

ADEM



ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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JAMES W. WARR

DIRECTOR

BOB RILEY

GOVERNOR

November 15, 2004

**CERTIFIED MAIL (No. 7003-0500-0001-2707-9010)
RETURN RECEIPT REQUESTED**

Facsimiles: (334)
Administration: 271-7950
General Counsel: 394-4332
Air: 279-3044
Land: 279-3050
Water: 279-3051
Groundwater: 270-5631
Field Operations: 272-8131
Laboratory: 277-6718
Mining: 394-4326
Education/Outreach: 394-4383

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

Re: Former Ft. McClellan property

Dear Mr. Harvey:

Enclosed please find Consent Order No. 05-009-CHW which requires you to take certain actions in regard to alleged violations of the Alabama Hazardous Waste Management and Minimization Act. This Order has been issued with your consent and is final and not appealable.

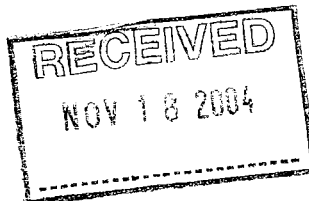
If you have any questions, please feel free to contact me at the ADEM Office of General Counsel in Montgomery at (334) 271-7855.

Sincerely;

Thomas L. Johnston
Associate General Counsel

TLJ/kp
Enclosure

cc: Gerald Hardy, Chief
ADEM Land Division



In The Matter Of:

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

U. S. Army Corps of Engineers
Huntsville Engineering and Support Center
4820 University Square
Huntsville, Alabama 35816-1822

Tetra Tech FW, Inc.
4960 Corporate Drive, Suite 140
Huntsville, Alabama 35805

USEPA ID NUMBER AL4 210 020 562

No. 05-009-CHW

Pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 through 22-22A-16, Code of Alabama 1975, as amended; the Alabama Hazardous Wastes Management and Minimization Act of 1978 (AHWMMA), §§ 22-30-1 through 22-30-24, Code of Alabama 1975, as amended; the ADEM Administrative Code of Regulations ("ADEM Admin. Code R.") promulgated pursuant thereto, and without the adjudication of any issues of fact or law and upon the consent of the Parties hereto, the Alabama Department of Environmental Management (hereinafter, "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 U.S. Army Corps of Engineers (COE) contractor Tetra Tech FW, Inc. (TtFW) of unexploded ordnance (UXO) and other munitions and explosives of concern (MEC) at the former Fort McClellan Installation (assigned EPA ID Number AL4 210 020 562). The COE is responsible for conducting quality assurance for TtFW's work at Fort McClellan on behalf of USAG. The above are referenced collectively herein as "the Parties."

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 AHWMMMA, §§ 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 AHWMMMA 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 the above authorities, on July 30, 2004, the Department issued Emergency Administrative Order No. 04-086-EHW ("the Order") to the Parties, alleging violations of applicable law and imposing certain requirements and response actions. Since that date, the Parties have complied with the requirements of Paragraph A.1. of the Order by locating and properly managing munitions described therein to the satisfaction of the Department, and have engaged in discussions to clarify the requirements remaining under Paragraph A.2 of the Order. This Consent Order is issued to clarify and document such remaining obligations.

6. The Parties neither admit nor deny the findings of fact or law contained in this Consent Order and the Order, however, in an effort to cooperate with the Department, the Parties, without waiving any objection to the Order, have taken the actions outlined in Paragraph 5 hereof and also consent to the terms contained herein.

7. The Department acknowledges that the USAG, the COE, and TtFW immediately began working with the Department to address the requirements of the Order and have cooperated with the Department's investigation.

8. The Department agrees to this Consent Order upon a determination that the terms are in the best interests of the citizens of Alabama in resolving the alleged violations.

