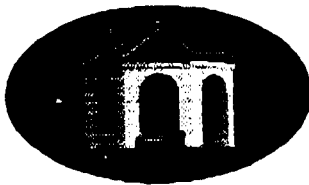


ATTACHMENT 7

RESPONSE TO COMMENTS BY ADEM, EPA AND JPA

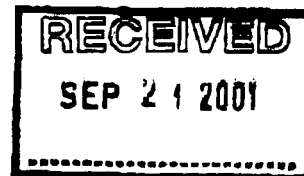


McClellan

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September 18, 2001

Send to RON



GOR
Mr. Glynn Ryan
BRAC Site Manager
US Army Garrison
Building 215, 15th Street
Ft. McClellan, AL 36205

Dear Mr. Ryan:

My staff and counsel have reviewed the Finding of Suitability to Transfer ("FOST") First CERFA Parcel, dated July 2001. Our comments are listed below for your review. We would appreciate the opportunity to discuss these comments with you in more detail.

1) Underground Storage Tanks ("USTs")

As we have previously discussed with you and the leadership at TRADOC, the JPA is very concerned about assuming the liabilities that may be involved in accepting property containing USTs. We have contacted ADEM and provided them with the copy of the UST map given to us by the Army. After their evaluation of the USTs contained in the FOST is completed, we will provide you with a list of the tanks that we support remaining in the ground and a list of the tanks that we would prefer to have removed prior to transfer. Until we have completed our evaluation we cannot support the inclusion of the USTs in this FOST.

2) Exclusions Zones ("EZs")

The EZs continue to be a contentious point with us. Exclusion Zones have a serious detrimental impact on our ability to successfully redevelop Fort McClellan. While safety remains a paramount concern for all of us, we need to work together to properly balance safety and redevelopment concerns. In this regard, our counsel, David Knisely, will continue his discussions with Robin Mills at TRADOC concerning the required coverage of the EZs and necessary deed language. We note that the current language regarding EZs in Attachment 1 of the FOST needs a considerable amount of refinement.

3) Environmental Protection Provisions (Deed Language), Attachment 1

The proposed deed language used in the FOST does not comport with language actually used in past deeds. It appears that the consultant preparing the FOST should be given copies of these earlier deeds so that this FOST and future FOSTs accurately reflect actual deed language. Mr. Krisely is available to review specific discrepancies in the Environmental Protection Provisions in the FOST and language utilized in earlier deeds.

4) CERCLA Covenant

Because the property to be transferred under this FOST is "CERFA clean", we believe the appropriate covenant to be utilized in Section 12 of the FOST is the covenant given under Sec. 120 (h)(4) of CERCLA.

Please let me know if you have additional questions concerning our comments. We are looking forward to having all the above issues resolved and the FOST completed.

Sincerely,



Dan Cleckler
Executive Director

DC: lm

Cc: David Lederle
TRADOC



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

October 15, 2001

EMAIL & US MAIL

4WD-FFB

Mr. Ron Levy
BRAC Environmental Coordinator
U.S. Army Garrison
Environmental Office
Building 215, 15th Street
Fort McClellan, AL 36205-5000

SUBJ: Draft Finding of Suitability to Transfer (FOST), dated July, 2001, for the First CERFA Parcel; Fort McClellan; Calhoun County, Alabama

Dear Mr. Levy:

Pursuant to CERCLA §120(h), the Environmental Protection Agency (EPA) has reviewed the Draft Finding of Suitability to Transfer (FOST), dated July, 2001, for the First CERFA Parcel; Fort McClellan; Calhoun County, Alabama. Comments are enclosed. As per the FOST provided, the Army intends to transfer approximately 2520.39 acres, including 122 facilities, to the Anniston-Calhoun County Fort McClellan Development Joint Powers Authority (JPA), for use consistent with current use and with Department of Defense and Army policy.

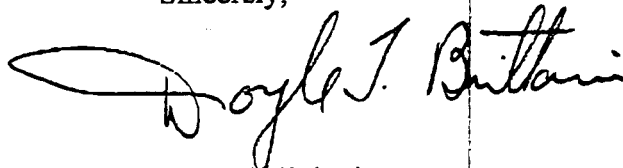
Before EPA can give final comment on the FOST, we must review final documents.¹ We request that final documents be provided to EPA. Our current comments, as the underlying DoD documents, are draft in nature. EPA expects to receive a copy of the deed(s) or other transfer documents inclusive of all terms (including notices/covenants) both prior to and after execution of the documents. The statement in the FOST that notices and restrictions will be included in the transfer documents affords less certitude of protection of human health and the environment than do the complete transfer documents.

¹ EPA considers "final form" to mean a final draft with all attached appendices. A FOST should include all proposed transfer documents in their entirety with all attached appendices. In the case of a deed or other transfer document, this is the form as it will be presented for signature to the prospective grantee, and as it will be signed by both the prospective grantee and the DoD.

EPA expects the Army to attach any of our comments, to the extent they are not incorporated into or addressed by the final FOST and/or deed or assignment² of transfer, as unresolved regulatory comments in an attachment to the documents.³ If the Army chooses not to respond to these comments, EPA will consider characterizing our comments as "unresolved regulatory comments" pursuant to DoD policy on FOSTs, and have said comments placed as an attachment to the FOST. DoD should be on notice that failure to comply with the above-delineated CERCLA requirements, may subject the Facility to citizen suits under CERCLA §310 for failure to perform specified, non-discretionary duties.

Thank you for your cooperation. If you have any questions, please call me at (404) 562-8549.

