



Department of Defense **INSTRUCTION**

NUMBER 4715.08

November 1, 2013

USD(AT&L)

SUBJECT: Remediation of Environmental Contamination Outside the United States

References: See Enclosure 1

1. PURPOSE. In accordance with the authority in DoD Directive (DoDD) 5134.01 and DoDD 4715.1E (References (a) and (b)), this instruction:

a. Reissues DoD Instruction (DoDI) 4715.8 (Reference (c)) to update established policy and assigned responsibilities and procedures for remediation of environmental contamination on DoD installations outside the United States.

b. Incorporates and cancels Deputy Secretary of Defense Memorandum (Reference (d)).

2. APPLICABILITY. This instruction:

a. Applies to:

(1) OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff (CJCS) 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) Remediation of environmental contamination on DoD installations outside the United States.

b. Does not apply to:

(1) Spill responses governed by DoDI 4715.05 (Reference (e)) and country-specific final governing standards (FGSs) or, where no FGSs have been issued, DoD 4715.05-G (Reference (f)).

(2) The civil works functions of the Department of the Army.

(3) Environmental contamination caused by DoD activities in foreign assistance programs.

(4) Facilities and activities associated with the Naval Nuclear Propulsion Program, in accordance with Executive Order 12344 (Reference (g)), and conducted pursuant to section 7158 of Title 42, United States Code (Reference (h)).

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

d. Does not supersede or amend any existing international agreement respecting remediation of environmental contamination caused by the DoD outside the United States.

3. POLICY. It is DoD policy that:

a. DoD manages and applies installation assets to sustain the DoD national defense mission; uses environmental, safety, and occupational health management systems in mission planning and execution across all military operations and activities; and ensures all organizations plan, program, and budget to manage the environmental, safety, and occupational health risks that their activities generate in accordance with Reference (b).

b. DoD establishes policy, assigns responsibilities, and prescribes remediation procedures in compliance with section 342(b) of Public Law (PL) 101-510 (Reference (i)).

c. DoD takes no action to remediate environmental contamination resulting from armed conflict.

d. DoD takes no action outside of a DoD installation to remediate environmental contamination caused by DoD actions or activities beyond that specifically required by applicable international agreement.

e. Adjudication of any obligations resulting from environmental contamination present outside of a DoD installation and caused by DoD actions or activities, whether such actions or activities occurred on or off of a DoD installation (unless specific action off the DoD installation is required by applicable international agreement), will be determined in accordance with the claims procedures within applicable international agreements.

4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES. See Enclosure 3.

6. **RELEASABILITY. Unlimited.** This instruction is approved for public release and is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

7. **EFFECTIVE DATE.** This instruction:

a. Is effective November 1, 2013.

b. Must be reissued, cancelled, or certified current within 5 years of its publication to be considered current in accordance with DoDI 5025.01 (Reference (j)).

c. Will expire effective November 1, 2023 and be removed from the DoD Issuances Website if it hasn't been reissued or cancelled in accordance with Reference (j).



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Under Secretary of Defense
for Acquisition, Technology, and Logistics

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ENCLOSURE 1

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 4715.8, "Environmental Remediation for DoD Activities Overseas,” February 2, 1998 (hereby cancelled)
- (d) Deputy Secretary of Defense Memorandum, "Environmental Remediation Policy for DoD Activities Overseas,” October 18, 1995 (hereby cancelled)
- (e) DoD Instruction 4715.05, "Environmental Compliance at Installations Outside the United States,” November 1, 2013
- (f) DoD 4715.05-G, "Overseas Environmental Baseline Guidance Document,” May 1, 2007
- (g) Executive Order 12344, "Naval Nuclear Propulsion Program,” February 1, 1982
- (h) Title 42, United States Code
- (i) Public Law 101-510, "National Defense Authorization Act for Fiscal Year 1991,” November 5, 1990, as amended¹
- (j) DoD Instruction 5025.01, "DoD Directives Program,” September 26, 2012, as amended
- (k) DoD Directive 5530.3, "International Agreements,” June 11, 1987, as amended
- (l) Public Law 105-261, "Strom Thurmond National Defense Authorization Act for Fiscal Year 1999,” October 17, 1998
- (m) Public Law 102-484, "National Defense Authorization Act for Fiscal Year 1993,” October 23, 1992
- (n) Joint Publication 1-02, "Department of Defense Dictionary of Military and Associated Terms,” current edition

¹ Copies may be obtained from the Internet at https://www.denix.osd.mil/denix_secure/shf/References.cfm

ENCLOSURE 2

RESPONSIBILITIES

1. UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS (USD(AT&L)). In coordination with the CJCS and the Under Secretary of Defense for Policy, the USD(AT&L):

a. Oversees the implementation of this instruction.

b. Authorizes exceptions to this instruction's requirements in accordance with paragraph 1f of Enclosure 3.