ORDER

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

A. That, upon execution of this Consent Order by the Parties and the Department, the Parties may recommence munitions investigation and recovery actions at the former Fort McClellan that were stopped pursuant to ADEM Administrative Order No. 04-086-EHW, issued July 30, 2004. In those segments included in the "*Plan for Meeting the Requirements of the Revised Section A.2. of ADEM's Emergency Administrative Order*" (the "Plan"), referenced in Paragraphs B, C and D below, the Parties shall not initiate any new munitions investigations or recovery actions without Department approval, pending completion of the reinvestigation effort.

B. That ADEM Administrative Order No. 04-086-EHW is hereby amended as follows: Section A.2. is deleted and replaced with:

"The Parties shall re-investigate for the presence of improperly relocated MEC items in selected areas adjacent to areas previously cleared by TtFW on the former Fort McClellan property. The investigation shall be conducted in accordance with the "*Plan for Meeting the Requirements of the Revised Section A.2. of ADEM's Emergency Administrative Order*," which is incorporated herein by reference.

Any relocated MEC item shall be immediately secured until the item can be appropriately located for destruction or destroyed in place. If relocated MEC items are discovered, 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 relocated MEC items are found. If a new area is located, the USAG must determine the limits of the disposal and UXO impact area at the new location. All relocated 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 fuzed 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.”

C. That to satisfy the above requirement, the Parties shall select areas and complete investigations in accordance with the Plan, dated contemporaneously and adopted herein by reference as an enforceable provision of this Consent Order.

D. That, as investigations of the selected segments are completed pursuant to the Plan, the Parties may recommence in such segments munitions investigation and recovery actions that were stopped pursuant to ADEM Administrative Order No. 04-086-EHW.

E. That after completion of work under the Plan and submittal to the Department of all required reports, the Department upon review and acceptance of the reports will issue to the Parties a notice that the requirements of the Order and this Consent Order have been satisfied.

F. That this Consent Order shall apply to and be binding upon the Parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented and to legally bind such party.

G. That, to the extent that any costs of compliance are attributable to USAG or COE, the payment or obligation of funds shall be subject to the availability of funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C. §1341. In the event that a payment or obligation of funds would constitute a violation of the Antideficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

H. That for purposes of this Consent Order only, the Parties agree that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction. The Parties further agree that in any action brought by the Department to compel compliance with the terms of this Consent Order, the Parties shall be limited to the defenses of Force Majeure, compliance with this Consent Order, and physical impossibility.

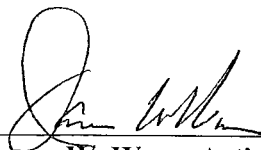
I. That the Parties are not relieved from any liability upon the failure to comply with any provision of this Consent Order.

J. That the issuance of this Consent Order does not preclude the Department from assessing civil penalties pursuant to § 22-22A-5(18)(a), Code of Alabama (1975), against the USAG, COE, its contractors, or any other party for the violations alleged herein.

K. That this Consent Order does not preclude the Department from taking other enforcement actions should additional facts and circumstances be discovered in the future concerning the Parties which would constitute violations not addressed in this Consent Order.

L. That by agreement of the Parties, this Consent Order shall be considered final and effective immediately upon signature of all Parties and the Department. This Consent Order shall not be appealable by the Parties, and the Parties hereby waive any hearing on the terms and conditions of same; provided that this waiver shall not effect the right of the Parties to seek to have this Consent Order approved, or resist modification or disapproval thereof, by the Environmental Management Commission, in the event any non-party aggrieved by the terms and conditions of this Consent Order timely requests a hearing before the Environmental Management Commission to contest this Consent Order; provided further that in the event the Department shall assess civil penalties against any Party for the alleged violations, the Parties reserve the right to request a hearing and seek review of any such penalty imposed.

ORDERED and ISSUED this 15th day of November, 2004.



