12.

Subject: Dispute clarifying points
From: Rizgar Ghazi
Date: Wed, 27 Apr 2005 12:10:00
To: "Parent, Chris" <CParent@dtsc.ca.gov>
To: "Diebert, Donn" <DDiebert@dtsc.ca.gov>

I tinkered with it a little bit.

Rizgar A. Ghazi, P.E.
DTSC
8800 Cal Center Drive, Sacramento, CA 95826
Phone: 916-255-3610 | Fax: 916-255-3734
email: rghazi@dtsc.ca.gov

Attachment: Dispute clarifying points.doc

BENICIA DISPUTE RESOLUTION

Issue 1: Is the ordnance action (Munitions and Explosives of Concern (MEC)) to date a Removal or Remedial action.

US Army Corps of Engineers' (USACE) considers all MEC investigation and remediation as complete for the entire facility and any remaining residual risk is manageable. The intent of the work identified in the work plan was completed. The ongoing public education and the 5 year review and institutional control plan being developed will address the remaining risk. No additional work such as specific Land Use Covenants or operations and maintenance agreements are necessary, since USACE does not own the property.

DTSC considers USACE's effort taken to date to remediate the MEC contamination at the Arsenal as inadequate for a final action. In comment letters provided to US Army Corps and during project management meetings, several deficiencies were noted by DTSC regarding the limited scope of the investigation and actions taken to date.

Deficiencies cited for review of the work as a Removal Action include:

- Incomplete geophysical technology screening and mapping effort;
- An incomplete analysis and investigation of anomaly sources;
- The work plan was not completed as identified. This failure to complete clean up of MEC was identified in a number of areas some examples are as follows; The area where the tank turret was used as a popping furnace for treatment of ordnance, no complete clearance to depth as identified in the work plan in several areas, Sector 2 ordnance anomalies were left in place with no understanding if they are ordnance items, no site conceptual model;
- Failure to resolve several of these discrepancies before issuance of the report; and
- Quality of report preparation.

Deficiencies cited for this as a Remedial Action are all of the above identified deficiencies for a removal action and the following additional concerns including:

- Lack of clean up goal;
- Lack of acceptance by current property owners for the limitations on actions;
- Lack of Land Use Covenant with property owners;
- Lack of following through of the CERCLA process to address other areas of identified MEC concern;
- No Operation and Maintenance plan has been generated.
- Lack of follow thorough with reviews and evaluations since the

action; and
Lack of commitment to address other finds in areas not part of the initial work.

Deficiencies as a final response action include all of the above concerns plus the following additional concerns including:

Further characterization is needed in areas that are suspected of ordnance contamination, Bay sediments, Valero Property, and Colonel Quarters well, etc.

Specific Land Use Covenants identifying for the property owner the restrictions or requirements for further development.

Operation and Maintenance Agreement to do in field reviews (Scanning, excavations and disposal if necessary of found items)

Potential Solutions to the Issue 1:

DTSC has offered up the following options for resolving the issues as follows:

U S Army Corps should generate a new work plan incorporating all activities for a final action. The work plan should describe additional surveys in Sectors 2, 4 and 5, including appropriate Quality Control/Quality Assurance work. The work effort should be consistent with US Army Corps criteria imposed and agreed upon for the Tourtelot Cleanup Project;

US Army Corps should submit a work plan and conduct additional surveys and removal actions in areas currently known or suspected of having MEC in and around the Arsenal including the surrounding bay sediments and water.

Rather than amending and resubmitting the Report, the original information should be rewritten and incorporated into a comprehensive and understandable final document after the additional work is completed; and

To keep the MEC work on track, DTSC and USACE should negotiate an agreement outlining the type of work remaining, deliverables to be provided, review times and response times and overall project schedule for achieving the above stated work.

Issue 2: No clear, obtainable and achievable MEC cleanup numbers are available National or within California.

US Army Corps will not perform any additional MEC investigations unless clear, obtainable and achievable cleanup objectives are worked out or a definition of what constitutes an acceptable risk level in the MEC cleanup area is agreed upon by both agencies.

DTSC agrees that there needs to be an understanding of what is trying to be achieved. US Army Corps requirement that a risk based cleanup standards (cleanup numbers or preliminary remediation goals) be worked out before any additional MEC investigations being preformed is unrealistic since there is no exixting nationally or State agreed upon risk based cleanup standards. DTSC recommends and has completed (this needs to be reworded) cleanups with DoD and the private sector for performance based cleanup standard. DTSC experience with performance based cleanup standards include the Tourtelot Cleanup Project site and Fort Ord. This is a pivotal issue for future work at this site and several others.

Potential Solutions to the Issue 2:
DTSC presents the following options for moving forward.

- Follow the CERCLA process starting from the Remedial Investigation forward.
- As part of the Feasibility Study develop a performance based cleanup with an evaluation of the various tools to manage the residual risk.
- After evaluation of the various tools for managing the risk determine the appropriate options for the particular site, locations, or areas. Various locations may need more or less risk management options.
- Execute the various risk management options (LUC, O&M Agreement, Deed restrictions, etc).

FORMAL DISPUITE PROCESS FOR BENICIA ARSENAL

Based on the Preliminary Assessment (PA) and Site Investigation (SI) conducted under various covers, the United States Army Corps of Engineer (USACE) is recommending that approximately *(Chris what is the number of sites? Also do we have acreage? Is it in one location where we can cut out a big chunk of land from the Grant perspective?)* XXX sites (XXX Acres) be designated as beneficially used or as a know Potentially Responsible Party (PRP) site. No further work is anticipated to progress on these sites under the current FUDS programming approach. The USACE has stated that these should be handled as part of the PRP FUDS program. No clear understanding or progressive approach is being presented and basically the USACE is waiting for the current land owner to approach the USACE for a settlement or to be sued for cost recovery.

The unresolved sites from the PA Phase fall into the "beneficial reuse" and/or PRP designation, due to the know use post Army and known contamination in these "beneficial reuse" areas. Access issues have also been cited as a reason no additional work can or will be pursued. The Corps has not wanted to work with the Department of Toxic Substance Control (DTSC) to acquire access. DTSC views the USACE approach of "beneficial reuse", combined with inadequate characterization as a reason to indicate there are no issues or no need to look further. Many of these sites lack proper investigations because of USACE sole reliance on historical records (gaps). Also there has been no soil sampling to determine if there is a release emanating from said operations. The "beneficial reuse" is being used as a shield to say somebody else needs to evaluate this site. There has been no evaluation of a release or extent of release in some areas.

In some cases similar operations or similar chemicals were being used in other cases the area was simply being reused for other purposes.

Army's Position: All remaining underground storage tanks, sewer lines, septic tanks, buildings, rail lines, maintenance areas, manufacturing areas, storage areas, known discharge locations and target areas are all being used, reused or access is being controlled.

DTSC's Position: USACE has failed to show the remaining underground storage tanks, sewer lines, septic tanks, buildings, rail lines, maintenance areas, manufacturing areas, storage areas and target areas were used to any significant extent by the subsequent property owners since the departure of the Department of Defense. In some locations the current property owner does not have similar operation or contaminates. Access control or denied is not a remedy or a reason for a property not to be evaluated.