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Environmental Compliance: Implications for Senior Commanders

WILLIAM D. PALMER

Defense and the environment is not an either/or proposition. To choose between them is impossible in this real world of serious defense threats and genuine environmental concerns.

— Secretary of Defense Dick Cheney, 1990¹

Three recent criminal prosecutions of Army personnel for environmental crimes underscore the serious consequences that can attend environmental violations. In *U.S. v. Carr* a Federal jury convicted an Army civilian maintenance foreman at Fort Drum of criminal violations of the Superfund Law for having instructed subordinates to dump and bury cans of waste paint.² The court sentenced Mr. Carr to one year in prison, suspended the sentence, and ordered him to serve one year of supervised probation. Mr. Carr's supervisory chain suspended him without pay for one year pending the outcome of the case, then demoted him to a nonsupervisory position after his conviction. In *U.S. v. Dee*, a Federal jury convicted three Army civilian scientists from Aberdeen Proving Ground of criminal violations of the Resource Conservation and Recovery Act for failing to properly identify, store, and dispose of hazardous wastes generated by their chemical weapons laboratory.³ One of the defendants, Dr. William Dee, was the principal architect of the Army's binary chemical weapons program. The court sentenced each defendant to 1000 hours of community service and a suspended sentence of three years probation. In *U.S. v. Pond* a Federal jury convicted the foreman of the Fort Meade wastewater treatment plant of criminal violations of the Clean Water Act for failing to conduct required sampling and tests and for submitting false test reports.⁴ The court sentenced Mr. Pond to eight months

in prison and four months in-house detention to be followed by one year of supervised probation and monetary restitution.

How can Army leaders avoid having these unhappy outcomes visited upon either themselves or their subordinates? This essay will undertake to explain how.

The Army is committed to environmental compliance in its operations to a degree that would have shocked its leaders of 20 or even 15 years ago. The Secretary of Defense's statement at the head of this article demonstrates that this commitment extends to the highest levels in the Department of Defense. The Secretary of the Army and the Chief of Staff have been equally direct in their guidance regarding environmental compliance: "Although the primary mission of the United States Army is national defense, we are committed to protecting our environment and conserving our natural resource heritage both for ourselves and future generations."⁵ This commitment to environmental compliance may intimidate many of today's Army leaders who know of environmental law as a strange mixture of ominous acronyms (CERCLA, RCRA, NEPA, TOSCA) and who have heard such stories of the dire consequences of noncompliance as those above.

Environmental compliance obligations arise in many contexts. The installation commander typically runs a number of operations that come complete with a range of environmental compliance obligations. These operations include wastewater treatment plants, boiler plants, drinking water systems, solid waste disposal, range operations, and removal of hazardous wastes such as asbestos, to name some of the more obvious. Perhaps the obligations of the lower-level leader are not so obvious, but they are real. Motor pool operations generate hazardous wastes in the form of used oil and other lubricants and solvents that must be collected, labeled, stored, and disposed of properly. POL supply points require spill prevention and control plans, spill reports, and proper maintenance and record-keeping procedures. Army installations have recycling programs for paper, waste oil, lead, brass, and other materials. Army leaders are responsible for sanitation and waste disposal during field exercises and other deployments. A leader's failure to attend to the details of proper disposal of hazardous wastes can impair installation

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operations, as Fort Polk discovered to its sorrow when JP-4 aviation fuel flushed into the sewage treatment plant, destroyed the plant's ability to treat wastewater, and led to violations of the plant's discharge permit.⁶ Because environmental compliance obligations have become such an integral part of the Army's operational mission, leaders must become familiar with the nature of this system and its requirements.

What Is Environmental Law?

- *It Is a Product of the Legislative Process*

Environmental law is primarily statutory, meaning that a legislative body has determined what needs protection; what kind of protection is required; who ought to be subject to environmental standards; and the penalties for violations. Its statutory nature is the system's strength, since only a broad societal consensus could bring about significant change. But this statutory aspect also entails telling weaknesses since our nation's body of environmental law was passed piecemeal. Over time, Congress has addressed separate problems such as air pollution (Clean Air Act); water pollution (Federal Water Pollution Control Act or Clean Water Act); and hazardous waste sites (the Superfund Law, known formally as the Comprehensive Environmental Response Compensation and Liability Act, or CERCLA). This fragmented approach has resulted in a variety of environmental protection laws, each representing a separate set of political and technical judgments that frequently have little relationship to one another.⁷ Thus our existing environmental laws constitute an uneasy alliance, not unlike a coalition government of moderate leftists and centrists. They may share the same ultimate goal, but each represents a slightly or even markedly different approach to achieving that end. Army leaders and their staffs must monitor installation operations according to standards, requirements, and procedures that vary with the type of pollutant each operation is generating.⁸

