# Chapter 5
# Environmental Regulations, Permits, and Consultations

Chapter 5 presents the laws, regulations, and other requirements that apply to the proposed action and alternatives. No new legislation or exemptions or waivers from any existing regulatory requirements would be required to implement any of the three mercury management alternatives presented in Chapter 2, Alternatives for the Management of Mercury. The proposed action would be implemented in a manner that complies with Department of Defense, Defense Logistics Agency, Defense National Stockpile Center, and other Federal environmental, safety, and health laws, regulations, Executive orders, and environmental permitting requirements. Informal consultations are being undertaken with appropriate Federal and state agencies and Native American tribal governments as part of the National Environmental Policy Act process.

## 5.1 LAWS, REGULATIONS, AND EXECUTIVE ORDERS

The major Federal laws; Executive orders; Department of Defense (DoD) and Defense Logistics Agency (DLA) directives, instructions, and manuals; and other compliance requirements that may currently or in the future apply to mercury management activities are identified in Table 5–1.[1] These compliance requirements are briefly described in Sections 5.1.1 through 5.1.9. Federal regulations that implement statutes and Executive orders are identified and discussed in these sections, where applicable.[2]

There are a number of Federal environmental statutes dealing with protection, compliance, or consultation that affect actions at every Defense National Stockpile Center (DNSC) candidate mercury management location. In addition, certain environmental requirements have been delegated to state authorities for enforcement and implementation. Although this chapter does not list specific state requirements in Table 5–1, state-administered programs are discussed throughout the chapter, where applicable. It is DNSC policy to conduct its operations in an environmentally safe manner in compliance with all applicable Federal, state, and local statutes, regulations, and standards. Although this chapter does not address pending legislation or future regulations, DNSC recognizes that the regulatory environment is fluid and subject to many changes, and that the construction and/or operation of any mercury storage facility or the sale of mercury must be conducted in compliance with the regulations and standards applicable at the time the action is taken.

[1] Executive orders can be found at www.archives.gov/federal_register/executive_orders/disposition_tables.htm. The U.S. Department of Defense directives, instructions, and manuals can be found at www.dtic.mil/whs/directives. The Defense Logistics Agency directives, instructions, and manuals can be found at www.dlaps.hq.dla.mil/SR2B.htm.

[2] The U.S. Code of Federal Regulations can be found at www.access.gpo.gov/nara/cfr/index.html. The Defense Logistics Agency regulations can also be found at www.dlaps.hq.dla.mil/SR2B.htm.

**Table 5–1. Federal Environmental Statutes, Executive Orders, and Guidance**

| Statute, Executive Order, Guidance | Citation |
|---|---|
| **Air Quality and Noise** | |
| Clean Air Act of 1970 | 42 U.S.C. 7401 et seq. |
| Noise Control Act of 1972 | 42 U.S.C. 4901 et seq. |
| **Water Resources** | |
| Clean Water Act | 33 U.S.C. 1251 et seq. |
| Safe Drinking Water Act of 1974 | 42 U.S.C. 300f et seq. |
| Floodplain Management | Executive Order 11988 |
| Protection of Wetlands | Executive Order 11990 |
| **Waste Management, Pollution Prevention, and Conservation** | |
| Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1974 and the Hazardous and Solid Waste Amendments of 1984 | 42 U.S.C. 6901 et seq. |
| Pollution Prevention Act of 1990 | 42 U.S.C. 13101 et seq. |
| Federal Compliance with Pollution Control Standards (as amended by Executive Order 12580) | Executive Order 12088, October 13, 1978 |
| Energy Efficiency and Water Conservation at Federal Facilities | Executive Order 12902, March 8, 1994 |
| Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition | Executive Order 13101, September 14, 1998 |
| Greening the Government Through Efficient Energy Management | Executive Order 13123, June 3, 1999 |
| Greening the Government Through Leadership in Environmental Management | Executive Order 13148, April 21, 2000 |
| Pollution Prevention | DoDI 4715.4 |
| Hazardous Material Pollution Prevention | DLAD 4210.4 |
| Defense Logistics Agency Environmental Protection Manual | DLAM 6050.1 |
| **Biotic Resources** | |
| Bald and Golden Eagle Protection Act of 1972 | 16 U.S.C. 668 to 668d |
| Migratory Bird Treaty Act of 1918 | 16 U.S.C. 703 et seq. |
| Endangered Species Act of 1973, as amended | 16 U.S.C. 1531 et seq. |
| Natural Resources Management Program | DoDD 4700.4 |

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| **Cultural Resources** | |
| American Antiquities Act of 1906 | 16 U.S.C. 431 et seq. |
| National Historic Preservation Act of 1966 | 16 U.S.C. 470 et seq. |
| Archaeological and Historical Preservation Act of 1974 | 16 U.S.C. 469 to 469c |
| Archaeological Resources Protection Act of 1979 | 16 U.S.C. 470 et seq. |
| American Indian Religious Freedom Act of 1978 | 42 U.S.C. 1996 et seq. |
| Native American Graves Protection and Repatriation Act of 1990 | 25 U.S.C. 3001 et seq. |
| Protection and Enhancement of the Cultural Environment | Executive Order 11593, May 13, 1971 |
| Archaeological and Historic Resources Management | DoDD 4710.1 |
| **Worker Safety and Health** | |
| Occupational Safety and Health Act of 1970 | 29 U.S.C. 651 et seq. |
| Safety and Occupational Health Policy for the Department of Defense | DoDD 1000.3 |
| **Transportation** | |
| Hazardous Materials Transportation Act of 1975 | 49 U.S.C. 5105 et seq. |
| Transportation and Traffic Management | DoDD 4500.9 |
| Packaging of Hazardous Material | DLAD 4145.41 |
| Defense Logistics Agency Transportation and Traffic Management | DLAD 4500.14 |
| **Emergency Response** | |
| Comprehensive Environmental Response, Compensation, and Liability Act of 1980; Superfund Amendments and Reauthorization Act of 1986 | 42 U.S.C. 9601 et seq. |
| Emergency Planning and Community Right-To-Know Act of 1986 (also known as "SARA Title III") | 42 U.S.C. 11001 et seq. |
| Superfund Implementation | Executive Order 12580, January 23, 1987 |
| Assignment of Emergency Preparedness Responsibilities | Executive Order 12656, November 18, 1988 |
| **Other** | |
| Strategic and Critical Materials Stock Piling Act | 50 U.S.C. 98 et seq. |
| National Environmental Policy Act of 1969 | 42 U.S.C. 4321 et seq. |
| Atomic Energy Act of 1954 | 42 U.S.C. 2011 et seq. |
| Farmland Protection Policy Act of 1981 | 7 U.S.C. 4201 et seq. |
| Protection and Enhancement of Environmental Quality (as amended by Executive Order 11991) | Executive Order 11514, March 5, 1970 |

