



# Office of Command Counsel Newsletter

August 2000, Volume 2000-4

## Korte: Briefing the AMC Board of Directors (BOD)--"Top 10 Legal Issues"

The AMC Commander hosts his subordinate commanders and senior staff at quarterly BOD meetings. Command Counsel **Ed Korte** provides attendees with point papers on ten important and timely legal matters that we are working at HQ AMC. Mr. Korte may choose to brief a few of these if he is on the agenda, but all receive copies of the ten point papers.

On June 28, 2000 Mr. Korte provided point papers on the following topics:

Partnering Implementation Assessment Team (Encl 1)

Contract Delinquencies (Encl 2)

Use & Misuse of Government Resources (Encl 3)

Professional Liability Insurance (Encl 4)

Environmental Differential Pay (Encl 5)

Overtime Pay (Encl 6)

Protest Lessons Learned (Encl 7)

GAO/Court of Federal Claims Protest Procedures (Encl 8)

Transportation Issues (Encl 9)

FMS Marketing (Encl 10)

Copies of each of these Point Papers are provided for your information and use.

Thanks to **Vera Meza**, who coordinates this effort.

## Colonel Bill Adams Retires

**Colonel Bill Adams**, who served as AMC Deputy Command Counsel/Staff Judge Advocate, and later as a member of the Intellectual Property Branch of the Office of Command Counsel, retired in June after six years of exceptional service to the AMC legal community.

**Colonel Adams** brought a unique and rare commitment and dedication to work from his first to his last day on the job. When a HQ AMC or field

client was unsure as to where to go for legal advice, **COL Bill Adams** was always a great place to start.

In a warm and moving ceremony presided over by AMC Deputy Commander **LTG James Link**, **Bill** received the Legion of Merit in the presence of his wife, Nancy, several family members, and distinguished guests including **MG Walt Huffman**, The Judge Advocate General of the Army.

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# 500th AMC-Level Protest Filed

Who would have thought that a pilot program starting in April 1991 would lead to a Presidential Executive Order, government-wide recognition, and over 500 cases handled at HQ AMC and not by some external forum?

The above describes the very successful and influential AMC-Level Protest Program.

The pilot proved so successful that HQ DA granted permanent authority to AMC in 1992.

In 1995, the Office of Federal Procurement Policy recognized the program as one of the "Ten Best Government Procurement Practices."

In October 1995 President Clinton signed Executive Order 12979 directing Federal agencies to allow protests to be filed at the agency level above the contracting officer, a process modeled after the AMC program.

The statistics are staggering:

*Over 500 protests filed*

*Average decision time: 17 days (at GAO 75 days)*

*Corrective action rate: 15%*

*Only 49 AMC decisions appealed, 47 decided in AMC's favor.*

The AMC-level Protest Program remains the most successful alternative dispute resolution program within the Command (Editor's Note: I also feel confident in saying it is the most successful ADR program in DOD, if not the Federal sector).

The current roster of Protest Litigation Branch attorneys is **Vera Meza**, who is Branch Leader, **Jeff Kessler**, **Josh Kranzberg**, and **Maj Cindy Mabry**.

## **Newsletter Details**

### **Staff**

*Command Counsel*  
Edward J. Korte

*Editor*  
Stephen A. Klatsky

*Layout & Design*  
Holly Saunders

*Webmaster*  
Joshua Kranzberg

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Check out the Newsletter on the Web at [http://www.amc.army.mil/amc/command\\_counsel/](http://www.amc.army.mil/amc/command_counsel/)

Letters to the Editor are accepted. Length must be no longer than 250 words. All submissions may be edited for clarity.

# Acquisition Law Focus

## WLMP--History & Background

The efforts to modernize and overhaul our logistics system has given rise to the crucial Wholesale Logistics Modernization Program (WLMP). While most of you have heard of this effort,

**Victor Ferlise**, Deputy to the Commander, CECOM, and former CECOM Chief Counsel has written an excellent paper that we share with you (Encl 11).

It describes the background circumstances leading to WLMP, problems encountered and efforts to solve issues using a Team approach.

Among the important sections of the article includes four major issues-opportunities, that governed the overall strategy:

- First and foremost, the acquisition leadership throughout DoD was committed to acquisition reform — not reform for reform's sake, but to achieve substantive innovations in the processes the government uses to acquire products and services.

