



Department of Defense **INSTRUCTION**

NUMBER 4715.06

May 4, 2015

Incorporating Change 2, August 31, 2018

USD(A&S)

SUBJECT: Environmental Compliance in the United States

References: See Enclosure 1

1. **PURPOSE.** In accordance with the authority in DoD Directive (DoDD) 5134.01 (Reference (a)) and the guidance in DoDD 4715.1E (Reference (b)), this instruction:
 - a. Reissues DoD Instruction (DoDI) 4715.6 (Reference (c)) to establish policy, assign responsibilities, and provide procedures for achieving and maintaining environmental compliance in the United States.
 - b. Designates DoD Components as lead agents to provide management of key DoD environmental issues.
 - c. Authorizes the publication of issuances to support the DoD environmental compliance program in accordance with the guidance in DoDI 5025.01, DoDI 4715.27, and DoD Manual 4715.06 (References (d), (e), and (f)).
2. **APPLICABILITY.** This instruction:
 - a. Applies to:
 - (1) OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this instruction as the “DoD Components”).
 - (2) All DoD operations, activities, and military installations in the United States, including government-owned, contractor-operated facilities, that are subject to environmental compliance laws including, but not limited to, requirements of:

(a) Sections 7401-7671(q) of Title 42, United States Code (U.S.C.), also known as the Clean Air Act and referred to in this instruction as the “CAA” (Reference (g)).

(b) Sections 1251-1387 of Title 33, U.S.C., also known as the Clean Water Act and referred to in this instruction as the “CWA” (Reference (h)).

(c) Sections 300f-300j-26 of Reference (g), also known as the Safe Drinking Water Act and referred to in this instruction as the “SDWA.”

(d) Sections 6901-6992(k) of Reference (g), also known as the Resource Conservation and Recovery Act and referred to in this instruction as the “RCRA.”

(e) Sections 2601-2692 of Title 15, U.S.C., also known as the “Toxic Substances Control Act” (Reference (i)).

b. Does not apply to:

(1) Environmental compliance outside the United States. In the case of enduring installations, this is addressed in DoDI 4715.05 (Reference (j)).

(2) With the exception of the requirements in References (e) and (f), the operations of U.S. military vessels and aircraft, at-sea training and testing activities, and off-installation operational and training deployments. Such excepted operations, deployments, and training and testing activities will be conducted in accordance with other DoD issuances and environmental compliance requirements incorporated into environmental management annexes (e.g., Joint Publication 4-04 (Reference (k))) and with all federal and State permits, consultation, and other applicable environmental requirements.

(3) The civil works function of the U.S. Army Corps of Engineers.

(4) Facilities and activities associated with the Naval Nuclear Propulsion Program in accordance with Executive Order (E.O.) 12344 (Reference (l)) and section 7158 of Reference (g).

3. POLICY. It is DoD policy that:

a. Environmental programs in the DoD achieve, maintain, and monitor compliance with all applicable environmental requirements. This includes compliance with requirements in statutorily mandated or authorized documents such as environmental permits, judicial decrees, and consent or environmental compliance agreements.

b. The DoD plan, program, and budget to achieve and maintain compliance with applicable environmental requirements and DoD environmental compliance policy in accordance with DoD 7000.14-R (Reference (m)).

c. DoD generation and release of pollutants, and the adverse effects on human health and the environment they cause, will be minimized.

d. Pollution prevention is the preferred means for attaining compliance.

e. DoD will implement the environmental management system (EMS) at appropriate facilities to achieve DoD environmental goals in accordance with DoDI 4715.17 (Reference (n)).

f. DoD will pay reasonable fees or service charges to State and local governments for compliance costs or activities, except when the supporting legal office determines that such fees are:

(1) Discriminatory in either application or effect.

(2) Used for a service denied to a federal agency.

(3) Assessed in accordance with a statute in which federal sovereign immunity has not been waived.

(4) Disproportionate to the intended service or use.

(5) Determined to be a State or local tax.

(6) Determined not to meet the criteria contained in Enclosure 7 of this instruction.

g. Internal and external compliance self-assessments are conducted at military installations.

h. The use of DoD military installations for the storage or disposal of non-DoD-owned toxic or hazardous materials is prohibited, except as allowed pursuant to section 2692 of Title 10, U.S.C. (Reference (o)).

i. All military and civilian DoD personnel will receive necessary and appropriate education regarding applicable environmental requirements through training, career development, and awareness programs

j. Military installations located in unorganized U.S. territories that are not subject to a U.S. environmental law of general application will nevertheless comply with the substantive requirements of that law.

k. U.S. military installations, as defined in the Glossary, must implement the reporting requirements of chapter 116 of Reference (g), also known and referred to in this instruction as the "Emergency Planning and Community Right-to-Know Act (EPCRA)" in accordance with applicable E.O.s (e.g., E.O 13693 (Reference (p)) and DoD guidance.

l. Reliance on class I and II ozone-depleting substances (ODS) will be eliminated under the authority of Reference (p) and subpart 223.8 of the Defense Federal Acquisition Regulation

Supplement (Reference (q)). Instructions for implementing Reference (p) are available at http://www.whitehouse.gov/sites/default/files/omb/procurement/green/eo13423_instructions.pdf.

4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES. See Enclosure 3.

