

Subject: Benicia Arsenal Dispute Issues  
From: Donn Diebert  
Date: Fri, 14 Oct 2005 16:59:00  
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Bruce, sorry for the length of this email, as we discussed and agreed, I am providing the attached list of sites (Same as the last list provided before our meeting) where the State has ongoing concerns and we believe they have not been adequately addressed. You previously received the Enhanced SI comments which provide more insight to some of these sites. Also DTSC has rejected the Community Relations Plan recently submitted. As far as disputes on Benicia Arsenal and other sites a meeting is scheduled between Vince Del Greico and Tony Landis later this month to try and resolve some of the programmatic issues and site specific issues. This lack of resolution to all party's satisfaction has hampered good relevant staff communication and site progress that everybody can support. Below is additional insight into my understanding of the Benicia Arsenal situation.

Before going to far forward, I want to at least present to you some history since you left the project. The State perception is that this project has been run as if Federal and State Laws/regs are of a secondary concern. For the Corps, money is the driver and the FUDS manual has been presented as the guiding light for measuring progress and is the only relevant document. The FUDS manual in its entirety does have some good points and bad points, it is contradictory, and there are any number of positions you can take on any given topic. This means the FUDS manual has flexibility. Currently at Jerry's level and below there is no compromise, no ability to discuss Corps decisions, or to dispute or discuss with Army personnel or representatives who realize the FUDS Manual is an imperfect document and disputes need to be resolved. We would like to work together to resolve the issues at the lowest level, but also work the issues up the chain quickly until all parties can agree or one group says we both need to do what we have to do. As stated earlier, issues have been raised above Jerry for resolution at the Tony and Vince level. Is there some other forum that maybe better suited? The Vince/Tony meeting will cover more than Benicia. You may want to discuss with Vince your possible involvement in the meeting.

I appreciate you taking the time to at least look into the issues a Benicia. As stated above Michael M. has our comments and concerns on the Enhanced SI for the non-MEC areas. The Community Relation Plan was rejected based on not following guidance or involving anybody (Public or State) in the update process. The last issue is the MEC issues still needing resolution. The attached site list was extracted from the Enhanced SI comments and earlier comments or lack of work prior to or during the Enhance SI work. I understand it is still early and our comments are probably still under Corps review so the following common issue and themes are presented below.

A critical element at this site and others is the reliance in total or in part on information found in the files or information not found in the files to definitively prove a point. I could devote a significant amount of time to the issue of record keeping and operational use at a site in this case in operation for 100 years. In most cases the handling of products, generation of waste, disposal of items (Products, wastes, materials, etc.) is not well defined and items such as accidents, spills, explosions, and the ensuing reconstruction/remediation efforts as you know are not well documented or understood and new information needs to be developed.

For Benicia some examples of where initial information was incomplete or unavailable until new information was developed are Tourtelot property, Camel Barn Area and landfills to name just three. At Tourtelot until MEC was found in the field this area was not considered a MEC area. Upon the additional ASR work the use of MEC was finally confirmed from the documentation, but actual ordnance use areas were still not clearly delineated. For the Camel Barn Area store house explosion and cleanup the records indicate 6 or 7 tons of ordnance were removed from the Camel Barn Area. It is unclear exactly how much was removed, what the initial amount of ordnance was within the building prior to the accident, what was consumed during the accident, what was actually hauled off, and thus what was left behind. Also the Armored vehicle burn furnace was not in the records, but found during the field work. For the Landfills, the Corps based on records assumed only metals was disposed in the landfills and as such only analyzed the samples for metals. The State stated these were probably hazardous waste landfills like any other landfill of the time and the Corps disregarded since the records did not demonstrate they were used this way. Another contractor, not related to the Corps, was working in and around one of the landfills and analyzed soil samples for volatiles, fuels and semi-volatile contaminants and found significant contamination in the landfill. This basically contradicts the Corps presented records. I am sure I could come up with additional examples at Benicia or other FUDS site for this type of inconsistency, suffice it to say records are unreliable at best.

As we talked at the meeting there are several locations where the Corps has stated "Beneficial Use". As the Corps attorney has stated on several occasions, the Corps is not authorized to evaluate these "Beneficial Use" areas. Basically this is not that DoD is not liable for environmental problems DoD caused prior to leaving the site it is just the next user supposedly has acted in a similar manner to cause similar releases. This is not exactly a definitive approach, total reliance on a records approach to confirm the daily use (products, waste generation, operational activities and disposal practices) at a facility which is over 100 years old is really stretching the usability of the information to say some of these areas are beneficially reused. DoD has recognized this short coming in several DoD documents with the poor reliability of records and has moved to using the USEPA PA/SI guidance and the CERCLA process. Basically when the Corps is done the PA/SI guidance should be

fulfilled at the end of the day not just a picking and choosing of what elements of the guidance should be used. This random selection of the use of guidance is a common element and has been an approach at other sites as well.