Sincerely,



Doyle T. Brittain
Senior Remedial Project Manager

Enc.

cc: Lisa Kingsbury, Ft. McClellan
Ellis Pope, USA/COE
Phil Stroud, ADEM
Jeanne Yacoub, IT
Daniel Copeland, CEHNC-OE-DC
Maj. Wayne Sartwell, ALANG
Maj. Bernie Case, ALANG

²CERCLA §120(h)(3)(A) and (4)(D).

³"Regulatory agencies will be notified at the initiation of the EBS and the FOST. The process of development of these documents will be designed to assure that regulators are provided adequate opportunity to express their views. Regulators will be provided with workable draft documents as they become available. Regulatory comments received during the development of these documents will be reviewed and incorporated as appropriate. Any unresolved regulatory comments will be included as attachments to the EBS or the FOST." DoD Guidance on the Environmental Review Process to Reach a Finding of Suitability to Transfer (FOST) for Uncontaminated Property, § IV(A).

**ENVIRONMENTAL PROTECTION AGENCY COMMENTS ON THE
DRAFT FINDING OF SUITABILITY TO TRANSFER (FOST),
DATED JULY 2001, FOR THE FIRST CERFA PARCEL**

COMMENTS

1. Section 1.0. Purpose. This section states that the property is intended to be used consistent with the Fort McClellan Comprehensive Reuse Plan, CERCLA and DoD and Army policy. Please provide a brief summary description of the proposed uses. In addition, please provide the party to whom the property will be transferred.
2. Section 3.1. Environmental Condition of Property Categories. The property is characterized as either ECP Category 1 (areas where there has been no release or disposal of hazardous substances or petroleum products) or Category 3 (areas where there has been a release of hazardous substances but below levels that require remediation). Please clarify whether the FOST is intended to document the identification of the property as uncontaminated under CERCLA § 120(h)(4) and to request that the State concur in that identification. Note that CERCLA requires the identification of uncontaminated property. Consulting EPA memorandum, *Military Base Closures: Revised Guidance on EPA Concurrence in the Identification of Uncontaminated Parcels under CERCLA Section 129(h)(4)*, may prove helpful though EPA's concurrence is, of course, not required for the identification process at Ft. McClellan.

Aerial photos consulted in making such determination should reflect prior usage of the property (current photos alone may not be sufficient). In addition, the requirement from CERCLA to conduct interviews with employees reads, "Interviews with current or former employees involved in operations on the real property." Please clarify whether interviewing FMC Real Estate Personnel is sufficient to satisfy this statutory requirement.

In addition, there are several facilities for which the classification as Category 3 appears to require more explanation. The text suggests that minor removal actions were conducted on hazardous substance releases at several facilities, including facilities 3298W, 888, 215W. In the event that such removals were conducted, it would appear to be more fitting to characterize those properties as Category 4, areas where there has been a release, disposal or migration of hazardous substances and all removal and remedial actions to protect human health and the environment have been taken.

3. Section 3.2. Storage, Release or Disposal of Hazardous Substances. This section states that there is no evidence that hazardous substances were stored, released or disposed of on the property in excess of reportable quantities. Since there are facilities (for example, Buildings/Parcels 3298W, 888, 215W) located on the property which stored waste oil, a hazardous substance not exempted from coverage under CERCLA, it is not clear from the text that the above statement is true. Please verify whether such notice is required by 40 CFR 373 at these parcels, and modify the text in this section and Section 3.3.2 accordingly.

4. Section 3.2. Storage, Release or Disposal of Hazardous Substances. Removals were conducted at the two indoor pistol ranges, with hazardous, lead-contaminated waste. Since lead waste is considered a hazardous substance, it appears to be inappropriate to characterize the property as Category 3. Removals actions were clearly conducted at these sites. Since the actions have removed the contamination, resulting in property that is safe for its intended reuse, Category 4 (areas where hazardous substances have been released, migrated or disposed of, and where all removal or remedial actions to protect human health and the environment have been taken) seems to be the appropriate classification.

5. Attachment 1. Environmental Protection Provisions: Notice of the Presence of Lead-Based Paint (LBP) and Covenant Against the Use of the Property for Residential Purpose. EPA does not anticipate that the level of lead in soils from lead-based paint at this property would pose an unacceptable risk based on the intended reuse, with the following modification, and information available to EPA.

Paragraph D. in the "Notice of Lead-Based Paint (LBP) and Covenant Against the Use of the Property for Residential Purpose" restricts the property against residential use. The property may pose an unacceptable risk if used in a manner that allows for regular visitation by the same child, 6 years of age or under, on at least two different days within any week, for example, day-care centers, preschools and kindergarten classrooms. Please revise the covenant in order to prevent such additional unacceptable use.

In addition, if EPA or the state develops generally applicable standards for the land uses permissible under the deed that require remediation of lead-based paint beyond that performed prior to the transfer of the property, then in accordance with DoD's Future Land Use Policy and with CERCLA § 120(h)(3)(A), EPA expects the Army to perform or assure the performance of any additional remedial action found to be necessary with respect to lead from lead-based paint released into the soil during the ownership of the property by the Army.

