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LETTER REGARDING U S EPA REGION IV COMMENTS ON DRAFT FINDING OF
SUITABILITY TO TRANSFER STUDY AREA 2 NTC ORLANDO FL
9/22/1999
U S EPA REGION IV

September 22, 1999

4WD-FFB

Mr. Wayne J. Hansel
Southern Division
Naval Facilities Engineering Command
P.O. Box 190010
Charleston, SC 29419-9010

SUBJECT: Comments on the Draft Finding of Suitability to Transfer (FOST) and Draft Environmental Baseline Survey for Transfer (EBST) for the Herndon Annex at Naval Training Center, Orlando, Florida

Dear Mr. Hansel:

The United States Environmental Protection Agency (EPA) has completed the review of the Draft Finding of Suitability to Transfer (FOST) and Draft Environmental Baseline Survey for Transfer (EBST) for the Herndon Annex at Naval Training Center, Orlando, Florida, dated July, 1999.¹

As per the FOST provided, the Navy intends to transfer the Herndon Annex, a non-contiguous property of the Naval Training Center, Orlando, Florida, including 54 acres of land and 9 buildings/ structures and associated realty, to the City of Orlando, for use by the Greater Orlando Airport Authority as a support facility for the Orlando Executive Airport, consistent with past use of the property.

¹Review of this request was conducted under CERCLA § 120(h).

Before the EPA can give final comment on the FOST, we must review final documents.² Therefore these comments are draft in nature. EPA expects to receive a copy of the deed(s) or other transfer documents inclusive of all terms (including notices/covenants) both prior to and after execution of the documents. The statement in the FOST that notices and restrictions will be included in the transfer documents affords less certitude of protection of human health and the environment than do the complete transfer documents.

EPA expects to attach any of our comments, to the extent they are not incorporated into or addressed by the final EBST, FOST, contract for sale³ and/or deed or assignment⁴ of transfer, as unresolved regulatory comments in an attachment to the documents.⁵

EPA reserves the right to alter our opinion of the suitability of the transfer upon receipt of the final FOST and executed transfer documents.

EPA is concerned with both protecting human health and the environment and achieving Congress' goal of expeditiously transferring uncontaminated and remediated real property to communities for economic redevelopment. EPA cannot provide concurrence with the proposed transfer based on the information currently available. Upon the Navy's providing information which will satisfy the following comments, EPA will be able to determine whether the transfer of the subject property is suitable.

² OLS considers "final form" to mean a final draft with all attached appendices. A FOST should include all proposed transfer documents in their entirety with all attached appendices. In the case of a deed or other transfer document, this is the form as it will be presented for signature to the prospective grantee, and as it will be signed by both the prospective grantee and the DoD.

³ CERCLA requires that whenever the DoD enters into a contract for the sale or transfer of property on which any hazardous substance was known to have been stored for a year or more, released, or disposed of, the contract include notice of the type, quantity and time of storage, release or disposal. CERCLA § 120(h)(1).

⁴ CERCLA § 120(h)(3)(A).

⁵ "Regulatory agencies will be notified at the initiation of the EBS and the FOST. The process of development of these documents will be designed to assure that regulators are provided adequate opportunity to express their views. Regulators will be provided with workable draft documents as they become available. Regulatory comments received during the development of these documents will be reviewed and incorporated as appropriate. Any unresolved regulatory comments will be included as attachments to the EBS or the FOST." DoD Guidance on the Environmental Review Process to Reach a Finding of Suitability to Transfer (FOST) for Contaminated or Remediated Property, § IV(A).

COMMENTS

Finding of Suitability to Transfer (FOST)

1. Section 3.0, Past Use and Proposed Reuse. This section states that proposed reuse will be consistent with past use. This conclusory statement should be backed up with more specific information so that this statement can be verified. Please describe the specific proposed uses.
2. Section 4.0, Environmental Findings. This section states that surface soil, subsurface soil and groundwater sampling supported the Orlando Partnering Team No Further Action decision. Please note that field activities at SA 43 did not include groundwater sampling.

This section states that a plume of groundwater contaminated with benzene in excess of State *and* Federal MCLs was identified under SA2 (the Herndon Annex Landfill). It also states "since no current source of benzene contamination can be identified on Herndon Annex the remedy of choice by the OPT is to install a quarterly monitoring program." The conclusion that the remedy of choice is quarterly monitoring is not supported by the fact that no current source of benzene has been identified at Herndon Annex. The two are not logically related. Further, this conclusory statement does not provide evidence that a remedial action has been taken which will be protective of human health and the environment.

