

*E*valuation



*R*eport

DOD COMPLIANCE WITH HAZARDOUS WASTE LAWS
IN THE U.S. EUROPEAN COMMAND

Report No. D-2001-009

November 14, 2000

Office of the Inspector General
Department of Defense

Form SF298 Citation Data

Report Date <i>("DD MON YYYY")</i> 14Nov2000	Report Type N/A	Dates Covered (from... to) <i>("DD MON YYYY")</i>
Title and Subtitle DOD Complaints with Hazardous Waste Laws in the U.S. European Command		Contract or Grant Number
Authors		Program Element Number
Performing Organization Name(s) and Address(es) OAIG-AUD (ATTN: AFTS Audit Suggestions) Inspector General, Department of Defense 400 Army Navy Drive (Room 801) Arlington, VA 22202-2884		Project Number
Sponsoring/Monitoring Agency Name(s) and Address(es)		Task Number
Distribution/Availability Statement Approved for public release, distribution unlimited		Work Unit Number
Supplementary Notes		Performing Organization Number(s) D-2001-009
Abstract This report is one in a series that discusses the DoD overseas environmental program at DoD facilities in Europe. The Defense Reutilization and Marketing Service provides international hazardous waste removal services for DoD components overseas. DoD Instruction 4715.5, i7Management of Environmental Compliance at Overseas Installations, l. April 22, 1996, directs DoD Environmental Executive Agents to consult with the U.S. European Command on significant issues arising from DoD environmental policy. The U.S. European Command coordinates and approves implementation of DoD Instruction 4715.5 by the DoD Environmental Executive Agents. DoD Environmental Executive Agents determine the extent host nation standards are generally in effect for host-government and private sector activities to develop environmental final governing standards guidance for a host nation. When developing final governing standards guidance, the DoD Environmental Executive Agents do not include host nation procedural and administrative requirements, such as permits, fines, and other sanctions as applicable environmental standards. The Deputy Under Secretary of Defense for Environmental Security selected the Commander in Chief, U.S. Naval Forces Europe, as the DoD Environmental Executive Agent for Italy.		Monitoring Agency Acronym
Subject Terms		Monitoring Agency Report Number(s)

Document Classification unclassified	Classification of SF298 unclassified
Classification of Abstract unclassified	Limitation of Abstract unlimited
Number of Pages 23	

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Acronyms

DRMO	Defense Reutilization and Marketing Office
DRMS	Defense Reutilization and Marketing Service
DUSD(ES)	Deputy Under Secretary of Defense for Environmental Security
EEA	DoD Environmental Executive Agent
EUCOM	U.S. European Command
OEBGD	Overseas Environmental Baseline Guidance Document



**INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-2884**

November 14, 2000

**MEMORANDUM FOR DEPUTY UNDER SECRETARY OF DEFENSE
(ENVIRONMENTAL SECURITY)
NAVAL INSPECTOR GENERAL**

**SUBJECT: Evaluation Report on DoD Compliance with Hazardous Waste Laws
in the U.S. European Command (Report No. D-2001-009)**

We are providing this evaluation report for your information and use. We considered management comments on a draft of this report in preparing the final report.

The Navy comments conformed to the requirements of DoD Directive 7650.3; therefore, additional comments are not required.

We appreciate the courtesies extended to the evaluation staff. Questions on the evaluation should be directed to Mr. William C. Gallagher at (703) 604-9270 (DSN 664-9270) (wgallagher@dodig.osd.mil) or Mr. Michael R. Herbaugh at (703) 604-9294 (DSN 664-9294) (mherbaugh@dodig.osd.mil). See Appendix B for the report distribution. The evaluation team members are listed on the inside of the back cover.

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Report No. D-2001-009

(Project No. D1999CB-0002.02)

November 14, 2000

DoD Compliance with Hazardous Waste Laws in the U.S. European Command

Executive Summary

Introduction. This report is one in a series that discusses the DoD overseas environmental program at DoD facilities in Europe. The Defense Reutilization and Marketing Service provides international hazardous waste removal services for DoD components overseas. DoD Instruction 4715.5, "Management of Environmental Compliance at Overseas Installations," April 22, 1996, directs DoD Environmental Executive Agents to consult with the U.S. European Command on significant issues arising from DoD environmental policy. The U.S. European Command coordinates and approves implementation of DoD Instruction 4715.5 by the DoD Environmental Executive Agents. DoD Environmental Executive Agents determine the extent host nation standards are generally in effect for host-government and private sector activities to develop environmental final governing standards guidance for a host nation. When developing final governing standards guidance, the DoD Environmental Executive Agents do not include host nation procedural and administrative requirements, such as permits, fines, and other sanctions as applicable environmental standards. The Deputy Under Secretary of Defense for Environmental Security selected the Commander in Chief, U.S. Naval Forces Europe, as the DoD Environmental Executive Agent for Italy.

