2008 and outlines how the Joint Force will operate in the future. The response is to propose "a generic process of operational adaptation that can apply universally to all joint operations despite the wide variety those operations may take." The document never descends to the level at which sustainability is a key operations enabler.	L
<i>Miscellaneous US</i>							
Protecting the Environment During Armed Conflict: An Inventory and Analysis of International Law		2009	Conceptual	No	No	"With a view to identifying the current gaps and weaknesses within the existing legal framework and making recommendations on how they can be addressed, this report reviews the provisions within the four main bodies of international law that provide protection for environment during armed conflict. These include international humanitarian law (IHL), international criminal law (ICL), international environmental law (IEL), and international human rights law (HRL). Each body of law is inventoried and analyzed as per the treaties, customary law, soft law, and case law it contains on the topic." Includes recommendations on how to strengthen the existing legal framework.	L
AFPMB Technical Guide No. 24	Contingency Pest Management Guide	2008	Guidance	Directly	Directly	This guide is intended to assist DoD service members, civilians, and contract personnel plan for and practice pest management during contingency operations in the absence of a formalized Theater or Installation Pest Management Plan. When such a plan exists, that document should take precedence over this technical guide.	M

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M - Medium L - Low none
Environmental Baseline Survey and Occupational Environmental Health Site Assessment Handbook: Contingency Operations (Overseas)		October 2009	Guidance	Directly	Directly	This handbook contains guidelines for conducting an Environmental Baseline Survey (EBS) and an Occupational and Environmental Health Site Assessment (OEHS) prior to establishing a base camp during contingency operations...The EBS and OEHS should be conducted prior to units occupying an area. If this is not possible, they should be done within 30 days of occupation. Before starting either of these processes, make contact with the combatant command to ensure the use of this handbook does not conflict with specific environmental guidance already in place.	M
You Spill, You Dig (YSYD) II	You Spill, You Dig II	2000 or after	Guidance	Directly	Directly	Updates the original YSYD of 1998. Contains USAREUR operational guidance intended to address environmental concerns. This document speaks of "sustained deployment operations."	M
Green Book for Contingency Operations Research Management	Green Book	2003	Guidance	Directly	Directly	USAREUR guidance intended on resource management during contingency operations	M

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M – Medium L – Low none
Environmental Guidebook for Military Operations	Environmental Guidebook for Military Operations	2008	Guidance	Directly	Directly	This guidebook gives operational planners the necessary tools to incorporate environmental considerations throughout the life cycle of the operation...This document is intended to serve as an environmental guidebook to help troop contributing nations with environmental management responsibilities identify relevant environmental requirements, practices, standards, and preventive measures, with a goal of integrating them into the planning and execution of military operations in a way that enhances the readiness of the force and accomplishment of the overall mission. It provides overarching principles, guidelines, templates, and examples which may be used by operational planners and deployed forces to achieve the overall environmental goals and objectives associated with a military operation.	H
USCENTCOM Contingency and Long-Term Base Camp Facilities Standards	Sand Book	2004	Guidance	Directly	Directly	This publication provides guidance for the planning and development of contingency base camps, long-term base camps, and aerial ports of embarkation/debarkation (APOE/APOD) that support associated missions IAW with Joint Publication 4-04 (Joint Doctrine for Civil Engineer Support). In addition, it provides consistent standards and expectations across the service components for infrastructure development, security, sustainment, survivability (essential for the quality of life), safety, and affordable working and living environments for personnel in the USCENTCOM Area of Operation Responsibility (AOR).	M

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M – Medium L – Low none
USCENTCOM Regulation Number 200-2, Environmental Quality – CENTCOM Contingency Environmental Guidance	CR 200-2, Environmental Quality	2009	Regulatory	Directly	Directly	Created to replace inappropriate use DoD 4715.05-G OEBGD, CCR 200-2 is intended to be similar to and follow a format comparable to DoD 4715.05-G OEBGD.	H
Base Camp Facility Standards	Red Book	2002	Guidance	Directly	Directly	USAREUR standards for base camp facilities	M
Annex L to Operations Orders	Annex L	Various	Regulatory	Directly	Directly	Annex L (and any appendixes thereto) is the single most important source for the compliance obligations of US forces participating in OCONUS contingency operations. Its provisions typically apply insofar as practicable given the priority concerns of protection of human life, force protection, and mission accomplishment.	H
COMISAF/USFOR-A COIN Training Guidance and ISAF Commander's Counterinsurgency Guidance		2009	Guidance	Directly	Directly	GEN Stanley McChrystal's training Guidance and counter-insurgency (COIN) principles for Afghanistan Ops	L
National Security Strategy (NSS)	2002 NSS	2002	Strategy	Indirectly	Indirectly		none
National Security Strategy	2010 NSS	2010	Strategy	Indirectly	Indirectly		none
National Military Strategy (NMS)	2004 NMS	2004	Strategy	Indirectly	Indirectly	Agility is the ability to rapidly deploy, employ, sustain and redeploy capabilities in geographically separated and environmentally diverse regions	none

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M – Medium L – Low none
Quadrennial Defense Review (QDR)	2010 QDR	2010	Strategy	Indirectly	Indirectly	Powerful trends are likely to add complexity to the security environment. Rising demand of littoral regions, the effects of climate change, the emergence of new strains of disease, and profound cultural and demographic tensions in several regions are just some of the trends whose complex interplay may spark or exacerbate future conflicts.	none
National Defense Strategy (NDS)	2008 NDS	2008	Strategy	Indirectly	Indirectly	General recognition that natural resource scarcity and climate change may generate new security concerns such as international terrorism.	none
Army Campaign Plan (ACP)	2010 ACP	2010	Strategy	Indirectly	Indirectly	Future Combat System (FCS) Key Performance Parameters (KPP): Network-Ready, Networked Battle Command, Networked Lethality, Survivability, Transportable, Sustainable/Reliable	none
Army Capstone Concept		2010	Strategy	Indirectly	Indirectly	Places more emphasis on sustainability rather than rapid projection.	L
FM 3-0 Operations	FM 3-0	2008	Doctrine	Indirectly	Indirectly	Emphasis is on force (personnel) sustainability- maintain personnel levels.	L
FM 3-07 Stability Operations	FM 3-07	2008	Doctrine	Indirectly	Indirectly	Does not address sustainability directly, but recognizes the need to be cognizant of human requirements to maintain stability – emphasis is on host nation	M
FM 3-100.14 Environmental Considerations during military Operations		2000	Doctrine	Indirectly	Indirectly	Rescinded, see FM 3-34.5; installation compliance focused.	none
FM 3-34.5/MCRP 4-11B Environmental Considerations	FM 3-34.5	2010	Doctrine	Directly	Directly	Definition of sustainability and environmental considerations is included.	H

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M - Medium L - Low none
<i>North Atlantic Treaty Organization (NATO)</i>							
AC/112-D (2007)0001-REV1	Directive for Reporting Incidents Involving the NATO Pipeline System (NPS), its Associated Fuel Facilities, and Other NATO-Funded Fuel Systems	2007	Regulatory	Directly	No	The following are the constituent systems of the NPS: Central Europe Pipeline System; North European Pipeline System; United Kingdom Government Pipeline and Storage System; Norwegian Pipeline System; Turkish Pipeline System; Greek Pipeline System; Northern Italy Pipeline System; Portuguese Pipeline System.	L
MC 469	NATO Military Principles and Policies for Environmental Protection	2003	Regulatory	Directly	Directly	These principles and policies apply to all NATO and non-NATO participants in NATO-led military activities....During NATO-led operations, when there is a conflict between operational imperatives and EP principles and policies, operational imperatives will have priority. Factors such as mission success, security considerations, reduced preparation time, and the possible limitations of environmental expertise and equipment may limit the application of EP principles and policies, particularly during the initial stages of military operations. Under all conditions, NATO-led forces must strive to respect EP principles and policies.	H

