

ADEM



ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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ONIS "TREY" GLENN, III, P.E.

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BOB RILEY

GOVERNOR

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General Counsel: 394-4332
Communication: 394-4383
Air: 279-3044
Land: 279-3050
Water: 279-3051
Groundwater: 270-5631
Field Operations: 272-8131
Laboratory: 277-6718
Mining: 394-4326

September 30, 2005

**CERTIFIED MAIL (No. 7003-3110-004-0269-1663)
RETURN RECEIPT REQUESTED**

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

Dear Mr. Harvey:

Enclosed please find Consent Order No. 05-127-CHW which has been issued pursuant to the Alabama Hazardous Waste Management and Minimization Act. This Order will serve as official notification that "No Further Actions" are required of the U.S. Army Garrison pursuant to Emergency Order No. 04-086-EHW and Consent Order No. 05-009-CHW, except as noted. 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

Birmingham Branch
110 Vulcan Road
Birmingham, Alabama 35209-4702
(205) 942-6168
(205) 941-1603 [Fax]

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, Alabama 35603-1333
(256) 353-1713
(256) 340-9359 [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]



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**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

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.¹
4960 Corporate Drive, Suite 140
Huntsville, Alabama 35805**

USEPA ID NUMBER AL4 210 020 562

CONSENT ORDER

No. 05-127-CHW

FINDINGS

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 EC, Inc. (formerly Tetra Tech FW, Inc.) 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

¹ Tetra Tech FW, Inc. changed its name to Tetra Tech EC, Inc. in January 2005.

for Tetra Tech EC, Inc. (formerly Tetra Tech FW, Inc.) 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, and is authorized to administer and enforce the provisions of the Alabama Hazardous Waste Management and Minimization Action (AHWMMA), §§ 22-30-1 through 22-30-24, Code of Alabama 1975, as amended.

3. On July 30, 2004, the Department issued Emergency Administrative Order No. 04-086-EHW to the Parties, alleging violations of applicable law and imposing certain requirements and response actions.

4. On November 15, 2004, the Department entered into Consent Order No. 05-009-CHW with the Parties, clarifying the response actions required under Emergency Order No. 04-086-EHW and incorporating a detailed response action plan entitled "Plan for Meeting the Requirements of the Revised Section A.2 of ADEM's Emergency Administrative Order."

5. The Department acknowledges that the Parties immediately began working with the Department to address the requirements of the two Orders and have cooperated with the Department. On November 2, 2004, Tetra Tech EC, Inc. (formerly Tetra Tech FW, Inc.) submitted a report entitled *Investigative Report for Segments 55, 56, 62, and 63 at Fort McClellan, Alabama*, documenting actions taken to satisfy the requirements of Paragraph A.1. of Administrative Order No. 04-086-EHW, and on December 14, 2004, Tetra Tech EC, Inc. (formerly Tetra Tech FW, Inc.) submitted a report entitled *Investigative Report for Consent Order 05-009-CHW at Fort McClellan, Alabama*, documenting the actions taken to satisfy the requirements of Paragraph B. of Consent Order No. 05-009-CHW.

6. Tetra Tech EC, Inc. (formerly Tetra Tech FW, Inc.) promptly corrected and remediated, with oversight from the COE and ADEM, the specific items made the basis of the Orders referenced above. Tetra Tech EC, Inc. (formerly Tetra Tech FW, Inc.) also undertook additional reconnaissance and investigation efforts at a cost of \$378,914 to verify that no other items had been mishandled.

7. Tetra Tech EC, Inc. (formerly Tetra Tech FW, Inc.) has documented that all improperly relocated items have now been identified and properly disposed of in accordance with applicable law. Further, Tetra Tech EC, Inc. (formerly Tetra Tech FW, Inc.) has reported to the Department disciplinary actions taken against those employees responsible for mishandling the UXO items, including termination of employment, and has agreed to reimburse the Department for the costs of investigation and oversight of response actions.

8. Based upon the submissions of Tetra Tech EC, Inc. (formerly Tetra Tech FW, Inc.), the Department concurs that the improperly relocated items have been disposed of in accordance with applicable law and that the Parties have satisfied the requirements of Order Nos. 04-086-EHW and 05-009-CHW.

9. The Parties neither admit nor deny the findings of fact or law contained in this Consent Order, however, in an effort to cooperate with the Department, consent to the terms contained herein.

10. 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, based upon information submitted to the Department, the requirements of Order Nos. 04-086-EHW and 05-009-CHW have been satisfied. The Parties are required to take no further actions thereunder and are fully and completely released from any and all obligations or liabilities of any kind arising from said Orders and/or the conduct upon which either or both was based, except as provided herein.

B. That the issuance of this Consent Order does not relieve the Parties from the requirements of Paragraph D. (prohibition against disposing of hazardous waste without obtaining an Alabama Hazardous Waste Management and Minimization Act permit) and

Paragraph E. (prohibition against land disposing of hazardous waste that did not meet the land disposal restrictions) of ADEM Administrative Order No. 04-086-EHW.

C. That, immediately upon receipt of this Consent Order and continuing each and every day thereafter, all reports or other documents related to military munitions response activities performed at Ft. McClellan (including, but not limited to, investigations, response actions, and recommendations that response actions are not required) which are required to be submitted to ADEM for review, comment and/or approval, will contain the below certification from the contractor to the USAG or the COE. In the transmittal letter to ADEM from the USAG or COE of such reports or documents, the USAG or COE will also execute the below certification. The individual from the USAG or COE with authority to transmit the reports or documents will have the authority to sign the certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

D. 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.

E. 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.


F. 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.

G. That any party who fails to comply with the provisions of this Consent Order shall not be relieved from liability.

H. That this Consent Order precludes the Department from taking other enforcement actions arising from the requirements of Orders No. 04-086-EHW and 05-009-CHW and/or for the conduct upon which either or both was based; provided, however, that the Department is not precluded 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

I. 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.

ORDERED and ISSUED this 29th day of September, 2005.



Onis "Trey" Glenn III, P.E.
Director
Alabama Department of
Environmental Management

U. S. Army Garrison

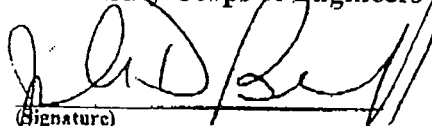
Dated: 30 SEPTEMBER 2005

(Signature)

GARY E. HARVEY SITE MANAGER
(Please Print Name and Title of Authorized Officer)

Dated: 29 Sep 05

U. S. Army Corps of Engineers



(Signature)

COL John D. Rivenburgh

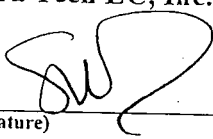
(Please Print Name and Title of Authorized Officer)

Commander

**U. S. Army Engineering and
Support Center, Huntsville**

Tetra Tech EC, Inc.

Dated: SEPT 29, 2005


(Signature)

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