Information contained in Section 7.4 of the EBST states that quarterly groundwater monitoring will be conducted for one year, in addition to a first-quarter focused risk assessment. If, after one year, the contamination of the groundwater has not attenuated through natural processes, additional remedial measures may be found to be warranted. This information is pertinent to both the reader's understanding of the context of the remedial decision relating to groundwater and to a finding of suitability to transfer. Please include this information in the FOST.

In addition, please provide information, including plume characterization data, that will demonstrate that the remedy selected will support placing in the deed the statutorily required CERCLA §120(h)(3)(B) covenant that all remedial action necessary to protect human health and the environment has been taken before the date of transfer.

In the alternative, if there is an insufficient factual basis to support placing the covenant in the deed, the Navy must utilize the covenant deferral provisions of CERCLA §120(h)(3)(C) to continue with this transfer. Under this alternative, unless the Navy follows the strictures of the covenant deferral provisions, the transfer would not be suitable.

3. Section 5.0, Requirements Applicable to Property Transfer, B. Hazardous Substance Notice. This section states that there are no records to indicate that any of the substances listed were released or disposed of on the Property or were above reportable quantities. While the FOST indicates that there is no information regarding the source of the benzene plume located under SA2, the Navy, at least, has information about the presence and chemical characteristics of the plume. CERCLA §120(h)(1) requires that in the case of property owned by the United States on which any hazardous substance was known to have been released, or disposed of, each deed entered into for the transfer of such property shall contain a notice of the type and quantity of such hazardous substances, notice of the time at which such storage, release or disposal took place and a description of the remedial action taken, if any. While all the information listed above may not be known, such information as is known must be included in the deed, regardless of whether the source of the benzene has been identified.

4. Section 5.0, Requirements Applicable to Property Transfer, C. CERCLA Covenants. This section indicates that the CERCLA §120(h)(3)(A)(ii)(I) covenant that all remedial action necessary to protect human health and the environment with respect to hazardous substances remaining on the property has been taken before the date of transfer. Please see comment 2 above.

The section also indicates that the CERCLA s 120(h)(4)(D)(i) covenant will be included in the deed. This covenant is appropriate for uncontaminated property, but not for property on which remedial action has been taken. Please clarify whether this covenant is appropriate for this transfer.

5. Section 5.0, Requirements Applicable to Property Transfer, D. CERCLA Access Clause. Please correct the citation to the CERCLA access clause to read CERCLA Section 120(h)(3)(A)(iii).

6. Section 5.0, Requirements Applicable to Property Transfer, E. Land and/or Groundwater Restrictions. The first restriction indicates that the use of the surficial aquifer groundwater should not be used for drinking or irrigation. The restriction on withdrawal of groundwater from this aquifer should not be limited to these particular purposes. Please revise the first restriction to read: "Prohibition on the use of surficial aquifer groundwater for any purpose, including, without limitation, drinking or irrigation." In the alternative, it may be advantageous to limit the activity which grants access to the groundwater rather the activities of end-use. In that case, the restriction should read: "Prohibition on drilling of any groundwater wells into the surficial aquifer." A further restriction should be included prohibiting damage to existing monitoring wells.

Please clarify whether drilling through the contaminated surficial aquifer to a deeper uncontaminated aquifer poses a risk of contamination to the deeper aquifer. If so, drilling of any wells into and through the surficial aquifer should also be prohibited.

The second restriction indicates that residential use of land within the landfill boundary is prohibited. It is unclear whether this implies that non-residential use of this land is protective of human health and the environment. Please clarify whether the Navy considers that non-residential use of land within the landfill boundary will be protective of human health and the environment. If it does not, the restriction should be revised to so state.

The third restriction restricts excavation and construction activities within the landfill boundary. To remove any ambiguity about the intent of the third sentence, please revise it to read, "Any activity involving the disturbance of soil below 12 inches must be approved in advance by the State and EPA, and any excavated soil must be disposed of properly in accordance with all Federal, State and local laws and regulations."

Please show the boundaries for the above mentioned groundwater and/or land use restrictions.

7. Notice of Hazardous Substance Storage. This notice was not referenced in Section 4.0 Environmental Findings. Please add such a reference. Since the Navy suspects that the hazardous substances described in the notice were stored in quantities at or greater than reportable quantities, this table should be attached to any contract for sale or other transfer as well as the deed. Please clarify whether the Navy intends to so attach the notice. The notice should also be accompanied by the following language from 40 CFR 373.3, prominently displayed: "The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or "Superfund") 42. U.S.C. section 9620(h)."

