



City Attorney's Office  
**MEMORANDUM**

**Date:** December 23, 2010  
**To:** Heather Mc Laughlin, City Attorney  
**From:** D Simpkins, Administrative Clerk  
**Re:** **Summary of December 22, 2010 Arsenal Meeting**

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Yesterday's meeting was a chance for the Arsenal property owners to meet Mark O'Brien from ERS and discuss concerns they had with the cleanup. Concerns included how the cleanup would be funded, whether or not the City would "go after" property owners and what the strategy will be.

Summary

ERS will represent the City as well as property owners, if the property owners would like. Property owners may have additional cost, which is where the insurance policies and other funding come in to play.

The consultant's goal is to find funding: grants, regulatory funds, UST funds, review 1970s or earlier insurance policies including board/council resolutions authorizing the purchase of insurance. The City and ERS will review property owners' insurance if requested. No action will be taken against property owners.

The consultant contract is performance based. If there are not enough funds to assist property owners, ERS will work solely for the City and DTSC will look to PRPs. If no funds are available, the contract would be terminated. If we reach the extent of our funding, the USACE will be responsible, but we will try to get the highest limit out of the insurance policies. ERS has never had a problem with funds before. The consultant is not entitled to all remediation funds.

A strategy has not been set. There is the possibility to take a global approach in assisting property owners, keeping in mind that no one is being forced to work with ERS. There is no certainty of what the cost will be as all issues are not yet known and no analysis of toxins has taken place.

How will escrow funds be handled? The City will control the escrow account, the details of which will be in the contract.

The first action is to delay DTSC from issuing the Imminent and Substantial Endangerment Order until the City and ERS have a strategy. Not all property owners know if their property has environmental issues. ERS would definitely like to eliminate properties from the cleanup; there is no reason to interrupt a business if its property is clean.

There was a concern that the DoD will say it did not cause all contamination and may try to put the blame on property owners. ERS indicated that it would be a matter of strategy, which is not set yet.

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A question of ethics came up, inquiring what the consultant's incentive was to reduce the level of cleanup. Federal and state set the cleanup regulations, so there's no legal way to cleanup what's already clean.

Can the definition of small property owners be redefined as holding less than 5 acres? The definition is negotiable and is in place to help small business owners in the arsenal that don't have the resources that Valero or AMPORTS have.

It was suggested that a group comprised of involved and affected property owners be put in place. You agreed this would be a good idea, similar to Arsenal RAB and Tourtelot CAG.

A handwritten signature in blue ink, appearing to read "J. Simple", is written over a horizontal line. The signature is cursive and somewhat stylized.