The several executive agencies charged with implementing and enforcing this system of laws, principally the US Environmental Protection Agency (EPA) and state environmental regulatory agencies, further complicate the system as they tend to compartmentalize themselves along the lines of the laws they are implementing.⁹ Thus Army leaders are likely to deal with one regulatory official regarding air quality permits, another regarding wastewater treatment plant operations, and another regarding hazardous waste programs. Unfortunately, our system of environmental laws has made one-stop shopping for environmental compliance impossible in most states.

These same executive agencies have added to the complex nature of environmental law with their own bodies of regulations that further interpret the requirements of the statutes passed by the legislatures. These regulations have the force of law and are as enforceable as the statutes themselves.¹⁰

The system of environmental laws is thus not a coherent whole, but rather a series of legislative judgments and executive interpretations about the appropriate approach to each specific type of pollution. Army leaders as a result confront great complexity in implementing the requirements of this system.

- *Environmental Law Is Recent*

Considering how broadly our system of environmental laws has affected life in the Army and in the nation in general—influencing everything from where we can conduct maneuver training to the contents of our underarm deodorant—one might assume that it has been with us for many years. But this system is very young, with most of our existing federal environmental laws dating back only to the early 1970s.¹¹

The fact that our environmental laws are recent has several significant implications for Army leaders. These laws were in many ways experimental, since they imposed controls for the first time. The same lawmaking bodies that created the statutes and implementing regulations have amended them repeatedly, refining their experimental approaches to pollution control.¹² Army leaders can expect to confront difficulties in managing environmental compliance programs caused in part by regulatory agencies unable to keep up with the changes in their own authorizing statutes or with the state of environmental technology and science.¹³ Army leaders must respond to the flux in environmental laws by creating a command climate that accommodates this constant change in the environmental compliance system. Such a climate will include seeking out and funding training opportunities for the installation's environmental management, legal, safety, and industrial hygiene staff. Likewise, Army leaders must recognize the need for periodic refresher training for members of their commands whose duties include environmentally sensitive operations such as vehicle maintenance, POL handling, and ammunition disposal.

Finally, these comparatively new laws and their implementing regulations can lead to delays in obtaining the approvals required for complying with the law in a particular situation. The often-untested techniques available for responding to a unique pollution prevention situation lead to a predictable institutional inertia. Higher commands may prove unwilling to approve a new approach until they have subjected it to a lengthy staffing and review process. The regulatory agency charged with enforcing the law at the installation level will face the same dilemma through its supervisory chain. If the tried and true methods do not apply in a given situation, Army leaders are likely to find themselves picking their way through a minefield of vague or even conflicting guidance from regulators and higher command and staff elements.

As our system of environmental law matures, and it is doing so quickly, regulatory agencies and the military are developing greater familiarity with the range of issues and options involved in a given pollution control situation. As we confront fewer "first times" in our environmental compliance

issues, we will find the solutions more readily, and the compliance process will become less contentious and frustrating.

- *Environmental Law Is Technology-Based*

Our system of environmental laws relies heavily on science and technology to accomplish its mission. For example, the statutes and their implementing regulations rely on scientific studies to establish standards for acceptable levels of pollutants.¹⁴ The discharge permit a state grants to an installation wastewater treatment plant under the Clean Water Act provides a typical example. The discharge permit will give numeric limits, expressed in seven- and 30-day arithmetic means and amounts per liter, for the constituents of a plant's wastewater discharge. The state will set these limits based on the efficiency of the technology the plant uses to treat wastewater. The permit will also specify monitoring, testing, and reporting requirements. Every one of these numeric limits, tests, and reports constitutes a legally enforceable obligation.

