

CECW-OA

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Environmental Quality
ENVIRONMENTAL COMPLIANCE POLICIES

TABLE OF CONTENTS

	Paragraph	Page
CHAPTER 1 INTRODUCTION		
Purpose	1-1	1-1
Applicability	1-2	1-1
References	1-3	1-1
Glossary	1-4	1-3
CHAPTER 2 ENVIRONMENTAL COMPLIANCE COORDINATORS		
Purpose	2-1	2-1
Applicability	2-2	2-1
Policy	2-3	2-1
CHAPTER 3 ENVIRONMENTAL COMPLIANCE ASSESSMENTS		
Purpose	3-1	3-1
Applicability	3-2	3-1
Policy	3-3	3-1
Funding	3-4	3-2
Environmental Protection Agency FEDPLAN Report	3-5	3-2
Releasability	3-6	3-2
Assessment Schedule	3-7	3-2
CHAPTER 4 POLLUTION PREVENTION		
Purpose	4-1	4-1
Applicability	4-2	4-1
Objectives	4-3	4-1
Policy	4-4	4-1
Major Program Requirements	4-5	4-1

This regulation supersedes Engineer Regulations 1165-2-116, dated 28 February 1968; 1130-2-407, dated 10 June 1977; 1130-2-434, dated 1 July 1985; and 1130-2-423, dated 1 November 1983.

	Paragraph	Page
CHAPTER 5 OIL AND HAZARDOUS SUBSTANCES SPILLS		
Purpose	5-1	5-1
Applicability	5-2	5-1
Policy	5-3	5-1
Major Program Requirements	5-4	5-2
Responsibilities	5-5	5-7
CHAPTER 6 POLYCHLORINATED BIPHENYLS MANAGEMENT		
Purpose	6-1	6-1
Applicability	6-2	6-1
Policy	6-3	6-1
CHAPTER 7 OPERATING POTABLE WATER SYSTEMS AT USACE PROJECTS AND FACILITIES		
Purpose	7-1	7-1
Applicability	7-2	7-1
Policy	7-3	7-1
CHAPTER 8 ENVIRONMENTAL COMPLIANCE TRAINING REQUIRED BY STATUTE AND IMPLEMENTING REGULATIONS		
Purpose	8-1	8-1
Applicability	8-2	8-1
Policy	8-3	8-1
CHAPTER 9 FEDERAL FACILITY COMPLIANCE ACT (FFCA) OF 1992, FINES AND PENALTIES		
Purpose	9-1	9-1
Applicability	9-2	9-1
Policy	9-3	9-1
CHAPTER 10 MANAGING OZONE-DEPLETING SUBSTANCES AT USACE PROJECTS AND FACILITIES		
Purpose	10-1	10-1
Applicability	10-2	10-1
Policy	10-3	10-1
Program Requirements	10-4	10-2
Reporting and Record Keeping Requirements	10-5	10-2

	Paragraph	Page
CHAPTER 11 ENVIRONMENTAL MANAGEMENT PROGRAM PLANNING (FEDPLAN)		
Purpose	11-1	11-1
Applicability	11-2	11-1
Policy	11-3	11-1
CHAPTER 12 THE FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET		
Purpose	12-1	12-1
Applicability	12-2	12-1
Policy	12-3	12-1
CHAPTER 13 HAZARDOUS WASTE MANAGEMENT		
Purpose	13-1	13-1
Applicability	13-2	13-1
Policy	13-3	13-1
Major Program Requirements	13-4	13-1
APPENDIX A REFERENCES		A-1

CHAPTER 1 - INTRODUCTION

1-1. Purpose. This regulation establishes the policy for the management of environmental compliance-related operations and maintenance (O&M) activities at U.S. Army Corps of Engineers (USACE) civil works and military projects and facilities. The environmental compliance mission is to assure that all USACE facilities and associated lands (including outgrants) meet environmental standards contained in relevant Federal, state and local laws and regulations. The environmental compliance mission is also related to environmental stewardship. Therefore this regulation should be read in tandem with ER 1130-2-540, Environmental Stewardship Operations and Maintenance Policies. Environmental compliance categories include, but are not limited to:

- a. Air emissions management.
- b. Cultural resources management.
- c. Hazardous materials management.
- d. Hazardous waste management.
- e. Natural resources management.
- f. Pesticides management.
- g. Petroleum, oil, and lubricant management.
- h. Solid waste management.
- I. Storage tank management.
- j. Toxic substances management.
- k. Wastewater management.
- l. Water quality management.

1-2. Applicability. This regulation applies to all USACE commands having responsibility for civil works functions and to military-funded projects and facilities.

1-3. References. See Appendix A.

1-4. Glossary.

a. Cleanup Operation. A non-emergency operation where hazardous substances or oil are removed, contained, incinerated, neutralized, stabilized, cleared up, or in any other manner processed or handled with the ultimate goal of making the site safer for people or the environment. A clean up operation may be a post-emergency spill response or may be a clean up action without being preceded by an emergency phase.

b. Discharge. Including, but not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping. "Discharge" will not include any discharge authorized by a legal permit.

c. Emergency Spill Response. The response to a spill of oil or a hazardous substance that poses an immediate or potentially immediate threat to persons, property or the environment. The purpose of the response is to prevent the spill from entering or continuing to enter the environment. Once under control where the oil or substance is no longer an immediate threat to persons, property or the environment, the spill response becomes a non-emergency spill clean up.

d. Extremely Hazardous Substance. A substance listed as an "extremely hazardous substance" in Appendices A and B of 40 CFR Part 355.

e. First Responder. An emergency spill responder as defined in 29 CFR 1910.120(q) who works at either of the lowest two levels of response: First Responder, Awareness Level or First Responder, Operational Level.

f. Hazardous Material. Any material designated as a "hazardous material" pursuant to 49 CFR 172.

g. Hazardous Materials Technician or Specialist. An emergency spill responder as defined in 29 CFR 1910.120(q) who has at least 24 hours of specialized training and works at the third or fourth highest levels (of five levels): Hazardous Materials Technician (third highest level) or Hazardous Materials Specialist (second highest level.) For further definition, see EP 200-2-3.

h. Hazardous Materials Response Team (or HazMat Team). An organized group of responders who handle or control spills of oil or hazardous substances requiring possible close approach to the substance. The purpose of their response is to control and stabilize the incident. Note: First Responders are not part of the HazMat team.