| Other (continued) | |
|---|---|
| Environmental Effects Abroad of Major Federal Actions | Executive Order 12114, January 4, 1979 |
| Federal Actions to Address Environmental Justice in Minority and Low-Income Populations | Executive Order 12898, February 11, 1994 |
| Protection of Children from Environmental Health Risks and Safety Risks | Executive Order 13045, April 27, 1997 |
| Trade Security Controls on Department of Defense Excess and Surplus Personal Property | DoDD 2030.8 |
| Environmental Security | DoDD 4715.1 |
| Environmental Effects Abroad of Major Department of Defense Actions | DoDD 6050.7 |
| Environmental Compliance | DoDI 4715.6 |
| Defense National Stockpile Operations Manual | DNSCM 4145.1 |

**Key:** DLAD, DLA Directive; DLAM, DLA Manual; DNSCM, DNSC Manual; DoDD, DoD Directive; DoDI, DoD Instructions; U.S.C., United States Code.

### 5.1.1 Air Quality and Noise

**Clean Air Act of 1970, as amended (42 United States Code [U.S.C.] 7401 et seq.)—**The Clean Air Act is intended to "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." Section 118 of the Clean Air Act (42 U.S.C. 7418) requires that each Federal agency with jurisdiction over any property or facility engaged in any activity that might result in the discharge of air pollutants comply with "all Federal, state, interstate, and local requirements" with regard to the control and abatement of air pollution. Mercury is designated as a hazardous substance under Section 112.

The Clean Air Act requires: (1) the U.S. Environmental Protection Agency (EPA) to establish National Ambient Air Quality Standards as necessary to protect the public health, with an adequate margin of safety, from any known or anticipated adverse effects of a regulated pollutant (42 U.S.C. 7409 et seq.); (2) establishment of national standards of performance for new or modified stationary sources of atmospheric pollutants (42 U.S.C. 7411); (3) specific emission increases to be evaluated so as to prevent a significant deterioration in air quality (42 U.S.C. 7470 et seq.); and (4) specific standards for releases of hazardous air pollutants (including mercury) (42 U.S.C. 7412). These standards are implemented through state implementation plans developed by each state with EPA approval. The Clean Air Act requires sources to meet standards and obtain permits to satisfy these standards. Emissions of air pollutants are regulated by EPA under Title 40 of the Code of Federal Regulations (CFR) Parts 50 through 99.

No amendments to current air permits or applications for new permits are expected for any alternatives.

**Noise Control Act of 1972, as amended (42 U.S.C. 4901 et seq.)—**Section 4 of the Noise Control Act of 1972, as amended, directs all Federal agencies to carry out "to the fullest extent within their authority" programs within their jurisdictions in a manner that furthers a national policy of promoting an environment free from noise jeopardizing health and welfare. All alternatives would require compliance with this act.

### 5.1.2 Water Resources

**Clean Water Act of 1972, as amended (33 U.S.C. 1251 et seq.)—**The Clean Water Act, which amended the Federal Water Pollution Control Act, was enacted to "restore and maintain the chemical, physical, and biological integrity of the Nation's water." The Clean Water Act prohibits the discharge of toxic pollutants (including mercury) in toxic amounts to navigable waters of the United States. Section 13 of the Clean Water Act requires all branches of the Federal Government engaged in any activity that might result in a discharge or runoff of pollutants to surface waters to comply with Federal, state, interstate, and local requirements. Section 307(a) designates mercury as a toxic pollutant. States are responsible for establishing, reviewing, and revising water quality standards pursuant to Section 303 and for submitting them to the EPA Administrator for review and concurrence. Water quality standards consider the designated uses of the navigable waters involved and the water quality criteria for such waters are based on the designated uses. Whenever a state revises or adopts a new standard, the state must also adopt criteria for all toxic pollutants listed pursuant to Section 307(a)(1) of the Clean Water Act (40 CFR 131).

The Clean Water Act also provides guidelines and limitations for effluent discharges from point-source discharges and establishes the National Pollutant Discharge Elimination System (NPDES) permit program. The NPDES program is administered by EPA, pursuant to regulations in 40 CFR 122 et seq., and may be delegated to states. Sections 401 through 405 of the Water Quality Act of 1987 added Section 402(p) to the Clean Water Act requiring that EPA establish regulations for permits for storm water discharges associated with industrial activities. Storm water provisions of the NPDES program are set forth at 40 CFR Section 122.26. Permit modifications are required if discharge effluent is altered.

No amendments to current NPDES permits or applications for new permits are expected for any existing storage facility under any of the storage alternatives.

**Safe Drinking Water Act of 1974, as amended (42 U.S.C. 300(f) et seq.)—**The primary objective of the Safe Drinking Water Act is to protect the quality of public drinking water supplies and sources of drinking water. The implementing regulations, administered by EPA unless delegated to states, establish standards applicable to public water systems. These regulations include maximum contaminant levels in public water systems, which are defined as water systems that have at least 15 service connections used by year-round residents or regularly serve at least 25 year-round residents. The EPA regulations implementing the Safe Drinking Water Act are found under 40 CFR 100 through 149, with maximum contamination levels for mercury in drinking water (i.e., 0.002 mg/l) under 40 CFR 141.62. Other programs established by the Safe Drinking Water Act include the Sole Source Aquifer Program, the Wellhead Protection Program, and the Underground Injection Control Program. Activities conducted under all of the alternatives must be in compliance with the standards specified under the Safe Drinking Water Act.

**Protection of Wetlands (Executive Order 11990)—**This order requires Federal agencies to avoid any short- or long-term adverse impacts on wetlands wherever there is a practicable alternative. Each agency must also provide opportunity for early public review of any plans of proposals for new construction in wetlands.

**Floodplain Management (Executive Order 11988)—**This order requires Federal agencies to establish procedures to ensure that the potential effects of flood hazards and floodplain management are considered for any action undertaken in a floodplain, and that floodplain impacts be avoided to the extent practicable.

