



**US Army Corps
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ENVIRONMENTAL QUALITY

ENVIRONMENTAL COMPLIANCE POLICIES

ENGINEER REGULATION

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No. 200-2-3

29 October 2010

Environmental Quality
ENVIRONMENTAL COMPLIANCE POLICIES

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CHAPTER 1 Introduction

1-1. Purpose.

a. This regulation establishes the policy for the management of environmental compliance-related operations and maintenance (O&M) activities for the U.S. Army Corps of Engineers (USACE).

b. The United States Army Corps of Engineers (USACE) shall fully comply with all applicable Federal, State, and local environmental laws and regulations, Executive Orders (EOs) and policies. This ER affirms the USACE commitment to environmental compliance (EC) and establishes additional environmental protection policies and practices pertaining to operation and maintenance (O&M) activities at Civil Works projects, facilities (including outgrants), and USACE owned facilities as appropriate. USACE fully recognizes the importance of environmental protection and strives to comply with environmental laws and regulations, and to achieve sustainable operations by incorporating the prevention of pollution and other sound environmental management practices in all environmentally significant mission activities, products, and services.

c. USACE is committed to achieve, maintain, and continually improve environmental compliance performance in all Civil Works business lines including Navigation; Flood and Coastal Storm Damage Reduction; Environment (including Protection and Restoration and Stewardship); Regulatory; Hydropower; Recreation; Water Supply; and Emergency Management.

d. USACE Real Estate shall execute acquisition, outgrant and disposal transactions at Civil Works projects in compliance with applicable Federal, state, and local environmental laws and regulations, including performance of environmental due diligence. This regulation establishes USACE requirements for compliance with CERCLA in the acquisition, outgrant and disposal of real property in support of O&M activities at Civil Works projects and facilities.

e. 33 CFR Parts 335-338 are incorporated by reference into this ER as the source for practices and procedures to be followed by the Corps of Engineers to ensure compliance with the specific statutes governing Army Civil Works operations and maintenance projects involving the discharge of dredged or fill material into waters of the U.S. or the transportation of dredged material for the purpose of disposal into ocean waters.

f. USACE Environmental Operating Principles (EOPs), as specified in ER 200-1-5, are incorporated by reference into this ER. The EOPs shall be incorporated in all environmentally significant USACE business.

This regulation supersedes ER 200-2-3, dated 30 October 1996

g. USACE shall ensure that this policy is communicated to, and implemented by, all affected staff, contractors and grantees, and that all relevant activities are overseen by qualified USACE personnel at all USACE facilities, projects, and associated lands and waters. This policy will be implemented at outgranted facilities and in all contract actions for work on the water resources projects to the extent provided by law, regulation, and executive order.

h. All contracts and contract modifications shall specify that contractors and grantees are required to comply fully with applicable Federal, state, and local environmental laws and regulations, Executive Orders, DoD and Army, regulations, policies, and guidance and that contractors and grantees are responsible for any enforcement actions, fines, penalties, and cleanup costs, to the extent provided for by law and policy, resulting from their failure to comply with applicable environmental requirements.

i. ER 1110-2-8154, Water Quality and Environmental Management for Corps Civil Works Projects is incorporated by reference into this ER as the source for practices and procedures to be followed by the Corps of Engineers to ensure compliance with the specific statutes governing Army Civil Works operations and maintenance. Water quality management shall be achieved via the management of water resources by the Corps of Engineers to improve, restore, conserve, and protect the physical, chemical and biological quality of the water for natural and human use.

1-2. Applicability. This regulation applies to all USACE commands having responsibility for Civil Works functions, and to USACE Military funded facilities as specified in the individual chapters and sections. This regulation does not apply to Support for Others programs managed by the Directorate of Military Programs such as support to USEPA, including Superfund and Brownfields, nor to environmental support to other Federal agencies. It also does not apply to the Formerly Utilized Sites Remedial Action Program (FUSRAP).

1-3. Distribution Statement. Approved for public release. Distribution unlimited.

1-4. References.

a. P.L. 104-332, National Invasive Species Act of 1996.

b. P.L. 106-580, National Institute of Biomedical Imaging and Bioengineering Establishment Act.

c. Executive Order 13112, Invasive Species, 3 February 1999

d. Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, 26 January 2007.

e. 33 CFR 335, Operation and maintenance of Army Corps of Engineers civil works projects involving the discharge of dredged or fill material into waters of the U.S. or ocean waters.

f. 33 CFR 336, Factors to be considered in the evaluation of Army Corps of Engineers dredging projects involving the discharge of dredged material into waters of the U.S. and ocean waters.

g. 33 CFR 337, Practice and procedure.

h. 33 CFR 338, Other Corps activities involving the discharge of dredged material or fill into waters of the U.S.

i. 40 CFR 261.21-261.24, Characteristics of Hazardous Waste.

j. 40 CFR 273, Standards for Universal Waste Management

k. 40 CFR 761.2, PCB Concentration Assumptions for Use.

l. DoD 4160.21-M, Defense Materiel Disposition Manual.

m. DoD 7000.14-R, Volume 4, Chapter 13, DoD Financial Management Regulation.

n. ER 200-1-5, Policy for Implementation and Integrated Application of the U.S. Army Corps of Engineers (USACE) Environmental Operating Principles (EOP) and Doctrine.

o. ER 1110-2-8154, Water Quality and Environmental Management for Corps Civil Works Projects.

p. ISO 14001:2004(E) International Standard.

q. Unified Facilities Guide Specification 01 57 20.00 10, Transportation and Disposal of Hazardous Material.

1-5. Explanation of Terms and Abbreviations. Abbreviations and terms used in this regulation are explained in the glossary.

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CHAPTER 2

Environmental Compliance for Civil Works Operations

2-1. Responsibilities.

a. The Chief of Operations or Operations Project Manager (OPM) is responsible for environmental compliance performance for all activities within the boundaries of their Project, District, or Division as well as HQ USACE.

b. The contracting officer for a construction or services contract or a real estate agreement affecting lands and waters under the control of Civil Works Operations, is responsible for communication and coordination with the contractor or grantee about all matters of compliance with the terms of the agreement.

c. The USACE Chief of Real Estate executing a real estate outgrant is responsible for incorporating applicable Environmental Conditions into real estate instruments pursuant to applicable federal, state, and local laws, regulations, executive orders and policies. Incorporation of language into any real estate document is the responsibility of the respective Chief of Real Estate in coordination with the respective HQ, Division, District and Project level Operations staff and the Office of Counsel.

d. Environmental compliance requirements are an inherent part of the mission of each business line in Civil Works Operations. The scope and magnitude of environmental compliance requirements of each mission is a function of the potential environmental impacts of the mission, and the associated controls defined by applicable laws, regulations, Executive Orders and USACE policies. Therefore, each business line is responsible, in coordination with their supporting Environmental Compliance Coordinator (ECC), to plan, program, budget, and execute their mission, including its environmental compliance requirements, in a manner that is fully compliant. Each business line must control the direct environmental impacts of its mission, such as use and release of hazardous materials, as well as indirect impacts, such as a collateral modification of lands or waters in a manner that degrades habitat or creates opportunity for establishment or proliferation of invasive species (P.L. 104-332, P.L. 106-580, and EO 13112).

e. Coordination of Requirements for Contracts, Real Estate Agreements, and Permit Requests.

(1) The USACE proponent for contracts, real estate actions, permits and other agreements affecting Civil Works Operations controlled lands and waters shall coordinate all requirements and agreements with the Operations element for environmental compliance review prior to finalization of requirements.

(2) The Operations element is responsible for reviewing and approving environmental requirements for contract, real estate, and permit actions affecting lands and waters under the control of Operations. Reviews and coordination with the OPM and Operations business line

personnel for environmental compliance will be documented prior to submission of the requirements to the respective Contracting, Real Estate, Regulatory, or other element for finalization within the terms of the agreement.

(3) If the contract, real estate action, permit, or other agreement involved a discharge of dredged or fill material into waters of the U.S., the OPM shall coordinate with the Regulatory branch within the appropriate local district to ensure compliance with requirements of the Clean Water Act. While the OPM may make a determination on environmental compliance, only the District Engineer (DE) and those whom the DE has delegated authority, may make a determination whether the proposed work is consistent with regulations associated with Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act of 1899.

f. USACE functional elements with activities affecting Civil Works Operations controlled lands and waters are responsible for the environmental compliance performance of their activities.

g. Operations element staff may verbally interact with grantees or contractors as necessary to prevent or stop activities that would result in immediate harm to the project's environmental performance. Such verbal field interactions must be documented in an internal memorandum or e-mail, and provided to the appropriate real estate or contracting officer for the official record. Any required written follow-up correspondence shall be provided under the signature of the real estate or contracting officer.

2-2. Business Program Goals and Objectives. An Army Civil Works mission, among other missions, is to develop, manage, and protect water resources. This is accomplished through business lines or programs. Goals pertaining to the environment are stated in the current Civil Works Strategic Plan or equivalent documents issued after the date of this ER. In general, these goals support the repair of past environmental degradation, prevention of future environmental losses, and ensure that projects perform to meet authorized purposes and evolving conditions. Program objectives include ensuring that the operations of Civil Works facilities and management of associated lands, including outgranted lands, comply with the environmental requirements of relevant applicable Federal, State, and local laws and regulations, Executive Orders, and with DoD, Army, and USACE policy.

CHAPTER 3

Civil Works Operations Environmental Compliance Coordinator (ECC) Network

3-1. The Environmental Compliance Coordinator Network. The ECC Network is composed of four levels that work closely together to provide consultation and support to the USACE Civil Works Operations business lines. The ECC Network also provides consultation and support to other functional elements supporting Operations, including Planning, Engineering and Construction, Project Management, Logistics, Safety and Occupational Health, and Real Estate.

a. At the top of the ECC Network, the Headquarters USACE component (HQ ECC) has overall responsibility for the USACE Civil Works environmental compliance program and serves as the HQ ECC, Community of Practice Leader, and Senior Environmental Compliance Policy Advisor.

b. At the Division level, the Division ECC serves as program manager and coordinates with the Districts and the HQ ECC.

c. At the District level, the District ECC serves as the environmental compliance coordinator for the District and coordinates with Project ECCs and the Division ECC.

d. At the Project/Facility level, which may include “regional” groupings of projects below the District level, the Project ECC serves as the environmental compliance coordinator at the Project/regional level and coordinates with the OPM and the District ECC.

3-2. ECC Network Objective. The objective of the ECC Network is to develop and maintain, Corps-wide, a comprehensive and consistent environmental compliance program for the Operations element.

3-3. Designation of ECCs.

a. The Chief of Operations shall formally designate and provide resources for training (see Chapter 15 for training requirements) of ECCs within the Operations element at the Division, District, and project/facility level. The designation of an ECC outside of the Operations element shall be approved by the Chief of Operations at the next higher level of command, and the HQ USACE Chief of Operations shall be notified.

b. Operational projects and facilities shall have a designated Project ECC. Each Project ECC shall report to the Operations Project Manager. Where applicable, the District Chief of Operations shall designate regional ECCs. Regional ECCs shall report to the Operations Project Managers at the projects within their assigned region, as well as the District ECC.

3-4. ECC Roles and Responsibilities.

a. General Responsibilities of ECCs at all levels of USACE:

(1) ECCs serve as the primary interface with local, state and federal environmental regulatory authorities.

(2) ECCs are responsible for accessing current environmental compliance requirements through use of state and federal websites, most recent versions of TEAM/ERGO and State supplement manuals; and by seeking input from technical experts as needed.

(3) ECCs provide environmental compliance and EMS implementation advice, consultation and support to the Operations Project Manager, the Operations business lines, and supporting functional elements, as appropriate at their level of USACE. However, the ECC shall *not* assume responsibility for environmental compliance performance of any business line or supporting functional element.

(4) ECCs prepare, review and advocate for support of the EC program and for EC funding requirements, such as compliance initiatives, EMS, training, and closure of ERGO findings, within the budgeting processes at their level of the Corps for all relevant Civil Works Operations business lines.

(5) ECCs serve as the point of contact for compiling and maintaining environmental performance measurement and compliance-related policies, procedures and records appropriate for their level of the USACE. Examples include documents such as permits, Resource Conservation and Recovery Act (RCRA) hazardous waste manifests, exception reports, training records, assessment and inspection records, biennial reports, and environmental study, clean-up and liability documentation.

(6) ECCs support management review of environmental compliance performance using the performance measures, data, and standard formats established by HQ USACE Chief of Operations.

(7) ECCs promote environmental compliance awareness, guide and oversee environmental compliance program implementation and performance, provide support for unplanned environmental compliance issues, support ERGO assessments for others, and perform other duties as assigned by the Chief of Operations or OPM.

(8) ECCs develop and oversee Civil Works Operations environmental compliance policy and advocate for resources for policy implementation, at their level and for each subordinate organizational level.

(9) ECCs support environmental compliance reporting requirements by compiling and submitting, or directing and overseeing the compilation and submission of, data required to support environmental compliance program management requirements.

(10) ECCs ensure the review of contracts, outgrants, and other agreements for appropriate coverage of environmental compliance requirements, and they provide government oversight for the execution of the environmental compliance requirements of contracts, outgrants and other agreements that affect the project(s) they support.

b. Specific Responsibilities:

(1) HQ ECC Responsibilities:

(a) The HQ ECC tracks legislative and regulatory changes with impacts to Civil Works Operations business lines and associated environmental programs; establishes program initiatives; ensures timely distribution of information; promotes a capable workforce of trained and qualified ECCs; fosters communication within the ECC community; maintains intra and inter-agency relationships and coordination; initiates data calls and evaluates data; assesses and reports on attainment of goals; identifies compliance trends; captures lessons learned; and takes actions necessary to support Divisions, Districts, and projects in accomplishing their environmental compliance responsibilities.

(b) The HQ ECC shall convene Project Delivery Teams (PDTs) comprised of members of the ECC Community of Practice (CoP) and other CoPs, when appropriate, to develop and standardize tools, practices, guidance and policy for the USACE Environmental Compliance Program.

(c) The HQ ECC shall request funding on an annual basis to provide technical support services from environmental compliance subject matter experts of the USACE Environmental and Munitions Center of Expertise (EM CX) to support new or evolving Civil Works Operations environmental compliance requirements.

(d) HQ ECC shall program funding for updates of the Environmental Assessment Manual (TEAM), the Environmental Review Guide for Operations (ERGO) and State supplement manuals and take action to ensure Corps-wide access to the latest manuals.

(2) Division ECCs are responsible for environmental compliance programs at their Division and on USACE owned and/or operated Civil Works Districts and projects/facilities within their Division boundaries. They are responsible for quality assurance, regional interface, and consistency regarding policy implementation; supporting the HQ ECC in efforts to develop and maintain policy and doctrine; promoting a capable workforce of trained and qualified ECCs; fostering communication within the ECC community; and maintaining intra and inter-agency relationships and coordination.

(3) District ECCs are responsible for environmental compliance programs at their District and on USACE owned and/or operated Civil Works projects/facilities within their District boundaries. Responsibilities include supporting implementation of EC program initiatives; providing oversight and monitoring for compliance related to the protocols identified in *The Environmental Assessment Manual/Environmental Review Guide for Operations Supplement (TEAM/ERGO)*; developing and maintaining internal and external

assessment schedules; implementing ERGO assessments; and assuring entry and updating of all EC OMBIL data.

(4) Project/Facility ECCs, including ECCs assigned to support multiple Civil Works projects within a District, are responsible for providing environmental compliance guidance, leadership, and oversight at the project/facility location(s) and/or floating plant facility. They manage and conduct EC program activities at project/facility location(s); serve as the single point of contact for hazardous waste recordkeeping relative to the project EPA ID number(s); conduct internal assessments and support external assessments of project/facility following the protocols prescribed in the ERGO/TEAM Manuals; implement EC program initiatives; provide environmental compliance inspector escort; report releases to USACE and regulatory authorities; oversee oil spill prevention and response; enter and update EC OMBIL data for internal assessments; and enter and maintain data in all EC OMBIL data input forms in coordination with the District ECC.

3-5. ECC Network Communications, Resources, and Information Exchange.

a. The Environmental and Munitions Center of Expertise (EM CX) is a resource for information on a broad spectrum of environmental requirements. The EM CX regulatory compliance staff specializes in the understanding and application of environmental requirements such as the Clean Air Act, Clean Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Resource Conservation and Recovery Act, the Safe Drinking Water Act, the Toxic Substances Control Act, and the Hazardous Materials Transportation Act. Their website address is http://www.environmental.usace.army.mil/tech_reg.htm

b. The Environmental Compliance component of the Natural Resources Management (NRM) Gateway provides internet access to information helpful in successfully maintaining compliance initiatives at every level of program management. The site was created as a knowledge management system, providing the environmental compliance community with a USACE-specific source for evaluating and maintaining proactive compliance programs. Regulatory information is provided and is enhanced by information sharing links pertinent to USACE activities. The site address is <http://corpslakes.usace.army.mil/employees/envcomp/envcomp.html>.

c. FedCenter.gov is the Federal government's home for comprehensive environmental stewardship and compliance assistance information. It supports all aspects of environmental management and compliance, to include automatic notifications of draft and final regulatory changes, an automated tool to assist users in identifying the regulations that apply to their activities and facilities, OMB scorecard reporting tools supporting the President's Management Agenda and Executive Order reporting requirements for EMS, and it provides on-line training resources. FedCenter is developed and maintained by the Federal community to support requirements defined by the Federal community. The site address is <http://www.fedcenter.gov>.

d. The ECC network and the NRM Gateway, <http://corpslakes.usace.army.mil/employees/envcomp/envcomp.html>, shall be used to exchange both positive and negative lessons learned regarding compliance and pollution prevention activities. The goal is to share knowledge.

e. Information on becoming involved in the Gateway Initiative is available at <http://corpslakes.usace.army.mil/employees/gateway/gateway.html>. Opportunities include serving as subject matter experts within special areas of interest or as technical coordinators for maintaining current and relevant information on the web pages.

f. The environmental compliance list server was created to manage email correspondence for members of the ECC community. It provides a forum for guidance distribution, group discussion of issues, and general information sharing on specific topics of interest. Email may be distributed to ECCs via links provided on the NRM Gateway site or via the USACE Outlook distribution list, DLL-ECCnetwork@usace.army.mil.

g. HQ/DIVISION Teleconferences. Generally, on a quarterly basis, the HQ ECC sets up a teleconference with the Divisions to exchange information, discuss hot topics, and follow up on previous action items.

h. Environmental Compliance Advisory Team (ECAT). An Environmental Compliance Advisory Team shall be established to provide oversight of the Environmental Compliance Program. Voting members of the ECAT shall be nominated by Divisions and appointed through the HQ USACE Civil Works Operations Natural Resources Management Branch and may be comprised of a combination of Division, District and Project Environmental Compliance Coordinators. Two non-voting members shall represent HQ USACE, and the EM CX. Additional non-voting members may be proposed by the ECAT, and appointed at the discretion of the HQ USACE Chief of Operations. The ECAT shall evaluate significant EC policy, funding, performance measurement, and other compliance-related management proposals, and shall recommend appropriate action(s) with regard to each proposal to the HQ USACE Civil Works Operations Natural Resources Management Branch.