- Second, we did have the cash flow of approximately

\$40 million a year for maintenance, which could be expected to increase over time.

- Third, automation advances had resulted in systems much more adaptable, upgradeable, reconfigurable, scaleable, and interoperable than was possible when the initial COBOL systems were built.

- Fourth, the commercial sector had expended significant amounts of money in developing the science of supply chain management via velocity management and similar techniques. Companies were advertising that, within one day of receiving an order, they could have a product enroute to any customer in the world.

So again, the challenge was to find a way that the Army could capitalize on the advances that had occurred in the commercial world and DoD's commitment to acquisition reform, that did not require the influx of additional dollars over and above the estimated annual maintenance costs.

## List of Enclosures

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18. Professional Conduct Reminder (PCR)-Army Attys Representing
19. PCR--Counsel as Advisor
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21. Environmental Fines
22. Ct. Dec. Hazard Waste
23. Preference for Local Remed Contractors

## The ABC's of T for C: One-Year Settlement Proposal Rule

**Jignasa Desai**, CECOM, DSN 992-9827, has provided an interesting paper addressing FAR provisions and case law related to the general rule that the Contractor must submit its settlement proposal within a year after the contract was terminated for convenience (Encl 12).

The article highlights FAR 52.249-6(f) and the case of Do-Well Machine Shop, Inc. v. US, 870 F.2d 637 (Fed.Cir. 1989), that upheld a contracting officer's decision that a settlement proposal was untimely under the one-year rule.

## Rehab Act Mandates Accessibility Requirements for IT Purchases

AMC Computer Technology counsel **Lisa Simon**, DSN 7672552, provides a point paper on an important development in information technology purchases (Encl 13).

Congress amended section 508 of the Rehabilitation Act to "beef up" the extent to which federal electronic and information technology must be accessible to disabled employees and disabled members of the public.

All federal electronic and information technology devel-

oped or procured after the law's effective date must be comparably accessible to disabled employees and disabled members of the public as to their able-bodied counterparts unless to do so would represent an "undue burden". (29 USC 794d)

To the extent there is an "undue burden", the law requires that agencies provide disabled employees and disabled members of the public an alternative means of access to the data or information.

## Contracting Parties: Can Not Limit Disputes Clause Applicability

Should the parties to a Government contract be able to agree contractually on which provisions of the contract are subject to the Disputes clause? (Encl 14).

The Court of Appeals for the Federal Circuit answered that question in the negative in a 1997 decision that was recently implemented in the Federal Acquisition Regulation (FAR). Federal Acquisition Circular (FAC) 97-15, effective February 25, 2000, implements the Federal Circuit's decision in Burnside-Ott Aviation Training Center v. Dalton, 107 F.3d 854 (Fed. Cir. 1997).

The court held that the parties could not contract away the contractor's right to ASBCA review of its claim under the Contract Disputes Act. Any attempt by the parties to deprive the Board of jurisdiction to hear a dispute that otherwise falls under the Contract Disputes Act defeats the purpose of the Act and the intent of Congress.

Thanks to OSC's **Bernadine McGuire**, DSN 793-8436.

## Handling Proprietary Contractor Data-- Properly

The TACOM-W Intellectual Property Division, **Pete Taucher, David Kuhn, Gail Soderling** and **John Moran** shared in the submission of a paper, in the form of an Advisory to their clients.

The article groups applicable handling rules into four categories:

Restricted rights or Limited Rights Data

Small Business Innovative Research (SBIR) Rights Data

Government Purpose License Rights (GPLR) Data

Other Proprietary Data

The reader is reminded that a government employee can be jailed or fined under the provisions of 18 USC Sec 1905 for unauthorized release of contractor proprietary data (Encl 15).

## Covenants Not to Compete

In support services contracts, it is not unusual for the Government to provide training to contractor employees.

This training represents a valuable investment by the Government. It is bad enough when that investment is lost when the employee decides to move on to other things. What is worse, and is generally a surprise to Government requisitioners, is the situation where a contractor employee wishes to continue and discovers that he is forbidden to do so.

The situation can arise in the following ways.:

A contractor may fail to win a follow-on contract. Or a small business may grow so much that it no longer qualifies for a small business set-aside. In such circumstances, the requisitioner may hope that certain key personnel will be picked up by the successor contractor.

