

FINDING OF SUITABILITY TO LEASE
(FOSL)

Parcel 5.1, Parcel 5.2, Parcel 30.1

Defense Distribution Depot Memphis, Tennessee

(FOSL Number 2)

November 5, 1997

1. PURPOSE

The purpose of this Finding Of Suitability To Lease (FOSL) is to document the environmental suitability of certain parcels of property at Defense Distribution Depot Memphis, Tennessee for leasing to the Depot Redevelopment Corporation consistent with the Department of Defense (DOD) and Army policy. In addition, this FOSL identifies use restrictions as specified in the text and attached Environmental Protection Provisions (enclosure 4) necessary to protect human health or the environment and to prevent interference with any existing or planned environmental restoration activities. Uses of the property will be restricted to light industry, storage, sorting operations, receiving, packaging and shipping, support activities, mechanical shop to support material handling equipment, recreation, welfare activities, training, education, and general office.

2. PROPERTY DESCRIPTION

The proposed property to be leased consists of 3.39 acres that include three buildings. The three buildings are identified as Building 274 ("J" Street Cafeteria), Building T272, and Building 925. A site map of the property proposed to be leased can be found at enclosure 1.

3. ENVIRONMENTAL CONDITION OF THE PROPERTY

A determination of the environmental condition of the facilities has been made based on the Community Environmental Response Facilitation Act (CERFA) Letter Report, dated December 5, 1996 and an Environmental Baseline Survey (EBS), dated November 6, 1996. The information provided is a result of a complete search of agency files during the development of the CERFA Letter Report and EBS. The following documents also provided information on environmental conditions of the property: Final Remedial Investigation Report (Law Environmental, August 1990), Final Environmental Assessment for Master Interim Lease (Tetra Tech, September 1996), Remedial Investigation Soil Sampling Letter Report (CH2M Hill, May 1997), OU - 3 and OU - 4 Field Sampling Plans (CH2M Hill, September 1995), RCRA Facilities Assessment (A.T. Kearney, Inc., January 1990), and the Installation Assessment (USAEHA, March 1981).

3.1 Environmental Condition of Property Categories

The properties that are being considered for lease are classified as (DOD) Environmental Condition of Property (ECP) Categories 3, 4, and 6. The ECP Categories for the specific buildings and/or parcels are as follows:

ECP Category 3:	Parcel 5.1 to include Building T272
ECP Category 4:	Parcel 30.1 that is Building 925
ECP Category 6:	Parcel 5.2 to include Building 274

A summary of the ECP Categories for specific buildings or parcels is provided in

Table 1 – Description of Property (enclosure 2).

3.2 Storage, Release, Treatment or Disposal of Hazardous Substances

It was determined that no hazardous substances were stored, released, or disposed in excess of the 40 CFR Part 373 reportable quantities in Building T272. Accordingly, there is no need for any notification of hazardous substance storage, release, treatment, or disposal for this building.

It was determined that even though no hazardous substances were released or disposed in Building 274 in excess of the 40 CFR Part 373 reportable quantities, there was a possible previous spill involved with this area. Building 274 was constructed on a former transformer storage area. Prior to construction of the cafeteria, a spill probably occurred in this area as evidenced by the information obtained from the CH2M Hill sampling conducted in 1997. One out of five samples taken indicate a level of PCB's in the grassy area immediately surrounding the cafeteria slightly above the Residential Risk Based Concentration (RBC) for soil ingestion (1.39 mg/kg vs 0.83 mg/kg). DDE, DDT, DDD, and Dieldrin levels found in the five samples were all below the RBC for soil ingestion.

It was determined that even though no hazardous substances were released or disposed in Building 925 in excess of the 40 CFR Part 373 reportable quantities, there was a previous spill involved with this area. The release of hazardous substances was remediated at the time of the release as an emergency response. Building 925 was previously known as X - 25, an open storage area where flammable materials and petroleum products were stored in an earthen and then concrete bermed area. At one time the concrete bermed area was covered with a fabric tension structure that was called a spandome. This building was labeled Building T925. On January 19, 1988, during a period of inclement weather (wind/rain), the spandome collapsed resulting in a release of hazardous substances in the bermed area. In order to safely remove the collapsed laminate roof and associated steel girders, the bermed area needed to be emptied. Two tanker trucks with pumps removed approximately 36,000 gallons of product and rain water that had accumulated. The following is a list of the impacted products and the 40 CFR Part 373 reportable quantity associated with them: Toluene (1,000 pounds), Xylene (100 pounds), Methyl Ethyl Ketone (5,000 pounds), Methyl IsoButyl Ketone (5,000 pounds), Acetone (5,000 pounds), and Isopropyl Alcohol (5,000 pounds). It was later determined that approximately 325 gallons of product had been spilled although the exact proportions are now unknown. Therefore, a worst case scenario would assume that it was possible for Xylene to exceed the 40 CFR Part 373 reportable quantity of 100 pounds (13.92 gallons) and/or Toluene to exceed the 40 CFR Part 373 reportable quantity of 1,000 pounds (137 gallons).

