

1. CONCEPT & BACKGROUND

These standards were developed by comparing and adopting the more protective requirements of the U.S. DoD Overseas Environmental Baseline Guidance Document (OEBGD) and Italian national, regional and local environmental laws and regulations, and applicable international agreements. These standards are the single definitive source of environmental compliance criteria applicable to DoD Components at installations in Italy. These are minimum requirements – component policy may impose additional requirements.

2. SCOPE

This document provides environmental standards for actions for DoD Components at installations in Italy. An installation is a base, camp, post, station, yard, center, or activity under the operational control of the Secretary of a Military Department or the Secretary of Defense.

Owned, leased, and joint use facilities that are operated or maintained by DoD Components must comply with these standards when, and to the extent that, the component controls the operation or maintenance activity (ies). At leased facilities operated and maintained by others, DoD Components may opt to require compliance with these standards by the lessor or contractor. In any case lessors and contractors must fully comply with Italian legal requirements.

This document does not apply to:

1. Installations that do not have more than de minimis potential to affect the natural environment (e.g., offices whose operations are primarily administrative, including defense attaché offices, security assistance offices, foreign buying offices and other similar organizations), or activities which DoD Components exercise control over only on a temporary or intermittent basis;
2. Operations of U.S. military vessels or the operations of U.S. military aircraft, or off-installation operational and training deployments. Off-installation operational deployments include cases of hostilities, contingency operations in hazardous areas, and when United States forces are operating as part of a multi-national force not under full control of the United States. Such excepted operations and deployments shall be conducted in accordance with applicable international agreements, other DoD Directives and Instructions, and environmental annexes incorporated into operation plans or operation orders. However, this document does apply to support functions for U.S. military vessels and U.S. military aircraft provided by the DoD Components, including management or disposal of off-loaded waste or material;
3. Facilities and activities associated with the Naval Nuclear Propulsion Program, which are covered under E.O. 12344 and conducted pursuant to 42 U.S.C. 7158;
4. The determination or conduct of remediation to correct environmental problems caused by DoD's past activities, conducted in accordance with DoD Instruction 4715.8, Environmental Remediation Overseas; and,

5. Environmental analyses conducted under E.O. 12114.

This document does not create any rights or obligations enforceable against the United States, DOD, or any of its components, nor does it create any standard of care or practice for individuals. Although the document references other DoD directives and instructions, it is intended only to coordinate the requirements of those directives as required. This document does not change other DoD or service directives or alter DoD or service policies.

3. RESPONSIBILITIES

It is DoD policy under the DODI 4715.5, Management of Environmental Compliance at Overseas Installations, that:

HQ USEUCOM will:

1. Coordinate and approve implementation of the FGS by the Environmental Executive Agent.
2. Resolve any disputes between other DoD Components and the Environmental Executive Agent regarding the FGS.

The DoD Environmental Executive Agent for Italy, CINCUSNAVEUR, will:

1. Develop and maintain the FGS in accordance with DODI 4715.5.
2. Distribute the FGS and any subsequent amendments or guidance to the service components and DOD agencies with installations or facilities in Italy. Forward a copy of revised FGS via USEUCOM to the Military Departments and DUSD(ES) for information.
3. Revalidate and update the FGS at least every two years.
4. Consult with host-nation authorities on environmental issues, as required, to maintain effective cooperation on environmental matters.
5. Resolve requests for waivers from the DoD Components.
6. Keep DoD Components informed of current environmental developments and trends.

DoD Components will:

1. Ensure that actions by DoD Components at installations in Italy, as well as planning, budgeting, programming, and execution, comply with these standards.
2. Designate Component Commanders or other officials who are authorized to apply for waivers or initiate appeals.
3. Attain compliance with the FGS using pollution prevention as the preferred means where economically advantageous and consistent with mission requirements.

4. WAIVERS

If compliance with the FGS at particular installations or facilities would seriously impair operations, adversely affect relations with Italian authorities, or require substantial expenditure of funds at an installation that has been identified for closure or at an installation that has been identified for a realignment that would remove the requirement, a DoD Component may ask the Environmental Executive Agent to waive the particular standard. Waivers are not required if compliance projects have been programmed by the service components but remain unfunded. See DoD Instruction 4715.5, Management of Environmental Compliance at Overseas Installations, and EUCOM Directive 80-1, Environmental Security, for complete waiver procedures.

The installation commander will forward waiver requests to the Environmental Executive Agent via the Component chain of command. Waiver requests should specify, at a minimum:

1. The particular standard for which a waiver is requested;
2. The extent of the relief requested and the period that the waiver will be in effect;
3. The anticipated impact of the waiver, if any, on human health and the environment or relations with Italy authorities over the period of the waiver; and,
4. The justification for the waiver and if a complete waiver of the standard is requested, why a partial and/or temporary deviation would not be sufficient.

The Environmental Executive Agent will consult with the other DoD Components and USEUCOM and grant or deny the request for waiver in whole, in part, or conditionally. Waivers may require periodic reviews and reporting.

In the event that the Environmental Executive Agent denies a waiver, the DoD Component may appeal to HQ USEUCOM for reconsideration.

