Evaluation Report

DOD HAZARDOUS WASTE MANAGEMENT AND REMOVAL SERVICES IN THE U.S. EUROPEAN COMMAND

Report No. D-2000-157 June 28, 2000

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Acronyms

COR	Contracting Officer's Representative
DLA	Defense Logistics Agency
DRMSI	Defense Reutilization and Marketing Service International
DRMO	Defense Reutilization and Marketing Office
HW	Hazardous Waste
OEBGD	Overseas Environmental Baseline Guidance Document
USAREUR	U.S. Army, Europe

INSPECTOR GENERAL
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June 28, 2000

MEMORANDUM FOR ASSISTANT SECRETARY OF THE AIR FORCE
(FINANCIAL MANAGEMENT AND COMPTROLLER)
DIRECTOR, DEFENSE LOGISTICS AGENCY
NAVAL INSPECTOR GENERAL
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Evaluation Report on DoD Hazardous Waste Management and Removal Services in the U.S. European Command (Report No. D-2000-157)

We are providing this evaluation report for information and use. We considered management comments on a draft of this report in preparing the final report.

Comments on the draft report conformed to the requirements of DoD Directive 7650.3 and left no unresolved issues. Therefore, no additional comments are required.

We appreciate the courtesies extended to the evaluation staff. 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 B for the report distribution. The evaluation team members are listed on the inside of the back cover.

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DoD Hazardous Waste Management and Removal Services in the U.S. European Command

Executive Summary

Introduction. This report is one in a series and discusses issues concerning hazardous waste management and removal services within the U.S. European Command. The first report, Inspector General, DoD, Report No. 99-251, "The Army Environmental Program in Germany, " September 15, 1999, discusses environmental program elements, the environmental requirements process, and the extent of Army liabilities as defined by the North Atlantic Treaty Organization's Status of Forces Agreement and the Final Governing Standards for Germany. During fieldwork for the first report, it appeared that hazardous waste operations in Europe were not meeting regulatory requirements and command needs. This report discusses contractor performance under hazardous waste management and removal contracts administered by the Defense Reutilization and Marketing Service International. The report deals only with hazardous waste management prior to and during removal; it does not deal with the ultimate disposal of hazardous waste.

In FY 1999, the DoD Components in Europe generated 37.3 million pounds of hazardous waste and spent $10.4 million to manage, remove, and dispose of it. Hazardous wastes are substances that are ignitable, corrosive, reactive with other substances, or toxic. As such, they pose considerable risk to military personnel, civilians, and the environment. The Defense Reutilization and Marketing Service International, headquartered in Wiesbaden, Germany, is responsible for disposing of all hazardous wastes generated by U.S. Forces overseas.

Objectives. The overall evaluation objective was to determine the status of DoD environmental program requirements at overseas military facilities. Specifically, we wanted to assess U.S. military compliance with governing environmental standards in foreign countries. For this report, we assessed hazardous waste management in the U.S. European Command. In addition, we evaluated the management control program as it pertains to evaluation objectives.

Results. Contractors were not providing adequate hazardous waste management and removal services at 10 of the 14 installations surveyed in Europe. As a result, installations have an increased risk for safety and environmental compliance violations, criminal and civil liability, negative impacts on operations, and friction with host countries. See the Finding section of the report for a detailed discussion of this issue. Appendix A contains details of the review of the management control program as it pertains to the evaluation objectives.

Summary of Recommendations. We recommend that the Commanders, Defense Logistics Support Command; Defense Reutilization and Marketing Service; and Defense Reutilization and Marketing Service International jointly determine appropriate internal staffing levels for contract administration and develop a strategic plan for improving contractor performance in Europe. We also recommend that the Commander, Defense Reutilization and Marketing Service International, increase oversight of contractors receiving a negative performance evaluation and hold contractors accountable for not complying with the terms of hazardous waste contracts. We further recommend establishment of a customer feedback system to solicit customer assessments of contractor performance. Finally, we recommend that the Commanders in Chief, U.S. Army Europe; U.S. Navy Europe; and U.S. Air Force Europe verify that installation commands are conducting quality inspections and providing quality control at contractor-serviced hazardous waste sites on the installation. Also, we recommend that they enter into a formal agreement with the Commander, Defense Reutilization and Marketing Service International, that specifies the roles and responsibilities of each party regarding the management of hazardous waste by a Defense Reutilization and Marketing Service International contractor.

Management Comments. Defense Logistics Agency agreed there were problems with hazardous waste contractor performance that caused dissatisfaction at the installations and stated they are working to resolve contractor performance problems. The Army concurred with the finding and recommendation. They are working with Defense Reutilization and Marketing Service International and Navy representatives to clarify roles and responsibilities under hazardous waste management and removal contracts and are taking steps to improve contractor performance. They are also working to strengthen the legal standing of foreign nationals working for the Army and to reduce the number of hazardous waste collection points on Army installations. The Navy concurred with the need to verify that installation commands are conducting quality inspections at contractor-serviced hazardous waste sites. Navy nonconcurred with the need for a formal agreement between the Navy and the Defense Reutilization and Marketing Service International because installations already have similar agreements. The Air Force concurred, stating that Air Force installations now provide oversight during the contract removal services and that all sites are being inspected. The Air Force also reported that all installations in Europe will have agreements with their servicing Defense Reutilization and Marketing Offices by September 2000. A discussion of management comments is in the Finding section of the report and the complete text is in the Management Comments section.

Evaluation Response. Management comments are responsive. The recommendation for Military Department-level service agreements with the Defense Reutilization and Marketing Service International was revised to allow for installation-level agreements. We agree that the Defense Reutilization and Marketing Service International and the Military Departments are working to improve hazardous waste management services in Europe. This effort should continue. Past deficiencies, coupled with shrinking resources and increasing international demands, dictate the need for optimizing existing resources.

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Background

This report is one in a series and discusses issues concerning the hazardous waste (HW) management and removal services within the U.S. European Command. During our fieldwork for Inspector General, DoD, Report No. 99-251, "The Army Environmental Program in Germany," September 15, 1999, personnel in Europe indicated that HW operations overseas were not meeting regulatory requirements and command needs. Therefore, this evaluation was conducted to determine the status of HW management in the U.S. European Command. This report discusses contractor performance under hazardous waste management and removal contracts administered by the Defense Reutilization and Marketing Service International. The report deals only with hazardous waste management prior to and during removal; it does not deal with the ultimate disposal of hazardous waste.

U.S. European Command. The U.S. Commander in Chief, European Command, implements and oversees provisions of DoD directives and promotes coordination between the Component commanders for environmental matters in Europe. U.S. Forces assigned to the Commander in Chief, U.S. European Command are organized into five Component commands: U.S. Army Europe (USAREUR), U.S. Navy Europe, U.S. Air Forces in Europe, Special Operations Command Europe, and the Marine Forces Europe.

The Overseas Environmental Baseline Guidance Document (OEBGD) sets minimum overseas environmental standards, based on applicable provisions of United States laws as well as DoD environmental policies. In countries with a significant U.S. military presence, standards established in the OEBGD are compared to similar standards in applicable host nation laws and international agreements. The most stringent of the standards is used to develop host nation final governing standards. Where they have been developed, U.S. Forces overseas are responsible for complying with host nation final governing standards, and not the OEBGD. However, some provisions of the OEBGD, such as those referring to the role of the DRMSI are fairly standard and normally included in the final governing standards. Where this is the case, the evaluation report cites the OEBGD instead of making reference to multiple final governing standards.

Military Component Commands. Component commands use hazardous materials in the accomplishment of military operations and missions. When hazardous materials are no longer usable they are disposed of as HW. Hazardous wastes are solid, liquid, or gaseous substances that are ignitable, corrosive, reactive with other substances, or toxic. Because HW poses a potential risk to humans and the environment, it must be used, handled, stored, transported, tracked, and ultimately disposed of in accordance with stringent standards and requirements. In FY 1999, the DoD Components in Europe generated 37.3 million pounds of HW. The Components paid the Defense Reutilization and Marketing Service International (DRMSI) approximately $10.4 million dollars for HW management, removal, and disposal.

DRMSI Responsibility for HW Disposal. The Defense Reutilization and Marketing Service is a field activity of the Defense Logistics Support Command, which is responsible to the Defense Logistics Agency (DLA). DRMSI is the European office that manages the disposal of HW for U.S. Forces stationed outside the Continental United States. Hazardous waste management and removal for disposal are important elements of the HW disposal cycle. DRMSI, headquartered in Wiesbaden, Germany, manages overseas operations in 13 countries. DRMSI is the DoD property disposal specialist overseas.

DRMSI started its overseas HW program in 1984. The HW mission in Europe is carried out at each of the 17 Defense Reutilization and Marketing Offices (DRMOs) that support U.S. military bases and installations in Europe. Some DRMOs provide temporary storage of hazardous waste during the disposal cycle. Military units turn in HW to a DRMO located on or near their installation. However, DRMSI is moving away from providing HW storage at its DRMOs in Europe because of increasingly stringent host nation HW transportation and storage laws and requirements.