### 5.1.3 Waste Management, Pollution Prevention, and Conservation

**Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. 6901 et seq.)—**The Solid Waste Disposal Act of 1965, as amended, governs the transportation, treatment, storage, and disposal of hazardous and nonhazardous waste. Under the Resource Conservation and Recovery Act of 1976 (RCRA), which amended the Solid Waste Disposal Act of 1965, EPA defines and identifies hazardous waste; establishes standards for its transportation, treatment, storage, and disposal; and requires permits for persons engaged in hazardous waste activities. Section 3001 designates mercury waste as a hazardous substance. (Note: DNSC's excess mercury is considered a resource, not a waste.) Section 3006 of the act (42 U.S.C. 6926) allows states to establish and administer these permit programs with EPA approval. The EPA regulations implementing RCRA are found in 40 CFR 260 through 283.

Small amounts of hazardous waste may be generated from activities conducted under mercury management alternatives. Therefore, this waste would have to be managed in compliance with RCRA. The Waste Management sections of Chapter 4, Environmental Consequences, provide information on the generation and management of hazardous wastes for each of the alternatives.

**Pollution Prevention Act of 1990 (42 U.S.C. 13101 et seq.)—**The Pollution Prevention Act establishes a national policy for waste management and pollution control. Source reduction is given first preference, followed by environmentally safe recycling, with disposal or releases to the environment as a last resort. Oil pollution prevention regulations (40 CFR 112) establish procedures to prevent the discharge of oil and require the preparation and implementation of spill prevention control and countermeasure plans. Activities under all of the alternatives would need to be in compliance with the Pollution Prevention Act and implementing regulations.

**Federal Compliance with Pollution Control Standards (Executive Order 12088), as amended by Executive Order 12580, Federal Compliance with Pollution Control Standards, January 23, 1987—**This order directs Federal agencies to comply with applicable administrative and procedural pollution control standards established by, but not limited to, the Clean Air Act, the Noise Control Act, the Clean Water Act, the Safe Drinking Water Act, the Toxic Substances Control Act, and RCRA.

**Energy Efficiency and Water Conservation at Federal Facility (Executive Order 12902)—**This order requires Federal agencies to develop and implement a program for conservation of energy and water resources. As part of this program, agencies are required to conduct comprehensive facility audits of their energy and water use.

**Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition (Executive Order 13101)—**This order requires each Federal agency to incorporate waste prevention and recycling in its daily operations and work to increase and expand markets for recovered materials. This order states that it is national policy to prefer pollution prevention, whenever feasible. Pollution that cannot be prevented should be recycled; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner. Disposal should be employed only as a last resort.

**Greening the Government Through Efficient Energy Management (Executive Order 13123)—**This order requires Federal agencies to significantly improve their energy management in order to save taxpayers dollars and reduce emissions that contribute to air pollution and global climate change. Goals are set for greenhouse gases reduction, energy consumption reduction, expansion of the use of renewable energy, petroleum use reduction, and water conservation.

**Greening the Government Through Leadership in Environmental Management (Executive Order 13148)—**This order sets new goals for pollution prevention, requires all Federal facilities to have an environmental management system, and requires compliance or environmental management system audits.

**Pollution Prevention (DoDI 4715.4)—**This instruction implements policy, assigns responsibility, and prescribes procedures for implementing pollution prevention programs throughout DoD. This instruction also authorizes the publication of the "Guide for Qualified Recycling Programs."

**Hazardous Material Pollution Prevention (DLAD 4210.4)—**This directive establishes the DLA Comprehensive Hazardous Material Management Program and the Hazardous Material Minimization Program, which includes DLA's source reduction program directed through the management of product/process specifications and standards documents/programs. This directive further establishes the Hazardous Material Management Council as the vehicle to address and resolve issues in hazardous material logistics management.

**DLA Environmental Protection Manual (DLAM 6050.1)—**This manual summarizes and highlights regulatory requirements that are of primary concern to DLA activities and provides compliance guidance and direction. The manual serves as DLA implementation of Executive Order 12088, Federal Compliance with Pollution Control Standards. It also identifies requirements, policies, and procedures for (1) preventing, controlling and responding to spills of oils and hazardous substances; (2) the protection of drinking water quality at DLA installations; (3) the permitting and control of wastewater discharges at DLA installations; (4) the control of air pollution; (5) hazardous waste management; (6) resource recovery and recycling; (7) polychlorinated biphenyls management; and (8) the defense environmental restoration program. Instructions on the preparation and submission of the Federal Agency Pollution Abatement Project Report are also provided in the manual.

### 5.1.4 Biotic Resources

**Fish and Wildlife Coordination Act of 1958 (16 U.S.C. 661 et seq.)—**The Fish and Wildlife Coordination Act promotes more effectual planning and cooperation between Federal, state, public, and private agencies for the conservation and rehabilitation of the Nation's fish and wildlife and authorizes the U.S. Department of the Interior to provide assistance. This act requires consultation with the U.S. Fish and Wildlife Service on the possible effects on wildlife if there is construction, modification, or control of bodies of water in excess of 10 acres (4 ha) in surface area. If such a body of water were to be found on a generic consolidated storage site where construction would occur, DNSC would be required to consult with the U.S. Fish and Wildlife Service.

**Bald and Golden Eagle Protection Act of 1972, as amended (16 U.S.C. 668 through 668d)—**The Bald and Golden Eagle Protection Act, as amended, makes it unlawful to take, pursue, molest, or disturb bald (American) and golden eagles, their nests, or their eggs anywhere in the United States (Section 668, 668c). A permit must be obtained from the U.S. Department of the Interior to relocate a nest that interferes with resource development or recovery operations. This requirement would apply to eagles that might come to inhabit storage facilities.

**Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 et seq.)—**The Migratory Bird Treaty Act, as amended, is intended to protect birds that have common migration patterns between the United States and Canada, Mexico, Japan, and Russia. It regulates the harvest of migratory birds by specifying conditions such as the mode of harvest, hunting seasons, and bag limits. The act stipulates that it is unlawful at any time, by any means, or in any manner, to "kill . . . any migratory bird." Although no

permit for this project is required under the act, DLA is required to consult with the U.S. Fish and Wildlife Service regarding impacts to migratory birds, and to avoid or minimize these effects in accordance with the U.S. Fish and Wildlife Service Mitigation Policy.

**Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.)—**The Endangered Species Act is intended to prevent the further decline of endangered and threatened species and to restore these species and habitats. Section 7 of the act requires Federal agencies having reason to believe that a prospective action may affect an endangered or threatened species or its habitat to consult with the U.S. Fish and Wildlife Service of the U.S. Department of the Interior or the National Marine Fisheries Service of the U.S. Department of Commerce to ensure that the action does not jeopardize the species or destroy its habitat (50 CFR 17). If, despite reasonable and prudent measures to avoid or minimize such impacts, the species or its habitat would be jeopardized by the action, a review process is specified to determine whether the action may proceed. If a threatened or endangered species were to be found at a candidate mercury storage location, consultations with the U.S. Fish and Wildlife Service would be required.

**Natural Resources Management Program (DoDD 4700.4)—**This directive prescribes policies and procedures for an integrated program for multiple-use management of natural resources on property under DoD control. This directive states that DoD will act responsibly in the public interest in managing its lands and natural resources and will have a conscious and active concern for the inherent value of natural resources in all DoD plans, actions, and programs.

### 5.1.5 Cultural Resources

**American Antiquities Act of 1906, as amended (16 U.S.C. 431 to 433)—**This act protects historic and prehistoric ruins, monuments, and antiquities, including paleontological resources, on federally controlled lands from appropriation, excavation, injury, and destruction without permission. Under this act, the President of the United States is authorized to declare historic landmarks, prehistoric and historic structures, and other objects of historic or scientific interest that are situated on lands controlled or owned by the Federal Government to be national monuments. As discussed in the Cultural Resource sections of Chapter 3, Affected Environment, and Chapter 4, no such declarations have been made to date on any of the candidate storage sites. However, any future declarations would require compliance with this act.

**National Historic Preservation Act of 1996, as amended (16 U.S.C. 470 et seq.)—**The National Historic Preservation Act provides that sites with significant national historic value be placed on the National Register of Historic Places, which is maintained by the Secretary of the Interior. The major provisions of the act for DLA are Sections 106 and 110. Both sections aim to ensure that historic properties are appropriately considered in planning Federal initiatives and actions. Section 106 is a specific, issue-related mandate to which Federal agencies must adhere. It is a reactive mechanism that is driven by a Federal action. Section 110, in contrast, sets out broad Federal agency responsibilities with respect to historic properties. It is a proactive mechanism with emphasis on ongoing management of historic preservation sites and activities at Federal facilities. No permits or certifications are required under the act.

Section 106 requires the head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking to ensure compliance with the provisions of the act. It compels Federal agencies to "take into account" the effect of their projects on historical and archaeological resources and to give the Advisory Council on Historic Preservation the opportunity to comment on such effects. Section 106 mandates consultation during Federal actions if the undertaking has the potential to have an effect on a historic property. This consultation normally involves the State and/or Tribal Historic

Preservation Officers and may include other organizations and individuals, such as local governments and Native American tribes. If an adverse effect is found, the consultation often ends with the execution of a memorandum of agreement that states how the adverse effects will be resolved. The regulations implementing Section 106, found in 30 CFR 800, were revised on May 18, 1999 (64 FR 27043), effective June 17, 1999. This revision introduced new flexibility and options for agencies to use to meet their obligations to comply with the act.

As discussed in the Cultural Resource sections of Chapters 3 and 4, no candidate storage site is currently on the National Register of Historic Places. However, some have been designated as possibly eligible.

**Archaeological and Historic Preservation Act of 1974, as amended (16 U.S.C. 469 to 469c)—**This act protects sites that have prehistoric and historic importance. It provides for the preservation of historical and archeological data, including relics and specimens, which might otherwise be irreplaceably lost or destroyed as a result of any Federal construction project or federally licensed activity or program. The management of any future findings of prehistoric or historic resources during archaeological surveys or during other activities conducted at any of the candidate storage sites would be required to comply with this act.

**Archaeological Resources Protection Act of 1979, as amended (16 U.S.C. 470 et seq.)—**This act requires a permit for any excavation or removal of archaeological resources from Federal or Native American lands. Excavations must be undertaken for the purpose of furthering archaeological knowledge in the public interest, and resources removed are to remain the property of the United States. The law requires that whenever any Federal agency finds that its activities may cause irreparable loss or destruction of significant scientific, prehistoric, or archaeological data, the agency must notify the U.S. Department of the Interior and may request that a department or agency undertake the recovery, protection, and preservation of such data. Consent must be obtained from the Native American tribe or the Federal agency having authority over the land on which a resource is located before issuance of a permit; the permit must contain terms and conditions requested by the tribe or Federal agency.

Any archaeological resources that may be found at a candidate storage site during future surveys or activities would not be removed without a permit.

**American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996)—**This act reaffirms Native American religious freedom under the First Amendment, and sets U.S. policy to protect and preserve the inherent and constitutional right of Native Americans to believe, express, and exercise their traditional religions. The act requires that Federal actions avoid interfering with access to sacred locations and traditional resources that are integral to the practice of religions.

**Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. 3001)—**This act establishes a means for Native Americans to request the return or "repatriation" of human remains and other cultural items presently held by Federal agencies or federally assisted museums or institutions. The act also contains provisions regarding the intentional excavation and removal of, inadvertent discovery of, and illegal trafficking in Native American human remains and cultural items. Major actions under this law include: (a) establishing a review committee with monitoring and policy-making responsibilities, (b) developing regulations for repatriation, including procedures for identifying lineal descent or cultural affiliation needed for claims, (c) providing oversight of museum programs designed to meet the inventory requirements and deadlines of this law, and (d) developing procedures to handle unexpected discoveries of graves or grave goods during activities on Federal or tribal lands. All Federal agencies that manage land and/or are responsible for archaeological collections from their lands or generated by their activities must comply with the act. Regulations implementing the act are found at 43 CFR 10.

**Protection and Enhancement of the Cultural Environment (Executive Order 11593)—**This order directs Federal agencies to locate, inventory, and nominate properties under their jurisdiction or control to the National Register of Historic Places, if those properties qualify. This process requires DLA to provide the Advisory Council on Historic Preservation the opportunity to comment on the possible impacts of the proposed activity on any potential eligible or listed resources. Compliance with this Executive order is discussed under the National Historic Preservation Act of 1996, as amended.