6. Attachment 1. Environmental Protection Provisions: Notice of the Potential for the Presence of Ordnance and Explosives. The Notice is not characterized as a covenant, though the language of the notice places requirements upon the Grantee in the event that ordnance is discovered. The last sentence in the first paragraph appears to omit the requirement for Grantee to notify the Grantor in the event that ordnance is discovered on the property, but merely obligates the Grantor to notify the Sheriff. Please clarify whether this omission is in an intentional aspect of the plan.
7. Section 11.0. Finding of Suitability to Transfer. Because of the question about whether some of the property should be considered uncontaminated, it is unclear whether the covenants of CERCLA § 120(h)(3) for remediated property or § 120(h)(4) for uncontaminated property are appropriate. Note that if some of the property is determined

to be "uncontaminated", it will be appropriate to revise the covenant and access clause accordingly. Alternatively, since some of the property may be more appropriately characterized as Category 4, having undergone removal actions (see comments 2 and 4), then the CERCLA § 120(h)(3)(A)(ii)(I) covenant that all remedial action necessary to protect human health and the environment with respect to any hazardous substances has been taken before the date of transfer must also be included in the deed or other transfer document.

8. Section 330 of the Defense Authorization Act for Fiscal Year 1993, Public Law 102-484 as amended by Section 1002 of the Defense Authorization Act for Fiscal Year 1994, Public Law 103-160 provides that the Secretary of Defense shall hold harmless, defend and indemnify the persons that acquire ownership or control of any facility at a military installation that is closing or closed pursuant to a base closure law from any claim for personal injury or property damage or economic loss that results from the release of hazardous substances or petroleum products as a result of DoD activities. Please include such a provision in the FOST and/or deed.
9. The subject FOST discusses the results of an asbestos survey for asbestos within some buildings. However, no mention is made of asbestos on the exterior of any buildings. It should be noted that the presence of friable asbestos on the exterior of buildings triggers environmental requirements. Likewise, any disturbance of asbestos through remodeling or demolition will likewise trigger environmental requirements as well as worker health and safety requirements. This should be noted in the subject FOST.

ADEM



ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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JAMES W. WARR
DIRECTOR

DON SIEGELMAN
GOVERNOR

September 4, 2001

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Land: 271-6160

Water: 271-6161

Groundwater: 271-6131

Field Operations: 272-8131

Laboratory: 277-5718

Mining: 394-4328

Education/Outreach: 394-4363

Ronald M. Levy
BRAC Environmental Coordinator
Environmental Office, 291 Jimmy Parks Blvd.
US Army Garrison
Fort McClellan, Alabama 36205

RE: ADEM Review and Comments: Draft Findings of Suitability to Transfer (FOST) for the First CERFA Parcel Transfer, dated July, 2001, Fort McClellan, Calhoun County, Alabama

Dear Mr. Levy:

The Alabama Department of Environmental Management (ADEM or the Department) has reviewed the subject document entitled *Draft Findings of Suitability to Transfer (FOST) for the First CERFA Parcel Transfer*. Enclosed are ADEM's comments for your review and written response. Please submit response comments and a revised FOST to the Department within 30 days from the date receipt of this letter.

For any questions or concerns regarding this matter please contact Mr. Philip Stroud at 334-270-5646 or via email at psn@adem.state.al.us.

Sincerely,

Stephen A. Cobb, Chief
Hazardous Waste Branch
Land Division

SAC/ps

cc: Mr. Doyle Brittain/EPA Region 4
Mr. Ellis Pope/USA COE, Mobile District
Mr. Jim Grassiano/ADEM

File: ADEM Land Division/Hazardous Waste Branch/Fort McClellan, Correspondence, 2001

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Birmingham, Alabama 36209-4702
(205) 942-6186
(205) 941-1603 (Fax)

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(256) 353-1713
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Mobile Branch
2204 Perimeter Road
Mobile, Alabama 36615-1131
(334) 450-3400
(334) 479-2593 (Fax)

Mobile
4171 Commanders Drive
Mobile, Alabama 36615-1421
(334) 432-6533
(334) 432-6599 (Fax)



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**ADEM COMMENTS
DRAFT FINDINGS OF SUITABILITY TO TRANSFER (FOST)
FIRST CERFA PARCEL TRANSFER JULY 2001
FORT McCLELLAN, ALABAMA**

General Comments

1. Regarding Appendix 1: If Further contamination is identified in the future that requires the Army to access transferred land for investigation and remediation purposes, it appears that the FOST should reference a deed restriction or notice facilitating such access. Please revise the FOST accordingly.

Specific Comments

	<u>Page/Section</u>	<u>Comment</u>
1.	iii/Acronyms	List of Acronyms: Please add the following acronyms to the list of acronyms: AST, USAEHA, pCi/L, and USACE.
2.	1/2.0	Figure 1: Please add road names and a north arrow to the figure and reference Calhoun County on the State Map.
3.	3/3.1	Third Paragraph, First Line: Figure 3 shows Parcel 161(1) without providing a reference or an arrow to identify the overall location of the parcel. Please confirm that Parcel 161(1) is in the area shown and clarify if a reference or arrow is needed. Table 4 indicates that Parcels 29 and 74 are associated with CERFA Category 3 (Parcel 29(3) and Parcel 74(3), respectively). Figure 3 shows that Parcels 29 and 74 are associated with CERFA Category 4. Please clarify. Figure 3 shows that there are two areas labeled Parcel labeled 95(3) and two areas labeled Parcel 12(3). Please clarify. Table 4 indicates that there is a Parcel 11(3), and figure 3 does not show 11(3). Please add Parcel 11(3) to Figure 3.
4.	4/3.3.2	Forth Paragraph, Sixth Line/Facility S-55, Parcel 33(3): The sentence states "Field notes recorded TPH of up to 36,000 ppm." Where was this contamination located and what happened to the soil that was contaminated with TPH at 36,000 ppm? Was the parcel remediated and the soil properly addressed?
5.	6/3.3.2	Third full Paragraph, Sixth Line/Facility 888W, Parcel 11(3): The sentence states that "Lead was detected in one monitoring well." What was the concentration of lead and does it pose a concern to groundwater? Will a land use control be required?