However, if the employment agreement with the contractor contains a covenant not to compete, sometimes called a noncompetition covenant, this may be impossible.

ARL's **Bob Chase**, DSN 290-1599 provides a paper with suggestions.

As reported in the *Washington Post* (March 18, 2000; page E01), the number of non-competition agreements and actions to enforce them have "risen very dramatically in the last couple of years." Companies see this as a way to protect their trade secrets and, perhaps, a way to limit competition generally. Others call it a new form of indentured servitude.

### Suggestion Raised

In future service contract solicitations, if we expect contractor employees to pick up valuable on-the-job training or expertise, we may state that a company practice of prohibiting employees to work for a successor contractor will make the bid non-responsive. An RFP can take that tack, or penalize an offeror a specified number of points in the evaluation. Note that we are not requiring potential contractors to forfeit all protections of non-competition agreements. They may still protect their client lists and trade secrets.

# Employment Law Focus

## Hatch Act--Civilian Employee Activities

CPT **Robert Paschall**, CECOM, DSN 992-9798 provides an outstanding paper on the Hatch act (Encl 16).

As authorized by the Hatch Act

### Federal civilian employees **may** engage in the following activities in their personal capacity:

- (1) Run for public office in nonpartisan elections (ones in which none of the candidates are affiliated with any political party);
- (2) Register and vote as they choose;
- (3) Assist in voter registration;
- (4) Express opinions about candidates and issues;
- (5) Contribute money to political organizations;
- (6) Attend political fundraising;
- (7) Attend events sponsored by political party or club;
- (8) Join and be an active member of a political party or club;

(9) Sign nominating petitions;

(10) Campaign for or against referendum questions, constitutional amendments, or municipal ordinances;

(11) Campaign for or against candidates in partisan elections;

(12) Make campaign speeches for candidates in partisan elections;

(13) Distribute campaign literature in partisan elections;

(14) Hold office in political clubs or parties.

### Federal civilian employees **may not** do the following:

(1) Use their official authority or influence for the purpose of interfering with or affecting the result of an election;

(2) Run for the nomination or as a candidate for election to a partisan political office;

(3) Knowingly solicit, accept, or receive a political contribution from a subordinate (an employee under the supervisory authority, control

or administrative direction of the other employee);

(4) Make a political contribution to any "employer or employing authority" meaning any person in the supervisory chain of command, this does not include the Vice President's campaign for President;

(5) Engage in political activity while on duty (this includes wearing political buttons while on duty);

(6) Engage in political activity while in any room or building while in the discharge of official duties;

(7) Engage in political activity while wearing a uniform or official insignia (to include military uniforms commonly worn by technicians);

(8) Engage in political activity using a U.S. Government owned or leased vehicle;

(9) Intimidate, threaten, command, or coerce a Federal employee to engage in, or not to engage in, political activity.

There are special rules for Federal employees who live in specific jurisdictions, primarily those with large Federal service employee populations.

## Political Activities of Military Personnel

The political activities of officers and enlisted members of the Active Army, USAR, and the ARNG are governed by DODD 1344.10 and AR 600-20, paragraph 5-3. The Hatch Act does not apply to military members.

The restrictions in AR 600-20 apply to soldiers on active duty, which is broadly defined.

Army personnel may not use military authority to influence or attempt to influence the vote of a member of the Armed Forces, or require a member to march or attempt to require a member to march to a polling place (18 U.S.C. § 609).

Members of the Armed Forces on active duty generally may not campaign for, or hold, elective civil office in the Federal Government, or the government of a state, territory, the District of Columbia, or any political subdivision thereof (10 U.S.C. § 973).

### **Soldiers on active duty**

#### **may:**

(1) Register, vote, and express their opinions on political candidates and issues, but not as representatives of the Armed Forces;

(2) Attend partisan and nonpartisan political meet-

ings or rallies as spectators; however, they may not attend in uniform, during duty hours, when violence is likely to occur, or when their activities constitute a breach of law and order;

(3) Make monetary contributions to a political organization, but not to other members of the Armed Forces on active duty or employees of the Federal Government, and subject to other requirements.

(4) Encourage other military members to vote;

(5) Serve as an election official, if such service: is not in uniform, does not interfere with military duties, and has the prior approval of the installation commander;

(6) Sign a petition for legislative action or to place a candidate's name on the ballot but only in the soldier's personal capacity;

(7) Write a letter to the editor expressing personal views, and place bumper stickers on cars (but not large banners or posters).