Temporary Building 925 was replaced in 1993/1994 with Building 925. While Building 925 stored hazardous materials (acetone, methyl ethyl ketone, methanol, ethanol) and petroleum products, it was determined that there was no evidence of any release or disposal in excess of 40 CFR Part 373 reportable quantities. A summary of the buildings in

which hazardous substances were stored, released, or disposed in excess of 40 CFR Part 373 reportable quantities is provided in Table 2 - Notification of Hazardous Substance and Petroleum Products, Storage, Release, or Disposal (enclosure 3).

3.3 Petroleum and Petroleum Products

3.3.1 Storage, Release, or Disposal of Petroleum or Petroleum Products

There is no evidence that any petroleum or petroleum products were stored, released, or disposed at the properties listed in this FOSL except for the area involving Building 925. Building 925 was built on the former earthen and then concrete bermed area of X - 25 and Building T925. There is no evidence that any petroleum or petroleum products were released or disposed in this area. The January 19, 1988 spill did not contain petroleum products. A summary of the building or area in which petroleum or petroleum products were stored, released, or disposed is provided in Table 2 - Notification of Hazardous Substances and Petroleum Products Storage, Release, or Disposal (enclosure 3).

3.3.2 Underground and Above-Ground Storage Tanks (UST/AST)

The EBS and visual site inspection (VSI) reported or identified **no** underground storage tanks and **no** above-ground storage tanks on the property listed in this FOSL. There is no evidence of petroleum contamination at these sites.

3.4 Polychlorinated Biphenyls (PCB) Equipment

There are no PCB containing transformers or other PCB containing equipment located on the property listed in this FOSL. However, Building 274 was built on the location of a former storage area for electrical transformers that contained PCB's. During the Installation Assessment conducted in March 1981, two transformers were observed in the storage area. Testing of the fluid in the transformers indicated concentrations of less than 50 parts per million of PCBs. The site's date of initial operations is unknown but assumed to be prior to 1981. Activities ceased in the mid-1980's because of the construction of the new DDMT cafeteria.

Surface soil sampling in the grassy areas surrounding Building 274 revealed one out of five samples indicating a slightly elevated level of PCB (Aroclor - 1260) above the residential risk-based concentration for soil ingestion (1.39 mg/kg vs 0.83 mg/kg). There is no surface exposure. This site is a candidate for an early removal action or Baseline Risk Assessment to support a Record of Decision for No Further Action. A restriction associated with this Building will be that no digging (soil disturbance) will be allowed in any of the grassy areas surrounding the "J" Street Cafeteria without the express permission of the Government.

The lease will include the PCB notification provision included in the Environmental Protection Provisions (enclosure 4).

3.5 Asbestos

The EBS and the Asbestos Identification Survey (Pickering, December 1993 and January 1994) indicate asbestos containing materials (ACM) are present in Building 274. The tile mastic contained 3% to 5% chrysotile. The ACM does not currently pose a threat to human health or the environment because there is no friable asbestos. The lease will include the asbestos warning and covenant included in the Environmental Protection Provisions (enclosure 4).

3.6 Lead-Based Paint (LBP)

Based on the age of Buildings 925 and 274 (constructed after 1978), they are presumed to contain no lead-based paint. The construction date of Building T272 (lumber storage shed) was 1942, and therefore it is presumed to contain lead-based paint.

No residential use is to be permitted under the terms of the lease.

The lease will include the lead-based paint warning and covenant included in the Environmental Protection Provisions (enclosure 4).

3.7 Radiological Sources or Contamination

There is no evidence that the Army or DDMT used or stored radioactive sources on the property listed in this FOSL.