15. Table 5 Table 5, Page 5 of 10: Building 1077F, Parcel 15(3) under "Remedial Actions" states that "Four monitoring wells were installed and one round of groundwater sampling was completed. Lead was detected in two monitoring wells exceeding the 20 ppb ADEM MCL." If there is an exceedence, then there may be chemicals associated with the site that pose an unacceptable risk to either human or ecological receptors. Overall the paragraph is confusing. Please clarify.
16. Table 5 Table 5, Page 8 of 10: Building 2094, Parcel 137(3) under "Remedial Actions" states that "Excavated soil was either returned to the tank pit or disposed at the Regional Landfill located in Piedmont, Alabama." Please identify the excavation area. Was the soil returned to the tank pit or disposed at the Regional Landfill? Please clarify the area of disposal.
17. Table 6 Table 6-1, Page 1 of 7: Building 143 under "Description & Location of ACM" has four separate sentences describing asbestos containing materials. Under the "Condition" heading there are only three conditions given for the four descriptions. Please add the missing condition.
18. Table 8 Table 8: There were 79 buildings that were built prior to 1978. There are only three buildings that were surveyed according to Table 8. Were surveys conducted for all 79 buildings? If the surveys were conducted for all 79 buildings, please add the survey reports to Table 8 and Attachment 2 "ACM Survey Reports."
19. Figure 4,5 and 7 Figures 4, 5 and 7 have no labeled features to give the reader the general location of the site indicated. Please add appropriate building numbers and/or road names to the figure to help locate some of the features that are presented.
20. Attachment 2 There are several pages throughout Attachment 2 that are either missing (e.g., Appendix A, Building 143; REPORT OF LABORATORY ANALYSIS FOR ASBESTOS), or not readable (e.g., Appendix C, Building 143; SAMPLE LOCATIONS PLANS). Please add appropriate information and legible sample location plans for Building 141, 143, and others as appropriate. Please add sampling location plans, selected ACM location plans, and selected ACM photographs to Appendix C, D, and E respectively for buildings 916, 917, 918, 925, 926, and 927.

End of Comments

**RESPONSE TO COMMENTS
BY ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
DRAFT FINDING OF SUITABILITY TO TRANSFER
FIRST CERFA PARCEL
FORT MCCLELLAN, ALABAMA**

General Comments

Comment 1: Regarding Appendix 1: If Further contamination is identified in the future that requires the Army to access transferred land for investigation and remediation purposes, it appears that the FOST should reference a deed restriction or notice facilitating such access. Please revise the FOST accordingly.

Response: Section 12.0 references a deed provision as required by CERCLA §120(h)(3)(A)(iii) granting the United States access to the Property in case a remedial action or corrective action is found to be necessary after the date of transfer.

Specific Comments

Comment 1: Page iii, List of Acronyms: Please add the following acronyms to the list of acronyms: AST, USAEHA, pCi/L, and USACE.

Response: AST, USAEHA, pCi/L, and USACE acronyms will be added to the List of Acronyms.

Comment 2: Page 1, Section 2.0, Figure 1: Please add road names and a north arrow to the figure and reference Calhoun County on the State Map.

Response: Road names and a north arrow will be added to the State Map.

Comment 3: Page 3, Section 3.1, Third paragraph, First line: Figure 3 shows Parcel 161(1) without providing a reference or an arrow to identify the overall location of the parcel. Please confirm that Parcel 161(1) is in the area shown and clarify if a reference or arrow is needed. Table 4 indicates that Parcels 29 and 74 are associated with CERFA Category 3 (Parcel 29(3) and Parcel 74(3), respectively). Figure 3 shows that Parcels 29 and 74 are associated with CERFA Category 4. Please clarify. Figure 3 shows that there are two areas labeled Parcel labeled 95(3) and two areas labeled Parcel 12(3). Please clarify. Table 4 indicates that there is a Parcel 11(3), and figure 3 does not show 11(3). Please add Parcel 11(3) to Figure 3.

Response: Parcel 161(1) encompasses all the areas where no storage, release, or disposal of hazardous substance or petroleum products has occurred represented on the map as all the areas that are not hatched. Because of the complexity of the shape of the area one arrow can not fully identify Parcel 161(1).

Figure 3 will be revised to indicate that Parcels 29 and 74 are both CERFA Category 3.

Labeling of two areas as Parcel 95(3) is correct. Figure 3 will be revised to show the actual locations of Parcels 11(4) and 12(4).

Comment 4: Page 4, Section 3.3.2, Forth Paragraph, Sixth line: Facility S-55, Parcel 33(3): The sentence states “Field notes recorded TPH of up to 36,000 ppm.” Where was this contamination located and what happened to the soil that was contaminated with TPH at 36,000 ppm? Was the parcel remediated and the soil properly addressed?

Response: Available records of Parcel 33(3) indicate that in 1991 six borings were installed around the perimeter of the tank area. Three samples were collected from each boring. Of the eighteen samples collected, TPH concentrations of 36,000 mg/kg were detected in one sample collected from one boring at a depth interval of 0 to 2 ft.

In 1999, UST closure assessments were conducted and subsurface soil and groundwater samples were collected from three borings and 3 monitoring wells, respectively. UST closure assessment results indicated that there are no chemicals associated with the site that present an unacceptable risk to either human health or the environment. Results of the assessments are included in the Final Underground Storage Tank Closure Assessment Report dated February 2001. The results were presented to the BCT and the BCT made a decision to NFA the site (Please reference ADEM’s concurrence letter dated February 20, 2001).