Objectives. The overall evaluation objective was to determine the status of DoD environmental program requirements at overseas military facilities. Specifically, we assessed U.S. military compliance with governing environmental standards in foreign countries. Additionally, we assessed whether the hazardous material and hazardous waste programs met regulatory requirements and command needs in Europe. We also reviewed the management control program as it related to DoD environmental requirements and the management of hazardous material and hazardous waste in Europe. This report discusses compliance with governing standards in Europe. Inspector General, DoD, Report No. 99-251, "The Army Environmental Program in Germany," September 15, 1999, discusses the status of environmental requirements and compliance with governing standards in Germany. Inspector General, DoD, Report No. D-2000-157, "DoD Hazardous Waste Management and Removal Services in the U.S. European Command," June 28, 2000, discusses meeting command needs for hazardous material and hazardous waste in Europe.

Results. DoD components and Defense agencies complied with country-specific environmental final governing standards when operating DoD facilities in the U.S. European Command. Management controls were adequate in that we identified no material management control weaknesses in the administration of DoD environmental programs in Europe. However, Italy requires compliance with procedural (permitting) and administrative (reporting) waste management laws. Italian regulators charged DoD civilian personnel with violations of Italian hazardous waste procedural (permitting) and

administrative (reporting) laws. Although the DoD Environmental Executive Agent provided interim guidance for permitting and reporting issues, the Agent did not provide interim guidance for responding to enforcement actions. As a result, Italian regulators fined DoD civilian personnel, threatened to shut down disposal activities at the Aviano field office, and threatened to sequester the property of the DoD Italian hazardous waste contractors. For details of the evaluation results, see the Finding section of the report.

Summary of Recommendations. We recommend that the Commander in Chief, U.S. Naval Forces Europe, issue revised environmental standards for Italy that resolve procedural and administrative compliance issues and establish procedures for responding to host nations that seek and enforce procedural and administrative environmental requirements.

Management Comments. The Commander in Chief, U.S. Naval Forces Europe, stated that they have implemented a strategy to minimize conflicts between Italian procedural and administrative requirements and DoD policy. This strategy will be reflected in the revised Final Governing Standards for Italy. The Commander in Chief, U.S. Naval Forces Europe, also stated that they have distributed procedures for responding to host nation enforcement action and plan to formally issue those procedures as Environmental Executive Agent guidance to U.S. forces operating in Italy. The complete text of management comments is in the Management Comments section.

Evaluation Response. The Commander in Chief comments were responsive. We asked for the date of publishing the Final Governing Standards for Italy. They responded that Components met during late October to discuss Final Governing Standards review procedures and timelines. The Final Governing Standards are projected for completion by April 2001. Publication of the Final Governing Standards is important to effective operations by field operating units.

Table of Contents

Executive Summary	i
Introduction	
Background	1
Objectives	3
Finding	
Compliance with Italian Procedural and Administrative Hazardous Waste Laws	4
Appendixes	
A. Evaluation Process	
Scope	10
Methodology	10
Management Control Program	11
Prior Coverage	11
B. Report Distribution	12
Management Comments	
Department of the Navy	15

Background

This report is one in a series that discusses the DoD overseas environmental program at DoD facilities in Europe. Our first report, Inspector General, DoD, Report No. 99-251, "The Army Environmental Program in Germany," September 15, 1999, discusses the status of environmental program requirements and compliance with governing standards at DoD facilities in Germany. Inspector General, DoD, Report No. D-2000-157, "DoD Hazardous Waste Management and Removal Services in the U.S. European Command," June 28, 2000, discusses meeting command needs for hazardous material and hazardous waste at DoD facilities in Europe. This report discusses compliance with governing standards at DoD facilities in Europe.

Managing Hazardous Waste Removal Overseas. DoD assigned the hazardous waste disposal mission to the Defense Reutilization and Marketing Service (DRMS), a primary field office of the Defense Logistics Agency under the Defense Logistics Support Command. With headquarters in Battle Creek, Michigan, DRMS has more than 2,600 employees worldwide in 39 states and 14 foreign countries. The actual disposal mission takes place at the 113 field offices, called Defense Reutilization and Marketing Offices (DRMOs), located at or near U.S. military installations worldwide. DRMOs provide safe, temporary storage of hazardous waste during the disposal cycle. DRMS provides contracting services for hazardous waste disposal in Europe and provides oversight for those contractors. Contracting officers heed the increasingly stringent governing host nation laws and regulations when developing hazardous waste disposal contracts.