6. INFORMATION COLLECTION REQUIREMENTS. Environmental compliance programs data requirements of the Environmental Management Information collection, referred to in paragraph 5f of Enclosure 2 and Enclosure 6 of this instruction, have been assigned report control number DD-AT&L(A,AR)2577 in accordance with the procedures in Volume 1 of DoD Manual 8910.01 (Reference (r)).

7. RELEASABILITY. **Cleared for public release.** This instruction is available on the Directives Division Website at <http://www.esd.whs.mil/DD/>.

8. SUMMARY OF CHANGE 2 This change reassigns the office of primary responsibility for this instruction to the Under Secretary of Defense for Acquisition and Sustainment in accordance with the July 13, 2018 Deputy Secretary of Defense Memorandum (Reference (s)).

9. EFFECTIVE DATE. This instruction is effective May 4, 2015.



Frank Kendall
Under Secretary of Defense for
Acquisition, Technology and Logistics

Enclosures

1. References
2. Responsibilities
3. Procedures
4. Environmental Compliance Metrics
5. Lead Agents for Environmental Compliance
6. Environmental Compliance Data Requirements
7. CWA Stormwater Reasonable Fee Determination Guidance

Glossary

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REFERENCES

- (a) DoD Directive 5134.01, "Under Secretary of Defense for Acquisition, Technology, and Logistics ((USD)AT&L)," December 9, 2005, as amended
- (b) DoD Directive 4715.1E, "Environment, Safety, and Occupational Health (ESOH)," March 19, 2005
- (c) DoD Instruction 4715.6, "Environmental Compliance," April 24, 1996 (hereby cancelled)
- (d) DoD Instruction 5025.01, "DoD Issuances Program," August 1, 2016, as amended
- (e) DoD Instruction 4715.27, "DoD Low-Level Radioactive Waste (LLRW) Program," July 7, 2017
- (f) DoD Manual 4715.06, "Regulations on Vessels Owned or Operated by the Department of Defense," date varies by volume
- (g) Title 42, United States Code
- (h) Title 33, United States Code
- (i) Title 15, United States Code
- (j) DoD Instruction 4715.05, "Environmental Compliance at Installations Outside the United States," November 1, 2013
- (k) Joint Publication 4-04, "Joint Doctrine for Civil Engineering Support," current edition
- (l) Executive Order 12344, "Naval Nuclear Propulsion Program," February 1, 1982
- (m) DoD 7000.14-R, "Department of Defense Financial Management Regulation (DoD FMR)," date varies by volume
- (n) DoD Instruction 4715.17, "Environmental Management Systems," April 15, 2009
- (o) Title 10, United States Code
- (p) Executive Order 13693, "Planning for Federal Sustainability in the Next Decade," March 25, 2015
- (q) Defense Federal Acquisition Regulation Supplement, Subpart 223.8, "Ozone-Depleting Substances," current edition
- (r) DoD Manual 8910.01, Volume 1, "DoD Information Collections Manual: Procedures for DoD Internal Information Collections," June 30, 2014, as amended
- (s) Deputy Secretary of Defense Memorandum, "Establishment of the Office of the Under Secretary of Defense for Research and Engineering and the Office of the Under Secretary of Defense for Acquisition and Sustainment," July 13, 2018
- (t) DoD Instruction 4715.02, "Regional Environmental Coordination," August 28, 2009
- (u) DoD Manual 4160.21, "Defense Materiel Disposition," October 22, 2015
- (v) DoD Manual 4140.01, "DoD Supply Chain Materiel Management Procedures," dates vary by volume
- (w) DoD Instruction 6050.05, "DoD Hazard Communication (HAZCOM) Program," August 15, 2006
- (x) Title 40, Code of Federal Regulations
- (y) Office of Legal Counsel, Department of Justice, Legal Opinion Memorandum, "Reimbursement or Payment Obligation of the Federal Government Under Section 313(c)(2)(B) of the Clean Water Act," February 25, 2011¹

¹ Available at <http://www.justice.gov/olc/opiniondocs/stormwater-cardin-bill.pdf>

- (z) United Nations Environment Programme, “The Montreal Protocol on Substances that Deplete the Ozone Layer,” current edition²
- (aa) Centers for Disease Control, “Recommendations for Using Fluoride to Prevent and Control Dental Caries in the United States,” April 17, 2001³

² Available at http://ozone.unep.org/new_site/en/montreal_protocol.php

³ Available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5014a1.htm>

ENCLOSURE 2

RESPONSIBILITIES

1. ASSISTANT SECRETARY OF DEFENSE FOR ENERGY, INSTALLATIONS, AND ENVIRONMENT (ASD(EI&E)). Under the authority, direction, and control of the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)), the ASD(EI&E):

a. Oversees implementation of this instruction, including the use of appropriate metrics, accountability of DoD Component-specific responsibilities, and annual review of the DoD Component compliance programs.

b. Implements the policy in Reference (b) and provides guidance, oversight, advocacy, and representation for environmental compliance programs, to include achieving compliance through pollution prevention initiatives and using the EMS framework in Reference (n).

c. Develops, issues, and reviews environmental compliance goals. In consultation with the DoD Components, approves the metrics established in Enclosure 4 of this instruction for attaining those goals.

d. Establishes environmental compliance priorities, policies, and guidance in consultation with the DoD Components.

e. Communicates with other federal agencies and States, tribal, and local governments on environmental compliance matters of DoD concern. Communications with representatives of the Legislative Branch must be conducted through the Office of the Assistant Secretary of Defense for Legislative Affairs, except for communications with the Defense Appropriations Committees, which will be coordinated with the Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer (USD(C)/CFO).

f. Designates and oversees lead agents for specific environmental compliance-related issues or areas. Current lead agent designations are identified in Enclosure 5 of this instruction.

g. Implements an integrated, coordinated Science and Technology Program to address environmental compliance requirements with science and technology developments.

