

ADEM



ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

POST OFFICE BOX 301483 36130-1483 • 1400 COLISEUM BLVD 36110-2059

MONTGOMERY, ALABAMA

WWW.ADEM.STATE.AL.US

(334) 271-7700

JAMES W. WARR
DIRECTOR

BOB RILEY
GOVERNOR

July 30, 2004

CERTIFIED MAIL (No. 7003-0500-0001-2707-8914)
RETURN RECEIPT REQUESTED

Facsimiles: (334)
Administration: 271-7950
General Counsel: 394-4332
Air: 270-3044
Land: 279-3050
Water: 279-3051
Groundwater: 270-5631
Field Operations: 272-8131
Laboratory: 277-8710
Mining: 394-4326
Education/Outreach: 394-4383

Gary Harvey
U.S. Army Garrison
Fort McClellan, Alabama 36205-5000

Dear Mr. Harvey:

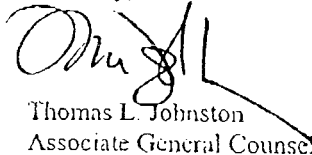
Enclosed please find Administrative Order No. 04-086-EHW which requires you to take certain actions in regard to violations of the Alabama Hazardous Waste Management and Minimization Act. Failure to comply with the terms of this Order may result in penalties of up to \$25,000 per day for each violation.

Pursuant to §22-22A-7(c)(1), Code of Alabama (1975), as amended, this Order may be appealed by filing a request for a hearing within 30 days after receiving notice of this Order. The request should be addressed to the Chair of the Environmental Management Commission and must comply with the requirements of ADEM Admin. Code R. 335-2-1-.04, copies of which may be obtained by submitting a written request to the attention of Diane McKeithen, ADEM Permits & Services Division, with a check or money order for \$3.00 for each copy requested. Rule 335-2-1-.04 is also available online at the Department's website at:

www.adem.state.al.us/regulations/div2/div2.htm

If you have any questions, please feel free to contact me at the ADEM Office of General Counsel at (334) 271-7855.

Sincerely;


Thomas L. Johnston
Associate General Counsel

TLJ/tj
Enclosure

cc: Gerald Hardy, Chief
ADEM Land Division

Birmingham Branch
110 Vulcan Road
Birmingham, Alabama 35208-4702
(205) 942-8188
(205) 941-1603 [Fax]

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, Alabama 35603-1333
(256) 353-1713
(256) 340-9350 [Fax]

Mobile Branch
2204 Perimeter Road
Mobile, Alabama 36615-1131
(251) 450-3400
(251) 479-2593 [Fax]

Mobile - Coastal
4171 Commanders Drive
Mobile, Alabama 36615-1421
(251) 432-6533
(251) 432-6598 [Fax]



Printed on Recycled Paper

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

In The Matter Of:)
)
U. S. Army Garrison)
Fort McClellan, Alabama 36205-5000)
)
U. S. Army Corp of Engineers)
Huntsville Engineering and Support Center)
4820 University Square)
Huntsville, Alabama 35816-1822)
)
Tetra Tech, Foster Wheeler)
4960 Corporate Drive, Suite 140)
Huntsville, Alabama 35805)
)
U.S. Fish and Wildlife Service)
291 Jimmy Parks Boulevard)
Fort McClellan, Alabama 36265)
)
USEPA ID NUMBER AL4 210 020 562)
_____)

EMERGENCY
ADMINISTRATIVE ORDER

No. 04-086-EHW

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 through 22-22A-16, Code of Alabama 1975, as amended, and the Alabama Hazardous Wastes Management and Minimization Act of 1978 (AHWMMA), §§ 22-30-1 through 22-30-24, Code of Alabama 1975, as amended, and the ADEM Administrative Code, promulgated thereunder, the Alabama Department of Environmental Management (hereinafter "ADEM" or "the Department") makes the following FINDINGS:

1. The U. S. Army Garrison (hereinafter "USAG"), under authority of the Base Realignment and Closure (BRAC) Office, oversees Department of Defense (DOD) Restoration activities, including investigation by the USAG contractor Tetra Tech, Foster Wheeler (TTFW) of unexploded ordnance (UXO) and other munitions and explosives of concern (MEC) at the Charlie Area of the Former Fort McClellan Installation (assigned EPA ID Number AL4 210 020 562). The U. S. Army Corp of Engineers (COE) is responsible for conducting quality assurance

for TTFW's work at Fort McClellan. The Charlie Area is presently under the ownership of the U.S. Fish and Wildlife Service (USFWS). The USAG's primary activities involve the management of Army retained conditions related to the transfer of property to other federal and private stakeholders at Fort McClellan. Presently, the USAG is the lead agency overseeing the cleanup of conventional UXO at the Charlie Area. Prior to the transfer of the Alpha and Bravo area to the Joint Powers Authority (JPA), the USAG was also the lead agency responsible for the UXO cleanup of the Alpha Area. That responsibility now rests with JPA. However, at this time, the USAG remains responsible for the UXO cleanup of the Bravo Area. Fort McClellan does not presently hold an Alabama Hazardous Wastes Management and Minimization Act (AHWMMA) permit for the treatment, storage, or disposal of hazardous waste, but applied for interim status permit coverage on November 19, 1980 to address the storage of hazardous waste as specified in Chapter 6 of the ADEM Admin. Code. The interim status hazardous waste storage facility was clean closed on July 15, 1996.

2. The Alabama Department of Environmental Management is a duly constituted agency of the State of Alabama pursuant to §§ 22-22A-1 through 22-22A-16, Code of Alabama 1975, as amended.

3. Pursuant to § 22-22A-4(n), Code of Alabama 1975, as amended, the Department is the state agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the federal Solid Waste Disposal Act, 42 U.S.C. 3251, et. seq., as amended, including §§ 6901 through 6992k, as amended. The Department is authorized to administer and enforce the provisions of the Alabama Hazardous Wastes Management and Minimization Act, §§ 22-30-1 through 22-30-24, Code of Alabama 1975, as amended.

4. Pursuant to § 22-30-19(a), Code of Alabama 1975, as amended, the Department is authorized to issue an order requiring immediate compliance whenever there is a violation of the Alabama Hazardous Waste Management and Minimization Act or the regulations promulgated thereunder. In cases where an imminent threat to human health or the environment is demonstrated, the order may suspend operations causing such a threat until the Department determines that adequate steps are being taken to correct such violations.

5. Pursuant to ADEM Admin. Code R. 335-14-7-.13(3)(a)(1)(iii), a military munition is not a solid waste when it is used for its intended purpose, including recovery,

collection, and on-range destruction of unexploded ordnance and munitions fragments during range clearance activities at active or inactive ranges. The phrase "use for intended purpose" does not include the on-range disposal or burial of unexploded ordnance and contaminants when the burial is not a result of ordnance use.

6. Pursuant to ADEM Admin. Code R. 335-14-7-.13(3)(c)(2), a used or fired munition is a solid waste if recovered, collected, and then disposed of by burial or landfilling either on or off a range.

7. Pursuant to ADEM Admin. Code R. 335-14-8-.01(1)(c), a permit is required under the Alabama Hazardous Waste Management and Minimization Act (AHWMMA) for the treatment, storage, and disposal of any hazardous waste. ADEM Admin. Code R. 335-14-8-.01(1)(c)(3)(i)(IV) allows treatment of military munitions during an emergency response without obtaining an AHWMMA permit. This exclusion does not apply to non-emergency situations or to disposal.

8. Pursuant to ADEM Admin. Code R. 335-14-5-.03(2), hazardous waste facilities are required to be designed, constructed, maintained, and operated to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, groundwater, or surface water which could threaten human health or the environment.

9. Pursuant to ADEM Admin. Code R. 335-14-9-.04(1), which incorporates 40 CFR 268.40(a), a prohibited waste identified in the table "Treatment Standards for Hazardous Wastes" may be land disposed only if it meets the requirements found in the table. For each waste, the table identifies one of three types of treatment standard requirements: (3) The waste must be treated using the technologies specified in the table ("technology standard"), which are described in detail in §268.42, Table 1—Technology Codes and Description of Technology-Based Standards.