DRMSI Contract Administration. Contracting officers, located at the DRMSI, negotiate and administer HW removal and disposal service contracts; some of the contracts include HW management services prior to removal. Contract administration duties are carried out by the 32 DRMSI Contracting Officer's Representatives (CORs). CORs are responsible for ensuring that contractors provide waste management and removal services in compliance with the terms of their contract. Where a DRMSI COR signs the HW manifest at the time the waste is removed for disposal, DoD liability shifts from generator to DRMSI. Until then, the installation commander, as the HW generator, is responsible for its safe handling and environmentally sound management.

Hazardous Waste Removal and Management Services. Thirteen installation commands now have HW service agreements with the DRMSI. Under the agreements, DRMSI contractors provide for HW management or removal and disposal services, or both. Hazardous waste management services represent a recent addition to HW removal and disposal contracts. Increasing numbers of installations are considering using DRMSI contractor services. Military installations and units pay for DRMSI HW management and removal services and their budgets and operations are directly impacted by the performance of DRMSI and its contractors. DRMSI promises to provide its military customers with an effective, safe, and efficient way of managing and disposing of HW in compliance with applicable laws and regulations. Therefore, in providing HW services, DRMSI contractors must comply with all applicable DoD standards and host nation environmental laws and regulations.

DoD Hazardous Waste Policy Overseas. In an August 1989 memorandum, the Assistant Secretary of Defense (Production and Logistics) wrote, "I support the use of the Defense Reutilization and Marketing Service." The memorandum stated that the DRMSI has a worldwide infrastructure of disposal expertise and specialized contract procedures. As a result, DRMSI could provide a comprehensive program for contractor selection and oversight to ensure that HW disposal is in full compliance with environmental laws and regulations. An

addendum to the memorandum listed 10 specific benefits that Military Components could derive from using DRMSI HW support services. Of the 10 benefits, 5 are related to contractor performance:

- records maintained to evaluate contractor performance,
- technical evaluation of contractor,
- 100 percent manifest tracking to maintain audit trail,
- 100 percent monitoring of contractor performance, and
- contract requirements tailored to customer needs and timeframes.

Criteria and procedures are outlined in DoD 4160.21-Manual, "Defense Material Disposition Manual," August 18, 1997. Chapter 10 of the Manual deals with HW and states, "DLA/DRMS is responsible for the disposal of HW for the DoD . . . use of DRMS services is the preferred method of disposal." The OEBGD, Chapter 6, Section 11, "HW Disposal," October 1992, states, "All DoD HW should normally be disposed of through the Defense Reutilization and Marketing Service."

For reasons outlined in DoD Directive 4001.1, Commanders may directly contract for HW support without using DRMSI services. However, DRMS should be afforded the opportunity to redress operational difficulties in providing services. While there has been at least one request, no waiver has been granted.

Role of Installation Commands. The Overseas Environmental Baseline Guidance Document, Chapter 6, Section 3, requires that hazardous waste storage areas be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. Section 3 also requires installation commands to conduct inspections of hazardous waste storage areas for malfunctions and deterioration, operator errors, and discharges that cause a release of hazardous waste. Inspections must be conducted often enough to identify problems in time to correct them before they cause harm.

Objectives

The overall evaluation objective was to determine the status of DoD environmental program requirements at overseas military facilities. Specifically, we wanted to assess U.S. military compliance with governing environmental standards for HW management in foreign countries. In addition, we evaluated the management control program as it pertains to evaluation objectives. See Appendix A for a discussion of the evaluation scope and methodology and our review of the management control program.

Hazardous Waste Contractor Performance

Contractors were not providing adequate HW management and removal services at 10 of the 14 installations surveyed in Europe. Adequate services were not provided because:

- DRMSI and the installation commands did not provide effective oversight and quality control of contractor performance, and
- DRMSI had not established an effective mechanism for customer feedback on contractor performance.

As a result, installations have an increased risk for safety and environmental compliance violations, criminal and civil liability, negative impacts on operations, and friction with host countries.

HW Contractor Performance in Europe

HW contractors were not providing adequate HW management and removal services at 10 of the 14 installations surveyed in Europe. Information provided by military and civilian personnel at the 10 installations in Germany and Italy indicated problems with contractor performance. Our observations corroborated what we were told. For example, at the 415th Base Support Battalion, Kaiserslautern, Germany, personnel complained about contractor performance. During a site visit to the installation's HW collection point, we saw compliance violations. The site was not secured and containers of waste were stored outside of the protected area. The contractor staff was not present at the site, although they were scheduled to be there.

DRMSI Contracting Officers administer 20 firm-fixed unit price requirement contracts for HW removal and disposal for 64 contract locations in Europe. Contract locations include those in Albania, Kosovo, Macedonia, Bosnia-Herzegovenia, Croatia, and Hungary where the U.S. is involved in contingency operations. Ten of the 20 contracts include waste management services as well as removal and disposal. With options, DRMSI estimates the total value of the 20 contracts, up to September 30, 1999, at approximately $16.7 million. DRMSI issued 594 delivery orders against the 20 contracts in FY 1999. Delivery orders and modifications totaled approximately $7.2 million.

Forty-eight percent of 99 DRMSI COR evaluation reports on HW contractor performance contained an overall negative assessment of contractor performance. The reports were issued between March 1997 and August 1999 and included evaluations on the performance of 9 major HW contractors. Those contractors provided HW services at 32 separate locations in 7 countries in Europe. DRMSI COR ratings on contractor performance at 15 locations in England, Italy, Germany, Spain, Greece, Turkey, and the Netherlands were

positive. However, COR ratings of overall contractor performance at 17 Army and Air Force sites in Italy, England, and Germany were either mixed or negative.

USAREUR installations are the major customers for DRMSI contractor-provided HW removal and management services. USAREUR installations generate 78 percent of all HW handled by the DRMSI. During the evaluation, the USAREUR, Chief, Environmental Division and Facilities Engineer Division reported that, historically, the Army has had problems with the adequacy of DRMSI HW contractor services. The USAREUR HW Program Manager reported that in the past decade DRMSI HW contractor performance was decidedly mixed and had failed to produce the benefits related to contractor performance that were listed in the August 1989 memorandum. The Headquarters, USAREUR, Chief, Environmental Division and the Facilities Engineer Division, reported a majority of USAREUR commands are not satisfied with the DRMSI contractor performance.

Contractor Oversight and Quality Control

Contractors were not providing adequate services because the DRMSI and the installation commands were not providing effective oversight and quality control of contractor performance. Contractor oversight and quality control were specific concerns of DoD officials and the installation commands in Europe. Without effective contractor oversight and control, the commands could not be sure that contractors were in compliance with DoD HW safety and compliance standards and host-nation laws or that installation operations would not be impacted by poor contractor performance. Both the DRMSI and the installation commands have specific responsibilities for contractor oversight and quality control.

DRMSI Contractor Oversight Responsibilities. Contractor oversight is a function of contract management and a responsibility of the COR. DRMSI promises its military customers "100% monitoring of contractor performance." To that end, DRMSI promises that the COR will witness all contractor HW removals. Under HW management agreements, DRMSI says that the COR will provide sufficient oversight of contractor-managed HW sites to ensure the sites are managed effectively. Although CORs have to be present before the contractor can actually remove the HW, CORs do not always show-up for scheduled HW pickups. As a result, removals have to be rescheduled. Rescheduling can cause problems by increasing the work of contractor and installation personnel thereby increasing contract costs. It can also impact installation operations due to regulatory limits on the amount of HW that the installation can accumulate and store at a particular site. Further, periodic COR inspections of contractor-managed sites have not been sufficient to ensure compliance with HW standards and host-nation laws. CORs are often responsible for several contracts at multiple installations. Personnel at the

U.S. European Command; the U.S. Army, Europe; the DRMSI; and the 104th Area Support Group stated there were not enough CORs to effectively monitor contractor performance. In addition COR responsibilities were increasing and becoming more complex.

Limited Personnel and Expertise. DRMSI has 32 CORs who are responsible for contractor oversight at 1500 HW pickup points in Europe. Four of the 32 are deployed to support U.S. military operations in Eastern Europe. The other 28 are stationed at one of the 13 DRMOs in Europe where CORs administer HW contracts. The USAREUR, Chief, Environmental Division and Facilities Engineering, and the HW Program Manager said that limited DRMSI personnel and expertise are the primary reasons for many HW management and removal services problems. When this issue was raised with DRMSI officials, the Commander, DRMSI, agreed on the need for more personnel resources.