Comment 5: Page 6, Section 3.3.2, Third full Paragraph, Sixth Line/Facility 888W, Parcel 11(3): The sentence states that “Lead was detected in one monitoring well.” What was the concentration of lead and does it pose a concern to groundwater? Will a land use control be required?

Response: In 1994 the tank and associated piping were removed as well as nine cubic yards of contaminated soils thus eliminating the source area. In 1999, UST closure assessments were conducted and subsurface soil and groundwater samples were collected from three borings and 3 monitoring wells, respectively. UST closure assessment results indicated that there are no chemicals associated with the site that present an unacceptable risk to either human health or the environment. Results of the assessments are included in the Final Underground Storage Tank Closure Assessment Report dated February 2001. The results were presented to the BCT and the BCT made a decision to NFA the site (Please reference ADEM’s concurrence letter dated February 20, 2001).

Because a remedial action was taken at the site, Parcel 11(3) has been reclassified to Category 4.

Comment 6: Page 7, Section 3.3.2, First paragraph, Fifth line: First Paragraph, Fifth line: Please explain what is meant by “20 ppb ADEM MCL.” If there is an exceedence, then there may be chemicals associated with the site that pose an unacceptable risk to either human or ecological receptors. Overall the paragraph is confusing. Please clarify.

Response: Results of the record review for Facility 1077, Parcel 15(3) are included in the UST Summary Report dated April 1999. A "No Further Action" was recommended for the site. The BCT made a decision to NFA the site. (Please reference ADEM's concurrence letter dated March 2, 1999).

Comment 7: Page 8, Section 3.3.2, Fourth paragraph, Last sentence: Facility 2094, Parcel 137(3): The last sentence states that "Excavated soil was either returned to the tank pit or disposed at the Regional Landfill located in Piedmont, Alabama." Please identify the excavation area. Was the soil returned to the tank pit or disposed at the Regional Landfill? Please clarify the area of disposal.

Response: Excavated soil was returned to the tankpit, however, the soil that could not be returned to the excavation was disposed of at the Regional Landfill located in Piedmont, Alabama. An ADEM Closure Assessment Form was completed for the tank removals. Details of the tank removal activities including the area of excavation are provided in IT's Underground Storage Tank Removal Closure Report, Fort McClellan dated March 2001.

Comment 8: Page 9, Section 3.3.2, Fourth paragraph, First sentence: Facility 3691G, Parcel 506(3): The first sentence states that "One 150-gallon heating oil tank was closed in place and replaced in 1996." This is a confusing sentence. Usually tanks that are closed in place are not replaced. Was a new tank installed in the vicinity? Is the old tank still in the ground? When was the tank closed in place? Please clarify.

Response: In 1996, one 150-gallon tank was closed in place (the tank is still in the ground). A new 500-gallon tank was installed in the vicinity to fuel the generator associated with the sewage lift station. An ADEM UST Closure Site Assessment Report was completed and is included in IT's UST Summary Report dated April 1999.

Comment 9: Page 10, Section 3.6, First sentence: Lead Based Paint (LBP): Spell out "79."

Response: Commonly, numbers less than ten are spelled out in text, numbers higher than ten are presented in text as numbers.

Comment 10: Page 10, Section 3.6: Seventy-nine buildings were built prior to 1978. The report only summarizes three buildings that were surveyed and the results are presented in Table 8. Are these three buildings the only buildings that have survey results? Please clarify why only three buildings are included in Table 8 and not all 79 buildings.

Response: Yes the three buildings are the only buildings that have survey results. During the 1995 LBP survey, priority was given to community-related buildings and family housing units.

Comment 11: Page 11, Section 3.7, Third Line: Please define "NRC."

Response: Nuclear Regulatory Commission will be defined in the text.

Comment 12: Table 1: Table 1 has several building numbers that should contain a "T" before the building number (e.g., T-213, T-218, T-344, etc.). Please add the "T" to the appropriate building numbers. Explain what "T" represents. Some building numbers are followed by the letters "F" and "W." Please define what these letters represent.

Response: "T" was previously used by the U. S. Army to signify temporary buildings, buildings that were in use for 5 years or less. The current Real Estate Department building tracking system is utilized in generating FOST and FOSL reports. Currently buildings are tracked without a "T".

UST Facilities are labeled with a "F" if they contain "fuel" and "W" if they contain "Waste Oil."

Comment 13: Figure 2: Building 503F is not shown on Figure 2. Please add Building 503F to Figure 2.

Response: Building 503 F will be added to Figure 2.

Comment 14: Table 3-2: Parcel 29(3), 30(3), and 74(3) in Table 3-2 are labeled as Parcel "29(4), 30(4), and 74(4)" on Figure 3. Please correct this discrepancy.

Response: The discrepancy will be corrected. Parcels 29(3) 74(3) and 30(4) will be labeled properly.

Comment 15: Table 5: Table 5, Page 5 of 10: Building 1077F, Parcel 15(3) under "Remedial Actions" states that "Four monitoring wells were installed and one round of groundwater sampling was completed. Lead was detected in two monitoring wells exceeding the 20 ppb ADEM MCL." If there is an exceedence, then there may be chemicals associated with the site that pose an unacceptable risk to either human or ecological receptors. Overall the paragraph is confusing. Please clarify.

Response: The text and tables will be revised for clarity. Results of the record review for Facility 1077, Parcel 15(3) are included in the UST Summary Report dated April 1999. A "No Further Action" was recommended for the site. The BCT made a decision to NFA the site. (Please reference ADEM's concurrence letter dated March 2, 1999).

