To Support the City of Benicia's Request for Congressional Funding to Complete the Cleanup of Benicia Arsenal, Benicia, California

Key Documents - Benicia Arsenal Cleanup

Formerly Used Defense Site (FUDS) & Potentially Responsible Party (PRP) Program

2000 - 2009

includes

Summary: Connecting the Dots of Benicia Arsenal Key Documents

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Key Documents compiled herein substantiate the need to complete the cleanup of Benicia Arsenal and are representative of records found in Benicia Arsenal files held by Cal-EPA/Department of Toxic Substances Control as Chief Regulatory Oversight Agency; Department of the Army, U.S. Army Corps of Engineers, Sacramento District CA, and Huntsville AL;
and City of Benicia, CA, City Attorney's office.

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Key Documents were chosen from among records acquired under 2009 FOIA Requests, submitted in October 2009, by Marilyn J. Bardet, concerned citizen of Benicia CA, and former Arsenal RAB member 2000 - 2005, who researched all materials received for the above stated purpose.

* * *

February 22, 2010

**Documents noted in this Table of Contents are available on the enclosed CD.
Full print-out of documents available upon request.**

Summary: Connecting the dots of Benicia Arsenal Key Documents

- In 1990, the Department of the U.S. Army initially determined that Benicia Arsenal would not need to be investigated under Defense Environmental Restoration Program - Formerly used Defense Sites; [See #1. DERP-FUDS FINDINGS AND DETERMINATION OF ELIGIBILITY, Dec 14, 1990.]

- In 1994, the Army's DERP-FUDS determination was revised, partly owing to inquiries made to USACE by Mr. Gordon Potter, an Arsenal property owner concerned about former DoD uses, including degreasing activity. [In 1996, confidential record of Mr. Potter's inquiry was acquired by Toxics Assessment Group under FOIA Request to USACE, Sacramento District. Not rec'd with Bardet 2009 FOIA Request]

- The Benicia Arsenal FUDS Program has completed its work. Funds for Arsenal FUDS program were cut by 50% in 2002. [See #34. DTSC Letter from Carolyn Tatoian-Cain, REA, dated Sept. 9, 2009, which addresses Letter from Gerald Vincent, USACE, dated July 9, 2009 regarding Draft-Final Removal Action Work Plan for Benicia Arsenal, Building 51 and UST 161; and also, USACE Letter from Jerry Vincent, to DTSC, March 27, 2003.]

- By 2005, the Potter Property [50 Series Bldg., Bldg.161] was declared a PRP site. [See #14. DTSC email: SUBJECT: Agenda for Benicia Mtg; ATTACHMENT: PRP DISCUSSIONS - Benicia Arsenal, Sept. 29, 2005.]

- The Army Corps did not produce a Remedial Investigation document or a Feasibility Study for the FUDS program or the PRP program. [See #30. USACE Quality Assurance Project Plan, Repository Document List 4/98 - 10/08.]

- The Benicia Arsenal RAB was unilaterally dissolved by USACE in late 2005. Since 2005, under a PRP program, there has been no public /stakeholder involvement or knowledge of regulators' response to USACE documents. [See #16. DTSC Letter, Oct 17, 2005, From Diane Fowler, Public Relations Supervisor, To Michael Mitchener, USACE; Subject: Benicia Arsenal Community Relations Plan; and also #30. DSMOA Joint Execution Plan and Performance Report, 2006 - 2008 CA.]

- The Human Health Risk Assessment Report - August 2008, is a thin document of very limited applicability and quality, of which the public had no knowledge. [See #35. DTSC Letter, from Eric M. Sciullo, PHd., Human and Ecological Risk Division (HERD), to Lance McMahan, DTSC Cleanup Program, dated Oct. 6 2009, SUBJECT: DRAFT FINAL HUMAN HEALTH RISK ASSESSMENT REPORT FORMER BENICIA ARSENAL.]

- It is doubtful that a PRP Arsenal property owner, such as Mr. Potter, could afford to front costs for site investigations, remedial work and regulatory oversight. The only way a PRP property owner could achieve a cleanup with oversight provided and paid for would be if DTSC issued an Order. [See #36. DTSC Order, undated draft, not sent, listing Potter Property and USACE as Responsible Parties. See also, #38. Settlement Agreement and Consent Order, dated Dec 20. 2004, Granite Management Corp, Pacific Bay Properties, FN Projects, Inc., and Pacific Bay Homes, LLC Plaintiffs v. United States of America and the Department of the Army, Defendants.]

