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LETTER REPLY TO LETTER DATED 17 DECEMBER 1997 REGARDING FAILURE TO
ACCEPT CLEAN UP LEVELS PROVIDED BY MISSOURI DEPARTMENT OF NATURAL
RESOURCES FOR RICHARDS GEBUR AIR FORCE BASE KANSAS CITY MO
12/31/1997
MISSOURI DEPARTMENT OF CONSERVATION

File: 17A-25
D.W. 291

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STATE OF MISSOURI
McGuinnin Governor • Divo A. Shott Director
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF ENVIRONMENTAL QUALITY
P O Box 176 Jefferson City MO 65102-0176

December 31, 1997

CERTIFIED MAIL #Z 062 471 648
RETURN RECEIPT REQUESTED

Mr. John H Fringer, P.E.
AFBCA/DB
1700 North Moore Street, Suite 2300
Arlington, VA 22209-2802

RE: Richards-Gebaur Air Reserve Station

Dear Mr. Fringer:

I received John Carr's letter of December 17, 1997, regarding the failure of the United States Air Force to accept the clean up levels provided by the Missouri Department of Natural Resources for Richards-Gebaur Air Reserve Station (RGARS). By this letter the Department of Natural Resources is invoking the dispute resolution provision under our current Department of Defense and State Memorandum of Agreement (DSMOA). As stated in Section IV of the DSMOA, the dispute resolution should start at the lowest possible level. I am directing this notice to you as the Base Environmental Coordinator and Air Force representative on the Base Closure Team for Richards-Gebaur Air Reserve Station.

Outlined below are the issues identified in Mr. Carr's letter which I feel do not accurately or fully reflect the current situation. I ask that you contact me to discuss these issues and review the dispute process within the next 10 days.

ISSUE 1 Mr. Carr's letter refers to an impasse between the U S Air Force and MDNR regarding agreement on appropriate cleanup levels at RGARS.

RESPONSE. The Air Force requested clean up levels which MDNR provided. These were incorporated into the June 27, 1997, report titled, "Addendum to Draft Report POL Yard Phase I/II, Soil Characterization" prepared by Dames & Moore for AFCEE and submitted to MDNR on November 6, 1997. The MDNR cleanup levels are listed in Table 1 "MDNR POL Yard Soil/Groundwater Cleanup Levels" and are referenced in Section 5.0 Conclusions and Recommendations.

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ISSUE 2. Mr. Carr speaks of the Federal Government's responsibility to evaluate contaminated sites and remediate to appropriate levels. He also referred to the U.S. Air Force's primary goals for restoration; (1) ensuring protection of human health and the environment, and, (2) compliance with Applicable or Relevant and Appropriate Requirements (ARARs) in accordance with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Mr. Carr also states that selection of the appropriate cleanup goals and the remedial alternatives is a risk management activity and is the responsibility of the U.S. Air Force.

RESPONSE: MDNR agrees that the U.S. Air Force is responsible for attaining appropriate cleanup goals. Those cleanup goals must comply with all applicable state regulations, and be based on relevant and appropriate requirements as well as other "to be considered" information for site specific cleanups at RGARS.

We also agree that the final determination for cleanup goals is a risk management decision which must be protective of human health and the environment and meet ARARs. If a risk based approach is proposed it must be supported by an appropriate Risk Assessment. In opposition to this approach the U.S. Air Force requested that MDNR agree to cleanup levels listed in EPA Region III Risk Based Concentration Table (RBC) that are non-site specific screening levels. This source is unacceptable.

The Region III RBC does not represent applicable state regulation or relevant and appropriate requirements. It includes a disclaimer that the risk based numbers should not generally be used to; (1) set cleanup or no action levels at CERCLA sites or RCRA corrective action sites; (2) substitute for EPA guidance for preparing baseline risk assessments; or, (3) determine if a waste is hazardous under RCRA. These items preclude it from use as a source for cleanup levels at this site. It also does not include information on the transfer of the contamination from one media, the soil, to the air and groundwater which both can serve as pathways of exposure to human health or ecological receptors, in addition to the cumulative risk from multiple contaminants or media, nor, does the RBC include screening levels for Lead (Pb) – a contaminant of concern at RGARS.

ISSUE 3. Mr. Carr states that the MDNR role at RGARS is limited to review and comment only, and the state does not hold veto power over the federal government remedial efforts per 42 USC § 9621 (f).

RESPONSE: We agree that 42 USC § 9621 (f) specifically states that "the President shall promulgate regulations providing for substantial and meaningful involvement by

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each state in initiation, development, and selection of remedial actions to be undertaken in that State." In addition as identified under CERCLA section 120 (a) (2) essentially that no Federal facility may use guidelines which are inconsistent with those established by the (EPA) Administrator or by the Act (CERCLA/SARA). This is all supported by 120 (a) (4) which indicates state law concerning removal and remedial action, including state laws regarding enforcement, shall apply to removal and remedial action at facilities owned or operated by a department, agency, or instrumentality of the United States when such facilities are not included on the National Priority list. " Currently, RGARS is not on that list. Further we maintain that RGARS must comply with Section 121(d) of CERCLA which outlines the degree of Cleanup. We are not aware that RGARS or the Air Force has made a determination to be inconsistent with the National Contingency Plan which would allow them to deviate from this process. While the Air Force has the right to make the decision on the remedial action, if that action is not considered protective of human health and the environment, enforcement actions and re-assessment of natural resource damages may be pursued. Under CERFA the state may also not support the Air Force transfer of the property.

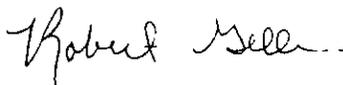
ISSUE 4. Mr. Carr states that the state has not met it's burden of proof for stricter cleanup requirements and that promulgated state ARARs for soil and groundwater have not been provided.

RESPONSE: ARARs for soil and groundwater protection were provided to the U.S. Air Force which are deemed legally applicable. In addition, Relevant and Appropriate Requirements paralleling these same requirements for cleanup to ensure protection of human health and the environment, have also been provided.

I hope to resolve these issues as soon as possible so that we can concentrate our efforts on a successful closure of RGARS under BRAC. Please contact me at (573) 751-3907 to discuss these issues.

Sincerely,

HAZARDOUS WASTE PROGRAM



Robert Geller, Chief
Federal Facilities Section, HWP

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c: Ms. Shelley Woods, AGO
Mr. Gene Gunn, U.S. EPA, Region VII
Mr. Bob Koke, U.S. EPA, Region VII
✓ Mr. Gary Reeves, AFBCA, Richards-Gebaur
Mr. Jim Woolford, U.S. EPA, HQ