ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

US DEPARTMENT OF THE ARMY,
ANNISTON ARMY DEPOT
7 FRANKFORD AVENUE
ANNISTON, CALHOUN COUNTY, AL

US DEPARTMENT OF THE ARMY,
ANNISTON MUNITIONS CENTER
7 FRANKFORD AVENUE
ANNISTON, CALHOUN COUNTY, AL

USEPA ID NUMBER AL3 210 020 027

Consent Order NO. 16-xxx-CHW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "ADEM" or "the Department") and the Anniston Army Depot and the Anniston Munitions Center pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, as amended, and the Alabama Hazardous Wastes Management and Minimization Act (AHWMMA), Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the ADEM Administrative Code, promulgated thereunder.

STIPULATIONS

1. The U.S. Department of the Army, Anniston Munitions Center (ANMC), is a Permittee and tenant of Anniston Army Depot (ANAD) (assigned EPA Identification Number AL3 210 020 027). ANMC's primary activities involve

the energetic treatment of waste munitions by open burning, open detonation and thermal treatment closed disposal processes and the associated storage of waste within permitted igloos for these operations. ANAD and ANMC are both listed permittees on Alabama Hazardous Wastes Management and Minimization Act permit AL3 210 020 027, for the treatment and storage of hazardous waste.

2. The Alabama Department of Environmental Management is a duly constituted department of the State of Alabama pursuant to Ala. Code §§22-22A-1 to 22-22A-16, as amended.

3. Pursuant to Ala. Code § 22-22A-4(n), (2006 Rplc. Vol.), 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. §§ 6901 to 6992k, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Hazardous Wastes Management and Minimization Act, Ala. Code §§ 22-30-1 to 22-30-24, as amended.

DEPARTMENT'S CONTENTIONS

4. On November 18, 2015, ANAD and ANMC offered a shipment of hazardous waste ammunition to a transporter that had not received an EPA identification number and an Alabama Hazardous Waste Transporter Permit.

5. A January 19, 2016, submission from ANAD notified the Department that the facility had sent a shipment of hazardous waste ammunition off-site for disposal to General Dynamics Ordnance and Tactical Systems in Missouri (EPA ID#MOD985798164) using a transporter that did not

have a valid EPA identification number or an Alabama Hazardous Waste Transporter Permit.

A. ADEM Admin. Code r. 335-14-3-.01(3)(d) states that a generator must not offer his hazardous waste to transporters that have not received an EPA identification number and an Alabama Hazardous Waste Transport Permit or to treatment, storage, or disposal facilities that have not received an EPA identification number and an Alabama Hazardous Waste Facility Permit or interim status pursuant to rule 335-14-8-.07 (or, in the case of out-of-state facilities, a permit valid in the receiving State). ANAD and ANMC shipped waste ammunition from Anniston Munition Center (ANMC) to General Dynamics Ordnance and Tactical Systems (GD-OTS) in Carthage, Missouri using a Transporter that did not have a valid EPA identification number or an Alabama Hazardous Waste Transporter Permit.

6. The Department issued a Notice of Violation on January 26, 2016, that cited the violation of the ADEM Administrative Code listed above.

7. Pursuant to Ala. Code § 22-22A-5(18)c. as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation(s), including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation(s) upon the environment; such person's history of previous

violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed $25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department shall not exceed $250,000.00. Each day such a violation continues shall constitute a separate violation.

In arriving at the civil penalty assessed in this Order, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The violation involved the failure of ANAD and ANMC to adhere to the ADEM Administrative Code. This violation resulted in an increased potential exposure and/or release of hazardous waste to the public and environment.

B. THE STANDARD OF CARE: By committing this violation, ANAD and ANMC did not exhibit a standard of care sufficient to prevent the violation.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has determined that there was no significant economic benefit gained by ANAD or ANMC as a result of the violation referenced herein.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: Upon discovery of shipping waste using a transporter without an EPA identification number or permit, ANAD self-reported the failure to verify EPA identification number or Alabama Hazardous Waste Permit to the Department.

E. HISTORY OF PREVIOUS VIOLATIONS: The facility has a history of violations and non-compliance. Since January 1, 2004, ANAD has received seven (7) Warning Letters, twelve (12) Notices of Violation, two (2) Administrative Orders and six (6) Consent Orders.

F. THE ABILITY TO PAY: The Operator has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty that is warranted in the spirit of cooperation and the desire to resolve this matter amicably without incurring the unwarranted expense of litigation.

8. The Department neither admits nor denies the Operator's contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violation cited herein without the unwarranted expenditure of State resources in further prosecuting the above violation. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

OPERATOR'S CONTENTIONS

9. The Alabama Department of Environmental (ADEM) issued the Anniston Army Depot (ANAD) a Notice of Violation (NOV) dated January 26, 2016 for a violation self-reported by ANAD to ADEM on December 21, 2015, pursuant to ANAD's Hazardous Waste Permit.