All CORs are responsible for between 1 and 5 contracts and the administration of those contracts at multiple locations, often in several countries, covering a wide geographic area. For example:

- There are 6 CORs stationed at the DRMO in Kaiserslautern, Germany, who are responsible for 5 contracts with 189 pickup points on 19 installations in 4 countries. In FY 1999, those CORs had to drive 300 miles to monitor pickups at one location in the Netherlands.
- There are 3 CORs stationed at the DRMO in Seckenheim, Germany, who are responsible for 3 contracts with multiple sites on 17 installations in 4 countries. Personnel at the 104th Area Support Group, and its subordinate command, the 414th Base Support Battalion, Hanau, Germany, said there are 100 HW pickup points on the installation at Hanau. Installation personnel said those 100 pick-up points represent a major challenge to the CORs in terms of contractor oversight.
- There are two CORs assigned to the DRMO in Aviano, Italy. In FY 1999, the CORs administered three HW removal and disposal contracts at five locations in Italy and Greece. During FY 1999, they were responsible for observing HW removals under 137 delivery orders and for monitoring HW management services at Livorno and Vicenza, Italy.

DRMSI and USAREUR officials and installation personnel expressed a belief that staffing levels are too low to ensure effective contractor oversight. Nonetheless, DRMSI relies on COR evaluation reports for an assessment of contractor performance. Also, DRMSI is expanding its HW services at the same time it is anticipating DLA personnel cuts across the board.

Increasing Oversight Responsibilities. COR oversight responsibilities are increasing due to an expansion of DRMSI services to include HW management services. Hazardous waste management services can include a wide range of services such as sampling and chemical analysis, inspecting,

loading, unloading, packaging, transporting, storing, maintaining HW sites, and recycling or disposing of HW. As DRMSI management services expand to other installations, CORs will experience a corresponding increase in oversight responsibilities. In addition, DLA guidance, based on the Program Objectives Memorandum, calls for Defense Reutilization and Marketing Service to reduce full time employee numbers 68 percent by FY 2005. As a result, DRMSI officials said they expect a 28 percent reduction in personnel by FY 2005. Reductions in personnel and increases in the numbers of contracts will result in additional challenges in overseeing and controlling contractor performance.

Increasing Complexity. COR oversight responsibilities and contractor performance requirements are becoming more complex due to rapidly changing host nation HW laws, regulations, and compliance expectations. DRMO zones include multiple countries with varying HW standards and regulatory requirements. CORs have to acquire and maintain core knowledge and expertise in applicable U.S. and host nation HW laws and regulations. In the past, host-nation regulators rarely enforced host-nation environmental laws and regulations on U.S. installations abroad. In recent years, however, host-nations in the European Union have become more concerned with the environment, and host-nation regulatory activity on U.S. installations has increased significantly. For example, the DRMO Zone 1 Environmental Program Manager stated that the Services' HW program in Italy changes daily because of changes in the enforcement of host nation and European Union waste management laws and regulations.

Country-specific variations in HW procedures also add to the complexities of HW management. For example, in Germany and the Benelux countries, the DRMSI COR signs the HW manifests unless the customer has agreed to act as a contracting officer's technical representative. When the COR signs the manifest in those countries, liability transfers from the generator, or installation command to the DRMSI. However, in Italy, the Director of Public Works, Environmental Management Office, signs the Italian equivalent of the U.S. manifest and other Italian HW shipping documents. In Italy, the DRMSI would have to become a licensed waste broker in order to sign manifests and effect a transfer of generator liability. Therefore, the generator, or installation command, signs and, thereby, negates the need for a license.

Strategic Plan Needed. Limitations on personnel and expertise, increasing COR responsibilities and legal complexities, and projected personnel reductions constrain the ability of DRMSI to provide effective HW services. As a result, DRMSI and its parent organizations need to assess contractor performance issues and develop a strategic plan for achieving appropriate staffing levels and for optimizing contractor performance and customer satisfaction. In addition, DRMSI should focus attention and increase oversight activities for contractors receiving negative performance evaluations and at those locations experiencing negative operational impacts due to inadequate contractor performance. DRMSI should also take appropriate and timely action against HW contractors who are not performing in accordance with the terms of HW contracts.

Command Contractor Oversight Responsibilities. Along with DRMSI deficiencies in contractor oversight, some installation commands are not performing quality inspections or providing quality control at contractor-operated HW sites. Quality inspection and control at HW sites is required by the OEBGD. Commands are not conducting inspections for several reasons. First, the military drawdown in Europe has left commands in Italy and Germany without the dedicated personnel and expertise to fully manage their HW programs. Second, some military commands do not understand their continuing responsibility for inspecting contractor-operated sites and pickup points on the installation. Finally, installation personnel in Italy reported they do not conduct inspections of contractor-operated sites because they believe that to do so would make them personally liable to host-nation regulators for contractor compliance violations.

Lack of Dedicated Personnel for Oversight. USAREUR acknowledged the lack of dedicated personnel for HW programs. The USAREUR HW Program Manager reported that, while some installations may still have a capability for managing all HW responsibilities without using DRMSI contractor services, the continued downsizing has eliminated most of that capability at many installations. Installation commands that once fully managed their HW programs are either considering, or have started using, DRMSI contractor-provided HW management services because of limited personnel.

U.S. Air Force Europe installations also expressed concern about reductions in dedicated environmental personnel. At the 31st Fighter Wing, Aviano Air Base, Italy, the 31st Environmental Flight Commander said that the Air Force is now making personnel changes that will reduce his dedicated full-time staff from eight funded slots to two. He will have only two part-time civilians assigned to manage the hazardous waste program, and only as an additional duty. He said the resulting staffing shortage would become a real problem during operations and contingency deployments. The command reportedly had once considered and rejected using DRMSI management services because of the continuing requirement to conduct quality inspections and control, but the realignment of personnel may force reconsideration.

Continuing Responsibilities. Under the waste management services agreements with the DRMSI, installations are still required to provide quality control as required by the OEBGD. However, some commands do not understand this continuing responsibility and, therefore, are not conducting operations and maintenance inspections at contractor-managed HW sites on the installation. Those commands erroneously believe that all oversight and compliance responsibilities transfer to the DRMSI when contractor-provided services begin.

The DRMSI Program Manager, Europe and Southwest Asia, Environmental Division, acknowledged that identifying the role that each representative (in a service agreement) plays has been one of the hardest parts of the Waste Management Services Program. The Program Manager said some customers (installations) want to treat contractor personnel like installation employees and

assign contractor personnel tasks that are not in the contract. Other customers forget that DoD policy requires regular storage area inspections because customers believe that the contractor assumes all responsibility. The manager stated that a Memorandum of Understanding outlining roles and responsibilities for parties with waste management contracts is a good idea.

DRMSI and USAREUR are working to finalize a Memorandum of Understanding that lays out responsibilities. As of May 2000, USAREUR and DRMSI did not have a signed agreement on the division of responsibilities and performance requirements.

Personal Liability for Contractor Compliance Violations. Local national installation personnel in Italy reported they do not conduct inspections of contractor-operated sites because host nation regulators would hold them personally liable for a contractor's compliance violations. Local national personnel working for DoD installations have the greatest concern, based on their legal status, about personal liability risks. This concern is generated by the fact that local national employees are not afforded the same protections from host-nation prosecution as other U.S. personnel because they are more accessible by local authorities.

Among other provisions, Article VIII of the NATO Status of Forces Agreement says that a member of a U.S. Force or a U.S. civilian employee, "shall not be subject to any proceedings for the enforcement of any judgement given against him in the receiving State in a matter arising from the performance of official duties." Article IX of the NATO Status of Forces Agreement states that local national civilian workers employed by a U.S. Force or civilian component shall not be regarded for any purpose as being members of that force or civilian component.[1]

However, if the official duties of a local national employee specify contractor oversight, he or she may be eligible for protection under host nation civil codes and for U.S. legal support. Host nation civil codes often do not allow local nationals to be sued or subjected to enforcement of a judgement for a tort[2] that they commit in the performance of their official duty. In addition, U.S. Forces have the authority to pay court costs and attorney fees only where a local national is subjected to criminal prosecution or administrative fining procedures arising out of the performance of an official duty. Consequently, a local national interviewed in Italy said he believes that local nationals need contractor oversight duties specifically listed as part of their official duties as a protection against lawsuits and enforcement judgements by host-nation officials.

[1] Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Forces, June 19, 1951.

[2] A wrongful act, damage, or injury done willfully, negligently, or in circumstances involving strict liability, but not involving breach of contract, for which a civil suit can be brought.

For example, at the Army 22nd Area Support Group, Camp Ederle, Vicenza, Italy, the Environmental Specialist, a local national, stated that installation employees could be held personally liable for any associated violations and enforcement actions imposed by host nation regulators. The Environmental Specialist suggested that the DRMSI Contracting Officers designate installation personnel as contracting officer's technical representatives with the official duties of providing quality control and performance feedback at contractor-operated sites.

A contracting officer's technical representative is a federal employee to whom a contracting officer has delegated limited authority in writing to make specific contract-related decisions. Similar to a COR, contracting officer's technical representatives are distinguished by the type of authority delegated to them. As used here, it would refer to someone working for an installation, but given authority for overseeing contractor performance on a day-to-day basis.

Although HW management service contracts are between the DRMSI and the contractors, installation commanders remain responsible for the conduct of quality assurance inspections. The Major Commands in Europe need to issue clarifying guidance on this issue and to verify that installations are indeed conducting the required inspections. A combination of information gathered during COR evaluations and installation inspections could provide more complete information for assessing and controlling contractor performance than COR evaluations alone.

