

**COMPLIANCE NEWSLETTER  
OCTOBER 2000**

No newsletter was sent out in Aug or Sep.

Here's what's happening in Compliance Branch at AEC!

Visit the Compliance Section of the AEC Web Site at:

<http://aec.army.mil/>

Anyone who would like to be added to or deleted from our mailing list should contact my secretary, Helena Tomick, at [hdtomick@aec.apgea.army.mil](mailto:hdtomick@aec.apgea.army.mil). Send her your name, installation name, mailing address, position/title/function, e-mail address, phone and fax numbers.

This newsletter is primarily intended for government (mostly Army) environmental offices. I'm only putting contractors on the direct distribution if they are directly supporting an Army environmental office and the request to add them is forwarded by their government POC. For contractors, in addition to the information above we request that you provide the name of your company, along with the position/title/function you perform for the Army environmental office you support.

Readers are invited to submit questions and topics for later newsletters. Information for doing so is at the end of this newsletter.

**GENERAL**

- \* In June, 2000 the Department of Justice issued an opinion that EPA can fine installations for UST violations. The Army Environmental Law Division has updated their matrix of who can fine Army installations for what. That matrix is inserted at the very bottom of the newsletter. The first fine, a large one, has already been issued.
- \* We at AEC completed our review of the Spring 2000 EPR Submission in July. All of our comments have been returned to the MACOMs.
- \* A new draft AR 200-2, Environmental Analysis of Army Actions, was published as a proposed rule in the Federal Register on 7 Sep 2000 (Volume 65, Number 174). The public is requested to provide comments to the Army Environmental Policy Institute by 6 Nov 2000. Army MACOMs and Installations will have one last chance to comment on it when the draft final is sent for approval to the ARSTAF.
- \* One of the services AEC provides to the Army is to analyze proposed regulations issued by EPA and the States and support the DOD Services Steering Committees in

developing DOD comments. Commenting on State regulations is headed by our Regional Environmental Offices (REOs), with support from the HQ AEC staff. Compliance Branch is heavily involved in this. We also inform Army MACOMs and installations about the content of these proposed rules, as well as providing the same service with regard to new final rules when they are issued. In FY01 we have identified 48 rules, proposed and final, that we anticipate will have some impact on the Army. Several of them are expected to have major impacts, both in costs and effects on Army operations. In addition to providing information about the rules, we also attempt to provide guidance and technical support to help installations comply. As an example of the potential impact of these new rules, we are currently working to support installations in dealing with the Clean Air Act Hazardous Waste Combustor NESHAP, which is expected to cost the Army, mostly AMC, \$15 M to \$25 M in air pollution control upgrades and furnace testing, and a new standard for Arsenic in drinking water that may cost the Army \$13M-\$36M to upgrade drinking water treatment plants. Information on the activities of this Environmental Legislative/Regulatory Analysis and Monitoring Program (EL/RAMP) will become a regular feature in the next Compliance Newsletter. (Information on State Regulatory Analysis and Monitoring Program (S-RAMP) activities is provided in the various REO Newsletters.) Information regarding several rules we have recently reviewed is included in the paragraphs below. The EL/RAMP Program Manager in Compliance Branch is Pam Klinger, 410-436-1207

\* Just received this 6 Oct 2000 from the facilities side of ACSIM regarding the 2001 DOD Recycling Workshop (also referred to as the Combined Services Recycling Workshop). It will be held 15-18 Oct 2001. One big change is that the 2001 DOD-Recycling Workshop will be held in conjunction with the Solid Waste Association of North America (SWANA) in Baltimore, MD.

The Air Force is the host for the 2001 conference. Please submit your abstract for the 2001 DOD Recycling Workshop (also known as the Combined Services Recycling Workshop) to Nancy Carper of the Air Force **by 10 December 2000**. Submit Electronically to: **Error! Bookmark not defined.** She can be reached at DSN 240-4964. Abstracts for topics areas relating to INTEGRATED SOLID WASTE MANAGEMENT (source reduction, reuse, recycling, composting, construction and demolition debris, etc) and AFFIRMATIVE PROCUREMENT must clearly define objective, scope of work, results, lessons learned and conclusions in 350 words or less.