The technical nature of environmental law with its scientific and technology-based compliance standards can cause apprehension. But Army leaders confronting a pollution compliance problem quickly develop a working familiarity with the scientific and technological issues involved in the problem. Every installation has staff officers in the office of the staff judge advocate and environmental management office whose job is to assist commanders to identify and resolve environmental compliance issues. Developing a working knowledge of technical or scientific concepts as they apply to an environmental compliance problem is no different from developing a working knowledge of any other part of an operational mission which needs attention.

- *Environmental Law Is Participatory*

Our system of environmental laws boldly goes where no law has gone before in providing generous public access to military installations and to military decisionmaking. The system frequently opens the front gates of an Army installation and the rationale for installation environmental decisions to public inspection. Congress mandated this openness to generate public support for environmental actions through community input in the environmental decisionmaking process.¹⁵

The National Environmental Policy Act (NEPA) and the Superfund Law are good examples of this legislative tendency. NEPA requires the now-familiar Environmental Assessment/Environmental Impact Statement before any federal action which significantly affects the environment.¹⁶ The regulations governing the impact statement require public notice and encourage public involvement in evaluating the proposed project and its alternatives. This public involvement can include public meetings, correspondence with uniquely affected persons, and opportunities to submit written or oral comments regarding the proposed action.¹⁷ The Army leader responsible for a hazardous waste site

cleanup under the Superfund Law must publish a notice of the proposed Remedial Action Plan the Army intends to use to accomplish the cleanup. The Army must provide a reasonable opportunity for written and oral comments and must hold a public meeting regarding the plan.¹⁸

This potentially high level of public involvement in installation-level decisionmaking can be upsetting to the Army leader who is accustomed to running his command as a personal fiefdom. Success in the public participation component of the Army's environmental compliance mission requires the active and effective involvement of the installation public affairs officer.

Beyond the public participation envisioned in NEPA and Superfund, Congress strongly believes in the effectiveness of permitting citizens to sue to enforce the requirements of environmental laws. Joe Citizen may bring suit against any polluter, including military installations and their leadership, who stands in violation of environmental protection laws.¹⁹ Congress envisioned the citizen's suit as a goad to effective enforcement by regulatory agencies like the EPA and as a direct enforcement tool to be used against polluters.²⁰ This vision has come to pass as concerned individuals and groups file large numbers of citizen suits each year. The citizen suit provision of the Clean Water Act is particularly popular, generating over 880 lawsuits between 1983 and 1988. And this figure, impressive though it is, doesn't tell the whole story. Just one environmental group, the Natural Resources Defense Council, during 1984 issued 121 notices of intent to sue under the Clean Water Act citizen suit section and ultimately elected to file suit in only 13 of those cases.²¹ In 1989 the council used the Clean Water Act's citizen suit provision to send a notice of intent to sue the US Military Academy for previous Clean Water Act violations.²² The council never filed its threatened lawsuit, as West Point was able to convince it that the problems leading to those past violations had been corrected. Army leaders grappling with an environmental compliance issue are thus not insulated from public or judicial review of their decisionmaking and must in many cases expect and provide for meaningful involvement by parties outside the installation.

- *Environmental Law Relies Heavily on State Enforcement*

Although Congress clearly intended to move out smartly in attacking pollution through the flurry of environmental protection legislation it passed in the 1970s, many of these laws placed the enforcement and implementation burden on the states. Commentators have referred to this system of state implementation and enforcement of federal standards, goals, and guidance as Cooperative Federalism or New Federalism.²³

But Congress had to do more than simply assign the enforcement and implementation mission to the states if it wished to give the states regulatory authority over military installations. Congress also waived federal sovereign immunity in every environmental protection statute, enabling states as well

as citizens to sue military installations and their leadership to enforce the pollution laws.²⁴

Congress's message in these waiver provisions is blunt: military installations must comply with all environmental laws just like the glue factory outside the gate. The state or local officials who enforce the environmental laws against the glue factory have the legal authority to enforce the same compliance standards against Army installations. Army leaders must be prepared to open their installations to state and local environmental officials and to cooperate with those officials to resolve any compliance problems their inspections reveal.²⁵ The days when the military could retreat within its reservation enclaves and pursue its national defense mission as it saw fit are long gone. Congress has made the states full partners in a national defense mission which includes environmental protection and preservation.

