



DEPARTMENT OF THE ARMY
U.S. ARMY RECORDS MANAGEMENT AND DECLASSIFICATION AGENCY
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AAHS-RDR-C

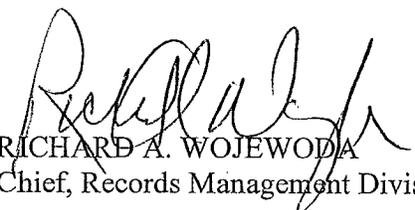
3 OCT 2011

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Preservation of Records for the Case of Chubb Custom Insurance Company v. United States, Case No. CV-11-5594 GW (MRWx)

1. Reference Memorandum, U.S. Army Legal Services Agency, 21 September 2011, subject: Preservation of Records for the Case of Chubb Custom Insurance Company v. United States, Case No. CV-11-5594 GW (MRWx) (Encl).
2. This memorandum applies to all Army activities and imposes an immediate moratorium on the destruction of all records related to the case of Chubb Custom Insurance Company v. United States, Case No. CV-11-5594 GW (MRWx) ("Chubb"). The case concerns alleged hazardous waste contamination at the Whittaker-Bermite Site in Santa Clarita, California.
3. The above-referenced case is a civil action for cost recovery, contribution, and declaratory judgment under sections 107(a), 113(f), 113(g)(2) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C §§ 9601-9675.
4. This moratorium includes all relevant documents regardless of medium, which may include, but are not limited to paper copies, electronically stored information found on computer systems and removable or portable electronic storage media. Additional information regarding types of records to be preserved, and what is included in this preservation order, can be found in the enclosed guidance. All records responsive to this moratorium will be held at their current location until you are notified to resume a regular disposition schedule.
5. You are encouraged to coordinate your efforts in responding to this request with your Command Staff Judge Advocate or servicing legal office. If you have questions regarding your obligation to preserve data, or to provide notice of potentially responsive documents, please contact CPT Murphy, (703) 693-0433 or by e-mail at richard.john.murphy@us.army.mil.
6. If you have questions concerning this memorandum, please contact Ms. Eve Roberts (703) 428-6435 or by e-mail at eve.g.roberts.civ@mail.mil.

Encl


RICHARD A. WOJEWODA
Chief, Records Management Division

DISTRIBUTION:
(see next page)

ENCL

DISTRIBUTION:

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Assistant Archivist, Office of Records Services

CF:

ACOM, ASCC, and DRU Records Administrators



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
UNITED STATES ARMY LEGAL SERVICES AGENCY
9275 GUNSTON ROAD
FORT BELVOIR, VA 22060-5546

JALS-EL

8 May 2013

MEMORANDUM FOR Army Records Management and Declassification Agency, ATTN:
AAHS-RDR (Eve Roberts), Room 102, Casey Building, 7701 Telegraph Road, Alexandria, VA
22315-3860

SUBJECT: Preservation of Records for the cases of *Whittaker Corporation ("Whittaker") v. United States*, United States District Court for the Central District of California, Civ. Case No. 13-01741 FMO (JCX) and *Chubb Custom Insurance Company ("Chubb") v. United States*, Case No. CV-11-5594 GW (MRWX)

1. The purpose of this memorandum is to provide notice of litigation hold requirements in the case of *Whittaker v. United States*. Whittaker Corporation's insurer, Chubb, sued the United States, as Whittaker's subrogee, on 7 July 2011. In *Chubb v. United States*, the Army issued a litigation hold on 22 September 2011. To meet the litigation hold requirements for the Whittaker case, you must simply maintain the moratorium on records destruction for all records related to the case of *Chubb v. United States*. Please refer to the litigation hold guidance of the Chubb case at enclosure 2. If you have received any new documents since your last search, please review those documents for relevant material. Both cases concern alleged hazardous waste contamination at the Whittaker-Bermite Site in Santa Clarita, California.
2. IAW paragraph 1-1 of AR 25-400-2, Army Records Information System, 2 October 2007, the Army is required to preserve those records needed to protect the rights and interests of the Army. The Department of Justice has requested that the Army initiate this moratorium on records destruction as an effort to ensure documents related to the Whittaker litigation are preserved.
3. Please contact me by phone at (703) 693-0433, or by e-mail at richard.john.murphy@us.army.mil if you wish to discuss this request further.