(1) Meetings. The ECAT shall meet at least annually. The HQ ECC shall participate in all meetings of the ECAT.

(2) Each voting ECAT member shall coordinate within their Division on matters addressed by the ECAT, and represent the interests of their respective Division, Districts and Projects in all deliberations of the ECAT.

(3) The ECAT shall support strategic planning for the EC program, to include sustainability initiatives adopted by USACE or Civil Works Operations, and shall serve in an active advisory role to the HQ USACE Civil Works Operations Natural Resources Management Branch.

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(4) The ECAT is funded by the O&M General appropriation. The HQ USACE Civil Works Operations Natural Resources Management Branch shall provide conceptual approval (subject to the availability of funds) for all new starts and other program funding adjustments by July of each year.

CHAPTER 4

Environmental Management Systems

4-1. Policy. An Environmental Management System (EMS) provides a framework through which an organization identifies attainable indicators of environmental performance, seeks continual improvement in its environmental performance, and documents improvements. It is USACE policy to implement an EMS in accordance with Executive Order (EO) 13423, “Strengthening Federal Environmental, Energy, and Transportation Management,” January 26, 2007, Instructions for Implementing EO 13423, March 29, 2007, and subsequent Federal guidance for EMS. Civil Works Operations’ EMSs shall be based upon the International Organization for Standardization framework, ISO 14001, “Environmental Management Systems – Requirements with Guidance for Use.” Funding for central development, maintenance, and awareness training for EMS shall be provided by HQUSACE.

4-2. EMS Requirements.

a. Federal agencies are required by Executive Order to implement environmental management systems at all appropriate organizational levels. The HQ USACE Chief of Operations, in conjunction with the Divisions, has determined, based on interpretation of Federal guidance, that the appropriate type of EMS for Civil Works Projects and Facilities is a multi-site organization EMS. This determination applies generally to USACE Civil Works Operations, and it may be amended to accommodate future Federal guidance and USACE mission requirements. The USACE Civil Works Operations EMS shall be developed and managed centrally and adapted to locally specific requirements and situations at the division, district and project levels, as appropriate. The USACE Civil Works Operations EMS will focus initially on environmental compliance, and it will be implemented through targeted enhancements of the ERGO process. EMS guidance, DoD, Army, and USACE policies and other tools for EMS implementation can be found in the EMS section under the Civil Works Compliance Tab on the Natural Resources Management Gateway website at: <http://corpslakes.usace.army.mil/employees/envcomp/envcomp.html>.

b. Civil Works Operations activities that are managed within the framework of the Civil Works Operations EMS are those having aspects with potential to cause significant environmental impacts. For purposes of this ER, environmentally significant activities are those that are regulated by federal, state, or local environmental laws, regulations, Executive Orders, or as directed by USACE policy or the responsible Chief of Operations or OPM. Some environmentally significant activities will be defined centrally based on laws, regulations, Federal executive orders, or USACE policy. Centrally defined environmentally significant activities shall be managed within the EMS at each organizational level of USACE (HQ, division, district and project) as required to meet environmental performance requirements. Additional environmentally significant activities may be defined by the OPM or the District or Division ECC and Chief of Operations.

c. Contract and outgrant activities will be addressed in the USACE Civil Works Operations EMS as required by Federal law, regulation or Executive Order, and as required by the Division or District Chief of Operations or the OPM in coordination with the respective Chief of Real Estate or Contracting.

d. The EMS shall address all significant environmental aspects on USACE controlled lands and waters and at outgrants.

4-3. Roles and Responsibilities. Roles and responsibilities for environmental compliance as they relate to the Civil Works Operations EMS are provided in Chapters 3, 4, 5 and 16 of this ER. In general, the requirements for implementation and operation of the Civil Works Operations EMS are enhancements of the ERGO process. Beyond those defined elsewhere in this ER, the specific EMS roles and responsibilities are as follows:

a. HQ USACE Operations Division.

(1) The HQ USACE Chief of Operations establishes the Civil Works Operations EMS policy and oversees implementation. The HQ USACE Chief of Operations responsibilities include performing HQ level management review of the EMS; development of EMS procedures and implementation tools intended to be applied Corps-wide; overseeing the Divisions' EMS implementation; ensuring the availability of resources necessary to establish, implement, maintain and improve the Civil Works Operations EMS; and ensuring that a management representative is appointed as necessary at the appropriate organizational levels and/or Projects or Facilities within the EMS.

(2) The HQ ECC is the overall proponent for the Civil Works Operations EMS. As such, the HQ ECC supports the HQ USACE Chief of Operations in all EMS responsibilities listed above, and provides EMS implementation advice and support to CW Operations business line personnel.

b. Division. The Division ECC is the Division-level proponent for EMS implementation, known as the *EMS Management Representative* (EMS MR). The EMS MR shall provide environmental compliance and business line expertise to support HQ USACE efforts for central development of EMS procedures and implementation tools, and ensure that ISO 14001 elements assigned to their division, districts and projects/facilities for execution are implemented and maintained using the centrally developed Civil Works Operations EMS procedures and implementation tools. In addition, the EMS MR shall report the performance of their EMS and recommendations for improvement in accordance with the management review procedures in Section 4-6.

c. District. The District ECC is the proponent for the implementation of the EMS elements appropriate to their organizational level for projects and facilities within their district boundaries. Responsibilities include periodically reviewing district and project/facility EMS procedures, providing EMS implementation advice and support to CW Operations business line personnel, reviewing the project/facility significant aspect list periodically to ensure it is representative of actual activities conducted at the project/facility;

establishing and reviewing progress of EMS objectives and targets; and providing input for management reviews.

d. Project/Facility. The Project/Facility ECC is the proponent for implementing the EMS procedures assigned to their project/facility; providing EMS implementation advice and support to CW Operations business line personnel; reviewing their environmental aspects periodically to ensure they are representative of activities associated with their project/facility; establishing objectives and targets to address locally and centrally defined environmentally significant activities; providing EMS awareness training to project/facility employees; and providing required input for EMS management review.

e. All Civil Works Operations personnel whose duties entail environmentally significant activities are responsible for understanding their role in the Civil Works Operations EMS and executing their duties in a manner that is protective of human health and the environment and fully compliant with the requirements of this policy.

4-4. EMS Element Requirements Contained Within This ER. The primary EMS document for the Civil Works Operations EMS shall be ER 200-2-3. Table 4-1 shows generally how the various EMS elements relate to the ERGO assessment process and serves as a conceptual gap analysis for a compliance focused EMS.

Table 4-1. ISO 14001 Elements – ERGO Process Crosswalk

ISO 14001 (2004) Elements	ERGO Process
4.2 Environmental Policy	ER 200-2-3 (Section 1-1 and Chapter 5, ERGO)
4.3 Planning	
4.3.1 Environmental Aspects	ERGO Pre-visit Questionnaire
4.3.2 Legal and Other Requirements	ERGO Manual/TEAM Guide
4.3.3 Objectives, Targets and Programs	ERGO Performance Measures, ER 200-2-3
4.4 Implementation and Operation	
4.4.1 Resources, Roles, Resp., Authority	ER 200-2-3, Chapter 5 (ERGO)
4.4.2 Competence, Training, Awareness	ECC, ERGO, and OMBIL training
4.4.3 Communication	ER 200-2-3 internal comm. for ERGO
4.4.4 Documentation	ERGO Manual, including procedures
4.4.5 Control of Documents	Procedure for annual updates of ERGO manual
4.4.6 Operational Control	CW Operations mission SOPs
4.4.7 Emergency Preparedness and Response	Spill Plans, exercises, etc...

ISO 14001 (2004) Elements	ERGO Process
4.5. Checking	
4.5.1 Monitoring and Measurement	Operations mission SOPs and permits requirements
4.5.2 Evaluation of Compliance	ERGO and other relevant compliance requirements
4.5.3 Non-conformity, Corrective & Preventive Action	N/A for ERGO
4.5.4 Control of Records	Tracking findings to closure; OMBIL data entry
4.5.5 Internal Audit	Project-level audits; HQ-level audits
4.6 Management Review	Done as part of ERGO process

Table 4-2 lists the locations within this ER containing specific ISO 14001 elements and requirements. Those EMS elements not fully addressed within this ER are discussed further in paragraph 4-7.

Table 4-2. Location of ISO 14001 Elements in ER 200-2-3

ISO Element	Title	Responsible Organization**	Location in ER (Chapter or Paragraph)
4.1	General Requirements	HQ	4-2
4.2	Environmental Policy	HQ	1-1
4.3.1	Environmental Aspects	HQ, Dist, and Proj/Fac	4-2(b) and 4-7
4.3.2	Legal and Other Requirements	HQ, Dist, and Proj/Fac	3-4, 5-2, and 4-7.
4.3.3	Objectives, Targets and Programs	HQ, Div, Dist, and Proj/Fac	4-5, and 4-7.
4.4.1	Resources, Roles, Responsibility and Authority	HQ, Div, Dist, and Proj/Fac	3-1, 3-2, 4-1, 4-3, 5-7 and 16-2
4.4.2	Competence, Training, and Awareness	HQ, Div, Dist, and Proj/Fac	Chapter 15
4.4.3	Communication	HQ, Div, Dist, Proj/Fac	Chapter 3, Chapter 6, 5-4 and 4-7

ISO Element	Title	Responsible Organization**	Location in ER (Chapter or Paragraph)
4.4.4	Documentation	HQ	ER 200-2-3
4.4.5	Control of Documents	HQ and Proj/Fac	4-7
4.4.6	Operational Control	Div, Dist, and Proj/Fac	Chapters 7, 8, 9, 10, and 4-7
4.4.7	Emergency Preparedness and Response	Div, Dist, and Proj/Fac	Chapter 10, Chapter 13, and 7-3
4.5.1	Monitoring and Measurement	HQ, Div, Dist, and Proj/Fac	4-7
4.5.2	Evaluation of Compliance	HQ, Div, Dist, and Proj/Fac	Chapter 5
4.5.3	Nonconformity, Corrective and Preventative Action	HQ, Div, Dist, and Proj/Fac	Chapter 5 and 4-7
4.5.4	Control of Records	HQ, Dist, and Proj/Fac	4-7
4.5.5	Internal Audit	HQ, Dist, Proj/Fac	4-7
4.6	Management Review	HQ and Div	4-6

** Organization responsibility for ISO elements may be full or only partial. The level to which each organization is responsible is provided in the specific chapter or paragraph referenced or in the specific procedure or tool developed for the ISO element (see paragraph 4-7, below).

4-5. Environmental Compliance Performance Measurement. Environmental compliance performance measures shall be established, reviewed at least annually, and updated as required by the HQ USACE Chief of Operations. Data supporting the environmental compliance performance measures shall be compiled, evaluated, reviewed, and certified by the OPM or Chief of Operations as complete and accurate at least annually at all USACE Divisions, Districts and Projects.

a. Performance measures shall be utilized by Civil Works Operations business lines to guide and support management decisions for attaining environmental compliance and sustainability goals, objectives and targets associated with statutory, regulatory, Executive Order and USACE policy requirements.

b. The current version of the Civil Works Operations environmental compliance performance measures is available on the Environmental Compliance page of the Natural

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Resources Management Gateway,
<http://corpslakes.usace.army.mil/employees/envcomp/envcomp.html>.

c. Civil Works Operations environmental compliance performance measures shall be incorporated into appropriate Project, District, Division and HQ USACE management review processes as described in Section 4-6.

d. All environmentally significant activities on USACE Civil Works-controlled land and waters, including those at outgrants, are subject to the performance measurement requirements established by the HQ USACE Chief of Operations.

e. Outgrant performance shall be tracked in EC OMBIL separately from USACE operated activities and incorporated into both Real Estate and Operations management review business processes.

f. The Operations and Maintenance Business Information Link, Environmental Compliance Module (EC OMBIL) is the authoritative source for environmental compliance performance measurement data, except for program areas that are specified in separate policy with data requirements supported by other Army, DoD or Federal systems.

g. The completion of the environmental compliance performance evaluation, as part of the Management Review process described in Section 4-6, shall be documented in EC OMBIL as supported by OMBIL capabilities.

4-6. Management Review. Management reviews of the multi-site organization EMS shall be conducted at all organizational levels within USACE. Management reviews at each organizational level shall include, at a minimum, the EMS elements implemented at the respective organizational level, as shown in Table 4-2, above.

a. The HQ USACE Chief of Operations shall annually initiate the management review by specifying any new or modified timeline, content, and format requirements for the upcoming performance period. Management Reviews meeting the requirements specified by the HQ USACE Chief of Operations, in addition to the general requirements in 4-6.b., shall be conducted at least annually by the OPM or Chief of Operations for each Project, District and Division, as well as HQ USACE.

b. General requirements for Management Reviews.

(1) Environmental compliance (ERGO) performance measures and a summary-level assessment of trends, successes and challenges in the ERGO process.

(2) A summary of the results of annual reviews and certifications, such as the coordination to verify completion of ERGO assessments (5-3.c.(7)), annual review of the Previsit Questionnaires (5-3.c.(10) and 5-3.d.(4)) and the Summary of Uncorrected Findings (5-3.c.(16)) that are executed as part of the Management Review process.

(3) Environmental compliance program and performance data required by USACE policy or relevant statutes, regulations or executive orders, such as Federal and USACE goals and metrics for reducing consumption of energy, water, petroleum, and green house gases.

(4) Status of EMS implementation and operation assessed using relevant Federal and USACE EMS metrics, and the results of EMS conformance audits, when applicable.

(5) An assessment of progress, successes and challenges in implementation of sustainable practices defined in USACE policy and Federal executive orders.

c. Project ECCs shall coordinate with the District ECC to compile the Management Review data for their project. The Project ECC shall report all relevant data to the OPM, and the OPM shall certify the completeness and accuracy of the data by sending it forward to the District ECC.

d. District ECCs shall compile the Management Review data for the District's Projects and report it to the District Chief of Operations. The District Chief of Operations shall certify the completeness and accuracy of the data by sending it forward to the Division ECC.

e. Division ECCs shall compile the Management Review for all Districts within the Division and report to the Division Chief of Operations. The Division Chief of Operations shall certify the completeness and accuracy of the data by sending it forward to the HQ ECC.

f. The HQ ECC shall compile and present to the HQ USACE Chief of Operations and higher levels of command, as directed, all Division level Management Review data. The HQ USACE Chief of Operations shall summarize and convey to Division level Chiefs of Operations and the HQ ECC any substantive management feedback received from HQ USACE leadership along with recommendations (such as formation of a PDT) for corrective actions, continual improvement, and special recognition/awards.

4-7. EMS Components Not Fully Addressed Within this ER.

a. EMS elements listed in Table 4-2 that reference this paragraph are not fully addressed in this ER. These elements will have either supplemental EMS procedures and/or other implementation tools developed for them that will satisfy the requirements of the ISO 14001 standard. Development of these supplemental procedures and tools will be centrally funded by HQUSACE.

b. Supplemental procedures for the following ISO elements will be posted on the HQUSACE QMS website at <https://kme.USACE.Army.mil/CE/QMS/> as developed.

- 4.3.1 Environmental Aspects
- 4.3.2 Legal and Other Requirements
- 4.3.3 Objectives, Targets and Programs
- 4.4.3 Communication
- 4.4.5 Control of Documents
- 4.4.6 Operational Control

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- 4.5.1 Monitoring and Measurement
- 4.5.3 Nonconformity, Corrective and Preventative Action
- 4.5.4 Control of Records
- 4.5.5 Internal Audit
- 4.6 Management Review

c. EMS procedures and tools developed centrally will incorporate present and future requirements for sustainability, carbon footprint, pollution prevention, energy, water, transportation, and environmental management as specified in law, regulation, and Executive Order. For example EMS procedures and tools may be centrally developed to (i) reduce the quantity of toxic and hazardous chemicals and materials acquired, used, or disposed of; (ii) improve the energy and water efficiency of USACE facilities; (iii) reduce petroleum consumption and improve the fuel efficiency and alternative fuel capabilities of the USACE non-tactical vehicle fleet and USACE vessels; (iv) increase diversion of solid waste as appropriate; (v) maintain cost-effective waste prevention and recycling programs in its facilities; and to implement sustainable practices as required by applicable laws, regulations or executive orders.

d. Tools to assist project/facilities in executing EMS procedures for which they are responsible can be found at the EMS section under the Civil Works Compliance Tab on the Natural Resources Management Gateway website at:

<http://corpslakes.usace.army.mil/employees/envcomp/ems.html>.