James W. Warr, Acting Director
Alabama Department of
Environmental Management

U. S. Army Garrison

Dated: 10 November 2004

(Signature)

GARY E. HARVEY, Site Manager

(Please Print Name and Title of Authorized Officer)

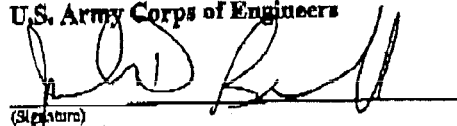
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10/11 04 WED 22:43 FAX 070957950477
11/10/2004 11:41 2568951196

US ARMY COE LEGAL
BALTSCHUG
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Dated: 10 Nov 2004

U.S. Army Corps of Engineers

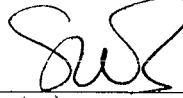

(Signature)

COL John D Rivenburgh
(Please Print Name and Title of Authorized Officer)

Commander
US Army Engineering
and Support Center

Dated: Nov. 9, 2004

Tetra Tech FW, Inc.



(Signature)

SAM W. BOX PRESIDENT & CEO
(Please Print Name and Title of Authorized Officer)

**Plan for Meeting the Requirements of the Revised Section A.2
of
ADEM's Emergency Administrative Order**

INTRODUCTION

This Plan describes the proposal for meeting the requirements of the revised Section A.2. of ADEM's Emergency Administrative Order No. 04-086-EHW (the "Order"). The investigation of the remaining areas covered by Section A.2. is primarily to confirm that the improper handling of fuzed munitions was limited. All areas where TtFW conducted intrusive operations in the six months preceding issuance of the Order will be included in the sampling plan described below in order to determine whether, to a reasonable degree of scientific certainty, other MEC items may have been improperly relocated.

A sampling plan based on the methodology used in Military Standard 1916 (MIL-STD-1916) will be employed to select the number of segments for investigation. The criteria will be equivalent to Verification Level (VL) III. The boundary around areas, such as the roads and high-use areas of the U.S. Fish and Wildlife Service (FWS) Land Transfer Area and the Water Tank Construction Sites (WTCS), have been assigned segment numbers. A total of 200 segments are included in the work that was performed in the six months prior to the issuance of the Order, inclusive of Segments 55, 56, 62 and 63. Segments 55, 56, 62 and 63, however, were excluded from the selection process as they were previously investigated. Since the number of segments is between 171 and 288, Code Letter (CL) A, Inspection by Attributes, is used to establish the number of segments to be inspected. As a result, the number of segments to be investigated is 32. The selection of 80% of the segments to be investigated will be by using the random function of Microsoft Excel. The Army and ADEM will designate the remaining 20%. The table below indicates the segments randomly selected.

SEGMENT ASSIGNMENT TABLE

Date 10/15/2004

Random Letter S20

Segment Density	Number of Segments	% of Total Segments	Percent to be Sampled	Number to be Sampled
High	40	21%	50%	13
Medium	26	14%	40%	10
Low	25	13%	5%	1
Lowest	96	51%	5%	1
Total Segments	187	100%	100%	25

Lowest Density	
Total	Segment
1	34

Low Density	
Total	Segment
1	102

Medium Density	
Total	Segment
1	3
2	35
3	49
4	99
5	110
6	127
7	159
8	177
9	187
10	199

ADEM Choices	
Total	Segment
1	95
2	98
3	117
4	126
5	137
6	138
7	143

High Density	
Total	Segment
1	4
2	18
3	23
4	53
5	61
6	87
7	88
8	136
9	139
10	188
11	175*
12	178*
13	194

*substitute segments for 2 sides of Rucker Avenue Tank Site

Additional Specific Areas of Concern (To be disclosed at start of investigation)	
Total	Segment
1	
2	
3	
4	
5	
6	
7	

SCOPE

1. The objective of this task is to determine whether any MEC items may have been improperly moved from an area that was cleared by TtFW into adjacent areas outside the scope of TtFW's contract.
2. TtFW will perform an instrument-assisted search 50 feet around the segments selected for investigation. The attached map shows these areas. TtFW will mark each MEC item discovered that has been possibly improperly relocated to a location outside the removal area, record the required data, and notify ADEM. TtFW will also mark any MEC item found on the surface.
3. Pending ADEM concurrence for work to proceed based upon this proposed plan, TtFW will commence mobilizing personnel to the site to begin the fieldwork. A work schedule will be provided to ADEM to allow sufficient time for ADEM to have personnel on site to observe the

fieldwork. At this time, U.S. Army Corps of Engineers (USACE) safety policy allows only two authorized visitors within the exclusion zone at a time.