Comment 16: Table 5: Table 5, Page 8 of 10: Building 2094, Parcel 137(3) under "Remedial Actions" states that "Excavated soil was either returned to the tank pit or disposed at the Regional Landfill located in Piedmont, Alabama." Please identify the excavation area. Was the soil returned to the tank pit or disposed at the Regional Landfill? Please clarify the area of disposal.

Response: See response to comment No. 7.

Comment 17: Table 6: Table 6-1, Page 1 of 7: Building 143 under “Description & Location of ACM” has four separate sentences describing asbestos containing materials. Under the “Condition” heading there are only three conditions given for the four descriptions. Please add the missing condition.

Response: A fourth condition will be added.

Comment 18: Table 8: Table 8: There were 79 buildings that were built prior to 1978. There are only three buildings that were surveyed according to Table 8. Were surveys conducted for all 79 buildings? If the surveys were conducted for all 79 buildings, please add the survey reports to Table 8 and Attachment 2 “ACM Survey Reports.”

Response: See response to comment No. 10.

Comment 19: Figures 4, 5 and 7 have no labeled features to give the reader the general location of the site indicated. Please add appropriate building numbers and/or road names to the figure to help locate some of the features that are presented.

Response: Road names will be added to the figure.

Comment 20: There are several pages throughout Attachment 2 that are either missing (e.g., Appendix A, Building 143; REPORT OF LABORATORY ANALYSIS FOR ASBESTOS), or not readable (e.g., Appendix C, Building 143; SAMPLE LOCATIONS PLANS). Please add appropriate information and legible sample location plans for Building 141, 143, and others as appropriate. Please add sampling location plans, selected ACM location plans, and selected ACM photographs to Appendix C, D, and E respectively for buildings 916, 917, 918, 925, 926, and 927.

Response: Appropriate information will be added or revised for legibility.

**RESPONSE TO COMMENTS
BY U.S ENVIRONMENTAL PROTECTION AGENCY REGION IV
DRAFT FINDING OF SUITABILITY TO TRANSFER
FIRST CERFA PARCEL
FORT MCCLELLAN, ALABAMA**

Specific Comments

Comment 1: Section 1.0, Purpose. This section states that the property is intended to be used consistent with the Fort McClellan Comprehensive Reuse Plan, CERCLA and DoD and Army policy. Please provide a brief summary description of the proposed uses. In addition, please provide the party to whom the property will be transferred.

Response: The Fort McClellan Comprehensive Reuse Plan will be included as an attachment to the FOST. The property will be transferred to the Anniston-Calhoun County Fort McClellan Development Joint Powers Authority as stated in Section 1.0 of the FOST.

Comment 2: Section 3.1, Environmental Condition of Property Categories. The property is characterized as either ECP Category 1 (areas where there has been no release or disposal of hazardous substances or petroleum products) or Category 3 (areas where there has been a release of hazardous substances but below levels that require remediation). Please clarify whether the FOST is intended to document the identification of the property as uncontaminated under CERCLA § 120(h)(4) and to request that the State concur in that identification. Note that CERCLA requires the identification of uncontaminated property. Consulting EPA memorandum, Military Base Closures: Revised Guidance on EPA Concurrence in the Identification of Uncontaminated Parcels under CERCLA Section 129(h)(4), may prove helpful though EPA's concurrence is, of course, not required for the identification process at Ft. McClellan.

Aerial photos consulted in making such determination should reflect prior usage of the property (current photos alone may not be sufficient). In addition, the requirement from CERCLA to conduct interviews with employees reads, "Interviews with current or former employees involved in operations on the real property." Please clarify whether interviewing FMC Real Estate Personnel is sufficient to satisfy this statutory requirement.

In addition, there are several facilities for which the classification as Category 3 appears to require more explanation. The text suggests that minor removal actions were conducted on hazardous substance releases at several facilities, including facilities 3298W, 888, 215W. In the event that such removals were conducted, it would appear to be more fitting to characterize those properties as Category 4, areas where there has been a release, disposal or migration of hazardous substances and all removal and remedial actions to protect human health and the environment have been taken.

Response: Historical and current aerial photographs were utilized in making a determination of environmental condition of property.

In addition to the interviews with current FMC Real Estate and Environmental Office personnel, information gathered during the environmental baseline survey including interviews with current and/or former employees was also used in generating the FOST.

Areas where removals were conducted will be reclassified to Category 4: including Parcels 11(4), 12(4), 30(4), 31(4) and the former four indoor pistol ranges, Parcels 519(4) and 520(4).

Comment 3: Section 3.2, Storage, Release or Disposal of Hazardous Substances. This section states that there is no evidence that hazardous substances were stored, released or disposed of on the property in excess of reportable quantities. Since there are facilities (for example, Buildings/Parcels 3298W, 888, 215W) located on the property which stored waste oil, a hazardous substance not exempted from coverage under CERCLA, it is not clear from the text that the above statement is true. Please verify whether such notice is required by 40 CFR 373 at these parcels, and modify the text in this section and Section 3.3.2 accordingly.

Response: Waste oil is a non-regulated, non-hazardous special waste with no reportable quantity. The FMC Hazardous Waste Management Plan did not allow for disposal of hazardous substances in the storage tanks. In addition, the subcontractor, Safety Kleen, who was responsible for picking up and recycling the waste oil, tested the used oil for heavy metals, flash point and chlorinated solvents. There are no records of any of the hazardous substances present in the used oil tanks.