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M – Medium L – Low none
STANAG 7141 EP (Edition 5)	Joint NATO Doctrine for Environmental Protection During NATO-Led Military Activities	2008	Regulatory	Directly	Directly	The aim of this agreement is to state NATO environmental doctrine for NATO led military activities and to provide guidance in environmental planning for all military activities. Participating nations agree with: (a) NATO environmental doctrine laid down in Annex A and the commander's responsibilities laid down in Annex B, (b) environmental training and education guidelines laid down in Annex C, and (c) providing and updating the National Military Points of Contact for Environmental Matters laid down in Annex D. This STANAG is implemented when a nation has issued the necessary orders/instructions to the forces concerned, putting the procedures detailed in this agreement into effect.	H
STANAG 2510 EP (Edition 2)	Joint NATO Waste Management Requirements during NATO-Led Military Activities	2009	Regulatory	Directly	Directly	The aim of this agreement is to state the requirements for NATO Waste Management (WM) during NATO-led military activities. It does not address the management of radioactive waste, ammunition waste, NBC waste and maritime waste.	H
STANAG 7102 (Edition 2)	Environmental Protection Handling Requirements for Petroleum Handling Facilities and Equipment	2009	Regulatory	Directly	No	The aim of this agreement is to: (a) protect national environmental resources and comply with national environmental legislation by establishing technical standards and procedures to allow deploying units of one nation to construct, operate, and maintain fixed and mobile jet fuel storage and fuel handling equipment while deployed to another nation; and (b) establish minimum environmental standards for related STANAGs by providing a means to collect and analyze national environmental requirements.	H
STANAG 2982 (Edition 1)	Essential Field Sanitary Requirements	1994	Regulatory	Directly	Directly	Participating nations agree to maintain the essential sanitary living conditions and control of waste in the area of operations by employing the sanitary principles described below.	H

Name	Short Title	Year	Type	Applicable OCONUS	Applicable to Contingency Operations	Comments	Importance: H- High M – Medium L – Low none
STANAG 2048 (AMedP-3)	Chemical Methods of Insect and Rodent Control (Covers AMEDP-3)	2006	Regulatory	Directly	Directly	Provides basic information on using pesticides to control disease vectors and pests during field situations worldwide.	H
NATO/SPS Short-term Project Report no. 283	Environmental Aspects of Military Compounds (Phase II)	2008	Study	Directly	Directly	The report includes as appendices drafts of handbooks that address (1) planning an EMS for NATO-led military activities; (2) environmental protection standards for NATO deployed compounds; (3) environmental protection to Annex EE for a standardized NATO Operations Plan; and (4) environmental protection best practices for NATO deployed compounds. Attempts to obtain finalized versions of these have not yet been successful.	H
<i>United Nations (UN)</i>							
UN_Ref 2009.6	Environmental Policy for UN Field Missions	June 2009	Policy	Directly	Directly	The purpose of this document is to provide policy for the Department of Peacekeeping Operations (DPKO), the Department of Field Support (DFS) and field missions on environmental matters and their implementation in field missions. The policy requires that each field mission establish its environmental policy and objectives and control measures which are to be implemented through all phases of the mission. Their implementation is the responsibility of the Head of Mission. All personnel shall conduct themselves in accordance with this document as well as with the DPKO/DFS Environmental guidelines and any associated objectives, instructions, operating procedures issued. NOTE: As of 19 July 2010, the guidelines to which this summary refers are not yet available. Per section D3, para 20, the provisions of this UN policy do apply to the military component: “the military component will comply with the environmental policy and objectives of the mission.”	H

Appendix B: Environmental Law at Overseas Locations

NOTE: The contents of this appendix are presented verbatim from the original document and provided as a valued resource for this report.

Course 15

ENVIRONMENTAL LAW AT OVERSEAS LOCATIONS

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INTRODUCTION

The Department of Defense (DoD) and its military services operate installations and facilities all over the world in support of United States national security interests. The way DoD personnel and contractors operate those installations and facilities can affect human health, safety, and the environment. Those effects on health, safety, and the environment can adversely impact readiness (individual and unit), morale, support from off-base civilian population, and relationships with off-base government officials. In addition, how DoD conducts its activities and manages its installations can affect its ability to operate (or continue operating) in specific locations. To ensure personnel are ready, able, and allowed to accomplish their mission worldwide, DoD installations and facilities worldwide must be good stewards of air, land, water, and other resources they utilize.

Complying with environmental laws, regulations, and policy helps installations be good stewards of the natural built environment. Environmental requirements are not the same at every installation. Some requirements are the same, but others are merely similar. In addition, when it comes to the standards that apply to installations located in foreign countries, the requirements can vary dramatically from country to country because of applicable international agreements and DoD policy.

This paper focuses on rules and restrictions that apply to DoD installations located outside the United States and its territories. It provides an overview of the environmental compliance, remediation (cleanup), and planning (environmental impact analysis process) obligations of DoD installations located in foreign countries. These mandatory actions and reactions apply to United States military forces stationed at traditional, established installations where non-provisional units conduct a permanent mission. This paper identifies, but does not address in detail, environmental requirements that apply to United States forces during operational and training deployments to foreign countries (including deployments to established installations with a permanent mission, for example, Aviano Air Base in Italy).

I. SOURCES

The environmental compliance, cleanup, and planning requirements for installations located in overseas areas (i.e., foreign countries) reflect a combination of law and policy from a variety of sources. The sources include federal law, international agreement obligations, Executive Branch directives, and DoD policy. Individual military service and command (e.g., major command, joint forces command, unified combatant command) policy (expressed through directives, instructions, and regulations) are additional sources. The primary source of requirements is DoD policy because that policy incorporates rules from other sources and applies when no other rules apply.¹

The following subsections provide basic information about the sources of environmental requirements for DoD installations and facilities in overseas areas.

A. UNITED STATES LAW

For the most part, environmental laws that apply to DoD installations located in the United States (or its territories) do not apply to overseas installations. As a general rule, a federal law does not apply to DoD activities in foreign countries unless the statute contains language that clearly expresses Congress' intent that the statute apply extraterritorially (in areas outside the legal jurisdiction of the United States and its territories). As a result, most federal environmental laws and regulations do not apply to DoD installations over-

¹ Federal and subordinate government laws and regulations in the countries hosting DoD installations (host nations) do not directly apply to DoD forces and installations. However, they might apply indirectly because of the terms of a binding agreement the United States entered into with the host nations. They also might apply indirectly by being incorporated into DoD policy that applies to overseas installations. See section II of this paper. Because host nation requirements do not directly apply to DoD installations overseas, they are not identified or discussed in this paper as a source of environmental requirements for DoD installations in foreign countries.

seas since the statutes themselves do not contain clear expressions of Congress' intent for the laws to apply extraterritorially.²

A few exceptions to the general rule are: 1) Asbestos School Hazard Abatement Act of 1984 (ASHAA)³ which applies to "any school of any agency of the United States" including DoD Dependent Schools overseas;⁴ and 2) National Historic Preservation Act (NHPA),⁵ which mandates federal undertakings outside the United States avoid or and mitigate adverse impacts on a foreign nation's list of properties that have natural or cultural heritage.⁶ Two other environmental laws generated litigation over their application outside the United States: 1) National Environmental Policy Act (NEPA),⁷ where the United States Circuit Court of Appeals for the District of Columbia Circuit determined that NEPA's requirements apply to federal activities in Antarctica;⁸ and 2) Endangered Species Act (ESA),⁹ where the United States Circuit Court of Appeals for the Eighth Circuit found Congress intended ESA Section 7's consultation duty extends to federal agency projects in foreign nations.¹⁰

B. INTERNATIONAL AGREEMENTS

Treaties and other international agreements are negotiated understandings and commitments the United States enters into with other countries. Some of these agreements specifically address DoD activities while others are broader in scope and apply to DoD forces only indirectly. A status of forces agreement (SOFA), for instance, defines the rights and

² See Richard A. Phelps, Environmental Law for Department of Defense Installations Overseas 3-5 (4th ed. 1998). You can access this paper via the Defense Environmental Network and Information Exchange (DENIX) at <https://www.denix.osd.mil/portal/page/portal/denix/international>.