2. DEPUTY UNDER SECRETARY OF DEFENSE FOR INSTALLATIONS AND ENVIRONMENT (DUSD(I&E)). Under the authority, direction, and control of the USD(AT&L), the DUSD(I&E):

a. Provides guidance on policy and implementation of this instruction.

b. Provides oversight of the requirements of this instruction.

c. Resolves a DoD Component's objections to a geographic combatant commander (GCC) resolution of a dispute between a DoD Component and a DoD lead environmental component (LEC) (designated in accordance with Reference (e)), relating to implementation of this instruction.

3. GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE. The General Counsel of the Department of Defense provides authoritative legal counsel and advice on remediation of environmental contamination outside the United States.

4. DoD COMPONENT HEADS. The DoD Component heads:

a. Plan, program, and budget to meet the requirements of this instruction.

b. Conduct remediation of environmental contamination for which they are responsible and as determined to be necessary in accordance with this instruction.

5. GCCs. In addition to the responsibilities in section 4 of this enclosure, the GCCs:

a. Oversee, coordinate, and approve, as necessary, implementation of this instruction within their geographic areas of responsibility.

b. Resolve disputes between a DoD Component and a DoD LEC, if any, on country-specific guidance relating to implementation of this instruction.

c. Coordinate activities of in-theater Service components to ensure consistent application of this instruction within a host nation.

6. DoD LECs. DoD LECs:

a. Plan, program, and budget to meet the requirements of this instruction.

b. Conduct remediation of environmental contamination for which they are responsible and as determined to be necessary in accordance with this instruction.

c. Provide, as necessary, country-specific guidance that is consistent with this instruction and any implementing guidance the DUSD(I&E) issues, and address:

(1) How to determine the appropriate level of remediation of environmental contamination at a specific location.

(2) Detailed processes for conducting studies, investigations, and other activities necessary to identify and document the environmental conditions required to make determinations in accordance with this instruction.

(3) Procedures for coordination with the host nation when DoD conducts remediation of environmental contamination.

(4) When the host nation is to conduct the remediation of environmental contamination, the procedures for negotiating the scope of such remediation with the host nation. Such procedures must be consistent with the policy and procedures for negotiating and concluding international agreements in DoDD 5530.3 (Reference (k)).

(5) Procedures for providing information regarding environmental contamination to host-nation authorities, subject to security requirements or as provided by any applicable international agreement, upon their written request.

d. Maintain existing and subsequently developed documentation about environmental contamination relating to DoD installations until 10 years after the installation is returned to the host nation or that time frame authorized under the appropriate claims process, whichever is longer.

e. Consult with other DoD LECs to ensure in-theater consistency in implementing this instruction.

ENCLOSURE 3

PROCEDURES

1. REMEDIATION OF ENVIRONMENTAL CONTAMINATION ON DoD INSTALLATIONS

a. In accordance with this instruction, a DoD Component will take prompt action to address a substantial impact to human health and safety due to environmental contamination that is caused by DoD activities and is located on a DoD installation.

b. For environmental contamination located on a DoD installation but not known to be due to the activities of the DoD, a DoD Component may take action to address that contamination if it poses a substantial impact to human health and safety of U.S. forces or personnel. Such action may only be undertaken after the DoD Component:

(1) With the assistance of the GCC, formally seeks remediation performed or funded by the host nation.