Customer Feedback on Contractor Performance

DRMSI does not have an effective process for collecting and using customer feedback on contractor performance. Customer feedback could provide DRMSI with valuable information for assessing contractor performance and the level of customer satisfaction with contractor services. Feedback could also provide an effective communication tool for identifying and resolving problems, alleviating confusion, and fostering more efficient use of resources. DRMSI does not have a standard format for customer feedback to assess customer satisfaction, which relies heavily on contractor performance. Some installation personnel believe they have no avenue to assess the contractor's performance.

We informed DRMSI officials of the need to improve DRMSI methods for obtaining customer feedback on contractor performance. Subsequently, DRMSI developed a draft standard format checklist for evaluating contractor performance on waste management services for Italy and Germany. It outlines procedures for customers to assess waste management services provided under DRMSI contracts. Designed to ensure generator (installation) compliance, environmental protection, and contract completion, the standard format establishes minimum requirements for DRMSI CORs. Under the plan, CORs must conduct regular site visits, with a goal of monthly assessments of contractor-operated HW sites. The standard format provides an area for customer remarks and signature.

While the DRMSI standard format for customer feedback is a good start, the standard format was developed without customer input. The DRMSI customer feedback plan had not been executed. Furthermore, the plan does not ensure routine customer feedback on contractor performance. DRMSI needs to expand that plan to ensure the collection and use of information from the customer.

Safety, Compliance, and Operational Impacts

At installations where DRMSI contractor-provided services are inadequate, the installations have an increased risk for safety and environmental compliance violations, criminal and civil liability, and negative impacts on operations.

Safety and Compliance Violations. When HW contractors do not perform in accordance with applicable legal requirements and HW standards, U.S. installations face an increased risk of compliance and safety violations. In Germany, we visited an HW site and determined that the contractor was not there when he was supposed to be and that there were numerous compliance violations at the site. The Army's 22nd Area Support Group, Camp Ederle, Vicenza, Italy, uses DRMSI contractor services for hazardous waste management and removal. Camp Ederle also had compliance and safety violations at the HW storage facility and the HW accumulation site. A visit to the 22nd Area Support Group hazardous waste storage facility verified compliance problems that included improperly labeled and improperly stored drums. One drum contained hazardous waste that was clearly different than the hazardous waste described on the drum label. This presented unsafe conditions for anyone handling the misidentified container.

In addition, the COR working out of the DRMO in Aviano, Italy, conducted eight on-site evaluations of the contractor's performance at HW sites on Camp Ederle between June 5 and August 11, 1999. Problems found by the COR during onsite inspections stemmed from contractor failure to perform according to the terms of the contract. For example, the COR found:

- improperly labeled or unlabeled hazardous waste drums,
- contractor employees not on-site as scheduled,
- contractor employees who did not speak English,
- inability to verify the contractor's employees were properly trained,
- recurring housekeeping issues, and
- lack of a key needed to access a collection site.

The problems were not found or corrected until the COR conducted a periodic inspection of the site. In the meantime, the installation commander was responsible for the quality of operations and to local regulators for compliance problems at those sites.

Criminal and Civil Liability. When there are compliance violations at contractor-operated sites, host-nation regulators have attempted to hold installation personnel personally liable and subject them to civil and criminal enforcement actions. Compliance violations can occur when a contractor is late for a pickup or when a contractor fails to complete removal schedules, keep appointments, or correct safety violations. Violations can result when there is improper preparation of the HW documentation (that is pickup reports, manifests, and notices of delivery) and when required HW records are not kept. Violations also occur when contractor employees have not been trained properly and when HW containers are not standard. Contractor performance or lack of performance can directly impact installation budgets and operations.

Impact on Operations. The failure of DRMSI HW contractors to provide adequate services in compliance with DoD standards and host-nation laws can directly impact the missions and operations of U.S. Forces. For example, there are legal limits on the amounts and types of HW that can be safely stored at a particular site. Military operations can be impacted when contractors are late for scheduled pickups, when they do not pick up accumulated HW before storage limits are exceeded, or when the COR is not on-site as scheduled to sign HW manifests. Hazardous waste pickup and removal can become crucial to mission accomplishment, especially during periods of increased operating tempo such as large exercises, emergencies, or contingency operations. During these critical operations, large volumes of HW can accumulate rapidly. Also, poor HW services can impact routine operations.

The subordinate military communities under the 98th Area Support Group include the 280th Base Support Battalion, Schweinfurt, Germany. The mission is "to achieve and maintain a state of readiness that will permit the command to project power and to win." The installation support command has an agreement with DRMSI for contractor services in which the contractor is supposed to provide all services necessary for sampling and chemically analyzing, inspecting, loading, unloading, packaging, transporting, storing, and recycling or disposing of the HW generated by multiple installations. Under this agreement, HW management, removal, and disposal are to be performed in accordance with German environmental laws and regulations, as well as European Union regulations. On three occasions in FY 1999, the installation staff complained either through the DRMO to the DRMSI or directly to DRMSI officials that continuing problems with the HW contractor's performance significantly impacted installation operations and missions.

Problems reported by the 280th Base Support Battalion include incidents in which HW removal by the contractor did not meet the requirements specified in the contract or the removal was not conducted in compliance with regulatory requirements. Specific complaints resulted from incidents in which the:

- contractor was unable to pick up waste antifreeze from underground storage tanks because he did not have the proper tools to open the lids of the tanks or the required coupling specified in the contract;

- containers were not labeled correctly and not properly secured on the transporting vehicle;
- required European waste codes on container labels were wrong;
- contractor's driver did not have the required credentials for legally transporting HW; and the
- contractor was hours late for scheduled pickups.

The 100th Area Support Group in Grafenwoehr, Germany reported similar problems. The 100th Area Support Group consists of the 282nd Base Support Battalion, Hohenfels, Germany, and the 409th Base Support Battalion, Vilseck, Germany. The 100th Area Support Group provides for base operations and support for several training commands and training areas, including the Grafenwoehr Training Area. The Grafenwoehr Training Area and an adjacent area at Vilseck are very sensitive and highly visible areas where large training exercises are held. These areas are regularly scrutinized by local German regulators and nearby community officials. Consequently, reports of poor performance by the contractor were quickly elevated to higher command levels.

Between January and March 1999, the 100th Area Support Group regularly complained to the DRMSI concerning inadequate HW services and their impact on military operations. Problems at Grafenwoehr included badly rusted HW containers used by the contractor, improper equipment for handling HW, COR absence at scheduled pickups so that installation staff had to sign the manifests, fewer HW drums than required, and poor housekeeping at HW accumulation points.

In 1999, formal complaints were made by the 98th Area Support Group, the 280th Base Support Battalion, Schweinfurt, and the 100th Area Support Group personnel for training areas at Grafenwoehr and Vilseck, Germany, concerning operational impacts experienced by the commands due to problems with contractor performance. The complaint made by the 280th in April 1999 cited "numerous problems with the contractor that cannot be tolerated." The complaint referred to previous requests for assistance that went unanswered and to the continuing poor performance of the contractor that was having a "significant impact on operations and missions." According to the USAREUR HW Program Manager, the complaint fell on the heels of shortcomings noted throughout 1998 and brought to the attention of DRMSI in a Memorandum of Concern that was sent to the DRMSI by the Headquarters, USAREUR, Deputy Chief of Staff, Engineering on November 20, 1998. The HW Program Manager said DRMSI never formally responded to the 1998 memorandum.

Summary

DRMSI contractors are not providing adequate HW management and removal services at 10 of the 14 installations surveyed in Europe. Contractors are not providing adequate services for several reasons. First, DRMSI is not providing effective oversight of contractor performance because of constraints on

personnel and their ability to develop the technical expertise. Second, installation commands are not providing effective contractor oversight and quality control at contractor-managed HW sites because of limited personnel, a lack of understanding of oversight responsibilities, and fear of personal liability for contractor compliance violations. Finally, problems providing effective contractor oversight are exacerbated by a lack of an effective mechanism for customer feedback. Components pay DRMSI for contractor HW services and their budgets and operations are directly impacted by inadequate contractor performance. At installations where DRMSI contractor-provided services are inadequate, the installations have an increased risk for safety and environmental compliance violations, criminal and civil liability, and negative impacts on operations.

Recommendations, Management Comments, and Evaluation Response

Revised Recommendation. Based on management comments, we revised the scope of Recommendation 3.b. to include all formal agreements.

1. We recommend that the Commanders, Defense Logistics Support Command; Defense Reutilization and Marketing Service; and Defense Reutilization and Marketing Service International jointly determine appropriate internal staffing levels and develop a strategic plan for improving contractor performance in Europe. The plan should address the strategic use of personnel resources and alternative strategies for ensuring effective contractor oversight.