2. DIRECTOR, DEFENSE LOGISTICS AGENCY (DLA). In addition to the responsibilities in section 5 of this enclosure, and under the authority, direction, and control of the Assistant Secretary of Defense for Logistics and Materiel Readiness, the Director, DLA:

a. In coordination with the other DoD Components, develops criteria and procedures for the disposal of DoD-generated hazardous materials and wastes.

b. Operates and manages the DoD ODS Reserve for mission-critical weapon systems. DLA's role as central manager of the DoD ODS Reserve includes management of turn-in, storage, reclamation, and issuance of mission-critical class I and II ODS to the Military Services and the U.S. Coast Guard in support of U.S. military weapons systems worldwide. The DoD ODS Reserve establishes and maintains procedures governing the operation of the Reserve for class I and II ODS as part of the DoD efforts to comply with Reference (p).

3. USD(C)/CFO. The USD(C)/CFO provides fiscal policy and guidance to plan, budget, and execute environmental requirements and comply with Office of Management and Budget processes throughout the DoD.

4. GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE (GC DoD). Through the Deputy General Counsel for Environment, Energy, and Installations, the GC DoD:

a. Provides authoritative legal advice and counsel on matters covered by this instruction.

b. Is the legal adviser to all committees, work groups, and other similar organizations formed in accordance with this instruction.

c. Reviews and approves, in advance, all requests for legal advice and opinions to other federal agencies outside the DoD on matters covered by this instruction.

5. DoD COMPONENT HEADS. The DoD Component heads:

a. Direct compliance with this instruction and require tenant activities to work cooperatively with the host military installation to comply with this instruction.

b. Implement programs to achieve, maintain, and monitor compliance with applicable environmental requirements. Use the EMS framework in accordance with Reference (n), the pollution prevention hierarchy (see paragraph 2.i. of Enclosure 3 of this instruction), and sustainable practices to meet this responsibility.

c. Plan, program, and budget for compliance with this instruction and DoD policy.

d. Consult with the Chairman of the Joint Chiefs of Staff and the appropriate Combatant Commanders on issues involving compliance with environmental requirements that may affect or impact readiness and the ability to support military operations.

e. Provide support and representation to the DoD lead agent program identified in Enclosure 5 of this instruction.

f. Collect data on the effectiveness of environmental compliance programs and report annually to ASD(EI&E) using the metrics established in Enclosure 4 and the reporting requirements explained in Enclosure 6 of this instruction.

g. Raise emerging DoD compliance issues to the ASD(EI&E) either through the lead agents identified in Enclosure 5 of this instruction or directly, if a lead agent is not identified. For regional compliance concerns, consult with DoD regional environmental coordinators in accordance with DoDI 4715.02 (Reference (t)).

h. Promptly notify the ASD(EI&E) of significant environmental events within the Component.

i. Require all major installations to conduct internal compliance self-assessments at least annually, and external compliance self-assessments at least once every 3 years. Schedules for other military installations will be determined by the responsible DoD Component. Compliance self-assessments can be done in conjunction with EMS audits in accordance with Reference (n).

j. Follow criteria and procedures in accordance with DoD 4160.21 Manual (Reference (u)) for disposal of hazardous material and hazardous wastes (HWs).

k. Collaborate on innovative environmental research and development technologies, and coordinate, through the ASD(EI&E), on the development of partnerships with federal agencies, government laboratories, States, tribal, and local governments, and the private sector.

l. Minimize emissions of greenhouse gases in accordance with Reference (p).

m. Require that all documents described in section 4 of this enclosure are routed for review and advance approval through the GC DoD.

6. DoD COMPONENT HEADS DESIGNATED AS LEAD AGENTS. DoD Component heads designated as lead agents provide management and leadership in meeting the responsibilities of a lead agent for specific environmental compliance-related areas when designated by ASD(EI&E) in accordance with paragraph 1f of this enclosure. Lead agent designations and their responsibilities are listed in Enclosure 5 of this instruction.

7. SECRETARY OF THE ARMY. In addition to the responsibilities in section 5 of this enclosure, the Secretary of the Army, in coordination with the other DoD Component heads, updates the compliance self-assessment program checklist and guide for DoD to support paragraph 5i of this enclosure.

ENCLOSURE 3

PROCEDURES

1. INTRODUCTION. These procedures are for implementing compliance responsibilities related to pollution prevention, partnering, and specific regulatory requirements.

2. DoD COMPONENTS. In accordance with this instruction, the DoD Components:
 - a. Minimize the use, release, and disposal of toxic and hazardous materials. Use a lifecycle approach that considers the selection, management, use, and disposal of toxic or hazardous chemicals in all of its operations. Use the supply chain procedures in DoD Manual 4140.01 (Reference (v)) and the disposition procedures in Reference (u).

 - b. Identify and implement efficiencies to reduce compliance costs and simplify requirements to the maximum extent possible.

