Evaluation Report

THE ARMY ENVIRONMENTAL PROGRAM IN GERMANY

Report No. 99-251 September 15, 1999

Office of the Inspector General
Department of Defense

Additional Copies

To obtain additional copies of this audit report, contact the Secondary Reports Distribution Unit of the Audit Followup and Technical Support Directorate at (703) 604-8937 (DSN 664-8937) or fax (703) 604-8932 or visit the Inspector General, DoD, Home Page at. www.dodig.osd.mil.

Suggestions for Future Audits

To suggest ideas for or to request future audits, contact the Audit Followup and Technical Support Directorate at (703) 604-8940 (DSN 664-8940) or fax (703) 604-8932. Ideas and requests can also be mailed to·

OAIG-AUD (ATTN: AFTS Audit Suggestions)
Inspector General, Department of Defense
400 Army Navy Drive (Room 801)
Arlington, VA 22202-2884

Defense Hotline

To report fraud, waste, or abuse, contact the Defense Hotline by calling (800) 424-9098; by sending an electronic message to Hotline@dodig.osd mil; or by writing to the Defense Hotline, The Pentagon, Washington, D C 20301-1900 The identity of each writer and caller is fully protected.

Acronyms

ASG	Area Support Group
BSB	Base Support Battalion
EO	Executive Order
GSA	German Supplementary Agreement
NATO	North Atlantic Treaty Organization
SOFA	Status of Forces Agreement
USAREUR	United States Army, Europe

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-2884

September 15, 1999

MEMORANDUM FOR AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT Evaluation Report on the Army Environmental Program in Germany (Report No. 99-251)

We are providing this draft evaluation report for review and comment.

DoD Directive 7650.3 requires that all recommendations be resolved promptly Because the Commander, United States Army, Europe did not comment on a draft of this report, we request the Commander, United States Army, Europe provide comments on the final report by October 15, 1999.

Questions on the evaluation should be directed to Mr. William C. Gallagher at (703) 604-9270 (DSN 664-9270) or Mr. Michael R Herbaugh at (703) 604-9294 (DSN 664-9294) See Appendix C for the report distribution. The evaluation team members are listed on the inside of the back cover.

Robert J. Lieberman
Assistant Inspector General
for Auditing

Office of the Inspector General, DoD

Report No. 99-251 **September 15, 1999**
(Project No 9CB-0088)

The Army Environmental Program in Germany

Executive Summary

Introduction. Executive Order 12088, "Federal Compliance with Pollution Control Standards," dated October 13, 1978, directs the head of each Executive agency to ensure that the construction or operation of Federal facilities outside the United States complies with the environmental pollution control standards of the host country

Objectives. The overall objective was to evaluate the Army environmental program in Germany Specifically, we reviewed various environmental program elements as well as the environmental program requirements process, and attempted to determine the extent of Army liability as defined by the Status of Forces Agreement and Final Governing Standards. We reviewed the management control program as it relates to the evaluation objective.

Results. Although the U.S. Army, Europe had a well-established environmental program in Germany, the following concerns exist·

- the impact of the 1993 Amendment of the German Supplementary Agreement to the NATO Status of Forces Agreement had not been fully assessed,
- a strategy for responding to the impact of the changes had not been developed and disseminated for use by the subordinate commands, and
- training of environmental personnel on the applicability of the German law and the increased potential for German enforcement action was insufficient.

Consequently, the U.S. Army, Europe could incur increased environmental costs for U.S. forces stationed in Germany; military, civilian, and local national personnel may be exposed to personal liability; and U.S.–host country relations could be strained.

Summary of Recommendations. We recommend that the Commander, U.S. Army, Europe, provide clear guidance to all environmental activities within the U S. Army, Europe, on the impact of the German Supplementary Agreement, develop a strategy for responding to the changed substantive and procedural requirements necessitated by the Agreement; and provide training to U.S. Army, Europe environmental personnel.

Management Comments. The Commander, United States Army, Europe did not respond to a draft of this report dated June 7, 1999 Therefore, we request the Commander, United States Army, Europe provide comments by October 15, 1999

Table of Contents

Executive Summary i

Introduction

Background 1
Objective 3

Finding

Army Environmental Program Requirements in Germany 4

Appendixes

A. Evaluation Process 15
   Scope 15
   Methodology 15
   Management Control Program 16
   Summary of Prior Coverage 16
B. Criteria 17
C. Report Distribution 19

Background

In 1990, USAREUR was a command of 213,000 soldiers operating on 858 installations. With the fall of the Berlin Wall and the dissolution of the Soviet Union in 1989, USAREUR downsized to a smaller force structure deemed adequate in the post Cold War era As of January 1, 1999, USAREUR consisted of 65,000 soldiers who lived and worked on 252 installations across Europe Base operations for 7 Area Support Groups (ASGs), containing 16 Base Support Battalions (BSBs), control these installations

NATO Status of Forces Agreement. A Status of Forces Agreement (SOFA) is an international agreement designed to serve the mutual interests of a host nation and U.S. citizens subject to its provisions. The NATO SOFA, signed June 19, 1951, balances U S. sovereign immunities and an American citizen's individual rights with obligations to a host nation's federal and local laws The NATO SOFA governs the relationship between Germany and U S forces on matters of criminal jurisdiction, passport and visa regulations, taxes, drivers' licenses, airport regulations, and other civil and legal matters.

