

CECW-O

29 November 2022

Errata Sheet

CECW-CE

ER 200-2-3

Environmental Quality
ENVIRONMENTAL COMPLIANCE POLICIES

1 September 2022

As Read: Page 1 paragraphs 1 and 2 should read:

(USAGE)

U.S. Army Corps of Engineers (USAGE)

Change To:

(USACE)

U.S. Army Corps of Engineers (USACE)

CECW-EC

DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314-1000

ER 200-2-3

Engineer Regulation
No. 200-2-3

1 September 2022

1. Purpose. This Engineer Regulation (ER) establishes the policy for the management of Environmental Compliance Requirements for all U.S. Army Corps of Engineers (USAGE) Facilities and missions within the United States, District of Columbia, and territories. The policy does not address detailed compliance for the National Environmental Policy Act (NEPA), the National Historic Preservation Act, the Endangered Species Act, or requirements concerning wetlands and floodplains.

2. Applicability. This ER applies to all USAGE facilities and their missions within the United States, District of Columbia, and territories. This ER does not apply to Support for Others programs managed by the Directorate of Military Programs such as support to U.S. Environmental Protection Agency (USEPA), including Superfund and Brownfields, nor to environmental support to other Federal agencies, including Department of Defense (DOD) installation support. It also does not apply to the Formerly Used Defense Sites program (FUDS) or to the Formerly Utilized Sites Remedial Action Program (FUSRAP).

3. Distribution Statement. Approved for public release. Distribution is unlimited
FOR THE COMMANDER:



JAMES J.
HANDURA COL, EN
Chief of Staff

* This regulation supersedes ER 200-2-3 dated 29 October 2010

ENVIRONMENTAL QUALITY
ENVIRONMENTAL COMPLIANCE POLICIES

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SUMMARY of CHANGE

ER 200-2-3

United States Army Corps of Engineers (USACE)

Environmental Quality, Environmental Compliance Policies

This administrative revision, dated 1 September 2022—

- Updates the applicability of this ER to all USACE facilities and missions in US and territories
- Updates the accountability for compliance to all Senior Managers
- Updates include adding the 19 September 2017 Non-Hazardous Solid Waste Diversion and Materials Management Policy and the guidance issued 27 January 2016 regarding Clean Water Act Compliance for Hydropower Facilities
- Incorporates the Risk Manager's Internal Control Program (RMICP) emphasizing the Environmental Compliance Program, when implemented in accordance with the ER, is the internal control for compliance with legal requirements
- Strengthens and clarifies broad requirements for EC training for all USACE employees tailored to their duties, including additional guidance for appropriate spill response training
- Add the requirement for Regional Assessment Teams (RATS) to be integrated into a Division's external assessment schedule

Chapter 1
Introduction

1-1. Purpose.

a. This Engineer Regulation (ER) supersedes ER 200-2-3, dated 29 October 2010 and establishes the policy for the management of Environmental Compliance Requirements (see Glossary) for all U.S. Army Corps of Engineers (USACE) Facilities (see Glossary) and their missions within the United States, District of Columbia, and territories. The policy does not address detailed compliance for the National Environmental Policy Act (NEPA), the National Historic Preservation Act, the Endangered Species Act, or requirements concerning wetlands and floodplains.

b. USACE must fully comply with all applicable Environmental Compliance Requirements. This ER affirms the USACE commitment to environmental compliance (EC) and establishes additional environmental protection policies and practices pertaining to mission activities at all USACE facilities. USACE fully recognizes the importance of environmental protection and strives to comply with EC Requirements, and to achieve sustainable operations by incorporating the prevention of pollution and other sound environmental management practices in all mission activities, products, and services.

c. USACE is committed to achieving, maintaining, and continually improving EC performance in all USACE missions and business lines.

d. USACE Real Estate must execute acquisition, outgrant, and disposal transactions at USACE facilities in compliance with applicable EC Requirements, including performance of environmental due diligence. This ER establishes USACE requirements for compliance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, Reference 15) in the acquisition, outgrant, and disposal of real property in support of mission activities at USACE facilities.

e. 33 CFR 335-338 are incorporated by reference into this ER as the source for practices and procedures to be followed by USACE to ensure compliance with the specific statutes governing Army Civil Works operations and maintenance projects involving the discharge of dredged or fill material into waters of the United States, or the transportation of dredged material for the purpose of disposal into ocean waters (References 5-8).

f. USACE Environmental Operating Principles (EOPs), as specified in ER 200-1-5 (Reference 29), are incorporated by reference into this ER. The EOPs must be incorporated at all USACE facilities and operating locations.

g. USACE must ensure that this policy is communicated to and implemented by all affected staff, contractors, and grantees, and that all relevant activities are overseen by qualified USACE personnel at all USACE facilities. This policy will be implemented at

outgranted facilities and in all contract actions to the extent provided by law, regulation, and Executive Order (EO).

h. All contracts and contract modifications (to include real estate instruments), cooperating association agreements, and Memoranda of Understanding/Agreement (MOUs/MOAs) must specify that contractors and grantees are required to comply fully with all applicable EC Requirements, and that contractors and grantees are responsible for any permits, enforcement actions, fines, penalties, and cleanup costs, to the extent provided for by law and policy.

i. ER 1110-2-8154, Water Quality Management, is incorporated by reference into this ER as the source for practices and procedures to be followed by USACE to ensure compliance with the specific statutes governing water quality management in Army Civil Works operations and maintenance (Reference 31). Water quality management must be achieved via the management of water resources by USACE to improve, restore, conserve, and protect the physical, chemical, and biological quality of the water for natural and human use.

1-2. Applicability. This ER applies to all USACE facilities within the United States, District of Columbia, and territories. This ER does not apply to Support for Other programs managed by the Directorate of Military Programs such as support to United States Environmental Protection Agency (USEPA), including Superfund and Brownfields, nor to environmental support to other Federal agencies and other DOD components. It also does not apply to the Formerly Used Defense Sites program (FUDS) or to the Formerly Utilized Sites Remedial Action Program (FUSRAP).

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

1-4. References. Required and related references are included in Appendix A. These documents, along with other appropriate guidance materials will be uploaded or linked in FedCenter or its successor as defined in policy.

1-5. Records Management (Recordkeeping) Requirements. The records management requirement for all record numbers, associated forms, and reports required by this regulation are addressed in the Army Records Retention Schedule-Army (RRS-A). Detailed information for all related record numbers are located in ARIMS/RRS-A at <https://www.arims.army.mil>. If any record numbers, forms, and reports are not current, addressed, and/or published correctly in ARIMS/RRS-A, see Department of the Army (DA) Pamphlet 25-403, Guide to Recordkeeping in the Army.

Chapter 2 Environmental Compliance for USACE Facilities

2-1. Responsibilities.

a. USACE Senior Managers (see Glossary) are responsible for the EC performance for all activities within the boundaries of their respective Facility, District, Center, or Major Subordinate Command (MSC), as well as within Headquarters, U.S. Army Corps of Engineers (HQUSACE).

b. The contracting officer for a contract, or a real estate officer for a real estate agreement affecting USACE lands and waters, is responsible for communication and coordination with the contractor or grantee about all matters of compliance with the terms of the agreement. See the Real Estate chapter (Chapter 10) for additional requirements for real estate actions.

c. The USACE Chief of Real Estate executing a real estate outgrant is responsible for incorporating applicable environmental conditions into real estate instruments under applicable EC Requirements. Incorporation of language into any real estate document is the responsibility of the respective Chief of Real Estate in coordination with the respective Headquarters (HQ), MSC, District or Center, facility-level Senior Managers, and the Office of Counsel.

d. Each business line is responsible, in coordination with their supporting Environmental Compliance Coordinator (ECC), to plan, program, budget, and execute their mission in a manner that is fully compliant with Environmental Compliance Requirements. The scope and magnitude of EC Requirements of each business line's mission are functions of the potential environmental impacts of the mission and the implementation of effective operational controls. This includes direct environmental impacts, such as use and release of hazardous materials, and indirect impacts, such as a collateral modification of lands or waters in a manner that degrades habitat or creates opportunity for establishment or proliferation of invasive species (References 34, 35, 39, and 40).

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

(1) The USACE proponent for contracts, real estate actions, permits and other agreements affecting USACE-controlled lands and waters must coordinate all requirements and agreements with the Senior Manager(s) of the affected USACE facility(ies) for EC review before finalization of requirements.

(2) The Senior Manager for each affected USACE facility is responsible for ensuring that applicable EC Requirements are incorporated in contract, real estate, and permit actions affecting USACE lands and waters.

(3) If the contract, real estate action, permit, or other agreement involves a discharge of dredged or fill material into waters of the United States, the Operations Project Manager

(OPM) must coordinate with the Regulatory branch within the appropriate local District to ensure compliance with requirements of the Clean Water Act. While the OPM may make a determination on EC, only the District Engineer (DE) and those to whom the DE has delegated authority, may make a determination whether the proposed work is consistent with regulations associated with Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act of 1899.

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

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

2-2. Business Program Goals and Objectives.

a. USACE missions are accomplished through business lines or programs. Goals pertaining to the environment are stated in a variety of strategic plans or equivalent documents. In general, these goals support the repair of past environmental degradation and prevention of future environmental losses and ensure that USACE facilities and missions perform to meet authorized purposes and evolving conditions.

b. Program objectives include ensuring that the operations of USACE facilities and management of associated lands, including outgranted lands, comply with applicable EC Requirements. The USACE Environmental Compliance Program, when implemented according to this ER, is the internal control for ensuring that USACE facilities and missions are operated and maintained in compliance with applicable Environmental Compliance Requirements. The environmental compliance assessment process described in Chapter 5 of this ER is the annually recurring process through which USACE formally assesses the effectiveness of its Environmental Compliance Program.

Chapter 3 USACE Environmental Compliance

3-1. The Environmental Compliance Coordinator Network. The ECC Network is composed of four levels that work together closely to provide consultation and support to all USACE facilities, missions, and functional areas with missions that entail significant environmental aspects.

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

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

c. At the District and Center level, the ECC serves as the Environmental Compliance Coordinator for the District or Center, and coordinates with facility-level ECCs and the MSC ECC.

d. At the facility level, which may include “regional” groupings of facilities below the District or Center level, the facility ECC serves as the Environmental Compliance Coordinator at the facility or regional level and coordinates with the facility Senior Manager(s) and the District or Center ECC.

3-2. ECC Network Objective. The objective of the ECC Network is to develop and maintain a capable, comprehensive, and consistent EC Program for USACE.

3-3. Designation of ECCs.

a. The Chief of Operations at the appropriate organization level must designate in writing and provide resources for training (see Chapter 10 for training requirements) of ECCs within the Operations element for the MSC, District, and project-/facility-level. The designation of an ECC outside of the Operations element must be coordinated in advance with the HQUSACE Chief of Operations.

b. The U.S. Army Engineer Research and Development Center (ERDC) Director must designate in writing and provide resources for training (see Chapter 10 for training requirements) of ECCs within the laboratories and Centers.

c. The Director of Logistics must designate in writing and provide resources for training (see Chapter 10 for training requirements) of ECCs for USACE-owned, logistics-managed facilities.

d. All USACE facilities must have a designated ECC. Each ECC must report to the facility Senior Manager for purposes of Environmental Compliance Requirements and performance. Where applicable, the District and Center Senior Managers must

designate regional ECCs. Regional ECCs must report to the Senior Managers at the facilities within their assigned region, as well as to the District or Center ECC.

3-4. ECC Roles and Responsibilities.

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

(1) ECCs serve as the primary interface with Federal, state, and local environmental regulatory authorities regarding Environmental Condition of Property (ECP) requirements.

(2) ECCs are responsible for accessing current environmental compliance requirements through use of Federal and state websites, the most recent versions of The Environmental Assessment Manual/Environmental Review Guide for Operations Supplement (TEAM/ERGO), and State supplement manuals; and by seeking input from technical experts as needed.

(3) ECCs provide Senior Managers with consultation and support on meeting environmental compliance requirements and on tracking and maintaining environmental compliance performance. However, the ECC must not assume responsibility for environmental compliance performance of any facility, mission, business line, or supporting functional element. Senior Managers are responsible for environmental compliance performance.

(4) ECCs prepare, review, and advocate for the support of the EC program and for EC funding requirements, such as compliance initiatives, training, and closure of environmental compliance assessment findings within the budgeting processes at their level of the USACE for all relevant facilities and business lines.

(5) ECCs serve as the point of contact for compiling and maintaining environmental performance measurement and compliance-related policies, procedures, and records appropriate for their level of the USACE. Examples include documents such as permits; Resource Conservation and Recovery Act (RCRA) (Reference 43) hazardous waste manifests; exception reports; training records; assessment and inspection records; biennial reports; and environmental study, cleanup, and liability documentation.

(6) ECCs support management review of environmental compliance performance using the performance measures, data, and standard formats established by HQ ECC and their organization's chain of command.

(7) ECCs promote environmental compliance awareness, guide and oversee EC Program implementation and performance, provide support for unplanned environmental compliance issues, support environmental compliance assessments for others, and perform other duties as assigned.

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

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

(10) ECCs reviews contracts, outgrants, and other agreements for appropriate coverage of Environmental Compliance Requirements, and they provide government oversight for the execution of the EC Requirements of contracts, outgrants and other agreements that affect the facility(ies) they support.

(11) At the discretion of the Senior Facility Manager, appropriately qualified (such as relevant NEPA experience) ECCs may prepare Categorical Exclusion (CatEx) determinations of applicability before an EA and/or EIS is considered to streamline the NEPA Process. CatEx's are explained and defined in 33 CFR 230.9 (Reference 2) and in ER 200-2-2 Procedures for Implementing NEPA (Reference 49).

b. Specific Responsibilities.

(1) HQ ECC Responsibilities.

(a) HQ ECC tracks legislative and regulatory changes that impact USACE facilities, missions and business lines, and associated environmental programs; establishes program initiatives; ensures timely distribution of information; promotes a capable workforce of trained and qualified ECCs; fosters communication within the ECC community; maintains intra and inter-agency relationships and coordination; initiates data calls and evaluates data; assesses and reports on attainment of goals; identifies compliance trends; captures lessons learned; and takes actions necessary to support USACE organizations accomplishing their EC Program responsibilities.

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

(c) HQ ECC must request funding on an annual basis to provide technical support services from environmental compliance subject matter experts of ERDC and the USACE Environmental and Munitions Center of Expertise (EM CX) to support new or evolving Environmental Compliance Requirements.

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

(e) HQ ECC must program funding for operation, maintenance, and technical support of the environmental compliance assessment system of record.

(2) MSC-level ECCs are responsible for the EC Programs at the MSC-level as well as at USACE facilities within their MSC's organizational boundaries.

(3) MSC ECCs are responsible for providing quality assurance, regional interface, and consistency regarding policy implementation; supporting HQ ECC in efforts to develop and maintain policy and doctrine; promoting a capable workforce of trained and qualified ECCs; fostering communication within the ECC community; and maintaining intra and inter-agency relationships and coordination.

(4) District, Center, and Directorate of Logistics (DoL) designated ECCs are responsible for environmental compliance programs at their District, Center, or logistics-managed facility, and at USACE facilities within their respective organizational boundaries.

(5) District ECC responsibilities include supporting implementation of EC program initiatives; providing oversight and monitoring for compliance related to the protocols identified in the TEAM/ERGO Supplement; developing and maintaining internal and external assessment schedules; implementing EC assessments; and ensuring entry, completeness, and accuracy of all EC assessment data in the EC system of record (ECSOR).

(6) Facility ECCs, including ECCs assigned to support multiple facilities within a District or Center, are responsible for providing environmental compliance guidance, leadership, and oversight at the facility location(s).

(7) Facility ECCs manage and conduct EC program activities at facility location(s); serve as the single point of contact for hazardous waste recordkeeping relative to the project USEPA Identification (ID) number(s); conduct internal assessments and support external assessments of project/facility following the protocols prescribed in the TEAM/ERGO Manuals; implement EC program initiatives; provide EC inspector escort; report releases to USACE and regulatory authorities; oversee oil spill prevention and response; enter and update ECSOR data for internal assessments; and enter and maintain data in all ECSOR data input forms in coordination with the District, Center, or DoL ECC.

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

a. The EM CX is a resource for information on a broad spectrum of environmental requirements. The EM CX regulatory compliance staff specializes in the understanding and application of environmental requirements such as the Clean Air Act; Clean Water Act; CERCLA, the Federal Insecticide, Fungicide and Rodenticide Act; RCRA; the Safe Drinking Water Act; the Toxic Substances Control Act; and the Hazardous Materials Transportation Act.

b. The Environmental Compliance Coordinators is a sub-Community of Practice component of the Environmental Community of Practice (ECoP).

c. FedCenter.gov is the Federal Government's home for comprehensive environmental stewardship and compliance assistance information. The site supports all aspects of environmental management and compliance, which includes automatic notifications of draft and final regulatory changes, an automated tool to assist users in identifying the regulations that apply to their activities and facilities, and Office of Management and Budget scorecard reporting tools; it also provides online training

resources. FedCenter is developed and maintained by the Federal community to support requirements defined by the Federal community. All ECC's should establish and maintain access to FedCenter.

d. The ECC Network and the ECC page within the ECoP portal can be used to exchange both positive and negative lessons learned regarding compliance and pollution prevention activities. The goal is to share knowledge. It is recommended that ECC's subscribe to ECoP notifications from the website.

e. Information on becoming involved in the ECoP is available through the ECC network. Opportunities for individuals include serving as subject matter experts within special areas of interest or as technical coordinators for maintaining current and relevant information on the web pages.

f. The environmental compliance list server was created to manage email correspondence for members of the ECC community. It provides a forum for distribution of guidance, group discussion of issues, and general information sharing on specific topics of interest. Email may be distributed to ECCs via links provided on the ECoP portal or via the USACE Outlook distribution list. It is recommended that all new ECC's subscribe to this distribution list.

g. HQ/MSC Teleconferences. Generally, on a quarterly basis, HQ ECC sets up a teleconference with the MSCs to exchange information, discuss upcoming ECC taskers, and follow-up on previous action items.