 - c. Use cooperative solutions to provide needed environmental facilities or services (e.g., waste storage, collection, and disposal facilities or services, and water supply or wastewater treatment works) where economically advantageous and consistent with mission requirements. Shared solutions may include working with other DoD military installations, other federal agencies, or public and private entities when consistent with section 2692 of Reference (o). This may include, when otherwise authorized, transfer of ownership through contractual agreements to municipal or private sources to provide such services.

 - d. Participate in the development of federal, States, tribal, regional and local plans and programs that achieve, maintain, and enhance environmental quality (e.g., watershed protection and management plans, and air quality implementation plans).

 - e. Use commercially proven solutions to achieve, maintain, and monitor compliance. Promote the development and use of innovative solutions for the prevention of pollution where economically advantageous and consistent with mission requirements.

 - f. As soon as circumstances allow, but no later than required by law, report to regulators all information required by applicable statutes, regulations, permits, orders, and agreements.

 - g. Promptly correct any environmental violations discovered.

 - h. Use supplemental environmental projects (SEPs), preferably those involving pollution prevention features, to offset fines and penalties, where appropriate and allowed by fiscal law.

 - i. Use the following pollution prevention hierarchy to develop environmental compliance solutions while protecting, preserving, restoring, and enhancing the quality of the environment.

(1) Prevent pollution at the source, focusing on elimination or substitution of materials early in the acquisition process.

(2) Reuse materials that cannot be eliminated.

(3) Recycle materials that cannot be reused.

(4) Treat pollution that cannot be eliminated or recycled.

(5) Dispose or release pollution into the environment only as a last recourse and only where such disposal or release can be controlled and conducted in a manner that is safe and consistent with applicable legal requirements.

(6) Consider waste-to-energy alternatives before disposal, where shown to be practical, environmentally beneficial, and allowed by State or locality.

j. Following the guidance in Enclosure 7 of this instruction, consult with appropriate legal counsel to determine whether an assessment for stormwater management in accordance with the CWA is payable as a legitimate fee or should be refused as an impermissible tax.

k. Provide oversight to confirm facilities' operations optimize fluoridation at DoD-owned or -operated community water systems serving more than 3,300 persons.

3. DoD MILITARY INSTALLATIONS. The DoD military installations:

a. Must determine if reporting is needed in accordance with the various EPCRA sections (see Chapter 116 of Reference (g) and Reference (p)). If reporting is needed, submit the report to all applicable EPCRA authorities and meet the deadline for submission.

b. Must apply the EPCRA definition of "facility" to assess EPCRA section 313 applicability, including threshold quantities for chemical releases. EPCRA section 313 reporting from operational range activities must be tracked separately from the main military installation, as operational ranges are not included in toxic chemical release reduction goals.

c. Are not required to comply with State and local right-to-know requirements, and must not pay for State and local right-to-know requirements such as implementation plans. National Guard installations should consult with their legal offices to determine if they are required to comply with State and local right-to-know requirements and for a determination of appropriate fees paid to State or local governments and reporting requirements for State and local planning.

d. Must not report any EPCRA information on publicly available websites that may pose a security concern or create a threat to critical infrastructure.

e. Must implement information and management controls that minimize the use of hazardous materials, and obtain product hazard data in accordance with DoDI 6050.05 (Reference (w)) and section 2222 of Reference (o).

f. Must maintain an HW minimization program to reduce volume and toxicity of waste generated, in accordance with section 6922(b) of Reference (g) and section 2222 of Reference (o).

ENCLOSURE 4

ENVIRONMENTAL COMPLIANCE METRICS

These metrics are indicators to help determine DoD military installation compliance with environmental requirements:

- a. Clean Air. Emissions of criteria pollutants and hazardous air pollutants (HAPs).
- b. Clean Water. Percentage of regulated water pollution control discharge permits in compliance with applicable requirements.
- c. Safe Drinking Water. Percentage of DoD population served by DoD public water systems (PWSs) that meet established health-based drinking water standards.
- d. HW. Reductions in HW disposed off-site and treated on-site.
- e. Enforcement Actions. Number of enforcement actions received from local, State, and federal environmental regulators.
- f. Environmental Permits. Number of environmental permits by statute.
- g. Fines and Penalties. Dollar amount of fines and penalties assessed and paid.
- h. Significant Non-compliance (SNC). Military installations on the Environmental Protection Agency's (EPA's) SNC list.

ENCLOSURE 5LEAD AGENTS FOR ENVIRONMENTAL COMPLIANCE

1. DoD Components serving as lead agents perform the responsibilities or functions related to a specific environmental program area or issue. Current lead agents are listed in the Table.

Table. Current Lead Agents for Environmental Compliance

Environmental Area	Lead Agent
CAA	Navy
CWA	Navy
Low-level Radioactive Waste	Army
National and Regional Response Team	Navy
RCRA	Army
SDWA	Air Force

2. Lead agent functions include:

a. Assist the ASD(EI&E) with coordination, management, and implementation of key environmental program areas or issues.

b. Organize and chair appropriate DoD Component steering committees and meetings necessary to facilitate lead agent responsibilities or resolve pending issues.

c. Develop operating principles for consideration by the ASD(EI&E) as necessary.

d. Coordinate lead agent activities with the Office of the ASD(EI&E), other DoD Components, and DoD regional environmental coordinator offices, as appropriate.

e. Track regulatory activity; identify their budget impact, if possible; and prepare, coordinate with the ASD(EI&E) and other DoD Components, and submit comments to appropriate regulatory authorities, as necessary.

f. Recommend policy and implementing guidance to the ASD(EI&E).

g. Report, as requested, on program areas to the ASD(EI&E).

h. Track legislation and significant and emerging issues.

i. Plan, program, and budget for serving as lead agent.