The Corps has identified the storm sewer as being “beneficially reused” in the industrial area. The storm sewer is not generally a facility that generates waste. In this particular instance the Corps is now saying because the storm sewer is still in use any discharge from it is the new owner. That is one perspective. The Corps has also had information in hand for well over two years that contamination is migrating into the storm sewer and out to the bay. The Corps has not presented a case as to why they should not be treating the storm sewer water prior to discharge to the bay or why wastes DoD generated should not be stopped from entering the storm sewer. Another issue is the disposal of used oil “waste oil” for weed control. The Corps tied the “waste oil” disposal/weed control back to the operation of the railroad tracks. This does not mean the current railroad track owner is responsible for the improper disposal of “waste oil” by DoD. I point these two cases out of several cases for the following reasons, the appearance is the Corps is doing work to show they do not have to do any more work, or the Corps is interpreting the FUDS Manual to demonstrate they are bound by Army policy not to address the issue to the exclusion and disregard for areas where the Corps should be doing work.

The Corps continues to routinely threaten the State to take it or leave it based on funding constraints. Throughout our meeting I heard the Corps state this about 4 times. If the work proposed does not provide sufficient information then it is not going to move the entire project forward and this should be acknowledged. The State has provided this information up front to Corps Staff in the over the shoulder reviews during the Enhance SI and previous work. The Corps is no different than any other entity having an obligation to investigate and as necessary remediate. The history presented at the meeting left off or glossed over some of the basic history behind how the Enhanced SI was developed. Initially, the Enhanced SI was just the SI to address the “I” area (Industrial Area) in the agreed upon WIRMS approach. The SI work plan for the “I” area had been worked out when there was an abrupt shift from the Corps in the overall site approach. The same budget identified for the “I” area SI was now to be used for the Enhanced SI work to cover the entire ~2800 acre site. This is an important aspect and a shift that was lost in the historical presentation and the repercussions are felt today. Take a look at the data sets or our comments and you will see limited sampling and significant conclusions trying to be drawn from the limited data and historical records. In order to achieve this, the Corps focused the work plan predominately on groundwater. This predominate one media approach and as you heard around the table is not the entire picture. Also not all analytes were evaluated for and in some cases the analytical data was presented as qualitative and was used quantitatively.

The meeting we attended was designed to discuss the information on the current two Corps identified PRP sites so we can work out a reasonable approach for addressing these areas. The meeting I thought was geared for that specific purpose but was lost in the translation. There was no up-front agenda even though we asked a few weeks in advance. We presented our list of sites a few days prior to the meeting since we were not getting any understanding from the Corps on what they were proposing to present. And there was no presentation of the power point slide to the State prior to the meeting. Not good all the way around the table. For the list of sites presented prior to the meeting, the State had evaluated the information available in our hands and under Federal and State Law/Regulations has identified these areas as needing more information; either evaluate further or provide more insight or details for our records. Some of these areas we believe are potentially solely Corps sites; others are potentially PRP sites, others maybe somebody else's issue or not a problem area. As you could tell from the meeting we were unable to discuss let alone hold a good conversation.

The MEC issue was one area that continues to plague this project today. There was no cleanup standards set prior to the Response Action. It is unclear if this was a final action since the work was not completed as presented (Armored Tank, Gonsalves Property, or other areas of the site the State has identified as a concern has not been addressed). The current MEC property owners are unaware of any restrictions or need for restrictions. It has been almost five years since the start of the action which if this is a final action would need to have a five year review under CERCLA and under DoD regulations should have been reviewed already. As near as we can tell the Corps has not scheduled or proposed any recognized follow-up activities for the MEC sites. Also as a side note we are trying to get the next grant package together and staff has not received a schedule for this project. (This is a common theme for other projects as well.)

We are not partnering on this project. The Corps has not brought the State in as a full partner or the community. The Community relations plan update was done without any community interviews or input and without State involvement or input. This lack of cooperation also shows in how the Corps arbitrary solicitation of our review. An example is not asking for input on the Treatability Study Work Plan for TCE and its Degradation Products in Groundwater in the Lowlands Geology of the Industrial Area. This should be part of the work plan development and coordinated with the State. When State staff questioned the Corps staff about this specific issue the reply was that the State would get to comment on it in the FS report. The Corps provides "complimentary" draft reports for "Information Only" not expecting or wanting comments. The FUDS projects are the only DoD projects where this approach occurs. We should be working together or agreeing on what will be reviewed and commented by the State (primary documents) and what we need for informational (Secondary documents) optional commenting documents, but this needs to be an iterative process since we need to build trust.

For the last common theme in the Enhanced SI comments, for areas where a chemical was found/detected Corps used the "Benicia Screening Levels" (Not agree to by the State), historical records or a leap to some sort of risk assessment to justify no further review for the area. In summary several sites lack soil data to eliminate them from further review, or there was insufficient soil data (Soil samples and/or soil gas) to complete the risk assessments, or the use of the unaccepted Benicia Screening Levels were used.

The list of sites is attached. I would like to resolve these disputed sites or move them up the chain if we can not agree. We should be able to agree on what we disagree upon? The list covers PA sites through SI sites. Remember we are all trying to closeout the entire Benicia Arsenal project as our respective authorities allow. I look forward to meeting with you and your staff to discuss these in an open forum at a location that is without distractions to the participants. Take a look at the list, the Enhanced SI comments, and the Community Relations Plan rejection letter and let us discuss at your convenience.

Thanks in advance for your help!!!

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**Attachment: Benicia PRP Discussions 09292005\_1.doc**  
**Attachment: Donn Diebert9.vcf**