 LANL Reference

DEPARTMENTS OF THE ARMY AND THE AIR FORCE
NATIONAL GUARD BUREAU
1411 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22202-3231

January 21, 2000

Office of the Chief Counsel

Ms. Mindy Lubber
Acting Regional Administrator
US EPA Region I
One Congress St., Suite 1100
Boston, MA 02114-2023

Dear Ms. Lubber:

As discussed in our conversation yesterday, this letter responds to U.S. EPA Region 1's Administrative Order (AO3) for Response Action at Massachusetts Military Reservation (MMR), SDWA 1-2000-0014. Pursuant to paragraph 82 of AO3, Respondent National Guard Bureau (NGB) hereby advises EPA that it intends to perform any necessary and appropriate remediation of the areas of concern (AOCs) (which includes the Training Ranges and Impact Areas) identified under AO3. NGB continues to be committed to ensuring the protection of the health and safety of the citizens of Cape Cod, as illustrated by the brief attached description of our efforts and plans to address the AO3 AOCs. Our goals and expectations are the same as EPA's, that any remedial action at these sites will be based on thorough scientific analysis and full community involvement.

You noted in a January 12, 2000 meeting and in our discussion yesterday that some of the concerns that NGB continues to have with certain provisions of AO3 and the Scope of Work, concerns that are shared in some instances by the Upper Cape community, could probably be resolved or clarified. For example, many of the timeframes are so compressed that meaningful public input as has been the case in the past is effectively precluded. We look forward to working toward a resolution of those issues, which are listed briefly in the attachment, and suggest that an appropriate forum for such an effort might be an expanded version of the Management Group as envisioned by EPA under Section XXIII of AO3. Finally, while we also do not necessarily agree with certain of the statements made in Sections VI, VII, VIII, and IX (Findings of Fact, Endangerment and Response, Conclusions of Law, and Determinations, respectively), NGB will continue to pursue and conduct any necessary and appropriate remediation.

In light of these concerns, we are recommending that we have one or several

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meetings in the very near future, at the parties' convenience, to further discuss these issues and work out a schedule that will allow us to meet our obligations.

Sincerely,

Russell C. Davis
Lieutenant General, U.S. Air Force
Chief, National Guard Bureau

Attachment

Copies Furnished (w/attach):

DoD (Ms. Sherri Goodman)
U.S. Army (Mr. Ray Fatz)
U.S. Air Force (Mr. Tad McCall)
Senator Edward M. Kennedy
Senator John F. Kerry
Representative William Delahunt
Governor A. Paul Cellucci
MA TAG (BGen George W. Keefe)
Lauren Liss, Commissioner, Massachusetts Department of Environmental Protection
Millie Garcia-Surette (Deputy Regional Director for the Bureau of Waste Site Cleanup - MADEP)
MMR Senior Management Board

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Attachment

A. NGB Efforts to Remediate Areas of Concern Listed in AO3

NGB is committed to accomplishing a community-based program that is built on sound science, balances human health and ecological requirements, and provides full stakeholder involvement to define the issues and develop solutions.

1. In AO3 Appendix A, EPA requires Rapid Response Actions to remove contaminated soil at the following sites: (1) steel-lined pit at the J-1 Range, (2) EDB-contaminated soils at Study Area 2 of the Impact Area, (3) firing and target areas of KD Range, (4) J-3 Wetland, (5) Gun Position 7, 16, (and 9, if deemed necessary), and (6) the Armored Personnel Carrier. NGB is arranging for removal and remediation of the contaminated soil and expects to make quick progress on those projects, pending review by EPA on the scopes of work and amendment of related AO3 timelines to allow for the recognized value of full and meaningful stakeholder/community input.

2. AO3 Appendix B requires the development of a plan to determine how best to address remediation of (1) Demolition Area 1, (2) Southeast Corner of the Ranges, (3) Central Impact Area, and (4) the areas throughout the Training Ranges and Impact Area containing surface and subsurface unexploded ordnance (UXO).