3. In addition to the functions in section 2 of this enclosure, the CAA lead agent, through their Service's steering committee, will develop ODS program recommendations for DoD Components to include:

- a. Turn-in of used and excess ODS and its eventual disposition in accordance with the procedures in Reference (u).
- b. Eliminating reliance on ODS.
- c. Providing estimates for ODS requirements that DLA will use in accordance with section 2 of Enclosure 2 of this instruction.
- d. Minimizing emissions of ODS in accordance with the requirements of part 82 of Title 40, Code of Federal Regulations (Reference (x)).

ENCLOSURE 6

ENVIRONMENTAL COMPLIANCE DATA REQUIREMENTS

DoD Components will provide the following data (in accordance with section 5f of Enclosure 2 of this instruction) as part of the annual environmental management information review by the ASD(EI&E):

a. Air Emissions. Provide air emissions data for the previous calendar year from stationary sources.

(1) Criteria Pollutant Emissions. In tons per year.

(a) Ozone. Reported as volatile organic compounds and nitrogen oxides.

(b) Particulate matter (PM).

1. 2.5 microns (PM-2.5).

2. 10 microns (PM-10).

(c) Nitrogen dioxides. Reported as nitrogen oxides.

(d) Sulfur dioxide.

(e) Carbon monoxide.

(f) Lead.

(2) HAPs. One total number in tons per year.

b. Clean Water. Provide clean water permit data on a fiscal year (FY) basis.

(1) Data

(a) Total number of water pollution control permits.

(b) Number of water pollution control permits in compliance with applicable requirements.

(2) Data Element Descriptions

(a) Water Pollution Control Permit Criteria. For this data requirement, a water pollution control permit is an authorization, license, or equivalent control document issued by the

EPA or a State or local agency to control pollutant discharges into waters of the United States or to a wastewater treatment plant. Permit applicability determination is as follows:

1. Included are permits for domestic wastewater, industrial wastewater and stormwater discharges, and wastewater discharges to publicly owned treatment works. For the purposes of this clean water data requirement, only report permits that have received final regulatory agency action, not draft or proposed permits.

2. Not included are:

a. Stormwater construction permits.

b. CWA permits for wetlands, dredging, sludge, or non-construction-related sediment and erosion control activities covered in sections 401, 403, 404, and 405 of Reference (h).

c. CWA permits for discharges of pesticides into waters of the United States.

d. Permits for the operation of wastewater collection systems.

(b) CWA Compliance Issues Determination. For the purposes of the DoD clean water metric data (see paragraph b(1)(b) of this section), if a facility answers “yes” to any of the questions in paragraphs b(2)(b)1 through b(2)(b)8 of this section, they are considered to have reportable compliance issues. During the reporting period, has the facility:

1. At any given discharge point, exceeded the same effluent limit for any 2 or more consecutive months or more than 3 months during the FY?

2. Had any prohibited bypass event, unpermitted discharge, or pass-through of pollution to a water body?

3. Failed to comply with permit requirements or special provisions within 90 days of the scheduled due date outlined in the permit?

4. Failed to submit a required report on time?

5. Received an enforcement action or failed to resolve or correct a condition from a previous enforcement action?

6. Failed to meet the requirements or schedule of a signed compliance agreement?

7. Failed to develop or implement a required program or plan, such as a stormwater pollution prevention plan or pretreatment program?

8. Failed to satisfy sampling, monitoring, or testing requirements?

c. Safe Drinking Water. Provide safe drinking water data on an FY basis.

(1) Data

(a) DoD Population Served by Regulated DoD PWSs

1. Total population.
2. Total population that received water that did not attain one or more health-based drinking water standards in accordance with the SDWA.
3. Total population that received water meeting all SDWA (health-based) standards. To determine this amount, the amount found in paragraph c(1)(a)2 is subtracted from the amount from paragraph c(1)(a)1 of this section.
4. Percentage of the population that received water meeting all SDWA health-based drinking water standards during the reporting period.

(b) DoD Population Served by Other DoD PWSs

1. Total population.
2. Total population that received notification that one or more health-based drinking water standards in accordance with the SDWA were not attained by their water supplier.
3. Total population that received water meeting all SDWA health-based drinking water standards. To determine this amount, the amount found in paragraph c(1)(b)2 is subtracted from the amount from paragraph c(1)(b)1 of this section.
4. Percentage of the population that received water meeting all SDWA health-based drinking water standards during the reporting period.

(c) Sum of DoD Population

1. Total population that received water that did not attain SDWA health-based drinking water standards.
2. Percentage of the total DoD population that received water meeting SDWA health-based drinking water standards.

(2) Data Element Descriptions

(a) DoD PWS. For this data requirement, a DoD PWS that provides drinking water to a fixed installation controlled by DoD is delineated as “regulated” or “other”. A “regulated”

DoD PWS is where the PWS is owned by DoD and “other” DoD PWS is where drinking water is provided to DoD by a non-DoD owned PWS in accordance with section 300f(4) of Reference (g).