i. Hazardous Substance. Any substance designated as a "hazardous substance" pursuant to 40 CFR Part 302. For the purposes of this guidance, references to "hazardous substance" include any hazardous chemical and extremely hazardous substance.

j. Hazardous Waste. Any waste designated as a "hazardous waste" pursuant to 40 CFR 260-261. All hazardous wastes are hazardous materials.

k. Hazardous Waste Site Worker. A non-emergency worker at a hazardous waste clean up site as defined in 29 CFR 1910.120(e) who usually has at least 40 hours of specialized training to work at hazardous waste clean-up sites.

l. Incident Command System (ICS). A formal system a HazMat team uses to manage the site of an emergency spill response. The system typically includes a designated incident commander, safety officer, and a logistics officer. (Note: For small scale emergency spill responses, these duties may all be performed by the same one or two individual(s).)

m. Lifecycle Basis. The analysis of the benefits or value added of a pollution prevention initiative using the total cost over the life of the initiative: first costs and average costs.

- n. Oil. Oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse and oil mixed with waste other than dredged disposal material.
- o. On Scene Commander (OSC). The federal official predesignated by the Environmental Protection Agency (EPA) or the U.S. Coast Guard (USCG) to coordinate and direct federal responses under subpart D or the official designated by the lead agency to coordinate and direct removal actions under subpart E of the National Contingency Plan (as per 40 CFR 300.5).
- p. Release. Any spilling, leaking, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any hazardous chemical, extremely hazardous substance, or CERCLA hazardous substances.
- q. Reportable Quantity. The quantity of a spilled hazardous substance specified in 40 CFR 302 at which the owner or operator of the facility spilling that substance becomes subject to certain notification requirements.
- r. Spill. The accidental or the deliberate but unpermitted discharge or release of reportable quantities of oil or a hazardous substance.
- s. Spill Contingency Plan. A plan required for some non-transportation-related facilities that outlines specific operational and administrative procedures that can be used by facility personnel to respond to an accidental spill of oil or a hazardous substance. Spill contingency plans must comply with standards established in 40 CFR 112.7.
- t. Spill Plan. Usually a Spill Prevention, Control, and Countermeasure Plan, often containing a Spill Contingency Plan. Some spill plans will also meet requirements for the facility's Emergency Response Plan (set forth in 29 CFR 1910.120) and/or for its Emergency Action Plan (set forth in 29 CFR 1910.38).
- u. Spill Prevention, Control and Countermeasure Plan. A plan required at some non-transportation-related facilities pursuant to 40 CFR 112 that should describe what actions the facility will take to prevent a discharge or release of oil or a hazardous substance from reaching navigable waters. For more detail, see EP 200-2-3.
- v. Spill Prevention and Response Plan. A plan that combines several required planning documents into a single organized document, including (1) the Spill Prevention, Control and Countermeasure Plan, (2) the Spill Contingency Plan, (3) the Emergency Response Plan, and (4) the Emergency Action Plan.
- w. Spill Response. A response to a spill of oil or a hazardous substance. A "spill response" could include an Emergency Spill Response and/or a Cleanup Operation.
- x. Spill Response Team. A team of trained, equipped spill responders that may be formed from USACE personnel, contractor personnel, MOA partner personnel, or any combination of these groups, to provide emergency spill response for a facility. Spill response teams may include First Responders.
- y. USACE Operated Facility. Those facilities operated using USACE personnel, and those facilities operated by USACE contractors where the USACE has active, directive control

ER 200-2-3
30 Oct 96

and management of the facility. USACE operated facilities include structures such as buildings, dams, powerplants, locks, and pipelines, as well as public lands and waters. Conversely, non-USACE operated facilities are facilities operated by a non-USACE entity under an appropriate outgrant, such as leased areas where USACE personnel and/or USACE contractors do not have active direct control and management of the facility.

z. Vessel Response Plan. A shipboard oil spill emergency plan that outlines specific operational and administrative procedures that can be used by the vessel's crew to minimize the release and effects of an accidental oil spill. Vessel Response Plans must comply with the requirements of the international pollution prevention agreement, MARPOL 73/78 and 33 CFR Part 155, including the OPA-90 amendments.

CHAPTER 2 - ENVIRONMENTAL COMPLIANCE COORDINATORS

2-1. Purpose. This chapter establishes the policy for designating Environmental Compliance Coordinators.

2-2. Applicability. This chapter applies to all USACE commands.

2-3. Policy.

a. MSC and district commanders will formally designate and train MSC and district Environmental Compliance Coordinators (ECC) within the Operations element. These individuals will administer the Operations element's internal environmental compliance program and also serve as coordinators with other functional elements having facilities management and/or environmental compliance responsibilities. ECCs will support rather than assume the environmental compliance responsibilities of the various functional elements outside the Operations element (Planning, Engineering, Project Management, Logistics, Safety and Occupational Health, and Real Estate). The objective is to develop and maintain a comprehensive and consistent environmental compliance program, centered on the existing Operations organization, since Operations is responsible for the majority of the USACE facilities. The designation of a MSC or district ECC outside of the Operations element must be approved by the next higher Command and CECW-OA must be notified.

b. Environmental compliance is an ongoing, daily concern at operational projects. Operational projects will have a designated and trained project ECC reporting to the Operations Project Manager (OPM), or be served by a regional ECC responsible to two or more OPMs. These individuals will advise the OPM on project environmental compliance issues, promote environmental compliance awareness throughout the project(s) and perform environmental compliance management and other duties, as assigned by the OPM.

c. Laboratories and FOAs will also formally designate and train ECCs with duties similar to 3b above.

d. ECC responsibilities and standards will be incorporated in the total Army Performance Evaluation System report support forms of designated individuals.

CHAPTER 3 - ENVIRONMENTAL COMPLIANCE ASSESSMENTS

3-1. Purpose. This chapter establishes the policy for conducting environmental compliance assessments at USACE projects and facilities.

3-2. Applicability. This chapter applies to all USACE commands (MSC), districts, laboratories, having responsibility for civil works functions, including floating plant. USACE military or military/civil-funded facilities and activities will adapt the environmental compliance assessment guidance in AR 200-1, Environmental Protection and Enhancement, in coordination with CECW-OA.