### **Soldiers on active**

#### **duty may not:**

(1) Use their official authority or influence to interfere with an election, solicit votes for a particular candi-

date or issue, or require or solicit political contributions from others;

(2) Participate in partisan political management, campaigns or conventions;

(3) Write and publish partisan political articles that solicit votes for or against a partisan political party or candidate, speak before partisan political gatherings, or participate in partisan political radio or television shows;

(4) Serve in any capacity or be listed as a sponsor of a partisan political club;

(5) Distribute partisan political literature or conduct a political opinion survey under the auspices of a partisan political club;

(6) Use contemptuous words against the President, Vice President, Congress, the Secretaries of the military departments, Defense, or Transportation, and the governors or legislatures of any state or territory where the soldier is on duty;

(7) Engage in fund-raising activities for partisan political causes on military reservations or in Federal offices or facilities;

(8) Attend partisan political events as an official representative of the armed forces.

# Personal Liability Insurance

The DoD Policy Guidance issued on professional liability insurance allows for payment of up to one half the cost of the policy, not to exceed \$150.00 (Encl 17).

The policy is retroactive to 1 October 1999, and an employee's first step would be to submit an SF 1164 through local personnel channels.

The DoD guidance indicates that DoD components should "establish processing procedures." Based on the information received informally from DA. This is being interpreted to mean local implementing procedures, and that the DoD guidance is sufficient authority for local implementation.

DOD Memo

**Diane Disney**,  
Deputy Assistant Secretary of Defense for Civil-

ian Personnel Policy writes as follows :

### **Authority**

Section 636 of the Treasury, Postal Service, and General Appropriations Act for Fiscal Year 1997, Pub. L. 104-208, as amended, requires agencies to reimburse qualified employees for up to one-half the cost incurred for professional liability insurance.

Authority to make such payments resides with heads of DoD Components and may be delegated to the lowest practical level.

### **OPM**

The Office of Personnel Management (OPM) does not plan to issue regulatory guidance on this issue. Therefore, in coordination with the Defense Finance and Accounting Service and the DoD Office of the General

Counsel, we have prepared the attached DoD guidance to assist in implementing this new authority. The provisions of this new authority became effective October 1, 1999.

In February 1998, OPM surveyed Federal agencies on the implementation of Pub. L. 104-208 (which, in its original form, allowed Federal agencies to contribute to the costs of professional liability insurance).

Based on this past practice, DoD Components may wish to maintain documentation on reimbursements for professional liability insurance should OPM survey Federal agencies in the future.

POC is HQ AMC Employment Law Team Chief, **Linda B.R. Mills**, DSN 767-8049

# Professional Conduct Reminders

It is important for us to keep these rules at the forefront as we engage in the daily practice of law. To help us do that, Ethics Team Chief **Mike Wentink**, DSN 767-8003, will periodically send a short quote from the rules, as they are set out in AR 27-26, or some other relevant item. This series will be known as “*Professional Conduct Reminders*” and this is the first one.

### “**Rule 1.13 Army as Client**”

(a) Except when representing an individual client pursuant to (g) below [duly assigned defense or legal assistance counsel], an Army lawyer represents the Department of the Army acting through its authorized officials. ... When an Army lawyer is assigned to such an organizational element and designated to provide legal services to the head of the organization, the lawyer-client relationship exists between the lawyer and the Army as represented by the head of the organization as to matters within the scope of the official business of the organization. The head of the organization may not invoke the lawyer-client privilege or the rule of confidentiality for the head of

the organization’s own benefit but may invoke either for the benefit of the Army ... subject to being overruled by higher authority in the Army.

“(b) An Army lawyer shall not form a client-lawyer relationship or represent a client other than the Army unless specifically assigned or authorized by competent authority. Unless so authorized, the Army lawyer will advise the individual that there is no lawyer-client relationship between them.”

Mr. Wentink continued addressing Army as Client in the next Professional Conduct Reminder.

Then, Mike extracted comments from the rule and made comments of his own.

The first two PCRs focused on Rule 1.13 in AR 27-26, “Army as Client.”

PCR #00-01 explained that, except when duly appointed to represent an individual as a defense counsel or legal assistance officer, the Army lawyer represents the Army acting through its authorized officials.