- 2 Encls
1. Complaint
 2. Guidance memo (Chubb, 21 Sep 13)

//Original Signed//
RICHARD MURPHY
CPT, JA
Litigation Attorney

ENC2

RECORD FREEZE REQUEST FOR Chubb Custom Insurance Company v. United States, Case No. CV-11-5594 GW (MRWx)

Proponent – U.S. Army Environmental Law Division, 901 N. Stuart Street, Suite 700, Arlington, VA 22203-1837

Effective date – 21 September 2011

1. Background. Chubb Custom Insurance Company (“Chubb”) seek to recover response costs incurred remediating the Whitaker-Bermite Site, located at 22116 West Soledad Canyon Rd., Santa Clarita, California (the “Site”). The Site was formerly owned and operated by Bermite Powder Company (“Bermite”) from 1942 to 1967, and Whittaker Corporation (“Whittaker”), an insured of AISLIC and Chubb, from 1967 to 1987. From 1942 to 1987 the Army and other services contracted with Bermite and Whittaker for the production of various munitions at the Site. Perchlorate has been found in the soil and groundwater at the Site. Solvents, including trichloroethylene (“TCE”), and tetrachloroethylene (“PCE”), have been found in the soil at the Site as well.

2. The Preservation Request. The Department of Justice has requested the Army to take the steps necessary to preserve documents relevant to this case to include the following information:

a. Any information about activities at the Site to include information concerning the historic release of hazardous substances at the Site.

b. Any parties other than the United States who could have contributed to the release of hazardous substances at the Site.

c. Any contracts agreements, lease agreements, correspondence, close out reports or any other documents related to the Site from 1942 to 1998.

d. Any contracts, specifications, orders or other documents or information related to the contracts between Army and Bermite Powder Company and/or Whittaker Corporation.

e. Any current or former employees (including names current address and phone numbers) who might have knowledge regarding activities at the Site.

f. All documents related to Chubb Custom Insurance Company.

3. Ownership and operations at the the Site. This freeze covers all records pertaining to the ownership and operation of the Site from 1942-1987 and Bermite and Whitaker as contractors for the Army to produce munitions at the Site, including the following:

a. The acquisition, storage, sale and disposal of raw materials and hazardous substances, including, but not limited to, TCE, PCE, perchlorate, copper, chromium, barium, lead, zinc, lead azide, red phosphorous, polyvinyl acetate, cyclotrimethylene trinitramine ("RDX"), cyclotrimethylene tetranitramine ("HMX"), methyl ethyl ketone ("MEK"), hexane, N-nitrosodimethylamine ("NDMA"), nitrate, semi-volatile organic compounds ("SVOCs"), dioxin/furans, ordnance and explosive waste ("OE"), unexploded ordnance ("UXO"), depleted uranium ("DU") and chlorinated solvents, including but not limited to TCE and PCE.

b. The construction, modification, ownership, leasing, or inspection of the plant facilities, including any plans for waste disposal.

c. The acquisition, ownership, use, and maintenance of equipment and machinery.

d. All spills, or reports of missing or stolen materials.

e. All contracts for the production of material, including specifications and directives for production methods or processes.

f. The production processes to include inspections, management and oversight of the process.

g. The waste generation process, to include the types of waste generated, the volume of waste generated and the specific processes and/or equipment or machinery used that generated the waste.

h. The waste disposal process to include the storage and handling of waste at the facility, and the transportation of the waste to waste disposal sites.

i. All contracts and manifests or other documentation reflecting waste disposal and arrangements for the transportation for waste disposal.

j. All contracts, manifests or other documentation reflecting the sale of a useable waste product or waste item.

k. All records relating to the study of the impact that burning of hazardous substances, including but not limited to perchlorate and solvents, has on groundwater.

