



DEPARTMENT OF THE ARMY
UNITED STATES ARMY LEGAL SERVICES AGENCY
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REPLY TO
ATTENTION OF

JALS-EL

20 November 2006

MEMORANDUM FOR HQDA, Assistant Chief of Staff for Installation Management, Office of the Director, Environmental Programs, ATTN: Mr. Joe Tarnopol, 600 Army Pentagon, Washington, DC 20310-0600

SUBJECT: Applicability of Pest Management regulations to RCI property

1. Issue: Various questions have arisen at Fort Benning concerning the Residential Community Initiative (RCI). Whether private sector property management firms (hereinafter RCI partners) must comply with the provisions of Department of Defense Instruction 4150.7, *DoD Pest Management Program*, and Army Regulation 200-5, *Pest Management*. Whether an RCI partner who has leased property from the Army, where the Army maintains ownership of the land, must comply with DODI 4150.7 and AR 200-5 pesticide applicator certification requirements. Whether there is a distinction between application of pesticides solely within RCI-owned buildings or also outside the buildings on Army-owned lands. Whether an Army installation has any responsibility vis-à-vis lessees to enforce or report State and Federal law concerning pesticide management. A related question arose at Fort Belvoir, as to whether AAFES must comply with DODI 4150.7 and AR 200-5 on RCI leased property.

2. BLUF: AR 200-5 and DODI 4150.7 are not applicable to RCI property management firms (RCI partners) or RCI owned or leased property. RCI partners must comply with EPA or EPA-approved State certification requirements. There is no distinction based on whether the application of restricted-use pesticides will be done solely within RCI-owned buildings or also outside the buildings on Army-owned lands leased to the RCI partner. The Army has no direct responsibility to enforce Federal or State laws related to pesticide application or to report violations thereof. However, installation commanders continue to be responsible for the health and safety of the military community and for ensuring installation compliance with federal, state and local laws. Installation commanders should ensure RCI partners satisfy applicable pest management requirements through provisions in the ground lease and allied documents. DoD tenants such as AAFES must comply with DODI 4150.7 and AR 200-5 when conducting pesticide application or management activities on leased RCI property.

3. Analysis:

a. Army Regulation 200-5 is applicable to: "Tenant and supported activities (to include other Federal agencies), contractor activities, lessees and all other performing activities in direct support of the Army located on real property under Army jurisdiction."¹ The regulation's

¹ AR 200-5, Preamble, Applicability, para. a(6).

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glossary defines lessees as “commercial activities (for example, retail establishments and agricultural leases)...” This language seems to apply to RCI partners, which are commercial activities operating on Army installations similar to agricultural leases. However, as the proponent of AR 200-5, the Assistant Chief of Staff of the Army for Installation Management (ACSIM) has authority to except activities from the application of the regulation consistent with controlling law and regulation. IAW ACSIM policy, AR 200-5 does not apply to installation management pest control activities on RCI properties.² This is consistent with DODI 4150.7.

b. Unlike AR 200-5, DODI 4150.7 does not state in clear terms that it applies to lessees. Instead, it “[a]pplies to all DoD operations, activities, and installations worldwide including appropriated fund activities; non-appropriated fund activities; contracted activities; and Government-owned, contractor-operated facilities.”³ An RCI partner does not fall within any of the stated categories. The DODI goes on to say it “[a]pplies to all DoD buildings, structures, lands, public works, equipment, aircraft, vessels, and vehicles.”⁴ This is a broad property-based statement of applicability. However, RCI property is subject to a leasehold interest and is not subject to DoD control except as stated in the ground lease and other agreements between the parties. The geographical parameters of the leasehold should be clearly articulated in the ground lease. DODI 4150.7 and AR 200-5 do not apply to DoD land included in the leasehold.

c. The non-applicability of DODI 4150.7 and AR 200-5 to RCI property makes sense in light of the Congressional intent behind RCI. Congress authorized the housing privatization program to give DoD flexibility to provide quality housing for military personnel, while shifting maintenance responsibility and costs to RCI partners.⁵ This is reflected in the statutory requirement that RCI partners must reimburse DoD for DoD-provided utilities and services such as pest management.⁶

d. RCI partners are not directly subject to DoD and Army Pest Management Programs. However, they must comply with all applicable federal, state and local laws and regulations, including the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)⁷ and implementing regulations.⁸ RCI applicators of restricted-use pesticides must be certified or supervised by certified personnel in accordance with EPA regulations or EPA-approved State regulations.

² ACSIM Memorandum, dated 3 Oct 03, SUBJECT: Installation Management of Pest Control Activities on Residential Communities Initiative (RCI) Properties at Army Installations.

³ DODI 4150.7, para. 2.2.

⁴ *Id.*, para. 2.3.

⁵ Title 10, United States Code, Chapter 169, Subchapter IV, Alternative Authority for Acquisition and Improvement of Military Housing, 10 U.S.C. § 2871 et seq. (commonly known as the Department of Defense Military Housing Privatization Initiative (MHPI) or the Residential Communities Initiative (RCI) in the Army).

⁶ 10 U.S.C. § 2872a.

⁷ 7 U.S.C. §§ 136 to 136y.

⁸ 40 C.F.R. Part 171.

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e. Further, DODI 4150.7 and AR 200-5 still apply to Army installations. Installation commanders have an ongoing responsibility “to prevent or control pests and disease vectors that may adversely impact readiness or military operations by affecting the health of personnel or damaging structures, material, or property.”⁹ This requires a comprehensive pest management program including “all pest management operations on an installation to support facilities engineering, non-appropriated fund, leased or out-leased activities, contract operations, material resources, etc.”¹⁰ Integration of RCI owned or leased property into the installation pest management program should be accomplished by inclusion of appropriate requirements in the ground lease and allied documents.

f. The ground lease should require installation commander approval of a pest management plan. The RCI pest management plan should be reviewed by the Installation Pest Management Coordinator (IPMC) to ensure compliance with FIFRA and other Federal and State requirements, to include compliance with EPA-approved State certification requirements. The RCI pest management plan should also include provisions to allow the IPMC and other appropriate personnel access for compliance and public health inspections. This is consistent with previous guidance and current practice – requirements for pest management plans to be reviewed and approved by installation commanders are typically included in RCI ground leases.

g. Army and Air Force Exchange Service (AAFES) and other DoD activities must comply with DODI 4150.7 and AR 200-5, due to their status as a DoD tenant or supported activity on the Army installation. As stated above, DODI 4150.7 is applicable to all DoD activities. Likewise, AR 200-5 applies to all tenant organizations on Army installations. As such, AAFES is subject to the installation pest management program. Further, if AAFES or other tenant activities apply restricted-use pesticides on an RCI-leased property they must comply with the EPA-approved DoD Plan for the Certification of Pesticide Applicators. This requirement would not apply to RCI partners’ pesticide management activities on RCI leased property.

4. Conclusion:

RCI pest control activities must comply with all applicable Federal, State and local laws and regulations. However, RCI partners are not required to follow the provisions of DODI 4150.7 and AR 200-5. Installation commanders must ensure installation compliance with the DoD and Army Pest Management Programs. With regards to RCI property, this is accomplished through the ground lease and allied documents. AAFES and other tenants on Army land must comply with DODI 4150.7 and AR 200-5 pesticide management requirements when conducting their own pesticide activities, although this would not apply to RCI partner pesticide management on its RCI leased property.

⁹ DODI 4150.7, para. 4.1.

¹⁰ DODI 4150.7, para. E4.1.5.1.

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5. POC is the undersigned at 703-696-1623, DSN 426-1623, mark.holycross@us.army.mil.



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