3.8 Radon

In keeping with DOD policy to not perform radon assessment and mitigation prior to transfer of BRAC property unless otherwise required by applicable law, there were no radon surveys conducted in the buildings listed in this FOSL. Radon surveys were conducted in accordance with regulations in the following residential structures at DDMT: Buildings 176, 179, 181, and 184. Radon was not detected above the EPA residential action level of 4 picocuries per liter (pCi/L) in these buildings.

3.9 Unexploded Ordnance

Based on a review of existing records and available information, none of the buildings or surrounding land proposed for lease are known to contain unexploded ordnance.

3.10 Other Hazardous Conditions

There are no other known hazardous conditions that present a threat to human health or the environment.

4. REMEDIATION

In October 1992, the U.S. Environmental Protection Agency (EPA) placed DDMT on the National Priorities List (NPL) for environmental restoration. DDMT has since entered into a Federal Facilities Agreement (FFA) with the Tennessee Department of Environment and Conservation (TDEC) and the EPA. Environmental contamination on the property does not present a hazard to leasing the property. In addition, environmental conditions on adjacent property do not present a hazard to the leasing of the property. Regulators have concurred with DDMT that the property does not pose risks above levels deemed protective provided that the property is used for the proposed purpose. The lease will include a provision reserving the Army's right to conduct remediation activities in the Environmental Protection Provisions (enclosure 4).

5. REGULATORY COORDINATION

TDEC and EPA Region 4 were notified of the initiation of the FOSL. Regulatory comments received during the FOSL development and the BRAC Cleanup Team meetings were reviewed and incorporated as appropriate. All comments received from TDEC and the EPA during the review process were resolved and incorporated into the FOSL. No written comments were received from the public.

6. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE AND CONSISTENCY WITH LOCAL REUSE PLAN

The environmental impacts associated with the proposed lease of the property have been adequately analyzed in accordance with the National Environmental Policy Act (NEPA). The results of this analysis have been documented in the Final Environmental Assessment for Master Interim Lease, Defense Distribution Depot Memphis, Tennessee, dated September 1996. The environmental effects of the activities anticipated under the proposed lease were determined not to be significant.

The proposed lease addressed by this FOSL is consistent with the reuse alternatives stated in the above referenced NEPA document and with the intended reuse of the property set forth in the Memphis Depot Redevelopment Plan dated May 1997.

7. ENVIRONMENTAL PROTECTION PROVISIONS

On the basis of the above results from the site-specific EBS, any subsequent or additional investigations, surveys, or studies identified in the FOSL, and in consideration of the intended use of the property, certain terms, conditions, reservations, and restrictions are required for the proposed lease. The Environmental Protection Provisions are at enclosure 4 and will be included in the proposed lease and all subleases.

8. FINDING OF SUITABILITY TO LEASE

Based on the information detailed in the EBS, the references cited therein, and this FINDING OF SUITABILITY TO LEASE, I have concluded that all Department of Defense requirements to reach a FINDING OF SUITABILITY TO LEASE have been fully met for the subject property. The subject property is suitable to lease by the Lessee for the intended purpose, subject to the terms, conditions, reservations, and restrictions set forth in the Environmental Protection Provisions attached to this FOSL, without posing an ~~unreasonable-unacceptable~~ risk to human health or the environment and without interference with the environmental remediation process at Defense Distribution Depot Memphis, Tennessee, and the uses contemplated for the lease are consistent with protection of human health and the environment.

As required by CERCLA section 120(h)(3)(B), I have determined that the Environmental Protection Provisions of the lease and the terms of the lease provide adequate assurances that the United States will take any additional remedial action found to be necessary to protect human health and the environment with respect to any hazardous substances remaining on the property on the date of the lease which has not been taken on the date of the lease.

Notification of hazardous substance or petroleum product storage, release, treatment, or disposal on the property, Table 2 - Notification of Hazardous Substance or Petroleum Product Storage, Release, Treatment or Disposal (enclosure 3) shall be provided in the lease documents, as required under the DOD FOSL Guidance.

Earle C. Richardson
Colonel, GS
Deputy Chief of Staff
for Engineering, Housing,
Environmental, and Installation
Logistics

4 Enclosures

Encl 1 Site Map of Proposed Lease Area

Encl 2 Table 1 - Description of Property

Encl 3 Table 2 - Notification of Hazardous Substance or Petroleum
Product Storage, Release, or Disposal

Encl 4 Environmental Protection Provisions

are required for the proposed lease. The Environmental Protection Provisions are at enclosure 4 and will be included in the proposed lease and all subleases.

