

The Environmental Law Division, OTJAG, Hosts Senior Environmental Law Specialist Workshop

The Environmental Law Division (ELD) of the Office of The Judge Advocate General, hosted its Winter Senior Environmental Law Specialists Workshop on 26 February 2003. The primary purpose of the Workshop was to discuss the transition of environmental legal support under the Transformation of Installation Management (TIM), with particular emphasis on the regional structure developed to support the Installation Management Agency (IMA). In addition, BG Joseph R. Barnes (USA Ret) gave a presentation on the establishment of Conservation Buffers around military installations by using Cooperative Agreements between the DOD and the Nature Conservancy pursuant to recently enacted legislation in the FY03 DOD Authorization Act. A brief synopsis of each presentation is provided below. Also provided, as attachments, are copies of the PowerPoint presentations used at the Workshop.

Keynote Address, Ms. Janet C. Menig, Deputy Assistant Chief of Staff for Installation Management.

Part of the impetus for TIM was to meet the challenge of getting all the MACOMs to agree to do something at the installation level and prevent the migration of installation support funds to mission related activities. One of the primary objectives of TIM is to cross level the quality of facilities and support at the installation to reduce, eventually eliminate the gap between the haves and the have nots. In order to manage installation support across the country in a centralized manner, a new organization, the IMA, was established. The IMA manages its installations through four Regional Offices – the Northeast Regional Office (NERO), Northwest (NWRO), Southeast (SERO) and the Southwest SWRO). The Regional Offices are the eyes and ears of the IMA Headquarters and will focus on compliance. Environmental compliance and conservation will be funded through the IMA HQ. The Office of the Director of Environmental Programs (ODEP) and the Army Environmental Center (AEC) will handle Restoration issues and funding for active site restoration. Base Realignment and Closure (BRAC) issues and funding will be handled by the BRAC office (BRACO), which will have three Field Offices (FO) – the National Capital Region (NCR) BRAC FO, the Hampton BRAC FO, and the Atlanta BRAC FO.

Panel #1, Understanding the Legal Side of IMA. Panel members: COL James Rosenblatt, TRADOC SJA; COL Douglas Baker, Chief, BRACO; LTC Richard Jaynes, Command Counsel AEC, and LTC Jacqueline Little, Chief, Resource Sustainment and Restoration Branch, ELD.

TRADOC SJA. The fundamental change wrought by TIM is the centralization of installation management. Because of its centralized nature, it was COL Rosenblatt's

opinion that the IMA regional offices may just be a temporary feature with the IMA eventually managing all installations from one location. The basic goal is to sit up a system that provides one-stop shopping for installation support.

BRACO. The BRACO will manage the BRAC and Excess Property sites through three BRAC Field offices. It was initially hoped that the three offices would handle sites on a more regional basis, but the geographical imbalance, and past MACOM involvement lead to a distribution that is not necessarily regional in nature. An attempt will be made to more closely align the future BRAC sites along regional lines. For BRAC installations that have been closed and lack the necessary support staff, Inter-Service Support Agreements (ISSA) will be negotiated with a larger installation in the general proximity to provide the necessary support.

AEC. AEC has hired two additional attorneys to work restoration issues. AEC manages the restoration dollars provided by the Army Budget Office and funds the installation workplans directly. AEC has signature authority for Records of Decision (RODs) less than or equal to \$10 million, and will review all other RODs.

ELD. Reporting environmental fines and penalties, and the coordination of agreements should be in accordance with the 18 December 2002 ELD guidance that is available in the December 02 ELD Bulletin. In general, the reporting /coordinating POC should be the supporting IMA regional attorney. The signature authority for environmental agreements is also in the above referenced ELD Bulletin, but is still a little murky. If the guidance doesn't provide clear direction, then ELD should be consulted. Lastly, the ELD Civil/Criminal Enforcement Handbook is being updated and should be out by the end of June 2003.

Panel #2, AR 200-2. Panel members: Mr. Timothy Julius, ODEP; LTC David Mayfield, ELD; MAJ Michael Bobrick, TRADOC/NERO IMA; and Mr. Thad Keefe, FORSCOM/SERO IMA.

ODEP. 32 CFR 651 has superseded AR 200-2, which is being revised to reflect the changes to how the Army conducts, processes, and reviews NEPA actions. One of the biggest confusions in the NEPA process triggered by TIM is determining who is the proponent for the federal action being proposed; i.e., is the proposal a garrison support or mission action. The basic guidance is the decision-maker and the funding source determines where the NEPA legal support comes from.

TRADOC/NERO IMA. Under existing regulations, the Installation Commander must review and approve the NEPA documentation. However, the General Order establishing the IMA can be cited as the authority to delegate this power to the Garrison Commander. If in doubt as to whom has the responsibility to review the NEPA action, have both the mission and BASOPs folks work the action.

ELD. Looking at revising 32 CFR 651 to incorporate all the changes brought about by TIM before re-publishing as AR 200-2. Until that time, there is a potential for NEPA actions to slip through the crack because current guidance/regulations reflect the staffing under the pre-TIM organizational structure, so installation ELSs need to remain vigilant.

Panel #3, Training Ranges. Panel members: Mr. Thomas Macia, Army G3; COL Vernon Abadoo, ODEP; and CPT Jeffrey Hatch, ELD.

Army G-3. The individual that has command and control of the range needs to be distinguished from the proponent for the range actions. The primary focus of the environmental mission as it relates to ranges activities is to ensure that military ranges can support training and provide readiness platforms. G3 establishes priorities and requirements for training, plans for the modernization and expansion of ranges, and formulates policy for range operations and management.

ODEP. ACSIM, through ODEP, establishes policy guidance and procedures for installation operations and real property management. Objective is to develop a Sustainable Range Plan (SRP) for all military ranges.

ELD. Still a lack of cross communication between the biologists in the environmental arena and the trainers in the G3 arena. Foresters tend to manage forests to maximize sustainable timber yields, not maximize training lands or habitat for species. Major push to change this mindset that was incubated during the period when forests on Army lands were looked at primarily as a revenue source.

Conservation Buffers, presenter BG (Ret) Barnes.

Recognizing that the loss of habitat in and around military installations poses both risks to the survival of certain species and often leads to restrictions on the military use of such lands, Congress enacted section 2811 of the FY03 DOD Authorization Act. Section 2811 amends 10 USC 2684 and codifies existing authority to use DOD funds to acquire a property interest in lands around military installations in order to create conservation buffers to deter encroachment and/or eliminate/reduce training restrictions on existing military property. This legislation provides a means whereby DOD can leverage financing by entering into partnership agreements with eligible entities in order to acquire and manage land for conservation purposes. One of the most powerful aspects of the new legislation is not just its ability to arrest encroachment on military training lands, but its potential to actually reverse encroachment. Some of the legal issues yet to be resolved include (1) Who enforces violations of any conservation easements created; and (2) Would the DOD really exercise a reversionary interest should it be included as an enforcement mechanism?