

Environmental Committee Minutes

February 3, 2009

3:00 pm

In attendance:

Laurie Cannon, Chair
Merwin Kinkade, Tinton Falls
Rose Estephan
Steve Young, Matrix Development
Laura Saunders, Buchart Horn
Frank Cosentino, FMERPA
Diane Canterbury, FMERPA
Rick Harrison, FMERPA
Tom Mahedy
Larry Quinn, N.J. DEP
Wanda Green, Dept. of Public Works, Fort Monmouth
Greg Pollack

We began the meeting talking about the re-surfacing of the stream banks and re-capping of the landfills: when those projects would get started and what they would entail. We focused most of the conversation on the recapping of the landfills. The caps would most likely be soil, not clay, but the DEP still wants to look at the soil sediment sampling and surface water sampling again before those decisions are made. The Army's plan for the soil capping is in response to the DEP's suggestion to do so. A foot of soil will be added to eliminate direct contact with what is currently on the surface of the landfills. Tom Mahedy, public member, expressed a concern over who would be responsible for the maintenance of the new caps and also with any PCB's that could escape from the landfills. If the soil cap is permeable, what will keep these contaminants from flowing from the landfill into surrounding streams? It was concluded that this would not be a concern because the Army has demonstrated on numerous occasions that PCBs are not migrating from the landfill. Funding has just been approved for a Baseline Ecological Evaluation and the Army will begin that project soon. The evaluation is based on three criteria for each site: 1) the site and contaminant is identified. 2) a critical receptor is identified (human, animal, etc.) and 3) whether or not there is a pathway to get to that receptor. Shaw Environmental has been asked by the Army to do the work on this project.

In regard to the trees that have grown in the landfill areas: When possible, the Army will try to save these trees but in many cases the roots would not survive the capping, so they will be removed. Planting meadow grasses will protect the new soil cap whereas growing trees will bring up the soil. The committee was in agreement that they would like to see as many trees saved as possible, and the Army agrees, but they also have to create a cap that is stable and will last. Tom Mahedy, public member, asked about excavating the landfills so they can be re-done with liners. Larry Quinn, from the DEP, stated that that was not necessary. The contaminants are not mobile and haven't been for 30 - 50 years. There has been ongoing groundwater testing and new surface water and sediment testing is planned for the near future. Steve Young, from Matrix, also made comments regarding the landfill covers. According to Steve, because of the proposed land use for those areas, digging up the landfills was not needed and re-capping was more than sufficient. Tom Mahedy, public member, expressed additional concerns about not lining the landfills.

A hand-out (Exhibit A) was distributed and is attached regarding the Justice Department's ability to uphold the EPA's authority to issue clean-up orders at the Department of Defense sites. Steve Young did not think this would come into play at Fort Monmouth.

Another hand-out (Exhibit B) was distributed, written by Steven Lester, Science Director, at the Center for Health, Environment and Justice. Tom Mahedy, public member, had forwarded Mr. Lester some information on the environmental conditions at Fort Monmouth so that he could critique the processes and procedures being used by the Army. Diane Canterbury forwarded this review to Steve Young of Matrix and Steve concluded that all items mentioned were previously reviewed by Matrix and were being followed. Diane Canterbury talked to Steve Lester and he stated that he really didn't have the background information from the Phase I Report to adequately review the material that was provided to him.

Next we discussed the underground storage tanks. As was previously reported, the Army asked that the underground storage tanks be considered for a no further action status and the DEP rejected those requests. The next step would be to drain them and fill them with soil and close the sites. Wanda Green stated that she was not able to discuss with any certainty projects that have not received verification of funding.

Finally, we discussed a new direction for the Environmental Committee. Up until this point, we have been reviewing the monitoring and clean up procedures of the various sites that have been found to have contaminants of concern. Our new direction will be to separately review the environmental acceptability of each parcel of property as we go forward. Frank Cosentino, Diane Canterbury, and Laurie Cannon will discuss this and have some talking points ready for the agenda of the next meeting. Any committee members with ideas for our direction forward can send them to Laurie Cannon, the FMERPA staff, or have them ready for our March meeting.

The next meeting is scheduled for March 3, 2009 at 3:00 pm.