³ 20 USC. §§ 4011-4022 (2006).

⁴ 20 USC. § 4020(5)(B).

⁵ 16 USC. § 470-470x-6 (2006).

⁶ 16 USC. 470a-2.

⁷ 42 USC. §§ 4321-4370f (2006).

⁸ Environmental Defense Fund, Inc. v. Massey, 986 F.2d 528 (D.C. Cir. 1993). For a discussion of Massey, see Phelps, *supra* note 1, at 4-6.

⁹ 16 USC. §§ 1531-1544 (2006).

¹⁰ Defenders of Wildlife v. Lujan, 911 F.2d 117, 125 (8th Cir. 1990); rev'd on other grounds, 504 US 555 (1992). In reversing the Circuit Court ruling, the United States Supreme Court did not address the substantive issue about involving extraterritorial application of ESA Section 7 because it found the respondents did not have standing to challenge the Department of Interior's interpretation of Section 7. 504 US at 578. For more information about the Lujan decisions see Phelps, *supra* note 1, at 6-7.

responsibilities of United States military forces stationed in a friendly foreign country.¹¹ A narrowly drafted basing agreement can do the same thing.¹² The Basel Convention, on the other hand, has a broader focus than DoD but still influences how DoD forces operate at overseas installations.¹³ Whether the United States makes the agreement with one country (bilateral agreement) or several countries (multilateral agreements), an international agreement can impose environmental duties on DoD installations and personnel.

As described in subsection D below, DoD policy incorporates the requirements of applicable international agreement requirements.¹⁴ Therefore, as long as DoD policy changes when international agreement requirements change, there should be no conflict between the environmental mandates of applicable international agreements and those of DoD regulations and instructions.

¹¹ The United States is a party to several SOFAs. For instance, the North Atlantic Treaty Organization (NATO) SOFA applies to United States armed forces (US forces) stationed in Europe. See Agreement between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, Jun. 19, 1951, 4 UST. 1792. For US forces stationed in Japan, the Japan SOFA applies. See Agreement under Article VI of the Treaty of Mutual Cooperation and Security Between the United States of America and Japan, Regarding Facilities and Areas and the Status of United States Armed Forces in Japan, Jan. 19, 1960, 11 UST. 1652. In South Korea, the Republic of Korea SOFA applies. See Agreement under Article IV of the Mutual Defense Treaty Between the United States of America and the Republic of Korea, Regarding Facilities and Areas and the Status of United States Armed Forces in Korea, Jul. 9, 1966, 17 UST. 1677.

¹² An example is the Agreement for Cooperation on Defense and Economy in Turkey, which is the basic authorization for United States armed forces to be stationed in Turkey. See Agreement for Cooperation on Defense and Economy in accordance with Articles II and III of the North Atlantic Treaty, Mar. 29, 1980, 32 UST. 3323.

¹³ Basel Convention on the Control and Transboundary Movement of Hazardous Wastes and their Disposal, effective May 5, 1992, available at <http://www.basel.int/text/con-e-rev.pdf>. Currently, 170 countries are parties to this treaty, which regulates the movement of hazardous and certain other wastes across member states' borders. 170 countries are currently parties to the Basel Convention. See Secretariat of the Basel Convention web site at <http://www.basel.int/ratif/conven.htm>. The United States signed the treaty on March 22, 1990, but has not yet ratified it. *Id.* Failure to ratify the treaty is not binding on the United States. As a practical matter, however, DoD forces stationed overseas must satisfy the Basel Convention if they want to transport regulated waste into or out of a country that has ratified the Basel Convention. For more information about the Basel Convention, see the Basel Convention Secretariat's web site at <http://www.basel.int/convention/about.html> and the United States Environmental Protection Agency's Basel Convention web site at <http://www.epa.gov/epaoswer/osw/internat/basel3.htm>.

¹⁴ For the most part, "incorporation" means DoD policy defers to and directs compliance with the relevant provisions of applicable international agreements. The policy documents generally do not mention specific agreements or their provisions by name.

C. EXECUTIVE ORDERS

Executive Orders (E.O.s) are a tool the President of the United States uses to manage the Executive Branch of the United States Government.¹⁵ E.O.s contain guidance and requirements the President issues for components of the Executive Branch. DoD is part of the Executive Branch and must therefore comply with relevant E.O.s.¹⁶

Several E.O.s that are relevant to DoD installations deal with matters related to the environment, but only a few directly address or influence environmental requirements for overseas installations. Two of those E.O.s are more influential than the others. They are E.O. 12088, *Federal Compliance with Pollution Control Standards*, and E.O. 12114, *Environmental Effects Abroad of Major Federal Actions*.

E.O. 12088 dates back to 1978 and requires federal Executive Branch agencies located in the United States to comply with federal, state, and local substantive and procedural pollution control requirements to the same extent as a private person.¹⁷ Regarding federal facilities overseas, the E.O. requires Executive Branch agencies to ensure their overseas facilities operate in compliance with "the environmental pollution control standards of general applicability in the host country or jurisdiction."¹⁸

E.O. 12114 was issued in 1979 and directs Executive Branch agencies to implement regulations that require consideration of environmental impacts when making decisions about certain federal actions that will significantly affect the environment of a foreign country or the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica).¹⁹

¹⁵ The powers of the federal government are divided among three separate bodies per the United States Constitution. US Const. arts. I-III. The legislative powers are vested in the Congress of the United States. *Id.* at art. I, § 1. The administrative or executive powers are vested in the President. *Id.* at art. II, § 1. The judicial powers belong to the Supreme Court and subordinate courts established by Congress. *Id.* at art. III, § 1. The President executes his powers through various departments, agencies, and organizations that together compose the United States Government's Executive Branch.

¹⁶ See US Const. art. II, § 2, cl. 1. Typically, DoD implements E.O.s through directives, regulations, and instructions. This is the same way DoD implements applicable laws.

¹⁷ Exec. Order No. 12,088, § 1-1, 43 Fed. Reg. 47707 (Oct. 13, 1978). This E.O. revoked a 1973 E.O. on the same topic. See *id.* at § 1-803, *revoking* Exec. Order No. 11,752, 38 Fed. Reg. 34793 (Dec. 17, 1973).

¹⁸ *Id.* at § 1-801. This provision requires facilities follow substantive requirements (e.g., emission limitations), but not procedural rules (e.g., applying for permits) See *id.* It is substantially similar to section 3(c) of E.O. 11752. See Exec. Order No. 11,752 at § 3(c).

¹⁹ Exec. Order No. 12, 114, 44 Fed. Reg. 1957 (Jan. 4, 1979).

D. DoD POLICY

DoD policy is the primary source of environmental requirements for DoD installations overseas. That is partly because DoD policy incorporates or implements relevant portions of federal law, international agreements, and Executive Orders. It is also partly because DoD policy applies in addition to and in the absence of other applicable sources.

DoD policy is expressed through directives, regulations, and instructions that tell installations and personnel what they must do, what they should do, and what they cannot do. There are several DoD policy documents that contain requirements and guidance on matters that affect the environment, but this paper will focus on only three: 1) DoD Instruction 4715.5, *Management of Environmental Compliance at Overseas Installations*, April 22, 1996; 2) DoD Instruction 4715.8, *Environmental Remediation for DoD Activities Overseas*, February 2, 1998; and 3) DoD Directive 6050.7, *Environmental Effects Abroad of Major Department of Defense Actions*, March 31, 1979.²⁰ These three documents specify DoD requirements for environmental compliance, remediation, and planning at DoD installations overseas. Sections II, III, and IV below address the documents and the policy they establish.

