



August 18, 2014

Heather Chin Chu McLaughlin, Esq.  
City Attorney  
CITY OF BENICIA  
250 East L Street  
Benicia, California 94510

Subject: Consulting Support, Benicia Arsenal Remediation Project

Dear Ms. McLaughlin:

Thank you again for affording us with the time to meet with you and discuss the City of Benicia's response to the Imminent and Substantial Endangerment (ISE) Orders recently issued by the California Department of Toxic Substances Control (DTSC).

Based on our file review and discussion with you, we understand that the City will jointly retain a consultant to respond to the ISE Orders along with at least one of the other Potentially Responsible Parties (PRPs). We agree with this approach. It has been our experience that jointly funded responses are typically more efficient and cost effective for the remedial investigation and remedial action phases of these projects. It is also our experience that while the PRP group may have shared objectives in responding to regulatory Orders, individual PRP group members may have separate needs for technical counsel with respect to issues surrounding cost and liability allocation. For obvious reasons, the interests of the various parties may not be aligned when determining who will put up the majority of funding for what may be a multi-million dollar remediation project.

At that stage of the process, a detailed forensic analysis of the site history and contamination "causation factors" will play a very important role in determining the size of the check that each PRP party will shoulder.

As technical consultants with decades of experience responding to ISE Orders, we would suggest that the City retain the services of an experienced and independent consultant who would work solely to serve and protect the interests of the City of Benicia during this process. As initial examples of facts and information which the City should be concerned during this process we would point to the following:

- a) The Orders indicate that the City is named as a PRP because the City owned and maintained a municipal sewer system on these properties to which contaminants such as solvents may have been released. In terms of the final cost allocation (whether through mediation or litigation), the City will want to know if the alleged contaminants were actually discharged to a sewer, and if the

**Bureau Veritas North America, Inc.**

*Health, Safety, and Environmental Services*

2430 Camino Ramon, Suite 122

San Ramon, CA 94583

Main: (925) 426.2600

Fax: (925) 426.0106

[www.us.bureauveritas.com](http://www.us.bureauveritas.com)



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discharge point was part of the sewer for which the City is actually responsible. Similarly, the City will want to have a complete understanding of the conditions of the permits and prohibitions which were in place during the time of the Army's occupancy of these properties.

- b) The Order further alleges that discharges of volatile organic compounds (VOCs) were released at these sites as late as the year 2004. The circumstances and parties involved in all recent VOC use and potential releases should be identified and documented. Relevant sources of information on VOC use by tenants can be obtained through a variety of sources including County and State Inspections, Waste Manifest Records, Generator Inspections, Planning Department Permits, etc. A detailed forensic analysis of this information may be outside the scope or may represent a conflict of interest to the consultant working collectively for multiple PRPs.
- c) We understand that the US Army Corps of Engineers steadfastly maintains that the Army has no responsibility to comply with these orders due to subsequent land use which postdates the Army's possession of the property. We have noted that the activities attributed to the Army in the ISE include numerous "VOC suspect activities" including painting, metal processing, and the use of dip tanks and degreasers. We would point out, based on years of experience at similar Army managed facilities, that it is entirely likely that the volume of solvents utilized at this facility by the Army exceed the solvent usage by all other subsequent tenants by several orders of magnitude.

Relevant to our recommendation, it is important that the City retain an independent consultant in an advisory role *early in the remedial investigation process*. An experienced independent consultant can serve to review work plans and reports prior to submittal to regulatory agencies. The independent consultant should advise the City on the elements, methodology and locations for sampling and analytical testing to insure that forensic information relevant to causation and therefor cost allocation will not be overlooked or ignored during the investigation process. If the gathering of such information is outside of the scope of work or limited by contract constraints placed on the joint PRP group consultant, the City's independent consultant would be able to implement a data collection program tailored to the City's needs, and do so in a timely fashion.

In closing, we believe that our consulting team has exceptional skills and experience in assisting PRPs (including municipalities) in making sense of the technical issues, analytical data, and historical analysis which will ultimately be a fundamental part of the final cost and liability allocation for this project. Bureau Veritas North America, Inc. appreciates the opportunity to continue our long history of providing service to the City of Benicia.



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Should you have any questions, or require additional information, please do not hesitate to contact us.

Sincerely,

John Werfal  
Regional Director  
Health, Safety and Environmental Services  
925.426.2629  
john.werfal@us.bureauveritas.com

Dwight Hoenig  
President  
Turner/Maclane Inc.  
510.881.8811  
dwight@turnermaclane.com