



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
U.S. ARMY GARRISON  
FORT McCLELLAN, ALABAMA 36205-5000

August 30, 2004

Fort McClellan, Alabama

Dr. William Sanders, Chairman  
Environmental Management Commission  
1400 Coliseum Boulevard  
Montgomery, Alabama 36110-2059

Dear Dr. Sanders:

The US Army Garrison, Ft. McClellan, Alabama (USAG) and the US Army Corps of Engineers, Huntsville Engineering and Support Center (COE) are requesting a hearing to contest the Alabama Department of Environmental Management's (Department) issuance of the above-cited Emergency Administrative Order (Order) on July 30, 2004. In accordance with Environmental Management Commission procedures and Thomas L. Johnston's July 30 letter transmitting the Order, the Army provides the following information required by ADEM Admin. Code R. 335-2-1-.04.

Section 335-2-1-.04(4), Request for a Hearing, requires:

*335-2-1-.04(4)(a) The name, mailing address, and telephone number of the person making the request:*

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COL John D. Rivenburgh  
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4820 University Square  
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*335-2-1-.04(4)(b) – A short and plain statement identifying the administrative action of the Department being contested:*

USAG and COE are contesting the broad and ambiguous language in Part A.2. of the July 30, 2004 Order, that (1) alleges various violations of the Alabama Hazardous Waste Management and Minimization Act and the regulations promulgated thereunder, and (2) suspended operations and required USAG and COE to undertake other actions because the Department asserted an imminent threat to human health or the environment.

USAG and COE reserve the right to contest other provisions in the Order if the Department, the USAG, and the COE cannot reach closure on Part A.1.

*335-2-1-.04(4)(c) – A short and plain statement of the threatened or actual injury suffered by the person making the request as a result of the administrative action of the Department:*

(1) The broad and ambiguous actions required by the Department in Part A.2 of the Order are not specific enough for the USAG and/or the COE to provide a plan for response. Under Alabama Code 22-30-19(a), the Department may issue an order requiring compliance immediately or within a specified time period, and, in cases where an imminent threat to human health or the environment is demonstrated, suspend operations causing such threat until the Department determines that adequate steps are being taken to correct such violations. Further, under 22-30-19(c), any order issued under the authority of 22-22A-5, shall state with reasonable specificity the nature of the required corrective action or other response measure and shall specify a time for compliance. Part A.2 of the Order does not comply with these specific regulations and is therefore unenforceable.

(2) The Department's authority to stop work under 22-30-19(a) should continue only until the Department determines that adequate steps are being taken to correct the alleged violation. The USAG and the COE have responded to the alleged threat that was presented in A.1 with enough specificity that it allowed them to conduct an appropriate response. Following extensive discussions with the Department, the USAG and the COE have also agreed to conduct a response in three other sectors that were not specifically identified in the Order. The actions being conducted in the Charlie Area should not prevent the USAG and/or the COE from conducting the sampling necessary to complete the Bravo Area Engineering Evaluation & Cost Analysis (EE/CA), and hence delay the Army's ability to carry-out its commitments pursuant to the covenant deferral provisions of the CERCLA 120(h)(3)(C) that allowed the Army to transfer the property to the Anniston-Calhoun County Fort McClellan Development Joint Powers Authority (JPA) early, prior to all cleanup actions being complete. Unless the Department has information that identifies with reasonable specificity a threat in the Bravo Area, the Order is being applied too broadly under the Alabama Code and implementing regulations. This blanket stop work requirement appears to be arbitrary when applied beyond the specified locations in the Charlie Area, and will have contractual impacts for both the USAG and the COE. In addition, redevelopment efforts of the new property owners at the former Fort McClellan, the US Fish and Wildlife Service and the JPA, may be directly or indirectly impacted by the blanket stop work order, and since USAG has contractual agreements in place with each of these entities, further liability could attach.

*335-2-1-.04(4)(d) – A short and plain statement of the alleged error(s) made by the Department in the administrative action:*

(1) While USAG and the COE recognize the Department's authority under Alabama Code 22-22A-5 to issue the Order, the Department has erroneously tried to extend that authority to an unknown threat that may or may not exist in an unknown location. This is in error since it exceeds the Department's authority under both law and regulation.

(2) There is no basis in fact, of which USAG and/or the COE are aware, for requiring a re-investigation of work previously done. There is no authority cited by the Department to support this broad and ambiguous requirement.

(3) The USAG and the COE also question whether or not an imminent threat existed, since the Department knew of the threat on or about July 10, 2004, but did not discuss the issue with either the USAG or the COE prior to issuing an order on July 30, 2004. The USAG and the COE believe that the Department had a duty to notify them of this potential problem, even while they were in the process of investigating the allegations and drafting the Order.

*335-2-1-.04(4)(e) – A short statement of the terms and conditions which the person making the request proposes that the Commission should include in an order modifying or disapproving the Department's administrative action:*

For the foregoing reasons, the Commission should modify the Order by deleting Parts A.2 and A.3. Further, Parts C.1 through C.4, Part D., Part E., and Part F. should also be deleted, since those provisions relate to the broad and ambiguous requirements set out in Part A.2.

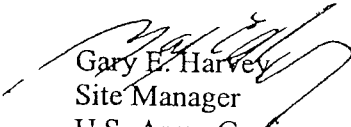
*335-2-1-.04(4)(f) – The name, mailing address, and telephone number of the attorney(s) for the person making the request, if represented by an attorney:*

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335-2-1-.04(4)(g) – The original signature of the person making the request or such person's attorney:

Respectfully,



Gary E. Harvey  
Site Manager  
U.S. Army Garrison



John D. Rivenburgh  
Colonel, U.S. Army  
Commanding

Certificate of Service

I hereby certify that I have this date provided a copy of the foregoing Request for a Hearing on the ADEM Emergency Administrative Order No. 04-086-HW on the recipients identified below by placing a copy of same in the U.S. Mail, properly addressed and postage prepaid:

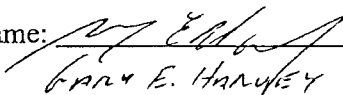
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Dated: 30 August 2004 Name:   
Gary E. Hanley