

Office of the General Counsel

October 1, 2003

The Honorable Donald Rumsfeld  
Secretary of Defense, U.S. Department of Defense  
The Pentagon  
Washington, D.C. 20301

**BY FIRST CLASS MAIL & FACSIMILE [(202) 693.7278]**

***Re: Your Alleged Violation of the National Environmental Policy Act of 1969,  
i.c.o. the Massachusetts Military Reservation,  
PEER's Notice that It Intends to Sue***

Dear Secretary Rumsfeld,

Public Employees for Environmental Responsibility (PEER) is a Washington D.C.-based non-profit, public interest organization chartered to promote honest and open government. Specifically, PEER serves public employees working on environmental issues and dedicated to open, ethical and accountable governmental administration of environmental laws and regulations throughout the United States. PEER represents thousands of local, state and federal government employees nationwide.

The Department of Defense -- through the United States Air Force and the United States Army -- leases land on Cape Cod from the people of Massachusetts to train our soldiers, sailors, airmen and marines. It does this contingent upon adherence to the National Environmental Policy Act of 1969. Defending our nation while breaking our laws is not an option within the menu of national security policies you are permitted to adopt.

PEER has learned that the Department of the Air Force (DoAF) and the Department of the Army (DoA) have signed lease extensions with the Commonwealth of Massachusetts for an additional twenty-five (25) years. Specifically, DoAF/DoA have extended their leases for use of lands at the Massachusetts Military Reservation. The leases originally signed in 1974 allow the Army and Air Force to utilize the lands through September 30, 2026. The proposed lease extension would allow the DoD agencies to use these same lands through September 30, 2051. The original lease and subsequent amendments were signed by the Department of the Air Force and the Department of the Army.

Between 1974 and the present date, the condition of the aquifer beneath the MMR has declined to the point where a change in existing conditions now requires full review under the National Environmental Policy Act of 1969.

Unfortunately, neither DoA nor DoAF have prepared an Environmental Assessment (EA) and/or Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) for the proposed lease extensions. It appears as if the DoD agencies are assuming that such lease extensions qualify for a Categorical Exclusion (CATEX). See 32 CFR Part 989.13.

A “categorical exclusion” is defined by NEPA regulations as “a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations and for which, therefore, neither an environmental assessment nor an environmental impact statement is required ...” See 40 CFR Part 1508.4.

CATEXs are typically reserved for routine and repetitive federal actions, and were designed to reduce paperwork and save time and money when such routine actions occur. However, in the case of the Massachusetts Military Reservation, a categorical exclusion cannot apply for several reasons. First, the proposed lease extension involves unique circumstances (i.e., the presence of a vulnerable sole source aquifer for Cape Cod). Second, there is an extremely high level of public interest in the proposed lease extension and the DoD agencies’ plans for the land. Third, there is a potential for degradation of already poor environmental conditions. Therefore, the proposed lease extension is not a routine matter, and a CATEX is not applicable until further analyses of the potential impacts are completed.

Please be advised that PEER will file suit against the DoAF and seek a temporary restraining order to prevent the lease extension from being signed until such time as DoAF fully complies with NEPA. Feel free to contact me if you have any questions.

Very respectfully,

Dan Meyer