3-3 Policy. It is the policy of the Corps of Engineers that USACE organizations will use environmental compliance assessments, in combination with regulatory agency inspections and environmentally sensitive day-to-day operations as a means of attaining, sustaining, and monitoring compliance with applicable Federal, state, interstate and local environmental regulations. USACE organizations will conduct two types of assessments: external and internal.

a. External Assessments.

(1) External assessments will be conducted on a five-year cycle and include major outgrants. Deviation from this cycle requires appropriate justification and MSC approval, or command approval at FOAs, etc.

(2) External assessment provides an outside perspective of a facility's environmental compliance status. They will be conducted by contractors or by teams of USACE personnel not employed at the facility to be assessed, and having the necessary organizational and subject matter expertise. Contracting assessments using existing Army Environmental Compliance Assessment System contracts, administered by USACE Environmental Support Districts, is encouraged.

(3) Operations Project/facility managers will provide appropriate staff support and will participate in reviewing assessment results.

b. Internal Assessments.

(1) Internal assessments (self assessments) will be conducted at each facility annually, with the exception of the year an external assessment is conducted. Districts will decide if internal assessments of outgrants are necessary. When internal assessments of outgrants are required, they will be incorporated in real estate compliance inspections or otherwise coordinated with the Real Estate Division. Each USACE operated project/facility will provide funding for its internal assessments.

(2) Internal assessments may be conducted by project/facility personnel.

(3) At a minimum, internal assessments will review and follow up on the status of uncompleted corrective actions contained in the Corrective Action Plan (CAP) from the last external and subsequent internal assessments; evaluate the status of uncompleted corrective actions required by Notices of Violation or other regulatory violations received since the last assessment (external or internal); assess compliance with any new regulatory requirements after

coordination with the district Environmental Compliance Coordinator; and address any special emphasis areas specified by higher command.

c. Environmental compliance assessments will be conducted using the current versions of The Environmental Assessment Manual (TEAM) and the Environmental Review Guide for Operations (ERGO) manual, supplemented with applicable State and local laws and regulations.

d. The external assessment process results in an ERGO Environmental Compliance Assessment Report and an accompanying CAP, which includes a funding strategy. The ERGO report will be signed by the assessment team leader and the project/facility manager. CAP's are developed and signed by the project/facility manager. Internal assessment findings are incorporated in a brief addendum to the last external assessment report and CAP, and signed by the project/facility manager. External and internal assessment reports and CAP's will be forwarded through the project or facility's chain of command (Operations, Logistics, Engineering, etc.) to the District Commander (or equivalent position in laboratories, FOA's, etc.) or designated senior leaders for final approval. If outgrant issues are involved approval will be coordinated with the Chief, Real Estate Division.

3-4. Funding. Each USACE operated project/facility will provide funding for its internal and external assessments, CAP's and deficiency correction requirements. Outgrant deficiency correction is the responsibility of the outgrantee.

3-5. Environmental Protection Agency FEDPLAN Report. Funding requirements identified during environmental compliance assessments will be identified in the annual Environmental Protection Agency FEDPLAN (formerly OMB A-106) report (see Chapter 11) and incorporated in the project/facility budget process.

3-6. Releasability. Draft assessment reports and supporting papers are internal working documents. The draft documents must be marked "For Official Use Only" (FOUO) and distribution handled accordingly. Requests for release of draft and/or final reports will be referred to the appropriate Freedom of Information Act Officer.

3-7. Assessment Schedules. MSCs will develop a MSC-wide cycle II schedule to assure that all external and internal assessments are completed during the cycle. MSC Commanders, district commanders and commanders/directors of facilities outside of the district structure will develop internal procedures to assure that assessments are conducted in accordance with this guidance and that corrective action plans are developed and executed.

CHAPTER 4 - POLLUTION PREVENTION

4-1. Purpose. This chapter establishes the USACE pollution prevention policy. Pollution includes impacts from USACE projects, facilities or activities to the air, surface waters, groundwater, soil, or other natural resources. Preventive measures include reduction or elimination of the sources of wastes, more efficient use of raw materials or energy, and reduced emissions of toxic materials to the environment.

4-2. Applicability. This chapter applies to all USACE commands having responsibility for civil works functions, and to military-funded projects and facilities.

4-3. Objectives. The USACE pollution prevention objectives are to:

- a. Develop cost-effective approaches to reducing energy use, conserving water, and reducing contamination to all environmental media.
- b. Minimize the use of environmentally degrading materials and processes in project/facility management.
- c. For those limited applications which deal in Toxic Release Inventory (TRI), reduce the total release and disposal of toxic chemicals by 50 percent between 1994 and 1999, in accordance with Executive Order 12856.
- d. Instill the pollution prevention ethic throughout the USACE community and all its mission areas.

4-4. Policy. It is the policy of the Corps of Engineers that:

- a. The USACE will comply with all applicable Federal, state, interstate and local environmental laws and regulations.
- b. Pollution will be prevented or reduced at the source. Wastes and by-products that cannot be prevented will be recycled. Pollutants that cannot be recycled will be treated to minimize environmental hazards. Disposal or other release into the environment will be employed only as a last resort and will be conducted in an environmentally safe manner. (See Chapter 4 of EP 200-2-3.)
- c. USACE operations and activities will incorporate pollution prevention practices on a life cycle basis.
- d. USACE personnel will practice pollution prevention.

4-5 Major Program Requirements. In consonance with Department of the Army guidance, USACE projects and facilities will:

- a. Develop a pollution prevention program.
- b. Develop and implement a pollution prevention plan. Update the plan whenever the project undergoes a significant change in functions or processes, or on a five-year cycle to

ER 200-2-3
30 Oct 96

correspond with the external environmental assessment.

c. Consider cost-effective pollution prevention in all planning at the earliest possible stage.

CHAPTER 5 - OIL AND HAZARDOUS SUBSTANCES SPILLS

5-1. Purpose. This chapter establishes policy for the prevention, control, reporting, and contingency planning for spills of oil and hazardous substances. The USACE goal is to use, generate, transport, store, handle, and dispose of oil and hazardous substances in a manner that protects the environment and public health.