CHAPTER 5

Environmental Compliance Assessments

5-1. Policy. USACE organizations shall conduct informal assessments of activities on a day-to-day basis, as well as periodic formal internal and external environmental compliance assessments. It is the policy of USACE to conduct recurring environmental compliance assessments using protocols and checklists in The Environmental Assessment Manual (TEAM), the Environmental Review Guide for Operations (ERGO) supplement, and State specific supplements in conjunction with applicable environmental laws and regulations to evaluate environmental compliance status of current activities.

5-2. Informal Assessments. Informal assessments of day-to-day operations shall be continuous and ongoing. ECCs shall monitor environmental laws and regulations to identify compliance requirements and to be cognizant of new or developing standards; utilize ECC networks for sharing and distribution of information; coordinate with USACE elements to promote awareness of and compliance with new and existing environmental requirements; and notify the Chief of Real Estate to inform affected entities of the need for action and the basis of any compliance deficiency. If the affected entity is unable or unwilling to undertake necessary corrective actions within a reasonable timeframe, compliance deficiencies shall be reported upward to the District Chief of Operations. If the affected entity is a grantee or contractor, the Operations element shall notify the Chief of Real Estate or Contracting, as appropriate. The Real Estate or Contracting point of contact will initiate formal notifications of non-compliance and/or corrective actions and is responsible for follow-up on compliance issues in accordance with the terms of the outgrant or contract. Real Estate, Contracting and Operations elements shall coordinate notifications and follow-ups to ensure USACE interests are protected. Team response: Global recommendation: do not include “contracts” or “contractors” in RE comments.

5-3. Formal Assessments.

a. Each Division shall develop a baseline Division-wide schedule for ERGO external assessments and for those internal assessments to be conducted in the next Fiscal Year. The internal assessment schedule for the coming Fiscal Year, and the external assessment schedule for the ERGO cycle, shall be entered, verified as accurate, or updated in EC OMBIL by the end of August in each Fiscal Year.

b. Each Division’s ERGO assessment schedule shall meet the following requirements:

(1) External Assessments.

(a) USACE Civil Works (CW) facilities operated by CW personnel: External assessments are required once in the 5 year ERGO cycle at CW facilities operated by CW personnel.

(b) Outgrants of real property on CW Projects: External assessments are required once in each 5 year ERGO cycle at those outgrants determined by the District to require support and oversight through the ERGO process. During the scheduling of ERGO assessments for each 5 year ERGO Cycle, the District ECC, in coordination with the Real Estate element, shall make determinations of outgrants requiring ERGO oversight and support based on the following criteria:

- The presence of outgrant activities regulated under Federal, state or local environmental law, regulation, permit, or executive order, or as specified by USACE policy.
- The presence of outgrant activities that warrant ERGO oversight and support based on a local determination.

(2) Internal Assessments.

(a) The *baseline* list of Corps-operated and outgrant facilities *potentially* requiring internal assessments shall be the list developed for external assessments in response to the requirements in paragraph 5-3 b (1), above.

(b) Beginning in FY11, the Districts may select facilities at which they shall schedule and execute internal ERGO assessments, to the extent that the facilities have documented in EC OMBIL performance data meeting the ERGO performance measure goals. The selection process shall be based on objective, District-level evaluations of the most recent ERGO assessment data in EC OMBIL and the criteria listed below:

- EC OMBIL data demonstrating facility attainment of HQ USACE-established goals for completion of ERGO assessments, entry of ERGO data into EC OMBIL, and closure of ERGO findings.
- Facility performance indicating a need for additional oversight, such as regulatory enforcement actions or reports by Corps staff of questionable environmental compliance practices, or if new environmentally significant activities are established at the facility.
- Applicability of new regulatory requirements at the facility or special emphasis areas specified by higher command.
- EC OMBIL data indicating that the time elapsed since the most recent ERGO assessment warrants an internal assessment in the coming year. The period of time between ERGO assessments at Corps-operated or outgrant facilities identified using the procedures at 5-3 b.(1) shall not exceed 5 years.

(c) CW operated facilities and outgrants that have *not* achieved the HQ USACE established ERGO goals as listed in 5-3.b.(2)(b), above for the previous fiscal year, or the most recent assessment, are required to schedule and conduct internal environmental compliance assessments annually, except for the year in which an external assessment is conducted.

c. Requirements for Conducting Formal Internal and External ERGO Assessments.

(1) Operations Project/facility managers shall provide appropriate staff to support the assessment team, shall participate in review of assessment findings, and shall take action to correct findings and continually improve environmental performance.

(2) The first formal external assessment conducted at any USACE operating location after the effective date of this ER shall evaluate and document whether there is or is not a reasonable basis for concern regarding legacy contamination caused by USACE operations. This information shall be recorded in EC OMBIL. See Chapter 13 for legacy contamination and PRP evaluation and reporting procedures.

(3) Assessments shall be coordinated with the project/facility Operations Manager.

(4) The Project ECC shall coordinate with the District ECC prior to starting an assessment.

(5) After each assessment, the Project ECC shall coordinate the completion of the assessment through the project/facility chain-of-command to the District ECC.

(6) The District ECC shall coordinate with the District Chief of Operations through their chain of command.

(7) The District or Project ECC shall retain documentation that coordination was completed.¹ (See memo at <http://corpslakes.usace.army.mil/employees/cecwon/pdfs/03dec19-compliance.pdf>). Annual completion of management review of ERGO performance data in accordance with the requirements of section 4-6 of this regulation constitutes documentation of the required coordination.

(8) For each documented finding, corrective action plans shall be developed, and after the plans are developed, persons responsible for closing each finding shall be formally tasked, including the responsible party's name, phone, and e-mail address, and the target date for completion of the task(s). Funding and manpower shall be allocated by Civil Works Operations and grantees, when supported by outgrant terms and conditions, as required, and tasks shall be executed as necessary to close all findings.

(9) Formal external assessment teams shall include persons not employed at the facility under review. For sake of cost efficiency and learning opportunities, use of USACE staff (ECCs or EM CX staff) is preferred over contract staff. RATS in which ECCs under different divisions or districts cross assess one another's projects is highly encouraged.

¹ Memo 18 Dec 2003, CECW-ON, Subj: Environmental Compliance Assessments Conducted at Civil Works Projects and Facilities

(10) Pre-Visit Questionnaires (PVQ). The Project ECC shall complete the PVQ through interviews with the facility manager of each activity with potential to cause significant environmental impact at the project location. PVQs for Corps controlled activities and outgrants are provided in the ERGO manual. The ECC shall compare the results of the PVQ with the ERGO/TEAM protocols to determine which environmental requirements and associated protocols relate to project activities. The PVQ shall be completed prior to the first internal and external assessment at each activity. It shall be reviewed annually by the ECC in conjunction with the management of each relevant project activity, and its completeness and accuracy shall be certified in writing, annually, by the OPM.

(11) Current environmental compliance status shall be evaluated as well as status of findings from the last external assessment and any subsequent internal assessments. All ERGO assessments shall include:

(a) Review and follow-up on all incomplete corrective actions pertaining to findings from any previous assessment.

(b) A visual walk-through inspection of the project facilities.

(c) Identification and documentation of any new findings.

(d) Review and follow-up on all incomplete corrective actions pertaining to Notices of Violation (NOV), Notices of Non-Compliance (NON), or other enforcement actions. For outgranted areas, coordination with grantees and responsibility for the NOV and NON is the responsibility of the Chief of Real Estate. See 6-4.c. for further guidance on regulatory actions at outgranted areas.

(e) Evaluation of compliance with any new regulatory requirement promulgated since the previous assessment.

(f) Evaluation of compliance with respect to any special emphasis areas specified by higher command.

(g) Whether additional measures are recommended to ensure sustained compliance.

(12) Internal and external assessment data shall be reviewed by the Project ECC, and its completeness and accuracy shall be certified in writing by the OPM using the ERGO Assessment Checklist available at

<http://www.fedcenter.gov/programs/compliance/assessment/teamguides/>

(13) Responsibility for ERGO assessment data entry into EC OMBIL shall be determined and documented by the District ECC in coordination with the Project ECCs.

(14) The District ECC shall ensure complete, accurate and timely entry of ERGO assessment data into EC OMBIL for all internal and external assessments. The District ECC

shall apply data quality assurance/quality control checks, as supported by OMBIL, throughout the year to ensure continual improvement of data quality.

(15) All ERGO-related data for outgrants will be tracked separately from data for Corps operated activities and reported to the District Real Estate element for any corrective action.

(16) For each internal and external assessment at Corps-operated and outgrant facilities, all findings and closure information from the previous Fiscal Year shall be documented in EC OMBIL by the last business day in October.

(17) Not later than the first business day after October 31st, the District ECC shall generate from OMBIL a “Summary of Uncorrected Findings” report and distribute it to all affected OPMs. The report shall be reviewed, updated as necessary, and certified as complete and accurate by each affected OPM. The OPM shall provide rationale for each finding that remains open, as well as the OPM’s plan for closing each finding. Feedback from the OPMs shall be provided to the District ECC for incorporation in the annual District-level management review.

d. Additional Requirements for Formal Internal and External Assessments at Outgrants.

(1) Using the list of outgrant facilities resulting from the procedures under 5-3. b., the Operations Division and the Real Estate Division will develop a schedule for conducting assessments at outgrants.

(2) Real Estate shall notify the appropriate grantee when their environmental compliance assessment shall take place.

(3) The grantee will be requested to participate in pre-briefings, the Outgrant PVQ, the assessment, and exit briefings relative to their outgranted area. The District RE element will support the OPM, the project ECC, and the District ECC in efforts to obtain grantee participation in environmental compliance assessments.

(4) Operations shall coordinate with Real Estate to request completion of the Outgrant PVQ from the ERGO Supplement by the grantee prior to the assessment. The PVQ helps identify environmentally significant activities at the outgrant, assemble appropriate team membership, and select protocols for performing assessments. The PVQ shall be completed prior to the first internal and external assessment at each outgrant. It shall be reviewed annually by the ECC in conjunction with the management of each relevant outgrant, and its completeness and accuracy shall be certified in writing, annually, by the OPM, and provided to the District ECC and the Real Estate element.

(5) The District ECC shall notify the RE element before the OPS element begins an ERGO assessment at an outgranted area.

(6) All findings of non-compliance and recommended management practices identified during assessments of outgranted areas shall be verbally communicated to the grantee during the exit briefings. The District ECC will provide the Real Estate POC the list of findings or the assessment report identifying each area of noncompliance to be formally communicated to the grantee in written correspondence in accordance with the terms of the outgrant agreement

(7) An appropriate timetable for correcting the findings of non-compliance shall be developed by the ECC and Real Estate in consultation with the grantee. USACE shall work with the grantees and the regulatory agencies to develop reasonable milestones for achieving compliance, especially if significant monetary investments are required to correct the problem. Responsibility for correction of deficiencies at outgrants shall be determined on the basis of the requirements of the outgrant agreement. If required, grantees shall be directed to the appropriate federal, state, or local regulatory agencies for additional guidance or assistance in determining compliance with applicable regulations.

(8) If the grantee does not take the required corrective action, Real Estate, pursuant to the terms of the outgrant document and in coordination with the OPM or Project ECC, as appropriate, shall provide management consultation to assist the grantee in meeting their responsibilities under the outgrant agreement for correcting non-compliance. If project level discussions do not result in closure of the issue, it shall be elevated to the District level.

(9) If the grantee does not take the required corrective action, Real Estate shall inform the Grantee that continued non-compliance may be referred to the appropriate regulatory agency, at the discretion of the Operations element in coordination with RE. In such cases, the appropriate regulatory agency will render final determinations with respect to compliance with relevant laws or regulations. In addition, Real Estate shall inform the grantee that continued non-compliance may also result in revocation of the outgrant.

(10) To ensure compliance with the grantee's requirement to take corrective action, all new outgrants and outgrant renewals shall contain provisions requiring the Grantee to promptly initiate and complete corrective actions identified in Environmental Assessment Reports conducted under the ERGO that the District Engineer determines shall be implemented to comply with applicable laws, regulations, conditions or instructions, including USACE policy. New Environmental Protection Provisions have been developed for all new outgrants and outgrant renewals or modifications. These provisions are designed to ensure grantees comply with environmental laws and participate in the ERGO process. See the forthcoming ER 405-1-80, Management and Outgrant Programs and its accompanying formats for these provisions.

(11) "Significant" findings identified during any environmental compliance assessment shall be reported immediately, both verbally and in writing, to the grantee. Pursuant to the terms and conditions of the outgrant, the Chief of Real Estate will provide written notification to the grantee, with written copies furnished to the District Commander, Chief of Operations, Office of Counsel, Safety Office, and the District ECC. In some cases, the

determination of a Significant finding may lead to the immediate closure of the localized area until USACE determines adequate precautions are taken to protect both people and the environment. While only the District Chief of Real Estate has the legal authority to implement an “immediate” closure of all or portions of the outgranted area, an exception exists for situations posing an imminent threat to life or property and immediate closure is determined by the OPM as the only cure. The Operations Project Manager will notify the Chief of Real Estate not later than 6 hours after determination is made or at the beginning of the next business day should this occur on a holiday or weekend.

(12) District ECCs shall provide Real Estate with EC OMBIL-generated Findings Summary sheets and Corrective Action Plan (CAP) forms to forward to grantees. Grantees shall complete and return the CAP forms, through Real Estate to the District ECC in a timely manner to identify their corrective action measures for non-compliant items along with the timetable for achieving compliance. Copies of the EC OMBIL-generated Findings Summary sheets and CAP forms and other pertinent correspondence shall be provided to the Chief of Operations and Real Estate.

(13) The District ECC shall ensure that scheduling of ERGO assessments at outgrants is coordinated with the District Real Estate element, and the results of ERGO assessments are provided to Real Estate for corrective action and inclusion in real estate compliance inspection reports, as appropriate.

5-4. Assessors. Persons conducting ERGO assessments shall possess adequate training, either formal or on the job, to be capable of identifying environmental compliance issues. Environmental training requirements are addressed in Chapter 15.

5-5. Facilities Outside of the Traditional Civil Works District Structure. Division Commanders, District commanders, and commanders/directors of facilities outside of the traditional Civil Works District structure shall develop internal procedures to assure that assessments are conducted in accordance with this guidance and that corrective action plans are developed, persons responsible for closing each finding are tasked, and tasks are executed as necessary to close all findings.

5-6. Releasability. Due to the potentially sensitive nature of compliance related findings, self-assessment information (internal and external) shall be marked "For Official Use Only" (FOUO), and any release outside of USACE shall be coordinated through the Office of Counsel.

5-7. Funding for Environmental Compliance Assessments.

a. Each USACE operated project/facility shall program funding and allocate manpower for each internal and external assessment to meet the following requirements:

(1) Form a team that is trained and qualified to assess the mission activities, including outgrants, at the project location(s).

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(2) Ensure training of ERGO Team members in accordance with the requirements in Chapter 15 of this ER.

(3) Travel and external manning support to form and deploy the assessment team and support all phases of the assessment process, from planning for the assessment through assessment report preparation and distribution.

(4) Facility managers of each organization, including outgrants, determined to have environmentally significant activities (as defined in Section 1-5) at the project location shall allocate time to support all phases of the assessment through the execution of tasks to close of findings.

(5) Execute tasks to close all findings identified during the assessment.

(6) Enter all data supporting the ERGO assessment into EC OMBIL.

CHAPTER 6

Regulatory Inspections and Notices at USACE Civil Works Operations Controlled Property

6-1. Policy.

a. Due to the nature of enforcement inspections, it is acknowledged that advance notice of compliance inspections is not always possible. USACE shall request rescheduling of unannounced inspections if appropriate staff members are not available to participate. However, if that can not be arranged, it is USACE policy to grant access to inspectors without prior notice during normal business hours provided the inspector provides proper credentials, the validity of the credentials can be confirmed, and the inspector meets all safety and security requirements for the facility.

b. It is the policy of USACE to request that inspectors provide entrance and exit briefings to management to explain the purpose and scope of the inspection and to relay any findings or concerns.

c. It is the policy of USACE for the Project to inform the District Chief of Operations, Office of Counsel, and District ECC of any significant regulatory activities such as enforcement actions, including notices of violation or notices of non-compliance. In cases involving outgranted areas, the Chief of Real Estate will be included in this notification requirement, to the extent that USACE personnel are notified of the grantee violation. Similarly, if the Chief of Real Estate is notified of a regulatory activity at an outgrant area, the Chief of Real Estate shall notify the Operations element at the project and District levels. Significant regulatory activities are those that the OPM, in consultation with the project ECC, determine to have potential to result in fines or penalties. In turn, the District ECC shall notify the Division ECC and HQ ECC.

d. It is the policy of USACE to initiate corrective action for non-compliance noted during an inspection as soon as possible and practical.

e. In addition to the requirements above, the project will forward to the District Office of Counsel any written enforcement action.

6-2. Escorts. Every effort shall be taken to ensure that appropriate staff accompanies inspectors at all times. The OPM has primary escort responsibility and shall be notified when an inspector arrives. The OPM may delegate this responsibility. If the OPM or Project ECC are unavailable, USACE shall request rescheduling of the inspection. However, forethought shall be given to pre-establishing alternate escorts in the event the Project ECC is unavailable and the inspection can not be rescheduled. Under no circumstances shall inspectors be unaccompanied.

6-3. Inspection Protocols.

a. An entrance briefing shall be conducted prior to the inspection.

(1) Attendance shall be requested of the Project ECC, Facility Manager, Natural Resource Manager, Mechanical/Electrical Supervisors, Safety Officer, Office of Counsel, and other staff likely to have involvement in the inspection or outcome of the inspection.