The 1959 German Supplementary Agreement to the NATO SOFA expanded obligations for NATO member forces stationed in Germany.[1] This expansion continued with the 1993 completion and 1998 ratification and application of the latest supplementary agreement. The NATO SOFA and the 1993 Amendment of the German Supplementary Agreement[2] (1993 amendment of the GSA) apply to U.S. armed forces personnel (both military and civilian), invited contractors, technical representatives, and family members. In addition to the NATO SOFA for Germany, there are many existing bi-lateral stationing agreements between Germany and the United States.

Federal Overseas Environmental Policy. Executive Order (E.O) 12088, "Federal Compliance with Pollution Control Standards," dated October 13, 1978, directed the head of each Executive agency to ensure that the construction or operation of Federal facilities outside the U.S complies with the environmental pollution control standards of the host country. While E.O. 12088 requires compliance with pollution control standards of the host country,

[1] Agreement of August 3, 1959, as amended by the agreements of October 21, 1971 and May 18, 1981, to supplement the agreement between the parties to the North Atlantic Treaty regarding the status of their forces with respect to foreign forces stationed in the Federal Republic of Germany (1959 German Supplementary Agreement)

[2] The agreement to amend the agreement of August 3, 1959, as amended by the agreements of October 21, 1971 and May 18, 1981, to supplement the agreement between parties to the North Atlantic Treaty regarding the status of their forces with respect to foreign forces stationed in the Federal Republic of Germany, signed March 18, 1993 (1993 German Supplementary Agreement) The agreement became effective March 29, 1998

USAREUR Regulation 200-1 provides that in the absence of an agreement to the contrary, the U.S., as a sovereign power, may not be compelled to comply with procedural requirements.

Department of Defense Overseas Environmental Policy. DoD published DoD Directive 6050.16, "Policy for Establishing and Implementing Environmental Standards at Overseas Installations," September 20, 1991, which was superceded by DoD Instruction 4715.5, "Management of Environmental Compliance at Overseas Installations," dated April 22, 1996 This directive:

- mandated the publication of a baseline guidance document,
- provided for the identification of an environmental executive agent for each foreign country with DoD installations or facilities;
- required environmental executive agents to publish Final Governing Standards for each country with DoD installations or facilities; and
- required the environmental executive agent to consult with host-nation authorities on environmental issues to maintain effective cooperation

The directive mandated establishment of the Overseas Environmental Baseline Guidance Document, which sets the minimum overseas environmental standards based on applicable provisions of United States laws as well as DoD environmental policies. These minimum standards are used in developing country-specific Final Governing Standards. The Final Governing Standards are a comprehensive set of substantive environmental provisions to which each DoD Component must comply in a specific foreign nation.

Further policy, contained in DoD Instruction 4715.8, "Environmental Remediation for DoD Activities Overseas," February 2, 1998, requires remediation of DoD-caused environmental contamination when known imminent and substantial endangerment to human health and safety exists. The Instruction also allows remediation if required to maintain operations or protect human health and safety.

Army Overseas Environmental Program. Environmental standards for Army commands in Germany are defined in Army Regulation 200-1, "Environmental Protection and Enhancement," dated February 21, 1997 This guidance implements:

- applicable international treaties, such as the Status of Forces Agreement;

- country-specific Final Governing Standards, or in the absence of Final Governing Standards, the Overseas Environmental Baseline Guidance Document; and

- Unified Command, major command and service regulations.

The USAREUR staff proponent for that command's environmental program is the Deputy Chief of Staff, Engineer who implements the Army environmental program in Europe through USAREUR Regulation 200-1, "USAREUR Environmental Quality Program."

Objective

The overall objective was to evaluate the Army environmental program in Germany. Specifically, we reviewed various environmental program elements and the environmental program requirements process, and attempted to determine the extent of liabilities to the Army as defined by the SOFA and Final Governing Standards. We also reviewed the management control program as it relates to the evaluation objective. See Appendix A for the evaluation process and review of management controls.

