



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

January 22, 2003

Steven J Morello  
General Counsel and  
Designated Agency Ethics Official  
Department of the Army  
104 Army Pentagon  
Washington, DC 20310-0104

Dear Mr. Morello:

The Office of Government Ethics (OGE) recently completed its review of the ethics program at the United States Army Corps of Engineers (USACE). This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objective was to determine the ethics program's effectiveness and compliance with applicable laws and regulations. The review was conducted during October and November 2002. The following is a summary of our findings, conclusions, and recommendation.

#### HIGHLIGHTS

OGE commends USACE for its commitment to maintaining the integrity of its employees, as demonstrated by the effectiveness of its training. Because of concerns about the accuracy and completeness of the advice and counseling being provided, USACE has begun clearing its advice and counseling with the Department of the Army (Army) Office of General Counsel prior to issuance. The ethics program will improve even more with additional attention to advisory committees

#### ADMINISTRATION

USACE's ethics program is decentralized. USACE headquarters' (HQ USACE) ethics counselor, in addition to managing the ethics program for headquarters employees, oversees the aspects of the ethics program administered by other ethics counselors at each of USACE's 8 divisions, 41 districts, and 8 research and development laboratories (hereafter referred to as USACE components). This oversight includes obtaining information for the various reports required by OGE, ensuring that ethics counselors receive proper training, and disseminating ethics-related policies and directives.

## FINANCIAL DISCLOSURE SYSTEMS

In 2002, 11 military and 42 civilian USACE employees were required to file public financial disclosure reports. We examined all 11 of the reports filed by military personnel and a sample of 29 of the 42 reports filed by civilians, these consisted of all the reports filed by HQ USACE civilian employees and a sample of those filed by civilian employees located within USACE components. The reports were generally filed, reviewed, and certified in a timely manner.<sup>1</sup> Moreover, ethics counselors at USACE and the Army Standards of Conduct Office (DA SOCO), where reports are forwarded for final review, certification, and retention, appear to have conducted a thorough review of the reports, as evidenced by the few technical deficiencies and no substantive deficiencies contained therein.

We also examined 56 of the 113 confidential reports required from and filed by regular HQ USACE employees in 2001.<sup>2</sup> Of these, four were new entrants and the remainder were annual reports, all of which were filed using the OGE Form 450.<sup>3</sup> While all annual reports we examined were filed, reviewed, and certified timely, two new entrant reports were filed late, and the filing timeliness for another could not be determined due to a failure to record the filer's date of appointment to the covered position.<sup>4</sup> The HQ USACE ethics counselor stated he was aware of the new entrant filing timeliness issue, but was confident that the current system by which

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<sup>1</sup>One combined annual and termination report was filed around the annual filing deadline, but more than thirty days after termination; the late fee was waived. Another report was filed almost two months late; however a note stated that it had initially been submitted timely, but on an obsolete form. Therefore, it was resubmitted on a current form.

<sup>2</sup>Within the last year USACE ethics counselors have made a concerted effort to reduce the number of confidential filers. The HQ USACE ethics counselor stated that they had succeeded in reducing the number of filers USACE-wide from over 10,000 to approximately 7,000 in 2002. At HQ USACE the number of filers has declined almost as dramatically; from 113 to only 83

<sup>3</sup>The HQ USACE ethics counselor explained that while he does not prohibit the use of the OGE Optional Form 450-A, he does not encourage it, and consequently, does not attach an electronic copy of the optional form to the notification e-mail he issues.

<sup>4</sup>In addition, the ethics counselors failed to record the date on which they received each report. Therefore, we relied on the dates filers signed their reports to determine filing timeliness. We reminded the HQ USACE ethics counselor of the requirement to record the dates on which he or component ethics counselors receive reports.

he receives semimonthly reports of new employees from the Office of Human Resources will remedy the problem. The review of the reports appeared to be thorough as we found only minor technical and no substantive deficiencies in reports we examined.

USACE has three Federal advisory committees. These committees consist of the Mississippi River Commission with seven current members; The U.S. Army Coastal Engineering Research Board with seven current members, and The Chief of Engineers Environmental Advisory Board with nine current members. We examined all available reports required from special Government employee committee members in 2001, the majority of which were appropriately filed, reviewed, and certified. However, two incumbent members have not filed financial disclosure reports since filing their new entrant SF 278s upon nomination several years ago<sup>5</sup>

#### EDUCATION AND TRAINING PROGRAM

HQ USACE provides initial ethics orientations and annual ethics training for all covered HQ USACE employees and encourages non-covered personnel to complete training as well. This training complied with the requirements in subpart G of 5 C.F.R. part 2638

The number of USACE employees has been declining in recent years, so ethics counselors rarely need to conduct initial ethics orientations. Despite the virtual hiring freeze at USACE, the HQ USACE ethics counselor did provide an initial ethics orientation in 2002 for approximately 40 new attorneys hired under an honors program.

