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DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
INSTALLATIONS LOGISTICS AND ENVIRONMENT
110 ARMY PENTAGON
WASHINGTON DC 20310-0110

March 25, 1999

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF DEFENSE
(ENVIRONMENTAL SECURITY)

SUBJECT: Notice of Availability (NOA) of the Draft Environmental Impact Statement (DEIS) for the Disposal and Reuse of the Military Ocean Terminal, Bayonne (MOTBY), New Jersey

In accordance with Department of Defense Instruction 4715.9, Environmental Planning and Analysis, enclosed is a copy of the NOA of the DEIS on the disposal and reuse of MOTBY.

Point of contact for this action is Ms. Theresa Persick-Arnold at 697-0216.

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Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational Health)
OASA(I&E)

Enclosure

Figure 8. Sample Letter of Transmittal of Draft Environmental Impact Statement to the Office of the Secretary of Defense

Subpart G—Public Involvement and the Scoping Process

§ 651.47 Public involvement.

(a) As a matter of Army policy, public involvement is required for all EISs, and is strongly encouraged for all Army actions, including EAs. The requirement (40 CFR 1506.6) for public involvement recognizes that all potentially interested or affected parties will be involved, when practicable, whenever analyzing environmental considerations. This requirement can be met at the very beginning of the process by developing a plan to include all affected parties and implementing the plan with appropriate adjustments as it proceeds (AR 360–5). The plan will include the following:

(1) Information dissemination to local and installation communities through such means as news releases to local media, announcements to local citizens groups, and Commander's letters at each phase or milestone (more frequently if needed) of the project. The dissemination of this information will be based on the needs and desires of the local communities.

(2) Each phase or milestone (more frequently if needed) of the project will be coordinated with representatives of local, state, tribal, and federal government agencies.

(3) Public comments will be invited and two-way communication channels

will be kept open through various means as stated above. These two-way channels will be dynamic in nature, and should be updated regularly to reflect the needs of the local community.

(4) Public affairs officers at all levels will be kept informed.

(b) When an EIS is being prepared, public involvement is a requisite element of the scoping process (40 CFR 1501.7(a)(1)).

(c) Proponents will invite public involvement in the review and comment of EAs and draft FNSIs (40 CFR 1506.6).

(d) Persons and agencies to be consulted include the following:

(1) Municipal, township, and county elected and appointed officials.

(2) Tribal, state, county, and local government officials and administrative personnel whose official duties include responsibility for activities or components of the affected environment related to the proposed Army action.

(3) Local and regional administrators of other federal agencies or commissions that may either control resources potentially affected by the proposed action (for example, the U.S. Fish and Wildlife Service); or who may be aware of other actions by different federal agencies whose effects must be considered with the proposed Army action (for example, the GSA).

(4) Members of existing citizen advisory groups, such as Restoration Advisory Boards and Citizen Advisory Commissions.

(5) Members of identifiable population segments within the potentially affected environments, whether or not they have clearly identifiable leaders or an established organization, such as farmers and ranchers, homeowners, small business owners, minority communities and disadvantaged communities, and tribal governments in accordance with White House Memorandum on Government to Government Relations with Native American Tribal Governments (April 29, 1994).

(6) Members and officials of those identifiable interest groups of local or national scope that may have interest in the environmental effects of the proposed action or activity (for example, hunters and fishermen, Izaak Walton League, Sierra Club, and the Audubon Society).

(7) Any person or group that has specifically requested involvement in the specific action or similar actions.

(e) The public involvement processes and procedures through which participation may be solicited include the following:

(1) Direct individual contact. Such interaction can identify persons and their opinions and initial positions, affecting the scope of issues that the EIS must address. Such limited contact may satisfy public involvement requirements when the expected significance and controversy of environmental effects is very limited.

(2) Small workshops or discussion groups.

(3) Larger public gatherings that are held after some formulation of the potential issues. The public is invited to express its views on the proposed courses of action. Public suggestions or alternative courses of action not already identified may be expressed at these gatherings that need not be formal public hearings.

(4) Identifying and applying other processes and procedures to accomplish the appropriate level of public involvement.

(f) The meetings described in paragraph (e) of this section should not be public hearings in the early stages of evaluating a proposed action. Public hearings do not substitute for the full range of public involvement procedures under the purposes and intent, as described in paragraph (e) of this section.

