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U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
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REPLY TO
ATTENTION OF
Jerry Vincent
(CESPK-PM-H)

Copy
2.

Donn Diebert, P.E.
Chief
Open Base Navy/Formerly Used Defense Sites
Office of Military Facilities
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

March 27, 2003

Dear Mr. Diebert:

I am responding to your letter dated January 31, 2003, concerning U.S. Army Corps of Engineers (USACE) activities at the Former Benicia Arsenal, Solano County, California under the Defense Environmental Restoration Program for Formerly Used Defense Sites (DERP-FUDS).

As you know, under the DERP-FUDS program the USACE mission is to ensure that environmental injuries caused by the Department of Defense (DoD) are addressed to the best of our ability based on established standards or identified risks to human health and the environment. As stated in your letters, DTSC had submitted comments and concerns regarding deficiencies in the "Final Report. Ordnance and Explosives Removal Actions, Sectors 2, 4 and 5" (Report). USACE acknowledges that the Report has inconsistencies that would need correction and areas that required additional clarification.

As stated at our meeting on December 20, 2002, and restated in our March 17, 2003 meeting, USACE has programmed and is executing the Hazard, Toxic, and Radioactive Waste (HTRW) Site Inspection (SI) work in the industrial sections of the former Benicia Arsenal site this fiscal year. This effort will consume all dollars programmed for the Arsenal this fiscal year and potentially the next five fiscal years. USACE feels that the continuation of this effort is keeping with our mission to investigate past environmental injuries and initiate corrective actions as required. For USACE to revisit sectors 2, 4, and/or 5 at this time would require the stopping of our HTRW effort, thus thwarting our efforts to discover past injuries, and prevent addressing potential actions that would lead to reducing risk to the public. Also stated in both meetings, USACE, in following the FUDS process, has limited funds each fiscal year and those funds are appropriated from Congress and require execution for the stipulated request. Changing the designated use of these funds would require higher level authorization and would jeopardize future funding as the data gathered under the current investigation will provide the necessary information to develop costs estimates for future environmental work.

From reviewing your letters and attending the above referenced meetings, USACE has a better understanding of DTSC's concerns about the perceived ordnance related risks at Sectors 2, 4, and 5. One of the major obstacles appears to be the fact that USACE and DTSC have not arrived at clear, obtainable, and achievable cleanup objectives or defined what constitutes acceptable risk

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levels in the ordnance cleanup area. Based on present technology, it is not possible and/or it is cost prohibitive to identify and/or remove 100% of all anomalies. Therefore, residual acceptance criteria needs to be developed. The development of acceptable cleanup standards will permit both agencies to jointly determine how "clean is clean" with acceptable levels of scrap and anomalies remaining on site.

Ordnance related actions taken at the Arsenal were intended to reduce potential risk to the public by removing the pathway for individuals to encounter ordnance items that could cause injury or death if handled in a manner that would cause detonation. It should be noted that USACE views the public education program aimed at middle school age children as the best method to reduce potential future injuries. This program informs those individuals most likely to look for ordnance related material of the potential dangers and explains the reporting process. The perception that ordnance related scrap could cause injury or undue risk to the public is one area that needs further discussion. Another area for discussion is the perception that all buried anomalies are placing the public at risk. These perceived risks need to be more clearly defined and quantified.

USACE takes note of DTSC's concerns about comments made both at the RAB meeting and in our recent newsletter. It was not our intent to mislead either the public or DTSC in our statements concerning meeting regulatory requirements that the ordnance cleanup was complete. As previously stated, there does not appear to be clear and achievable cleanup standards for the ordnance investigation and related work at the Arsenal, which have been agreed upon by DTSC and USACE. Therefore, to resolve this issue, USACE will be adding clarification to our comment in the next newsletter scheduled to be distributed in mid May and will continue to meet with your department to arrive at defining achievable standards.

USACE also takes note of DTSC's concern about comments made at the December 20, 2002 meeting in reference to USACE going forward with only public education as it relates to ongoing ordnance work in the current fiscal year. It was stated that it was USACE perception that, other than minor clerical corrections to the Army's Report, all ordnance actions were complete and, therefore funding for the Arsenal was directed towards the HTRW environmental investigations. It is still our opinion that the HTRW work is extremely important and will continue using present year funds. Along with the HTRW work, the education program mentioned above will also continue. As for your comment about the Army making inappropriate field decisions to stop work at the burial pit, it was not a "field decision" but a decision based on fiscal requirements that preclude USACE personnel from having contractors continue work when funds are not available. Again the issue of how "clean is clean" needs to be addressed when DTSC and USACE meet to discuss developing cleanup criteria prior to additional ordnance work being performed at the burial pit.