Management Comments. The Defense Logistics Agency concurred and stated DRMSI has initiated actions to improve contractor performance in Europe. DRMSI has consolidated organizational zones and will continue to evaluate optimal geographic stationing of personnel. DRMSI will coordinate a strategy with customers to reduce oversight requirements. DRMSI also will undertake a study to determine appropriate staffing levels.

2. We recommend that the Commander, Defense Reutilization and Marketing Service International:

a. Increase oversight of contractors receiving a negative performance evaluation and at installations reporting operational impacts from inadequate contractor performance; and, where appropriate, use the Default clause under Section F of the contract to hold contractors accountable for not complying with the terms of hazardous waste contracts.

b. Institute a customer feedback system to solicit customer assessments of contractor performance and to use that information as a management tool for evaluating hazardous waste contractors and for improving customer satisfaction.

Management Comments. The Defense Logistics Agency concurred and stated that inadequate contractor performance was based on new contractors, new contracts, and expanded DRMSI services. To eliminate future start-up problems, DRMSI will review roles and responsibilities, pre-award meeting procedures, and standard operating procedures to apply lessons learned. The Defense Logistics Agency implemented customer feedback initiatives before, during, and after the Inspector General, DoD, site visit that will provide customer assessments of contractor performance and improve customer satisfaction.

3. We recommend that the Commanders in Chief, U.S. Army, Europe; U.S. Navy, Europe; and the U.S. Air Force, Europe:

a. Verify that installation commands are conducting quality inspections and providing quality control at contractor-serviced hazardous waste sites on the installation in accordance with DoD policy.

b. Enter into a formal agreement with the Commander, Defense Reutilization and Marketing Service International that specifies the roles and responsibilities of each party regarding the management of hazardous waste by a Defense Reutilization and Marketing Service International contractor.

Management Comments. The Army concurred with the recommendation. They are working with DRMSI and Navy representatives to clarify roles and responsibilities under hazardous waste management and removal contracts and are taking steps to improve contractor performance. The Navy concurred with the need to verify that installation commands are conducting quality inspections at contractor-serviced hazardous waste sites. The Navy nonconcurred with the need for a formal agreement between the Navy and the DRMSI outlining roles and responsibilities under a waste services contract because installations already have similar agreements. The Air Force concurred with the recommendation, stating that all sites are being inspected. The Air Force also reported that all installations in Europe will have agreements with their servicing DRMO by September 2000.

Evaluation Response. Management comments were responsive. The Navy has implemented installation level agreements that satisfy the intent of the recommendation. This effort should continue. Past deficiencies, coupled with shrinking resources and increasing international demands, dictate the need for optimizing existing resources and for developing innovative and cooperative solutions for future management of hazardous waste.

Appendix A. Evaluation Process

Scope

Work Performed. We reviewed environmental policies and regulatory and program requirements for the DoD hazardous material program and the hazardous waste program in the European Unified Command. We visited 42 sites in Europe and the U.S. and reviewed 99 DRMSI contractor evaluations on 9 contractors with major HW direct delivery removal and disposal contracts in Europe. DRMSI evaluations reported on the performance of contractor personnel working at 32 locations in 7 countries. Specifically, we reviewed executive policy, Military Department regulations, and process and execution procedures.

Limitations to Scope. We concentrated our evaluation efforts on compliance with environmental hazardous material and hazardous waste requirements. Our evaluation did not verify the accuracy of the information in the management systems or the total environmental liabilities to DoD.

DoD-Wide Corporate Level Government Performance and Results Act (GPRA) Goals. In response to the GPRA, the Department of Defense has established 2 DoD-wide goals and 7 subordinate performance goals. This report pertains to achievement of the following goal (and subordinate performance goals):

> **Goal 2:** Prepare now for an uncertain future by pursuing a focused modernization effort that maintains U.S. qualitative superiority in key warfighting capabilities. Transform the force by exploiting the Revolution in Military Affairs, and reengineer the Department to achieve a 21st century infrastructure.
>
> - **Performance Goal 2.2:** Transform U.S. military forces for the future. **(00-DoD-2.2)**
> - **Performance Goal 2.3:** Streamline the DoD infrastructure by redesigning the Department's support structure and pursuing business practice reforms. **(00-DoD-2.3)**
> - **Performance Goal 2.4:** Meet combat forces' needs smarter and faster, with products and services that work better and cost less, by improving the efficiency of DoD acquisition process. **(00-DoD-2.4)**

DoD 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.

- **Environmental Functional Area. 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)**

General Accounting Office High-Risk Area. The General Accounting Office has identified several high-risk areas in the DoD. This report provides coverage of the Defense Contract Management high-risk area.

Methodology

To accomplish the evaluation, we identified and analyzed existing requirements, policy, and guidance related to the DoD overseas hazardous material and hazardous waste programs. We:

- conducted interviews, site visits, and data collection at the DoD, European Unified Command, the Army, the Navy, the Air Force, the Defense Logistics Agency, and the European Military Criminal Investigation Organization;
- researched environmental program requirements;
- reviewed implementation of the Military Services' programs and DRMS programs; and
- evaluated environmental program compliance.

To determine the adequacy of hazardous material and hazardous waste management, we evaluated DoD policy and procedures on material management, waste disposal, program oversight, and quality assurance. We also evaluated the impact of international agreements on the Military Services' management of hazardous material and hazardous waste in Europe. Additionally, we evaluated the effect changes in host nation environmental laws had on DoD hazardous waste program requirements. Finally, we examined the methods used by management to monitor the hazardous material and hazardous waste programs.

Evaluation Type, Dates, and Standards. We performed the program evaluation from June 1999 through January 2000 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 individuals and organizations within DoD and the Environmental Protection Agency. Further details are available upon request.

Management Control Program

DoD Directive 5010.38, "Management Control (MC) 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 the Management Control Program. We did not evaluate the management control program beyond ascertaining that the DoD Components have not reported any material management control weaknesses related to oversight of contractor performance and customer satisfaction with the hazardous waste disposal process. This evaluation disclosed no material weaknesses.

Prior Coverage

Office of the Inspector General, DoD, Report No. 99-251, "The Army Environmental Program in Germany," September 15, 1999.

Appendix B. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition, Technology, and Logistics
  Deputy Under Secretary of Defense (Environmental Security)
  Director, Acquisition Resources and Analysis
  Director, Defense Logistics Studies Information Exchange
Under Secretary of Defense (Policy)
Under Secretary of Defense (Comptroller)
  Deputy Chief Financial Officer
  Deputy Comptroller (Program/Budget)
Under Secretary of Defense for Personnel and Readiness
  Assistant Secretary of Defense (Health Affairs)

Joint Staff

Chairman, Joint Chiefs of Staff
Director, Logistics

Department of the Army

Assistant Secretary of the Army (Installations, Logistics and Environmental)
  Deputy Assistant Secretary of the Army (Environmental Safety and Occupational Health)
Auditor General, Department of the Army
Assistant Chief of Staff for Installation Management
Commander, U.S. Army, Europe and Seventh Army

Department of the Navy

Assistant Secretary of the Navy (Financial Management and Comptroller)
Auditor General, Department of the Navy
Assistant Secretary of the Navy (Installation and Environment)
Deputy Chief of Naval Operations (Logistics)
  Environmental Protection Safety and Occupational Health Division
Naval Inspector General
Commander, U.S. Navy Europe
Superintendent, Naval Postgraduate School

Department of the Air Force

Assistant Secretary of the Air Force (Financial Management and Comptroller)
Deputy Assistant Secretary of the Air Force (Environmental Safety and Occupational Health)
Auditor General, Department of the Air Force
Deputy Chief of Staff Installations and Logistics
Environmental Division
Commander, U.S. Air Forces Europe

Unified Command

Commander in Chief, U.S. European Command

Other Defense Organizations

Director, Defense Contract Audit Agency
Director, Defense Logistics Agency
Commander, Defense Logistics Support Command
Commander, Defense Reutilization and Marketing Service
Commander, Defense Reutilization and Marketing Service International

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

Congressional Committees and Subcommittees, Chairman and Ranking Minority Member (cont'd)

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

Department of the Army Comments

DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY, EUROPE, AND SEVENTH ARMY
INTERNAL REVIEW AND AUDIT COMPLIANCE OFFICE
UNIT 29351
APO AE 09014

AEAGX-IA 22 May 2000

MEMORANDUM FOR DEPARTMENT OF THE ARMY, U S ARMY AUDIT AGENCY, ORGANIZATIONAL EFFECTIVENESS, 3101 PARK CENTER DRIVE, ALEXANDRIA, VA 22302-1596

SUBJECT: Command Reply, DODIG Draft Evaluation Report on DoD Hazardous Waste Management and Removal Services in the U S European Command

1 Headquarters, U S Army Europe and Seventh Army (USAREUR) has reviewed the subject draft report Our detailed response is provided at Enclosure We concur with the finding and recommendations addressed to HQ USAREUR The enclosure also includes additional information to clarify issues and/or correct portions of the report

2 We appreciate the opportunity to review the draft report and to provide comments for consideration and inclusion in the final report