Then PCR #00-02 continued with additional extracts that helps the Army lawyer deal with an Army official who intends to proceed in a manner that will violate a legal obligation to the Army or violate law. The lawyer shall proceed as is reasonably necessary in the best interest of the Army taking into account all of the facts and circumstances. In addition, whenever it is apparent that the Army’s interests are adverse to those of the official, the lawyer shall explain the identity of The Army as the client

# Comment: Army Attorney's Represent the Army

What now follows are some extracts from the “*Comment*” to the Rule.

“For purposes of these Rules, an Army lawyer normally represents the Army acting through its officers, employees or members, in their official capacities. It is to that client when acting as a representative of the organization that a lawyer’s immediate professional obligation and responsibility exists...

“When one of the ... Army [officials] communicates with [you] the Army’s lawyer on a matter relating to [your] representation of the organization on the organization’s official business, the communication is generally protected from disclosure to anyone outside the Army by Rule 1.6. This does not mean, however, that the [official] is a client of the lawyer. It is the Army, and not the [official] which benefits from Rule 1.6 confidentiality. The Army’s entitlement to confidentiality ... may not be asserted by an [official] as a basis to conceal personal misconduct from the Army.

“When [Army officials] make decisions for the Army, the decisions ordinarily must

be accepted by the lawyer even if their utility or prudence is doubtful. Decision concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer’s province. However, different considerations arise when the lawyer may have reason to know that the Army may be substantially injured by the action of an [official] that is in violation of law or directive.”

Mike then offers the following:

1. Even though confidentiality protects communications from disclosure “to anyone outside the Army,” this does not mean that such communications may be discussed freely with anyone “inside the Army.”

We still need to exercise discretion and ensure that there is really a “need to know.” Unnecessary disclosure to officials within the Army could invite censure under the rules (e.g., the attorney’s casual disclosures within the Army could lead to disclosure to others outside the Army). And, from the perspective of the individual official, it might be that we can accomplish our job, satisfy

our fiduciary relationship to the Army, and comport with the Rules of Professional Conduct, and still extend a modicum of privacy to our conversation with the individual.

2. I disagree with the proposition that “[d]ecisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer’s province.” Well, perhaps the “as such” modifier saves the statement. But, as part of the command or organization that we support, I consider us to be full partners with the command and its management.

This means that we do not strictly limit ourselves to rendering legal advice. See **Rule 2.1 Advisor**: “In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client’s situation.”

For complete coverage of this issue and discussion of a dialogue within the AMC legal community see Enclosure 18.

# Professional Conduct Reminder: Meritorious Claims and Contentions

**Mike Wentink** addresses an important area of practice:

### **Rule 3.1 Meritorious Claims and Contentions**

“A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous [or] which includes a good faith argument for for an extension, modification, or reversal of existing law...”.

#### **“COMMENT:**

“The advocate has a duty to use legal procedure for the fullest benefit of the client’s cause, but also a duty not to abuse legal procedure. ... [I]n determining the proper scope of advocacy, account must be taken of the law’s ambiguities and potential for change.

“The filing of an action ... for a client is not

frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery ... not frivolous even though the lawyer believes that the client’s position ultimately will not prevail. ... The action is frivolous, however, if the client desires to have the action taken solely for the purpose of harassing or maliciously injuring a person or if the lawyer is unable either to make a good faith argument on the merits ... or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.”

#### **Frivolous Claim Case in the News**

The link below is to a newspaper article about a

case where the court decided that the cause of action that an attorney brought against a doctor was “frivolous” and awarded the doctor \$72,000 to include \$60,000 in punitive damages.

The jury was not impressed with the attorney’s explanation as to how he performed his due diligence, *i.e.*:

- (1) obtained assurances from other lawyers;
- (2) some unspecified and undocumented (he could not produce any notes) personal research in a medical library; and
- (3) a disputed elevator consultation with a client physician, whom he was defending for fondling patients.

<http://www.courier-journal.com/localnews/2000/0006/07/000607doc.html>

## Professional Conduct Reminder:

### Counselor as Advisor

### Rule 1.4

### Communication

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice.

In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors, that may be relevant to the client's situation, but not in conflict with the law.

#### COMMENT:

#### Scope of Advice

Advice couched in narrowly legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. ...