Chapter 4 USACE Environmental Management System

4-1. Policy. USACE manages the environmental aspects of its missions, activities and functions within the framework of its existing environmental management system (EMS). This ER is the foundational policy for the USACE EMS. Implementation and operation of the USACE EMS occurs through execution of the requirements of this ER.

4-2. EMS Requirements.

a. Federal agencies are required to implement EMSs at all appropriate organizational levels. Based on interpretation of Federal guidance, the appropriate type of EMS for USACE facilities is a multi-site organization EMS. The USACE EMS must be developed and managed centrally, and adapted to local mission requirements at the MSC, District, Center, field operating activity (FOA), and project levels, as appropriate. The USACE EMS is focused on EC and sustainability and will guide continual improvement through targeted enhancements of the EC and sustainability programs.

b. All significant environmental aspects of USACE missions, activities, and functions must be managed within the framework of USACE EMS. For purposes of this ER, significant environmental aspects are those that are governed by Federal, state, and local environmental, energy, water efficiency, and sustainability laws and regulations, EOs, and policies.

c. Significant environmental aspects must be managed within the EMS at each organizational level of USACE (HQ, MSC, District or Center, and Facility) as required to meet environmental performance requirements. Additional significant environmental aspects may be defined by MSC, District, Center, and facility-level individuals who are accountable for operational control of the significant activity.

d. Contract and outgrant activities will be addressed in the USACE EMS as required by Federal law, regulation or EO, in coordination with the respective Chief of Real Estate or Contracting, and the MSC, District, Center and facility-level individuals who are accountable for operational control of the significant activity.

4-3. Roles and Responsibilities. CHAPTERS 0, 0, 0, and 10 of this ER provide the roles and responsibilities for EC as they relate to the USACE EMS. Beyond those defined elsewhere in this ER, the following sections describe the specific EMS roles and responsibilities.

a. ERDC, Civil Works Operations, and DoL.

(1) The ERDC Director, HQUSACE Chief of Operations, and the Director of Logistics establish the organizational EMS policy within the framework of the overarching USACE EMS and oversee its implementation. The responsibilities of these organizations include:

(a) Performing management review of the EMS;

(b) Developing EMS procedures and implementation tools;

(c) Overseeing and annually attesting to the effectiveness of the EC program as an operational control through the Managers' Internal Control Program and Internal Controls Evaluation Plan (ICEP);

(d) Ensuring the availability of resources necessary to establish, implement, maintain, and improve the EMS; and

(e) Ensuring that a management representative is appointed as necessary at the appropriate organizational levels and USACE facilities within the EMS.

(2) HQ ECC is the overall proponent for the USACE EMS. As such, HQ ECC supports USACE in all EMS responsibilities listed above, and provides EMS implementation advice and support to MSCs, Districts, Centers, and FOAs.

(3) MSC, District or Center, and Project/Facility. ECCs at each organization level are the proponent for EMS implementation and operation in accordance with the requirements of this ER. ECCs provide Senior Managers and business lines with consultation and advisory support to ensure that they have an awareness and understanding of Environmental Compliance Requirements, and the means to meet these requirements in the context of day-to-day mission activities.

(4) To provide a foundation for the USACE EMS to meet Environmental Compliance Requirements effectively and to achieve continual improvement in environmental compliance performance, the MSC, District or Center, and Project/Facility ECC is the proponent for implementation of the requirements of this ER across all missions and business lines. In addition, MSC, District, and Center ECCs will annually submit to their Senior Manager a complete and accurate DA Form 11-2, Internal Control Evaluation Certification that reflects an objective assessment of the overall effectiveness of the EC program as an operational control within the MSC, District, or Center.

b. All USACE personnel whose duties entail significant environmental aspects are responsible for understanding their role in the USACE EMS and for executing their duties in a manner that protects human health and the environment, and that is fully compliant with the requirements of this ER (see Chapter 10 for training requirements).

4-4. Environmental Compliance Performance Measurement. Environmental compliance performance measures must be established, reviewed at least annually, and updated as required by the HQUSACE ECC in coordination with the MSC ECCs and HQUSACE senior leadership. Data supporting the EC performance measures must be compiled, evaluated, reviewed, and acknowledged as complete and accurate at least annually at all USACE MSCs, Districts, Centers, and projects.

a. ERDC, DoL, and Civil Works Operations business lines must use performance measures to guide and support management decisions for attaining EC and sustainability goals, objectives, and targets associated with statutory, regulatory, EO, and USACE policy requirements.

b. The current version of the USACE EC performance measures will be made available.

c. USACE EC performance measures must be incorporated into appropriate Project/Facility, District, MSC, and HQUSACE management review processes as described in Section 4-5.

d. All significant environmental aspects on USACE-controlled land and waters, including those at outgrants, are subject to environmental compliance performance measurement requirements established by the HQUSACE ECC.

e. Outgrant environmental compliance performance must be tracked in the ECSOR separately from USACE-operated activities and incorporated into both Real Estate and Civil Works Operations management review business processes.

f. The ECSOR is the authoritative source for environmental compliance performance measurement data, except for program areas that are specified in separate policy with data requirements that are supported by other Army, applicable U.S. Department of Defense (DoD), or Federal systems. The specific ECSOR will be defined by policy memorandum.

g. An objective and accurate assessment of the overall effectiveness of the EC program as an operational control at USACE facilities must be documented annually in accordance with the latest MICP requirements as part of the Management Review process described in Section 4-5.

4-5. Management Review.

a. The HQUSACE ECC must annually initiate the management review by specifying any new or modified timeline, content, and format requirements, for the current performance period. Management Reviews meeting the requirements specified by the HQUSACE ECC must be conducted at least annually by senior leadership at all USACE MSCs, Districts, Centers, and projects/facilities.

b. General Requirements for Management Reviews.

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

(2) A summary of the results of annual reviews and certifications, such as the coordination to verify Project Site Surveys (PSS) and Previsit Questionnaires (PVQ) (see Sections 5-2.c(6) and 5-3.d) have been reviewed and updated, and the “Corrective Action Plan, Open Findings”(Section 5-2.c(13)), has been executed as part of the Management Review process.

(3) EC program and performance data required by USACE policy or relevant statutes, regulations, or EOs, such as Federal and USACE goals and metrics for reducing consumption of energy, water, petroleum, and greenhouse gases.

(4) An assessment of progress, successes, and challenges in implementation of sustainable practices defined in USACE policy and Federal EOs.

(5) A completed DA Form 11-2, signed and submitted by each District or Center and MSC, as required by the MICP, that attests to the overall effectiveness of the EC and sustainability programs as operational controls for EC and sustainability, and that identifies any systemic weaknesses.

(6) Division, District or Center performance on the EC assessment metrics is an objective indicator of the overall effectiveness of the EC program as an internal control for EC and sustainability across the facility mission. Other objective indicators of EC program effectiveness include but are not limited to written designation of ECCs and absence of regulatory violations or instances of significant non-compliance as reported in EPA's Enforcement and Compliance History Online at <https://echo.epa.gov> or its successor.

c. Facility ECCs must coordinate with the District or Center ECCs to compile the Management Review data for their project. The facility-level ECC must report all relevant data to the Senior Manager at the project/facility to verify the completeness and accuracy of the data.

d. District and Center ECCs must compile the Management Review data for all facilities within their area of responsibility and report it to their Senior Manager. The ECC or Senior Manager of the District or Center must certify the completeness and accuracy of the data by sending it forward to the Division ECC.

e. MSC ECCs must compile the Management Review for all Districts or Centers within their area of responsibility and report it to their Senior Manager. The MSC ECC or Senior Manager must certify the completeness and accuracy of the data by sending it forward to HQ ECC.

f. HQ ECC must compile and present to the Senior Manager and higher levels of command, as directed, all MSC-level Management Review data. The HQUSACE Senior Manager must summarize and convey to the MSC Senior Managers and to HQ ECC any substantive management feedback received from HQUSACE leadership along with recommendations (such as formation of a PDT) for corrective actions, continual improvement, and special recognition/awards.

Chapter 5 Environmental Compliance Assessments

5-1. Policy. USACE organizations must continually monitor mission activities for EC performance on a day-to-day basis. USACE will schedule (in the ECSOR) and conduct formal internal or external environmental compliance assessments at facilities determined to have significant environmental aspects. It is the policy of USACE to conduct recurring EC assessments using protocols and checklists in the TEAM/ERGO Supplement, and state-specific supplements in conjunction with applicable environmental laws and regulations to evaluate EC status of current activities.

5-2. Assessments.

a. Each District, Center, and FOA must develop a baseline schedule for internal and external EC assessments for each 5-year assessment cycle. The assessment schedule will be recorded in the ECSOR. District, Center, and FOA ECCs may modify the assessment schedule in the ECSOR to accommodate unforeseen circumstances.

b. Each District, Center, and FOA assessment schedule must meet the following requirements:

(1) External assessments.

(a) External assessment teams must include persons not employed at the facility under review. For sake of cost efficiency and learning opportunities, use of USACE staff is preferred over contract staff.

(b) USACE facilities. External assessments are required at a minimum once in the 5-year EC assessment cycle. However, if the project or District ECC determines the site requires more frequent external assessments, they may do so at their discretion.

(c) Outgrants of real property on Civil Works (CW) Projects. External assessments are required once in each 5-year EC assessment cycle at those outgrants determined by the District. The District ECC, in coordination with the Real Estate element, must make determinations of outgrants requiring external assessment support and oversight based on the presence of outgrant activities regulated under Federal, state, and local environmental laws and regulations, EOs, and policies.

(2) Internal assessments.

(a) Internal assessments are conducted by assessors who are assigned to the facility being assessed.

(b) Internal assessments are conducted at all USACE facilities and outgrants that externals are completed at except as described in (c).

(c) Districts, Centers, and FOAs may schedule a “bye” for one or more internal assessments in the ECSOR, and thus, not conduct an assessment in a given year for any facility that meets the following criteria:

(d) A USACE facility for which ECSOR data demonstrate facility attainment of HQUSACE-established metrics, including but not limited to: completion of environmental compliance assessments; entry of environmental compliance assessment data into ECSOR; and closure of environmental compliance assessment findings.

- A facility demonstrates an absence of environmental regulatory enforcement actions, reports by USACE staff of questionable EC practices, and the establishment of new significant environmental aspects at the facility.
- A USACE facility has no new environmental regulatory requirements and does not fall under a special emphasis area specified by higher command.

(e) ECSOR data indicates an environmental compliance assessment has been executed at the USACE facility within the last 5 years. USACE facilities and outgrants that have not achieved the criteria listed above in 5-2.b.(2)(c) for the previous fiscal year, nor for the most recent assessment, are required to schedule and conduct internal EC assessments annually, except for the year in which an external assessment is conducted.

c. Requirements for Conducting Internal and External Environmental Compliance Assessments.

(1) USACE Senior Managers must provide appropriate staff to support the assessment team, must participate in review of assessment findings, and must take action to correct findings and continually improve environmental performance.

(2) All USACE facilities must have a completed Legacy Contamination Survey (LCS) to document whether there is a reasonable basis for concern regarding legacy contamination from historical activities on USACE land. The LCS must be recorded in the ECSOR. Consult with Office of Counsel and see Chapter 9 for legacy contamination and Potentially Responsible Party (PRP) evaluation and reporting procedures.

(3) Assessments must be coordinated with the project/facility Senior Manager. Annual completion of management review of EC performance data in accordance with the requirements of Section 4-5 of this ER constitutes documentation of the required coordination.

(4) For each documented finding, corrective actions must be developed as required in the ECSOR. Funding and manpower must be allocated by the Senior Manager and grantees, when supported by outgrant terms and conditions, as required, and tasks must be executed as necessary to close all findings.

(5) Regional Assessment Teams System (RATS). RATS assessments must be integrated into each MSC's External assessment schedule to develop consistency, share best practices, and provide on-the-job training opportunities for ECCs across Districts, Centers, and MSCs.

(a) Each MSC ECC in coordination with HQ ECC must designate one District or Center within each MSC as the Lead for administering a RATS assessment scheduling process. The District or Center selected to lead the RATS scheduling process must be, as determined by HQ and MSC consensus, the best EC assessment practitioner within each MSC.

(b) The MSC and lead District or Center have discretion regarding how to best implement this process and select the facilities RATS teams will visit.

(6) PSS. The facility ECC must complete the PSS in the ECSOR. The PSS must be reviewed annually and be updated as needed by the facility ECC in conjunction with the manager of each mission with significant environmental aspects at the facility.

(7) Current EC status and status of findings from the most recent EC assessment must be evaluated. All EC assessments must include:

(a) Review and follow-up on all carryover findings from the most recent assessment.

(b) A visual walk-through inspection of the facilities with significant environmental aspects.

(c) Identification and documentation of findings that were not before observed or documented.

(d) Review and follow-up on all incomplete corrective actions pertaining to Notices of Violation (NOVs), Notices of Non-Compliance (NONs), or other enforcement actions. For outgranted areas, the requirement to coordinate with grantees and grantee responsibility for NOVs, NONs, and other enforcement actions rests with the Chief of Real Estate. See Section 5-11c for further guidance on regulatory actions at outgranted areas.

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

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

(g) Identification of any additional measures recommended by the ECC to ensure sustained compliance.

(h) Compliance with USACE Sustainability Policy and Program Requirements. EC assessors will ensure that USACE Sustainability policy and programs are implemented

by assessing compliance with the Pollution Prevention-related requirements in the “Other Environmental Issues” section of the U.S. TEAM Guide and ERGO Supplement.

(i) Compliance with Petroleum Oils and Lubricants (POL) management practices for USACE Dams. EC assessors will ensure that USACE POL management practices are implemented by assessing compliance with the management practices identified in Section 7-5 of this ER.

(8) Internal and external assessment data must be reviewed by the facility ECC and be briefed to the facility Senior Manager. Its completeness and accuracy must be acknowledged in the ECSOR.

(9) Responsibility for environmental compliance assessment data entry into the ECSOR must be determined and documented by the District or Center ECC in coordination with the facility ECCs.

(10) The District or Center ECC must ensure complete, accurate, and timely entry of environmental compliance assessment data into the ECSOR for all internal and external assessments. The District or Center ECC must apply data quality assurance/quality control checks, as supported by the ECSOR, throughout the year to ensure continual improvement of data quality.

(11) All environmental compliance assessment-related data for outgrants and USACE-operated activities will be tracked separately in the ECSOR. Outgrant data will be reported to the District Real Estate element for any corrective action.

(12) For each internal and external assessment at USACE-operated and outgrant facilities, all findings and corrective action information from the previous fiscal year must be documented in the ECSOR by the last business day in October.

(13) Not later than the first business day after 31 October, the District or Center ECC must generate from the ECSOR a “Corrective Action Plan, Open Findings” report and distribute it to all affected facility-level ECCs and Senior Managers. The report must be reviewed by facility-level personnel and be updated as necessary in the ECSOR. The facility-level ECC must provide rationale for each finding that remains open, as well as the plan for closing each finding. Feedback from the Senior Managers must be provided to the District or Center ECC for incorporation in the annual District- or Center-level management review.

5-3. Additional Requirements for Internal and External Assessments at Outgrants.

a. Operations Division and the Real Estate Division will develop a schedule for conducting assessments at outgrants each year.

b. Real Estate must notify the appropriate grantee when their EC assessment must take place.

c. The grantee will be requested to participate in pre-briefings, the Outgrant PVQ, the assessment, and exit briefings relative to their outgranted area. The District Real Estate element will support the Senior Manager, the project ECC, and the District ECC in efforts to obtain grantee participation in environmental compliance assessments.

d. Before the assessment, Civil Works Operations must coordinate with Real Estate a request for the grantee to complete the Outgrant PVQ from the ERGO Supplement. The PVQ helps identify significant environmental aspects at the outgrant, assemble appropriate team membership, and select protocols for performing assessments.

(1) The PVQ must be completed before conducting an assessment at each outgrant.

(2) The PVQ must be reviewed annually by the ECC in conjunction with the management of each relevant outgrant. For external assessments, the PVQ must be provided to the District ECC and the Real Estate element.

e. The facility-level or District ECC must ensure that the Real Estate element is notified before the Operations element begins an environmental compliance assessment at an outgranted area.

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

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

h. If the grantee does not take the required corrective action, Real Estate, following the terms of the outgrant document and in coordination with the OPM or facility-level ECC, as appropriate, must provide management consultation to assist the grantee in meeting their responsibilities under the outgrant agreement for correcting non-compliance.

i. Finally, if the grantee does not take the required corrective action, Real Estate may inform the Grantee that continued environmental non-compliance will be referred to the appropriate regulatory agency. In such cases, the appropriate regulatory agency will render final determinations with respect to environmental compliance with relevant

laws or regulations. In addition, Real Estate must inform the grantee that continued non-compliance will also result in revocation of the outgrant.

j. To ensure compliance with the grantee's requirement to take corrective action, all new outgrants and outgrant renewals must contain provisions requiring the Grantee to promptly initiate and complete corrective actions identified during EC assessments.

k. "Significant" findings identified during any EC assessment must be reported immediately, both verbally and in writing, to the grantee. Under the terms and conditions of the outgrant, the Chief of Real Estate will provide written notification to the grantee, with written copies furnished to the District Commander, Chief of Operations, Office of Counsel, Safety Office, and the District ECC.

(1) The District Chief of Real Estate may implement an "immediate" closure of all or portions of the outgranted area under the terms/conditions of the outgrant instrument until USACE determines adequate precautions are taken to protect both people and the environment.