The Air Force Web site with information about the workshop is <http://www.afcee.brooks.af.mil/eq/wastecon/wastecon.htm> The site will contain additional workshop information as it becomes available. (I checked this URL before I sent the newsletter and could not get through. However, I did some more checking and the AFCEE site appears to be down today.)

**AIR - POC Larry Webber, 410-436-1214**

\* Emission reduction credits (ERCs). Larry briefed Ms. Menig (DACSIM) and Mr. Nerger, Director, Facilities and Housing, OACSIM on this topic recently. While the popular ideas regarding ERCs are about buying and selling, they can also be necessary within the installation for offsetting increases in emissions caused by new missions, or even changes in existing operations. Offsets are an integral part of the New Source Review program, which covers major new construction as well as modifications to sources. A review of activity has found that only one installation in DOD has participated in the pilot program that allows installations to keep revenues from ERC sales. Market prices for ERCs range dramatically across the country from \$86,000/unit in California to \$2000/unit in the east (for NOx).

\* (EL/RAMP Related Activity) Diesel and JP-8 continues to be a hot issue. DOD, with the Defense Energy Support Center in the lead, and with strong Army support, submitted comments to EPA on recently proposed rules that would control particulates from diesel engines and reduce allowable sulfur limits in diesel fuel. This is "2 rules in one" as the control technology needed to meet the PM limits is sensitive to sulfur. Consequently, sulfur in fuel needs to be limited to prevent the controls from being "poisoned" and rendered ineffective. In the proposed rule, EPA raised the ideas of considering JP-8 as a diesel fuel (historically they have not) and not allowing national defense exemptions for control requirements (historically they have). EPA's concern was the potential fueling of future diesel engines incorporating the new PM controls with higher-sulfur JP-8. The Western Regional Environmental Office continues to monitor activity in California with regard to control of diesel emissions, which the state has declared to be a "toxic air contaminant". In their evaluation of strategies, the state is considering JP-8 as a diesel fuel. Recently, Texas proposed rules that would limit the sulfur content of diesel fuel in the eastern part of the state. The Air Force REC in Texas submitted comments to ensure that DOD concerns are considered. Diesel emissions are a hot item and will be for quite some time. Request MACOM/installation assistance in keeping the REOs and Compliance Branch informed of state activities regarding these emissions. Our biggest concern is where JP-8 may be impacted. Please let Larry and your REO know if your state proposes regulations that would place controls/limits on diesel fuel so we can evaluate their potential impact.

\* EPA has published a guide for their inspectors on what to look for when reviewing facility compliance with the General Duty Clause associated with the Accidental Release Prevention Program. AEC is working on a summary guide to help installations understand the expectations. EPA's guide can be found on the CEPPO website: **Error! Bookmark not defined.**

\* On 4 Aug 00 the EPA published their rule regarding disclosure of offsite consequence analyses (65FR48107). The rule generally provides for the establishment of reading rooms around the country where Risk Management Plans will be available in a somewhat limited fashion to the community. **Error! Bookmark not defined.**

\* Rochelle Williams, the FORSCOM Air Pollution Program Manager, is supporting Army and DOD as the DOD representative to the White House Air Quality Research Subcommittee. AEC Compliance Branch supports her efforts. This subcommittee is involved in collecting and reviewing research on the effects of particulate matter. Rochelle also has the lead for the Army Compliance Technology Team for developing the Environmental Quality Technology User Requirement for Particulate Matter Research. Finally, she produces a Particulate Matter Research Newsletter that is available to DOD folks who are interested. She asks that anyone in DOD doing work on particulate matter let her know so that she can include it. Rochelle can be reached at (404) 464-7695. Her E-mail address is williaro@forscom.army.mil.

#### **HAZARDOUS AND SOLID WASTE - POC Bob Shakeshaft, 410-436-7077**

\* (EL/RAMP Related Activity) We are currently working on 4 EPA rulemaking actions, two of which might have significant impacts on the Army.