(2) Inspectors shall be requested to :

(a) Present official, verifiable identification.

(b) State reason for the inspection including whether it is routine or in response to a complaint or investigation; the scope of the inspection (for example whether it is a multi-media inspection or whether focusing on a particular aspect of the environmental program, such as hazardous waste); and specific records to be inspected and specific areas of the facility to be inspected (for example, areas managing hazardous waste or areas with air emissions, etc).

(c) Comply with safety requirements. Where necessary, this may involve wearing protective equipment such as hard hats, safety glasses, and/or steel toed boots.

(d) Meet security requirements or arrange for an alternate inspector meeting such requirements. (For example, USACE may have security plans in place which require persons accessing certain hazardous materials to be U.S. citizens.)

(e) For any samples obtained, issue a receipt, provide a duplicate or split sample, and furnish a copy of any analysis conducted.

(f) Provide an exit briefing at end of the inspection to relay any concerns or findings.

(3) If the inspector does not comply with USACE requirements listed above, the OPM or Project ECC shall contact District Office of Counsel for additional guidance.

(4) Evaluate the need for visitor safety training, the need for personal protective equipment, and ensure compliance.

b. The escort shall adhere to the following inspection protocol:

(1) Document the inspector's questions, comments, and statements; areas inspected; samples collected; records reviewed and/or copied; and any corrective action taken.

(2) Inspector's inquiries shall be answered in an accurate and concise manner by knowledgeable staff. If the answer is unknown, do not speculate. Determine the answer from a reliable source and provide the information to the inspector in a timely manner. If there are legal concerns, consult with Office of Counsel.

(3) Be aware that environmental regulations and permits stipulate record retention periods. When requested to produce records, produce only those records specifically requested. If requested to produce records beyond record retention timeframes, produce if available and if it is in the interest of the government to do so.

(4) Duplicate information (i.e. potential evidence) gathered by the inspector. For example, photograph same areas as the inspector photographs, duplicate copies of any written records collected by inspector, document verbal statements made to inspector, collect duplicate or split samples of any sample collected.

(5) If a deficiency or alleged violation is identified, where possible immediately initiate corrective action in the presence of the inspector.

(6) Request a copy of inspector's report, if one is generated, and copies of any photographs or sample results associated with the inspection.

6-4. Notices of Violation of Federal, State or Local Environmental Requirements. Upon receipt of written notice of enforcement action from Federal, State or Local enforcement agencies which involves non-compliance likely to result in fines or penalties:

a. Copies of written notices shall be forwarded upon receipt by the Project ECC to the District ECC. The District ECC will coordinate with the Office of Counsel, and forward as appropriate to the District Commander, Division ECC, and HQ ECC. Electronic forwarding is encouraged.

b. District ECC shall coordinate with District Office of Counsel (OC) regarding any violation in dispute or involving fines or penalties against USACE.

c. For enforcement actions involving outgranted areas, the Operations element shall coordinate with the Chief of Real Estate. The Chief of Real Estate has the responsibility for the formal enforcement action and coordination with grantees.

d. Where Regulatory entities offer an opportunity to meet either in person or via a conference call, USACE shall accept in order to resolve any misunderstandings, to demonstrate interest, and to gain a better understanding of any concerns. USACE representation shall include, as appropriate, the Operations Manager, ECC, OC, and other relevant staff.

e. Written responses shall be coordinated with OC and provided promptly.

f. Corrective action shall be promptly initiated and documented.

g. Lessons learned shall be shared via the ECC network and NRM Gateway as appropriate.

6-5. Recording Regulatory Actions. The Project ECC shall enter all regulatory actions into EC OMBIL within 14 business days. They shall also track them and state their corrective

actions in EC OMBIL. This includes any and all forms of notification received indicating a non-compliant status at the facility. Examples include water sampling not done; water sample failure; regulatory inspection findings; warning letters, etc. Fine and/or penalty information (both amount assessed and amount paid) shall be entered into EC OMBIL for tracking.

6-6. Fines, Penalties, and Inspection Fees.

a. Any fines or penalties assessed shall be coordinated with District OC to determine whether appropriate and payable. Regarding alleged violations of federal law, OC shall determine whether Congress has granted interagency authority to the federal agency. Regarding alleged violations of state and local laws, OC shall determine whether Congress has clearly and unequivocally waived sovereign immunity to allow payment of fines and penalties and whether the fines and/or penalties are reasonably based, assessed within the scope of the waiver, and applied in a non-discriminatory manner²

b. Any bills for regulatory actions, including but not limited to compliance inspections, shall be coordinated with District OC for a determination as to whether payable. OC shall evaluate whether the bill represents payable fees for services rendered or whether they constitute impermissible taxes for which the Federal government is not liable.

c. When consideration of a Supplemental Environmental Project (SEP) is warranted to offset fines and/or penalties, the District Operations element, in coordination with the Office of Counsel, shall coordinate with regulators to determine whether it is advantageous for USACE to pursue a SEP.

² 15 Aug 2007 Memo, Subject: Guidance for Counsel of Responding to State Allegations of USACE Violations of Environmental Compliance Law or Regulation and Demand for Payment for Fines and Penalties Associated with Civil Works Facilities or Operations. <http://corpslakes.usace.army.mil/employees/cecwon/memos-drill.cfm?Id=743>

CHAPTER 7

Hazardous Materials Management

7-1. Policy. USACE shall manage hazardous materials in a manner that is protective of human health and the environment; ensure hazardous materials are transported safely and securely; comply with all applicable Federal, state, and local laws and regulations, Executive Orders, and USACE/DoD policy regarding the management and transportation of hazardous material; and report releases of reportable quantities promptly in accordance with applicable regulations. (Remediation of spills is addressed in Chapter 10.)

7-2. Material Safety Data Sheets.

a. Material Safety Data Sheets (MSDSs) are manufacturer generated forms provided with hazardous products that provide detailed information including potential health effects, physical and chemical characteristics, and recommended handling and protective measures. MSDSs shall be maintained for hazardous chemicals used in the workplace. In addition, they shall be made readily accessible to employees, and employees shall be informed as to the physical location of MSDSs.

b. A central repository for MSDS information, the Hazardous Materials Information Resource System (HMIRS) is maintained by the Defense Logistics Agency and can be accessed at <http://www.dlis.dla.mil.hmirs/default.asp>.

7-3. Hazardous Materials Storage.

a. Hazardous materials on Civil Works controlled lands and waters, including contracts and outgrants shall be stored in a protective manner to minimize the threat of release, fire, or explosion. Hazardous materials shall be:

- (1) Evaluated for and protected from security threats.
- (2) Stored in containers in good condition.
- (3) Clearly marked or labeled to indicate the identity of the material and/or the hazard.
- (4) Segregated according to compatibility.
- (5) Provided secondary containment as determined appropriate by Project ECC in accordance with applicable laws and/or regulation.
- (6) Stored away from unprotected drains and unauthorized public access.

b. In addition, non-hazardous materials resembling hazardous materials shall be marked so as not to be mistaken for unidentified hazardous materials.

7-4. Hazardous Materials Security. Efforts shall be taken to evaluate whether types and/or quantities of hazardous materials, including hazardous wastes, represent security risks with

respect to potential terrorist acts or other unauthorized access. Actions shall be taken to minimize such risks. Procedures shall be implemented to notify local emergency planning authorities in the event that any significant amount of hazardous material, including hazardous waste, is stolen from the premises.

7-5. Hazardous Materials Transportation.

a. USACE complies with DoD hazardous material transportation policy established in DoD 4500.9-R, Defense Transportation Regulation. Consequently, USACE hazardous materials shipping activities, whether conducted by government employees or contractor personnel, shall comply with the Hazardous Materials Regulation (HMR) requirements of 49 CFR parts 100-175, International Maritime Dangerous Goods Code (IMDG-C) for domestic and international shipments by surface or water conveyance, and International Air Transportation Association (IATA) or International Civil Aviation Organization (ICAO) for shipments by air.

b. Hazmat employees³ (including but not limited to persons who prepare, transport, load, or unload hazardous materials) shall be trained and tested on hazardous materials regulations.

c. As specified within DoD policy, USACE shall not use the Federal exemption from the HMR in 49 CFR 171.1(d) (5). However, the material of trade exception in 49 CFR 173.6 may still be utilized where applicable.

d. USACE hazardous material cargo transported by government operated or commercially operated conveyances shall be in accordance with DoD 4500.9-R, Defense Transportation Regulation and shall be properly described, packaged, marked, labeled, placarded, segregated, and provided emergency response information unless excepted.

e. Transportation of USACE hazardous materials by privately-owned motor vehicle is prohibited.

³ Defined in 49 CFR 171.8

CHAPTER 8

Petroleum, Oils, and Lubricants Management

8-1. Policy. It is the policy of USACE to manage petroleum, oils, and lubricants (POL) in a manner that is protective of human health and the environment; to proactively prevent spills; to promptly report releases in accordance with applicable regulations; and to maintain readiness to act as First Responders.

8-2. Used Oil Management.

a. Used oil shall be collected and stored in a manner which prevents releases to the environment. Used oil shall be recycled for energy recovery or by reprocessing to the maximum extent practicable. Disposal of used oil is the least favored option.

b. In addition to complying with applicable Federal, State, and local used oil regulations, efforts shall be taken to ensure hazardous wastes do not become inadvertently mixed into used oil. In addition, used oil shall not be intentionally mixed with hazardous waste except in extraordinary circumstances specifically authorized by regulation and for which the resultant mixture remains used oil, not hazardous waste. This shall be documented via analysis demonstrating that the mixture does not exhibit any hazardous waste characteristic.

c. Offsite used oil shipments shall be presumed to be "off-specification" unless tested and documented as meeting the used oil specification in 40 CFR 279.11.

d. During accumulation, used oil collection containers shall be protected from infiltration of rainwater and shall be sited to minimize the likelihood of releases to surface waters (e.g. shall be sited away from drains and/or provided secondary containment.) Oil shall be regularly recycled to minimize the potential for significant releases.

8-3. Spill Prevention, Control and Countermeasures (SPCC). USACE shall evaluate volumes and locations of POLs and shall prepare and maintain SPCC plans where required.

8-4. POL Releases.

a. If despite preventive measures, a POL is released outside of the facility to "waters of the United States" such that an applicable water quality standard is violated or it causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines, USACE shall notify the National Response Center (NRC) immediately. POL wholly contained within the facility, for example within buildings or oil/water separators, is generally not reportable but shall be evaluated on a site-specific basis in accordance with Federal, state, and local regulations.

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b. Forethought shall be given to spill reporting and responsibilities shall be designated within spill plans, contingency plans, and/or SPCC plans.

c. See Chapter 10 - Spill Reporting and Response.

CHAPTER 9 Waste Management

9-1. Policy. USACE shall comply with applicable Federal, state, and local environmental laws and regulations, Executive Orders, and USACE policy for management, generation, transportation, treatment, storage, and disposal of waste. This includes terms and conditions of Federal and state permits. USACE shall:

- a. Establish local procedures and responsibilities for the execution of waste management programs.
- b. Minimize the need for RCRA permits through use of offsite treatment, storage, and disposal facilities.
- c. Implement waste reduction and recycling programs and procedures to support pollution prevention goals. Waste generation shall be reduced to the maximum extent practicable. When waste can not be eliminated, and where it is economically feasible, efforts shall be taken to minimize volumes and/or toxicity through reuse, recycling, or treatment.

9-2. Waste Disposal. USACE shall not engage in onsite disposal of hazardous waste, industrial waste, municipal solid waste, or construction/demolition waste. Open dumps are strictly prohibited. Plant material (e.g. tree limbs, grass clippings, etc.) and other non-regulated, compostable materials may be disposed onsite as allowed by State or local regulation.

9-3. Borrow Material.⁴ Soils containing hazardous waste, even if naturally occurring, are not eligible as borrow material. Though extensive analysis is not mandated, to minimize inadvertent transfer of contamination, borrow material whether being brought onto USACE property or taken from USACE property shall be screened for environmental contaminants prior to transfer. Professional judgment and consultation with the EM CX, as necessary, shall be used to determine whether material is suitable for on or off-site transfer. Generally, in addition to the above, soil significantly exceeding background levels is unsuitable as borrow material.

9-4. Hazardous Waste. USACE organizations shall:

- a. Make hazardous waste determinations for all discarded material. However, this shall not be construed to mean that USACE shall provide non-hazardous waste certifications. This determination does not apply to dredged material which is excluded as hazardous waste under 40 CFR 261.4(g).
- b. Determine applicable hazardous waste generator status (large quantity generator, small quantity generator, or conditionally exempt small quantity generator), and shall comply

⁴ This paragraph does not apply to dredged material.

with corresponding requirements. In determining generator status, careful consideration shall be given to hazardous wastes generated during execution of contracts and whether waste is the responsibility of USACE or the contractor. Only USACE generated wastes shall be counted toward USACE generator status, not contractor generated waste. The Environmental Protection Specification, Unified Facilities Guide Specification 01 57 20.00 9, defines "contractor generated hazardous waste" as "material that, if abandoned or disposed of, may meet the definition of hazardous waste. These waste streams would typically consist of material brought on site by the Contractor to execute work, but are not fully consumed during the course of construction." Thus, for example, paint thinners brought on site and not fully consumed would be the responsibility of the contractor and would not count toward USACE generator status, however, hazardous waste generated by a contractor as a result of lead-based paint removal from a USACE structure would count toward the USACE generator status.

c. For each assigned EPA ID number, make the Project ECC or the person responsible for shipments of hazardous waste the single point of contact responsible for compiling and maintaining all RCRA hazardous waste related records including copies of manifests, exception reports, training records, inspection records, and biennial reports.

d. Not receive regulated hazardous waste from an offsite generator thereby triggering hazardous waste permit requirements unless specifically authorized or permitted. However, this prohibition does not apply to hazardous waste generated on public vessels and exempt from RCRA regulation in accordance with Section 3022 of the Solid Waste Disposal Act. Such wastes are not subject to RCRA regulation until transferred ashore. However, once transferred ashore, these wastes become subject to RCRA and can not be accumulated for such time as to trigger a permit requirement. (Typically, this limits accumulation to less than 90 days.)

9-5. Universal Waste.

a. To the extent practicable, waste eligible to be managed as universal wastes (batteries, mercury containing equipment, recalled/cancelled pesticides, and lamps/light tubes) shall be managed under the universal waste rules, which provide streamlined hazardous waste management standards. To reduce compliance requirements, USACE shall strive to maintain small quantity handler status. Universal Waste regulations can be found in 40 CFR 273. Also check for any applicable state rules since states can modify the universal waste rules.

b. Maintain records of universal waste in support of solid waste and hazardous waste diversion programs required by EO 13423.

9-6. Asbestos Waste. USACE shall maintain compliance with all pertinent regulations and prevent human exposure to asbestos hazards. Regulated asbestos-containing material shall be removed/abated only when necessary for operational purposes; it presents a hazard; it can not be managed in place; it shall be disturbed during maintenance, repair, or construction

projects; it is friable or likely to become friable during demolition; economically justified to be removed during building deconstruction; or identified to be a hazard and ownership is being transferred to a non-federal entity.

9-7. Polychlorinated Biphenyls (PCB) Waste.

a. PCBs in service shall be managed in place unless operational, economic, or regulatory considerations justify removal. Economic analysis includes potential environmental damage.

b. For pre-1980 electrical equipment in service for which the PCB concentration is unknown, the PCB concentrations shall be presumed as specified within TSCA regulations (40 CFR 761.2) and shall be managed accordingly. For example, mineral oil transformers shall be presumed to be PCB contaminated (between 50 and 500 ppm PCB) and transformers other than mineral oil transformers shall be presumed to be PCB transformers (> 500 ppm PCB). Once removed from service, equipment shall be managed at actual concentration.

c. Small, intact PCB capacitors, such as from light ballasts, that are to be landfilled for disposal shall be managed to preserve the integrity of the equipment so as not to cause leakage of PCBs.

d. Personnel who handle or manage PCBs shall receive training in performing PCB related responsibilities in a safe and environmentally sound manner and shall also be included in exposure monitoring and medical surveillance programs in accordance with OSHA, DoD, DA, and USACE requirements.

9-8. Used Oil. Used oil shall be managed and recycled in accordance with applicable used oil regulations. See Section 8-2 regarding Used Oil Management.

9-9. Treated Wood. Burning of waste wood products treated with hazardous constituents, including but not limited to arsenic or pentachlorophenol may present an environmental hazard due to concentration or transformation of hazardous constituents during the combustion process. Therefore, USACE shall not engage in or allow burning of treated wood on USACE property.

9-10. Ozone Depleting Substances (ODS). ODS shall not be disposed of as waste. Recovered ODS can not be bartered, sold, or traded. Return excess ODS to the DoD ODS Reserve. See Chapter 9 of DoD 4160.21-M.

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CHAPTER 10
Spill Reporting and Response

10-1. Policy. USACE shall prevent spills of oil and hazardous substances due to USACE activities and maintain readiness to rapidly respond to contain and clean up USACE spills.

10-2. Responsibilities.

a. District Chief of Operations and OPMs are responsible for:

(1) Providing oversight, assuring spill plans are adequately prepared, and that emergency spill response methods are appropriate.

(2) Evaluating options for spill response support and seeking contract(s), Memorandum of Agreements (MOAs), or mutual assistance agreements to provide response. In the event that the OPM determines an in-house team is needed, establish and maintain a trained and qualified emergency spill response team at the appropriate response level, and assure annual training, appropriate medical surveillance, availability of proper equipment and supplies, etc.

(3) Reviewing the status of spill planning and response requirements and assuring that spill prevention or contingency plan requirements are met.