(2) In situations where the "significant finding" poses an imminent threat to life or property, personnel with authority under Title 36 Chapter III may order closure of all or portions of an outgranted area. When this occurs, the Operations element will notify the Chief of Real Estate no later than 6 hours after determination of imminent threat to life or property is made or at the beginning of the next business day should this occur on a holiday or weekend.

l. ECCs must provide Real Estate with ECSOR-generated findings and suggested corrective actions to forward to grantees. Grantees must provide corrective action plans along with the timetable for achieving compliance, through Real Estate to the District ECC in a timely manner to identify their corrective action measures for non-compliant items.

5-4. Assessments of Federal Energy Regulatory Commission Facilities. The facility ECC in coordination with the District ECC must arrange to accompany the Federal Energy Regulatory Commission (FERC) inspector(s) during their annual inspection of the FERC hydropower facilities in accordance with the terms of the FERC license and operating agreement. The facility or District ECC must provide a report of all environmental compliance findings documented during the inspection of a FERC facility to the FERC inspector.

5-5. Assessors. Persons conducting EC assessments must possess adequate training, either formal or on the job, to be capable of identifying EC issues. At a minimum, this includes environmental training requirements addressed in Chapter 10.

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

5-7. Funding for Environmental Compliance Assessments. Each USACE facility must annually program funding and allocate manpower within each relevant business line for the business-year-plus-two timeframe for each internal and external assessment to meet the following requirements:

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

b. Provide travel and external manning support to form and deploy the assessment team and support all phases of the assessment process, from planning for the assessment through assessment report preparation and distribution;

c. Allocate time to support all phases of the assessment through the execution of tasks to close of findings; Senior Managers of each organization, including outgrants, determined to have significant environmental aspects (as defined in Section 1-5.) at the project location must be tasked with this responsibility;

d. Execute tasks to close all open findings as a result of any assessment; and,

5-8. Policy for Regulatory Inspections and Notices at USACE Facilities.

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

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

c. It is the policy of USACE for the facility to inform District or Center Senior Managers, the Office of Counsel, and the District or Center ECC of any non-compliance noted during an inspection.

d. In cases involving outgranted areas, the Chief of Real Estate will be included in this notification requirement. Similarly, if the Chief of Real Estate is notified of a regulatory activity at an outgrant area, the Chief of Real Estate must notify the USACE Senior Manager at the facility and District levels.

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

5-9. Escorts. Every effort must be taken to ensure that appropriate staff accompany inspectors at all times. The facility-level Senior Manager has primary escort responsibility and must be notified when an inspector arrives. The Senior Manager may

delegate this responsibility. If the facility-level Senior Manager or facility ECC are unavailable, USACE must request rescheduling of the inspection. However, forethought must be given to pre-establishing alternate escorts in the event the facility ECC is unavailable, and the inspection cannot be rescheduled. Under no circumstances will inspectors be unaccompanied.

5-10. Inspection Protocols.

a. An entrance briefing must be conducted before the inspection. The ECC and Senior Manager or a designated representative must be present at the entrance briefing.

(1) Inspectors must be requested to:

(a) Present official, verifiable identification;

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

(c) Comply with safety requirements (including wearing protective equipment such as hard hats, safety glasses, and/or safety-toed boots);

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

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

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

(2) If the inspector does not comply with USACE requirements listed above, the facility Senior Manager or ECC must contact the District or Center Office of Counsel for additional guidance.

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

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

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

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

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

(4) Duplicate information (such as potential evidence) gathered by the inspector. For example, photograph the same areas as the inspector photographs, duplicate copies of any written records collected by inspector, and document verbal statements made to the inspector.

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

(6) Request a copy of inspector's report, if one is generated, and copies of any photographs.

5-11. Notices of Violation of Federal, State or Local Environmental Requirements.

Upon receipt of written notice of enforcement action from Federal, state, or local enforcement agencies, which involves non-compliance, the following actions must be taken:

a. Copies of written notices must be forwarded upon receipt by the facility ECC to the District or Center ECC. The District or Center ECC will coordinate with the Office of Counsel, and forward these copies, as appropriate, to the District or Center Commander, MSC ECC, and HQ ECC.

b. District or Center ECCs must coordinate with the District or Center Office of Counsel regarding any violation.

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

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

e. Written responses must be coordinated with the Office of Counsel and provided promptly.

f. Corrective action must be promptly initiated and documented.

5-12. Recording Regulatory Actions. The facility ECC or District/Center ECC must enter all relevant regulatory actions into the ECSOR within 14 business days. They must also track them and state their corrective actions in the ECSOR. This includes any and all forms of notification received indicating a non-compliant status at the facility. Examples include citation of water sample failure, regulatory inspection findings, and warning letters. Fine and/or penalty information (both amount assessed, and amount paid) must be entered into the ECSOR for tracking.

5-13. Fines, Penalties, and Inspection Fees.

a. Any fines or penalties assessed must be coordinated with the District or Center Office of Counsel to determine whether they are appropriate and payable. Regarding alleged violations of Federal law, the Office of Counsel must determine whether Congress has granted inter-agency authority to the Federal agency. Regarding alleged violations of any law or regulation, the Office of Counsel must determine whether Congress has clearly and unequivocally waived sovereign immunity to allow payment of fines and penalties and whether the fines and/or penalties are reasonably based, assessed within the scope of the waiver, and applied in a non-discriminatory manner.

b. Any bills for regulatory actions, including but not limited to compliance inspections, must be coordinated with the District or Center Office of Counsel for a determination as to whether they are payable. The Office of Counsel must evaluate whether the bill represents payable fees for services rendered or whether they constitute impermissible taxes for which the Federal Government is not liable.

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

Chapter 6 Hazardous Materials Management

6-1. Policy. USACE must manage hazardous materials in a manner that is protective of human health and the environment; ensure that hazardous materials are transported safely and securely; comply with all applicable EC Requirements regarding the management and transportation of hazardous material; and report releases of reportable quantities promptly in accordance with applicable regulations. (See Chapter 8 for addresses remediation of spills.)

6-2. Safety Data Sheets. The hazards inherent to materials used at USACE facilities are detailed on Safety Data Sheets (SDSs). SDSs are manufacturer-generated forms provided with hazardous products that provide detailed information including potential health effects, physical and chemical characteristics, and recommended handling and protective measures. SDSs must be maintained for hazardous materials used in the workplace. In addition, they must be made readily accessible to employees, and employees must be informed of the location of SDSs.

6-3. Hazardous Materials Storage.

a. Hazardous materials on USACE facilities, including contracts and outgrants, must be stored in a protective manner to minimize the threat of exposure, release, fire, or explosion. Hazardous materials must be:

- (1) Secured as appropriate for the hazards posed.
- (2) Stored in containers in good condition.
- (3) Clearly marked or labeled to indicate the identity of the material and the hazard.
- (4) Segregated according to compatibility.
- (5) Stored away from unprotected drains and unauthorized public access.

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

6-4. Hazardous Materials Transportation.

a. USACE complies with DoD hazardous material transportation rules established in DoD 4500.9-R, Defense Transportation Regulation (Reference 23). Consequently, USACE hazardous materials shipping activities, whether conducted by government employees or contractor personnel, must comply with the Hazardous Materials Regulation (HMR) requirements of 49 CFR 100-175, International Maritime Dangerous Goods Code (Reference 16) for domestic and international shipments by surface or water conveyance, and International Air Transportation Association or International Civil Aviation Organization for shipments by air.

b. Hazmat employees (defined in 49 CFR 171.8, Reference 16) (including but not limited to persons who prepare, offer for transport, transport, load, or unload hazardous materials) must be trained and tested on HMRs.

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

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

Chapter 7 Petroleum, Oils, and Lubricants Management

7-1. Policy. It is the policy of USACE to manage petroleum, oils, and lubricants (POL) in a manner that is protective of human health and the environment; to proactively prevent spills; to promptly report releases in accordance with applicable laws and regulations; and to maintain readiness to act as First Responder, Operations Level as defined in 29 CFR 1910.120(q)(6)(ii) (Reference 1).

7-2. Used Oil Management.

a. Used oil must be collected and stored in a manner that prevents releases to the environment. To the maximum extent practicable, used oil must be recycled by reusing it for energy recovery, or by reprocessing.

b. In addition to complying with applicable Federal, state, and local used oil regulations, efforts must be taken to ensure that hazardous wastes do not become inadvertently mixed into used oil. In addition, used oil must not be intentionally mixed with hazardous waste. The used oil regulations at 40 CFR 279.10 address when unavoidable mixtures are regulated as hazardous waste and when they are not. Consult these regulations and the Office of Counsel when this situation occurs to determine the requirements of Federal regulations and comply with applicable state and local regulations. If this situation arises, it must be fully documented, and the mixture must be tested to determine if it exhibits any hazardous waste characteristic.

c. Used oil shipped offsite for energy recovery purposes must be presumed to be “off-specification” unless tested and documented as meeting the used oil specification in 40 CFR 279.11.

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

7-3. Spill Prevention, Control, and Countermeasures. USACE must evaluate volumes and locations of POLs and must prepare and maintain Spill Prevention, Control and Countermeasures (SPCC) plans where required.

7-4. POL Releases. If a POL is released to “waters of the United States” such that an applicable water quality standard is violated, or that the release causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines, USACE must notify the National Response Center (NRC) and any applicable Federal, state, or local agency immediately. A POL wholly contained within a facility, such as within buildings or oil/water separators, is generally not reportable but must be evaluated on a site-specific basis in accordance with Federal, state, and local regulations.

7-5. POL Management Practices. All USACE facilities that use POL for routine operation and maintenance must implement the management practices listed below. Districts, in consultation with their MSC ECC and Chief of Operations will determine which of the management practices apply to facilities within each District. These practices below will be recorded in the PSS once they have been determined for a particular facility. Applicable practices will be implemented, reviewed, and updated as appropriate, and assessed annually during internal and external EC assessments.

(1) Implement operation/maintenance and housekeeping procedures that minimize oil/grease usage and leakage;

(2) Capture and reuse/recycle/dispose, as appropriate, lubricant leakage when and where practicable and;

(3) Use environmentally acceptable lubricants to the extent that is technically feasible to do so.

(4) When planning for major overhaul or replacement of equipment, evaluate the installation of new or replacement equipment (such as greaseless bushings) that will reduce or eliminate the use of lubricants to the extent that is technically feasible.

(5) Develop and implement an Oil Accountability Plan that accounts annually for lubricants added to and contained within equipment, as well as lubricants removed, recovered, or disposed. Required elements of an oil accountability plan:

(a) Inspection Procedure. A written procedure for the periodic inspection of oil-filled operating equipment, bulk storage containers, and high-risk equipment will be developed by each project. The purpose of this inspection will be to identify if the equipment or container is leaking oil.

(b) Leak Assessment Procedure. A written procedure for the assessment of leaking oil-filled operating equipment should be developed by each project. The purpose of the assessment is to determine the location of the leak, the amount of POL leaked, and whether the POL has been released to the environment.

(c) Documentation. Each inspection and assessment will be documented.

(d) Reporting. Inspection and assessment documentation must be reported at a minimum to the Maintenance Superintendent and Project ECC.

(e) Training. Each employee performing inspections on the oil-filled operating equipment must be trained in the proper method of identifying oil levels on the oil-filled operating equipment on which they perform inspections.

(f) Oil Transfers Procedure (Hydropower only). Each Operating Project must establish a written transfer procedure for generation equipment and transformers.

(g) Auditing. As part of the Environmental Compliance Assessment Program, Project ECCs must audit the project's oil accountability procedures annually to determine compliance.

(h) Review. Each Project procedure must be reviewed annually for applicability and updates.

Chapter 8 Waste Management

8-1. Policy. USACE facilities must comply with applicable EC Requirements for management, generation, transportation, treatment, storage, and disposal of waste. This includes terms and conditions of Federal and state permits.

a. Implement waste reduction and recycling programs and procedures to support pollution prevention goals. Waste generation must be reduced to the maximum extent practicable through sustainable acquisition and integrated solid waste management practices (References 25 and 43).

b. Establish procedures and responsibilities for the execution of waste management programs as detailed in this chapter.

c. USACE facilities must not engage in onsite disposal of hazardous waste, industrial waste, universal waste, municipal solid waste, or construction/demolition waste. Open dumps are strictly prohibited. Plant material (such as tree limbs, grass clippings) and other non-regulated, compostable materials may be composted or burned onsite as allowed by applicable regulation. Onsite burning must be conducted as specified in USACE policy for prescribed burns in ER 1130-2-540, Chapter 8 (Reference 32).

d. For borrow material, excluding dredged material -

(1) Soils containing hazardous materials, even if naturally occurring, are not eligible as borrow material. To minimize inadvertent transfer of contamination, borrow material for any application, whether being brought onto USACE property or taken from USACE property, must be screened for environmental contaminants before transfer.

(2) Professional judgment and consultation with District, EM CX, state or local regulatory authorities, as necessary, must be used to determine whether material is suitable for placement and use in another area, on- or offsite.

(3) Placement of fill in any location must be compliant with all applicable laws and regulations including Section 404 of the Clean Water Act (Reference 21).

e. For Outdoor Small Arms Shooting Ranges, best management practices for operating outdoor shooting ranges will be implemented based on the guidelines set forth in the most current USEPA Lead Management and Remediation Guidance for Outdoor Shooting Ranges (Reference 48).

8-2. Non-Hazardous Solid Waste.

a. Implement non-hazardous solid waste reduction, reuse, recycling, and disposal management programs at all USACE facilities where the relevant services are available in the local market at a reasonable cost, to achieve Federal and USACE solid waste

diversion goals as identified in USACE Non-Hazardous Solid Waste Diversion and Materials Management Policy (Reference 19, Appendix A).

b. USACE facilities may pursue innovative methods (including partnerships with non-profit or community organizations) to divert recyclable materials from landfill disposal and to quantify any diversion that is achieved.

c. Execute the following initial implementation requirements:

(1) All USACE facilities that generate non-hazardous solid waste, including solid waste generated by visitors, must implement the Waste Management and Diversion Requirements of Unified Facilities Criteria 1-200-2 (Reference 46) for the relevant lifecycle phase of the facility.

(2) Each USACE facility included in the Corps of Engineers Refined and Abridged Federal Energy Management Program Tool (CRAFT) database will update its Header Information to identify the types of solid waste management services in place for USACE employees and visitors while on site at the USACE facility.

(3) Quantification Requirements. Total mass of construction and demolition (C&D) and non-hazardous solid waste, as well as diverted mass of C&D and non-hazardous solid waste will be calculated in accordance with the current Guidance for Calculating Federal Compliance with Waste Diversion Goals (Reference 22).

(4) Reporting Requirements: Report quarterly in the CRAFT database no less than 6 weeks after the end of the fiscal quarter the total mass of C&D and non-hazardous solid waste, as well as the diverted mass of C&D and non-hazardous solid waste.

(a) USACE facility personnel are responsible for quantification and reporting of USACE- and visitor-generated solid waste and diversion quantities and cost.

(b) Personnel responsible for administering C&D contracts are responsible for quantification and reporting of C&D waste and diversion quantities and costs.

(5) During the next contract action for solid waste management services, each solid waste service contract will be reviewed by the District to ensure that all new and renewed contracts support quantification of solid waste and diversion (by mass or volume) in accordance with the solid waste management services available to the facility.

(6) All contracts resulting in generation of solid waste must include requirements for meeting USACE waste diversion goals as identified above in Section 8-2a.

(7) The USACE environmental compliance assessment program (ERGO) will be expanded to incorporate compliance with the solid waste and recycling policy in this chapter.

(8) District and facility-level non-hazardous solid waste programs should be established as detailed in the Non-Hazardous Waste Management Program template.

d. Maximize reuse of excess USACE personal property and equipment through transfer or sale. When excess property and equipment cannot be transferred or sold, it must be recycled as scrap. The “technically qualified person” will be as follows:

(1) For CW projects, the OPM or their designee;

(2) For revolving fund facilities, the local Logistics Management Specialist GS-0346, General Supply Specialist GS-2001, Supply Technician GS-2005, or their designated representative; or

(3) For USACE laboratories, the Laboratory Director or designated representative.

e. Maximize the recovery of recyclable materials from municipal solid waste and C&D waste streams, and divert these materials from landfills through reuse, donation, transfer, or sale.

f. Except for cases where a USACE facility is located on a military installation, proceeds resulting from sales of scrap and recyclable materials diverted from landfills in accordance with the procedures in Section 8-2d. of this policy must be processed and retained at the District or equivalent level in accordance with procedures in CERM policy memo, Collection of Civil Works Appropriation Refunds, Second Amendment, Enclosure 1 (11 Oct 2017) (Reference 47). Such proceeds must be expended for the following purposes as specified in Reference 40 , including subsequent reauthorizations:

(1) To support acquisition, waste reduction and prevention, and recycling programs as described in the latest Federal Executive Order and regulatory requirements.

(2) To support other Federal agency environmental management programs, including, but not limited to, the development and implementation of hazardous waste management and pollution prevention programs.

(3) For USACE facilities located on military installations, proceeds from sales of scrap and recyclable materials diverted from landfills must be retained and used in accordance with host installation requirements.

g. Promote waste minimization throughout the acquisition process by providing sustainable acquisition training to appropriate personnel in acquisition, contracting, and requirements positions.

8-3. Hazardous Waste. USACE facilities must:

a. Minimize the need for RCRA permits through use of offsite treatment, storage, and disposal facilities.

b. Make hazardous waste determinations for all discarded material. By regulation, dredged material is excluded from management as solid or hazardous waste under RCRA if it is subject to the requirements of a permit that has been issued under section

404 of the Federal Water Pollution Control Act (33 U.S.C. § 1344) or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. § 1413), including dredged material associated with a USACE Civil Works project that is subject to the administrative equivalent of one of the specified permits.,

c. Determine applicable hazardous waste generator status (large quantity generator, small quantity generator, or very small quantity generator), and comply with corresponding requirements. In determining generator status, careful consideration must be given to hazardous wastes generated during execution of contracts and whether waste is the responsibility of USACE or the contractor.