- Economic development with shovel-ready projects is planned for sites within former Benicia Arsenal; but remaining known and suspected hazards, including munitions, preclude immediate plans for development/reuse, including proposed residential. [See Lower Arsenal Mixed Use Specific Plan - March 30, 2007; also, LAMUSP Draft EIR, Recirculated Hazards Section. LSA. April 2008]

- A "Digging Ordinance" (also called "Ordnance Ordinance") was never finalized with DTSC for City of Benicia to allow Arsenal property owners to excavate soils to 12 inch depth without a permit. It is likely that some sites will be required to have deed restrictions and institutional controls. [See Covenant to Restrict Use of Property, dated Aug 23, 2004, for parcels of the Tourtelot Property.]

Key Documents - Benicia Arsenal FUDS & PRP Program 2000 - 2009

TABLE OF CONTENTS: [Documents are numbered consecutively and arranged by topic and date as much as possible. Acronyms: DoD = Department of Defense; USACE = United States Army Corps of Engineers; Cal-EPA = California Environmental Protection Agency; DTSC = Department of Toxic Substances Control.]

I. Overview: Benicia Arsenal site evaluation, FUDS & PRP program activities and FUDS & PRP funding: USACE perspective and Cal-EPA/DTSC response; concern for ordnance removal.

1. REVISED SITE SURVEY SUMMARY SHEET, DERP-FUDS SITE No. J09CA7055600,1994 [?]; document includes original DERP-FUDS FINDINGS AND DETERMINATION OF ELIGIBILITY, signed Dec.14,1990, by Roger F Vankoupe, Brigadier General, U.S. Army Commanding. [7 pages]

2. USACE Letter, dated March 27, 2003, from Jerry Vincent, FUDS Program Manager, addressed to Donn Diebert, Chief Open Base Navy/Formerly Used Defense Sites, Office of Military Facilities, DTSC - SUBJECT: DTSC *"comments and concerns on the deficiencies in the Final Report, Ordnance and Explosives Removal Actions, Sectors 2, 4 and 5..."* [5 pages]

3. DTSC Letter, dated October 5, 2004, from Frederick S. Moss, Division Chief, Office of Military Facilities, addressed to Mr. Jerry Vincent, Army Corps of Engineers, Sacramento District - Subject: INFORMATION CONCERNING FORMERLY USED DEFENSE SITE (FUDS) AND ACTIVITIES. [3 pages]

4. MEMORANDUM FOR Commander, Us Army Division, South Pacific (CESPD-PDM/ Vince Del Greco), 333 Market St. San Francisco, CA 94105 SUBJECT: Review of Benicia Arsenal Munitions and Explosives Removal Action - 2004. [3 pages]

5. Defense Environmental Programs Annual Report to Congress - Fiscal Year 2008 Complete Installation Data for Benicia Arsenal Formerly Used Defense Sites - Benicia Arsenal/CA99799F569900/C-EST, with maps. [5 pages]

II. Benicia Arsenal FUDS/PRP site investigations, regulatory comments on technical and policy concerns, disagreements and disputes between DTSC and Army Corp for Benicia Arsenal cleanup:

6. DTSC MEMORANDUM TO: Chris Parent, Project Manager, FROM: Patty W. Wong-Yim, PHd, Staff Toxicologist, HERD. DATE: Feb. 27, 2004 SUBJECT: Expanded Site Inspection - Draft Field Site Investigation Plan for Benicia Arsenal, Benicia CA, Document dated Jan. 24, 2000. [6 pages]

7. LETTER - CA Regional Water Quality Control Board; From Gary J. Riley, P.E. ; Dated Jun 29, 2004; To Department of the Army, Corps of Engineers, Sacramento District, Attn: Ms. Meegan Nagy. SUBJECT: Staff Comments on Final Expanded Site Investigation Plan for the Former Benicia Arsenal, Solano County (April 2004). [2 pages]

8. DTSC Response to Comment Table for the Draft Site Inspection Report - April 2005 - [Report submitted Sept. 9, 2005] General Comments and Executive Summary; Section 1 Introduction and Background; Section 2 Investigative Approach; Section 3 Field Methods and Sampling Data; Section 5 Data Usability; Section 6 Results and Analysis. [pages 1 -10, of 54]