(4) Routinely evaluating and updating existing spill prevention and contingency plan documents to assure they meet current criteria specified in applicable Federal and state regulations. Where extremely hazardous substances⁵ are present, plans shall specifically address emergency notification under Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA). Corrective actions shall be initiated immediately for plans that do not meet regulatory requirements.

10-3. Notifications.

a. In accordance with the National Contingency Plan, the Project shall immediately notify the National Response Center of any discharge in violation of the Clean Water Act and/or any discharge of a reportable quantity of a hazardous substance that occurs within a 24 hour period.

b. The requirement to internally coordinate is not a pre-requisite to notifying the National Response Center and shall not delay such reporting.

c. Where an extremely hazardous substance is involved, USACE operated facilities will provide emergency release notifications as required by 40 CFR Part 355.40.

⁵ See 40 CFR 355.

d. Where state and local notifications differ from Federal requirements, USACE facilities shall comply with all applicable requirements. Where applicability of law is in question, the Office of Counsel shall be consulted.

10-4. Internal Agency Coordination.

a. Where notification is required under paragraph 10-3, internal agency coordination shall occur as specified in spill response plans, but shall generally include notification of:

(1) The functional element that is responsible for operation of a facility. (In many cases, but clearly not all, this shall be the Operations element and its sub-element(s).)

(2) The District and Division Commanders.

(3) The Project and District ECCs.

(4) The Readiness Branch evaluates severity of incident and can utilize ENGLINK to further distribute information to higher authority. In Corps labs, reports shall be made through command channels to the appropriate level.

(5) The Real Estate Office, when the affected area includes an outgranted area.

(6) The Safety Office.

(7) The Public Affairs Office.

(8) Office of Counsel.

(9) The HQ USACE Civil Works Operations Natural Resources Management Branch via Division.

10-5. Spill Response.

a. Initiation of Response Action.

(1) If despite preventive measures a USACE spill occurs, USACE shall initiate response action. This may be in the form of formal notification to outside response authorities and/or active response by USACE. USACE policy first and foremost provides for protection of human life and health but requires optimal effort to protect the environment, particularly in sensitive areas identified in geographic response plans, and to protect property and structures. USACE personnel shall not respond to any spill unless it is safe to do so, and personnel are adequately trained and equipped. USACE may partner with others, such as States or Coast Guard on regional response teams. USACE personnel shall not respond at a level higher than the "First Responder, Operations Level⁶" unless authorized by the OPM and appropriately trained to do so.

⁶ 29 CFR 1910.120(q).

(2) USACE personnel shall not respond to non-USACE spills off USACE operated facilities, except as provided in paragraph 10-5.c. of this guidance.

b. Potential USACE Emergency Spill Response Scenarios. OPMs, with the assistance of the appropriate Safety and Occupational Health elements, shall anticipate the appropriate level of emergency spill response to be provided at USACE operated facilities and to plan accordingly. Each OPM shall maximize the use of qualified non-USACE spill response sources to minimize the risk to in-house personnel. Potential spill response scenarios are as follows:

(1) No USACE Response Team - Many USACE operated facilities are or shall be able to rely on public or private Hazardous Materials Emergency Response Teams in their area for assistance. USACE personnel from these facilities may not need to provide any emergency spill response.

(2) USACE First Responder In-House Team - A few facilities may need to establish their own in-house spill response teams. In some cases facilities shall establish in-house spill teams for limited emergency spill responses to meet initial emergency spill response needs until full scale emergency spill responders can arrive at a spill site. USACE personnel would typically be trained and qualified at the "First Responder, Operations Level⁷". USACE First Responders would then manage the spill scene until the arrival of a responder with whom the USACE facility has made previous arrangements for spill response services. This second responder may be a contractor, MOA partner, or mutual assistance agreement as discussed below.

(3) Non-USACE Response Team - Riskier, more demanding emergency spill response levels would typically be performed by a well-trained and experienced contractor or other non-USACE responder.

c. Non-USACE Spills.

(1) Except for personnel serving in an Emergency Management function or as part of a mutual assistance agreement, emergency spill responses by USACE personnel shall be limited to spills on USACE lands or facilities or caused by USACE activities. USACE contractor spills on USACE lands and waters are the responsibility of the contractor. The contractor shall be required to report spills to the Contracting Officer's Representative and the OPM or the District ECC immediately. In the event that a USACE contractor causes a spill on a USACE operated facility or from USACE activities and is unwilling or unable to respond, USACE shall provide a response to contain and clean up the spill. As in any case of a contractor's non-compliance with safety and environmental standards, USACE officials have the option of stopping contractor work and/or seeking compensation from the contractor for expenses incurred in fulfilling spill response obligations. Office of Counsel shall be

⁷ 29 CFR 1910.120(q).

consulted to assure compliance with all legal requirements, proper documentation, and presentation of any claim under the contract or any other applicable statute.

(2) Spills from a grantee on USACE lands are the responsibility of outgrant area operator. Where outgranted areas are mandated by Federal or state regulations to have and maintain a spill plan, Real Estate, in consultation with OPM, shall require the grantee to comply with spill planning requirements and to be able to clearly provide for an adequate response in the event of a spill. This requirement shall be an element of lease compliance inspections. Where outgranted areas are not required by Federal or state regulations to have a spill plan, OPMs in coordination with the Chief of Real Estate, shall encourage lease area operators to coordinate with local emergency response authorities to obtain necessary support in the event of a spill. In the event that any outgranted area facility appears to present a high risk of a spill of oil or a hazardous substance without being able to provide for an adequate response, the OPM shall, in coordination with the Chief of Real Estate, take prompt action to reduce the potential risk. In the case of very high risks of a spill without provision for adequate response, the OPM shall verbally notify the grantee and the Chief of Real Estate. The Chief of Real Estate will, in turn, notify the grantee pursuant to the terms of the outgrant. The Chief of Real Estate is the primary responsible agent for notifications to the grantee within outgranted areas.

(3) USACE responders may respond to non-USACE spills on USACE lands and waters at the discretion of the OPM when the spill poses an immediate threat to USACE operated facilities or personnel, is not being adequately controlled or contained by another spill response team, and when USACE responders are adequately trained and qualified to respond.

(4) OPMs may authorize emergency spill responses to non-USACE spills off USACE property when they determine the spill poses a threat to USACE operated facilities or personnel, is beyond the capability of available emergency spill responders, and that USACE personnel are adequately trained and qualified to provide such a response. OPMs are encouraged, in coordination with the Office of Counsel, to establish mutual assistance agreements for such situations. When incidents are resolved to the point that available emergency spill responders are capable of managing and controlling the spill, the OPM shall withdraw USACE personnel from the emergency spill scene.

(5) A follow-up report regarding such a spill response shall be prepared and submitted to the District Chief of Operations for review.

(6) Where determined that it is advantageous, the OPM may fulfill requests from the U.S. Coast Guard (USCG) EPA, or other agencies for assistance from USACE vessels to assist clean up operators when oil-saturated debris hampers cleanup efforts. Costs shall be reimbursed.

(7) USACE Response Cost Recovery. When USACE responds to spills caused by others, whether off-site sources, grantees, or invitees, costs may be recovered either through

lease or contract provisions, or by claims under CERCLA for recovery of response costs, or by other legal authority. The Office of Counsel shall be involved as early as possible and at every stage to assure compliance with legal requirements, proper documentation, and presentation and pursuit of any claims.

d. **Spill Response Equipment.** Equipment and supplies purchased and stored shall be consistent with the level of spill response training and qualifications maintained for USACE employees by the USACE facility. Purchase and storage of equipment and supplies for response to USACE spills on behalf of a spill response contractor or spill response MOA partner is permitted. All spill response equipment stored at USACE facilities shall be regularly inspected, maintained and serviced in accordance with manufacturer and USACE requirements.

e. Facilities that train employees to respond at the First Responder or higher levels shall include training in initiating an Incident Command System. (See Chapter 15.)

10-6. **Incident Commander.** The OPM at each USACE facility where there is a potential for a spill of oil or hazardous substances from the USACE facility or from USACE activities, shall designate in writing an Incident Commander (IC) who is responsible for executing the project's response plan.

10-7. **Public Information Related to Emergency Spill Response.** Release of information regarding spills of oil or hazardous substances shall be conducted per the following guidelines:

a. Officials assigned to release information about the spill shall ensure public safety, seek to prevent or reduce widespread public alarm, and ensure public understanding of the extent and nature of the public hazard resulting from the spill.

b. The public is entitled to all unclassified information concerning a spill. Furnishing such information in a timely, positive manner that assures accuracy and reflects consideration of the public welfare is in USACE interest and is a function of Command.

c. Information proposed for release shall be coordinated with the District Public Affairs Office and the District Office of Counsel.

d. Prompt release of information, not otherwise required by statute or regulation, shall be made at the discretion of the District Commander for spills that are contained within the project boundaries and pose no threat to public health and welfare or the environment. The OPM, in coordination with District PA and OC will advise the District Commander.

10-8. **Spill Plans.** For Civil Works Projects not subject to Federal spill planning requirements, the OPM shall prepare and maintain a spill response plan appropriate for local mission activities. See EP 200-2-3 for additional guidance on spill response plans.

10-9. **Documentation.** Records shall be maintained for all reportable releases of oil, hazardous substance, and extremely hazardous substance. Records shall include initial

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notification, subsequent written reports, and response actions. The goal is to be able to demonstrate that all necessary action has been completed. In the event of a spill emergency, the requirements established by statutes and regulations are appropriate.

CHAPTER 11
Permits

11-1. Policy.

a. USACE shall apply for environmental permits where legally required, but shall utilize management practices to avoid the need for environmental permits to the maximum extent practical in order to simplify compliance requirements.

b. During planning activities, in addition to considering the need for environmental permits to operate, USACE shall evaluate whether "permits to construct" or "permits to modify" are needed prior to commencing construction activities.

c. Permit related invoices/bills shall be coordinated with Office of Counsel for assistance in determining whether they constitute reasonable fees that are payable or whether they are inappropriate taxes for which the Federal government is not liable.

11-2. Permits for Cleanups.

a. CERCLA Hazardous Substance Response Actions. When responding under CERCLA, USACE shall not obtain any Federal, State, or local permit for any removal or remedial action conducted entirely onsite. Within the context of CERCLA, "onsite" does not refer to property boundaries, but rather refers to "the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action."

b. RCRA Corrective Actions. When conducting cleanups under RCRA, USACE shall obtain all applicable permits.

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CHAPTER 12 Recordkeeping

12-1. Policy. USACE shall retain environmental records onsite as required by regulation. Once regulatory record retention periods are exceeded, environmental records are archived as required by Army policy.

12-2. Operations and Maintenance Business Information Link, Environmental Compliance Module (EC OMBIL). EC OMBIL is the management tool for recording environmental compliance related information for Civil Works. Use of EC OMBIL is mandatory. It is used for collecting data relative to environmental compliance performance measures as specified within the Civil Works Strategic Plan. Data tracked includes internal and external environmental compliance assessments and associated scheduling; corrective actions; regulatory actions; storage tank data (all above ground, under ground, and day tanks regardless of size); EPCRA status; water quality, wastewater and permit information; and hazardous waste generator status. HQUSACE is responsible for establishing annual reporting deadlines. District ECCs are responsible for ensuring all project information is entered into EC OMBIL. Specifics on what shall be entered into the EC OMBIL system can be found in the Environmental Compliance section of the Help Manual in the Data Entry Form Definitions screens.

12-3. Retention of Environmental Liability Records. Retention of Environmental Liability Records. The retention periods for environmental records may differ depending on the Army's disposition instructions for records and the applicability of any statutory, legal, financial, or administrative requirements. For example, financial accounting policy requires records used to establish environmental liability amounts to be retained on file for a minimum of six years, three months, and one day after the environmental liability no longer exists. When more than one record retention requirement applies, the longer retention period shall be followed

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CHAPTER 13
Environmental Contamination and Reporting Requirements

13-1. Policy.

a. USACE shall plan for and respond to unpermitted releases of CERCLA hazardous substances, CERCLA pollutants or contaminants, and petroleum on or from USACE owned property as required by environmental law or regulation.

b. USACE shall report Civil Works properties with known or suspected unpermitted releases of hazardous substances, pollutants, or contaminants to EPA in order to facilitate EPA's compilation of the Federal Agency Hazardous Waste Compliance Docket under CERCLA 120(c) to the extent required by law.

c. USACE shall exercise its lead agency authority under CERCLA when responding to releases or potential releases of hazardous substances, pollutants, or contaminants except in rare cases where remediation is controlled by another program and can not be deferred to CERCLA. See ER 1165-2-132 Hazardous, Toxic and Radioactive Waste (HTRW) Guidance for Civil Works Projects for additional guidance on managing HTRW sites on Civil Works project lands.

d. USACE shall disclose environmental liabilities in financial statements. See section 13-3 for discussion regarding environmental liability.

e. Funding priority shall be given to sites listed on the National Priorities List (NPL) or for which there is a state or Federal environmental law or regulation mandating response beyond the PA/SI phase.

f. On lands and waters not controlled by USACE, USACE shall not remediate contamination for which it has not been determined liable.

g. USACE shall seek cost recovery where appropriate.

h. USACE shall ensure employees involved in site remediation are properly trained.

13-2. Procedures for Addressing Legacy Contamination On USACE Property.

a. USACE shall evaluate the potential for legacy contamination (as defined in Section 1-5) on USACE controlled lands and waters. This shall be accomplished through the external environmental compliance assessment process. The first external assessment conducted after the effective date of this ER shall include evaluation of whether there is or is not a reasonable basis to suspect legacy contamination.

b. The potential for legacy contamination shall be evaluated using a legacy contamination questionnaire and supplemental guidance issued by the HQ USACE Chief of Operations. Spills that were immediately cleaned up and areas where hazardous materials

were merely used, not disposed, do not constitute a reasonable basis for legacy contamination concern. Known historic releases of hazardous substance or suspected unpermitted disposal of hazardous substance substantiated through written records, historic photographs, or credible personnel interview statements constitute a reasonable basis for concern.

c. The assessment team shall interview personnel, review available records, and use the questionnaire available on the Environmental Compliance Topics page of the NRM Gateway at <http://corpslakes.usace.army.mil/employees/envcomp/topics.html> to evaluate whether there are legacy contamination concerns.

d. Determinations regarding the presence or absence of legacy contamination concerns shall be documented in assessment reports and data resulting from the questionnaire shall be captured through EC OMBIL.⁸

e. As required by RCRA 3016, USACE shall undertake a continuing program to update information regarding inventory of Federal Agency Hazardous Waste Facilities. Information shall be updated at the request of EPA. Upon receipt of request from EPA, HQ ECC shall coordinate with the ECC network to ensure timely and accurate update of the USACE inventory.

13-3. Environmental Liabilities Recognition, Valuation and Reporting.

a. The HQ ECC shall take actions to ensure completeness, accuracy and suitability for audit of the identification, valuation and reporting of USACE Civil Works environmental liabilities limited to those sites referred to as “non-FUSRAP,” which specifically excludes sites managed under the Formerly Used Defense Sites (FUDS) program and the Formerly Utilized Sites Remedial Action Program (FUSRAP).

b. The HQ ECC shall conduct regular (at least annual) evaluations of contaminated sites that are identified on the Federal Agency Hazardous Waste Compliance Docket to identify potential USACE environmental liabilities at a national level.

c. The HQ ECC shall issue environmental liabilities (EL) Reporting Guidance and quarterly data calls for updates of USACE environmental liabilities.

d. Each Division and District shall identify and provide to the HQ ECC the contact information for their EL reporting official. EL reporting officials shall be persons with the training, experience, and direct knowledge of or accountability for the identification and management of sites that may constitute USACE environmental liabilities. District and Division EL reporting officials shall follow the procedures described below for recognition, valuation and reporting of environmental liabilities in coordination with Resources Management, Office of Counsel, and Internal Review.

⁸ OMBIL page to capture information is under development.

e. Districts.

(1) Districts shall recognize, value, and report environmental liabilities to the Division for submittal to the HQ ECC.

(2) Districts shall retain records on environmental liability cost estimates, supporting documentation used to develop cost estimates, e.g. documents resulting from study or clean-up actions, and the name and position of the person(s) who developed and approved the cost estimate at the District level. In accordance with financial accounting guidance, records shall be retained for a minimum of six years, 3 months, and one day after the environmental liability no longer exists and must be producible within 48 hours of request.

(3) Districts shall distinguish between reasonably estimable measures of liability and liabilities for which costs can not be reasonably estimated. In situations where there is an on-going negotiation regarding the nature or extent of clean-up required on USACE controlled lands or waters and the cost of the liability is not reasonably estimable, it shall be reported as a probable EL site, but with an unknown EL cost estimate.

(4) A materiality threshold, as established in financial accounting guidance, shall be used as a threshold for recognition and valuation of environmental liability. The HQ ECC, in coordination with HQ USACE CERM-F shall evaluate, update as necessary, and notify the Division and District EL reporting officials, as identified in 13-3.d., above, of the materiality threshold for USACE Civil Works non-FUSRAP environmental liabilities.

(5) Where there are potentially responsible parties other than USACE, unless a settlement has been negotiated and agreed upon, the liability is not reasonably estimable and shall not be reported as an environmental liability.

(6) Civil Works activities and operations that result in day-to-day hazardous waste generation/ disposal are expensed and do not become an environmental liability on financial statements. Environmental litigation liabilities are not reported as environmental liabilities. Environmental litigation liabilities are reported separately as contingent liabilities.

f. Divisions.

(1) Shall ensure all District EL reporting officials are trained to support environmental liabilities identification, valuation and reporting, or that each District has the resources (manpower and funding) to execute environmental liabilities identification, valuation and reporting, as described above, using outside support that meets the training and competence requirements described herein.⁹

(2) Shall verify and validate all District environmental liabilities information prior to submittal to HQ ECC.