When the Services turn in hazardous waste, DRMS issues delivery orders under the hazardous waste contract for removal of the waste. DRMS International, located in Wiesbaden, Germany, manages operations for all DRMOs in Europe and provides removal services for hazardous waste generated by U.S. military installations. The U.S. European Command (EUCOM) has about 109,000 permanently assigned military personnel that conduct a full spectrum of military operations. Contingent operations and activities generate sizable quantities of hazardous waste. Proper management and disposal of DoD hazardous waste, in an environmentally sound manner, is an important segment of military operations. Defense components and Defense agencies that implement the DoD hazardous waste program use DoD environmental standards and affect relations with foreign nations.

Managing Compliance in the European Command. DoD Instruction 4715.5, "Management of Environmental Compliance at Overseas Installations," April 22, 1996 (Instruction 4715.5), prescribes the policy, responsibilities, and procedures for DoD components and unified combatant commands. EUCOM coordinates and approves implementation of Instruction 4715.5 by the DoD Environmental Executive Agents (EEAs) in their geographic area of responsibility. EEAs consult with EUCOM on significant issues arising from the DoD environmental policy. EUCOM also resolves disputes between EEAs, DoD components, and Defense agencies. DoD components (U.S. Army, Europe; U.S. Naval Forces, Europe; and U.S. Air Forces, Europe) execute EEA responsibilities that include:

-
- ensuring compliance with applicable environmental standards, and
 - issuing and reviewing environmental governing standards.

When developing environmental governing standards guidance, EEAs identify applicable host nation standards and compare those standards with DoD baseline guidance for overseas facilities. EEAs identify applicable host nation environmental standards based on published host nation law, transnational¹ enforceable standards, and applicable international agreements. Also, EEAs determine the extent host nation standards are adequately defined and generally in effect and enforced against host-government and private sector activities. EEAs then publish country-specific environmental final governing standards guidance. Furthermore, EEAs should consult with host-nation officials on environmental issues to maintain effective cooperation on environmental matters. The Services and DRMS International are required to comply with environmental final governing standards for each foreign country where DoD maintains a substantial presence.

Legislative History for Overseas Compliance. Executive Order 12088, “Federal Compliance with Pollution Control Standards,” October 13, 1978, directs DoD to establish environmental standards for U.S. facilities overseas. Executive Order 12088 requires Federal facility operations outside the U.S. to comply with “. . . environmental pollution control standards of general applicability in the host country” Public Law 101-510, “National Defense Authorization Act for Fiscal Year 1991,” section 342, as amended, requires that the Secretary of Defense “. . . develop a policy for determining applicable environmental requirements for military installations located outside the United States.” The public law also states that the policy should adequately protect the health and safety of military and civilian personnel assigned to overseas installations.

Defense Overseas Environmental Policy. DoD published overseas policy in DoD Directive 6050.16, “Policy for Establishing and Implementing Environmental Standards at Overseas Installations” (Directive 6050.16) on September 20, 1991. Directive 6050.16 required DoD to establish and maintain an environmental baseline guidance document. Also, Directive 6050.16 requires that the DoD executive agent for a host nation issue final governing environmental standards for operations in that country. DoD cancelled Directive 6050.16 when implementing Instruction 4715.5 that provides management guidance for environmental compliance overseas.

Instruction 4715.5 expands the guidance for governing standards, identifies the selection procedures for EEAs, and identifies the Deputy Under Secretary of Defense for Environmental Security (DUSD[ES]) as the selecting official. Also, Instruction 4715.5 directs the DUSD(ES) to identify the foreign countries needing

¹Extending or going beyond national boundaries; e.g., European Union directives are binding on the member states. Member countries include Germany, Italy, and the United Kingdom.

final governing standards and to assign an EEA for those foreign countries. The DUSD(ES) provides policy and guidance for overseas environmental compliance programs. The DUSD(ES) selected the Commander in Chief, U.S. Naval Forces, Europe, as the EEA for Italy. The EEA for Italy issued Final Governing Standards for Italy that implemented Directive 6050.16 policy. Since the cancellation of Directive 6050.16 in 1996, the EEA has not revised Final Governing Standards for Italy to implement Instruction 4715.5 policy.