**Archaeological and Historic Resources Management (DoDD 4710.1)—**This directive prescribes procedures and assigns responsibilities for the management of archaeological and historic resources located on lands under DoD control. This directive states that it is DoD policy to integrate the archaeological and historic preservation requirements of applicable laws with the planning and management of activities under DoD control, to minimize expenditures through judicious application of options available in complying with applicable laws, and to encourage practical, economically feasible rehabilitation and adaptive use of significant historical resources.

### 5.1.6 Worker Safety and Health

**Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.)—**The Occupational Safety and Health Act establishes standards for safe and healthful working conditions in places of employment throughout the United States. The act is administered and enforced by the Occupational Safety and Health Administration (OSHA), a U.S. Department of Labor agency. Although OSHA and EPA both have a mandate to reduce exposures to toxic substances, including mercury, OSHA's jurisdiction is limited to safety and health conditions that exist in the workplace environment.

Under the act, it is the duty of each employer to furnish employees a place of employment free of recognized hazards likely to cause death or serious physical harm. Employees have a duty to comply with the occupational safety and health standards and rules, regulations, and orders issued under the act. OSHA regulations (29 CFR 1910) establish specific standards telling employers what must be done to achieve a safe and healthful working environment. OSHA standards limit the concentration of elemental mercury in workplace air to 0.1 $mg/m^3$ (29 CFR 1910.1000). Government agencies, including DLA, are not technically subject to OSHA regulations, but are required under 29 U.S.C. 668 to establish their own occupational safety and health programs for their places of employment that are consistent with OSHA standards. DNSC's *Guidelines for All Potential Exposures to Elemental Mercury, Safety, and Health Guidelines for Mercury*, *(*January 15, 1977), sets mercury concentration levels. Mercury concentration levels in excess of 0.025 $mg/m^3$ as an 8-hour time weighted average when measured at the approximate breathing zone of a worker shall constitute a condition necessary to implement full personal protection and monitoring procedures.

Activities under all the alternatives would need to be conducted in compliance with this act. For those alternatives that include handling of mercury, mercury exposure levels would apply.

**Safety and Occupational Health Policy for the Department of Defense (DoDD 1000.3)—**This directive requires DoD to implement comprehensive programs to protect DoD personnel from accidental death, injury, or occupational illness and the public from death, injury, and illness, or property damage as a result of DoD operations.

### 5.1.7 Transportation

**Hazardous Materials Transportation Act of 1975 (49 U.S.C. 5105 et seq.)—**Transportation of hazardous materials and substances is regulated by the U.S. Department of Transportation (DOT). The Hazardous Material Transportation Act of 1975 requires DOT to prescribe uniform national regulations for transportation of hazardous materials. Most state and local regulations regarding such transportation that are not substantively the same as DOT regulations are preempted (i.e., rendered void) (49 U.S.C. 5125). This, in effect, allows state and local governments to only enforce the Federal regulations, not to change or expand upon them. This program is administered by the Research and Special Programs Administration of DOT, which coordinates its regulations with those of EPA (under RCRA) when covering the same activities.

DOT regulations (49 CFR 171 through 178, and 49 CFR 383 through 397) contain requirements for identifying a material as hazardous. DOT hazardous material regulations establish standards for packaging, marking and labeling, placarding, monitoring, routes, accident reporting and manifesting. Requirements for transport by rail, air, and public highway are included. All alternatives requiring transportation of any hazardous materials would need to be in compliance with these regulations.

**Transportation and Traffic Management (DoD 4500.9)—**This directive prescribes general DoD transportation and traffic management policies. This directive requires that DoD transportation resources be organized and managed to ensure optimum responsiveness, efficiency, and economy to support the DoD mission.

**Packaging of Hazardous Material (DLAD 4145.41)—**This directive establishes uniform policy for the Military Services and DLA for packaging hazardous materials for safe, efficient, and legal storage, handling, and transportation.

**DLA Transportation and Traffic Management (DLAD 4500.14)—**This directive establishes transportation and traffic management policy, assigns responsibilities, and provides guidance; it is applicable to all modes of transportation.

### 5.1.8 Emergency Response

**Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604[I] (also known as "Superfund")—**This act provides authority for Federal and state governments to respond directly to hazardous substance incidents. The act requires reporting spills to the National Response Center. Any non-federally permitted release of 1 pound or more of mercury into the environment in a 24-hour period must be reported immediately to the National Response Center (40 CFR 302.4).

**Emergency Planning and Community Right-to-Know Act of 1986 (U.S.C. 11001 et seq.) (also known as "SARA Title III")—**This act requires emergency planning, and notice to communities and government agencies, of the presence and release of specific chemicals. EPA implements this act under regulations found in 40 CFR 355, 370, and 372. Under Subtitle A of this act, Federal facilities are required to provide various information (such as inventories of specific chemicals used or stored and releases that occur from these sites) to the state emergency response commission and to the local emergency planning committee to ensure that emergency plans are sufficient to respond to unplanned releases of hazardous substances. Implementation of the provisions of this act began voluntarily in 1987, and inventory and annual emissions reporting began in 1988. Activities under all of the alternatives involving mercury storage facilities would need to be in compliance with these regulations.

**Superfund Implementation (Executive Order 12580)—**This order delegates to the heads of executive departments and agencies the responsibility of undertaking remedial actions for releases or threatened releases that are not on the National Priorities List, and removal actions, other than emergencies, where the release is from any facility under the jurisdiction or control of executive departments and agencies.

**Assignment of Emergency Preparedness Responsibilities (Executive Order 12656)—**This order assigns emergency preparedness responsibilities to Federal departments and agencies.

### 5.1.9 Other Statutes, Executives Orders, and Guidance

**Strategic and Critical Materials Stock Piling Act (50 United States Code 98 et seq.)—**The Strategic and Critical Materials Stock Piling Act regulates DLA sales of mercury from the National Defense Stockpile. Under this act, DLA is required to submit an Annual Materials Plan to Congress that includes a request for selling materials that are excess to stockpile needs for each fiscal year, for a total of four years. All mercury management alternatives would be affected by this act.

**National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.)—**The National Environmental Policy Act (NEPA) establishes a national policy promoting awareness of the environmental consequences of human activity on the environment and consideration of environmental impacts during the planning and decisionmaking stages of a project. It requires Federal agencies to prepare a detailed environmental impact statement (EIS) for any major Federal action with potentially significant environmental impact. Federal Agencies are regulated under the Council on Environmental Quality regulations (40 CFR Part 1500 et seq.) for implementing the procedural requirements of NEPA. Environmental Considerations in DLA Actions in the United States (DLAR 1000.22) establishes policy, assigns responsibilities, provides guidance, and establishes procedures for the integration of environmental considerations into DLA planning and decisionmaking in accordance with the Council on Environmental Quality NEPA regulations. The provisions of the regulations apply to proposed plans, decisions, and actions of DLA headquarters and field activities that could have an impact on the human environment.

