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Update on Lead Based Paint (LBP) in the Soil - MAJ Allison Polchek

The issue of LBP in the soil is a considerable controversy between the Environmental Protection Agency (EPA), States, and the Department of Defense. This problem arises when LBP applied to the exterior of a building flakes off during the normal weathering process and deposits in the soil around the building. This issue often comes to light during the transfer of property at Base Realignment and Closure (BRAC) sites, and typically has been raised through non-concurrences on draft Findings of Suitability to Transfer (FOSTs) and Findings of Suitability to Lease (FOSLs), under the recently enacted early transfer authority of Section 334 of the FY 97 Defense Authorization Act, and with EPA approval of Records of Decision (RODs) at National Priority List (NPL) sites.

The regulators' position is that the soil surrounding buildings should be cleaned up under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This cleanup would include soils around all types of buildings, from residential to industrial. The Army position, however, is that LBP in the soil is not actionable under CERCLA, but should instead be addressed under the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X). Title X applies only to residential buildings that are considered target housing. Target housing is generally defined as residential housing constructed before 1978. In addition, the Army generally uses Title X for areas adjacent to target housing (i.e., playgrounds).

The controversy recently reached a new level when the State of Indiana, dissatisfied with the Army's approach to LBP at Ft. Benjamin Harrison, invoked dispute resolution procedures under the Department of Defense and State Memorandum of Agreement (DSMOA). While there is a question whether the DSMOA is an appropriate mechanism to address the issue, talks are progressing with the State in hopes of reaching a solution. ELSs should be aware that this new approach to raise the LBP issue could be used at other installations.

Until this issue is settled, Army installations should continue to follow current Army policy. At BRAC sites where the EPA non-concurs on a FOST or FOSL, the comment should be attached as an unresolved comment and processed normally through Army channels. The DoD Policy on Lead-Based Paint at Base Realignment and Closure Properties remains in effect. Transferees will continue to be notified of the issue of LBP, and the requirement to abate will generally be passed on to the transferee. At sites where a ROD or the section 334 process is contemplated, installations should not agree to do any sampling or remediation of soils without major command or HQDA approval. Finally, should a state attempt to invoke the DSMOA process, contact your major command immediately.

***EPA's Uniform Hazardous Waste Manifest
Revisions Project - Major Lisa Anderson-Lloyd***

As of December 1997, EPA's Office of Solid Waste began holding meetings for both the public and State regulators to announce the Uniform Waste Manifest Revisions Project.¹ In addition to outlining the strategies that EPA is considering in an upcoming rulemaking, EPA is soliciting input on whether EPA's proposed strategies would reduce the burden of the current system. In the meetings, EPA will explain why manifest revisions are needed and the constraints EPA is under in designing a new system.

EPA believes revisions are necessary to reduce the variability and inefficiencies in the present system and to increase overall effectiveness in tracking hazardous waste. The record-keeping burden of the system is high with a total of 4.8 million hours/year and \$192,000,000/year expended in complying with requirements. EPA estimates the Federal burden as 86% of the total. A primary problem with the current system is the patchwork of requirements from State to State. The number of copies, the acquisition process, manifest fees, and submission requirements vary by State. The principal constraints in revising the manifest system are RCRA requirements, Department of Transportation shipping requirements, and state regulatory needs.

EPA's approach in designing a new manifest system is three-pronged. First, proposed revisions to the manifest form will include eliminating many unnecessary data fields and streamlining routing requirements. Secondly, automation improvements will be studied toward the goal of making the system more effective and efficient. Possible automation improvements include automating the entire manifest cycle, developing electronic signature standards, and allowing electronic storage of records. The third prong of the revised system is the examination of possible exemptions from the manifest system. Two significant exemptions being considered are the elimination of redundant requirements for generators with multiple sites and eliminating the requirement for full manifests for shipment of recyclables.

In January 1998, EPA and three States will begin a pilot project to test the electronic tracking of the generation, storage, and disposal of hazardous waste. The project will test an electronic data exchange system that transfers data electronically from facility to regulatory agency. The second part of the pilot project will test the electronic signature technology that ensures the integrity and security of the manifests. This project will assist EPA in drafting the rulemaking that EPA expects to propose in October 1998.

***Committee Nears Completion of Review of Overseas
Environmental Baseline Guidance Document-MAJ Mike Egan***

An interservice committee, comprised of representatives of the Military Departments, the Chairman of the Joint Chiefs of Staff, and the Defense Logistics Agency² is scheduled to complete review of the Overseas Environmental Baseline Guidance Document (OEBGD) during the second quarter of FY 98.

¹ This article is based on the first public meeting held by EPA on 11 December 1997 in Crystal City, Virginia, and on materials provided at that meeting. (Materials on file with author)

² Committee membership is determined pursuant to DODI 4715.5, Management of Environmental Compliance at Overseas Installations, April 22, 1996.

The OEBGD lays out implementation guidance, procedures, and criteria for environmental compliance at DoD installations outside the United States, its territories and possessions, i.e., overseas installations. The OEBGD is to be used by the Environmental Executive Agents appointed by the Office of the Secretary of Defense for host nations where significant DoD installations are located. The document includes specific DoD environmental criteria which are to be used by Environmental Executive Agents in developing the final governing standards to be used by all DoD installations in the host nation concerned. Unless inconsistent with applicable host nation law, base rights, and/or Status of Forces Agreements or other international agreements or practices established pursuant to such agreements, the baseline guidance shall be applied by the DoD components stationed in foreign countries when host nation environmental standards do not exist, are not applicable, or provide less protection to human health and the natural environment than the baseline guidance.³

Upon completion of review and revision of the document, the interservice committee will forward the OEBGD to the Deputy Under Secretary of Defense (Environmental Security) for coordination, final approval and distribution.

³ DoDI 4715.5, Management of Environmental Compliance at Overseas Installations, April 22, 1996, Para. 3.c. (1).