(1) Only USACE-generated wastes (even if created by a contractor) should be counted toward USACE generator status, not contractor-generated waste. The Temporary Environmental Controls, Unified Facilities Guide Specification 01 57 19 1.2.2 (Reference 46), defines “contractor-generated hazardous waste” as “material that, if abandoned or disposed of, may meet the definition of hazardous waste. These waste streams would typically consist of material brought on site by the contractor to execute work but are not fully consumed during the course of construction.”

(2) For example, paint thinners brought on site and not fully consumed would be the responsibility of the contractor and would not count toward USACE generator status.

(3) Hazardous waste generated by a contractor as a result of operations and maintenance activities; for example, lead-based paint removal from a USACE structure, would count toward the USACE generator status.

d. For each assigned USEPA ID number, the person responsible for shipments of hazardous waste is the single POC responsible for compiling, signing, and maintaining all RCRA hazardous waste-related records, including copies of manifests, exception reports, training records, inspection records, and biennial reports. The person responsible for these duties at each USACE facility must be trained and appointed in accordance with the Defense Transportation Regulation (DTR) 4500.9-R (Reference 26) requirements.

e. Prohibit the storage, treatment, or disposal of any toxic or hazardous material that is not owned by USACE or a DoD Component on a USACE property except within the provisions of Title 10 U.S.C. § 2692.

8-4. Universal Waste.

a. To the extent practicable, waste eligible to be managed as universal waste (including batteries, mercury containing equipment, recalled/cancelled pesticides, and lamps/light tubes) must be managed under the universal waste rules, which provide streamlined hazardous waste management standards. To reduce compliance requirements, USACE must strive to maintain small quantity handler status. Universal Waste definitions and regulations can be found in 40 CFR 273 (Reference 10). Also, check for any applicable state rules since universal waste rules can vary among states.

b. Maintain records of universal waste in support of solid waste and hazardous waste diversion programs established in response to the requirements of this ER.

8-5. Asbestos-Containing Material. USACE must maintain compliance with all pertinent regulations and prevent human exposure to asbestos hazards. Regulated Asbestos-Containing Material (ACM) must be removed or abated only if one or more of the following conditions exist: it is present in a school; operational requirements dictate removal; it presents a hazard; it cannot be managed in place; it is subject to disturbance during maintenance, repair, or construction projects; it is friable or likely to become friable during demolition; it is economically justified to be removed during building deconstruction; or it has been identified to be a hazard and ownership is being transferred to a non-Federal entity). All ACM abatement must comply with the Asbestos National Emission Standards for Hazardous Air Pollutants promulgated by USEPA under the Clean Air Act.

8-6. Polychlorinated Biphenyl Waste.

a. Polychlorinated Biphenyls (PCBs) in service must be managed in place unless operational, economic, or regulatory considerations justify removal. Economic analysis includes potential environmental damage.

b. For in-service PCBs, electrical equipment manufactured before July 2, 1979, for which the PCB concentration is unknown, the PCB concentrations must be presumed as specified within Toxic Substances Control Act (Reference 44) regulations (40 CFR 761.2) (Reference 13) and must be managed accordingly. For example, mineral oil transformers must be presumed to be PCB contaminated (between 50 and 500ppm PCB) and transformers other than mineral oil transformers must be presumed to be PCB transformers (>500ppm PCB). Once removed from service, equipment must be managed at actual concentration.

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

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

e. PCBs and PCB Items in service or projected for disposal must meet the applicable records and monitoring requirements as identified in 40 CFR 761.180 (Reference 14).

8-7. Used Oil. Used oil must be managed and recycled in accordance with applicable used oil regulations. See Section 7-2 regarding Used Oil Management.

8-8. Treated Wood. Burning of waste wood products treated with hazardous constituents, including but not limited to arsenic or pentachlorophenol may present an environmental hazard due to concentration or transformation of hazardous constituents during the combustion process. Therefore, USACE must not engage in or allow burning of treated wood on USACE property.

8-9. Ozone-Depleting Substances. Ozone-Depleting Substances (ODS) must not be disposed of as waste. Recovered ODS cannot be bartered, sold, or traded. Return excess ODS to the DoD ODS Reserve.

8-10. Policy for Spill Reporting and Response. USACE must prevent spills of oil and hazardous substances due to USACE activities and maintain readiness to rapidly respond to, contain, and clean up USACE spills.

8-11. Responsibilities for Spill Reporting and Response.

a. Senior Managers are responsible for:

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

(2) Evaluating options for spill response support and seeking contract(s), MOAs, or mutual assistance agreements to provide response. In the event a Senior Manager determines that an in-house team is needed, establish, and maintain a trained and qualified emergency spill response team at the appropriate response level, and ensure annual training, appropriate medical surveillance, and availability of proper equipment and supplies. In order to respond to spills in the environment responders must be trained as First Responder, Operations Level as defined in 29 CFR 1910.120(q)(6)(ii) (Reference 1).

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

(4) Routinely evaluating and updating existing spill prevention and contingency plan documents to ensure that they meet current criteria specified in applicable Federal and state regulations. Where extremely hazardous substances (See 40 CFR 355) are present, plans must specifically address emergency notification under Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (Reference 28). Corrective actions must be initiated immediately for plans that do not meet regulatory requirements.

8-12. Notifications for Spill Reporting and Response.

a. In accordance with the Clean Water Act and CERCLA, USACE facilities must immediately notify the NRC of any discharge in violation of the Clean Water Act and/or any discharge of a reportable quantity of a hazardous substance.

b. The requirement to internally coordinate notifications (see Section 8-13) is not a pre-requisite to notifying the NRC and must not delay such reporting.

c. Where an extremely hazardous substance is involved, USACE-operated facilities will provide emergency release notifications as required by 40 CFR 355.40 (Reference 12).

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

8-13. Internal Agency Coordination for Spill Reporting and Response.

a. Where notification is required under Paragraph 8-12, internal agency coordination must occur as specified in spill response plans, but must generally include notification of:

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

c. The District and MSC Commanders.

d. The USACE facility and District or Center ECCs.

e. The Readiness Branch evaluates the severity of incident and can use ENGLink to further distribute information to higher authority. In USACE labs, reports must be made through command channels to the appropriate level.

f. The Real Estate Office, when the affected area includes an outgranted area.

g. The Safety Office.

h. The Public Affairs Office.

i. The Office of Counsel.

j. The HQUSACE Civil Works Operations, Natural Resources Management Branch via Division.

8-14. Spill Response.

a. Initiation of Response Action.

(1) If, despite preventive measures, a USACE spill occurs, USACE must initiate response action. This may take the form of formal notification to outside response authorities and/or active response by USACE.

(2) USACE policy provides for protection of human life and health, but also requires optimal effort to protect the environment, particularly in sensitive areas identified in geographic response plans, and to protect property and structures. USACE personnel must not respond to any spill unless it is safe to do so, and unless those personnel are adequately trained and equipped.

(3) USACE may partner with others on regional response teams, such as States or the U.S. Coast Guard. USACE personnel must not respond at a level higher than the “First Responder, Operations Level” (See 29 CFR 1910.120(q)) unless authorized by the Senior Manager and appropriately trained to do so.

(4) USACE personnel must not respond to non-USACE spills off USACE-operated facilities, except as provided in Paragraph 8-14c(5) of this regulation.

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

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

(2) USACE First Responder In-House Team. A few facilities may need to establish their own in-house spill response teams. In some cases, facilities must establish in-house spill teams for limited emergency spill responses to meet initial emergency spill response needs until full scale emergency spill responders can arrive at a spill site. USACE personnel would typically be trained and qualified at the “First Responder, Operations Level.” (See 9 CFR 1910.120(q)). USACE First Responders would then manage the spill scene until the arrival of a responder with whom the USACE facility has made previous arrangements for spill response services. This second responder may be a contractor, MOA partner, or mutual assistance agreement as discussed below.

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

c. Non-USACE Spills.

(1) Except for personnel serving in an Emergency Management function or as part of a mutual assistance agreement, emergency spill responses by USACE personnel must be limited to spills on USACE lands or facilities, or to spills caused by USACE activities.

(2) USACE contractor spills on USACE lands and waters are the responsibility of the contractor. The contractor must be required to report spills immediately to the Contracting Officer’s Representative and to the Senior Manager, or to the District or Center ECC. In the event that a USACE contractor causes a spill on a USACE-operated facility or from USACE activities and is unwilling or unable to respond, USACE must provide a response to contain and clean up the spill. As in any case of a contractor’s non-compliance with safety and environmental standards, USACE officials have the option of stopping contractor work

and/or seeking compensation from the contractor for expenses incurred in fulfilling spill response obligations.

(3) The Office of Counsel must be consulted to ensure compliance with all legal requirements, proper documentation, and presentation of any claim.

(4) Spills from a grantee on USACE lands are the responsibility of outgrant area operator.

(5) Where outgranted areas are mandated by Federal or state regulations to have and maintain a spill plan, Real Estate, in consultation with the OPM, must require the grantee to comply with spill planning requirements and to be able to clearly provide for an adequate response in the event of a spill. This requirement must be an element of lease compliance inspections.

(6) Where outgranted areas are not required by Federal or state regulations to have a spill plan, OPMs, in coordination with the Chief of Real Estate, must encourage grantees to complete and maintain a spill plan according to a USEPA template and coordinate with local emergency response authorities to obtain necessary support in the event of a spill.

(7) In the event that any outgranted area facility appears to present a high risk of a spill of oil or a hazardous substance without being able to provide for an adequate response, the OPM must, in coordination with the Real Estate element, take prompt action to reduce the potential risk. In the case of very high risks of a spill without provision for adequate response, the OPM must notify the grantee and the Chief of Real Estate. The Chief of Real Estate will, in turn, notify the grantee following the terms of the outgrant. The Chief of Real Estate is the primary responsible agent for notifications to the grantee within outgranted areas.

(8) USACE responders may respond to non-USACE spills on USACE lands and waters at the discretion of the Senior Manager when the spill poses an immediate threat to USACE-operated facilities, natural resources, authorized purposes, or personnel. USACE responders must be adequately trained and qualified to respond. Given there is limited authority only to protect Federal interests, Senior Managers must, in coordination with the Office of Counsel, determine there is adequate justification. If the party who generated the spill wishes to request assistance, in coordination with the Office of Counsel, appropriate assistance agreements may be discussed.

(9) Senior Managers may authorize emergency spill responses to non-USACE spills off USACE lands and waters when they determine that: the spill poses a threat to USACE-operated facilities, natural resources, authorized purposes, or personnel; the required spill response is beyond the capability of available emergency spill responders; and USACE personnel are adequately trained and qualified to provide such a response. Senior Managers are encouraged, in coordination with the Office of Counsel, to establish mutual assistance agreements for such situations.

(10) When incidents are resolved to the point that available emergency spill responders are capable of managing and controlling the spill, the Senior Manager must

withdraw USACE personnel from the emergency spill scene. A follow-up report regarding non-USACE spills in USACE lands and waters must be prepared and submitted to the District or Center Senior Manager for review.

(11) When the Senior Manager determines that it is advantageous, the Senior Manager may fulfill requests from the U.S. Coast Guard, USEPA, or other agencies for assistance from USACE vessels to assist clean up operators when oil-saturated debris hampers cleanup efforts. Costs must be reimbursed.

(12) USACE Response Cost Recovery. When USACE responds to spills caused by others, whether offsite sources, grantees, or invitees, costs may be recovered either through lease or contract provisions, or by claims under CERCLA or the Oil Pollution Act of 1990 for recovery of response costs, or by other legal authority. The Office of Counsel must be involved before response begins and at every stage to determine if USACE has authority to respond and if funds are available for the cost of response, to ensure compliance with applicable legal requirements including coordination with regulatory authorities and documentation of all response actions and costs, and to initiate action to pursue cost recovery. If funds are provided by another agency or party, an agreement for reimbursement or advance funding must be in place before USACE actions begin.

(13) Whenever natural resources for which USACE may be a Federal trustee have been or could be injured by a spill on or affecting USACE Civil Works lands or waters, the Senior Manager will coordinate with the Office of Counsel and notify any other potentially affected Federal, State, or Tribal natural resource trustees, and the U.S. Department of Justice to assess whether Federal natural resources have been damaged by the spill and determine if a natural resource damage claim should be pursued against the responsible PRPs to provide for or fund the completion of an assessment and restoration of Natural Resource Damages (NRD) and to pursue a claim for recovery of NRD costs.

(14) Spill Response Equipment. Equipment and supplies purchased and stored must be consistent with the level of spill response training and qualifications maintained for USACE employees by the USACE facility. Purchase and storage of equipment and supplies for response to USACE spills on behalf of a spill response contractor or spill response MOA partner is permitted. All spill response equipment stored at USACE facilities must be regularly inspected, maintained, and serviced in accordance with manufacturer and USACE requirements. Facilities must train employees to notify the Senior Manager and the ECC upon discovery of a spill. Facilities that train personnel at the First Responder or higher levels must include training in initiating an Incident Command System. (See Chapter 10-1. 10-1.

8-15. Incident Commander. The Senior Manager at each USACE facility where there is a potential for a spill of oil or hazardous substances from the USACE facility or from USACE activities, must designate in writing an Incident Commander (IC), who is responsible for executing the project's response plan.

8-16. Public Information Related to Emergency Spill Response. Release of information regarding spills of oil or hazardous substances must be conducted per the following guidelines:

a. Officials assigned to release information about the spill must ensure compliance with all applicable requirements for notice to the public under applicable laws, public safety, seek to prevent or reduce widespread public alarm, and ensure public understanding of the extent and nature of the public hazard resulting from the spill.

b. The public will be provided opportunities for meaningful public involvement, to include notice and comment opportunities in advance of proposed actions to the extent possible under the circumstances of the spill, and in compliance with laws and regulations governing public involvement.

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

d. Information proposed for release must be coordinated with the District or Center Public Affairs Office, and with the District or Center Office of Counsel.

e. Prompt release of information not otherwise required by statute or regulation must be made at the discretion of the District Commander for spills that are contained within the project boundaries and that pose no threat to public health and welfare or the environment. The Senior Manager, in coordination with the District or Center Public Affairs and the Office of Counsel, will advise the District Commander.

8-17. Spill Plans.

a. Each USACE facility should refer to USEPA Qualified Facilities Applicability Flowchart to determine whether the facility is subject to the SPCC Rule. Each facility must document the applicability of the SPCC Rule in a Memorandum for Record (MFR). The MFR must be stored on-site and documented in the Project Site Survey in the ECSOR.

b. USACE facilities that are subject to the SPCC Rule must prepare an SPCC Plan using an USEPA spill plan template or equivalent.

c. For USACE facilities not subject to the SPCC Rule, the Senior Manager must prepare and maintain a spill response plan appropriate for local mission activities.

d. See Appendix B for additional guidance on spill response plans and see Chapter 10 for spill-related training requirements.

8-18. Documentation. Records must be maintained for all reportable releases of oil, hazardous substance, and extremely hazardous substances. Records must include initial notification, subsequent written reports, public involvement including opportunities

for comment and consideration of public comments, and the basis for and full extent of response actions conducted by USACE. The goal is to be able to demonstrate that all necessary actions have been completed.

Chapter 9 Permits

9-1. Policy.

a. USACE must apply for environmental permits where legally required but must use best management practices to reduce the need for environmental permits to the maximum extent practical, in order to simplify compliance requirements.

b. During planning activities, in addition to considering the need for environmental permits to operate, USACE must evaluate whether “permits to construct” or “permits to modify” are needed before commencing construction activities.

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

9-2. Permits for Cleanups.

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

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

9-3. Clean Water Act Section 402. If, during routine operation and maintenance of a USACE dam, responsible officials find that the facility may have the potential to introduce pollutants to navigable waters from a point source, they should first evaluate whether it is possible to avoid or eliminate the potential introduction of a pollutant.

a. This issue of national significance is sufficiently complex to require an interdisciplinary discussion to determine the proper course of action based on site-specific circumstances.

b. If it is not possible to avoid the potential introduction of a pollutant, the District, MSC, and HQUSACE Operations element, and Office of Counsel staff should be consulted. HQUSACE, MSC, and District will collaboratively evaluate the circumstances. If the final determination is that a National Pollutant Discharge Elimination System permit application is appropriate, the District will contact the responsible USEPA or state regulatory agency in coordination with HQUSACE, MSC and District Operations element, and Office of Counsel staff.

9-4. Policy for Recordkeeping . USACE must retain environmental records onsite as required by regulation and following any litigation holds from the Office of Counsel. Once regulatory record retention periods are exceeded, environmental records are archived as required by Army policy, unless a litigation hold is in place.

9-5. The Environmental Compliance System of Record. The ECSOR is the management tool for recording environmental compliance-related information for Civil Works and USACE-owned properties. Use of the ECSOR is mandatory. It is used for collecting data relative to EC assessments and associated performance measures. Data tracked includes internal and external EC assessments and associated scheduling; corrective actions; and regulator visits. Also included is project site-specific information such as: existing environmental permits, existing environmental plans, storage tank data, EPCRA Tier II reporting status, and hazardous waste generator status. HQUSACE is responsible for establishing annual reporting deadlines. District ECCs are responsible for ensuring that all project information is entered into the ECSOR.

9-6. Retention of Environmental Liability Records. The retention periods for environmental records may differ depending on the Army's disposition instructions for records, and on the applicability of any statutory, legal, financial, or administrative requirements. For example, financial accounting policy requires records used to establish environmental liability amounts to be retained on file for a minimum of 6 years, 3 months, and 1 day after the environmental liability no longer exists. When more than one record retention requirement applies, the longer retention period must be followed.