Baseline Guidance for Compliance Overseas. The DUSD(ES) first published the Overseas Environmental Baseline Guidance Document (OEBGD) in October 1992. The OEBGD established baselines for environmental protection on DoD installations overseas and implemented Directive 6050.16 policy. DUSD(ES) reissued the OEBGD, to implement Instruction 4715.5, as DoD 4715.5-G, "Overseas Environmental Baseline Guidance Document," March 15, 2000 and canceled the October 1992 version. Chapter 1 of the OEBGD provides an overview of criteria used to establish and maintain baseline guidance. Chapter 6 discusses policy and procedures for hazardous waste management. The OEBGD standards include applicable portions of DoD environmental policies and U.S. environmental laws and regulations.

Objectives

The overall evaluation objective was to determine the status of DoD environmental program requirements at overseas military facilities. Specifically, we assessed U.S. military compliance with governing environmental standards in foreign countries. Additionally, we assessed whether the hazardous material and hazardous waste programs met regulatory requirements and command needs in Europe. We also reviewed the management control program as it related to DoD environmental requirements and the management of hazardous material and hazardous waste in Europe. See Appendix A for a discussion of the evaluation scope and methodology and the review of the management control program.

Compliance with Italian Procedural and Administrative Hazardous Waste Laws

According to Italian regulators, DoD civilian personnel violated Italian procedural (permitting) and administrative (reporting) hazardous waste laws. These violations occurred because DoD policy does not recognize host nation procedural and administrative requirements as applicable environmental standards and no interim guidance was provided as to how to respond to Italian regulatory enforcement actions. As a result, Italian regulators:

- fined DoD civilian personnel,
- threatened to shut down DRMO Aviano, and
- threatened to sequester the property of the DoD Italian hazardous waste contractors.

Procedural Compliance with Hazardous Waste Laws

Compliance at DoD Facilities. DoD components and Defense agencies complied with country-specific environmental final governing standards when operating DoD facilities in the U.S. European Command. EEAs developed final governing standards for Germany (U.S. Army, Europe), Italy, and the United Kingdom (U.S. Air Forces, Europe) that met the DoD requirements in Instruction 4715.5. However, Italy requires compliance with procedural (permitting) and administrative (reporting) waste management laws. DoD policy specifically excludes compliance with host nation procedural and administrative standards. Therefore, Italian regulators charged DoD civilian personnel with violations of Italian hazardous waste procedural and administrative laws.

Italian Regulatory Inspections. The ecological unit of the Carabinieri, Italian national police, targeted DRMOs for noncompliance with Italian Legislative Decree No. 22 of February 5, 1997 (the Ronchi Decree). Without advance notice, the Carabinieri conducted inspections in February 1999 at DRMO Aviano (outside of Aviano Air Force Base), and in March 1999 at DRMO Sigonella (on Naval Air Station Sigonella in Sicily). Italian regional environmental officials and the Italian supervising prosecutor questioned DRMO employees about obtaining permits for operations as required by the Ronchi Decree. Also, Italian officials inspected waste management records at DRMO Sigonella. The Carabinieri charged the civilian DRMO chief at Aviano for operating an illegal waste management facility that collected and stored waste without authorization, a criminal violation of the Ronchi Decree. At DRMO Sigonella, the Carabinieri charged the civilian DRMO chief for failure to properly maintain waste management records and failure to make annual waste reports, two administrative violations of the Ronchi Decree.

Waste Management Law in Italy. The Ronchi Decree incorporates European Union directives in Italian waste management laws and imposes strict controls on waste generators, transporters, and disposal facilities. The Italian controls on waste include requirements for permits, manifests, and exact record keeping. Italian laws on manifesting and hazardous waste tracking require waste producers to procure and register manifests and file annual reports effective June 12, 1998. The ecological branch of the Carabinieri enforces the Ronchi Decree. Italian waste management laws before the Ronchi Decree required permits for hazardous waste, but authorities did not enforce requirements to obtain permits.

Policy for Hazardous Waste Permits and Reports

Final Governing Standards for Italy. Violations of Italian hazardous waste laws occurred because DoD policy does not recognize host nation procedural and administrative requirements as applicable environmental standards. Instruction 4715.5 defines applicable host nation environmental standards as specific management practices or standards to control environmental pollution that are, “. . . generally in effect and enforced against host-government and private sector activities.” Procedural and administrative requirements, such as permits, licenses, fees, fines, penalties, and other sanctions, are not included as applicable host nation environmental standards.

Final Governing Standards for Italy, section 1-4.C., states, “. . . it is not appropriate for DoD components to seek permits or comply with Italian procedural requirements imposed on private entities.” DoD policy maintains that the Services and DRMS International do not need to hold permits for waste management activities in Italy. The standards do not direct DoD components to seek environmental permits or to submit annual waste reports that are required by the Ronchi Decree. However, DoD facility managers maintain hazardous waste records and provide waste management data to the appropriate Italian environmental authorities upon request.