(g) Public surveys or polls may be performed to identify public opinion of a proposed action, as appropriate (AR 335–15).

§ 651.48 Scoping process.

(a) The scoping process (40 CFR 1501.7) is intended to aid in determining the scope of the analyses and significant issues related to the proposed action. The process requires appropriate public participation immediately following publication of the NOI in the FR. It is important to note that scoping is not synonymous with a public meeting. The Army policy is that EISs for legislative proposals significantly affecting the environment will

go through scoping unless extenuating circumstances make it impractical. In some cases, the scoping process may be useful in the preparation of EAs and should be employed when it is useful.

(b) The scoping process identifies relevant issues related to a proposed action through the involvement of all potentially interested or affected parties (affected federal, state, and local agencies; recognized Indian tribes; interest groups, and other interested persons) in the environmental analysis and documentation. This process should:

(1) Eliminate issues from detailed consideration which are not significant, or which have been covered by prior environmental review; and

(2) Make the analysis and documentation more efficient by providing focus to the effort. Proper scoping identifies reasonable alternatives and the information needed for their evaluation, thereby increasing public confidence in the Army decisionmaking process.

(c) Proper scoping will reduce both costs and time required for an EA or EIS. This is done through the documentation of all potential impacts and the focus of detailed consideration on those aspects of the action which are potentially significant or controversial. To assist in this process the Army will use the Environmental Impact Computer System (EICS) starting in Fiscal Year (FY) 04, as appropriate. This system will serve to structure all three stages of the scoping process (§ 651.49, 651.50, and 651.51) and provide focus on those actions that are important and of interest to the public. While these discussions focus on EIS preparation and documents to support that process, the three phases also apply if scoping is used for an EA. If used in the preparation of an EA, scoping, and documents to support that process, can be modified and adopted to ensure efficient public iteration and input to the decision-making process.

(d) When the planning for a project or action indicates the need for an EIS, the proponent initiates the scoping process to identify the range of actions, alternatives, and impacts for consideration in the EIS (40 CFR 1508.25). The extent of the scoping process (including public involvement) will depend upon:

(1) The size and type of the proposed action.

(2) Whether the proposed action is of regional or national interest.

(3) Degree of any associated environmental controversy.

(4) Importance of the affected environmental parameters.

(5) Significance of any effects on them.

(6) Extent of prior environmental review.

(7) Involvement of any substantive time limits.

(8) Requirements by other laws for environmental review.

(e) The proponent may incorporate scoping in the public involvement (or environmental review) process of other requirements, such as an EA. In such cases, the extent of incorporation is at the discretion of the proponent, working with the affected Army organization or installation. Such integration is encouraged.

(f) Scoping procedures fall into preliminary, public interaction, and final phases. These phases are discussed in §§ 651.49, 651.50, and 651.51, respectively.

§ 651.49 Preliminary phase.

In the preliminary phase, the proponent agency or office identifies, as early as possible, how it will accomplish scoping and with whose involvement. Key points will be identified or briefly summarized by the proponent, as appropriate, in the NOI, which will:

(a) Identify the significant issues to be analyzed in the EIS.

(b) Identify the office or person responsible for matters related to the scoping process. If they are not the same as the proponent of the action, that distinction will be made.

(c) Identify the lead and cooperating agency, if already determined (40 CFR 1501.5 and 1501.6).

(d) Identify the method by which the agency will invite participation of affected parties, and identify a tentative list of the affected parties to be notified. A key part of this preliminary identification is to solicit input regarding other parties who would be interested in the proposed project or affected by it.

(e) Identify the proposed method for accomplishing the scoping procedure.

(f) Indicate the relationship between the timing of the preparation of environmental analyses and the tentative planning and decisionmaking schedule including:

(1) The scoping process itself.

(2) Collection or analysis of environmental data, including required studies.

(3) Preparation of draft and final EISs (DEISs and FEISs), and associated review periods.

(4) Filing of the ROD.

(5) Taking the action.

(6) For a programmatic EIS, preparation of a general expected schedule for future specific implementing (tiered) actions that will involve separate environmental analysis.