In your letter, you commented about property owner's acceptance of deed restrictions on their property. When the property was original transferred, many if not all the property owners should have received some type of deed notification or restriction noting limitations of land use. However, in accordance with EP 1110-1-24, Establishing and Maintaining Institutional Controls

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for Ordnance and Explosive (OE) Projects, USACE intends to develop an institutional analysis and institutional control plan. The analysis and control plan will be designed to ensure current landowners and applicable agencies understand, and to the degree necessary, accept institutional controls.

Sector 2 concerns expressed in your letter are a prime example of why it is paramount that acceptable cleanup criteria be developed between our organizations. These developed criteria would then remove any future doubt of what constitutes adequate investigation and removal. Once our organizations have agreed upon what is obtainable and achievable standards for ordnance related materials, then the previous work efforts by USACE at the Arsenal can truly be evaluated for adequacy. For those areas inadequately characterized or cleaned based on the mutually acceptable cleanup standards, USACE would then go forward with the correct efforts for achieving risk reduction, thus eliminating DTSC's concerns in this area for public safety.

In your memo to file, attached to your letter, you mention that USACE has not attempted to address DTSC's comments regarding submerged OE and/or chemical warfare materials that have been reported to exist in the waters of the Carquinez Strait. Though I am not aware of any official correspondence to DTSC on this matter, I know the issue has been discussed in both the December 20, 2002 and March 17, 2003 meetings previously mentioned. USACE has revisited our records and cannot confirm that the reported occurrence of kicking a 1-ton cylinder of chemical warfare material off the pier ever took place. Due to funding limitations within the FUDS program USACE has to prioritize where its limited funds are executed thus allowing the greatest measure of reduction of risk from past environmental injuries. Therefore, searching for unconfirmed ordnance related material is another area where USACE and DTSC need to meet and discuss how best to execute the limited and available funds. This issue could be included in the final cleanup standards as to where and how much effort is appropriate in areas of unconfirmed use or disposal.

In recommendation one, you ask for a rewriting of the Report. In recommendation two, you ask for a work plan for completing the removal actions in Sectors 2, 4, and 5. In recommendation three, you request a workplan for survey and removal actions in and around the Arsenal including the bay. Once our respective agencies have come to an agreement on obtainable and achievable cleanup standards for the ordnance work at the Arsenal, then I concur that the Report should be reviewed for compliance with the established cleanup criteria and rewritten, if necessary. The agreed upon criteria would help to determine if any additional work plans would be required.

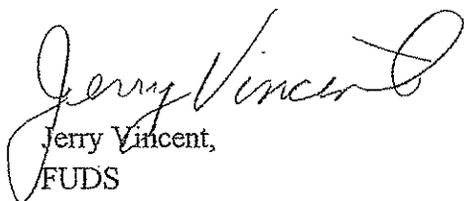
In recommendation four, you offer to enter into an enforceable agreement or issue an enforcement order. Although this measure should not be necessary for our agencies to meet and discuss the development of achievable and obtainable ordnance cleanup standards, it does have legal implications. If DTSC wishes to use this tool, all related matters would be handled through our respective Counsels and would have no bearing on developing cleanup standards and risk reduction goals. The legalities of enforcement orders are not ordnance related or a public safety issue but issues of Counsel.

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In closing, USACE believes that through open discussions and development of acceptance criteria, both agencies will be able to meet their mission objectives. Once we have fully defined obtainable and achievable standards, USACE can then determine what costs would be associated with arriving at these goals and program for those funds in the appropriate year. The year of execution would be based on completion of the ongoing HTRW work effort and the availability of funds from Congress. Although we may be in disagreement about a small number of specific matters, it remains our intention to work with the DTSC in a cooperative manner. Wherever possible, we intend that our actions should achieve your goals as well as ours. In addition, we believe that working together should result in achieving a higher degree of environmental protection and public safety than would otherwise be achieved if we each attempt to attain our goals separately.

Thank you for working with us on this very important issue of cleanup standard development. Schedules permitting, we would like to meet with you towards the end of April to establish a schedule for future cleanup standards development meetings. If you have any questions please contact me at (916) 557-7452.

Sincerely,



Jerry Vincent,
FUDS

Program Manager

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