**Mr. Wentink's Comment:** This brings to mind the story of the balloonists who were out for a wonderful Sunday outing, and while floating over the countryside, they lost their bearings. They

noticed a group of people by a river. They let some air out of their balloon so that they could drop down just enough to halloo the crowd and ask where they were. It was then that they noticed that it was an ABA picnic. As they hovered over a group of the picnicking lawyers, they yelled down: "Where are we?" The lawyers looked at each other, discussed it, and their spokesperson yelled back: "You are about 25 feet in the air hovering over a flowing body of water." With disgust, the balloonists fired up the air and moved on, and one commented to the other: "Ain't that just a typical lawyer's answer ... absolutely, precisely correct, but absolutely useless!"

Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

The complete treatment of this issue is at Enclosure 19.

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation.

#### COMMENT:

The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. ...

**Mike Wentink's comment and discussion is at Enclosure 20.**

# Environmental Law Focus

## Who Can Fine Us-Get Out Your Checkbook

The issue of whether EPA or the states can impose penalties for environmental violations is always of concern to our clients, and a matter that is constantly changing. Here is a matrix summary of where we stand today, on that issue, prepared by the Army's Environmental Law Division (Encl 21)

A A copy of the Department of Justice opinion holding that EPA, but not the states, can impose penalties for underground storage tank violations is available by calling **Bob Lingo**, DSN 767-8082.

In addition to the situation addressed in the ELD Matrix, EPA can also impose stipulated penalties for violation of Federal Facility Agreement obligations, and the Nuclear Regulatory Commission (NRC) can, and has, imposed penalties against federal facilities for violations of NRC nuclear material license requirements.

## Green Travel--

## Environmentally Friendly Rental Cars

Next time you go on official travel, how about trying an environmentally friendly rental car. They now are available at some locations, which provide eco-cars (natural gas, electric, and gas-electric hybrids) for rent. The first site opened in December 1998 at Los Angeles International Airport and has expanded since to several other California airports, including San Francisco and Sacramento. A Phoenix site is scheduled to open next month, and locations in Las Vegas, Atlanta,

Dallas, Houston, and Washington, D.C., are due to open by the end of this year. The fleet includes alternative-energy vehicles built by Honda, Nissan, Toyota, Ford, and GM. An electric version of the Toyota RAV4, for example, rents for as little as \$59 a day. All fuel costs are included in the daily rental and each location provides a short orientation and a list of charging/fueling stations. For more information, see: <http://www.evrental.com/home.html>

## Service Fees for Hazardous Waste Management

The RCRA makes the federal government subject to any "reasonable services charges" imposed by Federal, State, or local authorities for solid or hazardous waste management requirements.

Is a fee program that imposes higher fees based on the volume of waste generated or the type of hazardous waste management facility, such as landfills or incinerators. The Department of En-

ergy and other federal agencies thought not.

The Court of Appeals for the Second Circuit recently ruled that such charges WERE reasonable, even though the fees imposed may far exceed the actual cost of providing the regulatory services. While the opinion is binding only in the 2<sup>nd</sup> Circuit, it has a good chance of being followed in other circuits. The case is at Encl 22.

# Registering Your Closed Landfill

The RCRA hazardous waste management regulations require the owner, within 60 days of closure of a hazardous waste disposal unit to record a notation on the deed, or some other instrument which is normally examined during a title search. The notice shall indicate the unit was used to manage hazardous waste and the restrictions on disturbing. Many states have similar provisions for com-

pleting the closure of sanitary or industrial waste landfills. RCRA requires the federal government to comply with all federal, state, and local laws regarding the management of solid or hazardous waste. Some confusion has been caused by a General Services Administration (GSA) opinion which cautions that imposing institutional controls by deed restrictions on federal lands is a real estate transfer, and should not be

done unless in the process of disposal of the property. However, the GSA has clarified that their opinion was not meant to apply to notices or other annotations required on land records by hazardous or solid waste requirements, even on active installations. In such cases, you should consult with the Corps of Engineer and file the appropriate notice to protect closed hazardous or solid waste disposal units.