E. SERVICE AND COMMAND POLICY

Regulations, instructions, and other policy issued by individual armed services (e.g., Army, Navy, Air Force) or commands (e.g., major command, joint forces command, unified combatant command) are additional sources of environmental requirements for DoD installations overseas. Service and command directives and guidance can implement, interpret, and/or add to DoD policy. They cannot, however, conflict with or replace DoD policy. Furthermore, service and command policies apply only to installations and personnel subject to the authority of the organizations that issue them. For example, Air Force Instruction 32-7006, *Environmental Program in Foreign Countries*, April 29, 1994, complements DoD Directive 6050.7 and DoD Instruction 4715.5, but applies only to Air Force operations.²¹ Similarly, United States Forces Japan Instruction 32-7000, *Protection and Enhancement of Environmental Quality*, February 13, 2003, creates pollu-

²⁰ Department of Defense Instruction 4715.5, *Management of Environmental Compliance at Overseas Installations*, Apr. 22, 1996; Department of Defense Instruction 4715.8, *Environmental Remediation for DoD Activities Overseas*, Feb. 2, 1998; Department of Defense Directive 6050.7, *Environmental Effects Abroad of Major Department of Defense Actions*, Mar. 31, 1979. An example of other DoD policy documents that contain environmental requirements for overseas installations is DoD Directive 4715.12, *Environmental and Explosives Safety Management on Operational Ranges Outside the United States*, Jul. 14, 2004. Current DoD Directives and Instructions are available through the DoD electronic publications website at <http://www.dtic.mil/whs/directives/>.

²¹ This instruction is available from the Air Force Electronic Publications web site at <http://www.e-publis.af.mil/>.

tion incident reporting requirements, but applies only to United States Army, Navy, Marine, and Air Force facilities that are part of the joint command.

II. COMPLIANCE CRITERIA

DoD Instruction (DoDI) 4715.5, *Management of Environmental Compliance at Overseas Installations*, is the foundation of environmental compliance requirements for DoD installations overseas.²² However, these standards do not apply to all DoD facilities and activities overseas.

DoDI 4715.5 does not apply to: 1) DoD installations that do not have the potential to affect the natural environment (e.g., offices whose operations are primarily administrative); 2) DoD installations for which DoD exercises control only on a temporary or intermittent basis (e.g., leased facilities); 3) the operations of United States military vessels or aircraft; and 4) off-installation operational and training deployments.²³ In addition, the instruction does not apply to 1) determination or conduct of remediation to correct environmental problems caused by DoD's past activities, and 2) environmental analyses conducted under E.O. 12114.²⁴

The requirements that apply to facilities and activities that fall outside the scope of DoDI 4715.5 are determined by other DoD instructions or directives, military service or command policy, and applicable international agreements (including treaties). If the activity is an off-installation deployment, the environmental annex to the relevant operational plan or operational order will apply.

²² The instruction replaced a 1991 directive DoD issued to comply with E.O. 12,088. The 1991 directive was DoD Directive 6050.16, *DoD Policy for Establishing and Implementing Environmental Standards at Overseas Installations*, Sept. 20, 1991.

²³ DoDI 4715.5, *supra* note 18 at para 2.1. Exemption 1 will likely change to "DoD installations that do not have more than *de minimis* potential to affect the natural environment" when the instruction is revised since the current Overseas Environmental Baseline Guidance Document issued pursuant to DoDI 4715.5 contains the *de minimis* language in its exemption section. See DoD 4715.05-G, *Overseas Environmental Baseline Guidance Document*, para C1.3.1, May 1, 2007. Exemption 3 does not apply to support functions that enable ships and planes to operate. Exemption 4 does not apply to support functions for United States military vessels and aircraft provided by DoD. See DoDI 4715.5, *supra* note 18 at para 2.1.4. The standards that apply to ship and aircraft operations, as well as off-installation deployments, are determined by applicable international agreements, other DoD instructions or directives, military service and command policy, and the environmental annexes of operation plans or orders.

²⁴ DoDI 4715.5, *supra* note 18 at paras 2.1.6 and 2.1.7. DoDI 4715.8 specifies remediation requirements for DoD activities overseas and DoD Directive (DoDD) 6050.7 addresses environmental planning requirements. See Sections III and IV below.

The key provisions of DoDI 4715.5 deal with three subjects: 1) Overseas Environmental Baseline Guidance Document, 2) DoD Environmental Executive Agent, and 3) Final Governing Standards. The subsections below address these topics.²⁵

A. OVERSEAS ENVIRONMENTAL BASELINE GUIDANCE DOCUMENT

DoDI 4715.5 requires DoD to create and maintain the Overseas Environmental Baseline Guidance Document (OEBGD).²⁶

The OEBGD is a set of objective standards and management practices designed to protect human health and the environment. It reflects generally accepted environmental protection standards that apply to DoD activities in the United States. It also incorporates requirements of federal law that apply overseas.²⁷ The OEBGD criteria and procedure, as a whole, provide a minimum standard applicable to overseas DoD installations for protecting human health and the environment.

DoDI 4715.5 requires the OEBGD be reviewed "as needed," but at least every 2 years. The Air Force is the lead agency for reviewing and revising the OEBGD, but its sister armed services and the Defense Logistics Agency must be involved in the process. Changes are staffed to DoD for approval and then distribution to DoD Components and DoD Environmental Executive Agents.²⁸

The Deputy Under Secretary of Defense (Environmental Security) issued the first OEBGD in October 1992. Despite the 2-year review requirement, changes to the original OEBGD were not issued until March 2000. The Deputy Under Secretary of Defense (Installations and Environment) issued the current version of the OEBGD on May 1, 2007.²⁹

The current OEBGD contains criteria and management practices for air emissions drinking water, wastewater, hazardous material, hazardous waste, solid waste, medical waste,

²⁵ DoDI 4715.5, para 6.4 specifies procedures that apply for disposal of hazardous waste. These procedures apply in addition to country-specific or OEBGD requirements (for installations in countries where there are no country-specific requirements) regarding hazardous waste. *Id.* DoDI 4715.5, para 6.6 specifies criteria and a process for obtaining a waiver of applicable OEBGD or country-specific requirements. The provisions about hazardous waste are significant, but do not form a major component of the DoDI. Therefore, they are not addressed further in this paper.

²⁶ DoDI 4715.5, *supra* note 18 at para 6.2.1.

²⁷ *Id.*

²⁸ *Id.* at paras 6.2.2-6.2.4. The Deputy Under Secretary of Defense (Installations and Environment), formerly called the Deputy Under Secretary of Defense (Environmental Security), approves changes to the OEBGD per DoDI 4715.5, paras 5.2 and 6.2.4. The acronyms for these DoD officials are DUSD (I&E) and DUSD (ES) respectively.

²⁹ See DoD 4715.5-G, Overseas Environmental Baseline Guidance Document, Mar. 15, 2000; DoD 4715.05-G, *Overseas Environmental Baseline Guidance Document*, May 1, 2007.

petroleum products, pesticides, historic and cultural resources, natural resources and endangered species, polychlorinated biphenyls, asbestos, lead-based paint, and underground storage tanks. There are also standards pertaining to spill prevention and response planning.³⁰ The OEBGD also requires DoD Components establish and implement an environmental audit program to ensure overseas installations assess compliance with applicable standards annually.³¹

The OEBGD specifies baseline environmental protection requirements for DoD installations overseas. These standards provide the starting point for developing country-specific compliance requirements and apply in the absence of established country-specific rules.³²

B. DoD ENVIRONMENTAL EXECUTIVE AGENT

DoDI 4715.5 tasks DUSD (I&E) to designate a DoD Environmental Executive Agent (EEA) for environmental matters in countries where DoD installations are located and the level of DoD presence justifies establishment of country-specific environmental compliance requirements.³³

The DoD EEA can be a DoD component (e.g., Air Force, Defense Logistics Agency), Unified Combatant Commander (e.g., Commander, United States European Command), appropriate component (e.g., Commander, United States Atlantic Fleet), or subunified commander (e.g., Commander, United States Forces Korea). DoDI 4715.5, enclosure 3 is a list of EEAs DUSD(I&E) designated.³⁴ The list is not current. A few Air Force EEAs are Commander, United States Air Forces in Europe (Azores, Turkey, and the United Kingdom) and Commander, Air Force Space Command (Ascension Island and Greenland).