8. FINDING OF SUITABILITY TO LEASE

Based on the information detailed in the EBS, the references cited therein, and this FINDING OF SUITABILITY TO LEASE, I have concluded that all Department of Defense requirements to reach a FINDING OF SUITABILITY TO LEASE have been fully met for the subject property. The subject property is suitable to lease by the Lessee for the intended purpose, subject to the terms, conditions, reservations, and restrictions set forth in the Environmental Protection Provisions attached to this FOSL, without posing an unacceptable risk to human health or the environment and without interference with the environmental remediation process at Defense Distribution Depot Memphis, Tennessee, and the uses contemplated for the lease are consistent with protection of human health and the environment.

As required by CERCLA section 120(h)(3)(B), I have determined that the Environmental Protection Provisions of the lease and the terms of the lease provide adequate assurances that the United States will take any additional remedial action found to be necessary to protect human health and the environment with respect to any hazardous substances remaining on the property on the date of the lease which has not been taken on the date of the lease.

Notification of hazardous substance or petroleum product storage, release, treatment, or disposal on the property, Table 2 - Notification of Hazardous Substance or Petroleum Product Storage, Release, Treatment or Disposal (enclosure 3) shall be provided in the lease documents, as required under the DOD FOSL Guidance.


Earle C. Richardson

Colonel, GS

Deputy Chief of Staff

for Engineering, Housing,

Environmental, and Installation

Logistics

4 Enclosures

Encl 1 Site Map of Proposed Lease Area

Encl 2 Table 1 - Description of Property

Encl 3 Table 2 - Notification of Hazardous Substance or Petroleum
Product Storage, Release, or Disposal

Encl 4 Environmental Protection Provisions

TABLE 1 - Identification of Property and Environmental Conditions

Facility Identification and Description of Relevant Activities ^a	Corresponding EBS Identification	Environmental Condition Category Number	Environmental Condition of Property and Former, Ongoing, or Planned Remedial Action ^b
Building T272 is a 1,440 square foot building erected in 1942 as the Lumber and P Shed Facility. It is currently being used to store lumber.	Parcel 5.1	3	This building and the surrounding area were possibly subjected to historic pesticide application. There is a grassy strip approximately 10 feet by 100 feet that runs along the back wall of the building that was sampled (CH2M Hill, 1997). No pesticides were found that exceeded BRAC Cleanup Team screening levels. Therefore, while pesticides may or may not have been applied in this area, pesticides are not present at concentrations that require removal or remedial action.
Building 274 is a 13,500 square foot building erected in 1989 as the post restaurant known as the "J" Street Cafe. Its only use has been the cafeteria.	Parcel 5.2	6	A release of polychlorinated biphenyls (PCB's) occurred on this property prior to the construction of Building 274. Soil sampling (CH2M Hill, 1997) indicated that three (3) out of five (5) surface soil sampling locations from grassy areas directly outside of Building 274 contained low levels of PCB's with the highest detection being 1.39 mg/kg. This level exceeded BRAC Cleanup Team screening levels. The BCT has planned a shallow (0 - 12 inches) soil removal with offsite disposal for the areas around the three positive sample locations. This action will occur in 1998.
Building 925 is a 60,000 square foot building erected in 1994 as a special purpose warehouse. It occupies the site of the area formerly known as X - 25, an earthen and then concrete bermed area that contained flammable material and petroleum products. A spandome was placed on this area and was called Building T925. The spandome collapsed in 1988 and Building 925 was erected in the same area.	Parcel 30.1	4	In 1988 the former Building T925 (spandome) collapsed resulting in a spill of approximately 325 gallons of material that mixed with over 30,000 gallons of rainwater. Records show that the spill was contained in the bermed area and properly removed and disposed in accordance with all Federal, state, and local regulations.

^a Acreage figures are approximate. They have been calculated using AutoCad Release 12.

^b Quantity of spills are reported as noted from historical documents.