4. The areas requiring an investigation are listed below and shown in the attached figure:

- FWS Land Transfer Area (roads and high-use areas)
- Water Tower Construction Sites

5. The plan for each area is as follows:

FWS Land Transfer Area

TtFW will perform the investigation on the segments that border the roads, firebreaks, and high-use areas as identified on the attached map. In several areas, the 50-foot buffer zone is on a slope too steep to safely investigate. As a result, these areas will not be included in the investigation (if a complete segment falls into this category and is selected for investigation, it will be replaced by a segment of the Army/ADEM's choosing), but will be marked with stakes and colored survey tape, and photographed.

Water Tank Construction Sites

The WTCS are comprised of three separate sites that are located within the Bravo investigation area. The buffer zones around these sites were divided into segments and TtFW will perform an investigation in those segments selected.

PROCEDURES

The field investigation will be performed using UXO sweep teams. The teams may vary in size from 5 to 10 personnel depending on terrain, foliage, and location. The procedures the team(s) will follow are:

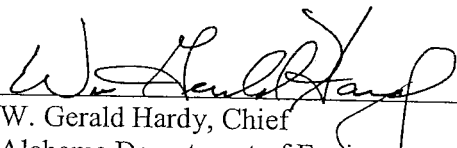
1. The 50-foot buffer will be measured using tapes pulled from the road or segment boundary to ensure that the 50-foot buffer is met. TtFW will segment the buffer into 100-foot long by 50-foot wide grids, divided into 5-foot wide by 100-foot long lanes to aid in tracking and quality control/quality assurance (QC/QA). An instrument-assisted sweep will be conducted. If an item that has been improperly moved is found within the designated grid, the bounds of that grid will be expanded to 100 feet (making it a 100-foot by 100-foot grid), and, in addition, the two adjoining grids will be expanded to 100-foot by 100-foot grids. If no items that have been improperly moved are found, no further action will be required.
2. Each grid within each segment will receive a unique identifier that will allow for tracking from the planning phase through government QA.
3. Once a team leader reports that the investigation of a segment is complete, a two-person QC team will come behind the sweep team and perform a MIL-STD-1916 QC survey. This survey will be supervised by TtFW's UXO QC Specialist and will be documented as a QC check of the sweep team. Once the TtFW QC Specialist accepts an area, the USACE will perform QA on the area.

4. A schedule will be established prior to going to the field with input from the Transition Force, USACE, and ADEM. This schedule will be provided to allow ADEM sufficient time to observe the effort. TtFW's Senior UXO Supervisor will plan daily activities and areas to be swept, and this plan will be provided to the ADEM on-site representative(s) (if on site) each morning.

QUALITY CONTROL

1. TtFW's UXO Quality Control Specialist will conduct regular Preparatory, Initial, and Follow-up Surveillance Inspections on the process. Details of the Process Quality Control conducted will be contained within the Daily Quality Control Reports.
2. Product QC will be conducted following MIL-STD-1916, VL III, CL A, Inspection by Attributes, Inspection by Lots. This protocol requires a sample size of 32 units per lot or in this case, 32 lanes per given lot. The nominal lot size will be 200 lanes, with each lane being 5-foot wide by 100-foot long. The lanes will be parallel to the cleared area. The lot size will be nominally 20 grids, with each grid being 100-foot x 50-foot. The first 20 numbered grids will constitute the first lot, the second 20 numbered grids will constitute the second lot, and so on.
3. Failure Criteria will be an MEC item that has been improperly relocated into the area or any MEC item on the surface that was not investigated/marked. This would exclude scrap laying on the surface that is not MEC.

Accepted by ADEM this 15th day of November, 2004.


W. Gerald Hardy, Chief
Alabama Department of Environmental
Management, Land Division