The EEA's responsibilities include: 1) developing and maintaining country-specific environmental compliance requirements; 2) monitoring regulatory trends and identifying

³⁰ The 2007 version of the OEBGD covers the same media and issues the 2000 OEBGD covered. The 2000 version did not cover the same topics the 1992 OEBGD covered. The 2000 edition did not include chapters on noise, radon, or environmental effects (planning). In addition, the 2000 OEBGD added a chapter on lead-based paint. Compare DoD 4715.05-G with DoD 4715.5-G and DoD 4715.5-G with *Overseas Environmental Baseline Guidance Document*, October 1992.

³¹ See DoD 4715.05-G, para C1.5.2. See also DoDI 4715.5, para 5.3.4, which requires self-assessments annually at all installations and external assessments at least every 3 years at all major installations.

³² See *id.* at para C1.1. See also DoDI 4715.5, *supra* note 18 at para 6.3.8.

³³ DoDI 4715.5, *supra* note 18 at para 6.1. The instruction actually tasked DUSD (ES) to designate DoD EEAs, but since DUSD (ES) is now DUSD (I&E) this paper uses the current office symbol for the DoD-level decision maker. The country-specific requirements, once issued, would apply instead of the OEBGD standards. See *id.* at para E2.1.5.

³⁴ The list is not current. For example, the EEA for the Azores is no longer the Commander, Air Combat Command; it is the Commander, United States Air Forces in Europe.

applicable host nation environmental standards; 3) consulting with host nation authorities on environmental matters, as needed, to maintain effective cooperation on environmental matters; 4) consulting with affected DoD components and the geographic unified combatant command (UCC) on significant issues arising from DoD environmental policy in that country; 5) acting on requests DoD components submit for waiver of applicable requirements; and 6) keeping the DoD components informed of current environmental developments and trends.³⁵

C. FINAL GOVERNING STANDARDS

Final Governing Standards (FGS) are the set of environmental compliance standards EEAs develop for DoD installations in a specific country. The FGS for a country includes substantive provisions (e.g., technical limitations on air emissions or wastewater discharges) and specific management practices (e.g., reporting and recordkeeping requirements) that apply to all DoD installations and activities in that country unless an exemption or waiver applies.³⁶

EEAs develop FGS in consultation with appropriate in-country or theater representatives of the DoD components operating in the country. EEAs cannot issue FGS or FGS changes, however, without appropriate Unified Combatant Commander approval. In developing FGS criteria, EEAs conduct a comparative analysis of applicable host nation environmental standards and international agreement requirements to OEBGD rules.³⁷

A "host nation" is the specific country where DoD forces are stationed, and EEAs ascertain "applicable host nation standards" by: 1) identifying published host nation law and applicable international agreements for the protection of human health and the environment within the host nation; 2) determining the extent to which the host nation standards are adequately defined, generally in effect, and actually enforced against host government and private sector activities; and considering whether the United States or the

³⁵ DoDI 4715.5, *supra* note 18 at para 5.3.2.

³⁶ Exemptions are specified in DoDI 4715.5, para 2.1. See section II above for a description of exemptions. Waivers are granted pursuant to DoDI 4715.5, para 6.6. The process and criteria for obtaining a waiver is the same for OEBGD and FGS standards. See DoDI 4715.5, para 6.6. A waiver is available only if compliance with the standard in question would 1) seriously impair DoD actions, 2) adversely affect relations with the host nation, or 3) require substantial expenditure of funds for physical improvements at an installation that has been identified for closure or realignment (where realignment would remove the requirement). *Id.*

³⁷ See DoDI 4715.5, *supra* note 18 at para 6.3

host nation has responsibility for construction, maintenance, and operation of the installation.³⁸

Normally, the comparison of host nation, international agreement, and OEBGD criteria is made on an individual, standard-to-standard basis and the criterion that provides more protection to human health and the environment is the standard that is incorporated into the FGS. However, where the EEA determines a standard cannot be considered individually because it is part of a comprehensive regime for a particular environmental subject, the comparison may be made on a broader scope. For example, the EEA may compare the host regulatory regime or international agreement requirements to the corresponding set of OEBGD standards and include in the FGS whichever regime is more protective.³⁹

DoDI 4715.5 does not specify how EEAs are to determine which standard or regulatory regime is "more protective" of human health or the environment. That means EEAs can use any reasonable method to make the determination, such as a side-by-side comparison of empirical standards or a risk-based assessment of the competing criteria's impact on health or the environment.⁴⁰

If host nation standards or applicable international agreement requirements address an environmental threat that is not addressed in the OEBGD, the EEA must consider them in making the FGS. In considering them, the EEA will not incorporate the host nation standards into the FGS if they are not adequately defined, are not generally in effect, and/or are not actually enforced against host nation government and private sector activities. However, until the EEA establishes a standard for the threat in the FGS, DoD installations must follow the relevant host nation or international agreement standard.⁴¹

By regulation, EEAs must revalidate and update their FGS on a periodic basis, but at least every 2 years.⁴² Historically, EEAs have not always reviewed, revised, or updated FGS as

³⁸ *Id.* at para 6.3.2. When identifying published standards that are generally in effect and actually enforced against host country government and private entities, EEAs do not consider laws and regulations of local governmental units unless the local rules implement national laws that delegate authority to, or recognize the authority of, the local governmental unit. *Id.* at para 6.3.2.2.

³⁹ See DoDI 4715.5, *supra* note 18 at para 6.3. The DoDI does not specify how to determine which standard or regime is "more protective" of human health or the environment.

⁴⁰ See Phelps, *supra* note 1, at 34.

⁴¹ See DoDI 4715.5, *supra* note 18 at paras 6.3.2.2 and 6.3.3.3.

⁴² *Id.* at para 6.3.6.

often as required.⁴³ To be relevant and keep installations out of trouble with host nation authorities, FGS must be living documents that EEAs actually review and revise or update on a regular, timely basis (e.g., the shorter of every 2 years or whenever relevant new host nation standards become effective). DoD access to overseas installations can be threatened by failure to satisfy host nation authorities that DoD forces are operating in accordance with, consistent with, or in respect of relevant environmental laws and rules.⁴⁴

Regarding funding compliance with FGS or OEBCD (for installations in countries where no FGS has been established), DoDI 4715.5 says FGS or OEBCD standards "shall be given the highest priority for funding and execution" in the current or the immediately following fiscal year. This imperative, though, only applies if failing to fund compliance will result in: 1) an imminent and substantial threat to human health, 2) a direct threat to ongoing United States operations or United States access to an overseas installation, or 3) a United States violation of an applicable international agreement obligation. When the imperative does not apply, DoD policy says funding compliance should be addressed according to a risk-based prioritization, considering local circumstances and long-term objectives.⁴⁵

III. REMEDIATION REQUIREMENTS

DoDI 4715.8, *Environmental Remediation for DoD Activities Overseas*, states DoD's policy for remediation of environmental contamination at DoD installations or caused by DoD operations in foreign countries.⁴⁶ The policy applies to remediation of contamination on or emanating from DoD installations or facilities in overseas areas. The policy also

⁴³ For example, the EEA for the United Kingdom issued the first country-specific FGS in 1994 and did not issue another one until 2002. In 2006, the EEA updated the hazardous waste chapter. *Compare* Headquarters, United States Air Forces in Europe, Final Governing Standards for the United Kingdom (FGS-UK), 1994 *with* Headquarters, United States Air Forces in Europe, Final Governing Standards for the United Kingdom (FGS-UK), Mar. 20, 2002 (updated Feb. 16, 2006). The EEA for Japan, on the other hand, issued the first country-specific FGS in 1995 and half a dozen updates since then. The current FGS for Japan was published in 2004 and updated in 2006. See Headquarters, United States Forces Japan, *Japan Environmental Governing Standards*, pages v-vi, Sep. 2006. Military members can access FGS through the Defense Environmental Network and Information Exchange (DENIX) at <https://www.denix.osd.mil/portal/page/portal/denix/international>.