Comment 4: Section 3.2, Storage, Release or Disposal of Hazardous Substances. Removals were conducted at the two indoor pistol ranges, with hazardous, lead contaminated waste. Since lead waste is considered a hazardous substance, it appears to be inappropriate to characterize the property as Category 3. Removals actions were clearly conducted at these sites. Since the actions have removed the contamination, resulting in property that is safe for its intended reuse, Category 4 (areas where hazardous substances have been released, migrated or disposed of, and where all removal or remedial actions to protect human health and the environment have been taken) seems to be the appropriate classification.

Response: Section 3.2 will be revised to account for the lead-contaminated waste at the former four indoor pistol ranges, Building 141, Parcel 519(4) and Building 143, Parcel 520(4) previously referred to in the EBS as Parcels 16Q-X and 217Q, respectively.

Comment 5: Attachment 1, Environmental Protection Provisions: Notice of the Presence of Lead-Based Paint (LBP) and Covenant Against the Use of the Property for Residential Purpose. EPA does not anticipate that the level of lead in soils from lead-based paint at this property would pose an unacceptable risk

based on the intended reuse, with the following modification, and information available to EPA.

Paragraph D. in the "Notice of Lead-Based Paint (LBP) and Covenant Against the Use of the Property for Residential Purpose" restricts the property against residential use. The property may pose an unacceptable risk if used in a manner that allows for regular visitation by the same child, 6 years of age or under, on at least two different days within any week, for example, day-care centers, preschools and kindergarten classrooms. Please revise the covenant in order to prevent such additional unacceptable use.

In addition, if EPA or the state develops generally applicable standards for the land uses permissible under the deed that require remediation of lead-based paint beyond that performed prior to the transfer of the property, then in accordance with DoD's Future Land Use Policy and with CERCLA § 120(h)(3)(A), EPA expects the Army to perform or assure the performance of any additional remedial action found to be necessary with respect to lead from lead-based paint released into the soil during the ownership of the property by the Army.

Response: Agree. Language which addresses the above mentioned notice of LBP and Covenant against the use of the Property for residential purpose was inadvertently deleted from the paragraph. The notice will be revised to reflect the comment.

Comment noted.

Comment 6: Attachment 1. Environmental Protection Provisions: Notice of the Potential for the Presence of Ordnance and Explosives. The Notice is not characterized as a covenant, though the language of the notice places requirements upon the Grantee in the event that ordnance is discovered.

The last sentence in the first paragraph appears to omit the requirement for Grantee to notify the Grantor in the event that ordnance is discovered on the property, but merely obligates the Grantor to notify the Sheriff. Please clarify whether this omission is in an intentional aspect of the plan.

Response: The title of the notice will be changed to "Notice of the potential for the presence of ordnance and explosives and covenant to remove ordnance and explosives".

For further clarification, the sheriff's SOP is in turn to notify DOD components of the OE. This was intentionally done to assure a single point of contact with continuity was notified who in turn notifies DOD/DA of the necessity to remove OE. In addition this assures continuity beyond the complete shutdown/closure of Fort McClellan.

Comment 7: Section 11.0, Finding of Suitability to Transfer. Because of the question about whether some of the property should be considered uncontaminated, it is unclear whether the covenants of CERCLA § 120(h)(3) for remediated property or § 120(h)(4) for uncontaminated property are appropriate. Note

that if some of the property is determined to be "uncontaminated", it will be appropriate to revise the covenant and access clause accordingly. Alternatively, since some of the property may be more appropriately characterized as Category 4, having undergone removal actions (see comments 2 and 4), then the CERCLA § 120(h)(3)(A)(ii)(I) covenant that all remedial action necessary to protect human health and the environment with respect to any hazardous substances has been taken before the date of transfer must also be included in the deed or other transfer document.

Response: The deed for the Property will contain the following provisions:

For Category 1 Property:

- The covenant under CERCLA § 120(h)(4)(D)(i) warranting that any response action or corrective action found to be necessary after the date of transfer shall be conducted by the United States
- CERCLA § 120(h)(4)(D)(ii) granting the United States access to the property, in case, in which a response is found to be necessary after the date of transfer for the Property, or such access is necessary to carry out a response action or corrective action on adjoining property.

For Category 3 Property:

- The covenant under CERCLA § 120(h)(3)(A)(ii)II warranting that any remedial action under CERCLA found to be necessary after the date of transfer with respect to such hazardous substances remaining on the Property shall be conducted by the United States
- A clause as required by CERCLA § 120(h)(3)(A)(iii) granting the United States access to the Property in any case in which remedial action or corrective action is found to be necessary after the date of transfer.

For Category 4 Property:

- The covenant under CERCLA § 120(h)(3)(A)(ii)I warranting that all remedial action necessary to protect human health and the environment with respect to any hazardous substance has been taken before the date of transfer
- CERCLA § 120(h)(3)(A)(ii)II warranting that any remedial action under CERCLA found to be necessary after the date of transfer with respect to such hazardous substances remaining on the Property shall be conducted by the United States
- A clause as required by CERCLA § 120(h)(3)(A)(iii) granting the United States access to the Property in any case in which remedial action or corrective action is found to be necessary after the date of transfer.

Comment 8: Section 330 of the Defense Authorization Act for Fiscal Year 1993, Public Law 102-484 as amended by Section 1002 of the Defense Authorization Act for Fiscal Year 1994, Public Law 103-160 provides that the Secretary of Defense shall hold harmless, defend and indemnify the persons that acquire ownership or control of any facility at a military installation that is closing or closed pursuant to a base closure law from any claim for personal injury or property damage or economic loss that results from the release of hazardous substances or petroleum products as a result of DoD activities. Please include such a provision in the FOST and/or deed.

