



# THE MEMPHIS DEPOT TENNESSEE

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## ADMINISTRATIVE RECORD COVER SHEET

AR File Number 33



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File:  
C.G. 541.460.2

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STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
OFFICE OF GENERAL COUNSEL  
401 Church Street  
Nashville, Tennessee 37243-1548

April 20, 1993

Mr. James M. Carr  
Assistant Counsel  
Defense Logistics Agency  
Headquarters  
Cameron Station  
Alexandria, Virginia 22304-6100

RE: FFA for Defense Distribution  
Region Central, Memphis, Tennessee

Dear Mr. Carr:

DLA's proposed clause entitled "Stipulated Penalties" has been carefully considered. The State cannot accept this language.

The Federal Facilities Compliance Act and the decision in United States v. Colorado, 1993 WL 98763 (10th Cir. Colo.) have strengthened the State's resolve that Tennessee should not sign an FFA that does not provide for stipulated penalties. If Tennessee does not enter into the FFA, it now seems clear that Tennessee can issue a unilateral order under its RCRA authority. Failure to comply with such an Order could result in the assessment of penalties of up to \$50,000 per day (T.C.A. Section 68-212-114).

DASD-E's directives regarding stipulated penalties should be reviewed to reflect changing law. The State certainly agrees that the aim of the FFA is to streamline and hasten the cleanup process. Forcing Tennessee to act outside of the FFA's proposed framework should be avoided. Tennessee request that DLA's position on this issue be reviewed at the highest level.

Sincerely,

A handwritten signature in cursive script, appearing to read "E. Joseph Sanders".

E. Joseph Sanders  
Assistant General Counsel

EJS/E9023110/D6

cc: Mr. Jordan English  
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