⁴⁴ Whether host nation authorities can reasonably expect DoD forces to obey, act consistent with, or respect new host nation standards depends largely on what applicable status of forces agreements, basing, or other international agreements say about compliance with environmental standards. Another reason the FGS must remain current is funding. For overseas installations, FGS compliance is a major justification for funding environmental projects. Changes in international agreement obligations or host nation laws can drive FGS changes. If needed FGS changes are not made in timely manner, funding projects that need to be executed to address those changes will be delayed and the delay can cause difficulties with host nation authorities.

⁴⁵ See DoDI 4715.5, *supra* note 18 at para 6.5.2.

⁴⁶ See DoDI 4715.8, *supra* note 18 at para 1.1.

applies to cleanup of contamination caused by current DoD operations, including training, that occur away from a DoD installation or facility in a foreign country.⁴⁷

This policy applies worldwide, including locations where applicable international agreements specifically address remediation. The policy cannot negate or limit international agreement requirements, but it can add to them.⁴⁸ In addition, the policy does not apply to cleanup actions (to include spill response actions) that are covered by requirements in environmental annexes to operation orders or similar operational directives. It also does not apply when remedial action is required by the applicable country-specific FGS or, in a country where no FGS have been established, OEBGD.⁴⁹

The DoD policy differs depending on where the environmental contamination occurs. For contamination on or emanating from a DoD installation or facility, DoDI 4715.8 requires DoD components to take prompt action to remedy known imminent and substantial threats to human health and safety from contamination that was caused by DoD operations.⁵⁰ The duty to remediate, however, is limited. First, it requires a commander to reduce risk only to the point that it no longer poses an imminent and substantial danger.⁵¹ It does not require the commander to eliminate all risk posed by environmental contamination that is caused by DoD activities. In addition, the duty to remediate is subject to the availability of funds.⁵²

For contamination at sites away from a DoD installation or facility, DoDI 4715.8 requires DoD components to take prompt action to remedy known imminent and substantial threats to human health and safety from environmental contamination caused by current DoD operations.⁵³ The duty to remediate is limited in that "current operations" does not include: 1) operations connected with actual or threatened hostilities; 2) security assistance programs; 3) peacekeeping missions; 4) relief operations; 5) logistics, maintenance,

⁴⁷ See *id.* at para 2.1.

⁴⁸ For example, the relevant agreements the United States has with the Republic of Korea do not require any "restoration" before returning DoD-operated facilities to the Republic of Korea. However, DoDI 4715.8 applies and requires remediation of imminent and substantial threats prior to return. The remediation requirement in this case is not enforceable as a matter of law, but it is binding as a matter of policy. E-mail from William Nicholls, Deputy Director for Environmental Readiness, Safety and International Environmental Programs within the Office of the Deputy Under Secretary for Defense (Installations and Environment), to John McCune, Chief of Environmental Compliance, Office of the Staff Judge Advocate, Headquarters Air Education and Training Command, (Jan. 31, 2008) (on file with author).

⁴⁹ See *id.* at para 2.2.

⁵⁰ This duty applies regardless of whether the installation is open, active but designated for return to the host nation, or closed (i.e., already returned to the host nation). See DoDI 4715.8, *supra* note 18 at paras 5.1, 5.2.

⁵¹ See DoDI 4715.8, *supra* note 18 at para 5.4.3.

⁵² See *id.* at paras 5-5.2.

⁵³ See *id.* at para 5.3.

or administrative support functions provided by a contractor off-base; or 6) the United States Army's civil works function.⁵⁴

DoDI 4715.8 authorizes remediation of contamination that does not pose an imminent and substantial health or safety threat. However, the DoD component commander must consult with the relevant EEA before approving actions to remedy lesser threats. In addition, the component commander must make a determination that remediation of the lesser threat is needed. For threats caused by contamination on or emanating from a DoD installation or facility, the remedial action must be needed to maintain operations or protect human health and safety. For threats caused by contamination at locations away from (i.e., off and not emanating from) DoD installations, the remedial action must be needed to maintain operations.⁵⁵

Remediation beyond that required under the DoD policy may be undertaken by the host nation using its own resources.⁵⁶

Whether remediation is driven by international agreement, risk to health or safety, or the need to maintain operations, the DoD component commander must consult with the appropriate EEA before approving a cleanup project.⁵⁷ EEAs are tasked by DoDI 4715.8 to establish country-specific remediation policy to ensure consistent remediation of DoD-contaminated sites in the host nation.⁵⁸

IV. PLANNING STANDARDS

DoD Directive (DoDD) 6050.7, *Environmental Effects Abroad of Major Department of Defense Actions*, states DoD policy and procedures for consideration of environmental impacts when authorizing or approving certain major federal actions that do significant harm to the environment of a foreign nation or the global commons.⁵⁹ The directive im-

⁵⁴ See *id.* at para 2.1.3.

⁵⁵ See *id.* at paras 5.1.2, 5.2.2, 5.3.2. The EEA is the same for remediation and compliance issues. See *id.* at para 4.2.3.

⁵⁶ See *id.* at paras 5.1.4, 5.2.4, 5.3.4

⁵⁷ See *id.* at paras 5.1.2, 5.1.3.2, 5.2.1.1, 5.2.2, 5.2.3.2, 5.3.2, 5.3.3.2, 5.4.1.

⁵⁸ See *id.* at para 4.2.3. In the European Theater, the Unified Combatant Commander issued a remediation directive that includes country-specific remediation policies developed by the appropriate EEAs in coordination with relevant DoD components and the Unified Combatant Command. See Headquarters, United States European Command Directive 80-2, *Environmental Security: Environmental Executive Agent Remediation Policy*, Jun. 11, 2007. DoD personnel can access this document through the United States European Command electronic publications web site at <https://pubs1.eucom.mil/ED/edmain.asp>.

⁵⁹ Under the policy, "global commons" are geographical areas that are outside the jurisdiction of any nation. For example, the oceans outside territorial limits and Antarctica. See DoDD 6050.7, *supra* note 18 at para 3.4.

plements E.O. 12114 and applies in addition to as well as in the absence of relevant international agreement obligations. DoD component and unified combatant command policy may supplement, but not conflict with, the DoD policy.⁶⁰

DoDD 6050.7 requires DoD components consider the environmental impact of certain major federal actions before when deciding whether or not to authorize or approve those proposed actions. A "major federal action" is an action of considerable importance that is: 1) implemented or funded directly by the United States Government; 2) involves substantial expenditure of time, money, and resources; 3) affects the environment on a large geographical scale or substantially affects the environment on a smaller geographical area; and 4) is substantially different from other actions with which it may be associated that have already undergone environmental analysis and been approved.⁶¹ Specifically excused from the definition of major federal action are deployments of ships, aircraft, and other mobile military equipment (e.g., tanks).⁶² The DoD Directive applies to major federal actions (i.e., major DoD actions) that do significant harm to the environment of the global commons, a foreign country, or a protected global resource.⁶³

The DoD policy specifies two different environmental impact analysis and documentation standards. One applies to proposed actions that do significant harm to the environment of a foreign country or protected global resource. The other applies to actions that do significant harm to the environment of the global commons.⁶⁴

A. MAJOR ACTIONS THAT HARM THE GLOBAL COMMONS

For major federal actions that significantly harm the environment of the global commons, an environmental impact statement (EIS) must be completed. The statement may be specific to the proposed action being considered, may be a generic statement that covers the class of similar actions, or may be a program statement.⁶⁵ The EIS must be prepared in two stages, the first stage of which is a draft statement that is made available for public

⁶⁰ See DoDD 6050.7, *supra* note 18 at paras 1, 4, E1.1, E2.1. For additional information about E.O. 12,144, see subsection IC of this paper. Air Force policy for environmental analysis abroad is referred to in AFI 32-7006, para 4.2.3, but specified in 32 C.F.R. §§ 989.37, 989.38 (2007). AFI 32-7061, *Environmental Impact Analysis Process*, Mar. 12, 2003, adopts 32 C.F.R. Part 989 as the Air Force policy regarding environmental impact analysis process.

⁶¹ See DoDD 6050.7, *supra* note 18 at paras 3.2, 3.5, 4.3, 4.4, E1.1, E2.1.