Status of Forces Agreement. DoD policy is based on the general principles of international law, and provisions of the North Atlantic Treaty Status of Forces Agreement. “The Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces,” June 19, 1951, (the Agreement) article II, states that the U.S. military forces and civilian components duty are to “respect” host nation laws. Although the Agreement does not define “respect,” the general understanding is to avoid actions that would disparage host nation laws. Claims provisions in the Agreement, article VIII, paragraph 5, are for negligent acts that cause damage to the host nation. Article VIII, paragraph 5.g., states that U.S. military forces or civilian components shall not be subject to enforcement proceedings of judgment arising from the performance of their official duties. General principles of sovereignty limit overseas Federal facilities compliance to substantive, not procedural, host nation requirements. DoD policy accomplishes substantive compliance or “respect” for host laws.

Defense Policy Modification. DRMS International acknowledged the potential operational impact of the DoD policy for overseas environmental compliance in a

June 1999 memorandum to the Defense Logistics Agency. DRMS International stated that Italian regulators disagreed with DoD policy based on evolving Italian environmental laws and the Carabinieri enforcement actions. The Italian prosecutor in Aviano disagreed with DoD policy noting the lack of Italian military exemption, and the location of DRMO Aviano on Italian territory. DRMS International stated that DoD policy implementation created tensions in relations with Italian officials. DRMS International acknowledged similar circumstances in Japan, Spain, and Germany, and expects similar developments in remaining European Union countries, and other locations where DRMS International operates. Furthermore, DRMS International strongly advocated the modification of DoD waste management policy and practices in Italy through correspondence with the EEA. The EEA should update the Final Governing Standards for Italy to prescribe procedures that resolve procedural and administrative regulatory requirements for hazardous waste management.

Guidance for Responding to Host Nations. The EEA issued an interim guidance message on “Hazardous Waste Shipment in Italy,” July 6, 1998, after recognizing that changes for manifesting and reporting hazardous waste directly affected procedures at DoD facilities in Italy. The EEA advised DoD facility operators to procure and register manifests, in accordance with Italian procedures, to continue transporting hazardous waste. Also, the EEA strongly advised using active duty personnel to procure and sign manifests in an attempt to maintain the best defensible position for employees under the Status of Forces provisions.

Italian regulatory enforcement actions prompted supplemental guidance from the EEA in a message on “Environmental Compliance and Waste Management in Italy,” March 30, 1999. The EEA advised U.S. installation commanders to initiate dialog with their host Italian base commander and request assistance in applying for permits and other procedural requirements. In preparation for meetings with Italian base commanders, the EEA provided guidance for dialog in the initial meeting on April 16, 1999. The EEA requested minutes from meetings with Italian base commanders, notification of any difficulties with obtaining cooperation, and consultation before payment of any permitting fees.

Dialog with Italian Authorities. Italian base commanders refused to obtain permits for DoD components and Defense agencies. The EEA stated, in the “Waste Management in Italy Status Report,” May 21, 1999, that the Italian base commanders refused to sign permits and annual report forms. For DRMO Aviano, the Italian base commander stated that the request did not comply with the Ronchi Decree requirements that place responsibility for compliance with the hazardous waste generators and facility managers. At Naval Air Station Sigonella, the Italian base commander would not accept responsibility for generating hazardous waste. For the Army Southern European Task Force in

Vicenza, the Italian base commander would not process Italian administrative documents for the U.S. because the waste generator (U.S. military) was required to submit the documents.

EEA representatives met with the Italian Defense General Staff, environmental officer on June 2, 1999, to discuss environmental roles and responsibilities for the U.S. and Italian base commanders. As a result of the June 1999 meeting, the Italian Defense General Staff, Environmental Officer formally directed Italian base commanders to provide the regulatory liaison requested from U.S. installations. Subsequent EEA guidance advised U.S. commanders that Italian base commanders, or DoD military representatives with a cover letter from the Italian base commander, were to sign annual report forms. Guidance also advised U.S. commanders to immediately contact the EEA if Italian base commanders expressed an unwillingness to sign or submit permits on their behalf. DoD Instruction 4715.5 requires EEAs to consult with EUCOM on significant issues arising from DoD environmental policy. The EEA should continue to consult with EUCOM and establish guidance for responding to or avoiding enforcement actions resulting from the Ronchi Decree.

Impact of Host Nation Laws on DoD Operations in Europe

Mission and Operation Impacts. Italian regulators fined DoD civilian personnel for criminal and administrative violations of Italian hazardous waste laws. Italian regulators also threatened to shut down DRMO Aviano, to compel full compliance with Italian hazardous waste laws at DRMOs, and to sequester contractor property. The alleged criminal and administrative violations carry potential fines ranging from about \$30,000 to \$180,000 for each charge. Local Italian environmental regulators advised DRMO Aviano employees in April 1999 that applying for a permit could prevent the shut down of DRMO Aviano.