**Table 2 - Notification of Hazardous Substance or Petroleum Product
Storage, Release, or Disposal**

Facility Identification and Description of Relevant Activity	Identity of Hazardous Substances or Petroleum Products	Parcel Number/ ECP Category	Date of Storage, Release, Treatment, or Disposal Activities	Former, Ongoing, or Planned Remedial Actions
Building 274 was constructed in 1989 as the post cafeteria. Prior use of the area was for transformer storage. Parcel 5.2 consists of Building 274, sidewalks, parking areas, and small grassy areas immediately surrounding the building.	A release of polychlorinated biphenyls (PCB's) occurred at this site prior to the construction of Building 274. One out of five samples taken by CH2M Hill in 1997 indicated a level of PCB's slightly above the Residential Risk Based Concentration (RBC) for Soil Ingestion (1.39 mg/kg vs 0.83 mg/kg). DDT, DDE, and DDD, and Dieldrin levels were all below the RBC for Soil Ingestion.	Parcel 5.2 ECP 6	Releases occurred prior to the construction of the building in 1989.	The BRAC Cleanup Team has planned a shallow (0 - 12 inches) soil removal in 1998 with offsite disposal for the grassy area surrounding Building 274.
Building 925 was constructed in 1994 as a special purpose warehouse. Prior use was the X - 25 area, an earthen then concrete bermed area used for storage of flammable and hazardous materials. A spandome was placed over the concrete bermed area and the building was designated T925.	The following substances have been stored in Building 925 or in the area where Building 925 now stands: Toluene, Xylene, Methyl Ethyl Ketone, Methyl IsoButyl Ketone, Acetone, Isopropyl Alcohol, Methanol, Ethanol, Naphtha, Ethyl Acetate, Morpholine, Cyclohexylamine, and antifoam agent.	Parcel 30.1 ECP 4	In January 1988, a release occurred in Building T925 due to the collapse of the spandome. Approximately 36,000 gallons of rain water and product were recovered from the area. Approximately 325 gallons of product was determined to have been spilled.	The release was immediately handled as an emergency response action in January 1988. No further action is planned for this site.

ENCLOSURE 4 – ENVIRONMENTAL PROTECTION PROVISIONS

The following conditions will be placed in the lease to ensure there will be no unacceptable risk to human health or the environment and no interference with Defense Distribution Depot Memphis, Tennessee (DDMT) missions or to the Defense Distribution Depot Memphis, Tennessee Installation Restoration Program (IRP), and to ensure regulatory requirements for the IRP and other compliance programs administered by DDMT are met.

1. The sole purpose for which the leased premises and any improvements thereon may be used, in the absence of prior written approval of the Government for any other use, is for uses similar or comparable to past or current activities of the Depot. These include light industry, storage, sorting operations, receiving, packaging and shipping, support activities, mechanical shop to support material handling equipment, recreation, welfare activities, training, education, and general office.
2. The Lessee shall neither transfer nor assign this Lease or any interest therein or any property on the leased premises, nor sublet the leased premises or any part thereof or any property thereon, nor grant any interest, privilege, or license whatsoever in connection with this Lease without the prior written consent of the Government. Such consent shall not be unreasonably withheld or delayed. Every sublease shall contain the Environmental Protection Provisions herein.
3. The Lessee and any sublessee shall comply with the applicable Federal, state, and local laws, regulations, and standards that are or may become applicable to the Lessee's or sublessee's activities on the Leased Premises. These include the DDMT NPDES and Industrial Wastewater Discharge Permits.
4. The Lessee and any sublessee shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operations under the Lease, independent of any existing permits.
5. The Government's rights under this Lease specifically include the right for Government officials to inspect upon reasonable notice the Leased Premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not the Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. The Government normally will give the Lessee or sublessee twenty-four (24) hours prior notice of its intention to enter the Leased Premises unless it determines the entry is required for safety, environmental, operations, or security purposes. The Lessee shall have no claim on account of any entries against the United States or any officer, agent, employee, or contractor thereof.

6. The Government acknowledges that Defense Distribution Depot Memphis, Tennessee has been identified as a National Priorities List (NPL) site under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. The Lessee acknowledges that the Government has provided it with a copy of the Defense Distribution Depot Memphis, Tennessee Federal Facility Agreement (FFA) entered into by the United States Environmental Protection Agency (EPA) Region 4, the State of Tennessee, and DDMT that became effective March 1995, and will provide the Lessee with a copy of any amendments thereto. The Lessee agrees that should any conflict arise between the terms of such agreement as it presently exists or may be amended and the provisions of this Lease, the terms of the FFA will take precedence. The Lessee further agrees that notwithstanding any other provisions of the Lease, the Government assumes no liability to the Lessee or its sublessees or licensees should implementation of the FFA interfere with the Lessee's or any sublessee's or licensee's use of the Leased Premises. The Lessee shall have no claim on account of any such interference against the United States or any officer, agent, employee, or contractor thereof, other than for abatement of rent.