5. PERMITS & REPORTING

The Italian Base Commander is the formal representative of the installation pursuant to bilateral agreement and serves as the liaison with national authorities and the contact with local authorities and local external military and civil entities. Therefore, any formal interaction or interaction of common (U.S. and Italian) interest with Italian authorities will be conducted under the cognizance, approval, or involvement of the Italian Base Commander. DoD Components will assist the Italian Base Commander with applying for permits and providing reports and records or otherwise helping him with his liaison duties. DoD Components shall not obtain permits directly from the host nation. Matters for which the Italian Base Commander may be expected to require assistance are listed in the Administrative Items at the end of each chapter.

If the Italian Base Commander obtains a permit on behalf of a DoD Component and the permit requires a more protective standard than prescribed in the FGS, the standard in the permit shall be the compliance standard. However, if a permit allows a less protective standard, then the FGS will be the compliance standard unless a waiver is obtained.

If the installation at issue does not fall under the responsibility of an Italian Base Commander, the DoD installation may request clarification from the Environmental Executive Agent via the chain of command. The Environmental Executive Agent may pursue having higher Italian military headquarters resolve representational responsibility.

Contractors performing work for DOD must comply with all Italian laws and regulations including obtaining all necessary licenses and permits.

6. ACCESS TO INSTALLATIONS & INFORMATION BY ITALIAN AUTHORITIES

Inspections and non-routine requests for information by Italian authorities shall be coordinated with the Italian Base Commander and reported to the Environmental Executive Agent via the Component chain-of-command. To the maximum extent possible, U.S. military personnel shall lead the review of DoD Component activities by Italian authorities during the inspection.

7. LEGAL PROTECTIONS FOR U.S. FORCES EMPLOYEES

Legal protections afforded DoD personnel investigated or charged by a host nation with alleged offenses arising out of any act or omission done in the performance of official duty vary depending upon the status of the individual under the NATO Status of Forces Agreement (SOFA) and other applicable international agreements. In general, there is a greater ability for the U.S. to assert a primary right to exercise criminal jurisdiction over a member of the force as opposed to a member of the civilian component. There is no such right with respect to local national employees. Accordingly, due consideration should be given to a military service member assuming responsibility, in coordination with the Italian Base Commander, for issues of alleged U.S. noncompliance raised by host nation authorities.

Installations, activities, and personnel should immediately contact their servicing legal office when faced with possible or actual host nation enforcement actions in order to maximize protections afforded to DoD personnel under the NATO SOFA, bilateral agreements, and U.S. and DoD regulations, and to secure legal representation for the subjects of the enforcement action (including local national employees). Installations will report possible or actual Italian enforcement actions to the Environmental Executive Agent via their chain-of-command.

If the authorities seek to question a DoD employee regarding his or her official duties, a representative from installation legal should accompany the employee. The installation legal representative should clarify with the authorities whether the employee is questioned as a suspect or a witness, and the employee advised accordingly. It may not be readily apparent whether the host nation legal proceeding is criminal or administrative in nature. This point should be

clarified as soon as possible since different procedures may apply depending on the answer. Installations will report interview by Italian authorities to the Environmental Executive Agent via their chain-of-command.

1.7.1 COUNSEL FEES & RELATED ASSISTANCE

AR 27-50/SECNAVINST 5820.4G, "Status of Forces Policies, Procedures, and Information," establishes criteria and assigns responsibility for the provision of counsel and bail, the payment of court costs, and other necessary and reasonable expenses incident to representation in foreign criminal and civil proceedings. It includes appellate proceedings before foreign courts and foreign administrative agencies that involve military and civilian personnel (including local nationals). The payment of fines is not authorized by the reference. Approval authorities and additional procedures for requests for counsel fees and related assistance are listed in USAREUR Regulation 550-50/USAFE Instruction 51-706, "Exercise of Foreign Criminal Jurisdiction Over United States Personnel." Approval authority is assigned according to geographic area rather than chain of command.

1.7.2 CRIMINAL JURISDICTION

DoD policy is to maximize U.S. criminal jurisdiction to the extent permitted by applicable agreements. EUCOM Directive 45-3 and service instructions define policy, responsibilities, and procedures for the exercise of U.S. jurisdiction. Certain countries have tri-service regulations that address country specific policy, responsibilities and procedures. The primary right to exercise jurisdiction under the NATO SOFA may be more difficult for DoD to claim in official duty cases involving civilian employees because the extraterritorial application of U.S. law to civilians is limited. U.S. jurisdiction is not available for local national employees. In view of these limitations, a military member should be identified, where possible, as the responsible DoD party in an enforcement action. If an assertion of the primary right to exercise jurisdiction is not appropriate or is denied in a case, consideration should be given to requesting a waiver of host nation jurisdiction.

1.7.3 DEPARTMENT OF JUSTICE (DOJ) INVOLVEMENT

The 28 C.F.R. section 50.15, provides procedures for representation of Federal employees by DOJ attorneys. A Federal employee may be provided representation in civil and criminal proceedings in which he or she is sued, subpoenaed, or charged in his individual capacity, where the actions of the employee reasonably appear to have been performed within the scope of the employee's employment and representation is in the interest of the U.S. In civil/administrative cases, DOJ may request substitution of the United States for the employee. The installation legal representative should coordinate requests for DoJ representation through Component command channels and the Environmental Executive Agent.