DRMS International stated, in a June 1999 memorandum, that reducing operations at DRMO Aviano because of failure to obtain environmental permits would cause significant mission impact. DRMO Aviano is an accumulation point for all excess property in the Aviano area. Also, DRMO Aviano receives property and waste from other installations in the area, and provides mission critical support to U.S. installations fully engaged in contingency operations. Waste generation was high while U.S. forces supported North Atlantic Treaty Organization actions based at Aviano Air Base. In addition, available space for waste storage was also at a premium. Italian regulators threatened to continue their efforts to compel full compliance at DRMOs in Italy.

Italian Regulator Response. The Italian prosecutor admitted that practices at DRMO Aviano did not appear to threaten human health or the environment. Under Italian waste management law, collecting and storing waste without authorization is a criminal offense. However, waste is difficult to define under the Ronchi Decree. Regulators define waste on a case-by-case basis using the history and status of each item. Since Italian regulators could not direct DRMO Aviano to obtain a permit, Italian regulators changed requirements for waste removal by Italian contractors. Italian regulators informed Italian hazardous waste removal

contractors that any attempt to remove waste from DRMO Aviano would result in sequestration of the contractor's trucks and contents.

Defense Efforts for Civilians. Officials at DRMS International have aggressively defended the actions of DoD employees and the activities at DRMO Aviano and DRMO Sigonella. DRMS International maintains that employees acted within their official duties, which is consistent with DoD environmental compliance policies. The Air Force and the Navy provided legal counsel for the DRMO civilian employees; however, the charges have not been dismissed. Consequently, DoD employees in Italy remain at risk of personal, criminal liability under Italian waste management practices until the Government of Italy recognizes that DoD is exempt from the authorization, registration and notice procedures of the Ronchi Decree. The risk of personal, criminal liability extends to all DoD employees engaged in generating and transporting hazardous waste, and employees responsible for hazardous waste facility management.

Executive Agent and Theater Efforts. Although the EEA provided interim guidance for permitting and reporting issues, the EEA did not provide interim guidance for responding to enforcement actions. In December 1999, EUCOM made an informal request for EEAs to provide suggestions for theater guidance on responding to host nation enforcement actions. The EEA for Italy suggested procedures for responding to host nation enforcement actions in January 2000. EUCOM decided in June 2000 not to act on the informal request because EEAs are more effective in formulating guidance on responding to host nation enforcement actions. The EEA should provide interim guidance that prescribes the appropriate responses to Italian enforcement actions.

Summary

The Italian Government requires adherence to Italian procedures under waste management laws in the Ronchi Decree. U.S. installations and DRMS International follow the Final Governing Standards for Italy when handling hazardous wastes. The Final Governing Standards for Italy state that compliance with Italian procedural (permitting) and administrative (reporting) laws is not appropriate. DoD policy does not require personnel to obtain permits for handling hazardous waste (procedural) or to file forms for annual waste reports (administrative). Although the EEA provided interim guidance for handling hazardous waste, Italian regulators brought criminal charges against the DRMO Aviano chief and administrative charges against the DRMO Sigonella chief for noncompliance with Italian law procedures.

The EEA recognized that Italian law changes directly affected procedures at DoD facilities and provided supplemental guidance to respect Italian waste management laws. However, the EEA did not provide interim guidance for responding to possible enforcement actions. Tensions between Italian authorities and DoD personnel increased because DoD personnel did not comply with procedural and administrative Italian hazardous waste laws. Italian authorities threatened to shut down operations at DRMO Aviano and to compel full compliance with Italian laws by all DRMOs in Italy. In addition, Italian

authorities threatened to sequester contractor property if contractors attempted to remove hazardous waste. Implementation of the recommendations should resolve Italian regulatory requirements for hazardous waste management at DoD facilities in Italy, and reduce risks of prosecution against DoD civilian personnel for noncompliance with Italian waste laws.

Recommendations, Management Comments, and Evaluation Response

We recommend that the DoD Environmental Executive Agent for Italy, Commander in Chief U.S. Naval Forces Europe:

1. Issue revised Final Governing Standards for Italy that not only respect Italian hazardous waste laws, but also resolve procedural and administrative issues for compliance with Italian laws.