5-2. Applicability.

a. This chapter applies to USACE commands having responsibility for civil works-funded facilities and activities, including floating plant. Military-funded USACE facilities and activities are subject to guidance provided in AR 200-1, Environmental Protection and Enhancement. Hazardous, Toxic and Radioactive Waste (HTRW) Program activities and projects are subject to guidance provided in CEMP-RT memorandum, 20 Jul 95, subject: Spill Reporting Procedures for USACE Personnel Involved in HTRW Projects.

b. Throughout this document the term “Commander/Director” is used to refer to the organizational leader, such as the District Commander, Laboratory Director, FOA Director, etc.

5-3. Policy.

a. It is the Army policy to prevent spills of oil and hazardous substance due to Army activities and maintain readiness to rapidly respond to contain and clean up a spill.

b. It is the policy of USACE to prevent spills of oil and hazardous substances, including extremely hazardous substances, from USACE operated facilities or due to USACE activities. Unpermitted willful discharges from USACE operated facilities, activities or vessels are prohibited.

c. When a USACE spill occurs despite preventive measures, USACE operated facilities will provide for a prompt, coordinated and effective spill response to contain and clean up the spilled material.

d. USACE personnel will not respond at a level higher than the “First Responder, Operations Level” (as defined in 29 CFR 1910.120(q)) unless authorized by the Commander/Director and appropriately trained to do so. (For additional guidance on First Responder, Operations Level and other Emergency Spill Response levels, see Appendix D of EP 200-2-3.)

e. USACE personnel will not respond to any spill unless it is safe to do so and they are adequately trained and equipped.

f. In the event of a spill emergency, USACE policy provides for protection of human life and health, and requires optimal effort to protect the environment, particularly in sensitive areas, and to protect property and structures.

g. USACE personnel will not respond to non-USACE spills off USACE operated facilities, except as provided in paragraph 6b(6) (c) and (d) of this guidance.

h. The Operations Project Manager or facility manager at each USACE facility where there is a potential for a spill of oil or hazardous substances from the USACE facility or from USACE activities, will designate in writing an On-Scene Coordinator who is responsible for executing the project's response plan.

5-4. Major Program Requirements.

a. Notification.

(1) USACE spill response teams and representatives will provide notification to and coordination with Federal, state and local agencies as prescribed by applicable laws and regulations, including notification of the National Response Center in the event of a release or discharge of oil or a hazardous substance at, or in excess of, its reportable quantity.

(2) Internal agency coordination will include notification of:

(a) The functional element that is responsible for operation of a facility. (In many cases, but clearly not all, this will be the Operations element and its sub-element(s).)

(b) The Environmental Compliance Coordinator.

(c) The Safety Office, and the Occupational Health Officer (Industrial Hygienist).

(d) The Public Affairs Officer.

(e) The Readiness Management Office in Districts and Divisions. In Corps labs, reports will be made through command channels to the appropriate level.

(f) The Office of Counsel.

(3) Where state and local laws and regulations differ from Federal requirements, USACE facilities will comply with all applicable requirements. Where applicability of law is in question, the Office of Counsel will be consulted.

(4) Where an extremely hazardous substance is involved, USACE operated facilities will comply with the requirements defined in 40 CFR Part 355.

(5) Where oil or a hazardous substance has been spilled in a quantity that does not equal or exceed the Federal reportable quantity, USACE facilities may still have to report the spill to state authorities. State regulations may be more stringent than federal.

(6) Additional technical guidance is provided in 40 CFR 110 and 40 CFR 355.

b. Spill Response Actions.

(1) USACE Personnel.

(a) USACE personnel will not respond at a level higher than the "First Responder, Operations Level" (as defined in 29 CFR 1910.120(q)) unless authorized by the Commander/Director and appropriately trained and qualified to do so. (For additional guidance

on First Responder, Operations Level and other Emergency Spill Response levels, see Chapter 5 of EP 200-2-3.)

(b) USACE personnel will not respond to any spill unless it is reasonably safe to do so and they are adequately trained and equipped. (For additional guidance on training, see Appendix D of EP 200-2-3, "Training Requirements for Spill Responses.")

(c) In the event of a spill emergency, the following protection priorities are hereby established as a guideline for spill responders:

- human life and health
- environment
- property and structures

(d) USACE personnel will not respond to non-USACE spills off USACE operated facilities, except as provided in paragraph 5-4b(7)(c) and (d) of this guidance.

(2) Determining Appropriate Level of Emergency Spill Response:

(a) USACE Districts, Labs and field offices, including floating plant, will provide for a prompt, effective, coordinated response to contain and clean up spills at USACE operated facilities or resulting from USACE activities.

(b) Potential USACE Emergency Spill Response Scenarios:

(i) Many USACE operated facilities are or will be able to rely on public or private Hazardous Materials Emergency Response Teams in their area for assistance. USACE personnel from these facilities may not need to provide any emergency spill response.

(ii) A few facilities may need to establish their own in-house spill response teams.

(iii) In some cases, USACE personnel will need to provide an initial emergency spill response for containment at the First Responder, Operation Level. USACE First Responders would then manage the spill scene until the arrival of a responder with whom the USACE facility has made previous arrangements for spill response services. This second responder may be a contractor or a Memorandum of Agreement (MOA) partner as discussed below.

(c) Commanders/Directors, with the assistance of the appropriate Safety and Occupational Health elements, must determine the appropriate level of emergency spill response to be provided at USACE operated facilities. Each commander should maximize the use of qualified non-USACE spill response sources to minimize the risk to in-house personnel.

(d) Most facilities will establish in-house spill teams for limited emergency spill responses to meet initial emergency spill response needs until full scale emergency spill responders can arrive at a spill site. USACE personnel would typically be trained and qualified at the "First Responder, Operations Level" designated in 29 CFR Part 1910.120(q). Riskier, more demanding emergency spill response levels would typically be performed by a well-trained and experienced contractor or other non-USACE responder.

(e) Remote locations or lack of qualified available assistance may prompt the establishment of some in-house emergency spill response teams who are to provide a full scale emergency spill response. These teams should be closely managed and monitored by a designated team leader to assure maximum personnel protection. In some cases, team members will require medical surveillance health monitoring as part of these duties. Periodic reviews for the availability of a qualified non-USACE responder should be performed and the burden removed from USACE personnel when the situation changes.