This *Mercury Management EIS* (MM EIS) has been prepared in accordance with the Council on Environmental Quality and DLA regulations. It discusses reasonable alternatives and their potential environmental consequences.

**Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.)—**The Atomic Energy Act authorizes the U.S. Department of Energy (DOE) to establish standards to protect health or minimize dangers to life or property for activities under DOE's jurisdiction. Through a series of DOE orders, an extensive system of standards and requirements was established to ensure safe operation of DOE facilities. DOE regulations are found in 10 CFR 2002 through 1099 and may apply to alternatives that include the use of DOE's Y–12 National Security Complex at Oak Ridge, Tennessee.

**Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq.)—**This act requires the avoidance of any adverse effects on prime and unique farmlands. Its purpose is to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses and to ensure that Federal programs are administered in a manner that, to the extent practical, will be compatible with state and local government and private programs and policies to protect farmland.

**Protection and Enhancement of Environmental Quality (Executive Order 11514)—**This order (regulated by 40 CFR 1500 through 1508) requires Federal agencies to continually monitor and control their activities to: (1) protect and enhance the quality of the environment, and (2) develop procedures to ensure the fullest practicable provision of timely public information and understanding of the Federal plans and programs that may have potential environmental impact so that views of interested parties can be obtained. DLA has issued regulations (DLAR 1000.22) for compliance with this Executive order. As previously discussed, this MM EIS has been prepared in accordance with NEPA requirements (i.e., 40 CFR 1500 through 1508).

**Environmental Effects Abroad of Major Department of Defense Actions (Executive Order 12114)—**This order requires officials of Federal agencies to further the purpose of NEPA with respect to the environment outside the United States, its territories and possessions. Activities conducted under the Sales Alternatives must be in compliance with this order.

**Environmental Considerations in DLA Actions Abroad (DLAR 1000.29)** is a DLA regulation that establishes DLA policy, assigns responsibilities, and provides procedures for the review of environmental effects of major DLA actions outside the United States, its territories and possessions, as required by Executive Order 12114, Environmental Effects Abroad of Major Federal Actions. Overseas activities conducted under the Sales Alternatives must be in compliance with this regulation and Executive Order 12114.

**Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Executive Order 12898)—**This order requires each Federal agency to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. The environmental justice sections of Chapter 4, Environmental Consequences, provide information on the compliance with this order.

**Protection of Children from Environmental Health Risks and Safety Risks (Executive Order 13045)—**This order requires each Federal agency to make it a high priority to identify and assess environmental health risks and safety risks that may disproportionately affect children and to ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks or safety risks.

**Trade Security Controls on DoD Excess and Surplus Personal Property (DoDD 2030.8)—**This directive ensures that all DoD excess and surplus personal property is transferred in accordance with applicable U.S. laws, regulations, and policies. The Director of DLA is required to act as the program manager for policy implementation of trade security control policy and procedures for transfers of DoD excess and surplus personal property.

**Environmental Security (DoDD 4715.1)—**This directive establishes policy for environmental security within DoD. The directive states that it is DoD policy to display environmental security leadership within DoD activities worldwide and support the national defense mission by:

- ensuring that environmental factors are integrated into DoD decision-making processes that may have an impact on the environment and are given appropriate consideration along with other relevant factors
- preventing pollution and minimizing adverse environmental impacts
- protecting, preserving, and restoring and enhancing the quality of the environment

**Environmental Effects Abroad of Major Department of Defense Actions (DoDD 6050.7)—**This directive provides policy and procedures to enable DoD officials to be informed and take account of environmental considerations when authorizing or approving certain major Federal actions that may do significant harm to the environment outside the United States.

**Environmental Compliance (DoDI 4715.6)—**This instruction implements policy and prescribes procedures for achieving compliance with applicable Executive orders and Federal, state, interstate, regional, and local statutory and regulatory environmental requirements. This instruction states that it is DoD policy to:

- reduce compliance costs and simplify requirements to the extent possible, with pollution prevention being the preferred means for attaining compliance
- participate in the development of Federal, state, and local plans and programs for achieving, maintaining, and enhancing environmental quality
- use commercially proven solutions, including available technology, to achieve, maintain, and monitor compliance, where possible
- conduct internal and external compliance self-assessments at installations

**Defense National Stockpile Operations Manual (DNSCM 4145.1)—**This manual applies to the storage and handling of Defense National Stockpile commodities at all storage locations. It includes general storage procedures, as well as policy, procedures, and instructions on packaging, commodity maintenance, health and safety, security, shipping and receiving, and accountability. It also provides general requirements, procedures, instructions, and information required for the acquisition, disposal, upgrading, and quality maintenance of strategic and critical materials in DNSC. Instructions on environmental and occupational health and safety monitoring and reporting are included in the manual. Specific guidance on the storage of mercury is provided in Appendix 4-A of the manual.

## 5.2 PERMITS

The operation and possible modification of facilities may require new environmental permits or modification of existing permits. Permits regulate activities conducted during operation, including the storage of materials and discharges of effluents to the environment. Operation of existing or modified storage facilities in most cases might only require the modification of existing environmental permits as opposed to applying for new permits. These permits would be modified as required by appropriate Federal, state, and local agencies. Any permit modification or application for a new permit needed for mercury management activities would not be made before a Record of Decision was issued on this MM EIS. The following sections summarize the major permitting requirements for each of the alternatives. Permitting requirements are discussed in more detail under each resource area in Chapters 3 and 4.

### 5.2.1 Mercury Storage

The No Action Alternative and alternatives involving consolidated storage at an existing DNSC storage depot or other candidate storage facility would most likely not trigger any new environmental permitting requirements. Existing permits would remain in place under the No Action Alternative. These permits most likely would not have to be modified for the additional mercury that would be stored at one of the DNSC depots or for the addition of mercury at other candidate sites under the Consolidated Storage Alternative.