⁹ For training requirements, see Memorandum, ACSIM, 16 Jul 2009, subject: Army Implementing Guidance for Environmental Liabilities Recognition, Valuation, and Reporting.

(3) Submit to HQ ECC quarterly updates of the status of environmental liabilities within the Division to ensure complete and accurate recognition, valuation, and reporting of all new environmental liabilities, and to update the probability, cost estimate, and site description and clean-up status for existing environmental liabilities. The Division EL reporting official may authorize, at their discretion, District EL reporting officials to report EL information directly to the HQ ECC; however, it remains the responsibility of the Division EL reporting official to ensure that all EL information is complete, accurate, and available to support the annual audit of the USACE Civil Works financial statement.

(4) Division environmental liability POCs shall retain records documenting the receipt, review, Division-level validation, and forwarding to the HQ ECC, of all environmental liability information required for the quarterly and annual reports. The Division EL reporting official's record of submittal to the HQ ECC may be a hard copy memo or an e-mail transmitting the required quarterly and annual environmental liability reports.

g. EC OMBIL shall be used to document the rationale for environmental liability determination.¹⁰

h. Each reported environmental liability shall be reconciled with the real property asset or assets with which it is associated, and it shall be reflected in the USACE-CW real property asset record.

13-4. Limitations on Cleanup Actions at Non-USACE Facilities. USACE shall not cleanup contamination for which it is not legally liable unless authorized to do so. See additional guidance in ER 1165-2-132 regarding Hazardous, Toxic and Radioactive Waste (HTRW) Guidance for Civil Works Projects.

13-5. Response Actions at Outgranted USACE Properties. Grantees are responsible for reporting and responding to releases occurring on or from USACE outgranted property as a result of actions or activities of the Grantee. This does not, however, relieve USACE from applicable reporting under CERCLA 120(b) regarding the Federal Agency Hazardous Waste Compliance Docket (aka the Docket), if required, and if not already reported by the Grantee. Where outgranted property becomes listed on the Docket, USACE shall coordinate with Grantee for performance of the work or shall perform the work and seek cost recovery, as provided in the lease agreement or as allowed under CERCLA.

13-6. Policies and Procedures for Potentially Responsible Party (PRP) Sites.

a. General.

(1) CERCLA, Section 107 (42 U.S.C. § 9607) imposes liability on (1) current owners and operators of facilities where hazardous substances have been released; (2) owners and

¹⁰ OMBIL page is under development.

operators of facilities at the time the hazardous substances were disposed; (3) persons who arranged for disposal or treatment of such substances, and; (4) persons who accepted such substances for transport, treatment or disposal. Such a person (which includes companies, corporations, and government entities) is referred to as a Potentially Responsible Party (PRP). Though technically not a PRP under the CERCLA definition, parties that are responsible for contamination cleanup due to a contractual instrument are referred to as PRPs by USACE and treated similarly to CERCLA PRPs. USACE can be a PRP or have to deal with PRPs on a site for which USACE has responsibility. The primary goal in PRP matters is to resolve USACE liability in a Department of Justice (DOJ) coordinated settlement providing USACE a complete release from all claims. Pursuit of a PRP should be considered anytime it is viewed as possible that there is a PRP for contamination for which USACE has responsibility. Typical situations in which it might be appropriate to pursue a PRP are where a determination is made that it is necessary to address contamination that pre-existed construction of the project/facility but was not addressed previously, contamination that has been addressed in a manner that is not currently considered sufficient, and contamination that was caused by a third party at an operational facility. This list is suggestive and is not intended to be exclusive.

(2) Paragraph 6.b. of Engineering Regulation (ER) 1165-2-132, *Hazardous, Toxic, and Radioactive Waste (HTRW) Guidance for Civil Works Projects* (26 Jun 92) provides “Construction of Civil Works projects in HTRW-contaminated areas should be avoided where practicable” and discusses how such construction can be avoided. Still, situations may arise where such construction in contaminated areas is unavoidable or where Civil Works property is found to be contaminated and other parties are believed to have legal liability for the contamination.

(3) The PRP process in a Civil Works context must keep in mind three issues that might affect how USACE should proceed. The first is the point in the life-cycle of the project/facility in which the contamination is discovered and addressed. The second is whether the project/facility is cost-shared or federally funded. The third is whether USACE maintains O&M responsibility after the facility is operational.

b. Timing of Determination that Contamination Will Need to Be Addressed. ER 1165-2-132 addresses responsibilities for HTRW activities based on the timing of this determination.

c. Cost-sharing of Project.

(1) For cost-shared projects, paragraph 5.a(7) of ER 1165-2-132 provides that during the construction phase, “[r]ecovery of costs from a PRP would be accomplished by the project sponsor.” Paragraph 6.b. of ER 1165-2-132 provides that “[n]o cost sharing credit will be given for the cost of response actions” and this includes any costs related to PRP recovery. Paragraph 12.b. of ER 1165-2-132 also provides “[w]here sponsors have undertaken response actions, the sponsor must provide a letter prior to construction on impacted lands from the appropriate regulatory agency(s) confirming that response actions

complied with regulatory guidelines and statutes.” Paragraph 10 of ER 1165-2-132 also discusses responsibility during execution of and after a project partnership agreement (PPA) is signed.¹¹

(2) For non-cost shared projects, the Federal government is responsible for “[r]ecovery of costs from a PRP.” Paragraph 5.a(7) of ER 1165-2-132.

(3) As stated above, construction of Civil Works projects in HTRW-contaminated areas should be avoided where practicable. However, it is possible for fully federally funded projects on land that is not federally owned to be constructed knowing of the existence of at least one other PRP. In such a situation, paragraph 8.b(2) of ER 1165-2-132 provides “the cost of response action will be 100 percent Federal expense although the Federal Government may seek a contribution through appropriate legal proceedings at a later date.”¹² It should be stressed that this is not a preferred course of action, but is possible. In such a circumstance, the cost of response actions should be obtained prior to the start of construction.

d. O&M Responsibility At Operational Facilities. As stated above, a PPA likely allocates responsibility at an operational facility to a local sponsor. This includes responsibility for any releases associated with that operation. There might be circumstances where USACE retains this responsibility at an operational facility, however. For instance, this is most likely at facilities at which USACE is responsible for operating. In any circumstance where a third party causes contamination, that party is a PRP and is responsible for any releases they may cause.

e. District Responsibilities.

(1) District Commander. The District Commander, through the Office of Counsel (OC), Chief of Real Estate, when applicable, and project manager (PM) is responsible for representing the USACE in the PRP process, which consists of:

(a) determining liability and contribution on restoration and remediation projects in the District,

¹¹ The ER actually uses the term local cooperation agreement (LCA). This term and also project cooperation agreement (PCA) are synonymous with the term PPA.

¹² As discussed more fully below, it is CW policy to not use federal appropriations to remedy contamination that is the responsibility of others and for which there is little or no nexus between the contamination and USACE.. The policy to not conduct response actions on sites with other viable PRPs is based on the following: fiscal law restraints, which limit use of appropriated funds to clean up contamination not caused by USACE; lack of adequate resources to pursue cost-recovery or contribution action; concern that the burden of proof is not unnecessarily shifted to the United States with respect to any action; necessity to preclude diversion of program dollars from other CW activities; desire to avoid incurrence of long-term cost demands; and consistency with the National policy that the “polluter pays” for contamination for which it is liable and that general taxpayer funds should not be used to relieve PRPs of their liability under CERCLA.

(b) analyzing the appropriate position to take on behalf of the District with regulators, other PRPs, and members of the public,

(c) providing justification to the Division and HQ regarding these positions and determinations, and

(d) completing negotiations and fulfilling requirements of any PRP agreement or litigation, regarding the USACE-Civil Works (CW) environmental liability for the property.

(2) District Project Manager (PM).

(a) The District PM is the overall manager of the effort to assure that the PRP process moves forward effectively. The PM is responsible for providing all PRP data required for planning, programming, budgeting, execution, and reporting. The PM participates with Counsel at the District in the negotiation effort, and is a participant in the negotiation and settlement process. The PM, at the direction of counsel, determines if historical and technical research of the site history is necessary¹³ and arranges for such research as necessary. The PM reviews and comments on PRP documents, coordinates technical input to the historical analysis and cost allocation reports and all technical support to activities conducted at the project, and coordinates the contract or in-house field investigation in support of the project, if any.

(b) The District PM, in coordination with the District Counsel, will be responsible for reports and data calls regarding the PRP activities.

(3) District Office of Counsel.

(a) The Office of Counsel bears ultimate responsibility and accountability for developing case strategy, for leading the District team during negotiations, settlement, or litigation, as well as any other substantive activities related to the PRP negotiation or litigation effort, and for the legal sufficiency of all settlement arrangements and administrative agreements.

¹³ It is quite possible that much is already known about the site and significant research and investigation is not required. For instance, ER 1165-2-132 provides that throughout project development, information relevant to consideration of the existence of other PRPs is gathered. For instance, during the Reconnaissance Phase, an HTRW assessment is to be conducted. As part of this assessment: existing and past land uses should be evaluated; current and historical aerial photographs should be studied and compared; records should be searched and should extend as far as records are available; long-time local residents, workers, and current property owners should be interviewed about past land uses, potential contamination, and any history of HTRW problems; and EPA, state, and local regulatory or response agencies should be consulted for license/permit actions, for any violation, enforcement, and/or litigation against property owners, and for general information about local HTRW problems such as illegal dumping and past contamination. The feasibility phase includes a preliminary identification of potential source areas of any contamination. In addition, a HTRW Documentation Report may exist to address HTRW related construction information.

(b) Counsel oversees legal review of PRP investigation reports, as well as any documents and correspondence submitted to other PRPs or regulators on the USACE PRP status.

(c) In accordance with AR 27-40, the Office of Counsel is the sole point of contact (POC) between USACE and the Department of Justice (DOJ) on all PRP-related activities. Requirements of AR 27-40, the Freedom of Information Act, and the Federal Rules of Civil Procedure will control release of all documents related to the PRP investigation. The District will provide the EM CX historical documents on topics of general applicability collected in support of PRP activities.

(d) Counsel shall assure that PRP matters are entered into the Office of the Chief Counsel's Matter Tracking System (MTS) and that information is updated promptly to ensure its accuracy and completeness.

(e) As any cost recovery claims by USACE seeking payment of response costs from other PRPs are subject to Statutes of Limitation (SOL) under CERCLA or other laws, Counsel must promptly evaluate the circumstances to determine the date on which the SOL would bar the government from pursuing cost recovery and take necessary action to assure that recovery actions are filed well within the SOL period.

(f) Any agreement that is a final settlement of claims by or against the United States, or that preserves or waives a legal defense or claim of the United States, must be coordinated with and approved by the Department of Justice. This coordination will be processed within USACE by the District Counsel through the Division Counsel to CECC-E, in the case of pre-litigation settlements and administrative orders, and to CECC-L where the settlement is subsequent to the filing of litigation.

f. Headquarters. In the Office of the Chief Counsel, CECC-E is the primary program legal support office for pre-litigation coordination with Department of Justice (DOJ). With initiation of litigation, responsibility for DOJ coordination and HQ oversight of the litigation rests with CECC-L. Pre-litigation and administrative agreements will be referred to CECC-E; while settlement agreements and consent decrees associated with previously filed litigation will be referred to CECC-L.

g. Environmental and Munitions Center of Expertise (EM CX). The EM CX is available to provide legal, technical, and programmatic assistance to the Districts as requested by the District, the Division, or HQ USACE. Though not mandatory, Districts are strongly encouraged to seek EM CX legal and technical staff review of site history analysis, liability and cost allocation analysis reports, administrative orders, settlement agreements, and consent decrees.

h. PRP Requirements.

(1) Experience has shown that effective management of PRP negotiations demands major commitments of legal, project management, and technical resources. Furthermore, the

complexity of the legal issues that must be addressed, and the effect that those issues have on resolving USACE CERCLA liability or on the need for litigation, requires that Counsel take the lead in such negotiation efforts. It is especially vital that Counsel and technical resources are adequately staffed and trained to support the negotiation requirements.

(2) PRP activities encompass the following efforts.

(a) Conducting research (historical, technical, and legal) on all PRPs related to the property. In particular, Counsel shall search for previous litigation documentation that may address (even absolve) United States liability at the property.

(b) Evaluating the potential liability of USACE for CERCLA hazardous substances contaminating a property.

(c) Developing a legal position with respect to the basis or bases for, defenses from, and allocation of CERCLA liability associated with USACE use of the property.

(d) Directing negotiations before litigation that focus on resolving CERCLA liability, including agreements and Alternative Dispute Resolutions (ADRs) with PRPs, Federal, tribal, and state regulatory agencies arising from CERCLA liability, and including Federal Facility Agreements (FFA) under Section 120 of CERCLA, if appropriate.

(e) Managing USACE litigation associated with United States' CERCLA liabilities arising from USACE activities and USACE cost recovery initiatives against other responsible parties at USACE Civil Works (CW) properties.

(f) Carrying out any agreements requiring further efforts by USACE arising from settlement of CERCLA liability.

(3) USACE focuses its PRP efforts toward settlement of any USACE CERCLA liability with other PRPs, rather than on conducting response actions using CW appropriations. The PRP mission goal is to negotiate a fair and equitable settlement with other PRPs who either have or will take the response action in exchange for a release of USACE liability under CERCLA, other applicable environmental laws, and rules of common law. These settlements should reflect any USACE contribution made toward investigating and remediating contamination. Payments of such settlements will be certified by DOJ for payment from the Judgment Fund. By arranging for settlement in advance of response action, USACE avoids expending CW appropriations to address the responsibilities of others. Absent specific legislative authority, costs recovered after the fact are not returned to CW accounts and, thus, are lost to USACE.

(4) USACE coordinates its PRP settlement efforts with the DOJ. USACE strives to achieve final settlement of any liabilities, using the Judgment Fund for payment of the government's fair share allocation of response costs sought by other PRPs. Although using CW appropriations to respond to contamination caused by others is not the preferred approach, USACE seeks, in appropriate cases, recovery from other PRPs of the costs it has

expended in response actions related to hazardous substance releases for which other PRPs are liable.

(5) USACE PRP negotiations should strive to resolve all liability for contribution to and indemnification for future claims including those based on CERCLA, the RCRA sections 7002 or 7003, and any other Federal law. It is recognized that this is a matter of negotiation and may affect other terms of the settlement; however, it is generally considered in the best interest of the agency to fully resolve all possible liability for environmental response actions in a single comprehensive settlement.

i. Third-Party Sites (TPS). A TPS is property owned by another party. USACE, along with other parties, may bear potential liability for USACE hazards or hazardous substance release at TPS. This liability may result from disposal, transport, or arranging for transport of hazardous substances from a USACE civil works property. If a TPS is currently used by an active military service component or has more recently or predominantly been used by an active military service component, responsibility for representing USACE interests regarding the property will be borne by the active military component. A contiguous plume extending off USACE CW property or extended range fans are not TPS projects and should be considered under the originating property. USACE will not clean up contamination caused by civil works activities at TPS. All such contamination will be dealt with under the claims provision in conjunction with the Department of Justice. Any such claims received by a District should be referred to the Office of Counsel.

j. Potentially Responsible Party Actions Justification Requirements. Initiating PRP activities is not an admission of responsibility. Activities may include investigations (e.g., records searches) to determine the validity of the involvement and the liability of both USACE and any PRP(s). Activities involving PRPs should take into account the property conditions and circumstances. Such activities should be commensurate with Counsel's best professional judgment of risk and needs. To declare the involvement of a PRP, the District must ensure that there is at least one of the following:

(1) Documented or reliable testimonial evidence that USACE CW is potentially responsible for property contamination and that the contamination may at least partially be the result of the actions of other PRP(s).

(2) Receipt of a PRP notification letter from an environmental regulator.

(3) A letter or other notification from a private party alleging USACE CW PRP liability and indicating intent to seek recovery under CERCLA.

(4) Filing of court action seeking contribution under CERCLA based on USACE CW alleged responsibility for contamination.

(5) Documented or reliable evidence as to the responsibility of other parties for the contamination.

k. Justification for Cost Recovery.

(1) Cost recovery is to be pursued where DoD has incurred response costs above \$200,000 for which another party may be liable. Where the District's estimate of cost recovery potential is significantly lower than its estimate of costs to pursue recovery, counsel will consult with CECC-E prior to any referral being made to DOJ. When the settlement costs are not clear but may be low, the District shall do a limited amount of historical and technical research and legal analysis before conducting a full historical analysis of the project. In general, full research and analysis of facility history will not be justified if the cost exceeds any anticipated recovery, or if USACE potential liability appears unfounded or potential contribution share is de minimis.

(2) The following actions should be taken by counsel and PM for projects involving PRPs:

(a) Review all readily available information

(b) Estimate costs of PRP investigation, preparation, and negotiation compared to the estimated settlement cost based on assumed response costs.

(c) Justify the basis for continuing PRP negotiation and investigation activities on the project where the costs of such action exceed the anticipated removal/remedial action costs.

(d) Evaluate, in consultation with DOJ, participation under a simple contribution agreement if liability is established and this is less costly than continuing with PRP negotiations and investigations.

(e) Evaluate applicability of any Statute of Limitations (SOL) that would bar cost recovery by USACE for response costs incurred.