3 The USAREUR point of contact for this action is Ms June Valdez She can be reached at DSN 370-7589, or via commercial from CONUS at 011-49-6221-577589, or via electronic mail at: valdez@cmdgrp hqusareur army mil

Encl

///original signed///
WILLIAM L WHANGER, II
Chief, Internal Review and
Audit Compliance Office

Final Report
Reference

COMMAND REPLY
DODIG DRAFT OF A PROPOSED EVALUATION REPORT
DoD Hazardous Waste Management and Removal Services in the U.S. European Command

Finding. DRMS-I contractors were not providing adequate HW management and removal services at 10 of the 14 installations surveyed in Europe Contractors were not providing adequate services because: (i) DRMS-I and the installation commands did not provide effective oversight and quality control of contractor performance, and (ii) DRMS-I had not established an effective mechanism for customer feedback on contractor performance As a result, installations have an increased risk for safety and environmental compliance violations, criminal and civil liability, and negative impacts on operations

Additional Facts: HQ USAREUR is providing additional information designed to provide clarity and/or improve the accuracy of the report

Revised

a Ref pg 2, "DRMS-I Contract Administration" The report is correct in stating that the DRMS-I COR signs the manifests for the HW generators in Germany and the Benulex In Italy, the DPW-EMO office signs both the 1348 documents and the Italian Formulario which initiate the shipments of the wastes and is comparable to the American manifest system

b Ref pg 2, "DOD Hazardous Waste Policy Overseas" DRMS-I does not maintain the record of manifests The DPW EMO office does this

c Ref pg 9, The report highlighted the weak legal standing of Italian employees when there is a perceived violation of environmental laws HQ USAREUR is working with the Environmental Executive Agent United States Navy Europe (NAVEUR) in solving this issue for Army Installations in Italy Two recommendations were made during the 18 Feb 00 DoDIG Service Out Brief One of the recommendations was to have the DoD Environmental Executive Agency (NAVEUR) issue interim policy that explains and resolves conflicts between host nation laws and the final governing standards The second recommendation was to request USEUCOM publish a policy for responding to host nation enforcement actions against DoD facilities and employees

d Ref pg 11, "Safety and Compliance Violations" The DPW EMO office has coordinated correction of these deficiencies with the DRMS-I representative

e Ref pg 6, DRMS-I addresses the excessive number of collection points throughout HQ USAREUR; as the report stated, over 100 in Hanau alone To address this issue, HQ USAREUR has formed a Hazardous Waste Working Group Committee that will study the possibility of reducing the number of collection points This will allow (DRMS-I) better allocating resources, reducing the role of the installation for oversight of these locations, and streamlining the entire program This HW Working Group Committee will meet at the next Environmental Quarterly Managers Meeting in June 00 and discuss the reduction of excessive number of collection points

Enclosure pg 1

f The problems in Grafenwoehr, Hohenfels, Schweinfurt and Vilseck in March 99, noted in their 1999 Environmental Compliance Assessment System (ECAS) for Management Services were the result of start-up problems (new contractor, new contract, new services) These issues were satisfactorily resolved

g DRMS-I expanded their services in support of HQ USAREUR environmental requirements by providing waste management services, and contract assistance when HQ USAREUR is understaffed

Recommendation The Commander, HQ USAREUR will

a Verify that installation commands are conducting quality inspections and providing quality control at contractor-serviced hazardous waste sites on the installation in accordance with DoD policy

Action Taken. **Concur.** HQ USAREUR considers Contractor Oversight and Quality Control a shared responsibility between the ASGs, BSB's & DRMS-I HQ USAREUR will discuss this concept with the ASG/BSB's and DRMS-I during the next Environmental Quarterly Managers Meeting 15-16 June 00 Quality inspections have improved considerably ECAS results are now being used to measure the contractor's ability to comply with contract requirements DRMO has hired a new COR who provides effective oversight of contractor performance and immediately responds to all customer complaints DRMS-I and HQ USAREUR jointly participate in Hazardous Waste working group committees HQ USAREUR will inspect for environmental compliance (ECAS) as we do with all other tenants/customers/units (usually biannually) and management services will be randomly inspected at least once a month Increased number of inspections may be required if services are not satisfactory Other efforts to improve contract performance and oversight include reducing contract invoices for past unsatisfactory contract performance, and hiring personnel with greater English proficiency, the lack of which has caused problems at the beginning of the contract period

b Enter into Memorandums of Understanding (MOU) with the Commander, Defense Reutilization and Marketing Service International that specify the roles and responsibilities of each party regarding the management of hazardous waste not delivered to a Defense Reutilization and Marketing Office

Action Taken. **Concur** A revised MOU was drafted on 20 April 2000 by the representatives of the various ASG/BSB's, HQ USAREUR/ODCSENGR Environmental Division and DRMS-I and is being staffed by all parties with the intent to finalize by the end of FY 00 This MOU covers Germany and the Benelux An MOU between HQ USAREUR installations in Italy and the DRMS-I is being prepared by NAVEUR to clarify responsibilities in Italy and the intent to finalize by the end of FY 00

Department of the Navy Comments

Final Report Reference

DEPARTMENT OF THE NAVY
COMMANDER IN CHIEF
UNITED STATES NAVAL FORCES EUROPE
PSC 802
FPO AE 09499-0151

7500
Ser 012/U349
24 May 00

From: Commander in Chief, U.S. Naval Forces, Europe
To: Inspector General, Department of Defense

Subj: DRAFT EVALUATION REPORT ON DOD HAZARDOUS WASTE MANAGEMENT AND REMOVAL SERVICES IN THE U.S. EUROPEAN COMMAND (PROJECT NO. D2000CB-0002.01, FORMERLY PROJECT NO. 9CB-0088.01)

Ref: (a) IG, DoD Draft Report (D2000CB-0002.01) of 27 Mar 00

1. Summary. Reference (a) requested comments on the draft report and its recommendations. The response below sets forth comments and recommendations to clarify the report, and addresses two recommendations requiring Commander in Chief, U.S. Naval Forces, Europe (CINCUSNAVEUR) action. We concur with the recommendation that CINCUSNAVEUR verify subordinate commands conduct inspections and provide quality control at command contractor-serviced hazardous waste sites. We do not concur with the recommendation that CINCUSNAVEUR enter into a Memorandum of Understanding (MOU) with Commander, Defense Reutilization and Marketing Service International (DRMSI).

2. Comments on Report (keyed to sections)

a. Executive Summary:

Revised

(1) CINCUSNAVEUR does not concur that it should enter into a MOU with DRMSI, for the reasons set forth in paragraph 3.a.(2) below.

b. Background, Pages 1-3:

Revised

(1) U.S. Forces overseas are responsible for complying with DoD environmental Final Governing Standards (FGS). The FGS are determined by comparing the Overseas Environmental Baseline Guidance Document (OEBGD) to applicable host-nation environmental standards or standards under applicable international agreements, and where there is inconsistency, using the more protective standard to establish the FGS unless a specific international agreement with a host nation establishes a different applicable standard. The FGS is not a compilation of U.S. and host nation environmental laws as stated on page 1

Subj: DRAFT EVALUATION REPORT ON DOD HAZARDOUS WASTE MANAGEMENT AND REMOVAL SERVICES IN THE U.S. EUROPEAN COMMAND (PROJECT NO. D2000CB-0002.01, FORMERLY PROJECT NO. 9CB-0088.01)

of the draft report. Moreover, the NATO Status of Forces Agreement (SOFA) only requires residing allied forces to "respect" (not "obey" or "comply") with host nation law. Recommend that the report clarify U.S. Forces responsibility for environmental compliance in host nations.

(2) The draft report states, "In FY 1999, the military Components in Europe generated 37.3 million pounds of HW." Recommend that the report cite the source of this information.

(3) The draft report states, "DRMSI is the DoD property disposal specialist overseas and the DoD Executive agent for HW disposal in Europe." Recommend that the report reference the instruction that defines DRMO's Executive Agent responsibilities. Deleted

(4) The draft report states, "The Overseas Environmental Baseline Guidance Document sets the minimum overseas environmental standards, based on applicable provisions of United States laws as well as DoD environmental policies." The report subsequently often refers to OEBGD requirements. In countries with Environmental Executive Agents, the OEBGD is used in concert with Host Nation standards to establish FGS; the FGS set the minimum standards. Only in countries without FGS does the OEBGD sets the minimum standards. Additionally, the draft report refers to the 1992 OEBGD rather than the current OEBGD of 15 Mar 00. Recommend clarifying minimum overseas environmental standards. Revised

(5) The draft report refers to DoD Instruction 4715.6, which is not applicable overseas, thus making the reference to DoD 4160.21-M inapplicable also. Recommend deleting the references. Revised

(6) DoD Directive 4001.1 generally addresses the authority of a commander; it does not mention a waiver from using DRMSI services. The current OEBGD states: "C6.3.10.1 All DoD hazardous waste should normally be disposed of through the Defense Reutilization and Marketing Service (DRMS). A decision not to use DRMS for hazardous waste disposal may be made in accordance with DoD Directive 4001.1 (reference (n)) for best accomplishment of the installation mission, but should be concurred in by the component chain of command to ensure that Revised

Final Report Reference

installation contracts and disposal criteria are at least as protective as criteria used by DRMS." The FGS are being revised to reflect the current OEBGD and Host Nation standards. Recommend clarifying decision process for not using DRMS for hazardous waste disposal.