9-7. Availability of Policy References and Guidance Documents. References and Guidance Documents of national interest will be made available. FedCenter or its successor (as defined by policy) will be the primary clearing house for these items.

9-8. Policy for Environmental Contamination and Reporting Requirements.

a. USACE must plan for and respond to unpermitted releases of CERCLA hazardous substances, CERCLA pollutants or contaminants, and POL on or from USACE-owned property unless another party is legally responsible for some or all of the contamination.

b. USACE must report Civil Works and USACE-owned properties with known or suspected unpermitted releases of hazardous substances, pollutants, or contaminants to the USEPA per 42 USC §9603(c).

c. USACE must exercise its lead agency authority under CERCLA when responding to releases or potential releases of hazardous substances, pollutants, or contaminants except in rare cases where remediation is controlled by another program and cannot be deferred to CERCLA. See ER 1165-2-132, Hazardous, Toxic and Radioactive Waste (HTRW) Guidance for Civil Works Projects (Reference 33), for additional guidance on managing HTRW sites on USACE-owned lands and property.

d. USACE must disclose environmental liabilities (EL) of existing environmental contamination in financial statements. See Section 9-10 for discussion regarding environmental liability.

e. Funding priority must be established based on relative risk among all USACE Civil Works sites where action is required, including sites listed on the National Priorities List by USEPA, sites that present a significant threat to public health or welfare from a release with a completed or threatened exposure pathway, and sites with an applicable requirement under Federal or state environmental law for response beyond the Preliminary Assessment/Site Inspection phase. On lands and waters not controlled by USACE, USACE must not remediate contamination that is not from USACE-owned property or that is at least partially the responsibility of another party.

f. All documents related to remediation must be retained. If cost recovery is an issue, the Office of Counsel must be consulted.

g. USACE must ensure that employees involved in site remediation are properly trained.

9-9. Procedures for Addressing Legacy Contamination on USACE Property.

a. Senior Managers must ensure that for USACE-controlled lands and waters, a one-time LCS has been completed and documented within the ECSOR. Results of Legacy Contamination Surveys must be coordinated with individuals with experience in environmental investigation and cleanup. District personnel are encouraged to seek assistance, as needed, from the EM CX.

b. Where a finding is made of a reasonable suspicion of legacy contamination warranting investigation, the Senior Manager at the USACE facility and the responsible District or Center must budget for funding to conduct a Preliminary Assessment. Further action will be pursued when warranted as specified in CECW-CO memo of 19 September 2011, Subject: Legacy Contamination Evaluations on USACE Property.

c. Spills that were immediately cleaned up and areas where hazardous materials were merely used, not disposed, do not constitute a reasonable basis for legacy contamination concern. Known historic releases of hazardous substances or suspected unpermitted disposal of hazardous substances substantiated through written records, historic photographs, or credible personnel interview statements, constitute a reasonable basis for concern.

d. The assessment team must interview personnel, review available records, and complete the LCS in the ECSOR to identify and document legacy contamination concerns.

e. As required by 42 USC §6937, USACE must undertake a continuing program to update information regarding the inventory of Federal Agency Hazardous Waste Facilities. Information must be updated at the request of USEPA. Upon receipt of

request from USEPA, HQ ECC must coordinate with the ECC Network to ensure timely and accurate update of the USACE inventory.

9-10. Environmental Liabilities Recognition, Valuation and Reporting.

a. HQ ECC must take actions to ensure completeness, accuracy, and suitability for audit of the identification, valuation, and reporting of USACE CW EL limited to those sites referred to as “non-FUSRAP,” which specifically excludes sites managed under the FUDS program and FUSRAP.

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

c. The HQ ECC must take action to ensure that quarterly EL data calls are completed by the MSCs, Districts, and Centers to document new and update existing USACE EL.

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

e. Districts and Centers.

(1) Districts and Centers must recognize, value, and report EL to the MSC for submittal to the HQ ECC.

(2) Districts and Centers must retain records on environmental liability cost estimates that support documentation used to develop cost estimates, such as documents resulting from study or cleanup actions, and the name and position of the person(s) who developed and approved the cost estimate at the District level. In accordance with financial accounting guidance, records must be retained for a minimum of 6 years, 3 months, and 1 day after the environmental liability no longer exists. Documentation must be producible within 48 hours of request.

(3) Districts must distinguish between reasonably estimable measures of liability and liabilities for which costs cannot be reasonably estimated.

(4) In situations where there is an ongoing negotiation regarding the nature or extent of cleanup required on USACE-controlled lands or waters, and where the cost of the liability is not reasonably estimable, it must be reported as a probable EL site, but with an unknown EL cost estimate. MSCs and Districts must report probable and reasonably estimable EL based-on information, documentation, and cost estimates developed during the previous phase of the CERCLA process.

(5) For the purpose of this ER, the phases of the CERCLA process are as follows: PA/SI, Remedial Investigation/Feasibility Study, and Remedial Design/Remedial Action. The technical and financial data in each MSC and District EL report must be limited to the ongoing phase of the CERCLA process for each EL site.

(6) Where there are potentially responsible parties other than USACE, unless a matter is resolved (for example, a settlement has been negotiated and agreed upon), the liability is not reasonably estimable and must not be reported as an environmental liability. The intention of the U.S. Government is to resolve all U.S. liability when it resolves the matter. In that circumstance, it will never have to be reported.

(7) USACE is not responsible for reporting contested environmental liability claims, litigation risk, the environmental liabilities of other parties, or environmental liabilities that have been or are expected to be paid by the U.S. Department of the Treasury from the permanent, indefinite Judgment Fund provided by 31 U.S.C. § 1304. Counsel should be consulted about the availability of the Judgment Fund and its relationship to environmental liability reporting.

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

f. MSCs.

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

(2) Must verify and validate all District and Center EL information before submittal to HQ ECC.

(3) Submit to HQ ECC quarterly updates of the status of EL within the MSC to ensure complete and accurate recognition, valuation, and reporting of all new EL, and to update the probability, cost estimate, and site description and cleanup status for existing EL. The MSC EL reporting official may authorize District or Center EL reporting officials to report EL information directly to HQ ECC; however, it remains the responsibility of the MSC EL reporting official to ensure that the that all EL information is complete, accurate, and available to support the annual audit of the USACE CW financial statement.

(4) MSC environmental liability POCs must retain records of all environmental liability information required for quarterly and annual reports, and document the receipt, review, MSC-level validation, and submission to the HQ ECC.

¹ For training requirements, see Memorandum, ACSIM, 16 Jul 2009, Subject: Army Implementing Guidance for Environmental Liabilities Recognition, Valuation, and Reporting.

(5) Each reported environmental liability must be reconciled with the real property asset or assets with which it is associated, and it must be reflected in the USACE real property asset record.

9-11. Limitations on Cleanup Actions at Non-USACE Facilities. As a general rule, USACE must not clean up contamination for which it is not legally liable. See ER 1165-2-132, HTRW Guidance for Civil Works Projects.

9-12. Response Actions at Outgranted USACE Properties. Grantees are responsible for reporting and responding to releases occurring on or from USACE outgranted property as a result of actions or activities of the grantee. This does not, however, relieve USACE from applicable reporting under CERCLA 120(b) regarding the Federal Agency Hazardous Waste Compliance Docket (the Docket), if required, and if not already reported by the grantee. Where outgranted property becomes listed on the Docket, USACE must coordinate with the grantee for performance of the work, as provided in the lease agreement.

9-13. Policies and Procedures for Potential Responsible Party Sites.

a. General.

(1) CERCLA, Section 107 (42 USC §9607) imposes liability on: (1) current owners and operators of facilities where hazardous substances have been released; (2) owners and operators of facilities at the time the hazardous substances were disposed; (3) persons who arranged for disposal or treatment of such substances, and (4) persons who accepted such substances for transport, treatment, or disposal. Such a person (which includes companies, corporations, and government entities) is referred to as a PRP.

(2) For Civil Works lands where USACE is the accountable land holding agency, USACE may be a PRP solely as a result of its current owner status, and USACE may be a PRP because of operations that may be the source of a release or threatened release of a hazardous substance on the property. Any previous owner, grantor, lessee, licensee, grantee, or operator on USACE Civil Works land may be a PRP for a release or threat of a release of a hazardous substance for the property area where that party has owned, operated or has or had a property right. USACE Senior Managers will consider all PRPs for any Civil Works lands where there has been a release or there is a threat of a release of a hazardous substance.

(3) The primary goal in PRP matters is to resolve USACE liability in a U.S. Department of Justice (DOJ) coordinated settlement providing USACE a complete release from all claims. Pursuit of a non-USACE PRP should be considered any time it is viewed as possible that there is a PRP for contamination at or from USACE Civil Works lands.

(4) Typical situations in which it might be appropriate to pursue a PRP are where a determination is made that it is necessary to address contamination that pre-existed the construction of the project/facility but was not addressed previously; contamination that has been addressed in a manner that is not currently considered sufficient; and contamination

that was caused by a third party at an operational facility. This list is suggestive and is not intended to be exclusive.

(5) It is critical that the Office of Counsel be coordinated with immediately if a PRP potentially shares responsibility for contamination with USACE and that all actions be coordinated with the Office of Counsel.

(6) Paragraph 6.b. of ER 1165-2-132, HTRW Guidance for Civil Works Projects (Reference 33) provides that “Construction of Civil Works projects in HTRW-contaminated areas should be avoided where practicable” and discusses how such construction can be avoided. Still, situations may arise where such construction has occurred.

(7) If construction is unavoidable and planned or has already occurred on USACE Civil Works lands where contamination is present, and a PRP is or may be responsible for the contamination or the construction, the responsibility of any such PRP for responding to the contamination will be considered at the earliest possible time and preferably before construction is initiated.

(8) In accordance with ER 1165-2-132, for Civil Works cost share projects on other lands where contamination is present, the non-Federal sponsor will be solely responsible to fund or arrange for funding for all costs associated with eliminating or addressing all such contamination, including completing all response actions considering the planned project use of the property and disposing of all contaminated solid or hazardous waste, including waste containing any CERCLA hazardous substance, before, during or after the conduct of all phases of the project. In addition, the non-Federal sponsor will hold the United States harmless for all liability associated with such contamination at a cost-share project, in order to protect the United States and USACE from costs associated with liability as a PRP under CERCLA or any other Federal or state law for such contamination at the project site.

b. Timing of Response to Contamination Discovery for Civil Works Projects.

(1) If knowledge of a release or threat of release of contamination is acquired for USACE Civil Works lands, USACE will comply with CERCLA Section 120, 42 U.S.C. 9620, and promptly proceed with a PA/SI to determine if further response action is necessary. Regulatory agencies and the public will be notified in accordance with CERCLA and the NCP. If knowledge of a release or threat of release of contamination is acquired regarding the location of a Civil Works project not on USACE lands, USACE will promptly advise the non-Federal sponsor or landowner and regulatory agencies with authority over the location, and ensure the contamination is addressed before further action is taken by USACE on the project. See ER 1165-2-132 for additional information on addressing this issue at various phases of Civil Works projects.

c. Cost-Sharing of Project.

(1) For cost-shared projects, of ER 1165-2-132 (Reference 33) provides that, “[r]ecovery of costs from a PRP would be accomplished by the project sponsor.”

(2) Paragraph 6.b. of ER 1165-2-132 provides that “[n]o cost sharing credit will be given for the cost of response actions.” Likewise, no cost sharing credit will be given for any costs related to cost recovery. Paragraph 12.b. of ER 1165-2-132 also provides that “[w]here sponsors have undertaken response actions, the sponsor must provide a letter before construction on impacted lands from the appropriate regulatory agency(s) confirming that response actions complied with regulatory guidelines and statutes.” Paragraph 10 of ER 1165-2-132 also discusses responsibility during execution of and after a project partnership agreement (PPA) is signed.² Paragraph 10 includes language that must be included in an agreement with a local sponsor.

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

(4) As stated above, construction of CW projects in HTRW-contaminated areas should be avoided where practicable. Paragraph 8.b.(2) of ER 1165-2-132 discusses projects without a non-Federal sponsor involving non-Federally owned land. It provides that “the cost of response action will be 100% Federal expense although the Federal Government may seek a contribution through appropriate legal proceedings at a later date.”³ It should be stressed that this is not a preferred course of action but is possible. In such a circumstance, the cost of response actions should be obtained before the start of construction.

c. District and Center Responsibilities.

(1) The District or Center Commander is responsible for ensuring all PRP issues concerning Civil Works projects or lands are referred to the District Counsel, who will represent USACE with regards to all such matters. The Project Manager (PM), Chief of Real Estate, Resource Management Officer, and other District or Center employees will support the District Counsel as requested on these matters. The goals of the PRP process are to:

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

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

² The ER actually uses the term local cooperation agreement (LCA). This term and project cooperation agreement (PCA) are synonymous with the term PPA.

³ As discussed more fully below, law and CW policy provide that Federal appropriations will not be used to remedy contamination that is the responsibility of others. Not conducting response actions on sites with other viable PRPs is based on the following: fiscal law restraints, which limit use of appropriated funds to clean up contamination not caused by USACE; lack of adequate resources to pursue cost-recovery or contribution action; concern that the burden of proof is not unnecessarily and unreasonably shifted to the United States with respect to any action; necessity to preclude diversion of program dollars from other CW activities; desire to avoid incurrence of long-term cost demands; and consistency with the national policy that the “polluter pays” for contamination for which it is liable and that general taxpayer funds should not be used to relieve PRPs of their liability under CERCLA.

(c) Provide justification to the MSC and HQ regarding these positions and determinations.

(2) District PM.

(a) The PM is responsible for providing all PRP data required for planning, programming, budgeting, execution, and reporting. The PM reviews and comments on PRP documents, coordinates technical input to the historical analysis and cost allocation reports and all technical support to activities conducted at the project, and coordinates the contract or in-house field investigation in support of the project, if any.

(b) The PM participates with Counsel at all levels of USACE in the negotiation effort and is a participant in the negotiation and settlement process. The PM, upon advice of counsel, determines if historical and technical research of the site history is necessary⁴ and arranges for such research as necessary.

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

(3) Office of Counsel.

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

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

(c) In accordance with Army Regulation (AR) 27-40, the Office of Counsel is the sole POC between USACE and the DOJ on all PRP-related activities. Requirements of AR 27-40, the Freedom of Information Act, and the Federal Rules of Civil Procedure will control release of all documents related to the PRP investigation.

⁴ It is quite possible that much is already known about the site and significant research and investigation is not required. For instance, ER 1165-2-132 provides that throughout project development, information relevant to consideration of the existence of other PRPs is gathered. During the Reconnaissance Phase, an HTRW assessment can be conducted. As part of this assessment: existing and past land uses should be evaluated; current and historical aerial photographs should be studied and compared; records should be searched and should extend as far as records are available; long-time local residents, workers, and current property owners should be interviewed about past land uses, potential contamination, and any history of HTRW problems; and EPA, state, and local regulatory or response agencies should be consulted for license/permit actions, for any violation, enforcement, and/or litigation against property owners, and for general information about local HTRW problems such as illegal dumping and past contamination. The feasibility phase includes a preliminary identification of potential source areas of any contamination. In addition, an HTRW Documentation Report may exist to address HTRW-related construction information.

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

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

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

d. Headquarters Responsibilities. In the Office of the Chief Counsel, CECC-E is the primary program legal support office for pre-litigation coordination with DOJ on matters involving environmental law. If litigation is filed, CECC-E will work with CECC-L on all coordination with DOJ and HQ oversight of the USACE litigation position, and any settlement agreements and consent decrees. All final settlements, including consent decrees, require the approval of the Chief Counsel to provide the concurrence or other position of USACE to DOJ. If a litigation judgment is issued, CECC-L will work with CECC-E on any recommendation for reconsideration or appeal and will provide any necessary coordination with the General Counsel of the Army, the other Military Department General Counsels, or the DoD General Counsel.

e. EM CX Responsibilities. The EM CX is available to provide legal, technical, and programmatic assistance to the Districts as requested by the District, the MSC, or HQUSACE. Though not mandatory, Districts are strongly encouraged to seek EM CX legal and technical staff review of site history analysis, liability, and cost allocation analysis reports, administrative orders, settlement agreements, and consent decrees.

f. PRP Requirements.

(1) Experience has shown that effective management of PRP negotiations demands major commitments of legal, project management, and technical resources. Furthermore, the complexity of the legal issues that must be addressed, and the effect that those issues have on resolving USACE CERCLA liability or on the need for litigation, requires that the Office of Counsel take the lead in such negotiation efforts. It is especially vital that the Office of Counsel and technical resources are adequately staffed and trained to support the negotiation requirements.

(2) PRP activities encompass the following efforts.

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

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

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

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

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

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

(3) USACE focuses its PRP efforts toward settlement of any USACE CERCLA liability with other PRPs, rather than on conducting response actions using CW appropriations. The PRP mission goal is to negotiate a fair and equitable settlement with other PRPs who either have or will take the response action in exchange for a release of USACE liability under CERCLA, other applicable environmental laws, and rules of common law.

(4) Negotiation of a settlement will include consideration of USACE response costs incurred at the site of the contamination as a cost recovery claim for costs of investigation, removal or remedial action, and any cost or damage claims available to USACE under any lease or contract, tort law, or common law. Consideration will also be given to the availability of enforcement actions under CERCLA, RCRA, or other environmental laws, to require a responsible party to perform a response or corrective action on Civil Works lands. If a settlement or litigation judgment results in a requirement for the United States to pay a sum to another party, USACE Civil Works appropriations are not available for such a purpose. DOJ will be requested to submit the sum to the U.S. Department of the Treasury for payment from the Judgment Fund per 31 U.S.C. § 1304.

(5) By arranging for settlement in advance of response action, USACE avoids expending CW appropriations to address the responsibilities of others.