NGB agrees that Demo Area 1 is a problem area and had been poised to transfer the responsibility for cleanup of the site to the Air Force Center For Environmental Excellence (AFCEE) under a 1998 AFCEE/NGB agreement. However, AO3 has affected that process by imposing a new non-CERCLA cleanup framework/timelines, thus preventing AFCEE from implementing the type of coordination/stakeholder involvement system used so successfully in the Otis ANGB Installation Restoration Program (IRP). As a result, responsibility for the site has not been transferred and, following recent receipt of EPA's comments on appropriate technologies, NGB is moving ahead quickly with developing the cleanup plan for Demo Area 1.

NGB is currently preparing a Response Plan for the Southeast Corner of the Ranges and expects to submit that plan to EPA for review within the next two weeks. The EPA recently approved a Response Plan to delineate the area of contamination in the Central Impact Area and NGB is mobilizing to begin implementation of that plan later this month.

Regarding the fourth category of UXO on the Training Range/Impact Area, NGB feels that any remedial program as vast as the potential projects anticipated by AO3 concerning UXO must be based on a thorough scientific analysis, with an evaluation of the various human health and enviromental risks involved, and must involve the community and other stakeholders in the discussion. We believe that the requirements and schedule set forth by EPA in Appendix B Table 1 may well preclude achieving those goals. For example, NGB expects to have data available late this year

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from studies of UXO in high use target areas on the Impact Area. Such data will be invaluable in determining the likely condition of UXO in other areas of the Training Range and Impact Area at the Massachusetts Military Reservation (MMR), the safety challenges presented in addressing UXO in such areas, the environmental impacts of possible UXO removal programs, and will help immeasurably in gaining a better understanding of the role that UXO plays or does not play in the issue of risk to human health or the environment. These studies were required under the Scope of Work in Administrative Order SDWA I-97-1019 (AO1).

NGB remains committed to working with EPA and the community in obtaining the information necessary to make an informed decision on the risks presented by surface and subsurface UXO. The importance of the subject and the scope and impact of potential projects mandates that any decision be supported by thorough scientific analysis and allow for meaningful and substantial input by the stakeholders.

B. NGB Concerns and Significant AO3 Issues For Discussion

1. Order (Section X, para. 72) - This section requires that NGB conduct a feasibility study (FS) for remediation of surface and subsurface unexploded ordnance (UXO), after which EPA will select an appropriate remedy. Following EPA's decision, NGB is required to take remedial action for all surface and subsurface UXO. As noted above, investigations of two high use target areas in the MMR Impact Area are in progress. Evaluation of the results of those studies, which are expected within the next 12 months, are critical to determining any necessary and appropriate remedial action regarding subsurface UXO. The completion of any remedial investigations/feasibility study concerning the appropriate treatment of UXO should await completion of the AO1 study. Additionally, the process must include adequate public involvement and that requirement should be accommodated and planned for in AO3. Following adequate information-gathering and public education/involvement, NGB agrees to discuss and reach resolution with EPA on any actions required to address UXO on the Training Ranges and Impact Area.

The importance of the kind of meaningful public involvement effectively precluded by the timelines included in AO3 (specifically, those set out in Appendix B, Table 1), was clearly articulated at the January 19, 2000 meeting of the Senior Management Board (SMB). Community members of the SMB noted the fact that all clean-up decisions involve trade-offs and that where a more extensive clean-up means greater environmental impact, a decision has to be made on how much risk is acceptable. The SMB members noted that if all the stakeholders are involved from the beginning and in a meaningful way, a consensus is usually reached on how to proceed.

As presently written, AO3 contains no time for such meaningful public input. By driving to a remedial action decision not informed by the extensive data to be generated over the course of the next twelve months, AO3 deprives the stakeholders as well as EPA of any ability to assess the risks that UXO might present to the drinking water.

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Without that ability, the stakeholders – and EPA – cannot make judgments about the trade-offs that clean-up decisions involve.

2. Public Involvement (Section XXII, para. 108) - This language suggests that the Impact Area Review Team (IART) established under AO1 will be the source of public involvement and input for Work done under AO3. The IART is limited in the type of public input that it provides and we feel that it is not an adequate public forum for AO3. In order for NGB and EPA to ensure adequate public involvement in all Work undertaken pursuant to AO3, a broader base is necessary. Clearly, as illustrated by the concerns of the community expressed at length at the SMB meeting on January 19th, the public involvement process should include the SMB and be based on the ongoing AFCEE Installation Restoration Program (IRP) or some similar process since that works very well. In light of these significant issues, the January 29, 2000 deadline for submittal of a public involvement plan should be postponed to accommodate public input on this important issue.