(7) The paragraph entitled "Role of Installation Commands" refers to the superceded OEBGD. The FGS are being revised to reflect the new OEBGD and current Host Nation standards. Recommend revising the paragraph to take into account the current OEBGD.

c. HW Contractor Performance in Europe Findings, Pages 4-5:

(1) This section states that the value of FY99 contact delivery orders and modifications for hazardous waste removal and disposal was $7.2M. See page 4. Recommend clarifying if this is included in the $10.4M figure cited in the background section for FY99 management, removal and disposal. See page 1.

d. Contractor Oversight and Quality Control Findings, Pages 5-10:

Revised

(1) The draft report states, "Finally, installation personnel in Italy reported they do not conduct inspections of contractor-operated sites because they believe that to do so would make them personally liable to host-nation regulators for contractor compliance violations." Please quantify the number and types (host nation, civilian, military) of personnel who expressed this opinion. The details will help CINCUSNAVEUR determine if this is an aberration or a common view that needs to be addressed through training and additional management oversight.

Revised

(2) The paragraph entitled "Personal Liability for Contractor Compliance Violations" requires revision. The terms of the SOFA do extend to local nationals working on U.S installations. Article 9 states that the conditions of employment and work for local civilian labor shall be those laid down by the legislation of the host nation. Host nation civil laws do not necessarily preclude a local national from being sued or subjected to enforcement of a judgment for a tort they commit in the performance of their official duty. U.S. military

Final Report
Reference

Subj: DRAFT EVALUATION REPORT ON DOD HAZARDOUS WASTE MANAGEMENT AND REMOVAL SERVICES IN THE U.S. EUROPEAN COMMAND (PROJECT NO. D2000CB-0002.01, FORMERLY PROJECT NO. 9CB-0088.01)

and members of the civilian component have protection from enforcement of private civil judgments brought against them in the host nation in a matter arising from the performance of official duties - these matters are to be brought under the NATO SOFA claims procedures. They are not necessarily protected from enforcement of administrative fines in cases brought by the host nation. U.S. military, civilian component and local nationals may have their counsel fees and related assistance incident to representation in foreign criminal and civil proceedings paid for by the U.S. With respect to criminal jurisdiction, the primary right to exercise criminal jurisdiction under the SOFA is more difficult for DoD to claim in official duty cases involving civilian employees because they are not subject to the UCMJ. U.S. criminal jurisdiction is not available under the SOFA for local national employees. In view of these limitations, a military member should be identified where possible as the responsible party for oversight (vice including oversight duties in a local national's position description).

e. Safety, Compliance, and Operational Impacts Findings, Pages 11 - 13:

(1) The lack of specifics regarding the deficiencies at Vicenza makes it difficult to understand the problem being described. Recommend clarifying the "compliance and safety violations." How was the waste in the one drum "clearly different" from the label? Recommend clarifying (if accurate) that the DoD standard at accumulation point is one drum of each type of waste. Also, recommending deleting any reference to Italian regulatory limits, as these are not applicable to U.S. installations. (U.S. installations follow the FGS.)

Revised

3. Comments on Recommendations Requiring CINCUSNAVEUR Action

a. Recommendations, Page 14:

Page 15

(1) Concur with Recommendation 3.a. Please note that there are no contractor-serviced hazardous waste sites as defined in the draft report (none serviced by contractors via management service contracts) on CINCUSNAVEUR installations.

(2) Do not concur with Recommendation 3.b. As stated, the objectives of the proposed Memorandum of Understanding (MOU)

Final Report Reference

Subj: DRAFT EVALUATION REPORT ON DOD HAZARDOUS WASTE MANAGEMENT AND REMOVAL SERVICES IN THE U.S. EUROPEAN COMMAND (PROJECT NO. D2000CB-0002.01, FORMERLY PROJECT NO. 9CB-0088.01)

are unclear and fail to address administrative procedures/ agreements already in effect at many theater locations.

Revised

(a) The recommendation requires that the MOU address "the management of hazardous waste not delivered to a Defense Reutilization and Marketing Office." It is unclear whether this refers to property that is "received in place" by DRMO contractors or property that is disposed of by the installation (generator) through other means than a DRMO contractor.

Revised

(b) The recommendation also apparently fails to take into account Memoranda of Agreement (MOA) and Inter-service Support Agreements already in place at some Navy installations (e.g., Naples, La Maddalena, Rota and Sigonella). The MOA's address Navy and DRMO roles and responsibilities in regards to property that is "received in place" by DRMO contractors.

(c) Finally, please note that DRMSI reviews and concurs with the Environmental Final Governing Standards for European countries that outline HW disposal roles. Based on this role, the preparation and staffing of an MOU covering the same issues would unnecessarily expend environmental resources that could be used for other issues.

R. S. Dearth

R. S. DEARTH
Chief of Staff

Copy to:
NAVINSGEN WASHINGTON DC

5

Department of the Air Force Comments

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON DC

6 JUN 2000

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDITING OFFICE OF THE INSPECTOR GENERAL DEPARTMENT OF DEFENSE

FROM: HQ USAF/ILE
1260 Air Force Pentagon
Washington DC 20330-1260

SUBJECT: Evaluation of DoD Hazardous Waste Management and Removal Services in the U.S. European Command, Project No D2000CB-0002.01, Formerly Project No 9BC-0088.1, 27 Mar 00

This is in reply to your memorandum requesting the Assistant Secretary of the Air Force (Financial Management and Comptroller) provide Air Force comments on the subject report Previously, we sent you a memo dated 1 Jun 00 that incorrectly stated "non-concur" with regard to Recommendation 3a; please disregard that memo This memo corrects that misstatement.

Recommendation 3a: Concur. The recommendation does not clearly indicate whether the phrase "...contractor serviced hazardous waste sites. " refers to sites serviced by the Defense Reutilization and Marketing Services International (DRMSI) hazardous waste (HW) management services contract option or sites being serviced by DRMSI disposal contractor for "receipt on-site" HW removals. However, based upon our interpretation we note that there has been recent validation that all USAFE installations using DRMSI's on-site HW removal services do have government oversight during the contract HW removal process Furthermore, all sites receive inspections in accordance with DoD policy and applicable Final Governing Standards. (NOTE: Because this is a current practice, there are no cost savings or time-need associated with this item.)

Recommendation 3b: Concur. The recommendation indicates the Commanders in Chief, U.S. Army Europe; U.S Navy Europe; and U S Air Force Europe should enter into Memoranda of Understanding (MOUs) with DRMSI But, it does not delineate whether this applies strictly to the HW management services contract option or if it also applies to HW removal contracts. Suggest a change of wording requiring USAFE to ensure installations establish MOUs with DRMSI (or Defense Reutilization Management Office (DRMO)) defining site specific roles and responsibilities This would appear to be more practical, regardless of the contracting option

The Air Force also notes the requirement to have an MOU (or equivalent) between the installation/generating activity and DRMO for HW "receipt on site" services is already established in DoD 4160.21-M (Aug 97), DLA Disposal Policy, Chapter 3, paragraph B.1.a. (1). In general, most USAFE installations have already established such MOUs with their servicing

DRMOs Aviano, Ramstein, Rhein Main, and Spangdahlem Air Bases are the only exceptions, and these installations are working now with DRMSI to have such MOUs in place by Sep 00, as required by DoD policy. (NOTE: Similar to 3.a., because this item is already in place, there are no cost savings or time-need associated with the item)

Paragraph 2, page 8: This paragraph should be deleted from the final report text since it offers no net value to the evaluation. It mentions that staffing for the HW program at Aviano AB, Italy, was reduced, leading the base to consider using DRMSI's HW management services contract This reduction was due, in part, to the implementation of a new Air Force policy moving manpower authorizations with entomology Air Force Specialty Codes (AFSCs) from the environmental flight back into the pest management shops While the entomology specialists typically manage Aviano's HW program, these resources were not lost; but, can be simply reassigned if the civil engineer commander desires The use of DRMSI's HW management services has been, and will continue to be, a resource option for base level commanders.

If there are any questions or concerns, you can contact Mr. Jeffrey Domm, AF/ILEVQ, 607-0196 or Maj Scott Bridgeman, AF/ILEPP, 604-3627.

Michael A. Aimone

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cc:
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Defense Logistics Agency Comments

DEFENSE LOGISTICS AGENCY
DEFENSE LOGISTICS SUPPORT COMMAND
8725 JOHN J KINGMAN ROAD, SUITE 2533
FORT BELVOIR, VIRGINIA 22060-6221

MAY 25 2000

IN REPLY REFER TO DLSC-LEP

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDITING, DEPARTMENT OF DEFENSE

SUBJECT: DoD IG Draft Report, Evaluation of DoD Hazardous Waste Management and Removal Services in the U.S. European Command (Formerly 9CB-0088.01, now D2000CB-0002 01)

The attached comments are provided in response to your March 27, 2000, request in the subject report We partially concur regarding the Findings and concur with comments regarding the Recommendations, but we non-concur with certain specific deficiencies that were cited in support of the Findings.