A. The January 26, 2016 NOV cited ANAD for failure to verify that a transporter had a valid EPA identification number or an Alabama Hazardous Waste Transporter Permit. In a March 1, 2016 letter to ADEM, ANAD provided a detailed response to the ADEM NOV letter. A review team was immediately established by ANAD to determine and implement corrective actions. A review of the event determined that existing Anniston Munitions Center (ANMC) procedures provided for verification of the hazardous waste transporter EPA identification number and Alabama Hazardous Waste Transporter Permit but were not followed properly.

B. To prevent a recurrence of this violation, a pre-shipment checklist was developed for hazardous waste ammunition shipments. The checklist identifies the actions required to ensure environmental compliance and verifies that personnel perform the requirements prior to shipment. Additional training was performed to implement the checklist. Following the violation, no additional hazardous waste shipments were performed until all corrective actions were implemented.

10. In Paragraph 7 E of the DEPARTMENT'S CONTENTIONS, HISTORY OF PREVIOUS VIOLATIONS, ADEM contends that ANAD has received 7 Warning Letters, 12 NOVs, 2 Administrative Orders, and 6 Consent orders since January 1, 2004. As a point of clarification, ANAD records indicate that 8 of the NOVs, 3 of the Consent orders, and 5 of the Warning Letters noted above were issued to the Anniston Chemical Stockpile Disposal Facility which is no

longer in operation and has been closed since September 30, 2014 in accordance with its permit requirements.

ORDER

THEREFORE, without admitting that it has violated any statute or regulations, ANAD and ANMC, along with the Department, desire to resolve and settle the alleged violations cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)(c), as amended, as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department, ANAD and ANMC agree to enter into this Consent Order with the following terms and conditions:

A. That not later than forty-five (45) days from the date of receipt of this Consent Order, ANAD and ANMC shall pay to the Department a civil penalty in the amount of **$4250.00** for the violations cited in this Consent Order. All penalties due pursuant to this Order shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
Post Office Box 301463
Montgomery, AL 36130-1463

Any payment submitted to the Department pursuant to this Consent Order shall reference the ANAD's name and address, and the ADEM Administrative Order number of this action.

B. That immediately upon the effective date of this Consent Order and continuing thereafter, ANAD and ANMC shall comply with all terms, conditions, and limitations of the Alabama Hazardous Wastes Management and

Minimization Act of 1978, Ala. Code §§ 22-30-1 to 22-30-24, as amended, the regulations promulgated pursuant thereto, and ANAD's AHWMMA Hazardous Waste Facility Permit.

C. The Department, ANAD and ANMC agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with federal or State law and therefore unenforceable, the remaining provisions herein shall remain in full force and effect.

D. The parties agree that this Consent Order shall apply to and be binding upon both 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. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations cited in this Consent Order.

F. ANAD and ANMC agree that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, ANAD and ANMC agree that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. ANAD and ANMC reserve the right to request removal under federal law. ANAD and ANMC anticipate that all obligations arising under this order

will be fully funded. However, any requirement for the payment or obligation of funds by ANAD and ANMC established by the terms of this order shall be subject to the availability of funds, and no provision herein shall be interpreted to require obligation of funds in violation of the Anti-Deficiency Act (ADA), 31 USC sec. 1341. In cases where payment or obligation of funds would constitute a violation of the ADA, the dates established requiring the payment or obligations of such funds shall be appropriately adjusted.

H. The parties agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate; ANAD agrees not to object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if future orders, litigation, or other enforcement action address new matters not raised in this Consent Order.

I. The Department, ANAD and ANMC agree that this Consent Order shall not affect the Operator's obligation to comply with any federal, state, or local laws or regulations.

J. The Department, ANAD, and ANMC agree that any modifications of this Consent Order must be agreed to in writing and signed by both parties.

K. The Department, ANAD and ANMC agree that this Consent Order shall be considered final and effective immediately upon signature of all parties.

This Consent Order shall not be appealable, and ANAD and ANMC hereby waive any hearing on the terms and conditions of same.

L. The parties agree that final approval and entry into this Consent Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Consent Order.

M. The parties agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve ANAD or ANMC of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

Anniston Army Depot

Colonel Martine S. Kidd
Commander

Date Signed: 31 OCT 16

Signed: Martine S. Kidd

Anniston Munition Center

Lt. Colonel Craig McIlwain
Commander

Date Signed: 10-19-2016

Signed: Craig L. McIlwain

Alabama Department of Environmental Management

Lance R. LeFleur
Director

Date Signed: _____

Signed: _____

Attachment A

Anniston Army Depot
Anniston, Calhoun
Facility ID No. AL3 210 020 027

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	Total of Three Factors
ANAD failed to verify transporter had a valid EPA identification number or an Alabama Hazardous Waste Transporter Permit.	1	4500	500		
TOTAL PER FACTOR		***4500***	***500***		***5000***

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	-750
Total Adjustments (+/-) *Enter at Right*	-750

Economic Benefit (+)	
Amount of Initial Penalty	
Total Adjustments (+/-)	-750
FINAL PENALTY	4250

Footnotes
** See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.*