(f) Expedite project negotiations to the maximum extent possible and reach project closeout as soon as possible.

l. Contract Claims. USACE determination of CERCLA liability allocation will be independent of any government contract claim entitlements raised by other parties. Subsequent payment demands for contribution or cost recovery against a government contractor PRP to address the contractor's CERCLA liability will not be offset by claims the contractor may assert under a previously issued government contract. The responsible Contracting Office must address whether contract claims for CERCLA costs are payable directly under the contract. This is especially important in the case of cost recovery referrals to the DOJ, as such referrals must address potential government contract claims or equity arguments that the PRP might seek to raise as offset to the CERCLA-based recovery claim. These situations require that the District, the responsible contracting office, and DOJ coordinate closely. CECC-E will be consulted should the identity of the contracting office be in doubt or should the District require assistance in getting the contracting office to provide its views on the PRP's right to contract entitlements. Contract claims for payment

entitlement under the provisions of a contract should be distinguished from the equitable consideration of the contracting relationship in determining a fair share allocation of CERCLA liability for a period of government ownership and contractor operation. The District will be responsible for evaluating the relationship of each PRP to the areas where hazardous substances were released and their contractual roles and responsibilities. The extent to which contractual roles and responsibilities may affect the equitable allocation of costs among PRPs also will be addressed.

m. Real Estate Instruments. As part of the PRP investigation, real estate instruments under which USACE CW took an interest for the property, as well as any relevant documentation of the negotiation of the transfers, will be evaluated to determine if CERCLA claims have been indemnified, waived, or otherwise affected by the terms of the instruments. Real property appraisal documents and property inventories often include important information about the condition of the site or the understanding of the parties at the time of the transfer. These real estate documents will be evaluated early in the PRP investigation. If a defense to a CERCLA contribution claim or a claim of indemnification in favor of the United States is possible from the language of a real estate instrument, the validity of these defenses or claims will be pursued prior to further expenditures on the project, except as justified by counsel and approved by the Division and HQ USACE.

n. Project Performance.

(1) For any property or project that may involve a PRP, the District should consult with the EM CX and the Division as to whether to build a case for cost recovery. In view of the potential for litigation or regulatory action on such properties, all documentation shall not be released prior to consultation with counsel.

(2) CW policy is to avoid cost recovery associated with contamination by other PRPs. Cost sharing agreements where USACE does not perform the response action are prohibited. CW funds should be used for conducting response actions for USACE contamination only. However, there may be cases where expenditure of CW funds can be used to address the remediation of non-USACE contamination that is commingled with USACE contamination or other circumstances where public health and safety are involved. In these cases, contribution from other PRPs must be pursued through negotiation of cost-sharing agreements or through litigation for cost recovery under CERCLA. As a matter of policy, USACE should pursue recovery of response costs of \$200,000 or more from other PRPs. In these cases, there is the additional burden of maintaining appropriate records to support cost recovery and contribution claims, to demonstrate compliance with the National Contingency Plan, 40 CFR Part 300, and to provide evidence of the response costs that are claimed.

(3) The District PM will be responsible for project management on any subsequent response action on the CW property and is responsible for assembling and maintaining the cost documentation for use in actions to pursue contribution from other PRPs.

(4) Counsel will assure review and approval by DOJ of all agreements that include a release of claims by or against the United States, admission of liability on behalf of the United States, or waiver of any legal defense or claim of the United States, including tolling agreements.

(5) Agreements settling a PRPs liability or contribution will be signed at HQ USACE level. It is recommended that the EM CX legal and technical staffs be consulted by the District in assuring that the agreement is consistent with applicable guidance. Copies of all final signed agreements will be provided to the District and the EM CX.

(6) Use of ADR procedures in coordination with the DOJ, such as non-binding arbitration, mediation, facilitation, mini-trial, and disputes panels, should be considered wherever normal negotiation techniques are unsuccessful. The District Commander may sign agreements providing for an ADR process on a PRP project but should coordinate with counsel first. Before using an ADR procedure in a PRP negotiation, the involved Counsel will provide notice to CECC-E. If litigation has already been filed in the matter, notice will also be provided to CECC-L. Upon request, CECC-E will assist Districts receiving PRP negotiation assignments in both tailoring existing ADR procedures and developing new ones. DOJ's involvement must be requested as early as possible to allow for participation in developing and implementing the ADR initiatives, as any settlement payments to other PRPs arising from the ADR would be expected to be certified by DOJ to the Judgment Fund for payment. The District Counsel will assure that MTS reflects the status of the ADR effort. Costs associated with undertaking ADR proposals will be coordinated between PM and counsel elements. Copies of all agreements establishing an ADR process or settlement agreements resulting from an ADR will be furnished to the EM CX.

o. Funding of Projects involving Potentially Responsible Parties.

(1) Funding for District PRP project activities will be provided from the annual work-plan of the District. All anticipated costs associated with PRP activities, including any costs required by a signed PRP agreement that are not payable from the Judgment Fund, must be programmed through normal operational funding channels. Programming requirements include eligible project activities anticipated in future years.

(2) The Judgment Fund is available to fund payments for settling US liabilities. Operational funding must be used to fund other USACE work efforts related to PRP activities (records searches, technical participation during response actions, or cost oversight) prior to final resolution of liability.

p. USACE Programmatic Project Closeout Procedures.

(1) The District Counsel will notify the lead regulator of the completion of PRP activities.

(2) An official closeout report for activities involving a PRP should be prepared by the District and signed by the District Commander. Notice of closeout will be provided to the

Division. Copies of the closeout report will be provided to the EM CX. Because certain portions of this report may contain sensitive information, counsel will assure that portions of the report containing such information are appropriately marked as attorney work product privileged and that release of such information is managed in accordance with that status. MTS will be updated regarding the project closeout. The official closeout report should have the following attachments:

(a) A Memorandum for Record (MFR) that contains a brief history of the PRP activities.

(b) Information on DOJ settlement (if applicable and appropriate).

(c) A copy of the settlement agreement or any other pertinent settlement information.

(d) Any memoranda or letters from the District Commander or Counsel providing a determination on liability, applicability of contribution, or other required action.

(e) Any comments provided by the lead regulator on the closeout.

q. Reporting for PRP Activities. During the negotiations phase, cost-to-complete data should include only in-house expenditures and contract costs for support. Estimates of costs of remediation or estimated settlement figures should not be included. These are costs that must remain confidential until final negotiation and settlement.

r. Public Involvement and Administrative Record. Public involvement and Administrative Record requirements are the responsibility of the District when USACE is the lead agency for the response actions. These matters will be closely coordinated with the District Counsel on properties with PRP involvement. Counsel and the PMs for all Districts involved with response actions on projects performed by USACE will coordinate closely to ensure compliance with CERCLA and the NCP regarding public comments and to assure the Administrative Record file and permanent Project Files are properly assembled and maintained.

CHAPTER 14

Real Estate

14-1. Purpose. This Chapter establishes policy for conducting real estate transactions in compliance with applicable environmental laws and regulations and environmentally sound land management practices.

14-2. Applicability. This Chapter applies to all USACE Divisions and Districts performing real estate transactions in support of Operation and Maintenance (O&M) activities at Civil Works projects and facilities.

14-3. Policy.

a. It is USACE policy to comply with the requirements of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (CERCLA), to avoid incurring liability to the maximum extent possible as a result of real estate transactions and to avail itself of the landowner liability protections provided in the statute.

b. It is also USACE policy to protect government real estate assets by managing them under applicable Federal, state and local environmental laws and regulations and by performing a comprehensive environmental compliance assessment of outgrants determined by the District to require oversight.

14-4. Implementation.

a. In order for USACE to comply with the requirements of CERCLA and avail itself of the landowner liability protections afforded under CERCLA, USACE must perform certain actions to assess the environmental condition of property prior to entering into designated real property transactions. These transactions include fee acquisition of real property on behalf of the United States, leases of USACE controlled property, transfers of jurisdiction between federal agencies and deeds divesting title from the United States. Generally, this requirement does not apply to reassignments within the Army or DoD (including the Coast Guard), acquisition of less than fee or to other outgrants (easements, licenses or permits). However, some circumstances may warrant an environmental site assessment for these transactions as determined by the District Environmental Compliance Coordinator (ECC) or District Engineer and coordinated with the Chief of Real Estate. Finally, in the rare circumstance that USACE Civil Works property is made available by license to the National Guard Bureau or State National Guard Components, this chapter will apply to the issuance of that license as a matter of policy. These policies are similar to those found in paragraph 15-5 of AR 200-1, Environmental Protection and Enhancement, dated December 13, 2007 and align USACE Civil Works real property to the extent appropriate with all other Army real property.

b. As part of the required environmental assessment for outgrants identified in paragraph 5-3 of this regulation, the person or entity granted use of USACE real estate

assets, commonly referred to as the Grantee, will be informed of, and required to correct, any compliance-related finding pertaining to its operations. Notifications regarding non-compliance, penalties, etc. are only valid when reduced to writing and signed by the District Chief of Real Estate. Refer to Chapter 5 of this regulation for a comprehensive description of requirements for environmental compliance assessments on outgranted lands. Through the District Chief of Real Estate, the Project ECC will provide consultation support to the Grantee in close coordination with the District ECC. Where the Grantee is in substantial non-compliance and/or is unwilling or unable to implement corrective action, Real Estate and Operations officials will take actions as required in paragraph 5-3.d of this ER. Refer to Chapter 5 for full details on environmental compliance assessments, Chapter 10 for spill reporting and response and Chapter 13 for environmental contamination and reporting requirements. Also see the forthcoming ER 405-1-80, Management and Outgrant Programs for information on compliance inspections and other matters with regard to outgranted USACE property.

14-5. Environmental Condition of Property (ECP) Report.

a. Generally. USACE will assess, determine and document the environmental condition of property in an ECP Report.¹⁴ An ECP Report summarizes the historical, cultural, and environmental conditions of the property subject to the real estate transaction and includes references to publicly available and related reports, studies, and permits. It provides an accurate summary of the environmental condition of the property. The ECP Report is an integral part of the Report of Availability (ROA) or the Disposal Report which form the basis for the USACE official with delegated authority to approve the real property transaction and for the preparation of the required legal documents, land use controls and covenants that may be required for a covered transaction. For details on the content of a ROA or Disposal Report see the Real Estate Division and/or the most recent regulations on the Real Estate management, outgrant and disposal programs. An ECP Report is also required for any acquisition of fee land that may be required to support O&M activities at Civil Works projects and facilities.

b. Standards. The ECP Report must comply with applicable standards for performing either a Phase I or Phase II Environmental Site Assessment as defined in American Society for Testing and Materials (“ASTM”) Standard E 1527–05 entitled, “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,” or ASTM E 1903 (Standard Guide for Environmental Site Assessments: Phase II Environmental Site Assessment Process), as appropriate.

c. Preparation. An ECP Report must be prepared by an Environmental Professional. An Environmental Professional is defined as a person who possesses sufficient specific education, training and experience necessary to exercise professional judgment to develop

¹⁴ Prior environmental assessments conducted by USACE were referred to as an Environmental Baseline Survey (EBS) or Preliminary Assessment Screening (PAS).

opinions and conclusions regarding conditions indicative of releases or threatened releases on, at, in, or to a property (See ASTM Standard E 1527–05 for additional information).

d. Approval. The ECP Report must be approved by the responsible Project or District ECC or a person designated by the Chief of Operations.

e. Responsibility to Provide and Costs. When USACE is acquiring a fee interest in land, acting as the disposal agent or declaring land excess for disposal by GSA, USACE is responsible for the ECP Report. For all other transactions initiated by non-USACE entities, the non-USACE entity is generally responsible for providing and paying for the ECP Report or other environmental documentation or the non-USACE entity can pay for USACE to complete the required environmental documentation. USACE may prepare and pay for the ECP Report or other environmental documentation if there is a demonstrable benefit to USACE in the appropriate transaction.

14-6. Acquisition of Fee Interests. Fee acquisitions from non-Federal entities in support of Civil Works O&M activities require an ECP Report to comply with EPA’s “all appropriate inquiry” rules (40 CFR Part 312) under CERCLA prior to obtaining title to the real property to meet the protections afforded under Section 101(35)(A)(i) of CERCLA with respect to releases, threatened releases, or disposal of hazardous substances.

14-7. Acquisition of Less than Fee Interests (Lease, Easement, License, Right-of-Entry). Generally, acquisition of less than a fee interest in support of Civil Works O&M activities does not require an ECP Report. However, some circumstances may warrant an ECP Report for acquisition of less than fee as determined by the District ECC or District Engineer and coordinated with the Chief of Real Estate.

14-8. Leases.

a. An ECP report is required for all leases of property in support of Civil Works O&M activities. If the property has been the site of a release, storage, or disposal of hazardous substances USACE will notify the Lessee of the nature of the substance involved, when the substance was on the property, and a description of the remedial action taken, if any. A copy of the ECP Report will be provided to the Lessee and may be attached to the lease.

b. Renewals.

(1) If the lease did not have an environmental site assessment performed originally, one must be done prior to renewal using the ECP Report as the basis for the assessment.

(2) For renewal of existing leases that have previously had an environmental site assessment, the Project or District ECC must ascertain if environmental conditions have changed. If an environmentally significant change has occurred, it will be documented as a supplement or amendment to the original assessment report. An example of an environmentally significant change includes the storage of a hazardous substance for a year or more, a known release of such substance, or its disposal on the property. A copy of the

environmental site assessment and/or any supplements or amendments will be provided to the Lessee and attached to the lease. If there are no environmentally significant changes then no new documentation is required as long as the Lessee has been in continuous possession of the property.

(3) New Environmental Protection Provisions have been developed for all new leases and lease renewals or modifications. These provisions are designed to ensure Lessees comply with environmental laws and participate in the ERGO process. See the forthcoming ER 405-1-80, Management and Outgrant Programs and its accompanying formats for these provisions.

c. Lease Terminations. Upon termination of a lease, Real Estate, the Project or District ECC and the Lessee should jointly conduct a final lease close-out using an ECP Report funded by the Lessee to ascertain any changes in the environmental condition of the subject property. If the Lessee refuses to participate, Real Estate and the Project or District ECC or other qualified individual will conduct the final assessment at the Lessee's expense and provide a copy to the Lessee. If an environmentally significant change has occurred, it will be documented as an amendment to the original environmental site assessment, if one was done. The Lessee will be required to complete any environmental restoration in accordance with lease terms and conditions.

14-9. Easements, Licenses and Use Agreements.

a. The environmental section of the ROA is generally sufficient to document environmental requirements for easements, licenses, use agreements or similar real estate transactions where environmental concerns are very minor. However, some circumstances may warrant an ECP Report for these transactions as determined by the District ECC or District Engineer and coordinated with the Chief of Real Estate.

b. New Environmental Protection Provisions have been developed for all new outgrants and outgrant renewals or modifications. These provisions are designed to ensure Grantees comply with environmental laws and participate in the ERGO process. See the forthcoming ER 405-1-80, Management and Outgrant Programs and its accompanying formats for these provisions.

14-10. Outgrant Assessments and Procedures. The District Chief of Real Estate is the sole responsible agent for all matters regarding real estate outgrants. Notification procedures, compliance challenges and other matters with regard to outgranted lands will be closely coordinated through the Operations Project Manager, the Project or District ECC, District Chief of Operations, District Office of Counsel and other Federal, State and Local staff agencies as circumstances require. Outgrant documents require Grantees to comply with all Federal, State and local laws, ordinances and regulations. These include environmental requirements. The outgrant documents also specifically spell out notification procedures and requirements under and pursuant to the terms of the outgrant. Notifications regarding non-compliance, penalties, etc. are only valid when reduced to writing and signed by the District

Chief of Real Estate. Refer to Chapter 5 of this regulation for a comprehensive description of requirements for environmental compliance assessments on outgranted lands. Also see the forthcoming ER 405-1-80, Management and Outgrant Programs for information on compliance inspections and other matters with regard to outgranted USACE property.

14-11. Consents. When third parties request the use of existing USACE easements, an ECP Report may be required to document the baseline condition of the property prior to issuing the Consent, especially where material is being deposited onto USACE interests. In addition, it may be necessary to require the consenting party to provide test results with respect to any deposited materials.

14-12. Disposals by Deed.

a. Under CERCLA federal agencies are required to give notice of the storage, release or disposal of any hazardous substance in any contract for the sale or other transfer of real property that is owned by the United States. In addition, CERCLA requires that deeds contain certain additional notice, covenant and access provisions based on the environmental condition of the property being conveyed.

b. An ECP Report will be required to document the environmental condition of the property for all fee transfers to meet the CERCLA notice, covenant and access requirements. Depending on the absence or extent of contamination on the property being conveyed, the CERCLA notice, covenants and access provisions will vary. The person preparing the disposal deed should see the forthcoming ER 405-1-90, Disposals, Chapter 5 and the Counsel Handbook on Deeds and Deed preparation.

c. A Finding of Suitability to Transfer (FOST) is generally not required for any disposal or transfer of USACE Civil Works property. However, the disposal of highly contaminated property may require a FOST and District should coordinate with Division and Headquarters to determine if a FOST is required.

14-13. Transfers and Other Non-Deed Disposals.

a. Excess USACE Civil Works property.

(1) For excess USACE Civil Works property where the General Services Administration (GSA) is the disposal agent, an ECP Report will be prepared. However, disposal by GSA is not considered a transfer of jurisdiction to GSA. The appropriate level of detail for the ECP Report should be coordinated with GSA.

(2) For excess USACE Civil Works property where USACE is the disposal agent, an ECP Report is required for deeds divesting fee title. For disposal of a lesser interest in excess property, an ECP Report is not required unless the District ECC or District Commander determine otherwise and coordinate with the Chief of Real Estate.

b. Transfers of jurisdiction between Federal Agencies. An ECP Report will be prepared using readily available information to document the environmental condition of the property to be transferred.

c. Reassignments within Army or DoD. An ECP Report is optional for reassignments within the Army and between the Army and another DoD component.

14-14. Summary. The following table summarizes the documentation requirements by transaction type as discussed in the paragraphs above. However, as determined by the District ECC or District Engineer and coordinated with the Chief of Real Estate, an ECP Report or additional environmental assessment may be performed for any real estate transaction.