Land Disposal Restrictions (LDR), ANPR - The EPA published an Advanced Notice of Proposed Rulemaking (ANPR) on June 19, 2000, which was supposed to propose ideas that would streamline the LDR program. Our review found little reason to expect any real improvements but did raise a real concern. EPA discussed changing revisions to the LDR treatment standards for reactive wastes (D003), which had potential to impact Explosive Ordnance Disposal and demil operations. AEC worked with the OEESCM Stockpile committee to prepare comments on this and request further coordination with DoD.

- Electronic Manifesting, ANPR - FYI. OMB asked us to review a draft EPA proposal to automate HW manifesting. This will be optional and is generally good news for DoD installations. We will request MACOM and installation comments when the rule is published in the Federal Register, scheduled by the end of 2000.

#### **MUNITIONS - POC Tim Alexander, 410-436-1218**

\* Munitions Rule Computer Based Training (CBT). Mr. Larry Nortunen, of the Defense Ammunition Center (DAC), recently briefed the Army Munitions Workgroup (MWG) that the long-awaited CBT program had been completed and that 878 CDs have been sent to a wide variety of Army users (including USAR, ARNG and COE

customers). Development of the CBT was a joint effort of AEC and DAC, with participation of MWG members. MACOM environmental offices and ammunition offices have also received the CD. Larry noted that the first version had a few computer problems (for Windows NT users) but that the next “production run” would solve these minor difficulties. He also stated that a total of 3000 CDs would eventually be produced and available to all requestors. He concluded by noting that copies of the CD could be requested from DAC on the following web site:

<http://www.dac.army.mil/as/produ.html>

\* MUNITIONS RULE SITE ASSISTANCE VISITS

The Army Munitions Work Group, together with MACOM representatives, will bring Munitions Rule training to selected installations in FY00 – 01. Currently training is scheduled for the following dates and locations. Additional installations are still to be selected.

Week of October 23<sup>rd</sup>/Host MACOM – FORSCOM/FT Campbell

Week of November 13<sup>th</sup>/Host MACOM – NGB/Camp Shelby

Week of December 4<sup>th</sup>/Host MACOM – TRADOC/FT Bliss

This initiative is designed to provide participating Army staff with seminar style training on MR implementation, combined with a hands-on, “no fault” Munitions Rule compliance staff assistance visit. The site assistance visits will be performed by a team comprised of government subject matter experts (ODCSLOG/DAC/AEC/CHPPM), augmented with technically qualified staff provided by an AEC support contract. It is recommended that individuals attending the planned training first complete the MR computer based training (CBT) mentioned above.

This training is intended for ammo specialists, range operators, and environmental staff involved in the implementation of the Military Munitions Rule and the supporting DoD policy. MACOMs have been allocated spaces for each of these training opportunities. There is no tuition fee. Please contact your MACOM Munitions Rule POC or Tim Alexander by phone or e-mail (**Error! Bookmark not defined.**) for additional information.

\* QUALIFIED RECYCLING PROGRAM AEDA WORKSHOP  
COURSE #444

TUITION \$ 275

The Qualified Recycling Program AEDA (Ammunition, Explosives, and other

Dangerous Articles) Workshop is scheduled to be presented at the US Army Corps of Engineers, Tom Bevill Center, Huntsville, AL on the following date:

|                |              |
|----------------|--------------|
| SESSION 01-01  | 28-29 Nov 00 |
| Huntsville, AL |              |
| SESSION 01-02  | 21-22 Feb 01 |
| Huntsville, AL |              |
| SESSION 01-03  | 18-19 Apr 01 |
| Huntsville, AL |              |

To register for a space in this session, you should call Ms. Joy Rodriguez, 256-895-7448 or e-mail the name of the student, method of payment, telephone number, and fax number to Rebecca.J.Rodriguez@usace.army.mil. Payment may be made by Credit Card, billing against DD Form 1556, MIPR, or check made out to Finance and Accounting, Corps of Engineers. All DD Form 1556's should be faxed to 256-895-7497.

Hotel information and additional information on the class sessions will be provided to all students prior to class start date. Any questions on these workshops should be referred to Ms. Joy Rodriguez, Professional Development Support Center, Huntsville, AL, 256-895-7448.

