

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

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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.