(6) USACE coordinates its PRP settlement efforts with the DOJ. USACE strives to achieve final settlement of any liabilities, using the Judgment Fund for payment of the government's fair share allocation of response costs sought by other PRPs.

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

g. Third-Party Sites (TPS). TPS are properties owned by another party. USACE, along with other parties, may bear potential liability for USACE hazards or hazardous substance release at TPS. This liability may result from disposal, transport, or arranging for transport of hazardous substances from a USACE CW property.

(1) If a TPS is currently used by an active military service component or has more recently or predominantly been used by an active military service component, responsibility for representing USACE interests regarding the property will be borne by the active military component.

(2) A contiguous plume extending off USACE CW property or extended range fans are not TPS projects and should be considered under the originating property. USACE will not clean up contamination caused by CW activities at TPS. All such contamination will be dealt with under the claims provision in conjunction with the DOJ. Any such claims received by a District should be referred to the Office of Counsel.

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

(1) Documented or otherwise reliable evidence that USACE Civil Works property is or may be contaminated and that the contamination may be wholly or partially the responsibility of another party.

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

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

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

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

i. Justification for Cost Recovery. Cost recovery is to be pursued where USACE has incurred response costs and the conditions stated in the following paragraph apply.

j. Response Costs. Whenever USACE has incurred response costs and there is at least one non-Federal PRP, a claim for CERCLA cost recovery will be considered by the District Counsel, in coordination with CECC-E. If the anticipated costs to USACE of seeking cost recovery are likely to exceed the amount that may be recovered including future response costs, the District Counsel will confer with CECC-E and USACE may elect not to pursue further claims. If a PRP is solely responsible for the contamination, an enforcement action will be considered notwithstanding the amount USACE has incurred or the cost of future response actions. A limited amount of historical and technical research may be conducted by the District project team in order to evaluate these options. The research will include facts that concern whether a SOL is applicable to the claim, and, if so, the operative dates, to ensure the SOL does not pass before a claim is pursued, if appropriate, Contract Claims. USACE determination of CERCLA liability allocation will be independent of any government contract claim entitlements raised by other parties.

(1) Subsequent payment demands for contribution or cost recovery against a government contractor PRP to address the contractor's CERCLA liability will not be offset by claims the contractor may assert under a previously issued government contract.

(2) The responsible Contracting Office must address whether contract claims for CERCLA costs are payable directly under the contract. This is especially important in the case of cost recovery referrals to the DOJ, as such referrals must address potential government contract claims or equity arguments that the PRP might seek to raise as offset to the CERCLA-based recovery claim. These situations require that the District, the responsible contracting office, and DOJ coordinate closely. CECC-E will be consulted on the analysis of any potential claims by a contractor against the United States under a contract concerning the area in question, as well as any potential claims by USACE against a contractor under the terms of a contract.

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

k. Real Estate Instruments.

(1) As part of the PRP investigation, real estate instruments under which the United States Government acquired an interest in the property, as well as any relevant documentation of the negotiation of the transfers, will be evaluated to determine if CERCLA claims have been indemnified, waived, or otherwise affected by the terms of the instruments.

(2) Real property appraisal documents and property inventories often include important information about the condition of the site or the understanding of the parties at the time of the transfer. These real estate documents will be evaluated early in the PRP investigation.

(3) If a defense to a CERCLA contribution claim or a claim of indemnification in favor of the United States is possible from the language of a real estate instrument, the validity of these defenses or claims will be pursued before further expenditures on the project, except as justified by the Office of Counsel and approved by the MSC and HQUSACE.

I. Project Performance.

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

(2) USACE Districts will avoid performing response actions for releases for which other parties have whole or partial responsibility, thus avoiding the raising of fiscal law issues and the need for cost recovery from the PRP(s). USACE funds are not available to pay a portion of the response costs for work by PRPs to respond to a release on USACE Civil Works property, although DOJ may pursue an agreement with a PRP to share costs if the payment for the United States will be paid from the Judgment Fund.

(3) If there is a release on USACE Civil Works property and there is a substantial threat of an imminent and substantial danger to public health or welfare, the USACE District Counsel and PM may consider the need for a CERCLA time-critical removal action before a determination can be made of the responsibility of a PRP for the release. If a PRP is known to be responsible for a release that presents a substantial threat of an imminent and substantial danger to public health or welfare, the District Counsel and PM will seek to compel response by the PRP to the release through an authorized environmental regulator and/or seek the assistance of DOJ for a judicial order to compel an abatement action. The District Counsel will consult with the Division Counsel and CECC-E if such a situation arises.

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

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

(6) Agreements settling a PRP's liability or contribution will be subject to the approval of CECC and signed for the United States by an authorized DOJ official. Final settlements will normally be in the form of a consent decree. Copies of all final signed settlements will

be provided to CECC-E and the Division and District or Center Counsel and retained in the permanent files of the District or Center.

(7) Use of ADR procedures in coordination with the DOJ, such as non-binding arbitration, mediation, facilitation, mini-trial, and disputes panels, should be considered wherever normal negotiation techniques are unsuccessful.

(8) Before using an ADR procedure in a PRP negotiation, the involved Office of Counsel will provide notice to CECC-E. If litigation has already been filed in the matter, notice will also be provided to CECC-L.

(9) Upon request, CECC-E will assist Districts receiving PRP negotiation assignments in both tailoring existing ADR procedures and developing new ones. DOJ's involvement must be requested as early as possible to allow for participation in developing and implementing the ADR initiatives, as any settlement payments to other PRPs arising from the ADR would be expected to be certified by DOJ to the Judgment Fund for payment.

(10) The District or Center counsel will ensure that MTS reflects the status of the ADR effort.

m. Funding of Projects involving Potentially Responsible Parties.

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

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

n. USACE Programmatic Project Closeout Procedures.

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

(2) An official closeout report for activities involving a PRP should be prepared by the District or Center Counsel and signed by the District or Center Commander. Notice of closeout will be provided to the MSC. The Office of Counsel will ensure the report is appropriately marked as privileged to USACE and managed to prevent release. This report will be permanently retained in the District or Center files. The official closeout report should have the following attachments:

(3) An MFR that contains a brief history of the PRP activities.

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

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

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

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

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

p. Public Involvement and Administrative Record. Public involvement and Administrative Record requirements are the responsibility of the District when USACE is the lead agency for the response actions. These matters will be closely coordinated with the District Office of Counsel on properties with PRP involvement. The Office of Counsel and the PMs for all Districts involved with response actions on projects performed by USACE will coordinate closely to ensure compliance with CERCLA and the National Contingency Plan (NCP) regarding public comments and to ensure that the administrative record file and permanent project files are properly assembled and maintained.

Chapter 10 Real Estate

10-1. Purpose. This Chapter establishes policy for conducting real estate transactions in compliance with applicable environmental laws and regulations and environmentally sound land management practices.

10-2. Applicability. This Chapter applies to all USACE Divisions and Districts performing real estate transactions in support of O&M activities at CW projects and facilities.

10-3. Policy.

a. USACE is legally required to and will comply with the requirements of CERCLA of 1980, as amended, to avoid incurring liability to the maximum extent possible as a result of real estate transactions and to avail itself of the landowner liability protections provided in the statute.

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

c. Policies set forth in this chapter align USACE CW real property to the extent appropriate with all other Army real property.

10-4. Implementation.

a. For USACE to comply with the requirements of CERCLA and avail itself of the landowner liability protections afforded under CERCLA, USACE must perform certain actions to assess the environmental condition of property before entering into designated real property transactions.

(1) Section 0 summarizes the real property transactions and associated environmental site assessment requirements. These transactions include fee acquisition of real property on behalf of the United States, leases of USACE-controlled property, transfers of jurisdiction between Federal agencies and deeds divesting title from the United States.

(2) Generally, this requirement does not apply to reassignments within the Army or DoD, to acquisitions of less-than-fee, or to other outgrants (easements, licenses, or permits). However, some circumstances may warrant an environmental site assessment for these transactions as determined by the District ECC or DE, and as coordinated with the Chief of Real Estate and the District Counsel. Such transactions may have liability implications for the United States. At a minimum, the District must document the condition of the property immediately before the outgrant is issued.

(3) When USACE CW property is made available by license to the National Guard Bureau or State National Guard Components, this chapter will apply to that license issuance as it does to other license issuances of other civil works property.

b. As part of the required environmental compliance assessment for outgrants identified in Chapter 5-2 of this ER, the person or entity granted use of USACE real estate assets, commonly referred to as the grantee, will be informed of, and will be required to correct, any compliance-related finding pertaining to its operations.

(1) Through the District Chief of Real Estate, the Project ECC will provide consultation support to the grantee in close coordination with the District ECC. Notifications regarding non-compliance, penalties, etc. are only valid when they have been reduced to writing and signed by the District Chief of Real Estate or a designated Real Estate officer.

(2) Refer to Section 5-3 of this ER for a comprehensive description of requirements for EC assessments on outgranted lands.

(3) Where the grantee is in substantial non-compliance and/or is unwilling or unable to implement corrective action, Real Estate and Operations officials, with the advice of the Office of Counsel, will take actions as required in Section 5-3 of this ER.

(4) Refer to Chapter 5 for full details on EC assessments, to Chapter 8 spill reporting and response, and to Chapter 9-1. for environmental contamination and reporting requirements. Also see Chapter 8, ER 405-1-12 for information on compliance inspections and other matters pertaining to outgranted USACE property. Real Estate elements must add appropriate clauses to outgrants when new outgrants are issued or at renewal to ensure compliance with these requirements.

(5) Grantees that are not part of a DoD Component are prohibited from using USACE Civil Works property for the storage, treatment, or disposal of any material that is a toxic or hazardous material not owned by DoD. 10 U.S.C. § 2692. Under certain limited statutory exceptions, a grantee may be authorized by a senior USACE official to use toxic or hazardous material on USACE property, subject to providing protection to USACE and the United States from any responsibility or liability associated with such use. The Grantee will be responsible for compliance with all statutory and regulatory requirements associated with such toxic or hazardous material, including obtaining any necessary permits, spill planning, use or spill reporting, spill or release response, and protection of all persons or property that may be or are affected by the use of such toxic or hazardous materials.

10-5. Environmental Risk and Recognized Environmental Conditions (REC) for Real Estate Transactions.

a. Some sites have well documented history or site-specific historical knowledge that objectively demonstrates lack of environmental issues. These types of sites may not require the same level of review as a site with recognized environmental conditions (REC) for real estate transactions. This determination requires someone with sufficient knowledge and experience to exercise professional judgment, appropriately evaluate

risks, and form conclusions regarding RECs (for example, Environmental Professional as defined in ASTM 1527-13).

b. Once an Environmental Professional has determined that a site meets the above criteria, Real Estate Transactions may be fulfilled by completing the records review portion of a traditional Phase I ESA, including conducting interviews and reviews of internal USACE records as well as Federal, state, and local websites that document releases of hazardous substances. The findings from historical site records review and interviews should be documented by an Environmental Professional (see Glossary) or a person under the supervision of an Environmental Professional. The resulting document must be reviewed and approved by an Environmental Professional or equivalent.

10-6. Environmental Site Assessments.

a. Generally, USACE will assess, determine, and document the environmental condition of property in a Phase I ESA.⁵ A Phase I ESA:

(1) Addresses the environmental conditions of the property subject to the real estate transaction and includes references to publicly available and related reports, studies, and permits.

(2) Provides an accurate summary of the environmental condition of the property.

(3) Is an integral part of the Report of Availability (ROA) or the Disposal Report, which forms the basis for the USACE official with delegated authority to approve the real property transaction and for the preparation of the required legal documents, land use controls, and covenants that may be required for a covered transaction.

(4) For details on the content of a ROA or Disposal Report, see the Real Estate Division or the most recent regulations on the Real Estate management, outgrant, and disposal programs.

(5) Disposal reports will also require a classification of a “standard environmental condition of property area type” using the Standard Classification of Environmental Condition of Property Area Types for Defense Base Closure and Realignment Facilities (ECP). A properly scoped Phase I ESA should provide the necessary information to make this classification.

(6) Is required for any acquisition of fee land or acquisition by lease that may be required to support O&M activities at CW projects and facilities.

(7) That identifies recognized environmental conditions may recommend the use of a Phase II Environmental Site Assessment (Phase II ESA) for additional investigation.

⁵ Prior Environmental Site Assessments conducted by USACE were referred to as an Environmental Baseline Survey (EBS), an Environmental Condition of Property (ECP), or a Preliminary Assessment Screening (PAS).

b. Standards.

(1) The Phase I ESA must comply with the current version of applicable standards for performing a Phase I Environmental Site Assessment as defined in American Society for Testing and Materials (ASTM) Standard E1527, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process (Reference 18).

(2) The Phase II ESA must comply with the current version of applicable standards for performing a Phase II Environmental Site Assessment as defined in ASTM E1903, Standard Guide for Environmental Site Assessments: Phase II Environmental Site Assessment Process (Reference 20).

(3) The ECP must comply with the current version of applicable standards for Standard Classification of Environmental Condition of Property Area Types for Defense Base Closure and Realignment Facilities as defined in ASTM D 5746 (Reference 50).

c. Preparation. A Phase I ESA must be prepared and signed as specified in 40 CFR 312.21(d) (Reference 11) by an Environmental Professional (see Glossary). 40 CFR 312.20 provides information on requirements that must be met within 180 days before a Phase I ESA is signed.

d. Responsibility to Provide and Costs. When USACE is acquiring a fee or leasehold interest in land, acting as the disposal agent, or declaring land excess for disposal by the General Services Administration (GSA), USACE is responsible for the Phase I ESA. For all other transactions initiated by non-USACE entities, the non-USACE entity is generally responsible for providing and paying for the Phase I ESA or other environmental documentation, or the non-USACE entity can pay for USACE to complete the required environmental documentation. USACE may prepare and pay for the Phase I ESA or other environmental documentation if there is a demonstrable benefit to USACE in the appropriate transaction and if it is determined that USACE has such authority, in consultation with the Office of Counsel and Resource Management Office.

10-7. Acquisition of Fee Interests. Fee acquisitions from non-Federal entities in support of CW O&M activities require a Phase I ESA to comply with the USEPA's "all appropriate inquiry" rules (40 CFR 312) under CERCLA before obtaining title to the real property to meet the protections afforded under Section 101(35)(A)(i) of CERCLA with respect to releases, threatened releases, or disposal of hazardous substances.

10-8. Acquisition of Less than Fee Interests (Lease, Easement, License, Right-of-Entry). Generally, acquisition of less than a fee interest in support of CW O&M activities does not require a Phase I ESA. However, some circumstances may warrant a Phase I ESA for acquisition of less than fee as determined by the District ECC or DE, and as coordinated with the Chief of Real Estate.

10-9. Out-Leases.

a. A Phase I ESA is required for all leases of CW property to non-federal entities, except as noted below. If the property has been the site of a release, storage, or disposal of hazardous substances, USACE will notify the Lessee of the nature of the substance involved and when the substance was on the property and will provide a description of the remedial action taken, if any. A copy of the Phase I ESA will be provided to the Lessee and may be attached to the lease.

b. Renewals.

(1) If the lease did not have an environmental site assessment performed originally, one must be done before renewal using the Phase I ESA guidance as the basis for the assessment. The lessee will be responsible for the cost of the assessment unless there is a demonstrable benefit to USACE.

(2) For renewal of existing leases that have previously had an environmental site assessment, the Project or District ECC must ascertain if environmental conditions have changed. If an environmentally significant change has occurred, it will be documented as a supplement or amendment to the original assessment report.

(3) A copy of the environmental site assessment and/or any supplements or amendments will be provided to the Lessee and attached to the lease.

(4) An example of an environmentally significant change includes the storage of a hazardous substance for a year or more, a known release of such substance, or its disposal on the property.

c. Lease Terminations.

(1) Upon termination of a lease, Real Estate, the Project or District ECC, and the Lessee should jointly conduct a final lease closeout using a Phase I ESA funded by the Lessee to ascertain any changes in the environmental condition of the subject property. If the Lessee refuses to participate, Real Estate and the Project or District ECC, or other qualified individual will conduct the final assessment at the Lessee's expense and provide a copy to the Lessee.

(2) If an environmentally significant change has occurred, it will be documented as an amendment to the original environmental site assessment, if one was done. The Lessee will be required to complete any environmental restoration in accordance with lease terms and conditions.

10-10. Easements, Licenses, and Use Agreements.

a. Easements, Licenses and Use Agreements may not require extensive review due to lack of RECs and should be handled in accordance with 14-5. Some circumstances may warrant a Phase I ESA for these transactions as determined by the District ECC, and as coordinated with the Chief of Real Estate. Typically, licenses of civil works property to the National Guard will require a Phase I ESA as well as related documentation within the ROA.

b. Renewals.

(1) For renewal of existing easements, licenses, use agreements, or similar real estate transactions that have previously had an environmental site assessment, the Project or District ECC must ascertain if environmental conditions have changed. If significant environmental changes have occurred, the Project or District ECC, or an appropriately qualified individual designated by the District Chief of Operations, will ensure that the ROA Part B is updated or completed and meets the intent of ER 405-1-12, Chapter 8, or its successor (Reference 30).

(2) For renewal of existing easements, licenses, use agreements, or similar real estate transactions that have not previously had an environmental site assessment, the Project or District ECC, or an appropriately qualified individual designated by the District Chief of Operations, will ensure that the ROA Part B is completed and meets the intent of ER 405-1-12.