- *Environmental Law Has Teeth*

As we have seen, our environmental laws have tough enforcement mechanisms which military installations are encountering with greater frequency. Violations of environmental compliance obligations generally expose the violator to civil and criminal penalties and to the possibility of having to cease operations pending resolution of the violation. These legal sanctions, whether civil or criminal, are frequently keyed to each day of violation, making continuing violations especially costly.²⁶

The courses that federal and state environmental regulatory agencies will pursue in their early enforcement efforts against a facility are similar. The agency will first issue a Notice of Violation (NOV), identifying the alleged violation and requesting action to remedy the situation. This should be the commander's call to arms if he is not already aware of and working to resolve the problem. If the agency is not satisfied with his response to the NOV, it will usually issue a proposed Compliance Agreement or Compliance Order which will establish specific objectives the commander is responsible for meeting within specified time frames.²⁷

If the enforcement agency is the EPA and it is unsuccessful in getting the federal violator's attention using the NOV and Compliance Order, it will refer the dispute to EPA headquarters for resolution between EPA headquarters and Department of the Army.²⁸ The EPA will not bring civil suits nor, in most cases, levy civil penalties against noncompliant federal facilities.²⁹

On the other hand, if the frustrated enforcement agency is a state environmental regulatory agency, it will likely escalate its enforcement efforts by filing suit and seeking civil penalties or a court order to enforce its Compliance Order. The states are not subject to the same constraints the EPA imposes on itself and therefore have a wider variety of enforcement actions available to them.³⁰

Prosecutorial authority over criminal violations of environmental laws rests principally with the Department of Justice and the US attorneys in the federal districts.³¹ Each of the three criminal prosecutions discussed at the beginning of this article were litigated by US attorneys. The legal principles arising from these cases and the criteria federal prosecutors consider in deciding whether to prosecute environmental violations are useful to Army leaders. They serve as guides for implementing environmental compliance programs and for responding to reports of violations.

Because environmental laws are designed to protect the public from dangers against which individuals cannot reasonably protect themselves, a prosecutor is not required to prove that violators knew their actions were illegal. The offense is complete so long as the violators act voluntarily, knowing that they are dealing with hazardous materials. The court that convicted the Aberdeen scientists in *U.S. v. Dee* was restating a well-established legal principle when it found that in this context “ignorance of the law is no defense.”³² This principle demonstrates that Army leaders who fail to comply with known environmental compliance obligations risk criminal prosecution even when they may be unaware that their action or failure to act constitutes a criminal offense. Furthermore, Supreme Court cases from corporate settings imply that if commanders insulate themselves from discovering such violations, the “Responsible Corporate Officer” doctrine may hold them criminally responsible for those violations.³³ Thus Army leaders responsible for environmental compliance ignore or attempt to evade that responsibility at their peril.

What Should a Commander Do?

What course ought an Army leader concerned with environmental compliance pursue to avoid such penalties as have faced other violators? The Department of Justice policy for evaluating environmental violations provides useful guidance concerning behavior the Department wants to encourage. This policy considers a number of circumstances which militate against prosecution. Did the agency voluntarily disclose the violation? Did the agency cooperate in remedying the violation? Does the agency have an active environmental monitoring and compliance program? How pervasive is the noncompliance? Did the agency take disciplinary action itself where warranted?³⁴ Where these factors are positive, the US attorney is unlikely to seek criminal indictments.

The degree of knowledge the government must prove in environmental prosecutions and the factors prosecutors consider in assessing violations suggest that Army leaders must meet two fundamental obligations to avoid sanctions for environmental violations. First, such leaders must act affirmatively to ensure an effective environmental monitoring and compliance program is in place. Second, they must respond promptly and in good faith to any violations uncovered by this in-house program or by environmental

regulatory agencies. The Army has incorporated these obligations into its regulations, making them an integral part of a commander's mission.³⁵

Army leaders have a legal and environmental staff to assist them in implementing an effective environmental compliance program. This compliance program must include periodic environmental audits.³⁶ An installation's most recent audit and the management plan developed to address problems identified in the audit provide a good place for an incoming installation commander to begin. An Army leader seeking specific guidance concerning how to implement a comprehensive environmental compliance program will find it in the *Commander's Guide to Environmental Compliance*, which is available through the US Army Toxic and Hazardous Materials Agency.³⁷ Army Regulations 200-1 and 200-2 contain further guidance in defining a commander's environmental compliance mission. Army leaders who are not installation commanders can use the same professional staff and references to identify their own environmental compliance obligations. They can, for example, call upon the installation environmental coordinator for assistance in identifying the environmental compliance issues in the operations of their subordinate command, tenant activity, or operational directorate.

