

AMCCC-G

6 April 2001

**AMC POLICY
ON
COORDINATING ENVIRONMENTAL AGREEMENTS**

1. **Definition.** Environmental Agreements are formal agreements between Installation Commanders and Federal, state, and local environmental regulators to evaluate, identify, or correct actual or potential environmental deficiencies. Environmental agreements include but are not limited to orders on consent, compliance agreements, consent agreements, settlements, federal facility agreements, and interagency agreements. Agreements will be forwarded through command legal channels to Environmental Law Division (ELD) for review prior to signature. AR 200-1, paragraph 15-8.

2. **Notification Requirements**

a. Enforcement Action (ENF) Environmental Agreements. If the installation receives an ENF, which will require negotiation of an environmental agreement (e.g., Consent Agreement), the installation should report the ENF in accordance with the U.S. Army Materiel Command (AMC) Guidelines as described in reference memorandum, HQAMC, AMCIS, 20 November 2000, Subject: Reporting Enforcement Actions and Fines.

b. Non-ENF Environmental Agreements. If the installation seeks to negotiate a non-ENF environmental agreement, the installation will provide an information paper through the MSC to HQ AMC. The information paper will provide (1) background and history, (2) purpose of the proposed environmental agreement, and (3) the installation points of contact.

3. **Negotiation Process**

Installations are strongly encouraged to work closely with their higher headquarters legal and environmental offices throughout the entire environmental agreement negotiation process. In addition, installations should follow the guidance set forth in the attached Draft DA Pam 200-1 Consent Agreement Checklist (**Enclosure 1**) and the Army ELD Consent Agreement and Consent Order (CACO) Review Checklist (**Enclosure 2**). Note: the checklists are designed primarily for ENF environmental agreements but should be used to the extent applicable for non-ENF environmental agreements.

4. **Approval Process**

After an agreement has been negotiated, the draft agreement will be forwarded through command legal and environmental channels to Army ELD for review prior to signature. The draft agreement should include a memorandum/e-mail message explaining, (1) the parties involved in the agreement, a brief description of the problem, and the proposed corrective actions and (2) total cost associated with the agreement, the source of funding, and confirmation of approval from the funding organization.

5. **Distribution of Signed Agreements**

A copy of the signed agreement will be promptly faxed to the Army ELD, AMC Legal Office, and MSC Legal Office.

ENCLOSURE 1

DRAFT DA PAM 200-1 CONSENT AGREEMENT CHECKLIST

If the installation receives an enforcement action (e.g., Notice of Violation or proposed Consent Agreement) the installation should take the following steps:

1. Carefully review the enforcement actions to determine the validity of the alleged violation.
2. Prepare a response identifying all disputed violations and any legal defenses (e.g., sovereign immunity, etc.), and coordinate response, including legal review where applicable, with program and legal offices at higher headquarters.
3. Take appropriate action to preserve the installation's right to a hearing (e.g., submit a timely answer and request for a hearing). Installations are encouraged to seek guidance and legal review on all pleadings and significant stages of the Consent Agreement negotiation process from higher headquarters and HQDA.
4. Develop a compliance plan with a realistic compliance schedule to correct violations in a reasonable and cost effective manner.
5. If the enforcement actions involves a proposed fine, the installation should:
 - Obtain a copy(s) of the penalty calculation sheets or other documentation justifying the amount of the fine.
 - Ensure that any fine is based on valid violations and is consistent with the regulator's policy regarding environmental fines.
 - Identify possible supplemental environmental projects (SEP) to further offset the amount of the fine.
 - Negotiate the lowest possible fine.
1. Initiate settlement discussions with regulators to resolve disputed violations and develop a reasonable Consent Agreement. Coordinate all drafts of the Consent Agreement with higher headquarters and HQDA. To the maximum extent possible, follow HQDA (DAJA-EL), guidance on inclusion of boilerplate and other language advantageous to both the installation and the Army.
2. Installations are encouraged to work closely with their higher headquarters legal and environmental offices throughout the entire Consent Agreement negotiation process.
 - MACOM assistance may be required to negotiate agreements if an installation has difficulty with state and/or EPA regulators.
 - If a MACOM determines that a reasonable Consent Agreement cannot be negotiated, the MACOM will elevate negotiations to HQDA.
8. All draft Consent Agreements will be submitted through command legal channels to HQDA, Office of the Judge Advocate General (OTJAG), ATTN: DAJA-EL for approval prior to signature by the installation commander.

9. Installation should, where practicable, negotiate for inclusion of the following in environmental agreements:
 - A dispute resolution provision.
 - A force majeure provision.
8. Funding language, including a statement that nothing in the agreement will be interpreted to require any expenditure in violation of the Anti-Deficiency Act (31 USC 1341).

ENCLOSURE 2

Army ELD Environmental Criminal and Civil Liability Handbook CACO Legal Review Checklist

No.	Checklist Item	pg.
1.	Ensure that the party or parties listed in the Heading is the same as those named in the complaint	77
2.	Ensure that the authority under which the complaint was issued is correctly cited	78
3.	Ensure that the regulator is not reserving for itself any enforcement rights with regard to the present enforcement action	78
4.	Ensure that any concession to the regulator's jurisdiction only covers the present action	79
5.	Ensure that the jurisdiction concession limits stipulated penalty authority to the terms of the present agreement	79
6.	Ensure that the CACO specifies that the installation does not admit to any of the facts as alleged in the order or the complaint, and contains no language that could be interpreted to the contrary	80
7.	Check for inaccuracies in the facts	81
8.	Ensure that the CACO includes changes to the original complaint	81
9.	Ensure that the compliance certification is not an open-ended future certification	81
10.	Ensure that the officer required to make the certification is acceptable to the command	82
11.	If Respondent is required to bear its own costs, ensure the requirement also applies to Complainant	82
12.	Delete any provision requiring, in the event the filing of a civil action is necessary, that the installation agrees to pay reasonable attorney fees and costs	82
13.	If the CACO includes a requirement to provide the CACO to employees, agents, and contractors, ensure that the requirement has a termination clause and that the task can be accomplished	83
14.	Scrutinize the language ordering payment of cash for consistency with SEP offset figures	84
15.	Ensure that the ordered fine does not embody any pre-FFCA violations, or multi-inspection violations	84
16.	Ensure the fine does not double-count the same violation(s) allegedly detected during more than one inspection	85
17.	Ensure stipulated penalty figures are not excessive	86
18.	Contest a stipulated penalty provision that is triggered by under spending	86
19.	Watch for unreasonable requirements concerning satisfactory completion of the SEP and SEP Completion Reports	86
20.	Include in the CACO an acceptable dispute resolution provision, with the final decision-maker being a political appointee detached from the dispute	87
21.	(State agreement) Contest language specifying that the CACO shall be enforceable by the filing of a civil action in the relevant district of the	89

No.	Checklist Item	pg.
	State court	
22.	Ensure that RCRA corrective action expenditures do not anticipate use of DERP funds to offset a portion of the RCRA penalty	93
23.	Ensure that both parties have a clear understanding of the current state of corrective action and what more the order requires	94
24.	Contest any language that purports to charge the installation interest on late payments	94
25.	Ensure inclusion of appropriate Anti-Deficiency Act language	95
26.	Ensure inclusion of appropriate force majeure language	96
27.	Ensure that the agreement is tailored to the present settlement, without unnecessary boilerplate	96

NOTE - A full explanation of each checklist item can be found in the Army ELD Handbook on the page listed.