The HQ USACE ethics counselor personally provided verbal annual ethics briefings for all public filers at headquarters in 2001. At the USACE components, ethics counselors also conducted verbal training for all public filers, basing it on training materials developed by the Department of Defense Standards of Conduct Office (DOD SOCO)

Likewise, all confidential filers received their 2001 annual ethics briefings. The HQ USACE ethics counselor sent an e-mail notification to all headquarters employees reminding them of the annual training requirement and directing them to DOD SOCO's Web site, where they could access and complete online interactive ethics

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<sup>5</sup>We were advised by the HQ USACE ethics counselor that several years ago advisory committee members switched from filing SF 278s to filing OGE Form 450s. The need for these two members to file a financial disclosure form was apparently overlooked in the transition process and not discovered until our review.

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training<sup>6</sup> A feature of USACE's e-mail system allowed the HQ USACE ethics counselor to determine whether recipients actually opened the message<sup>7</sup>

In 2001, members of the Mississippi River Commission were provided live ethics training by a divisional ethics counselor. Members of the Chief of Engineers Environmental Advisory Board and the U.S Army Coastal Engineering Research Board were provided written ethics training materials.

#### ADVICE AND COUNSELING SERVICES

Although advice and counseling services have been developed and conducted in accordance with 5 C.F.R § 2638.203(b)(7) and (8), we were concerned about the accuracy and completeness of the advice and counseling, particularly with respect to advice provided on seeking and post employment. As a result, the documents were provided to the Army's Deputy General Counsel (Ethics and Fiscal) for review and analysis. Based on his examination, the Deputy General Counsel (Ethics and Fiscal) decided that, effective immediately, any advisory memoranda prepared by the HQ USACE ethics counselor would be cleared through his office prior to issuance to ensure the accuracy and completeness of the guidance provided.

#### ACCEPTANCE OF TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

USACE accepts payments of travel and related expenses from non-Federal sources in accordance with 31 U.S.C. § 1353 and 41 C.F.R. part 304-1. However, this authority is rarely utilized at headquarters, but more frequently used on behalf of scientists at the eight USACE laboratories. No payments were accepted from April 2001 through March 2002.

#### COORDINATION WITH INVESTIGATIVE ORGANIZATIONS

Based on our discussions with the HQ USACE ethics counselor and an examination of relevant documents, USACE appears to comply with the requirements of 5 C.F.R. §§ 2638.203(b)(11) and (12) and 2638.603. Allegations of ethical wrongdoing are usually investigated first by an internal investigating officer. These investigating officers are supported by counsel and follow the procedures for conducting investigations contained in Army

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<sup>6</sup>Although training is only required for financial disclosure report filers, the HQ USACE ethics counselor urges all headquarters personnel to take the training.

<sup>7</sup>In 2002, the HQ USACE ethics counselor required all covered employees to send him a reply e-mail acknowledging that they had completed the training.

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Regulation 15-6 This investigation determines whether any misconduct has occurred, and if so, whether it is a violation of rule or law. Rule infractions are usually handled internally through administrative disciplinary actions while most cases involving potential criminal conflict of interest violations are referred directly to the Criminal Investigative Command (CID). However, any allegation made against a member of the Senior Executive Service (SES) or a General Officer is investigated first by the Army's Office of Inspector General (OIG), which turns it over to CID if the allegations are substantiated.

The HQ USACE ethics counselor informed us that there is currently one ongoing investigation of a USACE SES employee by OIG. This case was appropriated by OIG after an initial internal investigation of allegations of mismanagement also uncovered a possible violation of 18 U S C § 208.

#### CONCLUSIONS AND RECOMMENDATION

USACE's ethics program is reasonably sound but requires improvement. The ethics training provided is an especially strong element of the overall program. Implementing the following recommendation (as well as coordinating the issuance of any ethics-related advice with the Army's Deputy General Counsel (Ethics and Fiscal)) will bring the program into compliance with ethics laws and regulations.

Ensure the HQ USACE ethics counselor collects OGE Form 450s from the two Mississippi River Commission members who have not filed since nomination.

In closing, I wish to thank the HQ USACE ethics counselor for his cooperation during this review and his efforts on behalf of the ethics program. Please advise me within 60 days of the actions you have taken or plan to take on our recommendation. A brief follow-up review will be scheduled within six months from the date of this report. In view of the corrective action authority vested with the OGE Director under subsection 402(b)(9) of the Ethics Act, as implemented in subpart D of 5 C F.R. part 2638, it is important that our recommendation be implemented in a timely manner. A copy of this report is being forwarded by transmittal letter to Army's Inspector General. Please contact Dale Christopher at 202-208-8000, extension 1130, if we may be of further assistance.

Sincerely,



Jack Covalesski  
Deputy Director  
Office of Agency Programs