



City Attorney's Office  
**MEMORANDUM**

**Date:** November 15, 2011  
**To:** Heather Mc Laughlin, City Attorney  
**From:** D Simpkins, Administrative Clerk  
**Re:** **Summary of November 14, 2011 Arsenal Meeting**

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Vice Mayor Alan Schwartzman opened the meeting by indicating the quarterly meetings are back on target and perhaps there will be another meeting in January. He stated that the Arsenal cleanup is a complicated issue so the City invited the Department of Toxic Substances Control ("DTSC") to answer questions.

Mayor Patterson indicated that it had been so long in between public meetings because the Arsenal Subcommittee had been trying to find a voluntary cleanup solution as well as traveling to Sacramento to meet with DTSC, Department of Justice ("DOJ"), and the US Army Corps of Engineers ("USACE").

Ray Leclerc (Assistant Deputy Director) and Charlie Ridenour (Branch Chief) from DTSC were on-hand to answer questions.

DTSC issued a draft order to get USACE and major property owners to collaborate and discuss solutions. DTSC has talked to a lot of people and received lots of feedback; especially that one solution is not going to work for everyone. DTSC is looking at how to deal with the cleanup by dividing the Arsenal into separate pieces, and is there a downside to dealing with it in that way.

Q: What defines a "major party"?

A: This is somewhat arbitrary term and the definition can be added on to.

Q: Why did they encompass the entire Industrial Park?

A: The Industrial Park is inside the boundaries of the Arsenal and DTSC is looking at the boundary more closely.

Q: Can folks leave the meeting today knowing they are not impacted by the order and are relieved of responsibility? Does DTSC write exemption letters?

A: DTSC is looking at carving up the Arsenal and will look at the entire area at some point. USACE will do enough work to say that an area is cleared; they think there is a lot of property to clear and they are not denying their responsibility. If a Phase I and/or Phase II has been done, that should be enough to indicate the property is clean. DTSC is not in the business of clearing properties; they are in the business of finding uncleared properties and directing the responsible party to clear it. Maybe a template for property owners to inquire about their property could be developed so owners would not be in limbo. DTSC will not get involved in sites where there is no potential for human exposure.

[Phase I: When buying a property: title search, restrictions, Covenants, Codes & Restriction's, disclosure requirements on title. For business properties: environmental conditions, uses of property i.e.: asbestos, PCP, etc., historical research ~ things to know before the bank makes a loan. No sampling but based on use history.

Phase II: Sampling based on Phase I uses, is there cleanup to be done?]

Q: How is it determined that Phase II is adequate?

A: The bank can decide or DTSC could review. The problem is military property doesn't have title transfers like private property. Military property could change uses many times in its life and have multiple unknown uses.

Q: Is there an end in sight?

A: It depends on the party. If nothing ever happened on your parcel and there is no indication of any issue, then DTSC considers the property released. If your parcel has been contaminated, then it's complicated.

Q: Is there a military use map?

A: Original documents are held by the City or DTSC. These maps can be found in Site Investigative Report and Expanded Site Investigative Report (color coded maps).

Q: How long before property owners know if they're under scrutiny?

A: Phase I & II can help. DTSC can review for this.

Q: Previously, there has been no guarantee that USACE will cleanup. The property owners are assuming the risk. How can assurance be provided to property owners?

A: If there is evidence of unexploded ordnance ("UXO"), DTSC will push USACE to cleanup. The Department of Defense ("DoD") is looking nationwide at UXO.

Q: If a property owner doesn't know about any UXO on the property, and allows someone to come look and they find UXO, the property owner is caught in a catch-22 if USACE can't cleanup right away.

A: The City's resolution tries to address that. DTSC is trying to partner with USACE to deal with UXO. Policies exist to deal with it, but time is an issue. Funding for FUD sites is not like funding for active sites.

Q: What is DoD's priority for Arsenal?

A. After Tourtelot, USACE had said they wouldn't look at the rest of the Arsenal until 2013. Representative George Miller pushed for them to get in there sooner. USACE is now saying that UXO is their responsibility but any other pollution is a shared responsibility. DTSC has looked at sites in the Arsenal for UXO to see if there's an issue. Valero's fenced area doesn't need work that unregulated sites need.

Q: What about contamination other than UXO?

A: USACE is not going to spend money to incriminate themselves, like an Army gas station still used as a gas station. They will show that they didn't do anything or that someone else used it the same way they did.

Q: The Army has said this is no longer a FUD site.

A: There is no regulation that says they're not responsible.

Q: Is most of our knowledge from Brown & Caldwell reports?

A: Yes.

Q: There are many sites where vehicles were parked and oil has seeped into the groundwater. How do you help these property owners?