Environmental compliance is a cooperative effort. This means Army leaders must ensure that staff members and the operational elements they serve communicate with one another concerning environmental compliance issues. This also means reporting violations to environmental regulators and cooperating with them to remedy the problem. Army leaders who treat environmental compliance as an important part of their mission are unlikely to feel the bite of our system of environmental laws.

The Army's commitment to environmental compliance is summarized in the following set of environmental quality goals published as Army policy in AR 200-1.³⁸

- Demonstrate leadership in protecting and improving the environment.
- Minimize environmental impacts while maximizing readiness.
- Integrate environmental considerations into Army decisionmaking.
- Restore lands and waters damaged by past Army waste disposal practices.
- Support recycling programs to conserve natural resources and minimize generation of wastes.
- Actively address environmental quality issues in relations with neighboring communities.

This aggregate commitment is more than just a promise to be good. It obliges Army leaders to be environmentally conscious in their decision-making, in their relations with the civilian community, in field and garrison, and in correcting past mistakes. They must live with and ultimately overcome

a legacy of environmental neglect. Their efforts are typified by the massive restoration projects underway at Rocky Mountain Arsenal, Twin Cities Army Ammunition Plant, Aberdeen Proving Ground, and a host of other installations where the Army has seriously damaged the environment in past operations.³⁹ These undertakings indicate that the Army is committed to the proposition that protecting the environment is an integral part of its duty.

Notwithstanding all this, some commanders may yet be tempted to think, "I have a mission to accomplish and being 'environmentally conscious' would just get in the way—I'm going to do what I need to do to get the mission done." But Army leaders cannot disregard environmental compliance in the name of "the mission." Complying with laws and regulations that apply to operations is as much a part of the mission as anything else. Dr. Dee honestly believed he was doing his job and serving the best interests of his nation by accomplishing his chemical weapons development mission at Aberdeen Proving Ground without having to waste time with the petty details of proper labeling, storage, and disposal of hazardous substances. He was wrong, and he and his subordinate supervisors paid a heavy price for failing to recognize their environmental compliance obligations. Prosecuting attorneys will go after the senior responsible official. The next higher official after Dr. Dee wore a green uniform with stars on the shoulders. That commanding general would have been a defendant had the FBI established that he was aware of and failed to act on his knowledge of the sloppy hazardous waste handling and disposal practices at Dr. Dee's facilities.

Our nation's system of environmental laws imposes significant obligations on Army leaders and enforces those obligations with public involvement in environmental decisionmaking and state enforcement authority over federal military installations. The system is complex, but the essential obligations of an Army leader are basic: to ensure environmental accountability in their operations and to respond effectively to violations of compliance obligations. In each case Army leaders can look to the installation-level environmental management cells in the engineering directorate and the office of the staff judge advocate for assistance in sorting out the technical and legal specifics of any compliance obligation.

Every Army leader shares responsibility for meeting the Army's obligations and pursuing the Army's goals in the area of environmental compliance. It's part of the mission. Environmental compliance is not just a good idea for its own sake. It's a good way to stay out of jail.

NOTES

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1. Address by Secretary of Defense Dick Cheney at a forum titled "Defense and the Environmental Initiative," September 1990. For a strong statement that the Army is not yet fully awake to its responsibilities in the area of environmental compliance, see Kent H. Butts, "Army Strategy for Environmental Success," Strategic Studies Institute Report (US Army War College), 1 August 1991.

2. U.S. v. Carr, 880 F.2d 1550 (2d Cir. 1989).

3. U.S. v. Dee, 912 F.2d 741 (4th Cir. 1990).

4. U.S. v. Pond, (D.Md. January 24, 1991), described in Information Paper by Gary M. Perolman, Environmental Law Division, US Army Legal Services Agency, "Fort Meade Civilian Employee Conviction," 14 March 1991 (on file with author).

5. Department of the Army, *Commander's Guide to Environmental Compliance* (Washington: GPO, 1989), p. 3.

6. Louisiana sent Fort Polk a Notice of Intent to Sue for violations of the Clean Water Act in 1984. Waste JP-4 jet fuel dumped into the post's sewage system had knocked out the post's wastewater treatment plant by killing the microbes the system used to treat its sewage. Fort Polk avoided litigation by reporting the violations and constructing grease/oil traps and a tertiary treatment facility. Information Paper by Captain William D. Palmer, Office of the Staff Judge Advocate, 5th Infantry Division and Fort Polk, "Fort Polk's Efforts to Correct Violations of Effluent Discharge Standards," 11 April 1985 (on file with author).