(g) If applicable, identify the extent to which the EIS preparation process is exempt from any of the normal procedural requirements of this part, including scoping.

§ 651.50 Public interaction phase.

(a) During this portion of the process, the proponent will invite comments from all affected parties and respondents to the NOI to assist in developing issues for detailed discussion in the EIS. Assistance in identifying possible participants is available from the ODEP.

(b) In addition to the affected parties identified in paragraph (a) of this section, participants should include the following:

(1) Technical representatives of the proponent. Such persons must be able to describe the technical aspects of the proposed action and alternatives to other participants.

(2) One or more representatives of any Army-contracted consulting firm, if one has been retained to participate in writing the EIS or providing reports that the Army will use to create substantial portions of the EIS.

(3) Experts in various environmental disciplines, in any technical area where foreseen impacts are not already represented among the other scoping participants.

(c) In all cases, the participants will be provided with information developed during the preliminary phase and with as much of the following information that may be available:

(1) A brief description of the environment at the affected location. When descriptions for a specific location are not available, general descriptions of the probable environmental effects will be provided. This will also address the extent to which the environment has been modified or affected in the past.

(2) A description of the proposed alternatives. The description will be sufficiently detailed to enable evaluation of the range of impacts that may be caused by the proposed action and alternatives. The amount of detail that is sufficient will depend on the stage of the development of the proposal, its magnitude, and its similarity to other actions with which participants may be familiar.

(3) A tentative identification of ''any public environmental assessments and other environmental impact statements that are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration'' (40 CFR 1501.7(a)(5)).

(4) Any additional scoping issues or limitations on the EIS, if not already described during the preliminary phase.

(d) The public involvement should begin with the NOI to publish an EIS. The NOI may indicate when and where a scoping meeting will take place and who to contact to receive preliminary information. The scoping meeting is an informal public meeting, and initiates a continuous scoping process, allowing the Army to scope the action and the impacts of alternatives. It is a working session where the gathering and evaluation of information relating to potential environmental impacts can be initiated.

(e) Starting with this information (paragraph (d) of this section), the person conducting the scoping process will use input from any of the involved or affected parties. This will aid in developing the conclusions. The proponent determines the final scope of the EIS. If the proponent chooses not to require detailed treatment of significant issues or factors in the EIS, in spite of relevant technical or scientific objections by any participant, the proponent will

clearly identify (in the environmental consequences section of the EIS) the criteria that were used to eliminate such factors.

§ 651.51 The final phase.

(a) The initial scope of the DEIS is determined by the proponent during and after the public interaction phase of the process. Detailed analysis should focus on significant issues (40 CFR 1501.7(a)(2)). To determine the appropriate scope, the proponent must consider three categories of actions, alternatives, and impacts.

(1) The three categories of actions (other than unconnected single actions) are as follows:

(i) Connected actions are those that are closely related and should be discussed in the same impact statement. Actions are connected if they automatically trigger other actions that may require EISs, cannot or will not proceed unless other actions are previously or simultaneously taken, are interdependent parts of a larger action, and depend on the larger action for their justification.

(ii) Cumulative actions are those that, when viewed with other past and proposed actions, have cumulatively significant impacts and should be discussed in the same impact statement.

(iii) Similar actions are those that have similarities which provide a basis for evaluating their environmental consequences together, such as common timing or geography, and may be analyzed in the EIS. Agencies should do so when the best way to assess such actions is to treat them in a single EIS.

(2) The three categories of alternatives are as follows:

(i) No action.

(ii) Other reasonable courses of action.

(iii) Mitigation measures (not in the proposed action).

(3) The three categories of impacts are as follows:

(i) Direct.

(ii) Indirect.

(iii) Cumulative.

(4) The proponent can also identify any public EAs and EISs, prepared by the Army or another federal agency, related to, but not part of, the EIS under consideration (40 CFR 1501.7(a)(5)). Assignments for the preparation of the EIS among the lead and any cooperating agencies can be identified, with the lead agency retaining responsibility for the statement (40 CFR 1501.7(a)(4)); along with the identification of any other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with the EIS (40 CFR 1501.7(a)(6)).

(b) The identification and elimination of issues that are insignificant, non-controversial, or covered by prior environmental review can narrow the analysis to remaining issues and their significance through reference to their coverage elsewhere (40 CFR 1501.7(a)(3)).