(f) Facilities which purchase and store spill response equipment and supplies for use by spill response teams should limit their purchase to no more equipment and supplies than would be required for response to a worst case scenario of a USACE spill. Generally, equipment and supplies purchased and stored should be consistent with the level of spill response training and qualifications maintained for USACE employees by the USACE facility. However, purchase and storage of equipment and supplies for response to USACE spills on behalf of a spill response contractor or spill response MOA partner is permitted. All spill response equipment stored at USACE facilities will be regularly inspected, maintained and serviced by a qualified technician in accordance with manufacturer and USACE requirements.

(g) Facilities which train employees to respond at the First Responder or higher levels will include training in initiating an Incident Command System.

(3) USACE Contractor Spills. Response to spills from contractor facilities and activities on USACE lands is the responsibility of the contractor. In the event that a USACE contractor causes a spill on a USACE operated facility or from USACE activities and is unwilling or unable to respond, USACE will provide a response to contain and clean up the spill. As in any case of a contractor's non-compliance with safety and environmental standards, USACE officials have the option of stopping contractor work and/or seeking compensation from the contractor for expenses incurred in fulfilling spill response obligations. Office of Counsel will be consulted to assure compliance with all legal requirements, proper documentation, and presentation of any claim under the contract or any other applicable statute.

(4) Potential Sources of Response Support. Potential spill response services are available to many USACE operated facilities by contract or MOA. Sources include county and city Hazardous Materials Response Teams, local fire departments, nearby military installations and other Federal facilities and private sector companies. Private sector sources include both companies specializing in providing emergency spill response support and others who have their own teams which can be trained and equipped to handle USACE emergencies as well. In seeking non-USACE responders, USACE operated facilities should assure that both emergency spill response and clean up operations needs are addressed. However, emergency spill response and clean up operations do not have to be addressed in the same contract or MOA; they can be separate actions.

(5) Formulation of MOAs with non-USACE Responders. Identifying a source of qualified spill response support is a critical part of formulating a spill plan. It is possible that to provide adequate support for the USACE operated facility's "worst case scenario," the team may require additional equipment or supplies. The MOA should specifically address these issues and the agreed costs to be paid in the event of a spill, including an agreed hourly rate, maximum possible cost for clean up of one "worst case" event, chain of communication and command during the emergency, designation of the party responsible for disposal of spill generated wastes, agreement that the USACE operated facility will retain originals of all disposal documents and

copies of all spill records, etc. The MOA should specify that the responder will minimize costs during the spill response. Contracts and agreements with states, local governments, Indian tribes or private entities should include some method of cost control to assure all responder costs are necessary.

(6) Public Information Related to Emergency Spill Response Actions. Release of information regarding spills of oil or hazardous substances will be conducted per the following guidelines:

(a) Officials assigned to release information about the spill should ensure public safety, prevent or reduce widespread public alarm, and ensure public understanding of the extent and nature of the public hazard resulting from the spill.

(b) The public is entitled to all unclassified information concerning a spill. Furnishing such information in a timely, positive manner that assures accuracy and reflects consideration of the public welfare is in USACE interest and is a function of Command.

(c) The Commander/Director has authority to approve release of information when a spill poses an imminent threat to public health and welfare or the environment.

(d) Information proposed for release will be coordinated with the District Public Affairs Officer.

(e) Prompt release of information, not otherwise required by statute or regulation, will be made at the discretion of the Commander/Director for spills that are contained within the project boundaries and pose no threat to the public health and welfare or the environment.

(7) Emergency Spill Response to Non-USACE Spills and Spills not on USACE Operated Facilities.

(a) Except for personnel serving in the Work for Others program or in an Emergency Management function, emergency spill responses by USACE personnel will be limited to spills on USACE lands or facilities or caused by USACE activities.

(b) USACE responders may respond to non-USACE spills on USACE lands at the discretion of the USACE facility manager when the spill poses an immediate threat to USACE operated facilities or personnel, is not being adequately controlled or contained by another spill response team, and when USACE responders are adequately trained and qualified to respond.

(c) Commanders/Directors may authorize emergency spill responses to non-USACE spills off USACE property when they determine the spill poses a threat to USACE operated facilities or personnel, is beyond the capability of available emergency spill responders, and that USACE personnel are adequately trained and qualified to provide such a response. When such a situation is resolved to the point that available emergency spill responders are capable of managing and controlling the spill, the Commander/Director will withdraw USACE personnel from the emergency spill scene.

(d) A follow-up report regarding such a spill response must be prepared and submitted to the MSC Commander within four weeks of the initial response date. MSC commanders will review such reports for concurrence with best interest determination and appropriateness of

actions taken.

(e) Where he determines that it is advantageous, the Commander/Director may fulfill requests from the U.S. Coast Guard (USCG) or other agencies for assistance from USACE contractor's drift collection vessels to assist clean up operators when oil-saturated debris hampers USCG contractor's clean up efforts. Costs should be reimbursed by USCG.

(8) Leased Area Spills. Response to spills from lessee facilities and activities on USACE lands are the responsibility of lease area operator.

(a) Where leased areas are mandated by Federal or state regulations to have and maintain a spill plan, district commanders will require the lessee to comply with spill planning requirements and to be able to clearly provide for an adequate response in the event of a spill. This requirement should be an element of lease compliance inspections.

(b) Where leased areas are not required by Federal or state regulations to have a spill plan, Commanders/Directors will encourage lease area operators to coordinate with local emergency response authorities to obtain necessary support in the event of a spill.

(c) In the event that any leased area facility appears to present a high risk of a spill of oil or a hazardous substance without being able to provide for an adequate response, the Commander/Director will take prompt action to reduce the potential risk. In the case of very high risks of a spill without provision for adequate response, the Commander/Director will notify regulatory authorities.

(9) USACE Response Cost Recovery. When USACE responds to spills caused by others, whether off-site sources, lessees, or invitees, costs may be recovered either through lease or contract provisions, or by claims under CERCLA for recovery or response costs, or by other legal authority. The Office of Counsel should be involved to assure compliance with legal requirements, proper documentation, and presentation and pursuit of any claims.

c. Spill Plan Documents. CECW-OD is the proponent for Vessel Response Plan guidance. Guidance for onshore facilities is provided below.

(1) HQUSACE recommends using a single spill plan document format to meet all the requirements specified in various regulations for the Spill Prevention, Control and Countermeasure Plan; the Spill Contingency Plan; the Emergency Response Plan; and the Emergency Action Plan. General guidance is provided in Chapter 5 of EP 200-2-3, Recommended Organization of a Spill Prevention and Response Plan (SPRP). Chapter 5 of EP 200-2-3 provides guidance on determining which, if any, of these four related plans may be required for any USACE operated facility.