Army Environmental Program Requirements in Germany

The Army environmental program in Germany is well established; however, it is facing increased environmental requirements The 1993 amendment of the GSA to the NATO SOFA expands the U.S Army environmental obligations and increases German involvement in U.S environmental compliance. The U.S. Army in Germany is not prepared to comply with the additional requirements because USAREUR headquarters has not fully assessed and provided adequate guidance on the impact of the 1993 changes, developed and disseminated a strategy for responding to the impacts of the changes, or trained environmental personnel on the applicability of German law and procedures and the increased potential for German enforcement actions. Consequently, USAREUR could incur increased environmental costs for U. S. forces stationed in Germany; military, civilian, and local national personnel may be exposed to personal liability; and U.S.- host nation relations may be unnecessarily strained.

Conduct of the Army Environmental Program in Germany

USAREUR Environmental Program. The Army environmental program in Germany is well established. USAREUR established a command environmental program with the goal of incorporating environmental stewardship into all military objectives. The command objectives to meet this goal are:

- attain compliance with all host-nation and applicable U.S. requirements,
- remediate contaminated sites as quickly as resources permit;
- adopt and implement management approaches, procedures, and operations to minimize contamination and pollution; and,
- conserve, protect, and enhance natural and cultural resources.

USAREUR has implemented policy, procedures, and systems to evaluate, achieve, maintain, and monitor these environmental program goals.

Environmental Program Elements. The elements of a well established and fully functional environmental program are listed in DoD Directive 4715.1, "Environmental Security," February 24, 1996. The elements of a complete environmental program for Army forces in a foreign country are described in Chapter 14 of Army Regulation 200-1 The USAREUR program contains all the key elements of both.

Executive Agent Responsibility. As the environmental executive agent for Germany, USAREUR conducted a comparative analysis between the Overseas Environmental Baseline Guidance Document and the substantive German environmental standards to publish the Final Governing Standards for Germany on March 14, 1996

Compliance. USAREUR adopted the Army's Environmental Compliance Assessment System in 1994 to identify and anticipate environmental requirements. USAREUR uses the Environmental Compliance Assessment System to provide installations with a comprehensive environmental evaluation.

Remediation. USAREUR programmed remediation claims totaling approximately $10 million per year in the FYs 2000 - 2005 Future Years Defense Plan. The claims, processed through the U.S. Army Claims Service Europe, were validated, programmed, and budgeted in order to maintain operations and foster positive relations with the host-nation government. Although no known, imminent and substantial endangerment situations existed, USAREUR considered these claims necessary to preserve positive relations with the host-nation government

Pollution Prevention. USAREUR implements the pollution prevention program through the Environmental Compliance Assessment System evaluation, Hazardous Material Control Centers, and through the development of a command pollution prevention plan that identifies strategies and opportunities to reduce the amount of hazardous materials used and hazardous waste generated.

Environmental Program Requirements Report. USAREUR uses the Army Environmental Program Requirements Report to manage the environmental requirements generated by the command environmental program. The Environmental Program Requirements Report provides the Army with the primary means for identifying and documenting all current and projected environmental requirements and resources needed to execute the program.

Must Fund Requirements. Army commands overseas must categorize their environmental requirements using the same classification and prioritization criteria that are used in the United States. All projects and activities identified in the Environmental Program Requirements Report are classified according to their compliance status. The classification system has four distinct classes (0, 1, 2, and 3). Class 0 consists of recurring requirements; Classes 1, 2, and 3 constitute non-recurring requirements. The Army designates Class 2 high priority items as 2H. The Army considers Classes 0, 1 and 2H as "must fund" requirements for the fiscal year the requirement is found to be noncompliant.

Programming and Budgeting. Army environmental requirements are validated by the Army Environmental Center and programmed by the Installation Program Evaluation Group. We did not do additional validation of these estimates during our review The Installation Program Evaluation Group programs response to environmental requirements by allocating available financial resources, reconciling conflicts involving unfunded requirements, and evaluating budgetary realignments to meet existing shortfalls and changed requirements.

The Installation Program Evaluation Group also prioritizes unfunded requirements. An unfunded requirement will be carried over to the next fiscal year or until funds are obligated against that requirement As of FY 1999, there are 10,471 "must fund" environmental requirements in the Army Environmental Program Requirements Report with an average of 3,000 funded annually.

Budget and Unfunded Requirements. The table below shows USAREUR Program Budget Guidance environmental funding for the FYs 2000-2005 Future Years Defense Plan. By comparing the USAREUR Environmental Program Requirements Report requirements with the Program Budget Guidance, the table shows a trend of increasing unfunded requirements during the FYs 2000-2005. This shortfall represents the difference between validated requirements and programmed dollars. The shortfall is expected to be $30.8 million for FY 1999, and because of the carry-over of requirements resulting from under funding, will increase to more than $111 million by FY 2005.