10. On July 21, 2004, an inspection by Department personnel documented thirteen 81 mm mortar rounds that appeared to have been recently removed from the area 15 feet from the center line of a road in the Charlie Area and disposed of in areas to the north (nine mortars) and south (four mortars) of the road, in violation of the regulations cited above. The road area had evidence of recent excavations characteristic of UXO digs. The mortars and dig areas were in

the general vicinity of Lat 33°44,788'; Long 085°44, 628'. Five of the mortars had visible fuzes. Three of the five fuze rounds had traces of blue paint indicative of practice rounds, but two of the mortars had no blue paint, thus indicating they were explosively configured. The disposed rounds appeared to be concealed behind trees and several had been further hidden by mounding leaves and dirt over them (landfilled). Some of the eight rounds that were not clearly fuze had a white/yellowish substance protruding out of the mortar round from the former fuze position, indicating remnants of a charged fuze still exists. The disposal area in question is located approximately 1200 feet south of the northern property boundary separating the former installation from a residential area.

11. Fuze ordinance, whether configured for high order detonation or not, are known to be shock sensitive and can maim, kill or otherwise injure those persons who encounter such items.

12. The recovery and re-burial of fuze ordinance, whether explosively configured or not, represents the disposal of a used or fired munition.

13. The burial or disposal on the land surface of munitions represents an imminent threat to human health or the environment.

ORDER

Based on the foregoing FINDINGS and pursuant to Code of Alabama 1975, §§ 22-22A-5(10), 22-22A-5(18), 22-30-20 and 22-30-19(a) and (b), as amended, it is hereby Ordered:

A. That, immediately upon receipt of this Order, the USAG and its contractors shall stop all munitions investigations and recovery actions on Fort McClellan until the conditions of this Order are met to minimize the possibility of an explosion:

1. That, within seven (7) days of receipt of this Order, the USAG shall locate and properly manage all disposed and/or landfilled munitions in the area in the general vicinity of Lat 33°44,788'; Long 085°44, 628'. Until this condition is met, the USAG shall secure the

area in accordance with ADEM Admin. Code R. 335-14-5-.02(5) and applicable Department of Defense Explosive Safety Board (DDESB) requirements. In addition, the USAG shall determine the limits of the UXO impact area at this location and either institute proper land use controls or institute expedited clearing of all fixed UXO items in the impact area.

2. The USAG shall re-investigate for the presence of recovered and disposed MEC items in any and all areas within one hundred (100) feet of areas previously claimed to have been cleared of MEC by TTFW on the former Fort McClellan property, whether or not previously cleared areas passed Army quality control and whether or not ADEM provided concurrence with prior clearance documentation. Any located MEC items shall be immediately secured until the item can be appropriately relocated for destruction or destroyed in place. If MEC items are located, the USAG shall secure the area(s) in accordance with ADEM Admin. Code R. 335-14-5-.02(5) and applicable DDESB requirements. The USAG shall notify the Department within 24 hours of discovering any location where disposed MEC items are located. If a new area is located, the USAG must determine the limits of the disposal and UXO impact area at the new location. All disposed MEC items must be managed in accordance with Division 14 of the ADEM Admin. Code. The USAG must either institute proper land use controls or institute expedited clearing of all fixed UXO items in the impact area. The 24-hour notification shall describe the specific item(s) identified and the location of the find. Within seven (7) days of finding any potential relocated MEC item(s), the Army shall provide additional documentation to the Department including a narrative description of the find, a photograph(s) of the find, a plan for the destruction of the item(s), and a map showing the specific location of the find including GPS coordinates.

3. That all activities described above shall be subject to direct monitoring by the Department. USAG will keep the Department apprised of all scheduled activities responsive to paragraphs A.1 and A.2 of this Order and allow adequate time for the Department to monitor the activity. During monitoring, the USAG will provide the Department UXO expertise.