Before closing the meeting, Tom Mahedy, public member, had a question about the flood plain and whether or not FEMA has set new standards. He expressed concerns about water flooding the landfills. He requested formal, written responses to his questions. Frank Cosentino stated that we are happy to answer the public's questions at any meeting at any time, but written responses are not required and it is not something we are willing to take the time to do. He wanted to know if the public could submit written comments on the proposal to cap the landfills and he was told that they were welcome to do so. He asked again what would be in the new landfill caps and the answer was 8 inches of clean soil and 4 inches of top soil for a total of 12 inches. He also asked when the information presented at the RAB Open House would be officially available to the public. The answer was everything was available except for the Stream Bank Stabilization Design and the Landfill Boundaries presentation which would be available shortly.

Justice Department Upholds EPA Authority to Issue Cleanup Orders at DOD Sites

InsideEPA.com, Dec. 4, 2008 -- The Justice Department is backing EPA's authority to issue cleanup orders at Defense Department facilities -- a major defeat for DOD in its long-fought campaign challenging the agency's authority and a decision likely to force the military to clean up contaminated sites.

In the Dec. 1 letter to DOD, DOJ's Office of Legal Counsel backs EPA on its authority to issue "imminent and substantial endangerment" orders under the Resource Conservation and Recovery Act (RCRA) and the Safe Drinking Water Act (SDWA) at four DOD facilities that are listed on the Superfund National Priorities List (NPL).

The dispute between EPA and DOD had angered congressional Democrats who weighed in on EPA's behalf and sought a Government Accountability Office investigation into DOD's refusal to follow the orders.

At issue are enforcement orders under RCRA and SDWA that EPA issued at four military sites in response to a stalemate between the agency and DOD over what cleanup requirements can be included in interagency cleanup agreements governing the sites.

Superfund law, known as the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), mandates the accords, known as federal facility agreements (FFAs), which lay out enforceable cleanup requirements at federal NPL sites. But an escalating dispute over the accords led EPA to issue the orders in 2007 and 2008, effectively mandating the military follow what EPA had sought to prescribe in the FFAs.

However, DOD argued that because the sites are listed on the NPL, they are governed by the Superfund law and EPA did not have authority under the two environmental laws to order the cleanups. DOD said EPA was wrong to issue the orders under laws other than CERCLA, saying the appropriate mechanism would have been a CERCLA order, which requires DOJ's concurrence before issuance. DOD then requested intervention from DOJ to settle several legal questions.

But this infuriated House Democrats who argued that congressional intent allows EPA to enforce RCRA authority against federal agencies in the same way it does against private industry. They also argued against allowing DOJ to arbitrate the issue, and contended that DOD is in violation of the orders. They pressed EPA to uphold the orders, regardless of DOD's position. In addition, the state of Maryland has threatened to sue the Army over its refusal to comply with one of the orders in its state.

DOJ's letter says EPA may issue a RCRA endangerment order "even if it would not have done so had DOD executed an interagency agreement under [the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)], provided that EPA has established the legal basis for the order required by RCRA and SDWA.

"We see no reason why EPA, in making an enforcement decision, may not take into consideration whether DOD has entered into an interagency agreement with respect to the facilities at issue," Steven Bradbury, principal deputy assistant attorney general at DOJ's Office of Legal Counsel, writes in the letter.

DOJ narrowed the dispute down to four questions because DOD's original request for resolution contained several factual disputes that DOJ says it is not positioned to resolve. In addition, DOJ said it issued its response to DOD's request in "summary form" rather than a formal opinion because of potential litigation that the state of Maryland may file against DOD over one of the orders -- something that would draw DOJ into defending the department -- and because DOJ does not believe a formal opinion is "warranted or necessary."

On a second question before it, DOJ found EPA can issue orders requiring broad, facility-wide cleanups under RCRA and is not limited to enforcement measures abating a specific threat.

"If implementation of a facility-wide clean up 'may be necessary' to provide such protection, EPA appears to have the authority to order DOD to undertake such a clean up," DOJ says, citing case law.

On a third question, DOJ says EPA may demand that additional terms be included in FFAs governing federal facility NPL sites. And finally, it found that such agreements can require the federal agency to clean up property that was not originally identified under the NPL listing and was transferred out of agency control.

On the provisions related to FFAs, DOJ found that while EPA "may demand" including additional terms not listed under CERCLA in FFAs, the term interagency "'agreement' denotes a consensual undertaking," and therefore DOD is not necessarily required to agree to all extra-statutory measures that EPA demands.