Table 1. USAREUR Environmental Funding
(in millions)

	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
Class 0, 1, and 2H	$66.2	$62.3	$64 0	$47.5	$47.2	$40.0	$36 9
Restoration	7.6	12.7	6.8	6.5	15.5	9.1	11.6
Must Fund Requirements[2]	**$73.8**	**$75.0**	**$70.8**	**$54.0**	**$62.7**	**$49.1**	**$48.5**
Unfunded Forward	16.2	30.8	52.4	73.7	85.2	103 7	108.9
Total FY Requirements	**$90.0**	**$105.8**	**$123.2**	**$127.7**	**$147.9**	**$152.8**	**$157.4**
Program Budget Guidance[3]	59.2	53.4	49.5	42.5	44.2	44.0	46.0
Unfunded Forward	**$30.8**	**$52.4**	**$73.7**	**$85.2**	**$103.7**	**$108.8**	**$111.3**

[1] "Policy and Guidance for Identifying U.S. Army Environmental Program Requirements" (Green Book), Headquarters, Department of the Army, August 1998.
[2] Green Book and Army Vice Chief of Staff Memorandum dated April 22, 1996.
[3] USAREUR FYs 2000-2005 Future Years Defense Plan.

Increased Environmental Requirements. The Army's environmental program in Germany is one of the more mature overseas programs. However, it is undergoing major changes caused by an expansion of U.S. obligations under a revised 1993 amendment of the GSA; increased German oversight, supervision,

and monitoring of U.S. environmental compliance; and the lack of a comprehensive and strategic response by the USAREUR. These factors are increasing U.S. environmental program requirements, costs, and the risks for civil and criminal liability of Army uniformed and civilian personnel.

1993 German Supplementary Agreement Expands U.S. Obligations

The 1993 amendment of the GSA expands the obligations of the U S. military in Germany and increases German oversight, supervision, and monitoring of U S. environmental compliance. While the 1993 amendment of the GSA governs the status of all foreign forces in Germany, this report focuses on the agreement only as it pertains to the status of U.S. forces and the relationship between Germany and the U.S military and its civilian Component With the application of the 1993 amendment of the GSA, the U.S. forces in Germany are obligated to apply, and in some cases comply with, German environmental laws unless there are no third party effects[3]. This holds true for substantive as well as certain procedural aspects. Compliance with the procedural aspects of German law creates new environmental requirements for USAREUR and increases the potential for punitive and enforcement actions The 1993 amendment of the GSA also provides for greater oversight and supervision by German officials over the USAREUR environmental program

1993 Amendment of the GSA Expands the Obligations of the U.S. Military in Germany. Germany renegotiated the GSA, after obtaining full sovereignty in 1991, to remove any "occupation-type" provisions from the agreement and to provide for other matters such as the environment. The NATO SOFA is silent on the environment, while Germany has developed demanding environmental standards and a growing body of environmental laws. Consequently, the 1993 amendment of the GSA creates an obligation for the U.S. military that goes much further than the NATO SOFA and the 1959 GSA in making German environmental laws applicable to U.S. military operations and installations.

From Respect to Apply and Comply. Article II of the NATO SOFA, establishes a U.S. duty to respect German law in general. However, Article 53 of the 1959 GSA allowed the U.S. military to apply its own internal public safety laws and regulations on U.S. installations in Germany. One major change in the 1993 amendment of the GSA was an amendment to Article 53, which provides generally that German law applies to the use of U.S. facilities except where there are no foreseeable effects on the rights of third parties, adjoining communities or the general public.

[3] DoD policy does not interpret what "foreseeable effects on third parties or the general public" means or prescribe how the standard is to be applied in the context of environmental compliance

Other provisions of the 1993 amendment of the GSA impose additional requirements for compliance with German law in several areas. Article 53A was a new provision that obligated the United States to comply with German laws requiring permits, and to operate regulated facilities in compliance with the conditions of the permits. Article 57 was amended to rescind the special rights of U.S. forces relating to the transportation of hazardous materials and waste in Germany. Unless the U.S. forces are exempted by other provisions of the GSA or are granted a special permit or an exemption from German regulations, U.S. forces are now obligated to comply with German law regulating the transportation of hazardous materials and waste.

From Higher Standard to Third Party Effects. Before the 1993 amendment of the GSA, U S. environmental laws and regulatory standards could be applied within a U.S. facility, except where German law set a higher standard. German law now applies in all cases except where there are no foreseeable effects on the rights of third parties, adjoining communities, or the general public Accordingly, as environmental matters of any consequence will likely have "foreseeable effects," the basis for determining the Final Governing Standards for Germany may have been changed. In practice, the safest course may be to apply German environmental standards.