3. Other Applicable Laws (Section XXV, paragraph 111) - NGB believes that we need a dialogue with EPA to consider how compliance with the National Environmental Policy Act (NEPA), state permitting procedures, and other legal requirements will be achieved now that we have mandated to us that a non-CERCLA cleanup process be used.

4. Other Examples Requiring Discussion/Clarification:

a. Incorporation and Enforceability of Documents (Section XVI, para. 92) - By incorporating as enforceable any document generated by NGB, this Section results in the generation of an inordinate number of deadlines that while not significant for cleanup purposes, could become subject to the AO3 penalty provisions. As is now being done with AO1, EPA and NGB need to agree on specifically defining the dates and deadlines that would be subject to Section XXVI, "Enforcement: Penalties for Noncompliance."

b. Cooperative Management of Activities (Section XXIII, para. 109) - NGB personnel must be involved in the cooperative management of AO3 at all levels and at an equivalent authority to the representatives of EPA and MA Department of Environmental Protection (MA DEP). In order to satisfy the needs for meaningful public involvement in actions involving AO3, NGB also suggests that the Senior Management Group include the Senior Management Board Selectmen, as well as a representative of the MA Department of Public Health. This would mirror the successful AFCEE IRP management process.

c. Dispute Resolution (Section XXIV, para 110) - This Section would require NGB to give up rights afforded it under existing Presidential Executive Orders, which is something that EPA cannot require. NGB strongly believes that it continues to have all rights, defenses, authorities and responsibilities accorded it under the Safe Drinking Water Act (SDWA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Defense Environmental Restoration Program (DERP) and

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all other applicable laws and Executive Orders (including, among others, Executive Orders 12088, 12146, and 12580).

d. MA DEP Involvement - A process needs to exist that specifically provides for the substantive involvement of the MA DEP. While paragraph 76 requires that all response actions meet the Massachusetts Contingency Plan (MCP), there needs to be recognition that the Project Management Group set forth in Section XXIII will act as a technical working group where consensus occurs to resolve inconsistencies between state and federal requirements. The purpose of such group should be to achieve consistency in the cleanup process and lessen the likelihood that NGB will have to deal with conflicting requirements under various federal and state statutes.

e. The Scope of Work (SOW) in A.I.A mandates that any cleanup of Rapid Response sites other than to "background levels" of contaminants requires justification. Achieving such a standard might be neither scientifically nor economically feasible, nor supported under a risk-based analysis. The evaluation criteria regarding a proper response action work plan should include risk assessment so that there is some kind of performance evaluation measure that addresses threats to human and ecological receptors.

f. Deadlines

- SOW Appendix A II.A.2 deadlines regarding the submittal of proposed schedules (which at a minimum will identify start and finish dates for each phase of the cleanup work) should not be earlier than April 1, 2000. The work completion schedules should be subject to work plan approval and negotiated when the full scope of the required work has been established. It would be unwise and arbitrary to set work completion dates when the full scope of the required efforts is unknown.

- SOW Appendix A II.A.2 and III.C. The March 1, 2000 deadline for submittal of the Draft Immediate Response Action Work Plan, the site specific Health and Safety Plans (HASP) and Quality Assurance Plan (QAP) to EPA for review/approval will be difficult to meet even if the HASP and QAP developed for MMR-related work under AO1 are adequate.

- SOW Appendix A III.D. The deadline of commencing an approved portion of work within fourteen (14) days after EPA approval of the remedial action Work Plan or a segregable component of such Work Plan, is unrealistic and unreasonable. We request that EPA consider the issues of federal contracting requirements and federal funding procedures.

- SOW Appendix A II.A.2. The December 1, 2000 deadline for completion of the cleanup/restoration activities must remain flexible, especially since some areas, particularly the wetlands areas, are highly dependent on weather influences and regulatory review processes.

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