9. Table: Benicia Arsenal Project and FUDS Programmatic Issues Meeting, April 6, 2005 [page 1, of 49]; Comment Resolution Meeting about Comments on the Preliminary Assessment for the Benicia Arsenal Updated based on Expanded SI data, [pages 2 - 10, of 49]; DTSC PRP Discussion Sites. [pages 10 - 49, of 49]

10. DTSC- email; SUBJECT: Fwd: Status of Disputes; DATE: Fri, June 17, 2005 09:30:00; FROM: Donn Diebert; TO: Jerry Vincent, USACE. [NOTE: munitions report concerns] [2 pages]

11. City of Benicia - email thread, SUBJECT: PLEASE HELP! RE: BENICIA ARSENAL SITE; FROM: Heather McLaughlin [City Attorney]; DATE: Wed. June 29, 2005 14:03:00; TO: Chris Parent, DTSC. [NOTE: regards what to do about "OE/UXO present in areas on the Valero property, but there has not been a survey...nor removal action..."]. [3 pages]

12. DTSC internal email - SUBJECT: Dispute clarifying points, with Attachment, BENICIA DISPUTE RESOLUTION; from Rizgar Ghazi, P.E. to Chris Parent and Donn Diebert, DATE: April 27, 2005. [6 pages]

13. DTSC - MEMORANDUM: DATE: Aug. 3, 2005 TO: Chris Parent, Project Manager, FROM: Patty W. Wong-Yim, PHd, Staff Toxicologist, Human and Ecological Risk Division, SUBJECT: Draft - Risk Assumptions Document, Former Benicia Arsenal, Benicia California, Document Dated May 2005. [9 pages]

14. DTSC -internal/external email - SUBJECT: Re: Agenda for Benicia Meeting, with ATTACHMENT: PRP DISCUSSIONS - Benicia Arsenal, Sept. 29, 2005 FROM: Donn Diebert, DATE: Sept. 28, 2005, TO: G.Graening, Brown & Caldwell; Wendy Link, Brn & Cldwll; Robert Elliot, DTSC; Mark Vest, DTSC; Rick Moss, DTSC; Tony Landis, DTSC; Allan Curlee, USACE; Gerald Vincent E SPL. USACE; Martin Fahning M SPK, USACE; Michael Mitchner E SPK, USACE, and John Lazorik, RAB member, Valero Refinery, Benicia. [4 pages]

15. DTSC email, SUBJECT: Benicia Arsenal Dispute Issues; FROM: Donn Diebert; DATE: Fri. Oct 14, 2005 16:59:00 TO: Bruce Handel, USACE. [5 pages]

16. DTSC Letter, dated Oct. 17, 2005; From Diane Fowler, Public Participation Supervisor, To Michael Mitchener, USACE. SUBJECT: Benicia Arsenal Community Relations Plan. [2 pages]

17. USACE Letter, dated March 3, 2006; From Katherine Greene, Project Manager, To Christine Parent; SUBJECT: Sate ARARs at the Benicia Arsenal FUDS Project. [2 pages]

18. DTSC email - SUBJECT: Re: Response to ARARs Letter; FROM: Chris Parent; DATE: Wed, March 8, 2006 16:34:00 TO: Katherine Greene A SPK, USACE [Note: thread from Ms. Greene notes that a Feasibility Study is being prepared.]. [2 pages]

19. Email thread - SUBJECT: RE: Request for Information Benicia Arsenal Records; FROM Randy Potter; DATE: Wed. April 12, 2006, 9:53:00; TO: Katherine Greene, A SPK; cc to Gerald Vincent, USACE; also cc to Chris Parent, DTSC, as well as others at the agencies. [3 pages]

20. Email thread - SUBJECT: I'm Confused. FROM: Randy Potter; DATE: Tues. June 27, 2006, 17:01:00; TO: Katherine Greene, A SPK, USACE. [NOTE: about question of degreaser]. [1 page]