From Substantive to Substantive and Procedural. E.O. 12088 requires U.S. Federal facilities overseas to comply with environmental pollution control standards of general applicability in the host country. In the past this requirement has been interpreted to apply only to substantive, not procedural standards. According to USAREUR, the 1993 amendment of the GSA now subjects the U.S military to application of the substantive and procedural aspects of applicable German law. Applying procedural law means keeping records, getting permits, or obtaining other types of German approval Every German environmental law and procedure made applicable to U S. military operations and installations involves a new requirement.

Potential for Punitive and Enforcement Actions. According to the Chief, International Law Division, USAREUR Office of the Judge Advocate, U.S. civilians and local nationals working for the U.S. military have always been subject to German law. Uniformed personnel can be charged with criminal environmental violations, but jurisdiction for trying uniformed personnel usually shifts from German authorities to U.S. military authorities. Before the 1993 amendment of the GSA, U.S. personnel were not subject to environmental enforcement actions. In the past U.S. forces needed only to comply with substantive laws. The most significant effect of the GSA revision is that U.S. forces now must follow administrative and procedural law as well. However, according to the Chief, International Law Division, we have always been subject to the law, the difference is that now there is a greater potential for enforcement actions. German courts have jurisdiction over all parties in civil actions regardless of nationality or military status.

Increased German Access. The 1993 amendment of the GSA also increased German access to U.S. Army installations and provided a defined role for German authorities in monitoring U.S. compliance matters. Amendments to the Protocol of Signature Re Article 53 provided greater access for German officials to inspect U.S. facilities and to safeguard German interests. U.S. facilities are dependent upon German authorities to obtain permits, licenses, or other forms of official permission on behalf of the United States. Article 54A requires U S Army authorities to cooperate with German authorities concerning the identification and evaluation of the environmental compatibility of all projects Under Article 57, German and U.S authorities jointly supervise the transportation of hazardous material. As a result, the 1993 amendment of the GSA provisions increased environmental requirements in Germany. These circumstances may increase the risk of personal liability for the Army and its civilian Component, especially for German local nationals employed by the Army.

German Response to the 1993 German Supplementary Agreement

As mentioned above, the 1993 amendment of the GSA to the NATO SOFA greatly increases the Army's environmental requirements in Germany. This development is based on the increased environmental awareness of European governments and the German government in particular, and on the 1991 establishment of full German sovereignty. This assertion of sovereignty led to a reduction and possibly an eventual elimination of the special status of U.S. forces stationed in Germany. The combination of these two effects increased German involvement in USAREUR environmental programs.

Increased Environmental Awareness in Germany. Germany has a robust environmental program and the addition of the Green Party into the governing coalition has further increased environmental awareness In addition, the number and sophistication of German environmental laws continues to increase The new German waste avoidance, recovery and disposal law (Kreislaufwirtschafts- und Abfallgesetz) is dated September 27, 1994. The new battery ordinance (Verordnung ueber die Ruecknahme und Entsorgung gebrauchter Batterien und Akkumulatoren) and updated soil protection law (Bodenschutzgesetz) are both dated March 1998. The inclusion of the environment into renegotiations of the 1993 amendment of the GSA is further indication of the importance of the environment to the German government.

Eliminating Special Status. The current status of U.S. forces in Germany has evolved from the occupation following World War II. As Germany has regained sovereignty the special privileges of the former occupation forces have decreased and German state officials increasingly require compliance with German law in areas where U.S. citizens were previously exempt. There are several indications of this trend in the environmental arena with the following two examples.

- The 1993 amendment of the GSA contains new requirements for safety advisors for hazardous material and, based on the current interpretation, hazardous waste cargo handlers must be trained on German procedural requirements and candidates must pass the test given in German. This point is still under negotiation, however, it would be the first case where the Germans would demand compliance with an environmental regulation which requires the members of the U.S. forces to speak and read German. This would require the U.S. military to hire either more German speaking civilians or local nationals.

- The U.S. military will no longer be exempt from German permitting requirements for environmental processes. While German federal agencies and officials will act on behalf of the U.S. military in obtaining permits and exemptions, these permits create an obligation to comply with permit provisions, namely German regulations.

Increased German Involvement. Since the 1993 amendment of the GSA was ratified, German involvement in the environmental program has increased on U.S. bases. The most important aspect of this involvement is that the degree of enforcement by Germans has changed. Threats of enforcement actions against individuals and an increase in letters of concern from local officials indicate this change.

The 417th BSB provided an example of a threat of enforcement. The BSB received a letter from Bavarian state officials in March 1999, which threatened to levy a fine against the BSB if action was not taken on the issue of cleaning an old laundry site. The letter was an attempt to get the BSB to act faster. Officials at the 417th BSB said that they had not received a letter with such language and tone before the 1993 amendment of the GSA revision.

Both the 98th and 100th ASGs reported an increase in the number of written complaints. They estimate that the number has almost doubled since the 1993 amendment of the GSA revision went into effect and the complaints cite German laws. According to the 417th BSB this demonstrates an increased awareness and intention of the German authorities to enforce their environmental laws.

