HEADQUARTERS
DEPARTMENTS OF THE ARMY AND THE AIR FORCE
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Environmental Quality

STATE AND FEDERAL ENVIRONMENTAL RESPONSIBILITIES

Summary. This regulation establishes the responsibilities, policies, and procedures at the State and Federal levels for the purpose of organizing and administering an effective environmental protection program within the National Guard Bureau.

Applicability. This regulation applies to all environmental actions pertaining to the National Guard Bureau and/or Federal or State properties which come under ARNG or ANG jurisdiction.

Supplementation. Local supplementation is not authorized except where additional prerequisites are imposed by State, territorial, or commonwealth laws or regulations. Supplementation of this regulation is prohibited without prior approval from NGB-PD, Washington, DC 20310-2500.

Interim Changes. Interim changes are not official unless authenticated by the Executive, NGB. Interim changes will be destroyed upon their expiration dates unless sooner superseded or rescinded.

Suggested Improvements. The proproponent agency for this regulation is the National Guard Bureau. Users of this regulation are invited to forward comments or suggestions on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to NGB-PD, Washington DC 20310-2500.

1. Purpose

This regulation defines the responsibilities, policies, and procedures of the National Guard Bureau as they pertain to joint Army and Air National Guard environmental issues. It defines the relationship between the National Guard Bureau and the States in the areas of environmental compliance. Definition and development of specific programs to achieve and maintain environmental compliance will be accomplished by the Army and Air National Guard Directorates.

2. References

a. AR 200-1, Environmental Protection and Enhancement.

b. AR 200-2, Environmental Effects of Army Actions.

c. AR 420-40, Historic Preservation.

d. AR 420-47, Solid (and Hazardous) Waste Management.

e. AR 420-74, Natural Resources, Land, Forest, and Wildlife Management.

f. AR 420-76, Pest Management.

g. Title 40, United States Code of Federal Regulations.

h. ANGR 19-1, Pollution Abatement and Environmental Quality.

i. ANGR 19-7, Environmental Pollution Monitoring.

j. ANGR 19-11, Hazardous Waste Management.

k. ANGR 19-14, Management of Recoverable and Waste Liquid Petroleum Products.

3. Policy

It is the policy of the National Guard Bureau that environmental compliance is mandatory. Failure to comply with environmental protection requirements may result in loss of mission capability, enforcement actions by civilian agencies, lawsuits, fines, penalties, and criminal prosecution. Moreover, any failure to satisfy an environmental requirement causes harmful pollution to the environment and the very society we are sworn to defend.

4. Functional responsibilities

a. Special Staff and Joint Offices. Special Staff and Joint Offices are responsible for providing support as required to the Army National Guard Directorate and the Air National Guard Directorate on all environmental matters.

(1) NGB-PD, as the focal point at the NGB Joint Staff level, is responsible for monitoring all NGB environmental issues with joint implications. This office is responsible for staffing and monitoring appropriate written and telephonic environmental inquiries addressed to or from the Chief and/or the Vice Chief, NGB. As the liaison for the Chief and the Vice Chief on all environmental issues, this office is responsible for providing support as required to the Army National Guard Directorate, Air National Guard Directorate, and their designated environmental representatives regarding joint environmental matters.

(2) NGB-JA will provide legal support to the directorates and the joint staff, and where appropriate, to the States, in achieving and maintaining environmental compliance. This office will review NGB-ARE and NGB/DEV policy, actions, directives, procedures, plans, and determinations as required to ensure legal sufficiency. Other actions will include rendering assistance in negotiations, monitoring litigations, coordination with active component and OSD legal functions, and taking an active role in environmental program implementation.

(3) NGB-PA is responsible for preparing policy guidance and assistance for all public affairs activities concerning National Guard environmental programs. NGB-PA will provide a communication network between State and territorial Public Affairs Officers (PAOs), NGB, and the media. This office is responsible for guidance and support to State and unit PAOs in keeping their local communities informed on various aspects of Guard environmental programs. State and territorial PAOs will provide NGB-PA feedback on community perceptions of NGB environmental programs. State and territorial PAOs will also coordinate with NGB on all environmental program news releases and conduct community relations as necessary.

(4) NGB-PO is the focal point for all liaison between Congress and NGB. Any replies to congressional inquiries prepared by NGB-ARE or NGB/DEV should be routed to NGB-PO with an information copy provided to NGB-PD.

(5) NGB-CP and NGB-CS will provide contract policy and contract support to the Army and Air Staffs and to the USPFOs relating to all environmental contracting issues.

(6) All other divisions and

joint offices will provide information, support, and assistance to the above offices, as necessary, for responses to environmental inquiries. In addition, these offices will provide assistance as necessary, in the development of directorate environmental policy and/or procedures.

b. Army National Guard and Air National Guard Directorates.

(1) NGB-ARE and NGB/DEV are responsible for establishing policy, guidance, and procedures for their respective directorates for all matters relating to Directorate environmental programs.

(2) NGB-ARE and NGB/DEV are responsible for providing support as required to the States and territories on environmental matters.

(3) All environmental inquiries and issues must be routed through the appropriate directorate for action. For correspondence addressed to the Chief or Vice Chief, the response will be prepared for their respective signature, if appropriate. Telephone inquiries should be referred to NGB-ARE or NGB/DEV for response.