"EPA nonetheless may require DOD to agree in the FFA to follow, 'in the same manner and to the same extent' as they apply to private parties, any 'guidelines, rules, regulations, and criteria' established by the [EPA] Administrator and made applicable to non-federal facilities under CERLCA," DOJ's letter continues.

DOJ's statement on FFAs comes as the White House Office of Management and Budget has yet to make any determinations on a related request from DOD to define the parameters of an FFA. -- Suzanne Yohannan

December 4, 2008

Inside Washington Publishers

Fort Monmouth Environmental Condition of Property Assessment
2005 BRAC
Phase II Site Investigation Results
August 13, 2008

Comments prepared by

Stephen Lester
Science Director
Center for Health, Environment and Justice
January 8, 2009

Observations:

- 1) Some areas have very high levels of contamination; lead in soil at Parcel 83; lead in groundwater at Parcel 57; chromium high in sediments at Parcel 39; PCE, TCE at Parcels 43, 50, and 52.
- 2) The level of Volatile Organic compounds (VOCs) found in soil gas samples taken at several sites is troubling and likely poses the greatest public health threat of all the test results included in this report. It is very important to determine the source of these VOCs and to determine the extent of the VOCs in both soil and in the groundwater. I strongly suggest that you get the DOD to do additional soil gas testing in order to define the extent of the soil gas contamination in the various areas where these test samples were taken. The VOCs in soil gas were found at Parcels 34, 43, 50, and 52.
- 3) I am surprised that no VOCs were found in any of the groundwater testing that was done. It is not clear why they would VOC would not be present in groundwater unless the DOD did not look for VOCs in the samples they took or if the samples that were taken were collected away from where the VOCs were found in soil gas. I strongly suggest that get DOD to do additional groundwater testing in order to define the extent of the VOC groundwater plume.
- 4) For most parcels, only a few samples (2 to 4) were collected from an environmental medium to evaluate the extent of contamination at the site. In most instances, this sampling is insufficient.
- 5) In many instances, no samples were collected from some media.

Questions to Consider:

- 1) For each parcel, what environmental media were sampled and analyzed? What was the rationale behind testing the media that was selected?
- 2) What criteria/standards did DOD use to determine when a contaminated area requires “further evaluation”? What was the rationale for choosing the criteria/standards that were used?
- 3) Provide a complete list of the criteria/standards for each environmental medium sampled that was used by DOD to determine whether “further evaluation” was needed. i.e, a complete list of the substances analyzed in each medium for each sample.
- 4) What does “further evaluation mean? Clarify what additional testing would be done.
- 5) Non-residential criteria/standards were used in several instances. Shouldn't residential criteria/standards be used to provide for unrestricted future land-use?
- 6) Why are different criteria/standards used at different sites to evaluate the same environmental medium? For example,

P. 27, 39

sediment

LEL/SEL

P. 43, 49. 61

sediment

ER-L/ER-M

- 7) What specific substances were analyzed for each environmental medium sampled at each parcel? i.e., what specific substances were analyzed in soil (surface and subsurface), sediment, soil gas, groundwater and indoor air samples collected at each parcel?
- 8) At each parcel, only select media were sampled. Why was sampling limited to these media at each parcel? What were all media not sampled at every parcel?
- 9) Provide a description of the sampling methods and procedures used to collect samples from each environmental medium that was sampled? i.e., soil sediment, groundwater, soil gas, and indoor air.
- 10) What detection limits were used for each environmental medium?
 - i i) What sampling was conducted in the sanitary lines and at the electrical substations? i.e., what substances were analyzed and in what environmental medium?
- 12) In several instances, “no further action” was recommended by DOD

despite the fact that testing identified concentrations of substance that exceeded the criteria/standards used to evaluate the results. Why did this occur?

P. 34 – soil/gas/benzene > non-residential criteria

P. 43 – soil/gas/benzene/DCM > non-residential criteria

P. 50 – soil/gas/PCE > non-residential criteria

10) For soil samples, at what depth were soil samples taken? Were soil samples taken at different depth for the same sample location? If so, how often was this done?