7. Al Alm, "A Dream That Hasn't Come True," *EPA Journal* (September-October 1990), p. 13.

8. The legislative process can also complicate the system of environmental laws by reacting precipitously to a perceived need, creating a statute which is exceptionally obtuse even by the standards of environmental statutes. The Superfund Law is a case in point. Even courts applying CERCLA have been impressed by its unique opacity and have said so: "Rushed through a lame duck session of Congress [Congress patched the law together during the last months of the Carter Administration], CERCLA has acquired a well-deserved notoriety for vaguely drafted provisions and an indefinite, if not contradictory, legislative history." *State of Ohio ex rel. Brown v. Georgeoff*, 562 F. Supp. 1300, 1310 n. 12 (N. D. Ohio, 1983). When it passed CERCLA, Congress bypassed the usual conference committee procedures, which tend to rectify dysfunctional sections of legislative proposals and generate clear expressions of what Congress is trying to accomplish. So Congress left courts and those of us subject to regulation under CERCLA to figure out what Congress intended.

9. Alm, *supra* note 3 at 13-14.

10. The regulatory agencies promulgating these regulations are acting pursuant to authority delegated to them by either the President or the Congress.

11. Only the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. (U.S. Code) §§ 4321-4370c (1988), predates the 1970s. Other environmental legislation was around prior to the 1970s, particularly in the area of air and water pollution, but it proved singularly ineffective. Congress passed the following major environmental legislation in the ten years from 1970 through 1980: The Clean Air Act in 1970 (CAA), 42 U.S.C. §§ 7401-7671q (1988); The Federal Water Pollution Control Act (The Clean Water Act—CWA) in 1972, 33 U.S.C. §§ 1251-1387 (1988); The Federal Insecticide, Fungicide, and Rodenticide Act in 1972 (FIFRA), 7 U.S.C. § 136-136y (1988); The Marine Protection Research and Sanctuaries Act in 1972 (MPRSA), 33 U.S.C. §§ 1401-1445 (1988); The Coastal Zone Management Act in 1972 (CZMA), 16 U.S.C. §§ 1451-1464 (1988); The Endangered Species Act in 1973 (ESA), 16 U.S.C. §§ 1531-1544 (1988); The Toxic Substances Control Act in 1976 (TSCA), 15 U.S.C. §§ 2601-2671 (1988); The Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act in 1976 (RCRA), 42 U.S.C. §§ 6901-6992k (1988); and The Comprehensive Environmental Response Compensation and Liability Act in 1980 (CERCLA), 42 U.S.C. §§ 9601-9675 (1988).

12. Congress has significantly amended the major federal environmental statutes numerous times: FIFRA, 5 times; TSCA, 2; CZMA, 3; ESA, 3; FWPCA, 5; MPRSA, 3; NEPA, 1; RCRA, 3; CAA, 2; CERCLA, 1.

13. On more than one occasion while the author was assigned as the Post Judge Advocate at Sierra Army Depot and involved in negotiations with California environmental regulators, the command confronted the difficult situation of the California legislature amending California's environmental laws faster than the regulatory agency could respond with appropriate implementing regulations. When the command asked for regulatory approval for a specific action or procedure the response was the institutional equivalent of a shrug of the shoulders. The regulators did not know whether they could approve the request, yet the Army had a clear legal obligation to act in response to an environmental problem.

14. The Clean Air Act § 108, 42 U.S.C. § 7408 (1988), orders the Administrator of EPA to prepare and periodically revise a list of air pollutants which endanger public health and welfare. He has accomplished this in the National Ambient Air Quality Standards, which establish the maximum concentrations of such pollutants consistent with human health. 40 C.F.R. (Code of Federal Regulations) § 50.1 and following. The principal goal of the Clean Air Act is to achieve these concentrations or lower concentrations in every part of the United States.