21. DTSC email - SUBJECT: Benicia Dispute Basis; FROM: Chris Parent; DATE: Tue. Sept 12, 2006, 15:42:00. [1 page]

22. DTSC Letter - Dated Dec. 1, 2006; From Christine Parent, Project Manager; To Ms. Katherine Greene, USACE; SUBJECT: DRAFT EXPANDED SITE INSPECTION ADDENDUM REPORT: FORMER BENICIA ARSENAL, BENICIA CA; General Comments. [4 pages]

23. DTSC Letter - Dated Sept. 6, 2007; From Christine Parent, Project Manager; To Mr. Damon Golubics, Senior Planner, City of Benicia CA; SUBJECT: CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL'S COMMENTS ON LOWER ARSENAL MIXED USE SPECIFIC PLAN ENVIRONMENTAL IMPACT REPORT JULY 2007, STATE CLEARING-HOUSE # 2007062021; includes copy of DTSC Comment Letter sent to City of Benicia, dated March 27, 2007. [5 pages]

24. DTSC - MEMO TO BENICIA ARSENAL FILE; From: Eric Wallberg, Project Manager Date: March 27, 2008 and March 28, 2008; SUBJECT: Grenade Discovered on Valero Property, Benicia Arsenal, Contra Costa County [error - Solano County] California. [1 page]

25. DTSC email - SUBJECT: Fwd: Valero Site Visit - UXO and Land Bridge Bush Planting; FROM Eric Wallberg; DATE: Fri, April 04, 2008 10:11:00; TO: Chris Parent, Donn Diebert and Lance McMahan. ATTACHMENT: Jpegs/photos showing location where 3 grenades were found on Valero property. Three of four of the Jpegs are included for this record; also Jpeg of an aerial map of refinery. [7 pages]

26. DTSC email/internal - SUBJECT: Re: Former Benicia Arsenal, Benicia - Proposed Development Plan; FROM Donn Diebert; DATE: Thurs. Aug 14, 2008 13:32:00; TO: Tony Landis, DTSC. [2 pages]

27. DTSC - email/internal; SUBJECT: Memo to City Manager 10032008.pdf; FROM: Donn Diebert; DATE: Mon. Oct 20, 2008 17:51:00; TO: Chris Parent and Eric Wallberg, DTSC [NOTE: regards City of Benicia "picking up and running with the Army Corps' Draft Final Human Health Risk Assessment...to support development." References a 122 page memo sent by USACE to Benicia City Manager and the issues of "land use" and "institutional controls."] [1 page]

28. USACE - Repository Document List.doc [The list, although undated, shows documents' release date to Repository, 4/98 thru 10/08. [NOTE: there is no listing for EE/CA (1999), or Remedial Investigation/ Feasibility Study documents. There is also no updated list with entry for the Human Health Risk Assessment Report released in 2009.] [2 pages]

29. Dept. of the Army, USACE - Letter, dated Sept. 8 2008, From Katherine Greene, Project Manager, to Chris Parent, DTSC; SUBJECT: Draft Final Human Health Risk Assessment Report: Benicia Arsenal, Formerly Used Defense Site (FUDS) Benicia, California [1 page]

30. DSMOA Joint Execution Plan and Performance Report, 2006 - 2008 CA; DTSC, date modified August 09, 2006, signed by Katherine Greene, USACE. [NOTE: Report not completed for 2007, 2008. Installation tasks include RAB and Comunity Relations]. [3 pages]

31. CA Regional Water Quality Control Board - Letter; Dated August 28, 2009; From Ross Steenson, PG, CHG, Engineering Geologist, Groundwater Protection Division; To Katherine Greene, USACE; SUBJECT: Comments on the Draft Final Soil Removal Action Work Plan, Former Benicia Arsenal dated June 2009. [4 pages]

32. DTSC - email thread/internal; SUBJECT: Re: FUDS, BENICIA ARSENAL: Land Use. From Laura Kaweski, Associate Environmental Planner, Office of Planning and Enviromental Analysis, Office of Legal Affairs; DATE: Tues. Jul 28, 2009 12:37:00; TO: Lance McMahan, DTSC. [Note: references residential use and cites Benicia General Plan land use in the Arsenal area.] [1 page]

