



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
INSTALLATIONS, ENERGY AND ENVIRONMENT
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WASHINGTON DC 20310-0110

19 DEC 2013

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Mr. Carl Edlund
Director, Superfund Division
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Dear Mr. Edlund:

I am responding to the General Notice Letter dated October 30, 2013, from the U.S. Environmental Protection Agency (EPA) informing me that the U.S. Army is potentially liable for the release or threatened release of hazardous substances at the Explo System Inc., Site (Site) at the Louisiana Military Department's (LMD) Camp Minden, Louisiana. I received this letter on November 13, 2013. EPA's letter stated that the Army may be liable under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") because it arranged for disposal or treatment, or arranged transport for disposal or treatment, of hazardous substances owned or possessed by the Army. EPA requested a response regarding whether the Army would enter into negotiations for the performance of a removal action to respond to the materials that were owned by Explo Systems at Camp Minden ("Explo materials").

The Army is not liable under CERCLA Section 107(a) for the Explo materials because it did not arrange for the disposal or treatment, or the transport for disposal or treatment, of hazardous substances owned by the Army. In *Burlington Northern & Santa Fe Ry. Co. v. United States*, 129 S. Ct. 1870 (2009), the U.S. Supreme Court restricted the scope of "arranger liability" to those entities that intend to arrange for the disposal of hazardous substances owned or possessed by the party at the time of disposal. Further, because Explo conducted operations at the Site pursuant to a Facility Use Agreement with the State, the Site is owned by the State, and the Army did not conduct operations at Camp Minden with regard to the Explo materials, there is no other basis for Army liability under CERCLA.

The Army entered into contracts with Explo for the purpose of demilitarization of intact DoD military munitions and transfer of title to the recovered recyclable materials to Explo for reuse or resale, with the expectation that Explo would sell, and indeed did sell, the recyclable materials, including propellant, resulting from the demilitarization process to third parties as useful commercial products. EPA's letter acknowledges that the purpose of the contracts was to recycle the contents of certain demilitarized DoD military munitions for commercial use. The Army did not intend to, nor did it, arrange for the disposal of hazardous substances in its contracts with Explo. Therefore, arranger liability does not extend to the Army through its contracts with Explo.

In addition, a number of the allegations of fact stated in EPA's draft administrative order as the basis to perform a removal action are incorrect. For example, information available to the Army indicates that the Explo materials, which are now owned by the State of Louisiana and stored at LMD's Camp Minden, are in safe storage. As such, the Explo materials present no imminent hazard beyond Camp Minden's boundary, and, although the precise condition of the propellant stabilizers is unknown, do not present an imminent hazard at the present time or in the future provided LMD continues to manage it safely.

The Army has recommended to LMD, the current owner of the Explo materials and the property where the Explo materials are located, that a stability monitoring program be established for the propellant stored at Camp Minden. This would provide LMD an understanding of the condition of the propellant's stabilizer, and allow it to manage this recyclable material safely through its final disposition. With this information, LMD or EPA will be able to explore the commercial sale of these materials as useful products, avoiding the costs and potential environmental risks associated with on-site destruction.

Because the Army is not liable under CERCLA, the Army cannot accept responsibility for the costs associated with the conduct of a removal action regarding the Explo materials at Camp Minden. Questions concerning this matter should be directed to the Army attorney CPT Scott Friedman, Army Environmental Litigation Division, at (703) 693-0433 or scott.j.friedman.mil@mail.mil.

Sincerely,



Hershell Wolfe
Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational Health)