15. H.R. Rep. No. 99-253(I), 99th Cong., 2d sess. 90 (1986), reprinted in 1986 U.S.C.C.A.N. 2835, 2872.
16. 42 U.S.C. § 4332 (1988).
17. Army Regulation 200-2, *Environmental Effects of Army Actions*, Chapter 7, (23 December 1988).
18. 42 U.S.C. §§ 9617 and 9620(f) (1988), implemented in Army Regulation 200-1, *Environmental Protection and Enhancement*, para. 9-11 (23 April 1990) (hereinafter AR 200-1).
19. The only major federal environmental laws not containing a citizen suit provision are The National Environmental Policy Act, 42 U.S.C. §§ 4321-4370c (1988); The Coastal Zone Management Act, 16 U.S.C. §§ 1451-1464 (1988) (a research- and grant-oriented law); and The Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 (1988).
20. H.R. Rep. No. 99-253, supra note 13 at 2965 and 3206.
21. Sygmunt J. B. Plater, Robert H. Abrams, William Goldfarb, *Environmental Law and Policy: Nature, Law and Society*, at 857 (St. Paul, Minn.: West Publishing Co., 1992).
22. Letter, Nora J. Chorover, Project Attorney, Natural Resources Defense Council, ca. March-April 1989 (on file with author).
23. See Frederick R. Anderson, Daniel R. Mandelker, and A. Dan Tarlock, *Environmental Protection: Law and Policy*, at 357 (2d ed.; New York: Little, Brown, 1990), and Laurent R. Hourcle, *Environmental Law for the Air Force*, at 20 (Maxwell Air Force Base, Ala.: Air Univ. Press, 1987).
24. The waiver language in the Clean Water Act is typical: "Each department, agency, or instrumentality of the executive . . . [branch] of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, and each officer, agent, and employee thereof in the performance of his official duties, shall be subject to, and comply with, all federal state, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner and to the same extent as any nongovernmental entity. . . . This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law." 33 U.S.C. § 1323 (1988). See also 42 U.S.C. § 7418 (1988) (Clean Air Act); 42 U.S.C. § 6961 (1988) (Resource Conservation and Recovery Act); and 42 U.S.C. § 9620 (1988) (CERCLA).
25. The President further emphasized federal facilities' environmental compliance obligations in Executive Order 12088, first signed by President Carter in 1978 and subsequently adopted by each succeeding President. This Order directs agency heads to comply with applicable pollution control standards and mandates an environmental planning process within each agency which includes pollution control plans, consolidated funding requests, interagency cooperation, and dispute resolution procedures. Exec. Order No. 12,088, *Federal Compliance With Pollution Control Standards*, 403 *Fed. Reg.* 23,478 (1978).
26. The Clean Water Act's penalty provision at § 309 is typical. It authorizes temporary or permanent injunctions; criminal penalties of up to \$25,000 per day of violation and one year in prison for negligent violations; criminal penalties of up to \$50,000 per day of violation and three years imprisonment for knowing violations; civil penalties of up to \$25,000 per day of violation; and administrative penalties of up to \$10,000 per day of violation. 33 U.S.C. § 1319 (1988).
27. US Environmental Protection Agency, *Federal Facilities Compliance Strategy*, at VI-4 through VI-9 (Washington: GPO, 1988).
28. *Id.* at VI-9 through VI-12.
29. *Id.* at VI-3.
30. *Id.* at VII-1.
31. Headquarters, Department of the Army Message, 162004Z Mar 89, Subject: Environmental Liability (on file with author).
32. *U.S. v. Dee*, 912 F.2d 741, 745 (4th Cir. 1990), quoting *U.S. v. International Minerals and Chemical Corp.*, 402 U.S. 558, 563 (1971).
33. *U.S. v. Park*, 421 U.S. 658 (1975).
34. Richard B. Stewart, Assistant Attorney General, US Department of Justice, Memorandum to all US Attorneys, "Exercise of Criminal Prosecutorial Discretion for Environmental Violations," 3 June 1991 (on file with author).
35. AR 200-1, paragraph 1-25a.
36. AR 200-1, paragraph 12-8.
37. Commander, US Army Toxic and Hazardous Materials Agency, ATTN: CETHA-EC, Aberdeen Proving Ground, Md. 21010-5401 DSN 584-4714 (410) 671-4714.
38. AR 200-1, paragraph 1-38.
39. The EPA has listed 36 Army installations or sites on the National Priorities List, which identifies the most dangerous hazardous waste sites in the nation. 40 C.F.R. § 300 App. B.