(2) Obtains written concurrence of the DUSD(I&E).

c. A DoD Component funds remediation of environmental contamination necessary to undertake an approved military construction (MILCON) project from the MILCON appropriation, and limits such remediation to that necessary to complete the MILCON project. Any remediation of environmental contamination beyond that required by the MILCON project may only be performed in accordance with the requirements of this instruction.

d. No remediation of environmental contamination is performed at a DoD installation that has been determined by OSD to have DoD operations terminated and returned to the host nation, except such measures as required to prevent immediate exposure of U.S. forces and personnel to environmental contamination that poses a substantial impact to human health and safety. Such measures will not extend beyond the date when DoD operations are terminated at the installation. For the purposes of this instruction, DoD operations are terminated when the missions for which the installation was maintained are no longer performed at the installation.

e. An applicable international agreement may require the United States to perform remediation of environmental contamination.

(1) Such remediation may be more extensive than that necessary to address a substantial impact to human health and safety.

(2) Before a DoD Component head begins such remediation, he or she:

(a) Consults with the DoD LEC, if any.

(b) Obtains a legal determination, from a level no lower than the theater component headquarters, that the requirement for such remediation is mandatory and arises from a binding international agreement.

f. No remediation of environmental contamination beyond that specified in this section may be undertaken, other than investigations pursuant to section 2 of this enclosure. If extraordinary circumstances are present, a GCC may request an exception to the provisions of this instruction from the USD(AT&L). Such a request is forwarded through the CJCS to the DUSD(I&E) and then to the USD(AT&L).

g. Remediation of environmental contamination, in addition to that specified in this section, may be undertaken by the host nation using its own resources at the DoD installation, subject to such mission and security requirements as the DoD may impose. Subject to such security requirements, the DoD Components encourage such remediation and cooperate with host-nation efforts by providing necessary information and appropriate access to contaminated sites.

h. Activities of DoD contractors outside of a DoD installation are not the DoD's responsibility, and no DoD remediation of environmental contamination is conducted for such activities.

i. Remediation of environmental contamination is driven by actual substantial impact to human health and safety; it must not be performed for symbolic purposes.

2. INVESTIGATIONS TO DETERMINE IF THERE IS A SUBSTANTIAL IMPACT TO HUMAN HEALTH AND SAFETY

a. If a DoD Component is aware that there is a reasonable likelihood of a substantial impact to human health and safety as a result of environmental contamination on a DoD installation, the DoD Component conducts an investigation until it determines either that a substantial impact to human health and safety exists or further investigation is not justified. Such determinations are supported by a health impact assessment generated as part of the investigation process.

b. An investigation is focused on, and limited to, the specific evidence or allegation that contamination is present at a particular location; it will not expand to broad investigations based on generalized allegations or proposals for random searches.

c. Investigations will:

(1) Be based on accepted science.

(2) Only be conducted after an investigation plan is developed.

(3) In accordance with the investigation plan, be performed in stages because the need for each additional stage of investigation is supported by the results of the prior stage.

(4) Involve host-nation officials, as appropriate.

(5) Only involve testing that is relevant to demonstrating a substantial impact.

d. Other than a *de minimus* amount, investigation measures may not include actual treatment or removal of the contamination itself, but may include temporary measures such as access barriers to avoid exposure.

e. Remediation of contamination may only be conducted after a health impact assessment is completed demonstrating a substantial impact to human health and safety.

3. DoD INSTALLATIONS THAT HAVE BEEN RETURNED TO A HOST NATION

a. After the return of an installation to the host nation, the DoD will not fund or perform any investigations or remediation of environmental contamination unless required by international agreement.

b. In accordance with section 321 of PL 105-261 (Reference (1)), DoD Components are prohibited, without prior notification of Congress, from entering into negotiations with a foreign nation regarding *ex gratia* claims by that nation's government for environmental remediation of sites in the country that the DoD formerly used. If a DoD Component receives such a request from a foreign nation that the United States engage in environmental remediation or fund such remediation, the DoD Component will refrain from engaging in discussions and promptly notify, through channels, the DUSD(I&E). For the purposes of this paragraph, "site" should be interpreted broadly to avoid inappropriate discussions.