USAREUR Response to the 1993 German Supplementary Agreement

USAREUR needs to respond more effectively to the 1993 amendment of the GSA. For example, USAREUR has provided insufficient policy guidance on the impact of German environmental regulatory changes defined in the 1993 amendment of the GSA. USAREUR has not provided:

- a complete assessment and policy guidance on the legal and practical impacts of the changes to environmental standards and procedures in the 1993 amendment of the GSA to the SOFA,

- a strategy for responding to the impact of environmental changes, and

- training on the applicability of German environmental laws and the potential for enforcement actions.

Legal and Practical Impacts of Environmental Changes. USAREUR headquarters has limited staffing available in the Office of the Judge Advocate to respond to the magnitude of changes caused by the implementation of the 1993 amendment of the GSA. That office reviews and evaluates environmental issues submitted to the ASGs and BSBs by local government officials, however, legal responses are not always timely because of limited resources. ASGs and BSBs have local nationals on their staff to support the environmental program and to assist with accessing local German environmental laws and to facilitate communication on environmental issues through working groups and daily contact. Promulgation of comprehensive guidance and procedures for use by USAREUR subordinate commands would help alleviate this problem

Command Strategy for Complying with GSA. Although USAREUR acknowledges the importance of environmental protection, USAREUR has not developed a strategy for responding to increased German environmental requirements resulting from the 1993 amendment of the GSA. A formal strategy for the command that provides the methodology for responding to increased regulatory oversight would assist ASGs and BSBs in complying with the requirements. For example, where German law requires a permit or other form of approval, U.S forces must acquire the permit through German agencies and must comply with the conditions contained in the permit. Substantial changes to existing facilities and minor construction now require a permit. A command strategy and accompanying guidance would limit the uncertainty when dealing with host nation officials.

Training of Personnel. USAREUR has not provided adequate training to Army environmental program managers at ASGs or BSBs. Personnel are not aware of the applicability of German environmental laws or the potential for German regulatory enforcement actions against Army environmental personnel. Since the 1993 amendment of the GSA ratification, local German regulatory officials have submitted a greater number of letters of environmental concern to ASGs and BSBs. Army personnel expressed concern about the extent to which local German regulatory officials may use the 1993 amendment of the GSA revisions to initiate enforcement actions for environmental violations. The 1993 amendment of the GSA also generated new training requirements for current employees.

Impact of 1993 German Supplementary Agreement Changes

The consequences of the ratification of the 1993 amendment of the GSA, and the ensuing German and USAREUR responses fall into two categories.

- The agreement itself has generated increased environmental requirements for the U.S. forces in Germany.
- Failure of German officials and USAREUR to respond appropriately has increased the risk of personal liability of individuals working for USAREUR.

Increased Environmental Requirements. The 1993 amendment of the GSA generated increased environmental requirements. These requirements include increased costs, more paperwork, and additional time and expertise.

Cost. According to the USAREUR Office of General Counsel, one objective of the U.S in the conduct of negotiating the 1993 amendment of the GSA was to keep it cost neutral. An attorney in that office stated that they did not achieve this objective An attorney in the Office of the Legal Advisor, U S European Command, agreed with USAREUR Office of General Counsel and said that there is a need to collect impact data and to analyze changes to local regulations and how they affect U.S. forces. While the 1993 amendment of the GSA is not the root cause of the current environmental funding shortfall, adding requirements increases the growing number of unfunded requirements.

Paperwork. The 1993 amendment of the GSA generated additional costs due to German procedural requirements Increased paperwork for permitting and certification and the need for increased training are examples of those procedural requirements. According to the 1993 amendment of the GSA, the Germans will help the U.S. forces obtain all permits. Existing environmental processes were extended by a grandfather clause, however, gathering the information required to exempt hundreds of existing facilities and processes was an unfunded project, expending manpower and resources at all levels.

Time and Expertise. Additional time and expertise are required to track new as well as existing German regulations and to comply as required. Due to the lack of environmental legal support throughout USAREUR, local national environmental managers at the ASGs and BSBs obtain changes to German regulations off the Internet. Environmental managers are expected to interpret and translate these regulations, something they currently lack the legal training to perform

Personal Liabilities. Due to sovereignty, the U.S. Government is immune from enforcement actions by the German government. Individuals working for the U.S forces, however, are at risk for criminal, civil, and administrative enforcement actions. Legally, the uniformed military and civilians working for the U.S. forces are distinct groups.

Common practice in USAREUR is to have uniformed military personnel sign hazardous waste manifests, in the belief that they are immune from prosecution by the German authorities. A 1998 case, when canisters of CS (orthochlorobenzalmalonitrile) riot gas were found in household trash in Vilsek, is a prime example. The German authorities began the investigation, but turned it over to the U.S. Army Criminal Investigation Command when they discovered that a U.S. Army Warrant Officer had signed the manifest.

