



FB 2004

**DEPARTMENT OF THE ARMY**  
HEADQUARTERS, U. S. ARMY AIR DEFENSE ARTILLERY CENTER AND FORT BLISS  
1733 PLEASANTON ROAD  
FORT BLISS, TEXAS 79916-6816

ENTERED

REPLY TO  
ATTENTION OF:

August 13, 2004

Felicia Orth, Hearing Officer  
New Mexico Environment Department  
2905 Rodeo Park Drive, East  
Building 1  
Santa Fe, New Mexico 87505-6303



Re: United States Army Air Defense Artillery Center and Fort Bliss  
v.  
New Mexico Environment Department Water and Waste Management Division  
Hazardous Waste Bureau

No.: HWB 03-03 (Fee)

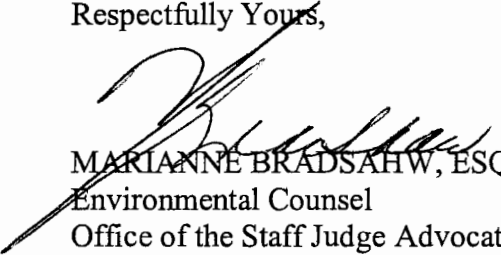
Dear Ms. Orth:

Please accept this communication in lieu of a more formal response to the terms set forth in the recent Order on Motion to Dismiss Appeal for Failure to State a Claim that has been issued in the above-referenced matter. The Order grants Fort Bliss leave to reply to Respondent, New Mexico Environment Department's, Motion to Dismiss and to amend its Answer. As the Order indicates, Respondent's Motion to Dismiss has been denied thereby rendering any response from Ft. Bliss regarding it unnecessary.

With respect to the underlying issues of the claim, it is Fort Bliss' intention to rely upon the pleadings it has previously filed. In addition however, we wish to amend our Prayer for Relief to request that, absent convincing evidence to indicate a congressional waiver of Sovereign Immunity rendering Ft. Bliss amenable to New Mexico state groundwater protection regulations, NMED's denial of the NFA petition modification for the six units at issue be deemed arbitrary, without foundation and an abuse of agency discretion. Since NMED has already communicated its determination that the six units are in compliance with RCRA regulations we believe that NMED will support its own determination and offer no evidence to contradict its own position. In essence, we request that the six units be removed from the 2002 FAUA invoice and all subsequent FAUA invoices and that Ft. Bliss' petition for NFA permit modification on all six units be granted.

Fort Bliss welcomes the opportunity to make a formal appearance and be heard on this matter. We will await further instruction from the Hearing Clerk regarding a hearing date.

Respectfully Yours,



MARIANNE BRADSHAW, ESQ.  
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Office of the Staff Judge Advocate  
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Fort Bliss, Texas 79916  
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cc: John E. Kileing ✓  
Chuck Noble