4. DETERMINATION OF SUBSTANTIAL IMPACT TO HUMAN HEALTH AND SAFETY AND EXTENT OF REMEDIATION ACTION

a. The determination that environmental contamination poses a substantial impact to human health and safety is made by the responsible in-theater component commander after consultation with the appropriate DoD medical authority and the DoD LEC, if any. Such a determination is made in writing and supported by a health impact assessment.

b. The authority to make such a determination may be delegated by the in-theater component commander to a subordinate flag-level officer, but consultation, as described in paragraph 4a of this section, is still required. No further delegation is authorized.

c. Actions addressing a substantial impact to human health and safety are considered complete when the environmental contamination no longer poses a substantial impact to human health and safety. Commanders will use their discretion, in consultation with the appropriate DoD medical authority, to make impact-based decisions on how to perform actions to address remediation of environmental contamination, ranging from institutional responses, such as restricting access or stopping use, to more extensive remedies.

5. REMEDICATION COMPLETION REPORT. A DoD Component that conducts any remediation of environmental contamination will provide to the DoD LEC, if any, and the GCC a report detailing the extent of actions, any follow-on monitoring and analysis, the cost of the remediation, and any negotiated conditions.

6. HOST-NATION CONTRIBUTION. Consistent with section 324 of PL 102-484 (Reference (m)) and any applicable international agreements, the DoD Component should seek host-nation or third-country contribution, including assistance in kind, for remediation of environmental contamination funded by the United States.

7. NEGOTIATIONS WITH HOST NATION. Negotiations with the host nation regarding any matter covered by this instruction are conducted in accordance with this instruction, Reference (k), and other applicable DoD issuances.

8. PLANNING, PROGRAMMING, AND BUDGETING OF FUNDS AND EXECUTION

a. Remediation of environmental contamination authorized by this instruction will be funded in the current or following fiscal year for current exposure and within the next 3 to 5 years for exposure about to occur.

b. This instruction does not require or authorize the DoD Components to expend funds or use other resources to meet requirements that are the responsibility of host nations, as stipulated in applicable international agreements.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

| | |
|-----------|---|
| CJCS | Chairman of the Joint Chiefs of Staff |
| DoDD | DoD Directive |
| DoDI | DoD Instruction |
| DUSD(I&E) | Deputy Under Secretary of Defense for Installations and Environment |
| FGS | final governing standards |
| GCC | geographic combatant commander |
| LEC | lead environmental component |
| MILCON | military construction |
| PL | public law |
| USD(AT&L) | Under Secretary of Defense for Acquisition, Technology, and Logistics |

PART II. DEFINITIONS

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

actions. The measures taken to engage in remediation of environmental contamination.

de minimus. A small, insignificant amount (i.e., 1-3 cubic yards) for the purpose of disposing of spoils from well drilling and other testing activities.

DoD LEC. Defined in Reference (e).

enduring location. A location is enduring when DoD intends to maintain access and use of that location for the foreseeable future. The following types of sites are considered enduring for U.S. Government purposes: main operating base, forward operating site, and cooperative security location. All three types of locations may be composed of more than one distinct site. Enduring locations are published in the OSD-approved Enduring Location Master List.

ex gratia. As a favor: not compelled by legal right.

FGS. Defined in Joint Publication 1-02 (Reference (n)).

foreign assistance. Defined in Reference (n).

health impact assessment. A scientific assessment that evaluates the levels of environmental contamination present at a location and whether there is a pathway of exposure that results in a substantial impact to human health and safety.

installation. An enduring location consisting of a base, camp, post, station, yard, center, or other DoD activity under the operational control of the Secretary of a Military Department or the Secretary of Defense.

international agreement. A multilateral or bilateral agreement, such as a base rights or access agreement, a status-of-forces agreement, or any other instrument defined as a binding international agreement in accordance with Reference (k).

investigation plan. A plan prepared by appropriate DoD health evaluation authorities that describes the data and investigative steps necessary to produce a health impact assessment. The plan is designed to provide the technical data necessary for the assessment and addresses what data is sought, how it is sought, and when it is sought in order to ensure that an investigation is conducted in stages to avoid engaging in unnecessary investigation.

remediation of environmental contamination. A process that starts with an investigation to determine whether a substantial impact to human health and safety exists and, if so, those subsequent measures taken to address the impact. It does not include responding to a spill.

spill. The release of contamination into the environment that is addressed contemporaneously (e.g., within days or weeks of the release).

substantial impact. A level of exposure that is occurring, or is about to occur within the next 3 to 5 years, and exceeds a generally established, published, and applied federal standard in the United States.

theater component headquarters. A Military Department's headquarters component within each GCC's area of responsibility.

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.

U.S. forces. Defined in Reference (n).