7. The Government, EPA, and the Defense Distribution Depot Memphis, Tennessee and their officers, agents, employees, contractors, subcontractors, have the right, upon reasonable notice to the Lessee and any sublessee, to enter upon the Leased Premises for the purposes enumerated in these subparagraphs and for such other purposes consistent with any provision of the FFA:

(a) to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test-pitting, testing soil borings and other activities related to the Defense Distribution Depot Memphis, Tennessee Installation Restoration Program (IRP) or FFA;

(b) to inspect field activities of the Government and its contractors and subcontractors in implementing the Defense Distribution Depot Memphis, Tennessee IRP or FFA;

(c) to conduct any test or survey required by the EPA or TDEC relating to the implementation of the FFA or environmental conditions at the Leased Premises or to verify any data submitted to the EPA or TDEC by the Government relating to such conditions;

(d) to construct, operate, maintain or undertake any other response or remedial action, as required or necessary under the Defense Distribution Depot Memphis, Tennessee IRP or FFA, including but not limited to monitoring wells, pumping wells, and treatment facilities;

(e) to conduct Environmental Compliance Assessment System Surveys (ECAS).

8. The Lessee and any sublessee shall comply with the provisions of any health and safety plan in effect under the IRP or the FFA during the course of any of the above described

response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with a representative or representatives designated by the Lessee and any sublessee. The Lessee and any sublessee shall have no claim on account of such entries against the United States or any office, agent, employee, contractor, or subcontractor thereof. In addition, the Lessee and any sublessee shall comply with all applicable Federal, state, and local occupational safety and health regulations.

9. The Lessee further agrees that in the event of any assignment or sublease of the Leased Premises, it shall provide to the EPA and TDEC by certified mail a copy of the agreement or sublease of the Leased Premises (as the case may be) within fourteen (14) days after the effective date of such transaction. The Lessee may delete the financial terms and any other proprietary information from the copy of any agreement of assignment or sublease furnished pursuant to this condition.

10. The Lessee shall strictly comply with the hazardous waste requirements under the Resource Conservation and Recovery Act (RCRA) or its Tennessee equivalent. Except as specifically authorized by the Government in writing, the Lessee must provide at its own expense hazardous waste management facilities, complying with all laws and regulations. Government hazardous waste management facilities will not be available to the Lessee. Any violation of the requirements of this condition shall be deemed a material breach of this Lease.

11. Defense Distribution Depot Memphis, Tennessee accumulation points for hazardous and other wastes will not be used by the Lessee or any sublessee. Neither the Lessee nor the sublessee will permit its hazardous wastes to be commingled with hazardous waste of DDMT.

12. The Lessee shall prepare and maintain a Government-approved plan for responding to hazardous waste, fuel, and other chemical spills prior to commencement of operations on the leased premises. Such a plan shall be independent of the Defense Distribution Depot Memphis, Tennessee and shall not rely on installation personnel or equipment. Should the Government provide any personnel or equipment, whether for initial fire response and/or spill containment, or otherwise on request of any Government officer conducting timely cleanup actions, the Lessee agrees to reimburse the Government for its costs.

13. The Lessee shall not construct or make or permit its sublessees or assigns to construct or make any alterations, additions, or improvements to, or installations upon or otherwise modify or alter the leased premises in any way that may adversely affect the Defense Distribution Depot Memphis, Tennessee environmental program, environmental cleanup, human health, or the environment, without the prior written consent of the Government. Such consent may include a requirement to provide the Government with a performance and payment bond satisfactory to it in all respects and other requirements deemed necessary to protect the interests of the Government. For construction or alterations, additions, modifications, improvements, or installations (collectively "work") in the proximity of

operable units that are a part of a National Priorities List (NPL) site, such consent may include a requirement for written approval by the Government's Remedial Project Manager. Except as such written approval shall expressly provide otherwise, all such approved alterations, additions, modifications, improvements, and installations shall become Government property when annexed to the Leased Premises.

14. The Lessee shall not conduct or permit its sublessees to conduct any subsurface excavation, digging, drilling or other disturbance of the surface without the prior written approval of the Government. This is to include all soil disturbances such as landscaping.

