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Subject: Architect-Engineer Responsibility Management Program (AERMP)

Applicability: Information

1. HQ, USACE Engineering and Construction (E&C) has received and analyzed the FY09 AERMP reports from all MSCs and Centers, which are required by Chapter 7 of [EP 715-1-7](#), Architect-Engineer Contracting. The following observations are made, for your information and use:

- a. The significant overarching profile performance of the 10 reports received is as follows:
 - (1) HNC, MVD, SPD and TAD had no cases for AERMP activities during FY09;
 - (2) POD initiated 2 cases in FY09, but had no activities on the cases during FY09;
 - (3) NAD brought 4 cases forward from FY08 and dropped one case, amounting to \$885,000;
 - (4) NWD brought 3 cases forward from FY08, initiated 2 cases, but had no activity on any of the cases in FY09;
 - (5) SWD brought one case forward from FY08, but had no activity on that case in FY09;
 - (6) LRD dropped two cases with \$8.6K of I&R Costs and settled 6 cases, as the only USACE Activity to settle any cases in FY09, but outlaying \$26.1K of I&R Costs;
 - (7) SAD brought one case forward from FY08, initiated two cases, but had no activity on any of the cases in FY09; and
 - (8) Of the 12 total cases initiated in FY09, SAD and LRD initiated two cases without determination of damages for this report.
- b. The total amount of A-E liability settlements received in FY09 was \$359,804, better than the FY08 settlement performance of \$291,017, but still phenomenally less than the FY07 settlement performance of \$3,141,813. The settlement performance for the previous ten years (1999-2008) is \$14,480,000 and the FY09 A-E Liability Settlement is close to 2.5% of the previous ten years performance. This ECB also records the changes in the error in the FY08 settlement performance from 19% to 1.9% of \$15,719,000, which was for the previous ten years prior to 2008 (1998-2007), and was incorrectly codified in ECB No. 2009-27.
- c. Only six (6) cases were settled in FY09, all by one USACE Command, LRD. Of the thirty (35) cases in the universe for FY09, only 17 % were settled; three (3) were dropped and 26 cases are being carried forward to FY10. In comparison to FY08, 21% (6 cases)

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of 28 were settled. The total negotiated settlement for the 6 FY09 cases was \$359,804 and the total original computed damages were \$818,201, resulting in a 43.9% settlement performance as compared to the damages; this was a great improvement over the FY08 settlement/damage performance of only 18%. Overall the number of cases settled for FY09 remained constant at six (6) as compared to FY08; but again in comparison to the settlement performance for the previous ten years (1999-2008) of \$14,480,000, the FY09 negotiated settlements were very low at approximately 2.5% of the \$14,480,000 total.

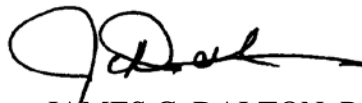
- d. Investigation and Recovery (I&R) Costs were reported by LRD for two (2) dropped cases, amounting to \$8,551 and with total damages amounting to \$92,878. LRD also reported total I&R Costs for the six (6) settled cases at \$26,111; with total damages at \$818,201 and total settlement at \$359,804. LRD outlaid a total of \$34,661 for I&R Costs for its eight (8) actions, which was approximately 9.6% of its settlement receipts.

2. In summary, of the six (6) USACE Commands who carried over cases from FY08 and initiated cases in FY09, only two Commands demonstrated any positive AERMP activity: LRD dropped 2 cases and settled 6 cases and NAD dropped 1 case. Four (4) of the 10 Commands had no AERMP cases; thusly, eight (8) Commands showed no evidence of AERMP performance for FY09. The significant profile performance for FY09 clearly indicates a greater focus must be placed on the Architect-Engineer Responsibility Management Program in the future.

3. Please, keep at the forefront of your AERMP management, the following points that must be considered when reporting:

- a. In the FY10 AERMP Reports, the total damages for the cases brought forward from FY09 should be the same total damages carried forward from the FY09 assessment or appropriate explanations should be given for the differences in the carry over damages.
- b. All design deficiencies are not A-E liability cases. It is only a case if the A-E firm is liable for the damages and USACE decides to pursue recovery.
- c. The reports must include I&R Costs, which are part of the total assessable damages, when appropriate. It is also important to track I&R Costs as a measure to accurately determine the effectiveness of the AERMP Program in each command. Also, appropriate justifications **MUST** be given for each case that is dropped.

4. Point of contact for subject ECB is Bunny Greenhouse, 202-761-7169.



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