4. Relevant record groups. Relevant records are likely to be found in the following National Archives record groups:

77 – Chief of Engineers
92 – Quartermaster General
108 – Headquarters of the Army
111 – Chief Signal Officer
153 – Judge Advocate General
156 – Chief of Ordnance
159 – Inspector General
160 – U.S. Army Service Forces
175 – Chemical Warfare Service
177 – Chiefs of Arms
203 – Chief of Finance
319 – Army Staff
335 – Secretary of the Army
336 – Chief of Transportation
337 – HQ Army Ground Forces
338 – U.S. Army Commands, 1942-
389 – Provost Marshal General, 1941-
391 – U.S. Regular Army Mobile Units, 1821-1942
394 – U.S. Army Continental Commands, 1920-1942
404 – U.S. Military Academy
407 – Adjutant General's Office, 1917-
499 – U.S. Army Defense Commands
544 – U.S. Army Materiel Command
546 – U.S. Continental Army Command
550 – U.S. Army, Pacific
551 – U.S. Army Military District of Washington
555 – United States Army Forces Command

5. Relevant commands, agencies, directorates, and installations. Below is a list of commands, agencies, directorates, and installations where these documents are likely to have been generated. It is not a comprehensive list, however. Should any additional command have generated documents relevant to this litigation, those documents should be retained: (1) World Wide Ammunition-data Repository Program (WARP), U.S. Army Joint Munitions Command (JMC), Rock Island, Illinois; (2) JMC Contracting Office, Rock Island, Illinois; (3) Defense Contracting Management Agency; (4) Historian, JMC, Rock Island, Illinois; (5) Project Information Retrieval System (PIRS), U.S. Army Corps of Engineers (USACE); (6) John L. Byrd, Jr. Technical Library for Explosives Safety, McAlester, Oklahoma; (7) Munitions Items Disposition Action System (MIDAS) office, McAlester, Oklahoma; (8) National Archives and Records Administration (NARA); (9) US Army Technical Center for Explosives Safety (USATCES), McAlester, Oklahoma; (10) US Army Aviation and Missile Command, Redstone Arsenal, Alabama; (11) US Army Aviation and Missile Research, Development and Engineering Center

(AMRDEC), Redstone Arsenal, Alabama; (12) Technical Research Center, Picatinny Arsenal, New Jersey; (13) Armament Research, Development and Engineering Center (ARDEC), Picatinny Arsenal, New Jersey; (14) US Army Research, Development and Engineering Command (REDCOM), Aberdeen Proving Ground, Maryland; (15) Redstone Scientific Information Center (RSIC), Redstone Arsenal, Alabama; (16) Defense Technical Information Center; (17) US Army Ordnance Museum; Aberdeen Proving Ground, Maryland; and (18) the Department of Defense Explosives Safety Board.

6. Types of Records to be preserved.

a. Preserve all relevant information, in whatever form it is generated and maintained, that is reasonably related to the subject matter of the lawsuit. This requirement applies to paper copies as well as electronically stored information (“ESI”) found on computer systems, removable or portable electronic storage media and personal home or portable computers.¹ All ESI and other records containing information related to the subject matter of the requests, including emails and other electronic communication, word processing documents, spreadsheets, databases, calendars, telephone logs, internet usage files, network access information, and information on other kinds of media, including PDAs (such as Palm Pilots or Blackberries), must be retained until resolution of this matter. ESI should be preserved in its originally-created or “native” format. In addition, you are required to retain any and all non-electronic documents and evidence in whatever form, including personal or desk files, calendars, notes, correspondence, drafts, policies, manuals, or other things relevant to the case.

b. Time frames listed for each freeze are approximate, based on the verbiage in the memorandums and/or litigation documents, where a time frame was not specified. These time frames are guidelines only. The agency records officer must still ensure that records presented for destruction do not meet any of the other criteria associated with a specific freeze. This is true even though any of the records associated with freezes date back to World War II, much of the permanent records more than 30 years old should have already been assessed to the National Archives and are probably no longer in Army custody, and long term records are probably in an FRC.

c. Failure to preserve and retain information may result in sanctions against the Army and the individual personally. Consequently, if you are unsure whether certain information should be preserved, err on the side of caution and preserve the information until you have spoken to the proponent about it.

¹ It is important to note that almost the entire history of the operation of the Whittaker-Bermite Site pre-dates the standard use of electronically stored information by the government and private sector.