(c) As part of the scoping process, the lead agency may:

(1) Set time limits, as provided in § 651.14(b), if they were not already indicated in the preliminary phase.

(2) Prescribe overall page limits for the EIS in accordance with the CEQ regulations that emphasize conciseness.

(d) All determinations reached by the proponent during the scoping process will be clearly conveyed to the preparers of the EIS in a Scope of Statement. The Scope of Statement will be made available to participants in the scoping process and to other interested parties upon request. Any scientific or technical conflicts that arise between the proponent and scoping participants, cooperating agencies, other federal agencies, or preparers will be identified during the scoping process and resolved or discussed by the proponent in the DEIS.

§ 651.52 Aids to information gathering.

The proponent may use or develop graphic or other innovative methods to aid information gathering, presentation, and transfer during the three scoping phases. These include methods for presenting preliminary information to scoping participants, obtaining and consolidating input from participants, and organizing determinations on scope for use during preparation of the DEIS. The use of the World Wide Web

(WWW) for these purposes is encouraged. Suggested uses include the implementation of a continuous scoping process, facilitating ''virtual'' public participation, as well as the dissemination of analyses and information as they evolve.

§ 651.53 Modifications of the scoping process.

(a) If a lengthy period exists between a decision to prepare an EIS and the time of preparation, the proponent will initiate the NOI at a reasonable time in advance of preparation of the DEIS. The NOI will state any tentative conclusions regarding the scope of the EIS made prior to publication of the NOI. Reasonable time for public participation will be allowed before the proponent makes any final decisions or commitments on the EIS.

(b) The proponent of a proposed action may use scoping during preparation of environmental review documents other than an EIS, if desired. In such cases, the proponent may use these procedures or may develop modified procedures, as needed.

Subpart H—Environmental Effects of Major Army Action Abroad

§ 651.54 Introduction.

(a) Protection of the environment is an Army priority, no matter where the Army actions are undertaken. The Army is committed to pursuing an active role in addressing environmental quality issues in Army relations with neighboring communities and assuring that consideration of the environment is an integral part of all decisions. This section assigns responsibilities for review of environmental effects abroad of major Army actions, as required by Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, dated January 4, 1979, 3 CFR, 1979 Comp.,p.356. This section applies to HQDA and Army agencies' actions that would significantly affect the quality of the human environment outside the United States.

(b) Executive Order 12114 and DODD 6050.7, Environmental Effects Abroad of Major Department of Defense Actions (planned currently to be replaced by a DODI, Analyzing Defense Actions With the Potential for Significant Impacts Outside the United States) provide guidance for analyzing the environmental impacts of Army actions abroad and in the global commons. Army components will, consistent with diplomatic factors (including applicable Status of Forces Agreements (SOFAs) and stationing agreements), national security considerations, and difficulties of obtaining information, document the review of potential environmental impacts of Army actions abroad and in the global commons as set forth in DODD 6050.7 (or DODI upon publication). The analysis and documentation of potential environmental impacts of Army actions abroad and in the global commons should, to the maximum extent possible, be incorporated into existing decision-making processes; planning for military exercises, training plans, and military operations.

§ 651.55 Categorical exclusions.

The list of CXs in Appendix B of this part may be used in reviewing potential environmental impacts of major actions abroad and in the global commons, in accordance with DODD 6050.7 (or DODI upon publication) and Executive Order 12114, section 2–5(c).

§ 651.56 Responsibilities.

(a) The ASA(I&E) will:

(1) Serve as the Secretary of the Army's responsible official for environmental matters abroad.

(2) Maintain liaison with the DUSD(IE) on matters concerning Executive Order 12114, DODD 6050.7, and this part.

(3) Coordinate actions with other Secretariat offices as appropriate.

(b) The DEP will:

(1) Serve as ARSTAF proponent for implementation of Executive Order 12114, DODD 6050.7, and this part.

(2) Apply this part when planning and executing overseas actions, where appropriate in light of applicable statutes and SOFAs.

(c) The DCSOPS will:

(1) Serve as the focal point on the ARSTAF for integrating environmental considerations required by Executive Order 12114 into Army plans and activities. Emphasis will be placed