

U.S. Department of Justice
Environment and Natural Resources Division
Environmental Crimes Section

February 8, 2007

LTC Kevin K. Robitaille, Chief
US Army Legal Services Agency
Litigation Division
General Litigation Branch
901 North Stuart Street
Arlington, VA 22203

SENT VIA ELECTRONIC MAIL

Dear LTC Robitaille:

The purpose of this letter is to provide notice of the on-going duty of Bluegrass Army Depot (hereinafter "Depot") managers, commanders, and employees to preserve all potentially relevant evidence associated with the grand jury's subpoena of December 1, 2006 and the on-going criminal investigation of the Depot's tenant Chemical Weapons Activity (hereinafter "Activity").

Potential Evidence That Must Be Preserved

The "evidence" that must be preserved includes any tangible thing that relates to the subject matter of the on-going investigation. Potentially privileged evidence must also be preserved. "Evidence" includes physical materials such as laboratory samples and specimens, and "documents." The definition of "document" includes any written or electronic material such as memos, e-mails, photographs, maps, diagrams, word processing files, databases, spreadsheets, presentation materials, notes, recordings, data, microfilm, microfiche, etc. The definition of "document" is not limited to official government files and includes one's own personal files, including notebooks, calendars, day planners, and electronic documents or e-mails that may have been stored on any U.S. Army computer or personal e-mail accounts. The definition also includes electronic files on out-of-date or "legacy" computer systems, on back up tapes, and the computers themselves. Note that any non-identical copy is considered a separate document.

For the purpose of this preservation notice, the subject matter of the investigation includes anything related to the Depot's tenant chemical waste and/or storage and/or monitoring Activity, including but not limited to the following:

1. Any documents that tend to reflect the activities of any Chemical Weapons Activity, or contractor to the Activity, at the Depot;

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Environment and Natural Resources Division
Environmental Crimes Section

2. Documentation concerning the Depot, such as might reflect site conditions, deterioration of the chemical weapons storage area, plans and training to account for leaks or terrorist attacks, methods to ensure international treaty compliance, etc;
 3. Environmental or technical investigation reports regarding the Chemical Weapons Activity;
 4. Any correspondence with any person regarding the Activity;
 5. Documentation of employee or administrative investigations at the Activity;
 6. Documents showing deliberations leading to any Activity decision, including the decision to change standard operating procedures, hire, fire, and/or promote employees or managers, discussions related to Activity responses to public inquiries, formal investigations or this investigation; and
 7. Communications with contractors or federal or state agencies regarding the Activity; and
 8. All documents related to the Activity's worker safety and/or environmental compliance.
- Accordingly, all personnel with access or responsibility associated with the above-noted evidence shall:

- a. Refrain from deleting, throwing out, shredding or otherwise destroying such materials, to include suspending all "auto-delete systems";
- b. Save, in their original "native" format, all electronic files including, but not limited to: word processing documents, spreadsheets, databases, and incoming and outgoing e-mails;
- c. Act to preserve documents and other evidence transferred to a Federal Records Center or any other location;
- d. Refrain from transferring any documents or other evidence to a Federal Records Center or any other location unless the investigators have been consulted and agree that the documents or evidence: (1) will be adequately preserved after being transferred; and (2) is not needed in its present location for purposes of the litigation.

Contact Information

Before any computer or electronic system is retired or upgraded, please contact EPA Louisville, Kentucky, CID Resident Agent in Charge Libby Zuege (502)582-5833 so that she can ensure that we retain access to the information after the upgrade. Also contact SA Zuege if there are any staffing changes that affect the case, to include retirements or permanent changes of station, or new or additional people working on matters relating to the Depot. Please ensure every co-worker, both attorneys and non-attorneys in your office and the Depot, who may have material fitting the above description, receive a copy of this memo and comply with it.

Thank you in advance for your cooperation in this matter. If you have any questions regarding which materials should be preserved or how they should be preserved, please do not hesitate to contact Jeffrey Phillips at (202)305-0354. We will contact you when these materials no longer need to be preserved.

Sincerely,

Jeffrey J. Phillips
Environmental Crimes Section