15. The Lessee shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act (RCRA), or its state equivalent and any other applicable laws, rules or regulations. The Lessee must provide at its own expense such hazardous waste storage facilities that comply with all laws and regulations as it may need for such storage. Any violation of the requirements of this provision shall be deemed a material breach of this Lease.

16. LEAD-BASED PAINT WARNING AND COVENANT:

a. The Leased Premises do not contain residential dwellings and are not being leased for residential purposes. The Lessee is notified that the Leased Premises contain buildings built prior to 1978 that contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems and impaired memory. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to lease.

b. Available information concerning known lead-based paint and/or lead-based paint hazards, the location of lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces is contained in the Environmental Baseline Survey that has been provided to the Lessee. Additionally, the following report pertaining to lead-based paint and/or lead-based paint hazards has been provided to the Lessee: Lead Based Paint Risk Assessment for DDMT (Barge, Waggoner, Sumner, and Cannon, December 1995, revised April 1996). Additionally, the Lessee has been provided with a copy of the Federally approved pamphlet on lead poisoning prevention. The Lessee hereby acknowledges receipt of all of the information described in this subparagraph.

c. The Lessee acknowledges that it has received the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of this Lease.

d. The Lessee shall not permit use of any buildings or structures on the Leased Premises for residential habitation without first obtaining the written consent of the Government. As

a condition of its consent, the Government may require the Lessee to: (i) inspect for the presence of lead-based paint and/or lead-based paint hazards in and around buildings and structures on the Leased Premises; (ii) abate and eliminate lead-based paint hazards in accordance with all applicable laws and regulations; and (3) comply with the notice and disclosure requirements under applicable Federal, state, and local laws or regulations. The Lessee agrees to be responsible for any future remediation of lead-based paint found to be necessary on the Leased Premises.

e. The Government assumes no liability for remediation or damages for personal injury, illness, disability, or death, to the Lessee, its successors or assigns, sublessees or to any other person, including members of the general public, arising from or incident to possession and/or use of any portion of the Leased Premises containing lead-based paint as residential housing. The Lessee further agrees to indemnify and hold harmless the Government, its officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death or property damage resulting from, related to, caused by or arising out of the possession and/or use of any portion of the Leased Premises containing lead-based paint as residential housing. This section and the obligations of the Lessee hereunder shall survive the expiration or termination of this Lease and any conveyance of the Leased Premises to the Lessee. The Lessee's obligation hereunder shall apply whenever the United States of America incurs costs or liabilities for actions giving rise to liability under this section.

17. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT:

a. The Lessee is hereby informed and does acknowledge that non-friable asbestos or asbestos-containing materials ("ACM") has been found on the Leased Premises, as described in the final base-wide EBS. The ACM on the Leased Premises does not currently pose a threat to human health or the environment.

b. The Lessee covenants and agrees that its use and occupancy of the Leased Premises will be in compliance with all applicable laws relating to asbestos; and that the Grantor assumes no liability for future remediation of asbestos or damages for personal injury, illness, disability, or death, to the Lessee, its successors or assigns, sublessees, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Leased Premises described in this Lease, whether the Lessee, its successors or assigns have properly warned or failed to properly warn the individual(s) injured. The Lessee agrees to be responsible for any future remediation of asbestos found to be necessary on the Leased Premises.

18. NOTICE OF POLYCHLORINATED BIPHENYL (PCBs) EQUIPMENT AND COVENANT:

a. The Lessee is hereby informed and does acknowledge that equipment containing polychlorinated biphenyls (PCBs) did exist on the Property as described in the final base wide Environmental Baseline Survey (EBS). All PCB containing equipment has been properly removed in accordance with applicable laws and regulations.

b. The Lessee covenants and agrees that any possession, use and management of any PCB containing equipment will be in compliance with all applicable laws relating to PCBs and PCB containing equipment, and that the Government assumes no liability for the remediation of PCB contamination or damages for personal injury, illness, disability, or death to the Lessee, its successors or assigns, sublessees or to any other person, including members of the general public, arising from or incident to use, handling, management, disposition, or other activity causing or leading to contact of any kind whatsoever with PCBs or PCB containing equipment, whether the Lessee, its successors or assigns have properly warned or failed to properly warn the individual(s) insured. The GRANTEE agrees to be responsible for any remediation of PCBs or PCB containing equipment found to be necessary from its use or possession during the term of the Lease. This section and the obligations of the Lessee hereunder shall survive the expiration or termination of this lease and any conveyance of the Leased Premises to the Lessee.