(b) Health-based Drinking Water Standards. If drinking water standards are not met, there is the potential for health-based risks. Applicable standards are issued for specific contaminants and criteria in accordance with part 141 of Reference (x), also known as the National Primary Drinking Water Regulations, as authorized by the SDWA or equivalent State or local statutory requirements, having a prescribed maximum contaminant level (MCL), maximum residual disinfectant level (MRDL), or treatment technique (TT).

1. When a DoD PWS has a documented violation of an MCL, MRDL, or the prescribed TT, the entire system is considered to be in violation of the standard unless the violation is only in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, and the primacy agency allows the system to limit distribution of the public notice resulting from the violation to only persons served by that portion of the distribution system that is out of compliance.

2. Sample results that trigger established action levels in accordance with the SDWA are not considered violations of health-based drinking water standards because the action levels trigger additional actions that must be taken for a water system to be found compliant.

3. If there is no documented MCL, MRDL, or TT violation, but one or more of the situations described in paragraphs c(2)(a)3a through c(2)(a)3g of this section apply, the system is considered to be in violation of drinking water standards with potential health-based effects.

a. Fecal coliform MCL violation or failure to test for fecal contamination after a total coliform test is positive.

b. Nitrate, nitrite, or combined nitrate and nitrite MCL violation or failure to take a confirmation sample.

c. Chlorine dioxide MRDL violation in the distribution system or failure to take repeat samples in the distribution system.

d. Exceedance of maximum allowable turbidity level resulting in an MCL or TT violation, when the State or EPA determines an SDWA Tier I notice is warranted.

e. Special public notice for non-community water systems with nitrate exceedances between 10 milligrams per liter (mg/l) and 20 mg/l, when allowed to exceed the MCL of 10 mg/l by the State.

f. Waterborne disease outbreak or other waterborne emergency.

g. Other violations, including monitoring violations determined by the primacy agency to require an SDWA Tier I or Tier II public notification.

(c) Other DoD PWS. A DoD PWS that is either a privatized system or meets all these exemption criteria:

1. Receives its water from another regulated PWS.
2. Does not provide any additional treatment to the water.
3. Does not sell any of the water it receives.
4. Does not supply the water to commercial carriers conveying passengers in interstate commerce.

(3) Additional Reporting Requirements. Provide a description of the nature and estimated duration of each instance the DoD Component did not attain a health-based drinking water standard that occurred during the reporting period. The description should include name and location of the military installation, nature of the issue, DoD population affected, duration of the issue, corrective actions taken or planned, and estimated date for achieving the standard.

d. HW Disposal

(1) Data. At the DoD Component level, provide the amount of all HW, in thousands of pounds, on an FY basis.

- (a) Shipped off-site.
- (b) Treated on-site.

(2) Data Element Descriptions

(a) HW Shipped Off-Site. For reporting purposes of this metric, HW shipped off-site includes HW, as defined by RCRA, but is limited to that HW that requires an EPA or State manifest and to universal waste that does not require a manifest. It does not include construction or demolition wastes such as asbestos or lead contaminated debris, unless regulated by States as HW in accordance with RCRA authority. These are examples of HW shipped off-site that should be included when shipped off the military installation using a manifest:

1. State regulated HW.
2. Spill-related HW (from ongoing activities and exceeding State contaminant thresholds).
3. Remediation HW.

4. HW manifested for recycling (e.g., spent solvent recycling).

(b) HW Treated On-site. All HW treated or disposed in a RCRA permitted, or interim status, treatment or disposal facility located on a DoD military installation. This includes all HW treated or disposed on-site and included in the RCRA biennial or State HW report, including both conventional and chemical munition demilitarization wastes. Do not include wastes excluded:

1. By subparts 261.5(c) and 261.5(d) of Reference (x). Specifically, wastes treated in an on-site wastewater treatment plant should not be included.

2. From RCRA treatment permitting requirements by subpart 264.1(g)(6) of Reference (x).

e. Enforcement Actions. Provide compliance enforcement action data on an FY basis for:

(1) Number of new enforcement actions received by statute:

(a) CAA.

(b) CWA.

(c) RCRA, subtitle C for HW.

(d) RCRA, subtitle I for underground storage tanks.

(e) RCRA, subtitle D for solid waste.

(f) SDWA.

(g) Other.

(2) Number of open enforcement actions received by category:

(a) Administrative enforcement actions.

(b) Project-related enforcement actions.

(3) Number of closed enforcement actions.

(4) Number of regulatory inspections conducted by federal, State, and local governments.

f. Environmental Permits by Statute. Provide the number of environmental permits, by statute and media, received on an FY basis for:

- (1) CAA, Title V.
- (2) CWA.
- (3) RCRA, subtitle C, part B.
- (4) RCRA, subtitle C, part B applications pending approval and in interim status.
- (5) RCRA, subtitle I for underground storage tanks.
- (6) RCRA, subtitle D for solid waste.
- (7) SDWA.
- (8) Other.

g. Fines and Penalties Assessed in an FY. Provide FY data for federal, State, and local:

- (1) Fines assessed.
- (2) Fines paid, including monetary and non-monetary penalties and SEPs.

h. SNC. Provide the number of military installations on the EPA's SNC list as of the end of the FY, including the cause for the SNC and actions taken to correct the SNC. The EPA Enforcement and Compliance History Online database, found at <https://echo.epa.gov>, provides guidance on SNCs for various media.