Action	Interest/ Party	Documentation
Acquisition	Fee	ECP Report
	Easement	No ECP Report unless warranted
	Lease, License/ROE	No ECP Report unless warranted
Outgrant	Lease	ECP Report and ROA
	Easement License	ROA
	License to NGB/SGB	ECP Report and ROA
Lease Renewal		ECP Report unless prior site assessment and no change in environmental conditions
Lease Termination		ECP Report
Deed divesting title from the US	Fee	ECP Report No FOST
Release or termination with no deed	Easement or other less than fee	NO ECP Report unless warranted
Excess property – GSA as disposal agent	GSA	ECP Report (level of detail coordinated with GSA)
Excess property - USACE as disposal agent	Fee (usually by deed)	ECP Report No FOST
	Easement or other less than fee (usually release or termination with no deed)	NO ECP Report unless warranted
Transfer	Federal Agency other than GSA	ECP Report
Reassignment	Within Army or DoD	ECP Report is optional

CHAPTER 15 Environmental Training for Civil Works Operations

15-1. Policy. USACE shall train its employees to execute their duties in a manner that complies fully with Federal, state and local environmental laws, regulations, Executive Orders, and USACE policy.

15-2. Responsibilities.

a. ECCs at all levels of USACE shall consult with supervisors, OPMs and Operations Chiefs with regard to environmental training requirements for Civil Works Operations employees.

b. Supervisors at all levels of USACE are required to work with ECCs, OPMs and Operations Chiefs to ensure their employees receive required environmental training.

c. The District ECCs shall make training recommendations to Project level supervisors. Project level supervisors and OPMs shall ensure that Project ECCs are adequately trained.

15-3. Training Resources.

a. Guidance on typical training requirements for USACE Civil Works Operations employees is available on the Environmental Compliance page of the NRM Gateway at <http://corpslakes.usace.army.mil/employees/training.cfm?Id=env-comp>.

b. The most recent copy of the ERGO manual provides a table of environmental training requirements for Civil Works Operations activities. (See 15-6, below.)

15-4. Training Requirements.

a. General Requirements for USACE Civil Works Operations Employees. All USACE Civil Works Operations employees whose duties may significantly impact the environment shall receive training as follows:

- (1) ER 200-2-3, Environmental Compliance Policies, for Civil Works Operations.
- (2) Environmental Management System Awareness Training.

b. General Training Requirements for ECCs. General ECC training shall consist of four tiers of courses as follows (course order may vary according to mission need):

- (1) Environmental Regulations Practical Applications (ECC#1)
- (2) ERGO Assessment and EC-OMBIL Data Entry (ECC#2)
- (3) Hazardous Waste Manifest Training (ECC#3) (as required to support the local mission)

(4) Environmental Management and Sustainability (ECC#4). The requirements of this tier may be fulfilled by a completing a variety of courses on environmental management and sustainability addressing topics relevant to USACE Civil Works Operations and Federal facilities. Course information is available on the NRM Gateway (see 15-3, above) and at <http://www.fedcenter.gov/>.

c. Mission Specific Training Requirements. The following training shall be accomplished in order to meet local mission requirement.

(1) Environmental Liabilities. USACE Districts are responsible for ensuring staff competence for environmental liabilities recognition, valuation and reporting. The staff to be trained includes, but is not limited to, those fulfilling roles of program and project managers, cost estimators, reviewers, and approvers.

(2) Hazardous Material Transportation. Supervisors shall ensure that personnel engaged in preparing, transporting, or offering hazardous materials for offsite transportation shall be trained on hazardous materials transportation regulations. This includes employees making DOT packaging decisions and signing shipping papers. In accordance with DoD policy, initial training shall be completed within 6 months of assuming duties and refresher training within 24 months thereafter by persons executing hazardous material (including hazardous waste) shipping documents.

(3) Resource Conservation and Recovery Act (RCRA) Training. Supervisors shall ensure that appropriate personnel are trained in hazardous waste, universal waste, used oil, and recyclable materials management. This includes recognition of hazardous waste, determination of generator status, compliance with generator standards, completion of hazardous waste manifest shipping documents and land disposal restriction (LDR) notifications. In accordance with RCRA requirements, initial training and annual refresher training is required on function specific duties and emergency response.

(4) Hazard Communication. Supervisors shall ensure that appropriate personnel are trained in hazard communication.

(5) Spill Response Training. Supervisors shall ensure that appropriate personnel are trained on requirements of spill plans, and contingency plans. Training shall include instruction on how to determine if a spill is reportable and may include training as "First Responder, Operations Level" designated in 29 CFR Part 1910.120(q). Any employee with spill plan, contingency plan, or hazardous materials security plan responsibilities shall be trained on emergency procedures and function-specific duties.

(6) Incident Command Training. Supervisors shall ensure that personnel who shall perform as a Designated Incident Commander (IC) during hazardous materials or POL spill response shall be trained in Incident Command to the appropriate level for the potential worst case spill at their facility. ICS 100, 200, and 700 are the minimum training requirements for

all Designated ICs. ICS 300 and 400 are required for Incident Commanders who may respond under unified command. (Refer to Homeland Security Policy Directive #5.)

(7) Hazardous Waste Operations and Emergency Response Standard (HAZWOPER) Training. Supervisors shall ensure that personnel who enter or work in hazardous waste operations areas or emergency responders who may respond to hazardous material incidents are trained in accordance with EM 385-1-1 and 29 CFR 1910.120.

15-5. Training Record Documentation. Formal training, as well as completion of field experience requirements that are specified in applicable regulations, shall be documented in personnel records; informal or on-the-job training shall be maintained by individuals and their supervisors, as appropriate.

15-6. Training Table. The Table in the ERGO manual refers to Federal environmental training requirements. The table is intended as a tool for identifying training needs, but is not all inclusive. For details of training requirements, refer to referenced sections of the regulations. At a minimum, training records shall be maintained in accordance with requirements specified within regulation.

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CHAPTER 16 Budgeting For Environmental Compliance

16-1. Purpose. The purpose of this section is to promote awareness of budget guidance to facilitate funding for environmental compliance.

16-2. Budget Engineer Circular.

a. Guidance regarding preparation and submission of the budget is provided annually via the Budget Engineer Circular. This guidance is generally issued annually between March and May. The budget EC guidance is posted at: <https://corpsinfo.usace.army.mil/cw/ec/ec.htm>.

b. The budget guidance specifies business lines. Each business line is addressed within its own appendix, and environmental compliance is integrated into each business line as appropriate.

c. Work Category Codes pertaining to environmental compliance are specified and shall be used for tracking of budgets and expenditures as follows:

- (1) 60160 - Environmental Compliance Management for Navigation.
- (2) 60260 - Environmental Compliance Management for Flood Damage Reduction.
- (3) 60360 - Environmental Compliance Management for Hydropower.
- (4) 60460 - Environmental Compliance Management for Environmental Stewardship.
- (5) 60560 - Environmental Compliance Management for Recreation.
- (6) 61160 - Environmental Compliance (Remedial Actions) for Navigation.
- (7) 61260 - Environmental Compliance (Remedial Actions) for Flood Damage Reduction.
- (8) 61360 - Environmental Compliance (Remedial Actions) for Hydropower.
- (9) 61460 - Environmental Compliance (Remedial Actions) for Environmental Stewardship Features
- (10) 61560 - Environmental Compliance (Remedial Actions) for Recreation.

d. Funding for environmental compliance will be included within Operations business line budgets. For extraordinary circumstances where implementation of corrective action is contingent upon receipt of additional funding, it is the policy of USACE to clearly and formally document the funding need through the budget process, and to continue to identify the need until full compliance is achieved. It is acknowledged that the Federal

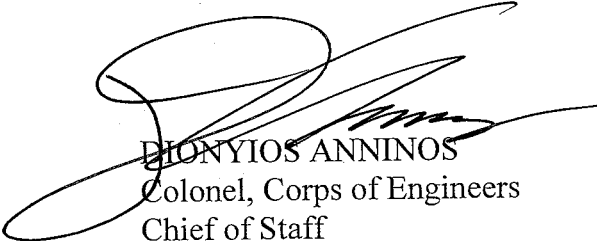
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budget process prioritizes funding of projects; however, it is not acceptable to presume that funding for environmental compliance related projects will be unavailable or will be of lower priority so as to remain unfunded. Rather, funds shall be formally identified and requested through the budget process until compliance is attained. ECCs at all levels will support preparation of budget package descriptions pertaining to environmental compliance. Descriptions shall be articulated such that persons unfamiliar with environmental requirements will be able to appreciate the significance of the request in order to evaluate relative priorities.

e. "Special interest items" are periodically identified to highlight specific activities. These will be budgeted for accordingly.

FOR THE COMMANDER:



DIONYIOS ANNINOS
Colonel, Corps of Engineers
Chief of Staff

GLOSSARY

Section I – Abbreviations and Acronyms

BMP	Best Management Practice
CAA	Clean Air Act
CAP	Corrective Action Plan
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CERCLIS	Comprehensive Environmental Response, Compensation and Liability Information System
CFR	Code of Federal Regulations
CW	Civil Works
CWA	Clean Water Act
DoD	Department of Defense
DOJ	Department of Justice
EC	Environmental Compliance
EC OMBIL	Environmental Compliance Module of OMBIL
ECC	Environmental Compliance Coordinator
ECP	Environmental Conditions of Property
ECQ	Environmental Conditions Questionnaire
EM	Engineering Manual
EMCX	Environmental and Munitions Center of Expertise
EMS	Environmental Management System
EO	Executive Order
EP	Engineering Pamphlet
EPCRA	Emergency Planning and Community Right-to-Know Act
ER	Engineering Regulation
ERGO	Environmental Review Guide for Operations
EPA	Environmental Protection Agency
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act

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FOST	Finding of Suitability for Transfer
FOTW	Federally Owned Treatment Works
FOUO	For Official Use Only
FUSRAP	Formerly Used Sites Remedial Action Program
HAP	Hazardous Air Pollutant
HMR	Hazardous Material Regulation
HTRW	Hazardous, Toxic, and Radioactive Waste
IATA	International Air Transport Association
ICAO	International Civil Aviation Organization
IMDG-C	International Maritime Dangerous Goods Code
ISO 14001	International Organization for Standardization (ISO) 14001
LDR	Land Disposal Restriction
LQG	Large Quantity Generator
MACT	Maximum Achievable Control Technology
MOA	Memorandum of Agreement
MSDS	Material Safety Data Sheet
MS4	Municipal Separate Storm Sewer System
NEPA	National Environmental Policy Act
NESHAP	National Emission Standards for Hazardous Air Pollutants
NON	Notice of Non-Compliance
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
NPL	National Priorities List
NRC	National Response Center
NRM	Natural Resources Management
NSF	National Sanitation Foundation
OC	Office of Counsel
ODS	Ozone-Depleting Substance
O&M	Operations and Maintenance
OMBIL	Operations and Maintenance Business Information Link
OPM	Operations Project Manager

OSHA	Occupational Safety and Health Administration
PA	Preliminary Assessment
PCB	Polychlorinated Biphenyl
POL	Petroleum, Oils, and Lubricants
POTW	Publicly-Owned Treatment Works
PRP	Potentially Responsible Party
PSD	Prevention of Significant Deterioration
PVQ	Pre-visit Questionnaire
RATS	Regional Assessment Team System
RCRA	Resource Conservation and Recovery Act
ROA	Report of Availability
RPM	Remedial Project Manager
RM	Resource Management
SDWA	Safe Drinking Water Act
SI	Site Inspection
SPCC	Spill Prevention, Control, and Countermeasures
SPCCP	Spill Prevention, Control, and Countermeasures Plan
SPRP	Spill Prevention and Response Plan
SWDA	Solid Waste Disposal Act
SWPPP	Storm Water Pollution Prevention Plan
TCLP	Toxicity Characteristic Leaching Procedure
TEAM	The Environmental Assessment Manual
TMDL	Total Maximum Daily Load
TRI	Toxic Release Inventory
TSD	Treatment, Storage, or Disposal
TSDF	Treatment, Storage, or Disposal Facility
UFGS	Unified Facilities Guide Specification
USACE	U. S. Army Corps of Engineers
USCG	U. S. Coast Guard

Section II – Terms

Environmental Liability

DoD Financial Management Regulation, DoD 7000.14-R, Volume 4, Chapter 13, as revised April 2008, states, "For financial reporting purposes, a DoD environmental liability is a future outflow or expenditure of resources that exists as of the financial reporting date for environmental cleanup, closure, and/or disposal costs resulting from past transactions or events. A DoD environmental liability exists when: (1) contamination is present or likely to be present; (2) environmental cleanup, closure, and/or disposal is required by lease contracts, federal, state, and/or local statute, regulation, or other legal agreement; and (3) the operations that created the liability are DoD related. An environmental liability may also exist if environmental contamination is not DoD related, but DoD enters into a binding agreement that formally accepts financial responsibility for cleanup, closure, and/or disposal."

Environmental Aspect

An element of an organization's activities that can interact with the environment. An environmental aspect has or can have an environmental impact.

Environmentally Significant Activity

For purposes of this ER, those activities that are regulated by federal, state, or local environmental laws, regulations, Executive Orders, or as determined by USACE policy or the responsible Operations Project Manager (OPM). For example, if a project has a NPDES regulated outfall, then it is "regulated" and considered an environmentally significant activity for purposes of this ER.

Environmental Management System

A set of processes and practices that enable an organization to increase its operating efficiency, continually improve overall environmental performance and better manage and reduce its environmental impacts, including those environmental aspects related to energy and transportation functions. EMS implementation reflects accepted quality management principles based on the "Plan, Do, Check, Act" model found in the ISO 14001:2004(E) International Standard and using a standard process to identify and prioritize current activities, establish goals, implement plans to meet the goals, evaluate progress, and make improvements to ensure continual improvement.

Federal Agency Hazardous Waste Compliance Docket

Required by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 120(c) to be established and maintained by the Environmental Protection Agency (EPA) and commonly referred to as the Federal Facilities Docket or the Docket. The Docket contains information submitted by Federal facilities under CERCLA 103, Resource Conservation and Recovery Act (RCRA) 3005, RCRA 3010, and RCRA 3016 and identifies Federal facilities in need of evaluation to determine whether they pose a threat to human health or the environment. The Docket is available through the Federal Register or <http://www.epa.gov/fedfac/documents/docket.htm>.

Finding

The term "finding" is used to refer to all findings other than "significant findings". A "finding" pertains to a situation or circumstance where there is a perceived or actual non-compliance with an applicable, promulgated, environmental standard.

Finding, Significant

A "significant finding" refers to a situation or circumstance where there is a perceived or actual non-compliance with an applicable, promulgated, environmental standard which poses a direct, significant threat to human health and safety, the environment, or the facility's missions so that it rises to a level of urgency as to require immediate action.

Headquarters Environmental Compliance Coordinator (HQ ECC)

The Headquarters USACE (HQ USACE) Senior Policy Advisor for Environmental Compliance.

Integrated Pest Management (IPM)

IPM is a planned program to prevent pests and disease vectors from causing unacceptable damage to operations, people, property, or the environment. IPM uses targeted, sustainable (effective, economical, environmentally sound) methods, including habitat modification, biological control, genetic control, cultural control, mechanical control, physical control, regulatory control and, when necessary, the judicious use of least-hazardous pesticides. Properly implemented IPM minimizes harm to human health and the environment; reduces the need for pesticides; reduces pest resistance; and minimizes pesticide waste.

Legacy Contamination

Legacy contamination means known or suspected hazardous substances, pollutants, or contaminants as defined under CERCLA, or petroleum releases remaining on USACE property from historic operations for which an evaluation or response action is indicated under law or regulation. See Chapter 13. It does not include releases previously investigated or cleaned up; de minimis losses of hazardous substances during use; areas where hazardous materials have been used but not disposed; or permitted releases. [Note: The term "legacy contamination" is not intended to capture the universe of USACE CW environmental liability.]

Management Practice

In the context of environmental compliance assessments, a "management practice" is a recommendation made to enhance environmental performance or which is required by USACE policy, but which is not required by law or regulation. "Management practices" are not "findings", but may be included as written recommendations in environmental compliance assessments reports.

Potentially Responsible Party (PRP)

The term PRP, is the term commonly used for covered persons under CERCLA 107, refers to all current owners and operators; all past owners and operators at the time of disposal; all

persons who arranged for the treatment or disposal at a facility of hazardous substances or pollutants or contaminants they owned or possessed; and all persons who transported hazardous substances or pollutants or contaminants to the facility for treatment or disposal, if they helped select the receiving facility. Though technically not a PRP under the CERCLA definition, parties that are responsible for contamination cleanup due to a contractual instrument are referred to as PRPs by USACE and treated similarly to CERCLA PRPs.

*Preliminary Assessment (PA)*¹⁵

A PA is a term established under CERCLA, to refer to a review of existing information and site reconnaissance, if appropriate, to determine if a release may require additional investigation or action. The PA phase does not involve site sampling.

Regional Assessment Team System (RATS)

RATS is a term used to refer to exchange of teams between Districts or Divisions for purposes of completing external environmental compliance assessments.

*Site Inspection (SI)*¹⁶

SI is a term established under CERCLA, to refer to an on-site investigation to determine whether there is a release or potential release and the nature of the associated threats. The purpose is to augment the data collected during the PA and to generate, if necessary, sampling and other field data to determine if further action or investigation is appropriate. The SI phase typically involves limited sampling to confirm or deny the presence of contamination, not to fully identify the nature and extent of contamination.

The Environmental Assessment Manual/Environmental Review Guide for Operations (TEAM/ERGO) TEAM/ERGO is the term used for reference manuals used for conducting environmental compliance assessments. They are updated regularly and made available via FedCenter.

¹⁵ See 40 CFR 300.5 and 300.420(b).

¹⁶ See 40 CFR 300.5 and 300.420(c).

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