5. Federal and State responsibilities

In all cases involving federally supported activities, the National Guard Bureau is obligated by law to exercise some degree of supervisory responsibility. Funding for environmental compliance will be provided in a manner consistent with existing Operations and Maintenance (O&M), Military Construction Program (MCP), and Defense Environmental Restoration Account (DERA) funding policies and requirements. In order to insure compliance with all applicable environmental requirements and to assure the necessary level of supervision over State and Federal activities, NGB and State responsibilities are delineated as follows:

a. National Environmental Policy Act (NEPA). NEPA and its implementing regulations require an appropriate level of environmental study and documentation. The required level of study and documentation is determined by the nature and scope of the proposed Federal action. The NGB is responsible for NEPA compliance where Federal actions, decisions, or funding is involved in a project affecting the National Guard. The responsibility for approval of Findings of No Significant Impact and Records of Decision may not be delegated outside of the NGB, Department of the Army, or Department of the Air Force, as appropriate. These documents must be approved by an authorized official.

b. Environmental restoration activities. The owner/operator of a facility is obligated to identify sources of past environmental contamination at his facility and to undertake a remedial program to clean up past contamination and remedy it, if required. In the DOD, this program is called the Installation Restoration Program (IRP). In the National Guard, IRP responsibilities are as follows:

(1) Federally owned facilities. The National Guard Bureau is responsible for all IRP work.

(2) State owned, federally supported facilities. Under the present law, both the State and Federal Governments may be jointly responsible for the costs of environmental restoration. Policy on site cleanup and environmental management is under development. In the interim, sites will be dealt with on a case-by-case basis.

(3) State owned and operated facilities (not federally supported). Each State is responsible for environmental restoration activities at State owned, State operated sites, including all planning and funding. The NGB will provide technical advice on a limited basis; however, Federal funds may not be expended on cleanup at these facilities.

c. Environmental compliance activities. Both the owner and operator of a facility are obligated under environmental law to meet all current requirements. (For additional information, see references in para 2 and app A.) In addition, States may maintain their own statutes and regulations which are applicable to National Guard facilities along with Federal requirements or may even supersede Federal requirements. In the National Guard, the following allocation of responsibility exists:

(1) Federally owned facilities. The unit operating the facility has an immediate responsibility to operate the facility according to environmental requirements. Acting on behalf of the owner, generally the Department of the Army or the Department of the Air Force, the National Guard Bureau has a coequal responsibility to ensure environmental compliance. The NGB will seek, in dealing with Federal and State regulators, to have these facilities treated as federally operated facilities for compliance purposes. The NGB will budget the program funds to meet environmental requirements.

(2) State owned, federally supported facilities. As owner and operator, the State and unit are liable for environmental compliance at these facilities. However, the NGB supports environmental compliance at these facilities in the same manner as it supports other valid expenditures of Federal funds. In order to assure that Federal funds are expended in a manner which complies with environmental requirements, the NGB will assist the States in resolving compliance issues and identifying environmental and funding requirements. The NGB will assess environmental compliance at these facilities, use the assessment results in planning and programing funding and monitor areas of environmental noncompliance.

(3) State owned/operated facilities (not federally supported). Each State is responsible for environmental compliance at State owned, State operated sites, including all planning and funding. The NGB is precluded from expending funds at these facilities except within the scope of specific funding authorization, e.g., NEPA compliance aspects of military construction program funding. The NGB will provide technical advice on a limited basis; however, Federal funds will not be expended on compliance at these facilities in the absence of specific statutory authority.

(4) The NGB will conduct a program of environmental compliance assessment (auditing) at all federally supported facilities. The Army National Guard and Air National Guard directorates will define and implement this program for facilities within the directorates.

6. Procedures

All States will--

a. Submit all joint ARNG and ANG environmental issues to NGB-PD with a copy furnished to NGB-ARE and NGB-DEV.

b. Submit input for joint NGB Environmental Compliance Policy

through NGB-ARE and NGB-DEV to NGB-PD.

c. Provide ARNG/ANG representatives to the NGB Environmental Advisory Council (EAC), as requested by NGB[PD.

7. Additional guidance
See appendix A for partial list of applicable statutes and executive orders.

APPENDIX A

Partial Listing of Environmental Statutes and Executive Orders

Major Statutes

1. Air Pollution
Clean Air Act, codified at 42 USC 7401-7462.

2. Water Pollution
Clean Water Act (Formal Title: Federal Water Pollution Control Act), codified at 33 USC 1251-1376. Most recently amended by the Water Quality Control Act of 1987.

3. Hazardous Waste
Resource Reservation and Recovery Act, codified at 42 USC 6901, et seq. Includes 1984 amendments from the Hazardous and Solid Waste Amendments of 1984 (HSWA). RCRA also regulates solid waste and underground storage tanks.

4. Toxic Substances
Toxic Substances Control Act (TSCA) codified at 15 USC 2601, et seq.

5. Pesticides
Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) 7 USC 136, et seq.

6. Drinking Water
Safe Drinking Water Act (SDWA) codified at 42 USC 300f, et seq.

7. Environmental Restoration
Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended by Superfund Amendment and Reauthorization Act of 1986 (SARA), codified at 42 USC 9601, et seq.

8. Planning and Policy
National Environmental Policy Act (NEPA), 42 USC 4321, et seq.

9. Executive Orders

a. **Environmental Compliance:** EO 12088.

b. **Environmental Effects Abroad of Major Federal Actions:** EO 12114.

c. Environmental Restoration: EO 12580.

d. **Environmental Restoration:** EO 12580.

By Order of the Secretaries of the Army and the Air Force:

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