(2) USACE facility spill plans will identify potential spill site locations, specific measures to be taken in case of a spill from those facilities or activities, and what level of emergency spill response is expected from USACE personnel to provide that response. The plan will also specify at what emergency spill response level USACE personnel at that location will be trained and qualified, and Commanders/Directors will assure that USACE personnel are not responding at levels beyond their training, qualification or beyond his authorization.

(3) Responsibility to assure that USACE facility spill plans are promptly developed and

adequately meet requirements rests with the functional element responsible for the operation of the facility. In many cases, this will be the Operations element, but in some cases it may be Engineering, Construction Logistics, or Emergency Management. The functional element may write the spill plan itself or may enlist the aid of other USACE elements, other agencies or even contractors to obtain the most effective plan possible. No matter who actually develops the plan, involvement of facility personnel is important to the development of any spill plan.

5-5. Responsibilities.

a. Major Subordinate Commands. MSC commanders are responsible for providing oversight, assuring spill plans are adequately prepared and that emergency spill response methods are appropriate.

b. Subordinate Commands and Laboratories. District and applicable laboratory and FOA Commanders/Directors are responsible for:

(1) Evaluating options for spill response support and seeking contract(s) or MOA(s) to provide response. In the event that the Commander determines an in-house team is needed, establish and maintain a trained and qualified emergency spill response team at the appropriate response level, and assure annual training, appropriate medical surveillance, availability of proper equipment and supplies, etc.

(2) Reviewing state and local laws and regulations to determine if additional requirements apply to spill plan documents for USACE operated facilities under their command.

(3) Reviewing the status of spill planning and response requirements and assuring that spill prevention or contingency plan requirements are met.

(4) Routinely evaluating and updating existing spill prevention and contingency plan documents to assure they meet current criteria specified in applicable Federal and state regulations. Plan documents should include compliance requirements related to Section 304 of the Emergency Planning and Community Right-to-Know Act spill reporting requirements defined in 40 CFR 355. Plans that do not meet regulatory requirements will be corrected immediately.

CHAPTER 6 - POLYCHLORINATED BIPHENYLS MANAGEMENT

6-1. Purpose. This chapter establishes the policy for the continued use and disposal of Polychlorinated Biphenyls (PCB).

6-2. Applicability. This chapter applies to all USACE commands having responsibility for civil works functions, including floating plant. USACE military-funded facilities will adapt the PCB management guidance in AR 200-1, Environmental Protection and Enhancement, in coordination with CECW-OA.

6-3. Policy. It is the policy of the Corps of Engineers that:

a. USACE activities will comply with the requirements of 40 CFR 761, and other applicable Federal, state and/or local requirements regulating the identification, control, use, storage, handling and disposal of PCBs.

b. Fully serviceable PCB containing equipment will continue to be operated until replacement or removal from service is justified due to condition, obsolescence and/or economic criteria.

c. Unmarked mineral oil electrical equipment, unless otherwise indicated by nameplates, will be automatically assumed to be PCB contaminated, and will be disposed of as such once removed from service.

d. USACE activities with PCBs will establish local procedures to ensure compliance with Federal, state and local requirements. In the absence of legal requirements, they will manage PCBs in a manner which provides environmentally safe handling through their final destruction and disposal.

e. Small PCB capacitors will be disposed of by methods which preserve the integrity of the equipment, as opposed to crushing or other process which may result in a release of PCBs. Incineration in approved PCB incinerators is permitted.

f. Personnel who handle or may potentially be exposed to PCBs will receive training in performing PCB related responsibilities in a safe and environmentally sound manner and will also be included in exposure monitoring and medical surveillance programs in accordance with OSHA, DOD, DA and USACE requirements.

g. PCB management requirements are provided in Chapter 6 of EP 200-2-3. Spill response policy is in Chapter 5, Oil and Hazardous Substances Spills, of this regulation.

CHAPTER 7 - OPERATING POTABLE WATER SYSTEMS AT USACE PROJECTS AND FACILITIES

7-1. Purpose. This chapter establishes the policy for compliance with the Safe Drinking Water Act (SDWA) and for operating potable water systems at USACE projects and facilities.

7-2. Applicability. This regulation applies to all USACE commands having responsibility for civil works functions, including floating plant, and to military-funded facilities and activities.

7-3. Policy. It is the policy of the Corps of Engineers that:

a. The USACE will provide drinking water to projects and facilities in accordance with the requirements of the SDWA and applicable state and local regulations. Drinking water provided on USACE floating plant will meet the drinking water quality standards of the SDWA. Drinking water provided for military-unique field operations will meet the requirements of Army Surgeon General Directives.

(1) The major provisions outlined in the SDWA include:

- (a) Primary and Secondary Drinking Water Standards.
- (b) Limits on allowable lead content in materials used to distribute water.
- (c) Lead Contamination Control Act.
- (d) Groundwater source protection programs.

(2) The major provisions of applicable state and local regulations include:

- (a) Criteria for operation and maintenance practices.
- (b) Plans/programs to safeguard drinking water quality and quantity, both at the source and in the distribution system.

b. USACE projects, facilities, and activities will develop and implement water conservation measures in accordance with the Energy Policy Act of 1992, Subpart F (PL 102-486), and EO 12902.

c. USACE projects and facilities will obtain and comply with all necessary National Pollutant Discharge Elimination System permits, water appropriation and use permits, or other permits which may be required for the operation of drinking water treatment systems.

d. Civil works projects and facilities will manage drinking water data as prescribed by the local district.

CHAPTER 8 - ENVIRONMENTAL COMPLIANCE TRAINING REQUIRED BY STATUTE AND IMPLEMENTING REGULATIONS

8-1. Purpose. This chapter establishes the policy for training requirements for personnel affected by certain statutes and implementing regulations concerning environmental compliance.

8-2. Applicability. This chapter applies to all USACE commands having responsibilities for civil works functions, including floating plant. USACE military-funded facilities and activities will adapt the training guidance in AR 200-1, Environmental Protection and Enhancement, in coordination with CECW-OA.