2. Establish procedures for responding to host nation enforcement actions against DoD facilities and employees.

Management Comments. The Commander in Chief, U.S. Naval Forces Europe, stated that they have implemented a strategy to minimize conflicts between Italian procedural and administrative requirements and DoD policy. This strategy will be reflected in the revised Final Governing Standards for Italy. The Commander in Chief, U.S. Naval Forces Europe, also stated that they have distributed procedures for responding to host nation enforcement action and plan to formally issue those procedures as Environmental Executive Agent guidance to U.S. forces operating in Italy. The complete text of management comments is in the Management Comments section.

Evaluation Response. We asked for the date of publishing the Final Governing Standards for Italy. The office of the Commander in Chief stated that Components met during late October to discuss Final Governing Standards review procedures and timelines. The Final Governing Standards are projected for completion by April 2001. Publication of the Final Governing Standards is important to effective operations by field operating units.

Appendix A. Evaluation Process

Scope

We reviewed environmental policies, regulatory, and program requirements for the DoD environmental program in the U.S. European Command. We visited 25 sites in Europe: 14 in Germany, 7 in Italy, and 4 in the United Kingdom. Specifically, we reviewed executive policy, Military Department regulations, and the process and execution procedures.

DoD-Wide Corporate-Level Government Performance and Results Act Coverage. In response to the Government Performance and Results Act, the Secretary of Defense annually establishes DoD-Wide corporate-level goals, subordinate performance goals, and performance measures. This report pertains to achievement of the following goal, but there is no applicable performance measure.

DoD Functional Area Reform Goals. Most major DoD functional areas have also established performance improvement reform objectives and goals. This report pertains to achievement of the following environmental functional area objective and goal.

Environmental Functional Area. Objective: Achieve compliance with applicable Executive Orders and Federal, State, and inter-state, regional, and local statutory and regulatory environmental requirements.

Goal: Number of new, open, unresolved and closed enforcement actions applicable environmental statutes. (ENV-2.1)

Methodology

To accomplish the evaluation, we identified and analyzed existing requirements, policy, and guidance related to the DoD overseas environmental programs. We:

- conducted interviews, site visits, and data collection at the DoD, the Unified European Command, the Army, the Navy, the Air Force, the Defense Logistics Agency, and the Military Criminal Investigation Organization, Europe;
- researched environmental program requirements;
- reviewed implementation of the Services programs and the DRMS International program; and
- evaluated environmental program compliance.

To review the environmental program management, we evaluated DoD policy and procedures on material management, waste disposal, program oversight, and

quality assurance. We also evaluated the impact of international agreements on the Service's environmental program management in Europe. Additionally, we evaluated the effect changes in host nation environmental laws had on DoD hazardous waste program requirements. Finally, we examined the methods management used to monitor the hazardous material and hazardous waste programs.

Use of Computer-Processed Data. We did not rely on computer-processed data or statistical sampling procedures.

Evaluation Type, Dates, and Standards. We performed this program evaluation from June 1999 through July 2000 in accordance with standards implemented by the Inspector General, DoD.

Contacts During the Evaluation. We visited or contacted individuals and organizations within DoD. Further details are available upon request.

Management Control Program

DoD Directive 5010.38, "Management Control (MC) Program," August 26, 1996, requires DoD organizations to implement a comprehensive system of management controls that provides reasonable assurance that programs are operating as intended and to evaluate the adequacy of the controls.

Scope of Review of the Management Control Program. We reviewed the adequacy of management controls over the implementation of environmental programs in Europe. Specifically, we reviewed the adequacy of management controls over the final governing standards for compliance with host nation regulations. Because we did not identify a material weakness, we did not assess management's self-evaluation.

Adequacy of Management Controls. Management controls for implementing environmental program management and final governing standards were adequate as they applied to the evaluation objectives.

Prior Coverage

During the last 5 years, the Inspector General, DoD, has issued Inspector General, DoD, Report No. 99-251, "The Army Environmental Program in Germany," September 15, 1999, and Inspector General, DoD, Report No. D-2000-157, "DoD Hazardous Waste Management and Removal Services in the U.S. European Command," June 28, 2000.

