



REPLY TO  
ATTENTION OF:  
CEHNC-OE-CX

DEPARTMENT OF THE ARMY  
HUNTSVILLE CENTER, CORPS OF ENGINEERS  
P.O. BOX 1600  
HUNTSVILLE, ALABAMA 35807-4301

APR 26 2007

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Refusal of Right-of-Entry at a Non-Federal Property for a Site Inspection (SI), Military Munitions Center of Expertise (MM CX) Interim Guidance Document (IGD) 07-01

1. PURPOSE: This Interim Guidance provides the process to follow if a non-Federal landowner refuses right-of-entry under the Formerly Used Defense Site (FUDS) Site Inspection (SI) Program.

2. APPLICABILITY: This guidance is applicable to the geographic military Districts and Military Munitions Design Centers executing and managing FUDS SI's.

3. REFERENCES:

- a. Engineer Regulation (ER) 200-3-1, Formerly Used Defense Site (FUDS) Program Policy.
- b. Memorandum, CEMP-CR, 22 January 2007, subject: Rights-of-Entry for Site Inspection Purposes, Formerly Used Defense Site Military Munitions Response Program.

4. REQUIREMENTS AND PROCEDURES:

a. The district project manager (PM) or a district real estate office representative will personally contact the landowner prior to sending any request for right-of-entry. The PM or real estate representative should explain the project and the reason right-of-entry is being requested. Explain the landowners' rights regarding the right-of-entry and that they will be receiving a formal request and prompt response is appreciated.

b. Appendix A of this interim guidance provides an example cover letter to be used to notify the landowner of the SI program and Appendix B provides the right-of-entry request.

c. If a response from the landowner is not received within 3 weeks from the date the letter was sent, the PM will contact the landowner again and follow-up regarding the right-of-entry. They will ask if there are any issues that require further explanation and inform the landowner that given the potential risk associated with the former use of the site it is in their own interest to cooperate. They should also be made aware that public safety authorities are aware of and support the Corps' efforts.

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d. If the property owner refuses right-of-entry or a response is not received within 2 weeks of the second request, the district PM will notify the appropriate authorities, such as EPA, State environmental regulatory agencies, and local government agencies involved with public safety. Appendix C provides an example letter used to notify appropriate authorities when right-of-entry requests are refused or a response is not received.

e. For projects or properties where military munitions are reasonably believed to be present and access is denied, the PM will notify Headquarters, US Army Corps of Engineers (HQUSACE) through the appropriate chain of command. HQUSACE will then notify DASA (ESOH) and ODEP (as appropriate) of the circumstances surrounding the denial of right-of-entry. According to the DOD Management Guidance for the DERP, HQDA is responsible for making appropriate referral to the Attorney General of the United States per CERCLA §104(e)(5)(B).

f. If the right of entry is not received within 60 days of regulatory notification, the district PM will send a letter to the property owner, with a copy furnished to the appropriate regulatory agencies, notifying them that their portion of the project property will proceed to pending status unless right-of-entry is received. Appendix D provides an example letter for this notification.

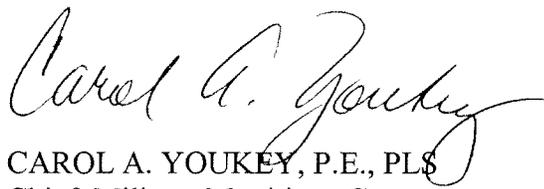
g. The PM will then create a separate project for the affected property or munitions response site in FUDSMIS and note it as pending. The project notes will include information on the attempts to obtain right-of-entry and reference to where associated documentation is stored.

h. The PM will then notify HQUSACE of the action. HQUSACE will in turn notify DASA (ESOH) and the Office of the Director Environmental Programs for referral of the project to the Department of Justice (DOJ) in accordance with the FUDS Engineer Regulation. Following consultation with DOJ, DASA (ESOH) may direct the project be declared ineligible.

5. If the SI can be completed without access to the parcel, the SI report should note that access was not given and that eligibility may be reviewed at a later phase.

6. EFFECTIVE DATES: The requirements and procedures set forth in this interim guidance are effective immediately. They will remain in effect indefinitely, unless superseded by other policy or regulation.

7. POINT OF CONTACT: If you need additional information, please contact Mr. John Sikes, Military Munitions Center of Expertise, at (256) 895-1334.



CAROL A. YOUKEY, P.E., PLS  
Chief, Military Munitions Center  
Of Expertise

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Appendix A  
Example Cover letter for Property Owner



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
[Name of District] CORPS OF ENGINEERS  
[Street Address or P.O. Box]  
[City], [State] [ZIP + 4 Code]

[Date]

Real Estate Division

[Title] [First Name] [Last Name]  
[Street Address or P.O. Box]  
[City], [State] [ZIP + 4 Code]

Dear [Title] [Last Name]:

The U.S. Army Corps of Engineers is conducting a site inspection at the former **[name of site]** in **[city, state]**, a formerly used defense site that has been identified as having used, stored, produced and/or tested military munitions. We believe that the property you **[own][lease][occupy]** at **[street address], [city], [state]** may be located on the former **[name of site]**.