The German authorities did not necessarily have to pass jurisdiction. Criminal liability for military personnel might be imposed under either German law or the Uniformed Code of Military Justice, as circumstances dictated. Article VII of the NATO SOFA addresses jurisdiction of the matters by U.S or Germany or concurrent jurisdiction with one primary country; but the article is subject to interpretation and sometimes negotiation. Whether an offense is committed in the course of performing official duties would also be an important consideration. Where the offense is grave enough, the host nation may make great efforts to obtain the right to exercise jurisdiction even where the offense was committed by uniformed military personnel in the exercise of official duty.

Department of the Army civilians and local nationals working for U S. forces are not protected by the SOFA. In addition, USAREUR, as all other Components of the Department of Defense, choose not to purchase professional liability insurance for government employees. When this is combined with ever changing regulations and an atmosphere of increased enforcement, the result is greatly increased risk. German nationals working for the U S forces are at the greatest risk, and they are acutely aware of this fact.

Summary

The Army has an active environmental program in Germany. However, USAREUR has not provided clear, comprehensive guidelines on the changes made by the 1993 amendment of the GSA to the NATO SOFA and their impact on the ASGs and BSBs. Also, USAREUR has not established sufficient policy guidance for field activities to use in response to the increased German environmental regulatory oversight. As a result, liabilities to the Army environmental program could increase through environmental costs for U S. forces stationed in Germany. Army liabilities could also increase because of German regulatory enforcement actions against military, civilian, and local national personnel in Germany thereby complicating U.S relations with Germany.

Recommendations

We recommend that the Commander, United States Army, Europe

1. Provide clear, comprehensive guidance on the impact of the 1993 Amendment of the German Supplementary Agreement to ensure that environmental personnel at military facilities in Germany have a complete understanding of German environmental requirements applicable to the forces

2. Develop and publish a strategy to support environmental personnel at military facilities in Germany in response to the impacts of the 1993 Amendment of the German Supplementary Agreement.

3. Provide training on Recommendations 1. and 2. to ensure environmental personnel at military facilities in Germany have the opportunity to discuss the 1993 Amendment of the German Supplementary Agreement changes that affect them personally.

Management Comments Required

The Commander, United States Army, Europe did not respond to the draft of this report in time for comments to be incorporated into the final report.

Appendix A. Evaluation Process

Scope

We reviewed environmental policies, program requirements, and liabilities in Germany. Specifically, we reviewed environmental policies and procedures at the BSBs, ASGs, U.S. Army Claims Service, Army Corps of Engineers, U.S Army Europe, U S. European Command, and Center for Health Promotion and Preventive Medicine

DoD-Wide Corporate Level Government Performance and Results Act Goals. In response to the Government Performance and Results Act, the Department of Defense has established 6 DoD-wide corporate level performance objectives and 14 goals for meeting those objectives. This report pertains to achievement of the following DoD-wide corporate level objective and goal

- **Objective:** Shape the international environment through DoD engagement programs and activities. **Goal:** Support friends and allies by sustaining and adapting security relationships. **(DoD-1.1)**

Environment Functional Area Reform Goals. Most major DoD functional areas have also established performance improvement reform objectives and goals. This report pertains to achievement of the following acquisition functional area objective and goal.

- **Objective:** Achieve compliance with applicable Executive Orders and Federal, State, and inter-state, regional, and local statutory and regulatory environmental requirements. **Goal:** Reduce the number of new, open, and unresolved letters of concern and enforcement actions **(Env-2.1)**

Methodology

To accomplish the evaluation, we identified and analyzed existing requirements, policy, and guidance related to DoD overseas environmental efforts. We·

- conducted interviews, site visits, and data collection at DoD, Department of the Army, Army Staff, Unified Commands, and Service Centers,
- evaluated the Army environmental program requirements in Germany, and,

- developed potential findings for verification.

Limitations to Evaluation Scope. We concentrated our efforts on compliance with environmental requirements. Our evaluation did not determine the extent of the liabilities to the DoD and the Army for complying with German environmental requirements, nor did we attempt to validate USAREUR cost estimates.

Evaluation Type, Dates, and Standards. We performed this program evaluation from November 1998 through May 1999 in accordance with standards issued by the Inspector General, DoD We did not rely on computer-processed data or statistical sampling procedures.

Contacts During the Evaluation. We visited or contacted individual organizations within DoD. Further details are available upon request.

Management Control Program

DoD Directive 5010.38, "Management Control Program," August 26, 1996, requires DoD organizations to implement a comprehensive system of management controls that provides reasonable assurance that programs are operating as intended and to evaluate the adequacy of the controls.