7. General Guidance

a. The record freeze primarily pertains to documents that were generated from 1942 to 1987, but use those dates as general guidelines. Keep a look out for other information related to the Whitaker-Bermite Site outside of the 1942-1987 date range.

b. Because this litigation involves historical Army activities, most of the documents could have already been destroyed or accessioned to the National Archives. Some documents might remain in a Federal Record Center or an overlooked filing cabinet. Prior to disposal, agency records officers must ensure that all records presented for destruction do not meet any of the other criteria associated with a specific freeze.

c. Ensure that this letter is distributed to all personnel in your office who may be involved in, or have information pertaining to, the abovementioned lawsuit. Forward any information regarding agency personnel who may have potentially relevant information.

d. Notify me if you believe you may have documents related to the subjects in Paragraphs 1, 2 and 3. We will work with you to confirm the responsiveness, type of information, quantity, and how we will go about collecting the documents.

e. Continue to comply with this Litigation Hold until you receive notice that this Hold is lifted.

f. You are encouraged to coordinate your efforts in responding to this request with your Command Staff Judge Advocate or servicing legal office. If you have any questions about your obligations to preserve data, or to provide notice of potentially responsive documents, please contact Captain Richard Murphy by phone at (703) 693-0433, or by e-mail at richard.john.murphy@us.army.mil.



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
UNITED STATES ARMY LEGAL SERVICES AGENCY
9275 GUNSTON ROAD
FORT BELVOIR, VA 22060-5546

JALS-EL

6 July 2016

MEMORANDUM FOR Army Records Management and Declassification Agency, ATTN:
AAHS-RDR (Eve Roberts), Room 102, Casey Building, 7701 Telegraph Road, Alexandria, VA
22315-3860

SUBJECT: Preservation of Records for the case of *Whittaker Corporation ("Whittaker") v. United States*, United States District Court for the Central District of California, Civ. Case No. 13-01741 FMO (JCX)

1. The purpose of this memorandum is to provide an update concerning the litigation hold requirements in the case of *Whittaker v. United States*. On 7 July 2011, Whittaker Corporation's insurer, Chubb Custom Insurance Company ("Chubb"), sued the United States, as Whittaker's subrogee, in *Chubb v. United States*, Case No. CV-11-5594. On 22 September 2011, the Army issued a litigation hold for that case. On 11 March 2013, Whittaker sued the United States in *Whittaker v. United States*. On 8 May 2013, the Army updated the terms of the litigation hold to include that case as well. On 13 June 2016, the Court of Appeals for the 9th Circuit overruled a lower court decision that had dismissed Whittaker's case against the United States. As a result, that case has been returned to the district court for further litigation.
2. To meet the litigation hold requirements for *Whittaker v. United States*, you must simply maintain the moratorium on records destruction that had previously been sent out. Please refer to the litigation hold guidance in Enclosures 1 and 2. If you have received any new documents since your last search, please review those documents for relevant material.
2. IAW paragraph 1-1 of AR 25-400-2, Army Records Information System, 2 October 2007, the Army is required to preserve those records needed to protect the rights and interests of the Army. The Department of Justice has requested that the Army initiate this moratorium on records destruction as an effort to ensure documents related to the Whittaker litigation are preserved.
3. Please contact me by phone at (703) 693-0430, or by e-mail at Michael.j.lovelace.mil@mail.mil if you wish to discuss this request further.

2 Encls

1. 22 SEP 11 litigation hold
2. 11 MAR 13 update to litigation hold


MICHAEL J. LOVELACE
MAJ, JA
Litigation Attorney

RECORD FREEZE REQUEST FOR Chubb Custom Insurance Company v. United States, Case No. CV-11-5594 GW (MRWx)

Proponent – U.S. Army Environmental Law Division, 901 N. Stuart Street, Suite 700, Arlington, VA 22203-1837

Effective date – 21 September 2011

1. Background. Chubb Custom Insurance Company (“Chubb”) seek to recover response costs incurred remediating the Whitaker-Bermite Site, located at 22116 West Soledad Canyon Rd., Santa Clarita, California (the “Site”). The Site was formerly owned and operated by Bermite Powder Company (“Bermite”) from 1942 to 1967, and Whittaker Corporation (“Whittaker”), an insured of AISLIC and Chubb, from 1967 to 1987. From 1942 to 1987 the Army and other services contracted with Bermite and Whittaker for the production of various munitions at the Site. Perchlorate has been found in the soil and groundwater at the Site. Solvents, including trichloroethylene (“TCE”), and tetrachloroethylene (“PCE”), have been found in the soil at the Site as well.

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