B. That, within 30 days of receipt of this Order, the USAG shall verify the list of known target areas on the former Fort McClellan property previously provided to the Department, and shall supplement said list with any other areas currently known or suspected to have UXO munitions

C. That the USAG shall provide the information described below on the frequency indicated for each item.

1. The USAG shall immediately notify the Department of any and all potential finds of UXO and/or MEC of any kind that are not in keeping with the most current version of the Conceptual Site Model (CSM) previously submitted by the USAG to the Department.

2. The USAG shall report to ADEM any and all actual or potential UXO finds or anomalies that have the potential to result in adverse human health risks to DOD or non-DOD property, including private property, state-owned property (e.g., state highways), and other federal property. The list of anomalies should include, but not be limited to, fuzed ordnance (including practice rounds), any HE configured items (whether fuzed or not), and any fragmentation items containing suspected high explosive remnants.

3. The USAG shall provide the Department a copy of the weekly report (submitted by TTFW to comply with Data Item Description (DID) OE-085 regarding weekly status reports) addressing any potential UXO/OF/MEC finds within 48 hours of receipt by Fort

McClellan or its DOD representative. For any reported UXO/OE/MEC finds or anomalies that have the potential to result in human health risks to DOD and non-DOD property, the USAG shall notify the Department within 24 hours of identification of such potential concerns by the USAG's UXO contractor.

4. If there are any instances of historical UXO/OE/MEC finds for which notification would have been required pursuant to this Order (had it then been in effect) but which did not occur, the USAG shall notify the Department of each instance within 30 days of receipt of this Order.

D. That, immediately upon the receipt of this Order and continuing each and every day thereafter, the USAG (or its contractors) shall not dispose of hazardous waste without first obtaining an AIIWMMA permit in accordance with ADEM Admin. Code R. 335-14-8-.01(1)(c).

E. That, immediately upon the receipt of this Order and continuing each and every day thereafter, the USAG (or its contractors) shall not dispose of hazardous waste unless the waste meets the land disposal restrictions specified in ADEM Admin. Code R. 335-14-9-.04(1)/ 40 CFR 268.40(a).

F. That, within sixty (60) days after completion of closure by removal of each hazardous waste management unit, the USAG shall submit to ADEM a closure report containing specific details of the closure and all certifications and notices of closure in accordance with all requirements of ADEM Administrative Code R. 335-14-5-.07(6).

G. That, immediately upon receipt of this Order and continuing until approval is granted by the Department, the USFWS shall not conduct controlled burns or any other activity that may cause disposed UXO munitions to explode on the land owned by USFWS at Fort McClellan.

II. That the issuance of this Administrative Order does not preclude the Department from seeking civil penalties, criminal fines or other appropriate sanctions or relief against the USAG, its contractors, or any other party for the violations cited herein.

I. That failure to comply with the provisions of this Order shall constitute cause for commencement of legal action by the Department against the USAG, its contractors, or any other party for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this 30th day of July, 2004.



James W. Warr, Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110-2059
(334) 271-7700

Certificate of Service

I hereby certify that I have this date served the foregoing ADLM Emergency Administrative Order No. 04-086-HW on the recipients identified below by facsimile and by placing a copy of same in the U.S. Mail, certified mail with return receipt requested, properly addressed and postage prepaid:

Gary Harvey
U.S. Army Garrison
Fort McClellan, Alabama 36205-5000
Fax 256-848-5517

Dan Copeland
U.S. Army Corps of Engineers
Huntsville Engineering and Support Center
4820 University Square
Huntsville, Alabama 35816-1822
Fax 256-722-8709

Steve Miller
US Fish and Wildlife Service
291 Jimmy Parks Boulevard
Fort McClellan, Alabama 36265
Fax 256-847-9089

Art Holcomb
Tetra Tech Foster Wheeler
4960 Corporate Drive, Suite 140
Huntsville, Alabama 35805
Fax 256-830-1991

Dated: July 30, 2004