⁶² See *id.* at para 3.5.

⁶³ See *id.* at para E1.1, E2.1.

⁶⁴ See *id.* at paras 4.2, 4.3, E1.1, E2.1.

⁶⁵ See *id.* at para E1.3.1.

comment in the United States.⁶⁶ The second and final stage is the EIS itself, which must reflect consideration of substantive comments received on the draft EIS. This final EIS must be made available to the public in the United States.

Before preparing an EIS, the DoD sponsor of a proposed action may prepare an environmental assessment (EA) to help decide whether an EIS is necessary for the proposed action. In such case, the DoD sponsor would use the environmental document to help it decide whether or not the proposed action is "major" and to decide if the proposed action significantly harms the environment of the global commons. The EA must be made available to the public in the United States upon request, but does not have to be released for public comment prior to completion.⁶⁷

After publication of the final EIS, but before execution of the proposed action, the DoD sponsor should prepared a supplemental EIS if there are substantial changes to the proposed action relative to the environment of the global commons or significant new information relating to the proposed action's effects on the environment of the global commons. When preparing a supplemental EIS, the DoD sponsor must prepare the document in the same two stages that apply when a proponent prepares an original EIS.⁶⁸

At a minimum, an EIS must include sections that: 1) describe the purpose and need for the proposed action, 2) identify the environmental consequences of the proposed action and reasonable alternatives; 3) provide a concise description of the environment of the global commons that will be affected by the proposed action and reasonable alternatives; and 4) provide comparative analysis of the environmental effects on the global commons caused by the proposed action and alternatives. An EA prepared to help decide if an EIS is required should include, as a minimum, information about the need for the proposed action and the effect of the proposed action on the environment of the global commons.⁶⁹

A DoD proponent does not have to hold public hearings when preparing an EA or EIS. However, the proponent may not make a decision on a proposed action until 90 days after the draft EIS is made available to the public or 30 days after the final EIS is made available to the public, whichever is later. Notice of availability must be published in the Federal Register and the 90 and 30-day time periods may run concurrently.⁷⁰

⁶⁶ See *id.* at para E1.4.2. The public comment period must be at least 45 days long unless the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) approves a waiver based on a showing of "probable important adverse effect on national security or foreign policy." See *id.* at para E.1.4.9.

⁶⁷ See *id.* at paras E1.3.9.

⁶⁸ See *id.* at para E1.4.4.

⁶⁹ See *id.* at paras E1.3.9, E1.4.5.

⁷⁰ See *id.* at para E1.4.9.

B. MAJOR ACTIONS THAT HARM A FOREIGN NATION OR PROTECTED GLOBAL RESOURCES

For major federal actions that do significant harm to the environment of a foreign country or to a protected global resource, either an environmental study (ES) or an environmental review (ER) must be conducted.⁷¹

However, this rule does not apply to all major federal actions. It only applies to: 1) major federal actions that do significant harm to the environment of a foreign nation that is not involved in the action; 2) major federal actions that do significant harm to the environment of a foreign country by providing that country a product, emission, or effluent that is prohibited or strictly regulated under United States domestic law (e.g., asbestos, polychlorinated biphenyls, radioactive substances); and 3) major federal actions taken outside the United States that significantly harm natural or ecological resources of global importance designated for protection by the President of the United States or, in the case of a resource protected by an applicable international agreement, designated for protection by the head of the United States Department of State (i.e., the Secretary of State). No study or review is required for actions that do not fit one of the categories listed above, to include actions in which the foreign nation is a direct participant.⁷²

Even if an action fits within one of the categories identified in the preceding paragraph, the DoD policy might not apply. That is because the policy includes a number of exemptions.⁷³ Some of the listed exemptions include actions the DoD proponent determines do not do significant harm to the environment of the foreign country or global resource, actions taken by or pursuant to the direction of the President or the Secretary of Defense in the course of armed conflict, actions taken by or pursuant to the direction of the President or the Secretary of Defense when the national security or national interest is involved, and disaster and emergency relief actions.⁷⁴ The policy authorizes DoD to create addi-

⁷¹ See *id.* at para E2.3.1.1. DoDD 6050.7 and its enclosures do not specifically define "global resource." Para E2.2.1.3 of the DoDD does, however, mention "natural or ecological resources of global importance designated for protection by the President or, in the case of such a resource protected by international agreement binding on the United States, designated for protection by the Secretary of State." The same paragraph says attachment 1 to enclosure 2 of the DoDD is a list of global resources designated for protection by the President or the Secretary of State. However, attachment 1 is blank. E.O. 12144, which the DoDD implements, mentions global resources, but does not specifically define them either. Compare Exec. Order No. 12, 114, *supra* note 17 at § 2-3(d) with DoDD 6050.7, *supra* note 18 at paras E2.1, E2.2.1.3.

⁷² See DoDD 6050.7, *supra* note 18 at para E2.2.1. This means that if a foreign country will participate in the proposed action, the DoD proponent of the proposed action does not have to complete an ES or ER. See *id.*

⁷³ See *id.* at para E2.3.3

⁷⁴ See *id.* at para E2.3.3.

tional exemptions following certain stated procedures.⁷⁵ It also authorizes DoD to exclude categories of action from the requirement to complete a study or review.⁷⁶

An ES is an analysis of the likely environmental effects of a proposed action. It normally includes: 1) a general review of the affected environment; 2) the predicted effect of the proposed action on the environment; 3) significant actions taken by governmental entities regarding the proposed action to either avoid harm to the environment or improve the environment; and 4) significant environmental considerations and actions by the other nations or international organizations participating in the study.⁷⁷

An ER is a concise review of the important environmental issues raised by the proposed action.⁷⁸ It includes an identification of the environmental issues and a review of any consideration the United States and any foreign government participating in the action have given or can give to the environmental impacts of the proposed action.⁷⁹ To the extent practicable, the ER should include: 1) a description of the proposed action; 2) identification of the important environmental issues raised by the proposed action; 3) explanation of the actions that have been taken or will be taken by the DoD component to improve the environment or minimize the proposed action's impact on the environment; and 4) statement of any actions governments of foreign countries affected by or participating in the action have taken or plan to take that will affect the environment.⁸⁰

An ES is bilateral or multilateral effort made by the DoD proponent of the proposed action in cooperation with at least one foreign nation or an international organization to which the United States belongs (e.g., North Atlantic Treaty Organization).⁸¹ Unlike an ES, an ER is prepared unilaterally by the United States. That means the DoD proponent prepares an ER by itself or in conjunction with another federal agency. Foreign nations and international organizations are not co-authors of the review.⁸²

Upon completion, an ES must be made available to the Department of State, federal Council on Environmental Quality, and other interested federal agencies. Upon request, the study must be made available to the public in the United States. Interested foreign

⁷⁵ See *id.* at para E2.3.3.2.

⁷⁶ See *id.* at para E2.3.4. A categorical exclusion may be granted for a class of actions that normally cause significant harm to the environment individually or cumulatively. See *id.*

⁷⁷ See *id.* at paras E2.4.1, E2.4.4.

⁷⁸ See *id.* at paras E2.3.1.1.2, E2.5.1.1, E2.5.4.

⁷⁹ See *id.* at para E2.5.1.1.

⁸⁰ See *id.* at para E2.5.4.

⁸¹ See *id.* at paras E2.3.1.1.1, E2.4.1.2.

⁸² See *id.* at paras E2.3.1.1.2, E2.5.1.2.

governments may be provided a copy of the study also, subject to some limitations and controls on any classified information.⁸³ Similar rules apply for distribution of ERs.⁸⁴

V. ENVIRONMENTAL REQUIREMENTS DURING DEPLOYMENTS

The requirements described in sections I-IV of this paper provide an overview of obligations that apply to DoD forces stationed at traditional, established installations where non-provisional units conduct a permanent mission. For the most part, those rules do not apply to DoD forces during operational and training deployments to or in foreign countries. This section identifies, but does not address in detail, environmental requirements that apply to United States forces during operational and training deployments to foreign countries (including deployments to established installations with a permanent mission, such as Aviano Air Base in Italy).