Summary Sampling media and criteria

27	SD	sediment	2	LEL/SEL	FE
		Soil	2	non given	NFA
34	SG	soil gas	3	SG non-residential	NFA/FE IA
38		soil	24	non given	NFA
39	SD	sediment	2	LEL/SEL	FE
		soil	1	non given	NFA
43	SD	sediment	3	ER-L/ER-M	FE
	SG	soil-gas	4	SG non-residential	NFA
	IA	indoor air	2	IA non-residential	FE
49	SD	sediment	3	ER-L/ER-M	FE
	SS	ssoil 0-0.5d	6	NRDCSCC	FE
	SB	ssoil 0-0.5d	1	NRDCSCC	FE
	GW	groundwater	3	NJ GWQC	FE
50	SG	soil gas	5	SG non-residential	NFA
		indoor air	9	non given	FE/no found
52	SG	soil gas	4	SG non-residential	NFA/FE IA
57	SS	ssoil .5-1.0d	10	NRDCSCC	FE
	GW	groundwater	5	NJ GWQC	FE
61	SD	sediment	2	ER-L/ER-M	FE
	SB	ssoil 1.5-2.0d	7	NRDCSCC	FE
69	SD	sediment	2	ER-L/ER-M	FE
	GW	groundwater	2	NJ GWQC	FE
		soil	2	non given	NFA

70		soil	3	non given	NFA
80	GW	groundwater	2	NJ GWQC	FE
		soil	2	non given	NFA
83	SS	ssoil 0-0.5d	6 ?	NRDCSCC	FE
	SS	ssoil .5-1.0d	6 ?	NRDCSCC	FE
	SS	ssoil 1-1.5d	2 ?	NRDCSCC	FE
		groundwater	12 ?	non given	NFA

LEL/SEL – Lowest Effect Level/Serious Effect Level

ER-L/ER-M- Effects Range - Lower/Effects Range – Median from NOAA

NRDSCC – Non residential direct-contact soil cleanup criteria

NJGWQC – New Jersey Groundwater Quality Criteria

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PUBLIC MEETING
NOVEMBER 3, 2007
FORT MONMOUTH ENVIRONMENTAL RESTORATION

QUESTIONS:

1. What table/display contains the public health study and assessment for Fort Monmouth base workers, military, and local residents who may have been exposed or contaminated by pollution, hazards and toxins in the air, water, soil on the base?
2. If there is no study, why has it not been done?
3. Are base workers, military and local residents aware of unusual illnesses or sickness for themselves or others.
4. Is the base really as clean as is being presented?
5. What are the costs for proper cleanup? Is there an economic interest in under reporting existing conditions?
6. What has been the record in toxic base cleanups around the country and world?
7. Why has the pentagon been seeking exemptions from US public health and environmental laws?
8. Have you researched the Fort Monmouth environmental documents at the Monmouth County library's reference desk in Shrewsbury?
9. Why are these documents not available more easily on a Fort Monmouth , RAB or FMERPA website?
10. Why has the RAB- remediation advisory board been in existence for about a year, but the public has not been allowed to attend environmental briefing meetings? Why does the RAB report to the army, but not to FMERPA? Why is it called remediation, not clean up?
11. Why does FMERPA have a separate environmental subcommittee that has not been included on the year of environmental meetings?
12. How can the subcommittee determine how suitable something is for redevelopment when they have been excluded?
13. Who is liable if new occupants of the base get sick or find contamination (DOD, army, RAB, FMERPA environmental subcommittee, FMERPA, Eatontown, Tinton Falls, Oceanport taxpayers)?
14. Why does MATRIX want to privatize the remediation/ clean up?
15. Does this allow a bypass of regulations, laws and liability? Would Matrix also get the contract to oversee this? Is this a conflict of interest?
16. Does a nfa- no further action ruling by the nj dep a mean that the site is clean or is it linguistic detoxification?
17. Does fencing off a contaminated area the best thing for future generations?
18. What is the condition of streams, ponds and bay areas at Fort Monmouth?
19. What effect has the pouring toxic things into the drains and sewage system had humans and on the ecosystem?
20. What effect have broken tanks and pipes carrying these things had on underground soils and water?
21. What is the status of the ash and toxic landfills? Is there a proper liner at every site?
22. What is the status of the toxic pit outside the Myer blg. that was covered with lime? Has it moved toward the blg.?
23. What about the radiation, PCB, asbestos contaminated sites?
24. How are sensitive native american sites being protected?
25. When will life support systems of air, water, earth protection be understood as important to survival?

For more information
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Stop Military Toxics www.stopmilitarytoxics.org
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