ENCLOSURE 7

CWA STORMWATER REASONABLE FEE DETERMINATION GUIDANCE

1. The guidance in this enclosure will be used in consultation with appropriate legal counsel to determine whether an assessment for stormwater management in accordance with the CWA is payable as a legitimate fee or should be refused as an impermissible tax. This guidance has no application to payments of assessments in accordance with other laws. Section 1323(c) of the Reference (h) amendment has two general effects:

a. Section 1323(c)(1) of Reference (h) explains what constitutes a reasonable service charge for purposes related to stormwater runoff.

(1) For stormwater charges, the reasonable service charge must meet the criteria in paragraphs 1a(1)(a) through 1a(1)(g) of this section, regardless of whether the fee, charge, or assessment is or is not denominated a tax. These criteria may, in any particular case, expand or contract what qualifies as a reasonable service charge for purposes of stormwater runoff. The service charge:

(a) Must relate to the control and abatement of water pollution.

(b) Must be reasonable.

(c) Must be nondiscriminatory.

(d) Must be based on some fair approximation of the proportionate contribution of the property or facility to stormwater pollution.

(e) Must be measured in terms of quantities of pollutants, or volume or rate of stormwater discharge or runoff from the property or facility.

(f) Must be used to pay or reimburse the costs associated with any stormwater management program, whether associated with a separate storm sewer system or a sewer system that manages a combination of stormwater and sanitary waste.

(g) May include the full range of programmatic and structural costs attributable to collecting stormwater, reducing pollutants in stormwater, and reducing the volume and rate of stormwater discharge.

(2) Waivers of sovereign immunity, such as that contained in section 1323(c)(1) of Reference (h), are fact specific in application (i.e., it is difficult to fashion a general conclusion as to whether individual service charges fit within the statutory definition and are or are not payable). That caution may be even more applicable in the case of section 1323(c)(1) of Reference (h), since it is significantly more detailed than are references to reasonable service charges found in other waivers of sovereign immunity, as well as the general waiver found in

section 1323(a) of Reference (h). Because it adds detail to what would otherwise constitute a reasonable service charge in accordance with section 1323(a) of Reference (h), there are more criteria to apply than is typical in determining whether a specific stormwater charge is a reasonable service charge and payable.

b. Section 1323(c)(2) of Reference (h) addresses matters relating to appropriations law.

2. The concerns relating to section 1323(c)(2) of Reference (h) are addressed in a legal opinion in the Office of Legal Counsel, Department of Justice, Legal Opinion Memorandum (Reference (y)).

a. No stormwater charge should be denied based on the lack of specific appropriations act language.

b. Such charges should be paid, as they have been in the past, using appropriations otherwise available to the DoD. Generally, this will be operation and maintenance appropriations.

c. Section 1323(c) of the Reference (h) amendment is not retroactive in effect. It only applies prospectively to charges with an assessment date (not the payment due date) after the date of enactment, January 4, 2011.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

ASD(EI&E)	Assistant Secretary of Defense for Energy, Installations and Environment
CAA	Clean Air Act
CWA	Clean Water Act
DLA	Defense Logistics Agency
DoDD	DoD directive
DoDI	DoD instruction
E.O.	Executive order
EMS	Environmental Management System
EPA	Environmental Protection Agency
EPCRA	Emergency Planning and Community Right-to-Know Act
FY	fiscal year
GC DoD	General Counsel of the Department of Defense
HAP	hazardous air pollutant
HW	hazardous waste
MCL	maximum contaminant level
mg/l	milligrams per liter
MRDL	maximum residual disinfectant level
ODS	ozone-depleting substances
PM	particulate matter
PWS	public water system
RCRA	Resource Conservation and Recovery Act

SDWA	Safe Drinking Water Act
SEP	supplemental environmental project
SNC	significant non-compliance
TT	treatment technique
U.S.C.	United States Code
USD(AT&L)	Under Secretary of Defense for Acquisition, Technology, and Logistics
USD(C)/CFO	Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purposes of this instruction.

compliance. Adherence to and attainment of all applicable federal, State, tribal, and local regulatory environmental requirements or standards.

compliance self-assessment. An evaluation of the environmental, natural, and cultural resources compliance posture and overall environmental management program. The compliance self-assessment does not include inspections conducted by a regulatory agency. There are two types of self-assessments:

external compliance self-assessments. Inspections or evaluations conducted by designated persons from outside the military installation being inspected.

internal compliance self-assessments. Inspections or evaluations conducted by the military installation personnel or their designees.

criteria pollutants. A group of common air pollutants regulated by the EPA on the basis of health and/or environmental effects. The EPA has currently established six criteria air pollutants as: ozone (as measured by the presence of nitrogen oxides and volatile organic compounds), PM, nitrogen dioxide, sulfur dioxide, carbon monoxide, and lead. Criteria air pollutants are regulated by health-based standards called National Ambient Air Quality Standards.

enforcement action. A formal, written notification by the EPA or other authorized federal, State, tribal, or local environmental regulatory agency of violation of any applicable statutory or regulatory requirement. Enforcement action does not include warning letters or informal notices of deficiencies or notices of deficiencies to permit applications. One written notice, regardless of the number of individual violations, findings, or citation listed in it, counts as one enforcement action. If a written enforcement action cites violations of more than one statutory requirement, it

counts as multiple enforcement actions, one in each of the applicable statutory requirement categories. Items found to be out of compliance during an internal or other DoD Component review, compliance review, or audit, are not included in this definition of enforcement action.