10-11. Outgrant Assessments and Procedures. The District Chief of Real Estate is the sole responsible agent for all matters regarding real estate outgrants.

a. Notification procedures, compliance challenges, and other matters regarding outgranted lands will be closely coordinated through the Operations Project Manager, the Project or District ECC, District Chief of Operations, District Office of Counsel, and other Federal, state, and local staff agencies as circumstances require.

b. Outgrant documents require grantees to comply with all Federal, state, and local laws, ordinances, and regulations. These include environmental requirements. The outgrant documents also specifically spell out notification procedures and requirements under and following the terms of the outgrant.

c. Notifications regarding non-compliance, penalties, etc. are only valid when they have been reduced to writing and signed by the District Chief of Real Estate or designated Real Estate officer. Refer to Chapter 5 of this ER for a comprehensive description of requirements for EC assessments on outgranted lands.

10-12. Consents. When third parties request the use of existing USACE easements, granting consents for such use should be reviewed by an Environmental Professional to determine if RECs are present and handled in accordance with 14-5. In some cases, however, a Phase I ESA may be required to document the baseline condition of the property before considering the request, especially where material is being deposited onto USACE interests. In addition, it may be necessary to require the requesting party to provide test results with respect to any deposited materials. In any event, the requesting party will be required to certify in writing what material will be deposited, agree in writing to bear any costs related to that deposit and indemnify USACE in writing for any costs related to that deposit.

10-13. Disposals by Deed when USACE is the Disposal Agent.

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

b. In addition to a Phase I ESA an ECP classification will be required to determine the area type of the property for all fee transfers or transfer of any other interest in real property by deed, to meet the CERCLA notice, covenant and access requirements. Depending on the absence or extent of contamination on the property being conveyed, the CERCLA notice, covenants and access provisions will vary. An ECP classification is not required for disposal of a lesser interest in property by an instrument other than a deed, unless the District ECC determines otherwise and coordinates with the Chief of Real Estate.

10-14. Finding of Suitability to Transfer. A Finding of Suitability to Transfer (FOST) is required for any Federal property where response action is not complete before the transfer, including USACE CW property, in accordance with CERCLA § 120(h)(3)(C). The District will coordinate with the Division and HQUSACE in the preparation and approval of the FOST.

a. For USACE CW property to be reported as excess to GSA, a Phase I ESA and an ECP classification will be prepared. The appropriate level of detail for the Phase I ESA should be coordinated with GSA.

b. Transfers of jurisdiction between non-DOD Federal agencies. A Phase I ESA and an ECP classification will be prepared using readily available information to document the environmental condition of the property to be transferred.

c. Reassignments within Army or transfer to another DoD component. A Phase I ESA and an ECP classification are optional for these types of transactions based on negotiation between the components.

10-15. Summary. Table 0-1 summarizes the documentation requirements by transaction type as discussed in the paragraphs above. However, as determined by the District ECC or DE, and as coordinated with the Chief of Real Estate, an ECP Report or additional environmental assessment may be performed for any real estate transaction.

**Table 0-1.
Documentation Requirements by Transaction Type**

Action	Interest/Party	Documentation
Acquisition	Fee	Phase I ESA
	Easement	A review as described in 14-5.a. unless a Phase I ESA is determined to be necessary
Acquisition	Lease, License	Phase I ESA unless 14-5 applies
Outgrant	Lease (except Agricultural)	Phase I ESA and ROA unless 14-5 applies
Outgrant	Easement License Use Agreement	A review as described in 14-5.a. unless a Phase I ESA is determined to be necessary.
Outgrant	License to National Guard	Phase I ESA and ROA
Outgrant	Agricultural Lease	A review as described in 14-5.a. unless a Phase I ESA is determined to be necessary (Note: This applies to lease of new areas as well as each new competitive award. If a new competitive award is made to the same Lessee, the previous environmental review may be relied upon unless conditions have changed.)
Outgrant	Lease Renewal with same Lessee, on same property, for same purposes. (Other instances will be treated as a new Lease.)	Rely on previous site assessment. If significant change has occurred, supplement the previous site assessment. If no previous site assessment, conduct Phase I ESA prior to renewal.

Action	Interest/Party	Documentation
Outgrant	Renewal of Easement, License or Use Agreement with same Grantee, on same property, for same purposes. (Other instances will be treated as a new outgrant.)	Rely on previous site assessment. If significant change has occurred, supplement the previous site assessment. If no previous site assessment, conduct a review as described in 14-5.a. unless a Phase I ESA is determined to be necessary.
Outgrant	Renewal of License to National Guard	Rely on previous site assessment. If significant change has occurred, supplement the previous site assessment. If no previous site assessment, conduct Phase I ESA prior to renewal.
Outgrant	Lease Termination	Phase I ESA and joint Lease closeout
Outgrant	Termination of Agricultural Lease	Visual site inspection and Lease close out or Phase I ESA and joint Lease close out if a Phase I was done initially.
Outgrant	Termination of Easement, License or Use Agreement	Visual site inspection and outgrant close out or Phase I ESA and joint outgrant close out if a Phase I ESA was done initially.
Outgrant	Termination of License to National Guard	Phase I ESA and joint outgrant closeout
Consent for use of USACE Easement		Phase I ESA if determined to be necessary in cases involving placement of fill or dredge material disposal.
Disposal	Deed divesting fee title from the United States, USACE acting as disposal agency	Phase I ESA and ECP classification and Disposal Report

Action	Interest/Party	Documentation
Disposal	Deed divesting easement title or release or termination of easement with no deed, USACE acting as disposal agency	Phase I ESA and Disposal Report unless 14-5 applies
Disposal	Excess property reported to GSA	Phase I ESA and ECP classification (level of detail coordinated with GSA)
Disposal	Transfer of Jurisdiction to a non-DoD Federal Agency	Phase I ESA and ECP classification
Disposal	Reassignment within Army or transfer to another DoD component	Optional: Phase I ESA and ECP classification as negotiated between components

10-16. Policy for Environmental Training Requirements. USACE must train its employees to execute their duties in a manner that complies fully with EC Requirements.

10-17. Responsibilities for Environmental Training Requirements.

d. ECCs at all levels of USACE must consult with supervisors and Senior Managers regarding environmental training requirements for Civil Works Operations employees.

e. Supervisors at all levels of USACE are required to work with ECCs and Senior Managers to ensure that their employees receive required environmental training.

f. District and Center ECCs must make training recommendations to facility-level supervisors. Facility-level supervisors and Senior Managers must ensure that facility ECCs are adequately trained.

10-18. Training Requirements.

a. In accordance with policy established in Section 2-1.d of this ER, each mission and business line must provide all employees training tailored to the duties assigned to their position. The employee training must ensure that each employee is aware of the Significant environmental aspects entailed in the duties assigned to their position and understands the operational controls that are in place to enable them to successfully execute their duties in compliance with all relevant EC Requirements.

b. All USACE Senior Managers must receive Environmental Compliance and Sustainability Training for Managers in addition to the EC training specified in Paragraph 10-18a.

c. Foundational Training Requirements for ECCs. Supervisors must ensure that any employee who lacks on-the-job environmental compliance experience or equivalent education and training, must within 3 years of being designated as an ECC, successfully complete the courses listed below. The order of course completion may vary according to mission need.

(1) Environmental Regulations Practical Applications for Civil Works or Environmental Regulations Practical Applications (PROSPECT Course #398).

(2) Environmental Laws and Regulations (Proponent Sponsored Engineer Corps Training [PROSPECT] Course #170).

(3) Environmental Compliance Assessment Training (ERGO-CPTrack or its successors).

(4) Sustainability and Energy. The requirements of this tier may be fulfilled by a completing a variety of courses on environmental management and sustainability addressing topics relevant to USACE Civil Works Operations and Federal facilities.

d. Mission Specific Training Requirements. The following training must be accomplished to meet local mission requirements.

(1) Hazardous Waste Manifest Training (PROSPECT Course #223) and subsequent biennial refresher training. By taking this course you will satisfy requirements in Paragraphs (4) and (5) below.

(2) Energy Manager Training. ECCs and other employees who are going to be designated as Energy Managers in accordance with the Energy Independence and Security Act of 2007, Section 432 (Reference 411) must complete a 32-hour Energy Manager course as specified in Federal Energy Management Program guidance issued under Energy Policy Act of 1992, Subtitle F, Section 151 (Reference 38). The 32-hour training must be completed before an individual is designated as an Energy Manager.

(3) RATS On-the-Job Training. Each newly designated ECC must participate in a RATS assessment as the junior member of a more experienced assessment team.

(4) Hazardous Material Transportation. Supervisors must ensure that personnel engaged in preparing, transporting, or offering hazardous materials for offsite transportation must be trained on hazardous materials transportation regulations. This includes employees making U.S. Department of Transportation (DOT) packaging decisions and signing shipping papers. In accordance with DoD policy, 49 CFR 172.704 (Reference 17), and DTR 4500.9-R. Part II, Chapter 204, Paragraph D (Reference 26), initial training must be completed within 6 months of assuming duties and refresher training within 24 months

thereafter by persons executing hazardous material (including hazardous waste) shipping documents.

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

(6) Hazard Communication. Supervisors must ensure that appropriate personnel are trained in hazard communication.

(7) Spill Response Training. Supervisors must ensure that appropriate personnel are trained on requirements of spill plans and contingency plans.

(8) Training must include instruction on how to determine if a spill is reportable and may include training as “First Responder, Operations Level” designated in 29 CFR 1910.120(q) (Reference 1).

(9) Any employee with spill plan, contingency plan, or hazardous materials security plan responsibilities must be trained on emergency procedures and function-specific duties.

(10) In accordance with Engineer Manual (EM) 385-1-1, Section 33.G.02 (Reference 27), any USACE facility that establishes a spill response team to respond to spills in a defensive manner must train employees assigned to the response team to, at a minimum, the First Responder Operations Level.

(11) Incident Command Training. Supervisors must ensure that personnel who must perform as a Designated IC during hazardous materials or POL spill response must be trained in Incident Command to the appropriate level for the potential worst-case spill at their facility. Incident Command System (ICS) 100, 200, and 700 are the minimum training requirements for all Designated ICs. ICS 300 and 400 are required for Incident Commanders who may respond under unified command. (Refer to Homeland Security Presidential Directive 5 (Reference 36).)

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

10-19. Training Record Documentation. Formal training, as well as completion of field experience requirements that are specified in applicable regulations, must be documented in personnel records; informal or on-the-job training must be maintained by individuals and their supervisors, as appropriate.

Chapter 11 Budgeting for Environmental Compliance

11-1. Purpose. The purpose of this section is to promote awareness of budget guidance to facilitate funding for EC.

11-2. Budget Engineer Circular.

a. Guidance regarding preparation and submission of the budget is provided annually via the Civil Works Budget Development Engineer Circular. This guidance is generally issued annually between March and May.

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

c. Phase Activity Code “EP” is to be assigned to each budget package submitted for inclusion in the budget as a sustainability package.

d. Work Category Codes pertaining to EC are specified and must be used for tracking of budgets and expenditures as follows:

(1) 60160 - Environmental Compliance Management for Navigation.

(2) 60260 - Environmental Compliance Management for Flood Risk Management.

(3) 60360 - Environmental Compliance Management for Hydropower, FERC #539.

(4) 60460 - Environmental Compliance Management for Environmental Stewardship.

(5) 60560 - Environmental Compliance Management for Recreation.

(6) 61160 - Environmental Compliance (Remedial Actions) for Navigation.

(7) 61260 - Environmental Compliance (Remedial Actions) for Flood Risk Management.

(8) 61360 - Environmental Compliance (Remedial Actions) for Hydropower, FERC #545.

(9) 61460 - Environmental Compliance (Remedial Actions) for Environmental Stewardship.

(10) 61560 - Environmental Compliance (Remedial Actions) Maintenance for Recreation.

e. Funding for EC will be included within Civil Works Operations business line budgets. For circumstances where implementation of corrective action is contingent upon receipt of additional funding, USACE policy is to clearly and formally document the

funding need through the budget process, and to continue to identify the need until full compliance is achieved. ECCs at all levels will support preparation of budget packages for environmental compliance and sustainability requirements.

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

Appendix A References

- 1 29 CFR 1910. Occupational Safety and Health Standards. 1 July 2013, <https://www.gpo.gov/fdsys/granule/CFR-2013-title29-vol5/CFR-2013-title29-vol5-part1910>
- 2 33 CFR 230.9. Categorical Exclusions. 1 July 2012, <https://www.gpo.gov/fdsys/granule/CFR-2012-title33-vol3/CFR-2012-title33-vol3-sec230-9>
- 3 40 CFR 300.5. Definitions. 1 July 2001, <https://www.gpo.gov/fdsys/pkg/CFR-2001-title40-vol24/pdf/CFR-2001-title40-vol24-sec300-5.pdf>
- 4 40 CFR 300.420. Remedial Site Evaluation. 1 July 2009, <https://www.gpo.gov/fdsys/pkg/CFR-2009-title40-vol27/pdf/CFR-2009-title40-vol27-sec300-420.pdf>
- 5 33 CFR 335, Operation and Maintenance of USACE Civil Works Projects Involving the Discharge of Dredged or Fill Material into Waters of the United States or Ocean Waters. 1 July 2012, <https://www.gpo.gov/fdsys/granule/CFR-2012-title33-vol3/CFR-2012-title33-vol3-part335>
- 6 33 CFR 336, Factors to Be Considered in the Evaluation of USACE Dredging Projects Involving the Discharge of Dredged Material into Waters of the United States and Ocean Waters. 1 July 2011, <https://www.gpo.gov/fdsys/granule/CFR-2011-title33-vol3/CFR-2011-title33-vol3-part336>
- 7 33 CFR 337, Practice and Procedure. 1 July 2012, <https://www.gpo.gov/fdsys/granule/CFR-2012-title33-vol3/CFR-2012-title33-vol3-part337>
- 8 33 CFR 338, Other Corps Activities Involving the Discharge of Dredged Material or Fill into Waters of the United States. 1 July 2011, <https://www.gpo.gov/fdsys/granule/CFR-2011-title33-vol3/CFR-2011-title33-vol3-part338>
- 9 40 CFR 261.21-261.24, Subpart C. Characteristics of Hazardous Waste. 1 July 2012, <https://www.gpo.gov/fdsys/pkg/CFR-2012-title40-vol27/xml/CFR-2012-title40-vol27-part261.xml>
- 10 40 CFR 273, Standards for Universal Waste Management. 1 July 2012, <https://www.gpo.gov/fdsys/pkg/CFR-2012-title40-vol28/xml/CFR-2012-title40-vol28-part273.xml>
- 11 40 CFR 312. Innocent Landowners, Standards for Conducting All Appropriate Inquiries. 6 October 2015, <https://www.gpo.gov/fdsys/pkg/CFR-2011-title40-vol28/pdf/CFR-2011-title40-vol28-part312.pdf>
- 12 40 CFR 355.40. Emergency Release Notification. 1 July 1996, <https://www.gpo.gov/fdsys/pkg/CFR-1996-title40-vol14/pdf/CFR-1996-title40-vol14-sec355-40.pdf>

- 13 40 CFR 761.2, PCB Concentration Assumptions for Use. 1 July 2010, <https://www.gpo.gov/fdsys/granule/CFR-2010-title40-vol30/CFR-2010-title40-vol30-sec761-2>
- 14 40 CFR 761.180. Records and Monitoring. 1 July 2011, <https://www.gpo.gov/fdsys/pkg/CFR-2011-title40-vol31/pdf/CFR-2011-title40-vol31-sec761-180.pdf>
- 15 42 USC 9601 *et. seq.* (Chapter 103). Comprehensive Environmental Response, Compensation, and Liability (CERCLA). 11 December 1980, <https://www.gpo.gov/fdsys/pkg/USCODE-2011-title42/html/USCODE-2011-title42-chap103.htm>
- 16 49 CFR 100-175, International Maritime Dangerous Goods Code (IMDG-C). 1 October 2011, <https://www.gpo.gov/fdsys/pkg/CFR-2011-title49-vol2/pdf/CFR-2011-title49-vol2.pdf>
- 17 49 CFR 172.704, Training Requirements. 1 October 2010, <https://www.gpo.gov/fdsys/granule/CFR-2010-title49-vol2/CFR-2010-title49-vol2-sec172-704>
- 18 American Society for Testing and Materials (ASTM) Standard E1527, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process. 2014
- 19 USACE Non-Hazardous Solid Waste Diversion and Materials Management Policy Memorandum. 19 September 2017
- 20 ASTM E1903, Standard Guide for Environmental Site Assessments: Phase II Environmental Site Assessment Process. 2011, <http://www.polb.com/civica/filebank/blobload.asp?BlobID=9948>
- 21 Clean Water Act (CWA). 33 USC §1251–1387. 18 October 1972
- 22 Council on Environmental Quality. Interim Guidance for Calculating Federal Compliance with Executive Order 13693 Waste Diversion Goals. 23 December 2016, <https://eko.usace.army.mil/public/index.cfm?syspage=Documents&id=274585>
- 23 DoD 4500.9-R, Defense Transportation Regulation. March 1998, [http://navybmr.com/study%20material/DOD%204500.9-R,%20DEFENSE%20TRANSPORTATION%20REGULATION%20\(DTR\).pdf](http://navybmr.com/study%20material/DOD%204500.9-R,%20DEFENSE%20TRANSPORTATION%20REGULATION%20(DTR).pdf)
- 24 DoD 7000.14-R, Volume 4, Chapter 13, DoD Financial Management Regulation. “Environmental Liabilities,” https://comptroller.defense.gov/Portals/45/documents/fmr/archive/04arch/04_13b.pdf
- 25 DoD Instruction 4715.23. Integrated Recycling and Solid Waste Management. 24 October 2014, http://www.dtic.mil/whs/directives/corres/pdf/471523_dodi_2016.pdf
- 26 DTR 4500.9-R. Part II, Chapter 204, Paragraph D. Hazardous Material. 1 May 2018, https://www.ustranscom.mil/dtr/part-ii/dtr_part_ii_204.pdf