33. DTSC - email thread/internal; SUBJECT: not stated; FROM: Carolyn Tatoian-Cain, PM; DATE: Aug 12, 2009 9:12 a.m. TO: Leonard Robinson, Federal Liaison, CalEPA, DTSC [message discusses cleanup levels that will be required, possible restrictions on land use and also PRP agreement which "hasn't been initiated" by the Corps. The message from Mr. Robinson cites his contact with Ms. Kathy Hoffman, at Congressman George Miller's office, and inquires about cleanup levels for OE/UXO.] [1 page]

34. DTSC - Letter; dated Sept 9 2009; From Carolyn Tatoian-Cain, REA, DTSC; To Katherine Greene, Project Manager, USACE. SUBJECT: COMMENTS ON THE DRAFT FINAL REMOVAL ACTION WORK PLAN, BUILDING 51 AND FORMER UST 161, BENICIA ARSENAL FORMERLY USED DEFENSE SITE (FUDS) (CA99799F569900, J09CA0756) Benicia, Solano County. [NOTE: references final land uses, including residential, and implies future activities required.] [3 pages]

35. DTSC - Letter; dated Oct. 6, 2009; From Eric M. Sciullo, PHd., Human and Ecological Risk Division (HERD); To Lance McMahan, DTSC Cleanup Program; SUBJECT: DRAFT FINAL HUMAN HEALTH RISK ASSESSMENT REPORT FORMER BENICIA ARSENAL. [10 pages]

36. DTSC - Draft IMMINENT AND/OR ENDANGERMENT DETERMINATION AND REMEDIAL ACTION ORDER [no date]; In the matter of Benicia Arsenal; Responsible Parties: Potter Property, United States Department Sections 25358.3(a) c/o U. S. Army Corps of Engineers, 1325 J Street, Sacramento. CA 95814-2922.

III. Property restrictions, institutional controls and covenants governing land use; cleanup for residential development: precedents set by privitized (PRP) cleanup of Tourtelot, a former leased property of Benicia Arsenal. Also, funding mechanism for PRP cleanup. [Documents copied from DTSC website's Envirostor: Tourtelot Project archive, Activities]

37. Covenant to Restrict Use of Property (Environmental Restrictions); Pacific Pay Homes LLC, Granite Management, FN Projects Inc. with City of Benicia, and the California Environmental Protection Agency - Department of Toxic Substances Control; Recorded June 21, 2004, Skip Thomson, Assessor/Recorder.

38. Settlement Agreement and Consent Order: Granite Management Corporation; Pacific Bay Homes; FN PROJECTS INC; and PACIFIC BAY HOMES, LLC - Plaintiffs v. UNITED STATES OF AMERICA AND DEPARTMENT OF THE ARMY, Defendants. Filed Dec 20 2004. [NOTE: method of cost recovery for PRP cleanup of Tourtelot depends on cost recovery from suing the U.S. government, Department of Defense. Cleanup for residential development was fifty million dollars. See Settlement Agreement, pages 5 and 6.] [32 pages, including attachments and maps]

IV. City of Benicia's long-term development plans for former Arsenal lands and environmental review of the Lower Arsenal Mixed Use Specific Plan

39. Lower Arsenal Mixed Use Specific Plan (LAMUSP) Draft for Environmental Review, March 30 2007 - Opticos Design, Inc. Berkeley CA

40. Draft Environmental Impact Report for Draft LAMUSP, Recirculation of Select Sections; LSA April 2008 [NOTE: Recirculated Hazards Section, strategy outlined for PRP cleanup on piecemeal, case by case basis.]

41. DTSC email/internal - SUBJECT: Fwd: Benicia Arsenal: 1032 Adams Street, site cleanup and findings; FROM: Donn Diebert; DATE: Fri, Aug. 15, 2008 13:19:00; TO: Chris Parent and Eric Wallberg. [NOTE: several emails forwarded by thread, from Marilyn Bardet, concerned Benicia citizen and Angela Sanders, resident of Vallejo and former Arsenal property owner of the Guard House on Adams Road in the lower Arsenal, regarding discoveries of metal frag on slopes behind historic Guard House; findings occurred on property proposed for residential development.] [3 pages]

V. Evaluating the Department of Defense DERP- FUDS program: national perspective on FUDS program experiences and performance.

42. GAO United States General Accounting Office - Report to Congressional Requesters - August 2002 - GSO-02-658: ENVIRONMENTAL CONTAMINATION: Corps Needs to Reassess Its Determinations That Many Former Defense Sites Do No Need Cleanup. [77 pages].

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