No prevention of significant deterioration permits have been issued for any air emission source at the existing storage sites. There are currently no active air emissions sources at New Haven, Somerville, or Warren depots that are required to be permitted under the Clean Air Act or state air regulations. Y–12, however, currently has 40 individual air permits on the site. The Hawthorne Army Depot operates under an air permit for various sources, including boilers, processors, generators, and ordnance disposal and a separate permit for plasma ordnance disposal operations. There are currently no air emission sources at the PEZ Lake Development warehouses that would be used for mercury storage that would require Clean Air Act or state permits. There are currently a number of air emission sources at the Utah Industrial Depot that may require air pollutant operating permits. However, there are no boilers, furnaces, or other air pollutant sources associated with the two warehouses being considered for mercury storage that would require air pollution operating permits. The EPA Title V operating permit program is applicable to stationary sources with a potential to emit or exceed applicability thresholds. Some states, however, exempt small sources of air pollutants from permitting requirements.

No NPDES permits are currently required at the New Haven and Warren depots. Both the Somerville Depot and Y–12 have state NPDES permits for storm water discharge. Storm water discharges from the Hawthorne Army Depot are covered by a NPDES general permit. Utah Industrial Depot does not have a permit for storm water discharge, but normally retains storm water in an onsite detention basin. The depot is authorized by the Army to discharge overflow from the basin to the adjoining Tooele Army Depot. The PEZ Lake Development does not currently have a NPDES permit for storm water discharge.

All of the candidate storage sites generate and manage sanitary, nonhazardous, and hazardous waste on site. Y–12 also generates low-level radioactive waste and mixed low-level radioactive waste. The New Haven and Warren depots are conditionally exempt from RCRA requirements because each produces less than 100 kg of hazardous waste each calendar month. Somerville is considered a small quantity generator under RCRA, while Y–12 and the Hawthorne Army Depot are large quantity generators. Both PEZ Lake Development and the Utah Industrial Depot, as a whole, are large quantity generators because of cleanup and remediation activities. However, the specific sites being proposed for storage of excess mercury at these larger sites are not large quantity generators. All sites have been issued RCRA identification numbers. Y–12 and the Hawthorne Army Depot also have a RCRA permit for storage of hazardous materials. All mercury management candidate sites have state-authorized RCRA programs (EPA 2002).

### 5.2.2 Mercury Sales

Sales Alternatives that include shipment of mercury to other countries would need to consider U.S. export regulations. Buyers of DNSC mercury must comply with all U.S. export and foreign import regulations if mercury is shipped outside of the United States, including the U.S. Bureau of Export Administration Foreign Trade Statistics and Administration Regulations (15 CFR 30 and 732).

## 5.3 CONSULTATIONS

Certain statutes and regulations require DLA to consider consultations with Federal, state, and local agencies and federally recognized Native American groups regarding the potential for alternatives for mercury management to disturb sensitive resources. The needed consultations must occur on a timely basis and are generally required before any land disturbance can begin. These consultations are related to biotic resources, cultural resources, and Native American rights. The biotic resource consultations generally pertain to the potential for activities to disturb sensitive species or habitats. Cultural resource consultations relate to the potential for disruption of important cultural resources and archaeologic sites. Finally, Native American consultations are concerned with the potential for disturbance of ancestral

Native American sites and the traditional practices of Native Americans. DNSC is in the process of initiating the required consultations at the candidate sites and will report the status of these consultations in the Final MM EIS.

### 5.3.1 Native American Consultations

Upon publication of this Draft MM EIS, DNSC will initiate a government-to-government consultation process with potentially affected federally recognized Native American tribal governments. A copy of this MM EIS will be presented to each federally recognized tribe that has acknowledged potential concern for resources at the candidate sites.

The consultation process will be initiated by the responsible DNSC representative through a formal letter identifying the potential actions at the candidate site accompanied by a copy of this Draft MM EIS. The letter will request a response from each Native American tribal government regarding concerns under the American Indian Religious Freedom Act (P.L. 95-341) and the Native American Graves Protection and Repatriation Act (P.L. 101-601). Among the areas of specific concern that may be identified by Native American tribal governments are religious and sacred places and resources, Native American human remains, associated funerary objects, unassociated funerary objects, sacred objects, and cultural patrimony objects.

Each response will be addressed by DNSC through a consultation process acceptable to the specific Native American tribal government including, but not limited to, government-to-government meetings, interviews, and site visits. It will be the intent of these consultations to identify all potential Native American tribal government concerns associated with each action discussed in this Draft MM EIS and to consider the results of the consultation processes in the Final MM EIS. The individual consultation processes for each site with each Native American tribal government will be formally documented in the Final MM EIS including a summary of the consultation processes along with copies of formal correspondence.

In the event of inadvertent discovery of potential important materials such as human remains, associated funerary objects, unassociated funerary objects, sacred objects, and cultural patrimony during modification and/or operation of facilities, another consultation process will be initiated. In each case, the activities would be immediately suspended upon recognition of human remains or potential cultural materials. DNSC would be notified, and qualified cultural resource specialists would evaluate the materials to determine potential Native American origin. If the remains or materials are determined to be of potential Native American origin and within the criteria of the American Indian Religious Freedom Act and the Native American Graves Protection and Repatriation Act, DNSC would immediately initiate an expedited formal consultation process with Native American Tribal Governments with interest in the locations, as determined during the MM EIS consultation process described above. Based on the results of the consultations, DNSC would take appropriate action prior to resuming activities.

### 5.3.2 Archaeological and Historical Resources Consultations

Upon the publication of this Draft MM EIS, DNSC representatives will initiate consultation with the State Historic Preservation Officers of the potentially affected candidate sites. Although the consultation process is being initiated with the publication of this Draft MM EIS, assessments of cultural resources have previously been conducted at the candidate sites. A Cultural Resource Assessment was prepared for each of the three DNSC depots: New Haven (Deleon 1999a), Somerville (McLeod 1998), and Warren (Deleon 1999b). The goal of these assessments was to identify and evaluate any significant prehistoric and historic archeological sites, as well as historic structures and buildings owned by DNSC, within depot

boundaries. The State Historic Preservation Officers were consulted during the assessment process and were provided a copy of the draft assessment for review and comment. Cultural resources at Y–12 were described in the *Site-Wide Environmental Impact Statement for the Y–12 National Security Complex* (DOE 2001). During preparation of this document, DOE consulted with the Tennessee State Historic Preservation Officer regarding the presence of Y–12 resources eligible for the National Register of Historic Places.