A: Standard procedures are used to see what is on the site. If no evidence that something happened, DTSC cannot order a cleanup. Same thing goes for areas never documented as an Army site.

Q: How do property owners get a No Further Action ("NFA") letter?

A: It is in USACE's best interest to issue these. DTSC needs to engage with USACE and others to do NFA letters, which is a discretionary act.

Q: What is the draft order status?

A: This could be a model for the cleanup. It's not an order with authority, more a motivating document.

Q: The strategy to engage USACE makes property owners into sacrificial lambs. Who has jurisdiction over USACE?

A: Usually no one.

Q: This could last 15-20 years and tie up investments.

A: The facts of the property haven't changed since the state has become interested.

Q: A resolution is needed sooner than later.

A: It is a difficult problem. If property owner has done a Phase I and Phase II, DTSC will not go in and say "not good enough."

Q: What is needed to be exempt from draft order?

A: DTSC will consider this. They are typically not in the business of clearing properties, but they do get calls and they can say where or not properties are impacted.

Elizabeth: The subcommittee is making progress, still working on an actual approach and plan, and may have more information for the next quarterly meeting. Sign up at [www.ci.benicia.ca.us/Arsenal](http://www.ci.benicia.ca.us/Arsenal) for email updates for meetings.

Alan: It boils down to information. What is in your confidence level? If not comfortable, how can you enhance the information?

A: Nothing new has been received since the meeting. Confidence depends on specific properties.

Q: How much history do you have?

A: Identified in USACE reports. DTSC has reasonable confidence in that information.

Q: How would you increase confidence?

A: DTSC will review data, maps, historical data, sampling data. It depends on the type of site i.e. a burn dump could be investigated if developed since no issues now with it.

Q: There is additional information from the Potters, who did their own research in Army archives.

A: DTSC does not have that information yet.

Marilyn Bardet: The Potters have the information, but the Army blew them off. Information in the Jacobs report cites the Clocktower explosion but USACE ignored it.

In Unico's case, due to a typo in the report regarding the building number, their research shows the wrong information. How can they correct it?

Q: If Phase II is provided to the City, does the City give it to DTSC?

A: No, provide to DTSC.

Q: Do DTSC have USACE material on properties – binder of samples?

A: DTSC will take copies if you have anything. Hopefully they have it.

Q: Would they clear parcels?

A: They would not necessarily do that, but it should clear property for bank purposes.

Q: The order creates a psychological net even if property owners have information on the property.

A: Forward your information to the City and DTSC to see if they can clear it.

If you have a document saying the property is clear, DTSC can add it to their database to show it is clear, though they are not in the business of clearing it for the bank. DTSC looks to see if there's a risk and if a property needs to be cleaned dup. If you have information to clear property, discuss with DTSC.

Q: Will the Valero properties be broken out separately?

A: They would like to and it seems natural.

Q: Why?

A: Talking about ordnance only. Valero has said it is taking care of chemical issues and if there are issues, they will let us know. Valero says they don't want business disrupted and are working with UXO so far.

Q: How will you get USACE to cooperate?

A: They are cooperating on munitions, but chemicals will require an order.

Elizabeth: We are reviewing resources carefully and perhaps be able to present ideas in January.

Q: Will the City sit down with DTSC to work out a process or will individuals have to contact DTSC?

A: DTSC wants the information and will sit down with City to work on a process.

Q: Can DTSC be a clearinghouse and provide a checklist to be clear?

A: They will consider it. They have preliminary endangerment assessment ("PEA") manual that outlines some of the information that would be considered.

Q: Is the site assessment complete for the Arsenal? Can we trust the documents?

A: If you have evidence to show your property has no problem, then you shouldn't worry.

Q: Was there going to be an order issued on 9/10/10? If so, the good news meeting needs clarification.

A: The draft order was to bring parties together to see if they can solve the problem. It hasn't turned out to be a group hug.

Q: Who stopped the order?

A: No one has told DTSC to stop the order.

Q: Ninety percent of people affected here aren't the big corporate model. Will you decide the size or extent of the problem? You will help lots of people if you carefully consider the size of the net when you cast it.

Elizabeth: I think that was summarized well.

Q: If the phone call on 9/8 didn't happen, what would have happened?

A: Moving ahead with an approach and issued draft concept.

Q: Confused on priority of lower Arsenal as opposed to rest of Arsenal.

A: DTSC is looking at known issues. Gonzalves property was included as part of the Tourtelot cleanup. On the Valero property, a grenade was found during construction. The large size of the lower Arsenal was because of the trichloroethylene ("TCE") pollution that is part of record. When City tried to do the Specific Plan, City received DTSC letter and the experts were concerned. Looking now at excluding other areas with no issues and categorizing the types of property by issue.