We request your permission to enter the property for a period of **[number]** days sometime between **[date]** and **[date]** to determine if military munitions are present on your property. This may involve making a visual inspection of the property, surveying it with a metal detector or other instrument and collecting soil and/or water samples. We are not able to specify the exact dates for performing the site inspection at this time due to the unpredictable nature of the weather and other factors. However, we will attempt to notify you at least **[number]** days prior to commencing any activities. If you decide to grant permission, please sign and return the enclosed right-of-entry form and return it in the envelope provided. [We are requesting that each **[owner][lessee]** voluntarily sign the form.]

After performing the site inspection, we will advise you of our findings with regard to your property. We will also discuss with you the next steps in the process for addressing any safety hazards that may be posed and seek your further permission before proceeding with any response action that may be required on the property.

If you have any questions regarding this request or would like further information, please contact **[name of representative], [title]**, at **[phone number]** or via e-mail at **[email address]**.

Sincerely,  
[Name]  
[Title]

Appendix B  
Right-of-Entry (ROE) Request  
**DEPARTMENT OF THE ARMY**  
**RIGHT-OF-ENTRY FOR SITE INSPECTION**

\_\_\_\_\_  
(Name of Formerly Used Defense Site)

\_\_\_\_\_  
(Tract Number or Other Property Identifier)

The undersigned, hereby grant[s] to the Department of the Army, its employees, contractors, and subcontractors a right-of-entry on the property located in the [Commonwealth] [State] of [name of commonwealth/state], [County][Parish] of [name of county/parish], and described as:

[street address, city, state, ZIP Code and/or legal description]

This right-of-entry is granted upon the following terms and conditions:

a. This right-of-entry may be exercised only for the purposes of making a visual inspection of the property described above and surveying it with a metal detector or other instrument for evidence of the presence of military munitions together with the right to collect such soil and/or water samples, not to exceed [number] liter[s] each in volume, as may be necessary to permit a determination of whether military munitions are present on the property.

b. This right-of-entry may be exercised at any time between [date] and [date] for a period not to exceed a total of [number] days.

c. This right-of-entry does not grant any right to enter into any structure or building located on the property described above.

d. This right-of-entry may be revoked in writing by the undersigned upon [number] [day's][days'] prior notice delivered to the Department of the Army at:

[district mailing address]

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or printed name

\_\_\_\_\_  
Typed or printed name

\_\_\_\_\_  
Title (corporate/governmental representative)

Appendix C  
Example Letter of Notification to Regulatory Agencies



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**

[Name of District] CORPS OF ENGINEERS

[Street Address or P.O. Box]

[City], [State] [ZIP + 4 Code]

[Date]

[FUDS Office]

[Title] [First Name] [Last Name]

[Street Address or P.O. Box]

[City], [State] [ZIP + 4 Code]

Dear [Title] [Last Name]:

Our office contacted **[property owner's name]** on **[date]** about conducting a site inspection on the property at **[street address]**, **[city]**, **[state]** located on the former **[name of site]** in **[city, state]**, a formerly used defense site that has been identified as having used, stored, produced and/or tested military munitions.

We have not received a signed right of entry form from them. In accordance with our regulations, we are notifying your office that we are unable to conduct the site inspection on that property. We are seeking your assistance in gaining access in order to assess any potential risks related to munitions that may remain there. If we do not receive a signed right of entry within 60 days of this notification, we will have to indefinitely suspend activities with regard to that property and redirect our resources to other work within the Formerly Used Defense Site Program.

If you have any questions regarding this request or would like further information, please contact **[name of representative]**, **[title]**, at **[phone number]** or via e-mail at **[email address]**.

Sincerely,

[Name]

[Title]

Appendix D  
Example 60-day Follow-up Letter to Landowner



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**

[Name of District] CORPS OF ENGINEERS

[Street Address or P.O. Box]

[City], [State] [ZIP + 4 Code]

[Date]

[FUDS Office]

[Title] [First Name] [Last Name]

[Street Address or P.O. Box]

[City], [State] [ZIP + 4 Code]

Dear [Title] [Last Name]:

Our office has previously contacted you on **[date]** about conducting a site inspection for the Formerly Used Defense Site Program on the property you **[own][lease][occupy]** at **[street address], [city], [state]**. The property has been identified as potentially having military munitions once used, stored, produced and/or tested on it.

As we have not received a signed right of entry form from you, we notified the **[name of regulatory agency]** informing them that we are unable to conduct the site inspection on your property. Our regulations require us to indefinitely suspend our actions with regard to your property. You may be contacted by regulatory or public safety authorities with regard to this situation. This is a serious matter as there may be risks associated with the use of your property. By denying access to the property you may assume the liability for injuries, property damage, or future cleanup actions. You are urged to provide the aforementioned right of entry to allow us to conduct our work.

If you have any questions regarding this request or would like further information, please contact **[name of representative], [title]**, at **[phone number]** or via e-mail at **[email address]**.

Sincerely,

[Name]

Commander, District