Scope of Review of Management Controls. We reviewed the adequacy of the Army management controls over the environmental program overseas. We did not assess management's self-evaluation of these controls because we found no material control weaknesses.

Adequacy of Management Controls. The Army management controls we reviewed for the environmental program overseas were adequate as they applied to the evaluation objectives; we identified no material management control weaknesses.

Summary of Prior Coverage

General Accounting Office (GAO), Report No. RCED-94-55, "International Environment: Improved Procedures Needed for Environmental Assessments of U.S. Actions Abroad," February 11, 1994.

Office of the Inspector General, Department of Defense, Report No. 98-025, "Management and Administration of International Agreements in the Department of Defense," November 19, 1997

Inspector General of the Air Force Report No PN- 95620 "Environmental Compliance in Foreign Countries," August 9, 1995

Appendix B. Criteria

Executive Order

Executive Order 12114. This order provided information to decisionmakers to heighten awareness to environmental concerns and facilitate environmental cooperation with foreign nations.

Congressional Policy

National Defense Authorization Act for Fiscal Year 1991. This act required the Secretary of Defense to develop a policy for determining environmental requirements for military installations located outside the United States. In addition, the Secretary must ensure that the policy considers protecting the health and safety of military and civilian personnel assigned to those installations.

Overseas Specific

Status of Forces Agreement. This agreement obligates the U.S. forces to respect the host nation laws and to avoid actions that would derogate host nation relations. The SOFA includes claims and residual value provisions applicable to environmental contamination, and defines DoD responsibility with host nation laws.

Overseas Environmental Baseline Guidance Document The Overseas Environmental Baseline Guidance Document provides specific criteria, which establish baseline guidance for environmental protection at DoD installations overseas. The document implements DoD Instruction 4715.5 and sets minimum environmental standards by taking into consideration particular provisions of United States laws respecting environmental protection. The Overseas Environmental Baseline Guidance Document does not apply to the determination or conduct of remedial clean-up actions to correct environmental problems caused by DoD past activities. Such action shall be determined and conducted in accordance with applicable international agreements, Status of Force Agreements, and U.S. Government policy.

Final Governing Standards. The Final Governing Standards are the sole compliance standards at DoD installations in foreign countries. The standards apply to operation of DoD Components at installations overseas, and the heads of the DoD Components are obligated to ensure compliance to those standards

Army

AR 200-1, "Environmental Protection and Enhancement," Chapter 14, Army Environmental Program In Foreign Countries. This chapter clarifies those environmental requirements and standards that are applicable to Army activities located in or operating in foreign countries The objective of the Army environmental program overseas is to ensure compliance with applicable standards and to enhance environmental quality. In addition, the program is required to ensure human health and to provide long term access to the air, land and water needed to protect U.S. interests.

Army Policy Memorandum, Policy for Funding Environmental Program Requirements, April 22, 1996. This instruction is applicable to program resources required to mitigate actual or imminent health and environmental hazards and to comply with legally-mandated requirements, agreements and other judgments.

Appendix C. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition and Technology
  Deputy Under Secretary of Defense (Environmental Security)
  Director, Defense Logistics Studies Information Exchange
Under Secretary of Defense for Policy
Under Secretary of Defense (Comptroller)
  Deputy Chief Financial Officer
  Deputy Comptroller (Program/Budget)

Joint Staff

Chairman, Joint Chiefs of Staff
Director, Logistics (J-4)

Department of the Army

Assistant Secretary of the Army (Installations, Logistics and Environmental)
Auditor General, Department of the Army
Office of the Assistant, Chief of Staff for Installation Management
Commander, United States Army, Europe and Seventh Army
Commander, U.S. Army Corps of Engineers

Unified Command

Commander in Chief, U.S. European Command

Other Defense Organizations

Director, Defense Contract Audit Agency
Director, Defense Logistics Agency
Director, National Security Agency
  Inspector General, National Security Agency
Inspector General, Defense Intelligence Agency

Non-Defense Federal Organizations and Individuals

Office of Management and Budget
General Accounting Office
National Security and International Affairs Division
Technical Information Center

Congressional Committees and Subcommittees, Chairman and Ranking Minority Member

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on Defense, Committee on Appropriations
House Committee on Armed Services
House Committee on Government Reform
House Subcommittee on Government Management, Information, and Technology, Committee on Government Reform
House Subcommittee on National Security, Veterans Affairs, and International Relations, Committee on Government Reform

Evaluation Team Members

The Contract Management Directorate, Office of the Assistant Inspector General for Auditing, DoD prepared this report.

Paul J. Granetto
William C. Gallagher
Michael R. Herbaugh
LTC George P. Marquardt, USA
LTC Stuart G. Harrison, USA
Lorretta F. Swanson
Marcia L. Kilby
Sylvia Powell