Cultural studies and consultations were also previously conducted at the Hawthorne Army Depot, PEZ Lake Development, and Utah Industrial Depot. A cultural resources management plan was prepared for Hawthorne Army Depot that provides guidelines and procedures that enables the depot to meet its legal responsibilities for the identification, evaluation, and treatment of historic properties under its jurisdiction (Geo-Marine 1996). This document was developed in consultation with the Nevada State Historic Preservation Officer. Cultural resources at the PEZ Lake Development, previously part of the Seneca Army Depot, are described in the *Environmental Impact Statement for BRAC 95 Disposal and Reuse of Property at the Seneca Army Depot Activity, New York* (Army 1998). The New York State Historic Preservation Officer was consulted during preparation of this document. Cultural resources were also described in the *Final Environmental Impact Statement for Disposal and Reuse of the BRAC Parcel at Tooele Army Depot, Tooele, Utah* (Army 1996), where the Utah Industrial Depot is now located. As with the other EISs previously mentioned, the State Historic Preservation Officer was consulted regarding the cultural resources descriptions and analyses presented in the document.

The intent of each consultation that will be initiated with the State Historic Preservation Office upon publication of this Draft MM EIS will be to determine potential eligibility for nomination to the National Register of Historic Places of archaeological and historic resources that may be associated with the proposed actions and alternatives. Further consultations will be used to determine the potential for adverse effect to any resources determined to be eligible for nomination and any necessary actions required to mitigate potential adverse effects. The consultation process will be initiated by the responsible DNSC representative through a formal letter to the appropriate State Historic Preservation Officer identifying the potential actions at the candidate site accompanied by a copy of this Draft MM EIS and supporting cultural resource information. The letter will request a consultation meeting, if necessary, to discuss specific concerns and information needs. A site visit may be appropriate for locations with identified resources. In all cases, the consultation process will conform to 36 CFR 800 requirements for the management of archeological and historic resources and properties. Each consultation process will be documented in the Final MM EIS, including a summary of the consultation processes along with copies of formal correspondence.

In the event that potential archaeological and historic materials are inadvertently discovered during facility modification and/or operation, another consultation process will be initiated. In each case, the activities would be immediately suspended upon recognition of human remains or potential archaeological and historical materials. DNSC would be notified and qualified cultural resource specialists would evaluate the materials to identify and evaluate their potential archaeological and historical value under 36 CFR 800. If the materials were determined to be potentially eligible for nomination to the National Register of Historic Places, DNSC would immediately initiate an expedited formal consultation process with the appropriate State Historic Preservation Officer, as appropriate. Based on the results of the consultations, DNSC would take appropriate action prior to resuming activities to ensure mitigation of any adverse effect to resources determined eligible for nomination to the National Register of Historic Places.

### 5.3.3 Endangered Species Act Consultation

Although the consultation process is being initiated with the publication of this Draft MM EIS, previous assessments of ecological resources, including threatened and endangered species, have been conducted. A Natural Resource Assessment was conducted for each of the three DNSC sites: New Haven (Cash 1998a), Somerville (Cash 1998b), and Warren (Cash 1998c). The goal of these assessments was to meet Department of Defense requirements for natural resources conservation at the DNSC sites. The goal was accomplished through onsite assessments, information reviews, interviews with essential personnel, and appropriate Federal and state natural resource agencies. During preparation of the *Site-Wide Environmental Impact Statement for the Y–12 National Security Complex* (DOE 2001), informal consultations were initiated in late 1999 and were concluded with input from the U.S. Department of the Interior, Fish and Wildlife Service (USFWS) office located in Cookeville, Tennessee, in 1999 and the Tennessee Wildlife Resources Agency in 2000.

Biological surveys, assessments, and consultations were also previously conducted at the Hawthorne Army Depot, PEZ Lake Development, and Utah Industrial Depot. An Environmental Baseline Survey was conducted for Hawthorne Army Depot to document the environmental condition of the site (Army 2000). More recently, a rare plant study was conducted to provide a systematic botanical survey to determine the distribution and abundance of rare and sensitive plant species (Nachlinger 2001). As part of the U.S. Army Base Realignment and Closure (BRAC) Program, an EIS was prepared at the Seneca Army Depot, within which lies the PEZ Lake Development, to address environmental and socioeconomic impacts of disposing of the property and reasonable, foreseeable reuse alternatives (Army 1998). The U.S. Army consulted with the USFWS office located in Cortland, New York, and the New York State Department of Environmental Conservation. Under the same BRAC Program, an EIS was prepared for the Tooele Army Depot, part of which is now the Utah Industrial Depot (Army 1996). During development of the document the following agencies were consulted: USFWS offices located in Denver, Colorado, and Salt Lake City, Utah; Bureau of Land Management; and Natural Resources Department, Wildlife Resources Division. More recently, Environmental Assessments were prepared to address right-of-way issues on land occupied or adjacent to the Utah Industrial Deport (Army 2001a, 2001b). In both assessments the USFWS office in Salt Lake City, Utah, was consulted.

Upon publication of this Draft MM EIS, DNSC will conduct consultations with the appropriate regional and field offices of the USFWS and the equivalent state agencies. The consultations will solicit input on the potential for impacts on ecological resources, especially Federal threatened, endangered, and other species of concern or their critical habitat and/or state-protected species. These consultations will be conducted in accordance with Section 7(a)–(d) of the Endangered Species Act of 1973 (16 U.S.C. Sections 1536(a)–(d)) and its implementing regulations under 50 CFR 402, "Interagency Cooperation-Endangered Species Act of 1973, as Amended," and relevant state statutes and regulation.

The consultation process will be initiated by DNSC through letters to the U.S. Fish and Wildlife Service and equivalent state agencies. These letters will identify the potential actions at each candidate site, and be accompanied by a copy of this Draft MM EIS. Each letter will summarize the preliminary analysis of the potential impacts on ecological resources at each site, including any known Federal- or state-listed species. Each letter will also request that the consulted offices provide any available information on threatened and endangered animal and plant species (listed or proposed) and their habitats in the vicinity of the specific project areas. Each office will also be asked to identify any other issues or concerns that should be considered in this Final MM EIS.

Prior to any project implementation activities at any site, additional consultations with Federal and state agencies would be conducted as appropriate. Additionally, site-specific surveys and assessments would be conducted, as necessary, to determine the potential for impacts to protected or other sensitive animal and plant species and sensitive habitats and to identify any required mitigation measures.

## 5.4 REFERENCES

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