**WATER – POCS: Storm water and Clean Water Action Plan Georgette Myers, 410-436-1203; Wastewater Billy Ray Scott, 410-436-7073; Drinking Water Misha Turner, 410-436-7071**

\* (EL/RAMP Related Activity) Compliance Branch recently supported the DOD Drinking Water Services Steering Committee in preparing DOD comments on the Proposed Arsenic MCL. We thank all the installations which submitted copies of their Consumer Confidence Reports. Without those we could not have done all that we did. Comments and potential cost estimates for the proposed rule were received from all Services. Even though only relatively few installations would be impacted, the estimates for capital improvements DOD-wide were almost \$100 million, with annual O&M at about \$6 million. Comments were also submitted regarding other potential impacts the rule could have on other environmental programs (such as site cleanup and water compliance programs).

\* (EL/RAMP Related Activity) On 25 Aug a memo was signed forwarding copies of our information paper about the new rule on Underground Injection Control of Class V Injection Wells to all of the MACOM Environmental Chiefs. This rule impacts those Army installations that currently operate Class V motor vehicle waste disposal wells (MVWDW) and large-capacity cesspools. An MVWDW may be any hole in the ground (there are conditions that must be met) that receives or has received fluids from vehicular

repair or maintenance activities, such as auto craft shop, motor pools, or any facility that does any vehicular repair work. It will soon be posted on the AEC web site. An electronic copy can be sent to anyone who needs one.

\* The following water related items have recently been added to the Compliance section of the AEC web page:

1. Unified Federal Policy for a Watershed Approach to Federal Land and Resource Management. This policy is one of the Clean Water Action Plan's Action items. The final document will be signed by DOD and seven other Federal Agencies this month. This policy is an agreement between federal agencies to share information and common goals when developing plans for watersheds. This policy is NOT a regulatory driver for funding. DOD is currently working on guidance for implementing this policy across DOD.

2. Under Clean Water Act, Total Maximum Daily Loads (TMDLs), the document "The Effects of TMDLs on Army Installation Natural Resource Management Programs", is available for download from DENIX

3. Under Safe Drinking Water Act, the document, "Ft. Meade Source Water Assessment" is available for download. You will need a DENIX password to download reports from the DENIX links on the AEC web site.

\* AEC worked with the DOD CWA Services Steering Committee to prepare a DOD guidance document on the Storm Water Phase II Rule. This document was just completed and is currently being distributed to the MACOMs. This document will also be put on DENIX with a direct link to the document through the AEC web page.

### **STORAGE TANKS and SPILLS- POC Michael Worsham 410-436-7076**

\* (EL/RAMP Related Activity) DOD was recently given the opportunity to comment on a final EPA regulation on SPCC plans being worked in OMB prior to publication. The proposed version of this rule was published many years ago. The AEC Compliance Branch had less than one day's notice to review the 400 page final rule to identify any major issues we might have with it. None were noted, as was expected, as the rule will generally decrease the regulatory burden with respect to SPCC plans. When the final rule is issued, possibly in just a few months, the AEC will provide an Information Paper and additional guidance as necessary for this new rule.

\* At the DOD-EPA Region III Symposium in Baltimore in August, Garry Sherman of the EPA's RCRA Compliance and Enforcement Branch spoke briefly. He stated that the EPA's enforcement focus is shifting from "Do facilities have cathodic protection and leak

detection systems?", to "Are the systems functioning and do the operators know how to use them?" Afterwards he told Mr. Worsham that EPA can do a compliance assistance visit for USTs, in which the regulator comes in a less aggressive mode to help installations with compliance issues. Mr. Sherman has promised the AEC a list of the common UST compliance problems the EPA is seeing on its various inspections, and this will be forwarded to MACOMs as soon as we receive it. Mr. Sherman used to work at both Air Force and Navy installations. His number is 214-814-5267, or sherman.garry@epa.gov.