19. The Lessee shall not use the Leased Premises for the storage or disposal of non-Department of Defense owned hazardous or toxic materials, as defined in 10 U.S.C. 2692, unless authorized under 10 U.S.C. 2692 and properly approved by the Government.

20. The Government may impose any additional environmental protection conditions and restrictions during the terms of this lease that it deems necessary by providing written notice of such conditions or restrictions to the Lessee.

REFERENCE MATERIALS

I. The statutory and regulatory requirements relating to FOST/FOSLs are as follows:

CERCLA §120(h), 42 U.S.C. §9620(h) - Property Transferred by Federal Agencies

10 U.S.C. § 2667(f) as amended by section 2906 of the FY 94 Defense Authorization Act requiring DOD and EPA to consult on FOSL procedures

40 CFR PART 373 - Reporting Hazardous Substance Activity when Selling or Transferring Federal Real Property.

II. The DOD Guidance relating to FOST/FOSL's is as follows:

DOD Guidance on the Environmental Review Process to Reach a Finding of Suitability to Transfer (FOST) for Property Where Release or Disposal has Occurred, dated 1 June 1994.

DOD Guidance on the Environmental Review Process to Reach a Finding of Suitability to Transfer (FOST) for Property Where No Release or Disposal has Occurred, dated 1 June 1994.

DOD Policy on the Environmental Review Process to Reach a Finding of Suitability to Lease (FOSL), dated 18 May 1996.

DOD Fast Track to FOST - A Guide to Determining if Property is Environmentally Suitable to Transfer , July 1997

DOD Fact Sheet – A Field Guide to FOSL, Fall 1996

DOD Memorandum, Subject: Clarification of "Uncontaminated" Environmental Condition of Property at Base Realignment and Closure (BRAC) Installations, dated 21 October 1996

DOD Memorandum, Subject: Asbestos, Lead paint and Radon Policies at BRAC Properties, dated 31 October 1994

III. U.S. Environmental Protection Agency (EPA) Guidance

Guidance for Evaluation of Federal Agency Demonstrations that Remedial Actions are Operating Properly and Successfully Under CERCLA Section 120(h)(3), (Interim), dated August 1996

EPA Memorandum, Subject: Military Base Closures: Guidance on EPA concurrence in the Identification of Uncontaminated Parcels under CERCLA Section 120(h)(4),

re-issued March 27, 1997

IV. Department of the Army Guidance

AR 200-1, Environmental Protection and Enhancement, dated 21 February 1997

DAIM-BO Memorandum, Subject: Clarification of Meaning of Uncontaminated Property for Purposes of Transfer by the United States, dated 9 December 1996

V. WWW BRAC Sites

1. DOD Sites –

DOD Base Closure and Transition Office –

<http://emissary.acq.osd.mil/bctoweb/bctohome.nsf>

DOD Environmental Base Realignment and Base Closure (BRAC) Program

<http://www.dtic.mil/envirodod/envbrac.html>

DOD Base Closure and Community Reinvestment

<http://www.acq.osd.mil/iai/bccr.htm>

DOD Office of Economic Adjustment
<http://www.acq.osd.mil/oea/index.html>

2. Environmental Protection Agency EPA OSWER Federal Facilities Base Realignment and Closure

<http://www.epa.gov/swerffrr/brac.htm>

3. Department of the Army Base Realignment and Closure Office

<http://www.hqda.army.mil/acsimweb/brac/brac3.htm>

CERL BRAC/NEPA "How To" Manual

<http://www.cecer.army.mil/facts/sheets/PL19.html>

Corps of Engineers Base Realignment and Closure (Camp Bonneville)

- Good Slide Presentation

<http://www.nps.usace.army.mil/geotech/bnvl/brac95/index.htm>

Presidio of San Francisco BRAC Environmental Restoration Program

- General information as well as facts on Presidio Cleanup and Conversion

<http://www.presidiosanfran.com>

4. Department of the Air Force Air Force Base Conversion Agency

<http://www.afbca.hq.af.mil>

5. Department of the Navy

NAVY `NAVFAC Base Closure Site

<http://164.224.238.53:81/csohome.nsf>

Navy Facilities Engineering Command - information on Navy BRAC sites

http://www.ncts.navy.mil/homepages/navfac_es/bcp.htm

Navy Environmental BRAC News

<http://www.navy.mil/homepages/navfac/env/newslet.html>