- 27 Engineer Manual (EM) 385-1-1. Safety and Health Requirements. 30 November 2014,
https://www.publications.usace.army.mil/Portals/76/Publications/EngineerManuals/EM_385-1-1.pdf
- 28 Emergency Planning and Community Right-to-Know Act (EPCRA). 42 USC §§11001-11050 (Pub. L. 99-499, 100 Stat. 1728. 17 October 1986)29
- 29 Engineer Regulation (ER) 200-1-5, Policy for Implementation and Integrated Application of the USACE Environmental Operating Principles (EOP) and Doctrine. 30 October 2003,
https://www.publications.usace.army.mil/Portals/76/Publications/EngineerRegulations/ER_200-1-5.pdf
- 30 ER 405-1-12. Chapter 8, Real Estate Handbook. 20 May 1985,
https://www.publications.usace.army.mil/Portals/76/Publications/EngineerRegulations/ER_405-1-11.pdf
- 31 ER 1110-2-8154, Water Quality and Environmental Management for Corps Civil Works Projects. 31 May 1995,
<https://www.lrp.usace.army.mil/Portals/72/docs/WaterManagement/WQ%20JustificationER1110-2-8154.pdf>
- 32 ER 1130-2-540. Environmental Stewardship Operations and Maintenance Policies. 15 November 1996,
https://www.publications.usace.army.mil/Portals/76/Publications/EngineerRegulations/ER_1130-2-540.pdf
- 33 ER 1165-2-132. Hazardous, Toxic, and Radioactive Waste (HTRW) Guidance for Civil Works Projects. 26 June 1992,
https://www.publications.usace.army.mil/Portals/76/Publications/EngineerRegulations/ER_1165-2-132.pdf
- 34 Executive Order 13112. Safeguarding the Nation from the Impacts of Invasive Species. 3 February 1999,
<https://www.invasivespeciesinfo.gov/laws/execorder.shtml#eo13112>
- 35 Executive Order 13751, Safeguarding the Nation From the Impacts of Invasive Species, 5 December 2016,
https://www.fedcenter.gov/_kd/go.cfm?destination=ShowItem&Item_ID=30579
- 36 Homeland Security Presidential Directive 5. SUBJECT: Management of Domestic Incidents. 28 February 2003,
<https://www.dhs.gov/sites/default/files/publications/Homeland%20Security%20Presidential%20Directive%205.pdf>
- 37 International Organization for Standardization (ISO) 14001:2004. Environmental Management Systems - Requirements with Guidance for Use
- 38 Public Law (Pub. L.) 102-486. Energy Policy Act of 1992. 24 October 1992,
<http://www.gpo.gov/fdsys/pkg/BILLS-109hr6eas/pdf/BILLS-109hr6eas.pdf>

- 39 Pub. L. 104-332, National Invasive Species Act of 1996. 26 October 1996, <https://www.gpo.gov/fdsys/pkg/PLAW-104publ332/content-detail.html>
- 40 Pub. L. 106-580, National Institute of Biomedical Imaging and Bioengineering Establishment Act. 29 December 2000, <https://www.gpo.gov/fdsys/pkg/PLAW-106publ580/content-detail.html>
- 41 P.L. 110-140. Energy Independence and Security Act of 2007. 19 December 2007, <https://www.gpo.gov/fdsys/pkg/PLAW-110publ140/pdf/PLAW-110publ140.pdf>
- 42 P.L. 114-113, Div. E, §706. Recycling. Environmental Protection, <https://www.congress.gov/114/plaws/publ113/PLAW-114publ113.pdf>
- 43 Solid Waste Disposal Act [commonly called Resource Conservation and Recovery Act (RCRA)]. 42 USC §6901 et seq. 21 October 1976, <https://www.gpo.gov/fdsys/pkg/STATUTE-90/pdf/STATUTE-90-Pg2795.pdf>
- 44 Toxic Substances Control Act (TSCA). 15 USC 53, §2601-2695d 11 October 1976
- 45 UFGS 01 57 19 Temporary Environmental Controls. November 2015, <https://www.wbdg.org/FFC/DOD/UFGS/UFGS%2001%2057%2019.pdf>
- 46 Unified Facilities Criteria 1-200-2. High Performance and Sustainable Buildings, 7 November 2014, http://www.acq.osd.mil/eie/Downloads/IE/UFC_1_200_02.pdf
- 47 USACE Policy for Collection of Civil Works Appropriation Refunds, CERM-F, 11 Oct 2017
- 48 USEPA Best Management Practices for Lead at Outdoor Shooting Ranges. EPA-902-B-01-001, Revised June 2005, https://www.epa.gov/sites/production/files/documents/epa_bmp.pdf
- 49 ER 200-2-2. Procedures for Implementing NEPA. 4 March 1988, https://www.publications.usace.army.mil/Portals/76/Publications/EngineerRegulations/ER_200-2-2.pdf
- 50 American Society for Testing and Materials (ASTM) Standard D5746, Standard Classification of Environmental Condition of Property Area Types for Defense Base Closure and Realignment Facilities. Copyrighted material, reapproved 2016

Appendix B Spill Planning and Training Guidance

B-1. Spill Plan Documents.

a. USACE facility spill plans will identify potential spill site locations, specific measures to be taken in case of a spill from those facilities, and the level of emergency spill response expected from USACE personnel to provide that response. The plan will also specify at what emergency spill response level USACE personnel at that location will be trained (as defined in 29 CFR 1910.120), and the Commander/Director will ensure that USACE personnel are not responding at levels beyond their qualifications or authorization.

b. Responsibility to ensure that USACE facility spill plans are promptly developed and adequately meet requirements rests with the functional element responsible for the operation of the facility. In many cases, this will be the Operations element, but in some cases, it may be Engineering, Construction Logistics or Emergency Management. The functional element may write the spill plan itself or may enlist the aid of other USACE elements, other agencies, or contractors to obtain an effective plan. No matter who actually develops the plan, involvement of facility personnel is important.

B-2. Training Requirements for Spill Response.

**Table B-1.
Training Requirements for Emergency Spill Response.**

Response Level	Job Function	Training Requirements
First Responder Awareness Level	Witness incident and initiate emergency response	Understanding of hazardous materials, their risks, and how to secure site and notify others
First Responder Operation Level	Respond defensively to protect nearby persons, property and the environment	8 hours of training including Awareness Level topics
Hazardous Materials Technician	Respond aggressively to stop releases	24 hours of training including Operations Level topics
Hazardous Materials Specialist	Support technicians, provide information on specific substances and act as liaison with government authorities	24 hours of training equal to technician level plus specialized competency
On-Scene Commander	Assume control of the incident scene	24 hours of Operations-level training plus competency in commanding incidents and implementing emergency response plans
Skilled Support Personnel	Temporarily perform immediate emergency support work (e.g., operate backhoe or crane)	Initial pre-entry briefing
Specialist Employees	Provide technical advice or assistance to Incident Commander	Annual training and competency in area of specialization

B-3. Examples of Responses Undertaken at the Various Response Levels.

**Table B-2.
Examples of Responses Undertaken at the Various Response Levels.**

Response Level	Examples of Responses
First Responder Awareness Level	Protect oneself. Protect others from exposure by controlling entry to the scene. Witness information that could be useful. Initiate response and communicate incident information to responders.
First Responder Operations Level	All items listed for Awareness Level, plus: Can respond defensively, but without exposure. For instance, a responder could go upwind or downhill from a spill and prevent its reaching water or other problem site by placing an obstacle, absorbent, or barricade in its path. Responders with this training have greater training in recognizing spill factors than those with Awareness Level training and should be better able to communicate with higher level responders. Responders with this training can assume control of the scene and serve as On-Scene Commander (OSC) if they also meet OSC qualifications.
Hazardous Materials Technician	All items listed for Operations Level, plus: Can respond aggressively to any spill, protecting self against exposure through the use of specialized equipment not available to First Responders. This may include various kinds of respirators, suits, and other personal protective equipment. Can shut off the source of the spill. Can execute more complex responses, including controlled explosions and backfires.
Hazardous Materials Specialist	All items listed for Hazardous Materials Technician. Has additional technical training in specialized response knowledge to coordinate and execute specialty responses or serve as technical advisor to the OSC.
On-Scene Commander	Assumes control of the scene. Coordinates response, ensures safety of responders, makes command decisions on what actions will or will not be taken. Operations Level OSCs in most cases would likely give control of the scene to an OSC with higher training.
Skilled Support Personnel	Those tasks for which they were trained.
Specialist Employees	Provide specialty advice to the OSC, which may include topics like safety, chemical reactions, and public evacuation strategies.

Appendix C
Glossary - Acronyms and Abbreviations

<u>Acronym</u>	<u>Term</u>
ACM	Asbestos-Containing Material
ADR	Alternative Dispute Resolution
AR	Army Regulation
ASTM	American Society for Testing and Materials
C&D	Construction and Demolition
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of the Federal Regulations
CoP	Community of Practice
CRAFT	Corps of Engineers Refined and Abridged Federal Energy Management Program Tool
CW	Civil Works
EM CX	USACE Environmental and Munitions Center of Expertise
DA	Department of the Army
DOC	U.S. Department of Commerce
DoD	U.S. Department of Defense
DOE	U.S. Department of Energy
DOI	U.S. Department of Interior
DOJ	U.S. Department of Justice
DoL	Directorate of Logistics
DOT	U.S. Department of Transportation
DTR	Defense Transportation Regulation
EC	Environmental Compliance
ECC	Environmental Compliance Coordinators
ECoP	Environmental Community of Practice
ECP	Environmental Condition of Property
ECSOR	Environmental Compliance System of Record
EL	Environmental Liabilities
EM	Engineer Manual

<u>Acronym</u>	<u>Term</u>
EM CX	Environmental and Munitions Center of Expertise (EM/CX)
EMS	Environmental Management System
EO	Executive Order
EOP	Environmental Operating Principles
USEPA	U.S. Environmental Protection Agency
EPCRA	Emergency Planning and Community Right-to-Know Act
ER	Engineer Regulation
ERDC	U.S. Army Engineer Research and Development Center
ERGO	Environmental Review Guide for Operations
ES	Enterprise Standard
ESA	Environmental Site Assessment
FERC	Federal Energy Regulatory Commission
FOA	Field Operating Activity
FOST	Finding of Suitability to Transfer
FUDS	Formerly Used Defense Sites
FUSRAP	Formerly Utilized Sites Remedial Action Program
GS	General Schedule
GSA	General Services Administration
HMR	Hazardous Materials Regulation
HQ	Headquarters
HQUSACE	Headquarters, U.S. Army Corps of Engineers
HTRW	Hazardous, Toxic, and Radioactive Waste
IC	Incident Commander
ICEP	Internal Controls Evaluation Plan
ICS	Incident Command System
ID	Identification
IPM	Integrated Pest Management
ISO	International Organization for Standardization
LCS	Legacy Contamination Survey
LDR	Land Disposal Restriction
MFR	Memorandum for Record

<u>Acronym</u>	<u>Term</u>
RMICP	Risk Managers' Internal Control Program
MOA	Memorandum of Agreement
MSC	Major Subordinate Command
MTS	Matter Tracking System
NCP	National Contingency Plan
NEPA	National Environmental Policy Act
NGB	National Guard Bureau
NON	Notice of Non-Compliance
NOV	Notice of Violation
NRC	National Response Center
O&M	Operations and Maintenance
OC	Office of Counsel
ODS	Ozone-Depleting Substance
OPM	Operations Project Manager
OSC	On-Scene Commander
PA	Preliminary Assessment
PA/SI	Preliminary Assessment/Site Inspection
PCB	Polychlorinated Biphenyl
PDT	Project Delivery Team
PM	Project Manager
POC	Point of Contact
POL	Petroleum, Oil, and Lubricants
PPA	Project Partnership Agreement
PROSPECT	Proponent Sponsored Engineer Corps Training
PRP	Potentially Responsible Party
PSS	Project Site Surveys
PVQ	Previsit Questionnaire
RATS	Regional Assessment Teams System
RCRA	Resource Conservation and Recovery Act
REC	Recognized Environmental Condition
ROA	Report of Availability

<u>Acronym</u>	<u>Term</u>
ROE	Report of Excess
SDS	Safety Data Sheet
SEP	Supplemental Environmental Project
SGB	State Guard Bureau
SI	Site Inspection
SOL	Statutes of Limitation
SPCC	Spill Prevention, Control, and Countermeasure
SPRP	Spill Prevention and Response Plan
TEAM	The Environmental Assessment Management
TEAM/ERGO	The Environmental Assessment Manual/Environmental Review Guide for Operations Supplement
TPS	Third-Party Sites
USACE	U.S. Army Corps of Engineers
USDA	U.S. Department of Agriculture
USEPA	U.S. Environmental Protection Agency

Appendix D Technical Terms

Civil Works Projects.

Civil Works projects are defined as projects implemented and operated for commercial navigation, flood risk management, environmental restoration, hydroelectric power, recreation, and municipal and industrial water supply. Environmental Compliance (EC) Requirements include Federal, state, and local environmental, energy and water conservation, and sustainability laws and regulations; Federal EOs; and DoD, Army and USACE regulations and policies.

Environmental Liability.

DoD Financial Management Regulation, DoD 7000.14-R, Volume 4, Chapter 13, as revised April 2018 (Reference 24), states that:

For financial reporting purposes, a DoD environmental liability is an expected future outflow or expenditure of resources that exists as of the financial reporting date for environmental cleanup, closure, and/or disposal costs resulting from past transactions or events. A DoD environmental liability exists when: (1) contamination is present or more than likely to be present; (2) environmental cleanup, closure, and/or disposal is required by applicable federal, state, interstate, or local requirements or an authorized legal agreement such as a lease, contract, or international agreement; and (3) DoD activities created the liability and/or an authorized legal agreement establishes DoD as the responsible entity. An environmental liability may also exist if environmental contamination is not DoD related, but DoD enters into a binding agreement that formally accepts financial responsibility for cleanup, closure, and/or disposal.

Environmental Aspect.

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

Environmental Professional.

For a full definition of this term refer to 40 CFR 312.10(b). For purposes of this regulation, an Environmental Professional is a person who:

Possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases on, at, in, or to a property, sufficient to meet the objectives and performance factors in § 312.20(e) and (f). An Environmental Professional is to remain current in his or her field through participation in continuing education or other activities.

Environmentally Significant Activity.

For purposes of this ER, those activities that are regulated by Federal, state, or local environmental laws, regulations, EOs, or as determined by USACE policy or the responsible OPM. For example, if a project has a NPDES-permitted outfall, then it is

“regulated” and considered an environmentally significant activity for purposes of this ER.

Environmental Management System.

A set of processes and practices that enable an organization to increase its operating efficiency, continually improve overall environmental performance and better manage and reduce its environmental impacts, including those environmental aspects related to energy and transportation functions. EMS implementation reflects accepted quality management principles based on the “Plan, Do, Check, Act” model found in the ISO 14001:2004(E) International Standard (Reference 37) and using a standard process to identify and prioritize current activities, establish goals, implement plans to meet the goals, evaluate progress, and make improvements to ensure continual improvement.

Federal Agency Hazardous Waste Compliance Docket.

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

Finding.

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

Finding, Significant.

A “significant finding” refers to a situation or circumstance in which as a result of a finding, there is a direct, significant threat to human health and safety, the environment, or the facility’s missions so that it rises to a level of urgency as to require action to evaluate the need for response to protect public health or welfare.

Headquarters Environmental Compliance Coordinator (HQ ECC).

The HQUSACE Senior Policy Advisor for Environmental Compliance.

Integrated Pest Management (IPM).

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

Legacy Contamination.

Legacy contamination means known or suspected hazardous substances, pollutants, or contaminants as defined under CERCLA, or petroleum releases remaining on USACE property from historic operations for which an evaluation or response action is indicated under law or regulation. See Chapter 9. It does not include releases previously investigated or cleaned up; de minimis losses of hazardous substances during use; areas where hazardous materials have been used but not disposed; or permitted releases. (Note: The term “legacy contamination” is not intended to capture the universe of USACE CW environmental liability.)

Management Practice.

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

Potentially Responsible Party (PRP).

The term “PRP” is commonly used for covered persons under CERCLA § 107, refers to all entities who arguably have some liability for contamination at a site.

Preliminary Assessment (PA).*

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

Regional Assessment Team System (RATS).

“RATS” is a term used to refer to the exchange of teams between Districts or Divisions for purposes of completing external EC assessments.

Senior Manager(s).

For the purposes of this ER, the term “Senior Manager” refers to the HQUSACE, MSC, District, Center, and FOA individual assigned to the position of Chief of Operations, Director of Logistics, FOA Director, Director of Public Works, Operations Project Manager, Facility Manager, or Laboratory Director.

Site Inspection (SI). See 40 CFR 300.5 and 300.420(c).

“SI” is a term established under CERCLA and is defined as, an onsite investigation to determine whether there is a release or potential release and the nature of the associated threats. The purpose is to augment the data collected during the PA and to generate, if necessary, sampling and other field data to determine if further action or investigation is appropriate. The SI phase typically involves limited sampling to

confirm or deny the presence of contamination, not to fully identify the nature and extent of contamination.

The Environmental Assessment Manual/Environmental Review Guide for Operations (TEAM/ERGO).

TEAM/ERGO is the term used for reference manuals used for conducting EC assessments. They are updated regularly and made available via FedCenter.

Trustee.

CERCLA §107(f)(2)(A) requires the President to designate in the NCP Federal officials who are to act on behalf of the public as Trustees for natural resources under Federal trusteeship. Section 300.600 of the NCP designates the natural resource trustees.

Natural Resources.

Land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the exclusive economic zone defined by the Magnuson Fishery Conservation and Management Act of 1976), any state or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

USACE Facilities.

For the purpose of this ER the term "USACE facilities" is defined as all CW, research and development and USACE-owned/revolving fund buildings, installations, projects, structures, lands and waters, public works, equipment, aircraft, vessels, and vehicles within the United States, District of Columbia, and territories.