Response: It is inappropriate for the Army to include PL 102-484 Section 330 indemnification language in the FOST. The primary purpose of the FOST is to document the environmental condition of the property and certify that the property is suitable for transfer based on the environmental restrictions that will be incorporated in the real estate document. Furthermore, absent actual indemnification language being included in the FOST, as a matter of law, the Army has an obligation to meet its requirements under Section 330 of PL 102-484. Therefore, the Army will place PL 102-484 Section 330, indemnification language in the Deed, as the appropriate place to notice a legal right or responsibility afforded to the transferee.

Comment 9: The subject FOST discusses the results of an asbestos survey for asbestos within some buildings. However, no mention is made of asbestos on the exterior of any buildings. It should be noted that the presence of friable asbestos on the exterior of buildings triggers environmental requirements. Likewise, any disturbance of asbestos through remodeling or demolition will likewise trigger environmental requirements as well as worker health and safety requirements. This should be noted in the subject FOST.

Response: ACM surveys were conducted primarily for building interiors. The scope of the surveys did not include sampling of exterior components. However, if asbestos siding was observed, it was documented in the report. Detailed information is contained in the Asbestos Containing Materials Survey Reports included as Attachment 2 of the FOST.

**RESPONSE TO COMMENTS
BY THE JOINT POWERS AUTHORITY
DRAFT FINDING OF SUITABILITY TO TRANSFER
FIRST CERFA PARCEL
FORT MCCLELLAN, ALABAMA**

Specific Comments

Comment 1: **Underground Storage Tanks (“USTs”):** As we have previously discussed with you and the leadership at TRADOC, the JPA is very concerned about assuming the liabilities that may be involved in accepting property containing USTs. We have contacted ADEM and provided them with the copy of the UST map given to us by the Army. After their evaluation of the USTs contained in the FOST is completed, we will provide you with a list of the tanks that we support remaining in the ground and a list of the tanks that we would prefer to have removed prior to transfer. Until we have completed our evaluation we cannot support the inclusion of the USTs in this FOST.

Response: After appropriate investigations and testing were completed it was determined that no hazardous substances in the vicinity of the Underground Storage Tanks that exist require a remedial or removal response. In effect, existing Underground Storage Tanks in this transfer fall under Environmental Condition of Property Categories 3 and 4. The decision that no further remediation or removal is necessary was made by concurrence with ADEM and EPA.

Comment 2: **Exclusion Zones (“Ezs”):** The Ezs continue to be a contentious point with us. Exclusion Zones have a serious detrimental impact on our ability to successfully redevelop Fort McClellan. While safety remains a paramount concern for all of us, we need to work together to properly balance safety and redevelopment concerns. In this regard, our counsel, David Knisely, will continue his discussions with Robin Mills at TRADOC concerning the required coverage of the Ezs and necessary deed language. We note that the current language regarding Ezs in Attachment 1 of the FOST needs a considerable amount of refinement.

Response: Exclusion Zones are not an environmental impediment to suitability of transfer determinations. While the Army will continue to discuss this issue with the JPA, this is not an issue that needs to be addressed within the FOST. However, the deed for this transfer will address the issue of Exclusion Zones.

Comment 3: **Environmental Protection Provisions (Deed Language), Attachment 1:** The proposed deed language used in the FOST does not comport with language actually used in past deeds. It appears that the consultant preparing the FOST should be given copies of these earlier deeds so that this FOST and future FOSTs accurately reflect actual deed language. Mr. Knisely is available to review specific discrepancies in the Environmental Protection Provisions in the FOST and language utilized in earlier deeds.

Response: The language used in the Environmental Protection Provisions is the same language used in previous Findings of Suitability to Transfer. Please provide specific language that is causing concern in writing so we are better able to address your comment.

Comment 4: CERCLA Covenant: Because the property to be transferred under this FOST is "CERFA Clean", we believe the appropriate covenant to be utilized in Section 12 of the FOST is the covenant given under Sec. 120 (h)(4) of CERCLA.

Response: The deed for the Property will contain the following provisions:

For Category 1 Property:

- The covenant under CERCLA § 120(h)(4)(D)(i) warranting that any response action or corrective action found to be necessary after the date of transfer shall be conducted by the United States
- CERCLA § 120(h)(4)(D)(ii) granting the United States access to the property, in case, in which a response is found to be necessary after the date of transfer for the Property, or such access is necessary to carry out a response action or corrective action on adjoining property.

For Category 3 Property:

- The covenant under CERCLA § 120(h)(3)(A)(ii)II warranting that any remedial action under CERCLA found to be necessary after the date of transfer with respect to such hazardous substances remaining on the Property shall be conducted by the United States
- A clause as required by CERCLA §120(h)(3)(A)(iii) granting the United States access to the Property in any case in which remedial action or corrective action is found to be necessary after the date of transfer.

For Category 4 Property:

- The covenant under CERCLA §120(h)(3)(A)(ii)I warranting that all remedial action necessary to protect human health and the environment with respect to any hazardous substance has been taken before the date of transfer
- CERCLA § 120(h)(3)(A)(ii)II warranting that any remedial action under CERCLA found to be necessary after the date of transfer with respect to such hazardous substances remaining on the Property shall be conducted by the United States
- A clause as required by CERCLA §120(h)(3)(A)(iii) granting the United States access to the Property in any case in which remedial action or corrective action is found to be necessary after the date of transfer.