## Preference to Local Remediation Contractors

**T**he Comptroller General sustained a pre-award protest by a paving company against award of a contract for the capping of a landfill as a BRAC closure military base. The protestor alleged that the Corps of Engineers failed to comply with a statutory requirement that government agencies give a preference, to

the maximum extent possible, to contracting with local, small, and small disadvantaged businesses for work associated with closing military installations under a base closure law. The Comptroller General held that the USACE solicitation for a regional environmental remediation indefinite delivery/indefinite quan-

tity (IDIQ) contract failed to give reasonable consideration to the practicability of providing a preference to local contractors, Ocuto Blacktop & Paving Co., B-284165. The Corps of Engineers Chief Counsel has issued a memorandum of lessons learned from the case (Encl 23),

# Faces In The Firm

## Hello

### HQ AMC

**LTC Mike Walters** joined the General Law Division in July. A Buckeye, Mike arrives from his previous assignment at Ft. Riley with his wife Candy and son Michael.

### ARL

Effective 14 July 2000, **LTC Robert B. Lloyd** will be the new ARL Chief Counsel. LTC Lloyd is coming from a position as Chief Counsel located at the Armor Center and Fort Knox.

## Promotions

### HQAMC

**Mike Lassman**, member of the Employment Law team was promoted in July to the GS-15 level.

### AMCOM

**CPT Erick S. Ottoson** was promoted on 1 August 2000. Erick is a member of the Office of Staff Judge Advocate.

## Goodbye

### OSC--Tooele

**CPT Humphrey Johnson** Chief of the Tooele Legal Office, begins transition leave on 15 August 2000. He is leaving the Army to return to private practice in his beautiful home State of Maine.

### HQAMC

**Fran Gudely**, General Law Division Legal Technician retired on 31 July after 16 years of exceptional service with the Office of Command Counsel. Her dedication, loyal service and commitment will never be matched and will be impossible to replace.

## Birth

**MAJ Kevin Fritz**, Deputy SJA, Fort Monmouth, and his wife, Beth, celebrated the birth of a 7 pound, 13 ounce baby boy, Robert Joseph, on 11 July 2000.

### AMCOM

**MAJ Steven L. Butler**, Deputy Staff Judge Advocate, has left this office for an assignment in Korea.

### ARL

Effective 12 August 2000, **Mark D. Kelly**, will be leaving ARL, Intellectual Property Law Branch, to work for private industry.

## Death

**CPT Jeffery M. Neurauter** has left the Acquisition Law Division for assignment with the Trial Defense Service at Ft. Leavenworth, Kansas.

On 25 June 2000, Ralph Matheson, a former CECOM Legal Office attorney, passed away from heart failure as a result of burns received from a kitchen fire. Ralph had great knowledge and fascination with military history and leaders in particular. He will be missed.

**CPT Martin N. White** has left the Office of Staff Judge for an assignment in Germany.

**COL Steven B. Lundberg**, left as Chief Counsel for the ARL Office of Chief Counsel. His new duty station is the U.S. Army Space and Missile Defense Command located in Huntsville, Alabama.

## Faces In The Firm

# Passing of the first Female Army JAG Officer

**Phyllis Propp Fowle**, the first woman to be an officer in the Army Judge Advocate General's Corps died recently at age 92. Fowle also was the only woman to serve in the JAGC overseas during World War II. She was made a distinguished member of the corps in a banquet in her honor last year.

When Congress opened the Army to women in 1942 by creating the Women's Auxiliary Army Corps, she was the first to sign up.

She soon moved to the

Judge Advocate General's Corps.

She reported to the European Command Headquarters in Paris in 1945.

Fowle achieved the rank of Lieutenant Fowle and processed hundreds of legal cases in Germany, including one involving crown jewels stolen from a castle outside Frankfurt.

When the Army discharged all of its women in 1947, Fowle was asked to stay on as the civilian chief of legal assistance. She remained in that position until 1951.

## New Position

**MAJ Wade L. Brown** has moved from the Acquisition Law Division to the Office of Staff Judge Advocate where he is the Deputy Staff Judge Advocate.

## Awards & Recognition

### OSC

**Terese Harrison** (OSC Acquisition Law) was presented with the Commander's Award for Civilian Service. Major General Joseph W. Arbuckle presented the award to members of the Commercial Demilitarization Team.

### CECOM

**Lee Duerinck**, Attorney-Advisor, CECOM had an article published in the July/August 2000 issue of Program Manager magazine on the use of "due diligence" in the Wholesale Logistics Modernization Program (WLMP).

An important aspect of communication in the program was using a commercial business practice "DD"--offerors were provided a vast array of information allowing them and the Government to mitigate risks associated with the program.