Appendix B. Report Distribution

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Assistant Secretary of the Air Force (Financial Management and Comptroller)
Auditor General, Department of the Air Force
Deputy Chief of Staff Installations and Logistics
Environmental Division
Commander, U.S. Air Forces Europe

Unified Command

Commander in Chief, U.S. European Command

Other Defense Organizations

Director, Defense Contract Audit Agency

Director, Defense Logistics Agency

Commander, Defense Logistics Support Command

Commander, Defense Reutilization and Marketing Service

Commander, Defense Reutilization and Marketing Service International

Non-Defense Federal Organizations and Individuals

Office of Management and Budget

Congressional Committees and Subcommittees, Chairman and Ranking Minority Member

Senate Committee on Appropriations

Senate Subcommittee on Defense, Committee on Appropriations

Senate Committee on Armed Services

Senate Committee on Governmental Affairs

House Committee on Appropriations

House Subcommittee on Defense, Committee on Appropriations

House Committee on Armed Services

House Committee on Government Reform

House Subcommittee on Government Management, Information, and Technology,

Committee on Government Reform

House Subcommittee on National Security, Veterans Affairs, and International Relations,

Committee on Government Reform

Department of the Navy Comments



DEPARTMENT OF THE NAVY

COMMANDER IN CHIEF
UNITED STATES NAVAL FORCES, EUROPE
PSC 802
FPO AE 09499-0151

7500
Ser 012/635
15 Oct 00

From: Commander in Chief, U.S. Naval Forces, Europe
To: Inspector General, Department of Defense

Subj: DRAFT EVALUATION ON DOD COMPLIANCE WITH HAZARDOUS WASTE
LAWS IN THE U.S. EUROPEAN COMMAND (IG, DOD PROJECT NO.
D1999CB-0002.02, FORMERLY PROJECT NO. 9CB-0088.02)

Ref: (a) IG, DoD Draft Report (D1999CB-0002.02) of 14 Aug 00
(b) 1995 Memorandum of Understanding Between the Ministry
of Defense of the Republic of Italy and the
Department of Defense of the United States of America
Concerning use of Installations/Infrastructure by
U.S. Forces in Italy

Encl: (1) Implementation of Ronchi Decree and Impacts to
European Facilities - Course Outline
(2) Information for Persons Questioned by Italian
Authorities

1. Summary. Reference (a) requested concurrence or
nonconcurrence with each applicable finding and recommendation
in the draft evaluation. The response below nonconcurrs with one
finding and concurs with both recommendations requiring
Commander in Chief, U.S. Naval Forces, Europe (CINCUSNAVEUR)
action.

2. Response to Draft Evaluation (keyed to sections):

a. Executive Summary:

(1) There is no causal relationship between the lack
of Environmental Executive Agent (EEA) interim guidance for
responding to enforcement actions and the enforcement actions
taken by the Italians. Indeed, the steps for responding, which
consist of providing counsel, asserting jurisdiction, and
considering substitution of the U.S., were all taken here.
Moreover, none of these steps would have prevented the Italian
regulators from making their no-notice inspections and finding
alleged violations.

b. Recommendations, Page 9:

(1) Concur with Recommendation 1. We have implemented

Subj: DRAFT EVALUATION ON DOD COMPLIANCE WITH HAZARDOUS WASTE
LAWS IN THE U.S. EUROPEAN COMMAND (IG, DOD PROJECT NO.
D1999CB-002.02, FORMERLY PROJECT NO. 9CB-0088.02)

a strategy to minimize conflicts between Italian procedural and administrative requirements and DoD policy, which precludes compliance with such requirements based on sovereign immunity concerns. This was done in an EEA message of 30 Mar 99 and letter of 15 Jul 99. The strategy will be reflected in the revised Final Governing Standards for Italy. Chapter One of the revised Final Governing Standards for Italy will describe the liaison responsibilities of the Italian Base Commanders per reference (b). Reference (b) establishes the Italian Base Commander as the formal representative of the installation. The revised Final Governing Standards will recommend that DoD components assist the Italian Base Commander in applying for permits and providing reports or records or otherwise helping him meet his responsibilities as the liaison with regulators for U.S. operations. This is done in furtherance of the Italian Ministry of Defense's duties under the bilateral agreement and not because the U.S. is obligated to comply with host nation procedural and administrative requirements. The latter would be inconsistent with DoD policy and would require approval at the Secretariat level in DoD, with DoD General Counsel concurrence, because the policy is based on international law principles that have application beyond Italy.

(2) Concur with Recommendation 2. We have already distributed procedures for responding to host nation enforcement actions and plan to formally issue them as EEA guidance to U.S. Forces operating in Italy. EUCOM considered issuing such guidance for the theater, but decided against this, so we are proceeding as the EEA. We distributed the procedures in enclosures (1) and (2), at an environmental law course conducted on 22 Sep 00 in Naples, Italy.

We plan to formally issue these procedures as EEA guidance in order to ensure U.S. Forces operating in Italy are aware of preexisting established procedures for responding to host nation enforcement actions. We are also recommending additional procedures.

R S Dearth

R. S. DEARTH
Chief of Staff

Copy to: Naval Inspector General

Not included

Evaluation Team Members

The Contract Management Directorate, Office of the Assistant Inspector General for Auditing, DoD prepared this report.

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