FRANK B LOTTS
Deputy Commander

Attachment

Final Report
Reference

SUBJECT: DoD IG Draft Report, Evaluation of DoD Hazardousw Waste Management and Removal Services in the U.S. European Command (Formerly *9CB-0088.01, now D2000CB-0002.01)*

FINDING: Hazardous Waste Contractor Performance. DRMSI contractors were not providing adequate HW management and removal services at 10 of the 14 installations surveyed in Europe. Contractors were not providing adequate services because:

-DRMSI and the installation commands did not provide effective oversight and quality control of contractor performance, and

-DRMSI had not established an effective mechanism for customer feedback on contractor performance

As a result, installations have an increased risk for safety and environmental compliance violations, criminal and civil liability, and negative impacts on operations.

DLA COMMENTS:
We partially concur with the summary finding in that there were problems with hazardous waste contractor performance causing initial dissatisfaction by installations using Waste Management Services; however, DRMSI was aware of the start-up problems associated with awarding a new contract and was in the process of developing and implementing corrective actions at the time of the DOD IG audit.

We non-concur with the following cited deficiencies, which led to the contention that installations have an increased risk for compliance violations, criminal and civil liabilities, and operational impacts:

Deleted

- *Drums of hazardous waste at Camp Ederle exceeded quantity limits.* Final Governing Standards *(FGS)* are based on individual waste streams. None of the observed waste streams exceeded the allowable limit.

- *Drums of HW at Camp Ederle were improperly labeled.* The contractor received the drums that were incorrectly labeled by the generator just prior to the visit of the DoD IG team. The contractor had no time to open the drums himself before being requested to do so by the IG team.

Revised

- *Hazardous waste stored outside of the covered storage area.* Final Governing Standards do not specifically require covered storage

- *DRMSI and the installation commands did not provide effective oversight of contractor performance.* DRMSI CORs maintain a policy of 100% oversight of hazardous waste removals. DRMSI CORs were providing oversight of the Waste Management Services Contractors, as

Final Report Reference

evidenced by the detection and correction of deficiencies cited by the COR's on-site evaluation of the contractor's performance at Camp Ederle.

- *DRMSI and the installation commands did not provide effective oversight and quality control of contractors. . . similar problems were found during other site visits or were reported by Army, Air Force and Navy command staffs.* The report cites no specific problems at Navy or Air Force installations. This statement should be removed from the report.

Revised

Regarding customer feedback, a number of initiatives have been implemented before, during and after the DoD IG inspection. These will provide customer assessments of contractor performance and improve customer satisfaction. These are enumerated in our response to Recommendation 2b

INTENAL MANAGEMENT CONTROL WEAKNESS:
(X) Nonconcur
( ) Concur; weakness will be reported in the DLA Annual Statement of Assurance

Revised

RECOMMENDATION 1: That the Commanders, Defense Logistics Support Command; Defense Reutilization and Marketing Service; and Defense Reutilization Marketing Service International jointly determine appropriate internal staffing levels and develop a strategic plan for improving contractor performance in Europe. The plan should address the strategic use of personnel resources and alternative strategies for ensuring effective contractor oversight.

DLA COMMENTS:
We concur with comments regarding the report's recommendation to determine appropriate internal staffing levels and develop a strategic plan for improving contractor performance. Since October 1999, DRMSI has consolidated two separate organizational zones into one. This has streamlined communications and provided DRMSI with increased flexibility to realign resources to meet mission requirements, such as hazardous waste contracting support. DRMSI and the Central European Zone will continue to evaluate the optimal geographic stationing of contractor oversight personnel to ensure the most effective and efficient mission accomplishment. Prior to any staffing review, as recommended, we first intend to coordinate a strategy with our generators to reduce hazardous waste accumulation points, thus reducing oversight requirements. Based upon these results, we will undertake a study to determine appropriate DRMSI staffing levels commensurate with the contractor oversight workload. The following actions have also

been implemented to improve contractor performance in Europe: (1) placing the contractor on a performance plan designed to bring performance into compliance with the terms and conditions of the contract; (2) providing generator training on administration of the contract and the role of the contractor; (3) co-locating and aligning environmental and contracting support personnel so that they are better positioned to respond to customer concerns about contractor performance; and (4) partially outsourcing the DRMSI Quality Assessment Program to enable personnel resources to be focused on proper disposal contract management and oversight. We expect to accomplish actions relating to the determination of staffing levels by June 2001.

DISPOSITION:
(X) Action is ongoing. Estimated Completion Date: JUNE 2001
( ) Action is considered complete

RECOMMENDATION MONETARY BENEFITS: (WHERE APPLICABLE)
DLA COMMENTS:
ESTIMATED REALIZATION DATE:
AMOUNT REALIZED:
DATE REALIZED:

RECOMMENDATION 2: Recommend that the Commander, Defense Reutilization and Marketing Service International:

a. Increase oversight of contractors receiving a negative performance evaluation and at installations reporting operational impacts from inadequate contractor performance; and, where appropriate, use the Default clause under Section F of the contract to hold contractors accountable for not complying with the term of hazardous waste contracts.

b. Institute a customer feedback system to solicit customer assessments of contractor performance and to use that information as a management tool for evaluating hazardous waste contractors and for improving customer satisfaction.

DLA COMMENTS:
a. We concur with comments. A number of the findings of inadequate HW contractor performance were identified at locations where the generators were faced with a new contractor, new contracts, and expanded DRMSI services. At the time of the findings, DRMSI was already working to correct performance issues. By August, 1999, there was a marked improvement in contractor performance and generator satisfaction. For example, the military communities of Vilseck and Grafenwoehr, Hohenfels and Schweinfurt were starting to work with a new contractor, after five years with the previous contractor. Identified problems with the startup of a new contract involved generator misunderstandings, generator unrealistic expectations of the contractor's role, differences of opinion between the contractor and the generator, generator underestimated amounts of anticipated hazardous waste, generator failure to go through the proper internal channels to turn-in hazardous waste, and contractor deficiencies (failure to arrive on time or within the specified period of performance, placement of containers in poor condition, and poorly qualified personnel on scene). The contractor was placed on a performance plan, and the generators were trained on the operations of the contract. The contractor's performance is now within standards and received a "commendable" rating for waste management during Vilseck's ECAS inspection in the summer 1999

At another cited instance at Camp Ederle, non-conforming contractor services were considered to be minor in nature and were again partially the result of new start-up processes.

The generators in Germany have been offered the option to re-solicit and award a new contract, but all have elected to continue with the new contractor due to improved performance and a better understanding of the contractor's roles and responsibilities.

In response to contractor default considerations, the use of "Default" option is always considered when warranted. Deficiencies must be such that they are endangering performance of the contract. We must emphasize that, when considering the termination of any contract, we must consider the resultant impact on the customer, which could include a break in contractor service, no contract coverage, and impacts on operational workload and environmental compliance.

To eliminate future start-up problems, standard operating procedures are being reviewed to apply lessons learned from start-up and administration of the contracts mentioned in the report. The roles and

responsibilities of the generator, contractor, contractor representatives, CORs, DRMSI-H, and DRMS-TPHB are being reviewed, as well as procedures for preaward meetings between the CORs, the contractor, and the generators to outline and discuss specific services offered under the contract.

b. We concur with comments. A number of initiatives implemented before, during or after the DoD IG visit have been instituted and will provide customer assessments of contractor performance and improve customer satisfaction: a centralized appointment desk has proved effective in coordinating timely removals of HW; the USAREUR and DRMSI Memorandum of Understanding will streamline problem solving efforts and improve communication between the generator and DRMSI which will provide immediate feedback; DRMSI contracting officer-environmentalist country-specific support teams have been established for monitoring customer and contractor input and contractor performance, and providing immediate customer support to the contractor, the generators and the CORs; the improved contractor performance survey, which provides customer feedback from the shop level to the installation environmental officer, has been modified to allow customers to comment on the performance of the COR, servicing DRMO, and DRMSI overall; and annual DRMSI compliance inspections of DRMOs include application of a customer survey to assess customer satisfaction with the DRMO, to identify desired service enhancements, and to obtain suggestions for program improvements

DISPOSITION:
( ) Action is ongoing. Estimated Completion Date:
(X) Action is considered complete

RECOMMENDATION MONETARY BENFITS: (WHERE APPLICABLE)
DLA COMMENTS:NOT APPLICABLE.
ESTIMATED REALIZATION DATE:
AMOUNT REALIZED:
DATE REALIZED:

ACTION OFFICER:CAROLYN BRIDGEMAN/CAAE/767-6245_____
REVIEW/APPROVAL:JAN REITMAN/CAAE/767-6303_____
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