8-3. Policy. USACE commanders will promote environmental compliance and avoid regulatory agency fines and penalties by providing environmental training required by applicable Federal and state statutes and implementing regulations to applicable USACE employees. Information regarding training required by several Federal environmental statutes and regulations can be obtained from Environmental Compliance Coordinators.

CHAPTER 9 - FEDERAL FACILITY COMPLIANCE ACT (FFCA) OF 1992, FINES AND PENALTIES

9-1. Purpose. This chapter establishes the policy on payment of fines and administrative penalties levied against civil works funded projects, facilities and activities, under the Resource Conservation and Recovery Act (RCRA) (42 USC 6961) provisions covered by the Federal Facility Compliance Act (FFCA) of 1992. The FFCA of 1992 waives the immunity of the United States from fines and penalties for violations of certain provisions of RCRA. The FFCA does not apply to the underground storage tank provisions of RCRA nor to other environmental statutes such as the Clean Water Act, Clean Air Act and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA.)

9-2. Applicability. This chapter applies to all USACE commands having responsibility for civil works functions, including floating plant.

9-3. Policy. Office of Counsel should be consulted regarding liability for fines and penalties levied against civil works projects and facilities. Fines or penalties imposed under RCRA provisions covered by the FFCA will be paid promptly when they have been properly and appropriately assessed.

a. USACE Commanders must assure that regulatory deadlines and other matters which convey potential fines and penalties are programmed, monitored, and met to avoid violations, fines and penalties. However, after a violation is identified, responsibility for assessing appropriateness, budgeting for, and paying any associated USACE fines and penalties rests with the Commander having direct authority over the project, facility, or activity charged with the violation.

b. Any fines and penalties attributed to a Government contractor's actions/inactions at either USACE or USACE/non-Federal cost-sharing projects, facilities, or activities will be the responsibility of the contractor and will not be considered a contract or project cost.

c. At USACE/non-Federal cost-sharing partner projects:

(1) When violations are solely the result of either USACE actions/inactions, or non-Federal sponsor actions/inactions, associated fines and penalties will be paid by the responsible party and not included in the total project costs for purposes of cost-sharing.

(2) Where violations are the result of joint USACE/non-Federal sponsor actions/inactions, associated fines and penalties will be apportioned according to the Project Cooperation Agreement (PCA).

(3) Upon accepting the project, the project sponsor will assume total responsibility for environmental compliance.

(4) Projects with existing PCAs will not require amendment. However, project sponsors should be made aware as future PCAs will reflect this policy.

d. USACE fines and penalties resulting from the FFCA, including those arising from the daily operations and maintenance of civil works projects and facilities, will be paid from the

ER 200-2-3
30 Oct 96

applicable civil works appropriation account.

e. Fines and penalties attributed to an outgrantee's actions/inactions are the responsibility of the outgrantee.

f. HQUSACE will issue a periodic data call for information associated with fines and penalties assessed and paid under the FFCA of 1992.

CHAPTER 10 - MANAGING OZONE-DEPLETING SUBSTANCES AT USACE PROJECTS AND FACILITIES

10-1. Purpose. This chapter establishes the policy for managing ozone-depleting substances (ODSs) at civil works projects and facilities.

10-2. Applicability. This chapter applies to all USACE commands having responsibility for civil works functions, including floating plant. USACE research and development laboratories and other facilities that are wholly or substantially military funded but not located on military installations will adapt the ozone-depleting substance guidance in AR 200-1, Environmental Protection and Enhancement, in coordination with CECW-OA. USACE facilities located on Army installations will comply with the installation commanders' ozone-depleting substance elimination program requirements.

10-3. Policy.

a. It is the policy of USACE, in conformance to Executive Order (EO) 12843, to:

(1) implement cost-effective programs to minimize the procurement of materials and substances that contribute to the depletion of stratospheric ozone; and

(2) give preference to the procurement of alternative chemicals, products, and manufacturing processes that reduce overall risks to human health and the environment by lessening depletion of ozone in the upper atmosphere.

b. In implementing this policy, procurement practices will conform to the general requirements of Title VI of the Clean Air Act Amendments by:

(1) minimizing, where economically feasible, the procurement of products containing, or manufactured with, Class I substances in accordance with EPA's phaseout schedule and maximizing the use of safe alternatives;

(2) amending existing contracts to the extent permitted by law and, where practical, to be consistent with the phaseout schedules for Class I substances;

(3) being aware of the phaseout schedule for Class II substances (Clean Air Act Amendments, Section 605) in developing procurement policies and in awarding contracts; and

(4) implementing policies and practices that recognize the increasingly limited availability of Class I substances as production levels capped by the Montreal Protocol decline until final phaseout. Such practices will include, but not be limited to:

- reducing emissions and recycling ozone-depleting substances;
- ceasing the purchase of non-essential products containing or manufactured with ozone-depleting substances; and
- requiring that new contracts provide that any acquired products containing, or manufactured with, Class I or Class II substances be labeled in accordance with section 611 of

the Clean Air Act Amendments.

c. USACE projects and facilities will establish, fund and implement management programs to support this policy. MSC commanders, district commanders and commanders/directors of facilities outside the district structure will develop internal procedures to assure compliance with all aspects of this policy. ODS Elimination Plans will be prepared for all projects and facilities where USACE has operations and maintenance responsibilities for facility needs, including government-owned, contractor-operated facilities. Production phase-out milestones are contained in the Clean Air Act Amendments and are listed in the Army Acquisition Pollution Prevention Support Office publication "Strategic Plan for Eliminating Ozone-Depleting Chemicals from U.S. Army Applications."

10-4. Program Requirements.

- a. Identify sources of ODSs and determine type and amount.
- b. Monitor regulated ODSs to comply with standards.
- c. Procure equipment that meets applicable standards.
- d. Cooperate with Federal, state, and local authorities in achieving ODS plan goals.
- e. Assure that all technicians who service appliances, industrial process refrigeration units and motor vehicle air conditioner units that contain ODSs are certified by an EPA approved program in accordance with the 1990 Clean Air Act Amendments, Title VI, Section 602(a).
- f. USACE organizations in General Services Administration (GSA)-leased facilities and USACE users of GSA-leased vehicles will support applicable GSA programs to eliminate ODS use in accordance with lease agreements.

10-5. Reporting and Record Keeping Requirements. Programs certifying technicians must maintain records in accordance with section (g) of appendix D of 40 CFR, Part 82.166, Reporting and Record Keeping Requirements.