Environmental compliance, remediation, and environmental impact analysis requirements for deployments may be established by status of forces, basing, or other international agreements.⁸⁵

If requirements are not set by relevant international agreements and the deployment is to a traditional, established DoD installation or facility, country-specific FGS or the OEBGD (if no FGS have been issued) contain the DoD installation's compliance obligations.

Absent international agreements requirements, environmental remediation and planning requirements may be specified in an environmental annex to the operation plan, operation order, or similar operational directive. For deployments away from traditional, established facilities, the environmental annex of operation directives will also specify compliance requirements

If there is no environmental annex, DoD regulations other than DoDI 4715.5 and DoDI 4715.8 may apply or provide helpful information. Likewise, Unified Combatant Command, subordinate command, or DoD component rules and recommendations may apply or be helpful. Some examples of command and component guidance documents are: the Air Force's *Environmental Guide for Contingency Operations Overseas*, the United States Army Installation Management Agency, Europe Region's *You Spill, You Dig II*, and

⁸³ See *id.* at para E2.4.5.

⁸⁴ See *id.* at para E2.5.5.

⁸⁵ See, e.g., Agreement under Article VI of the Treaty of Mutual Cooperation and Security Between the United States of America and Japan, Regarding Facilities and Areas and the Status of United States Armed Forces in Japan, Jan. 19, 1960, 11 UST. 1652; Agreement for Cooperation on Defense and Economy in accordance with Articles II and III of the North Atlantic Treaty, Mar. 29, 1980, 32 UST. 3323.

Appendix D, *Environmental Considerations*, of Joint Publication 3-34, *Joint Engineer Operations*, February 12, 2007.⁸⁶

VI. RECENT CASE LAW

The National Historic Preservation Act of 1966 (NHPA)⁸⁷ has the goal of preserving the “historical and cultural foundations of the Nation...in order to give a sense of orientation to the American people.”⁸⁸ To this end, before a federal undertaking can proceed, a federal agency must “take into account” the effect of the undertaking on historical objects.⁸⁹ NHPA was amended in 1980 to cover federal undertakings occurring outside the United States which may adversely affect a property on the World Heritage List or foreign country’s National Registry equivalent.⁹⁰

This “overseas” section of the NHPA has the potential to delay a project if the procedural requirements of the NHPA are not properly followed. The Navy’s construction of the Futenma Replacement Facility off the coast of Okinawa, Japan was delayed because the Court held the Navy failed to take into account the effect of the undertaking on the dugong.⁹¹ The dugong is a species of marine mammal related to the manatee. Dugongs are significant in Okinawan culture because of their association with traditional Okinawan creation mythology, sometimes being considered the progenitor of the local people. Be-

⁸⁶ Air Force Handbook 10-222, volume 4, *Environmental Guide for Contingency Operations Overseas*, Mar. 1, 2007. This publication is available through the Air Force’s electronic publications library at <http://www.e-publishing.af.mil/shared/media/epubs/AFH10-222V4.pdf>; United States Army, Installation Management Agency, Europe Region, *You Spill, You Dig II*, 2003. This pocket-sized environmental handbook for deployments is available through the United States Army V Corps’ web site at <http://www.vcorps.army.mil/Safety/environmental/YouSpillYouDig-II-2003.pdf>; Joint Publication 3-34, *Joint Engineer Operations*, Appendix D, Feb. 12, 2007. Appendix D of the Joint Publication is titled *Environmental Considerations* and provides some environmental requirements commanders must meet during deployment operations in foreign countries. See Joint Publication 3-34, Appendix D.

⁸⁷ 16 USC. §§470 et seq.

⁸⁸ *Id.* at §470(b)(2)

⁸⁹ *Id.* at §470f

⁹⁰ *Id.* at §470a-2

⁹¹ See *Dugong v. Gates*, 543 F. Supp. 2d 1082 (2008)

cause of its cultural significance, the dugong is listed as a protected "natural monument" on the Japanese Register of Cultural Properties.⁹²

It was undisputed that the location of the proposed facility was a dugong habitat. The Navy cited several documents of basic scientific knowledge regarding dugong behavior, migratory movements, feeding patterns, and seagrass habitats, as well as the on-going environmental analysis conducted by the Japanese government.⁹³ But, the court held that held that under NHPA, the Navy, not the Government of Japan, has the obligation to take into account the effects of the undertaking on the dugong.⁹⁴ Furthermore, if insufficient data exists to evaluate the effects of the undertaking, then the Navy has the responsibility to ensure that further research is conducted.⁹⁵

VII. CHANGES ON THE HORIZON

DoD is in the process of rewriting the documents that state DoD policy for environmental compliance, remediation, and planning requirements for DoD installations and facilities located outside the United States and its territories. DoD is also developing new policies that will create additional environmental requirements for overseas installations.⁹⁶ This section provides some information about the major changes being staffed for DoDI 4715.5, DoDI 4715.8, and DoDD 6050.7.

A revision to DoDI 4715.5 is in the process of a second round of coordination due to significant changes. The major changes to the instruction are: 1) a new instruction number and name, which will be DoDI 4715.05, *Overseas Environmental Compliance*; 2) use of the term "Lead Environmental Component (LEC)" instead of EEA; 3) expands scope to include military operations and exercises; 4) slightly modifies waiver process; 5) changes maximum time between OEBGD and FGS reviews from 2 years to 5 years; 6) requires LEC to document the decision making process (i.e., information about comparative analysis) for FGS development.⁹⁷

⁹² *Id.* at 1084.

⁹³ *Id.* at 1111.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Email messages from Diana Fox-Jackson, HQ US Air Force, Air Force Environmental Quality, to John McCune, Chief, Hazardous Materials Management Branch and Lisa Fill, Air and Water Branch, Environmental Field Support Center, Air Force Legal Operations Agency (on file with authors). Updates on the publication status of the DoDIs were obtained in December 2009 from Diana Fox-Jackson.

⁹⁷ See *id.* Regarding LECs the new instruction will not designate specific major commands as LECs. Instead, it will designate specific military departments as LECs, with the relevant department head (e.g., Secretary of the Air Force) being authorized to delegate the responsibility to an appropriate flag officer in the department.

Revisions to DoDI 4715.8 are under review and may require a second round of coordination. Key changes to the instruction include: 1) a new instruction name, which might be *Environmental Remediation for DoD Activities Overseas*; 2) integrates "Lead Environmental Component" included in DoDI 4715.5 revision; 3) allows use of the OEBCD as guidance when deployed to a sustainment (long term) location; 4) authorizes remediation of contamination from non-DoD sources involved in military operations when necessary to protect the health and safety of DoD forces; and 5) authorizes use of funds to characterize environmental conditions required to make determinations under this instruction.⁹⁸

As of December 2009, revision of DoDD 6050.7 is on-going. No substantive changes are expected, but administrative changes are needed to correct organizational responsibility changes since the current policy was issued in 1979. In addition, the policy probably will be cancelled as a directive and reissued as an instruction.⁹⁹

The second policy under development is tentatively titled "DoDI 1322.XX, *Sustainment of Mission Capability Outside the United States*." This instruction will address overall sustainment of the DoD mission globally and is being developed in partnership with the Office of the Secretary of Defense, Personnel and Readiness (OSD (P&R)).¹⁰⁰

CONCLUSION

DoD forces and installations face environmental compliance, remediation, and impact analysis requirements everywhere they go. While the rules in overseas locations are different from the requirements in the United States, protecting human health and the environment remain as key features behind the standards. In addition to health, safety, and environmental dangers, failing to obey the applicable requirements at overseas installations can negatively impact mission readiness and also jeopardize DoD's ability to continue operating in the foreign country.

DISCLAIMER

The opinions and conclusions in this paper are the authors' alone and do not necessarily reflect those of the United States Air Force, or the Federal Government.

⁹⁸ See *id.*

⁹⁹ See *id.*

¹⁰⁰ See *id.*

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