### **LEAD BASED PAINT & ASBESTOS - POC Michael Worsham 410-436-7076**

\* The EPA recently released a clarification memo regarding disposal of lead-based paint waste. The memo states that LBP waste generated from a residence (houses, apartment buildings, military barracks, etc.) comes under the RCRA household hazardous waste exemption, even if it is generated by a contractor. The exemption also includes concentrated LBP wastes such as lead chips, dust and sludges. This means that these LBP wastes generated from houses may be disposed of as non-hazardous solid waste, and do not require TCLP testing. The memo is intended to encourage LBP abatements, for which lead waste disposal is a costly and inhibiting factor when the waste is treated as hazardous waste. However, the memo notes that states are free to adopt stricter disposal standards, including not recognizing the household waste exemption in whole or part. The Army Lead Hazard Management Team is considering the memo, and may create a short guidance memorandum regarding this EPA memo. No one should change their LBP management practices without first consulting their regulator.

### **PRIVATIZATION - Billy Ray Scott, 410-436-7073**

\* On 12 Jul 00 MG Van Antwerp, Assistant Chief of Staff for Installation Management, signed a memorandum to the MACOMs distributing information prepared by Compliance Branch about environmental issues related to Utilities Privatization. The subject of the memo was: Frequently Asked Questions (FAQs), No. 3: Environmental Compliance Issues Related to Privatization of Water and Wastewater Utilities.

\* Compliance Branch, in conjunction with the ACSIM Privatization Manager, is also working on a Privatization Guidance Document that will bring together a lot of information from both sides of ACSIM regarding how to proceed with Utilities Privatization.

COMPLIANCE is an INFORMAL communication of the undersigned, who is solely responsible for its content. Official policy/guidance/alerts will

continue to be sent through established channels. Please send any comments, questions or topics for future newsletters to me via one of the mechanisms listed below. Let me know if anyone wants to be added to or taken off the list.

THANKS.

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**ARMY AUTHORITY TO PAY PUNITIVE FINES  
 and YEAR AUTHORITY WAS RECEIVED**

Updated: 6 Jul 00

| <b>STATUTE</b>   | <b>IMPOSED BY STATE</b> | <b>IMPOSED BY EPA</b> |
|--|-------------------------|-----------------------|
| Resource Conservation and Recovery Act (RCRA) Subtitles C and D only (hazardous and solid waste) 42 U.S.C. §6961 | YES—1992                | YES—1992              |
| RCRA Subtitle I only (underground storage tanks) 42 U.S.C. §6991f  | NO                      | YES—2000 <sup>1</sup> |
| Safe Drinking Water Act (SDWA) 42 U.S.C. §300j-6   | YES—1996                | YES—1996              |
| Clean Air Act (CAA) 42 U.S.C. §7418  | NO <sup>2</sup>         | YES—1997 <sup>3</sup> |

|  |    |    |
|--|----|----|
| Clean Water Act<br>(CWA) 33 U.S.C. §1323   | NO | NO |
| <p>NOTES:</p> <ol style="list-style-type: none"> <li>1. DoD disputed EPA's assertion that it has authority to assess fines against federal facilities for UST violations and referred the issue to the Department of Justice (DoJ) in Apr 99. On 14 Jun 00 DoJ released an opinion that concluded that amendments to RCRA in 1992 gave EPA the authority to assess UST fines against federal facilities.</li> <li>2. Many states dispute the United States' position on this, and issue notices of violation that include assessments of fines. This issue was expected to have been settled through litigation in the 9<sup>th</sup> Circuit Court of Appeals, but that court recently issued a surprise ruling that remanded the case to state court without addressing the central issue. DoJ will likely appeal to the Supreme Court on the issue of removing cases to federal courts. It will probably be several years before the sovereign immunity issue is settled nationwide. In the interim, installations will continue to assert the position of the United States (i.e., the sovereign immunity defense) except in the four states (KY, OH, MI, TN) of the 6<sup>th</sup> Circuit, where the court found that federal facilities must pay penalties imposed by state regulators for CAA violations.</li> <li>3. The authority of EPA to impose fines stems from an amendment to the CAA in 1990. A DoD challenge to that authority was resolved in favor of EPA in a 1997 opinion by DoJ.</li> </ol> |    |    |