Environmental Baseline Survey for Transfer

8. Environmental Condition Summary. This section states that the Navy and the City of Orlando conducted a well survey and concluded that there were no permitted potable water wells in the adjacent neighborhood. This omits information in Appendix D, which included the Harding Lawson Associates report, which recommended that a focused risk assessment be conducted to evaluate potential exposure (to contaminated groundwater) due to private irrigation wells known to exist in the Azalea Park Neighborhood. Please correct the EBST to state that, though there are no known potable water wells in the adjacent neighborhood, private irrigation wells are known to exist in the Azalea Park Neighborhood. Please clarify the risk of exposure to benzene through the irrigation wells.⁶

⁶This section references Sections 7.3 (Institutional Controls) and 7.4 (Recommendations for

9. Section 7.1, Property Classification. This section states that the property has been classified as 4/Dark Green making the property suitable for transfer for the intended use. Sections 7.3 and 7.4 describe the remedial action recommended by the BRAC Cleanup Team as stated in the Site Screening Report. In such report, the BCT recommended to make SA2 eligible for transfer and the site reclassified from 7/Gray to 4/Dark Green after institutional controls and the chosen remedial alternative (monitoring) are in place. The FOST and the EBST does not include enough information to support that these measures are in place and will demonstrate that all remedial action necessary to protect human health and the environment has been taken before the date of transfer. Please clarify under what basis the property has been classified as 4/Dark Green.
10. Section 7.3, Institutional Controls. See comment 6 above.
11. Section 7.3, Institutional Controls. Section 7.3 states that the groundwater use restriction will include an advisory to the St. Johns River Water Management District and the City of Orlando that no surficial wells are to be permitted while the restriction is in effect. First, please clarify whether this section intended to be read "... that no surficial *aquifer* wells are to be permitted..." Second, an advisory to the St. Johns River Water Management District would be insufficient to gauge whether the Water Management District would agree with the advisory. Before relying upon advisories to provide protection to human health and the environment, the Navy should gain the alignment from the Water Management District that the District will permit no surficial aquifer wells until such time as groundwater monitoring by the Navy reveals that contamination is below MCLs.
- The advisory to property owners should include the potential hazards from contamination in private irrigation wells as well as potable water wells. In addition, since owners of current private irrigation wells have been identified through the survey, they should be individually notified of the potential hazards.
12. Section 7.4, Recommendations for Further Action. This section states that the City of Orlando and/or any subsequent land owner is responsible for ensuring that zoning and redevelopment activities are consistent with land use and groundwater restrictions. Though both the City and subsequent land owners will play an important role in adhering to clearly defined restrictions, the Navy will bear the ultimate responsibility for

Further Action). See comments under title of those sections.

monitoring the land use restrictions and ensuring that they are, in fact, followed. Please describe the system by which the Navy will monitor and enforce the land use controls over the life of the remedy of which they are a part.

13. Section 8.0, Certification of EBST. This section should also include that the property conditions stated in the report are based on environmental investigations as well.
14. The 'Environmental Restoration, Defense,' provision in the Department of Defense Appropriations Act of 1993 (H.R. 5504, 102d Cong.) provides that if DoD transfers or leases real property to a state or the political subdivision of a state, the U.S. shall hold harmless, defend and indemnify the State or political subdivision from all claims, demands, losses, damages, liens, liabilities, injuries deaths, penalties, fines, lawsuits and other proceedings, judgements awards and costs and expenses arising out of, or in any manner predicated upon, the presence, release or threatened release of any hazardous substance, pollutant or contaminant resulting from DoD activities, including the activities of any lessee, licensee or other person on the property during any time that the property was under DoD control. The FOST does not indicate the existence of such a provision, but it is a statutory imperative that the deed include such a provision.

If the military chooses not to respond to these comments, EPA should consider characterizing our comments as "unresolved regulatory comments" pursuant to DoD policy on FOSTs, and have said comments placed as an attachment to the FOST. DoD should be placed on notice that their failure to comply with the above-delineated CERCLA requirements, may subject the Facility to citizen suits under CERCLA § 310 for failure to perform specified, non-discretionary duties.

If you have any questions about these comments, please call me at (404) 562-8536.

Sincerely,

Nancy Rodriguez
Remedial Project Manager

cc: Barbara Nwokike, SouthDiv
Dave Grabka, FDEP