closed enforcement action. An enforcement action that is resolved by:

Revocation of the action by the imposing regulator;

Closure of the action following written notice by the regulator that the action is closed;

Closure of the action, after a reasonable time span, following written notice to the regulator of intent to close an enforcement action; or

Receipt of a signed compliance agreement or order.

open enforcement action. An enforcement action that has been issued but is not yet closed by one of the resolutions described in the definition of closed enforcement action. An open enforcement action is further broken down into two subcategories:

pending enforcement action. An enforcement action for which the deficiencies are corrected, but remain open, pending agreement by the regulator that it is closed.

unresolved enforcement action. An enforcement action for which the deficiencies are not yet corrected.

new enforcement action. Any enforcement action received during the reporting period, even if both received and closed out during the period. The date of an enforcement action is considered the date of the formal written notification.

enforcement actions by category. Categorizes the type of violation received based on whether the correction action requires a project or administrative action.

project-related enforcement action. Violation that requires a facility-related change to correct, regardless of funding level, minor or major construction, or repairs. If a single enforcement action contains both project- and administrative or operational-related violations, show the action as “project related.”

administrative-related enforcement action. Any violation that results from incorrect administrative procedures (e.g., labeling problems, late reporting, improper storage of material and waste, and training.)

environmental requirements. All substantive and procedural environmental requirements provided in applicable federal, State, tribal, and local statutes and regulations, and in applicable E.O.s.

government-owned, contractor-operated. A facility that is owned by the Federal Government but operated by private contractors without direct federal management, although a federal contracting staff may be present.

HAPs. Chemicals that present through inhalation or other routes of exposure, a threat of adverse health effects or adverse environmental effects whether through ambient concentrations, bioaccumulation, or deposition. Common HAPS include benzene, chlorine, and ethylene glycol. These pollutants are regulated by the National Emission Standards for Hazardous Air Pollutants.

major installation. Large and medium installations determined by the Military Service based on their end-of-year real property asset data submission installations table.

military installation. A base, camp, post, station, yard, center, or other activity under the jurisdiction of the DoD, including any leased facility, which is located in the United States.

Montreal Protocol. Refers to the international treaty, “Montreal Protocol on Substances that Deplete the Ozone Layer” (Reference (z)). This treaty is designed to protect the ozone layer in the earth’s atmosphere from depletion by phasing out ozone depleting substances. The treaty was agreed to in 1987 and last revised in 1999. The United States ratified the Montreal Protocol in 1988 and has joined four subsequent amendments.

ODS. The substances controlled internationally in accordance with Reference (z) and nationally in accordance with section 7671 (Title VI) of Reference (g). This includes:

class I substance. Any substance designated as class I in Reference (p), including chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform and any other substance so designated by the EPA by regulation at a later date.

class II substance. Any substance designated as class II in Reference (p), including hydrochlorofluorocarbons and any other substance so designated by the EPA by regulation at a later date.

ODS Reserve. DoD program, managed by DLA, to oversee current and future stock levels of critical ODS’s are maintained for military applications for the life cycle of the equipment. It provides a continuous supply of refrigerants, halons, and solvents to maintain mission-critical weapon system readiness.

optimize fluoridation. The ability to treat drinking water to the optimally adjusted concentrations of fluoride indicated in the Centers for Disease Control national guidelines, “Recommendations for Using Fluoride to Prevent and Control Dental Caries in the United States” (Reference (aa)).

pollution prevention. The identification and reduction or elimination of activities, areas, or processes that create excessive waste products or pollutants. Includes practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw material, energy, water, or other resources.

regulatory inspections during reporting period. All inspections by federal, State, and local regulators not including self-audits or inspections by any DoD entity. Multimedia inspections are considered one inspection for each media area inspected.

SEPs. Environmentally beneficial projects that an alleged violator agrees to undertake in full or partial settlement of an enforcement action, but which the alleged violator is not otherwise legally required to perform. SEPs can play a role in securing significant environmental and economic benefits, and protection of public health and the environment.

significant environmental event. A noteworthy environmental achievement or occurrence, either positive or negative, that may be of interest to or require a timely and appropriate response from the ASD(EI&E) level or above. Such occurrences may involve compliance with environmental statutes, criminal environmental enforcement actions, major oil or chemical emergencies or spills, or assessed fines or penalties over 1 million dollars.

storage. When used in reference to storage of toxic and hazardous waste (as defined in section 2692 of Reference (o)), a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of DoD items, equipment, or facilities.

Tier I and Tier II. Defined in part 1414 of Reference (x).

toxic or hazardous materials. Pollutants that may result in significant harm to human health or the environment including:

Hazardous substances defined in section 9601(14) of Reference (g), also known as the “Comprehensive Environmental Response, Compensation, and Liability Act of 1980.”

Ozone depleting substances designated in accordance with section 7671 of Reference (g).

Toxic chemicals defined in section 11049 of Reference (g).

United States. The several States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, American Samoa, Guam, Midway and Wake Islands, the U.S. Virgin Islands, any other territory or possession of the United States, and associated navigable waters, contiguous zones, and ocean waters of which the natural resources are under the exclusive management authority of the United States.

unorganized U.S. territories. Territories in which Congress has not authorized the local inhabitants to organize civil government. These include Wake, Midway, and Johnston Islands and Palmyra and Kingman Reefs.