CHAPTER 11 - ENVIRONMENTAL MANAGEMENT PROGRAM PLANNING (FEDPLAN)

11-1. Purpose. This chapter establishes the policy for complying with Executive Order 12088. The information required by Executive Order 12088 is compiled and reported through the Environmental Protection Agency (EPA) to OMB, utilizing the FEDPLAN planning process. Data is used to verify that Federal agencies are adequately planning and programming for environmental compliance, and ensures that agencies are requesting funding for all their compliance requirements. It is also used to assess progress in implementing environmental compliance programs.

11-2. Applicability. This chapter applies to all USACE commands having responsibility for civil works functions, including floating plant. USACE military or military/civil-funded facilities and activities will adapt the environmental pollution prevention, control, and abatement report guidance in AR 200-1, Environmental Protection and Enhancement, in coordination with CECW-OA.

11-3. Policy. USACE projects and facilities will submit FEDPLAN reports, through the chain of command, to CECW-OA for transmittal to the EPA. Reports will include revisions and updates to existing submittals and new requirements. Projects and facilities will coordinate FEDPLAN reports with budget personnel prior to submittal to CECW-OA to ensure that environmental requirements are incorporated in, and consistent with, budget documents.

CHAPTER 12 - THE FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET

12-1. Purpose. This chapter establishes policy for compliance with the Federal Agency Hazardous Waste Compliance Docket (docket). The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended, requires the Environmental Protection Agency (EPA) to develop and periodically update the docket for Federal facilities that manage hazardous waste, or from which hazardous substances have been, or may be released. The docket serves three major purposes: (1) to identify the universe of Federal facilities that must be evaluated to determine whether they pose a risk to human health and the environment sufficient to warrant inclusion on the National Priorities List; (2) to compile and maintain the information submitted to EPA on these facilities under the provisions of CERCLA; and (3) to provide a mechanism to make the information available to the public. A facility can be listed on the docket if one or more of the following circumstances apply:

a. Pursuant to Section 103(a) of CERCLA, the National Response Center has been notified of a release of hazardous substances in reportable quantities.

b. Pursuant to Section 103(c) of CERCLA, EPA has been notified of the existence of a facility where there are hazardous substances or where hazardous substances have been stored, treated or disposed of, and the existence of known or suspected releases of hazardous substances at such facilities.

c. Pursuant to Section 3005 of RCRA, the facility applied for a permit for certain hazardous waste treatment, storage or disposal (TSD) facilities.

d. Pursuant to Section 3010 of RCRA, notification is given to EPA that the facility is generating or transporting hazardous waste, or it is operating as a TSD facility.

e. Pursuant to Section 3016 of RCRA, the site is included in the agency inventory of hazardous waste TSD sites which the agency owns or operates, and sites at which hazardous waste had been disposed of at any time.

12-2. Applicability. This chapter applies to all USACE commands. Although the terms MSC commander and district commander are used throughout this guidance, Research and Development Laboratory Commanders and commanders or directors of other facilities outside the district structure will adapt this guidance to their organization.

12-3. Policy.

a. USACE will comply with docket requirements as published in the Federal Register.

b. The Environmental Compliance Branch (CECW-OA) is the HQUSACE point of contact regarding MACOM docket issues.

c. MSC Commanders will provide oversight to assure that district commands meet the deadlines and other requirements associated with the listing of USACE facilities on the docket. The MSC Environmental Compliance Coordinator in the Operations element will be the point of contact for MSC docket inquiries and upward reporting requirements.

d. Each District Commander with a facility or facilities listed on the docket will implement and maintain a management system to assure that deadlines and other requirements associated with the docket are met. District Environmental Compliance Coordinators will be their points of contact for docket inquiries and upward reporting requirements. Commanders of research laboratories and other facilities not under district commands will develop similar management mechanisms.

e. Commanders or senior management will assure that action is taken to have the responsible EPA region remove from the docket facilities that are incorrectly attributed to USACE or do not meet the requirements in paragraph 12-1 of this regulation, in a timely manner. The EPA Region must approve removal before Headquarters EPA will delist a facility.

f. For each valid addition to the docket the applicable district, laboratory or other responsible USACE organization will, within 18 months of docket update publication in the Federal Register, submit a preliminary assessment and if warranted, a site inspection, to the EPA Region having jurisdiction over the site. CECW-OA will be informed, through the chain of command, within 30 days after this requirement is met. A brief summary of the outcome, including further action required, if necessary will be included.

g. The USACE element responsible for operation of each facility listed on the docket is responsible for funding any preliminary assessments, site inspections and other follow up evaluation and/or site restoration work required.

h. Office of Counsel will be informed of docket listings.

i. Public Affairs offices of organizations with listed facilities should be prepared to respond to queries regarding the facilities, reasons for their being listed on the docket, and actions planned or underway.

CHAPTER 13- HAZARDOUS WASTE MANAGEMENT

13-1. Purpose. This chapter establishes policy for the management, generation, storage, transportation, treatment and disposal of hazardous wastes.

13-2. Applicability. This chapter applies to all USACE commands having responsibility for civil works functions, including floating plant. USACE military or military/civil-funded facilities and activities will adapt AR 200-1, Environmental Protection and Enhancement, in coordination with CECW-OA.

13-3. Policy. It is the policy of USACE to:

a. Comply with legally applicable and appropriate Federal, state and local regulations for the management, generation, treatment, storage, transportation and disposal of hazardous wastes. This includes terms and conditions of Federal and state permits.

b. Establish local procedures and responsibilities for the execution of waste management programs which emphasize proper waste storage, transportation and disposal, hazardous waste minimization, and organization responsibilities to achieve compliance.

13-4. Major Program Requirement-. USACE organizations must:

a. Identify whether or not the waste being managed is a hazardous waste according to Federal and state regulations.

b. Determine the appropriate generator status in accordance with Federal and state regulations and manage hazardous waste accordingly (obtain EPA Identification numbers, comply with storage requirements, manifest wastes, maintain records, report as necessary. etc.).

c. Formally train and designate personnel to sign manifests in accordance with Construction Bulletin 96-9, dated 3/13/96.

d. Maintain all records in accordance with Federal and state requirements.

FOR THE COMMANDER:

|| Appendix
See Table of Contents


OTIS WILLIAMS
Colonel, Corps of Engineers
Chief of Staff