

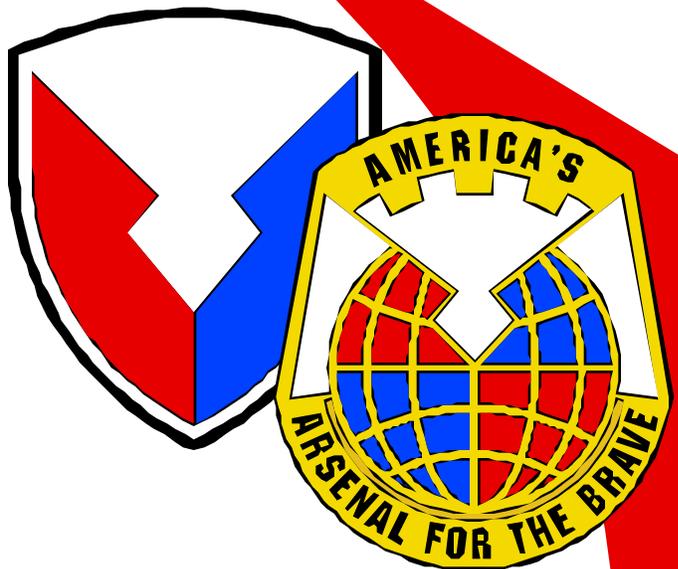
Presented by:
Robert S. Lingo
Associate Counsel

Army Materiel Command

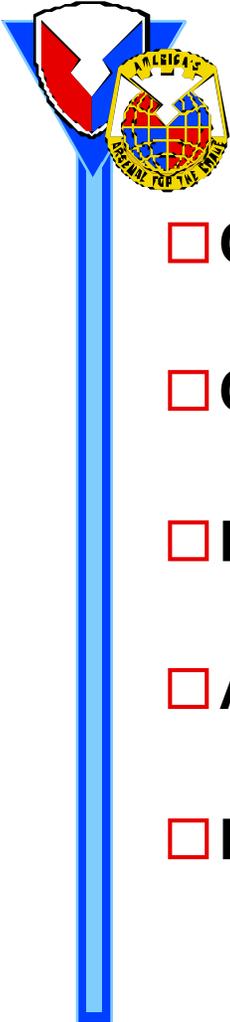
**AMC Environmental
VTC**

22 Sept 1999

1000 - 1100



AMC – Relevant, Responsive & Ready!



AGENDA

- Current Hot Topics**
- CAA Risk Management Requirements**
- Lead Based Paint & Hazard Issues**
- Affirmative Procurement Requirements**
- Discussion-time allowing**



NON-BRAC TRANSFERS

- 1993 ELD Legal Opinion: CERFA did not apply to non-BRAC DoD property**
 - ❖ **No requirement to get regulatory concurrence for uncontaminated property**
 - ❖ **CERCLA 120(h)(3) Covenant applied to both remediated & uncontaminated property**
- Army Office of General Counsel considering reversing opinion**
 - ❖ **CERFA applies to non-BRAC property**
 - ❖ **CERCLA 120(h)(4) Covenant for Uncontaminated Property**



NON-BRAC TRANSFERS

- So What - Is this a tempest in a tea pot ?**
 - ❖ **Maybe, but**
 - ❖ **Will determine what type of CERCLA covenant is granted, which is important to transferee**
 - ❖ **GSA does not want CERFA to apply, or be in position that regulators must concur on uncontaminated property determinations**
 - ❖ **Will affect how Army writes FOSTs for Army non-BRAC transfers**

- What to do--Stay tuned**



Fort Ord CERCLA Case

- Fort Ord Toxics Project and California Public Interest Research Group v. California EPA Army
- First time a federal appeals court has held that citizens may sue the military in order to obtain better environmental cleanups
- Military remedial action are pursuant to CERCLA 120
 - ❖ No bar to suits challenging military remedial actions
 - ❖ Suits challenging military removal actions are barred
- Would affect EPA Regions 9 and 10
- DoJ and Army considering appeal



PUNATIVE PENALTIES

EPA UST Penalty Assessments

- ❖ **EPA asserts authority to fine federal agencies**
- ❖ **OSD requested an opinion from DoJ Office of Legal Counsel in July**
- ❖ **Pending administrative hearings on hold**
- ❖ **No final decision or DoJ opinion**

State Punitive Air Penalties

- ❖ **6th Cir holds that CAA allows state to impose punitive penalties against federal facilities**
- ❖ **DoJ/Army considering rehearing or appeal to the U.S. Supreme Court**



PUNATIVE PENALTIES

- EPA can assess penalties against federal facilities for CAA violations**
 - ❖ Check the new Yellow Book
 - ❖ Attachment B
 - ❖ May appeal using new Rules of Practice

- EPA Field Citation Authority**
 - ❖ No developments; no final rule yet
 - ❖ Draft would provide for hearing before Regional Office attorney