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LETTER FROM MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY REGARDING
REMEDIAL ACTION FOR DIOXIN CLEANUP SITE 8 NCBC GULFPORT MS
10/6/2004
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY



STATE OF MISSISSIPPI
HALEY BARBOUR
GOVERNOR
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY
CHARLES H. CHISOLM, EXECUTIVE DIRECTOR

October 6, 2004

Mr. R.C. Davis, Jr., P.E.
Director, Environmental Restoration Division
Department of the Navy
Southern Division
Naval Facilities Engineering Command
P.O. Box 190010
2155 Eagle Drive
North Charleston, S.C. 29419-9010

Dear Mr. Davis:

Re: Remedial Action for Dioxin from Site 8
Private Property Off-Site
NCBC – Gulfport, MS

This letter is in response to your letter of September 13, 2004, that I received on September 20, 2004, concerning a proposed CERCLA remedial action and its impact on the property in question that is in our Brownfields Program. Very briefly, the Brownfield Regulations that we operate under virtually mirror the State's Brownfield Law; and the law is very proscriptive and does not provide for variances. Therefore our regulations do not provide for variances either. It was our opinion that because the property in question for remediation was privately owned and not a part of the Naval Construction Battalion Center that the liability protection afforded by the Brownfield Program would be an added benefit that the Navy could provide to the property owner. As discussed later in this letter, the Navy can withdraw the property from the Brownfield Program; and you must also be aware that the proposed CERCLA remedial action on the property could eliminate the property from the Brownfield Program if no further remediation of the property is required after the CERCLA remedial action.

ISSUE #1 – Will proceeding with CERCLA cleanup force us to withdraw from Brownfields?

The answer is that it possibly could require that you withdraw from the Brownfields program. Proceeding with the CERCLA cleanup will not necessarily force withdrawal from the program but one critical fact must be kept in mind. If as a result of the CERCLA cleanup the site were remediated to the point that no other remediation is required, then the site is no longer eligible for Liability Protection. Section 105(f) of the Brownfield Regulations states "Only Brownfield properties which require remediation may be included in a Brownfield Agreement." Also, remember that a part of the Brownfield process is to allow for public participation in the process and if the CERCLA cleanup remediates the property then this precludes the public participation required under the Brownfield Regulations.

ISSUE #2 – Completion of the Site Characterization Report (SCR)

The Brownfield Regulations require "that as a result of the proposed remediation, the Brownfield property will be suitable for the use or uses specified in the application while fully protecting public health and the environment." {Section 201(a)(1)} We read and interpret this to mean that in order to fully protect public

health and the environment that we must have analytical data that either proves or disproves the presence of any contamination on the property. Also, remember that the Department is giving the parties liability protection from future remediation of the property. We have always read and interpreted the regulations to require that we know up front what, if any, contamination is present on a property in the Brownfield Program because of these regulatory requirements.

If contamination other than dioxin contamination is found on the site as a result of the site characterization, and the Navy can attribute these contaminants to another source, then we can structure the liability coverage that the Department is providing accordingly. Obviously, if the Navy were not responsible for certain contamination then the Department would not require that the Navy remediate that contamination.

I do not understand the reference to two Section 8's in the Site Characterization Report format. The format for the SCR that I have has a Section 8 for Quality Assurance and a Section 9 for Summary and Conclusions. The two sections are not the same. If the copy of the SCR format that you have has two Section 8's then it is an error and is easily corrected.

Again, I do not know what figures that you wish to combine. However, if the combining of some figures makes sense then I do not see where we have a problem. If the question is about referring to figures in other documents, then this would not be acceptable. We are dealing with two distinct pieces of property, one owned by the Navy and one owned by a private party. The documents dealing with the two specific properties need to be stand alone documents.

ISSUE #3 – Completion of the Eco-Risk Evaluation

The Eco-Risk Evaluation should be completed to the point of determining what the acceptable ecological risk concentration is for dioxins for the property. The SCR would then provide the actual data for determining whether the ecological risk concentration has been met and whether further remediation is required. If the Navy wishes to wait and finalize a ecological risk evaluation until after the SCR and any further remediation is done that may be required, then I believe that is acceptable. Again, I repeat that at this time the ecological risk evaluation should be taken to the point of determining the acceptable ecological risk concentration for Contaminants of Concern (CoC) on the property.

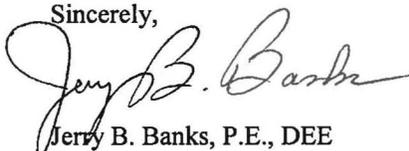
I agree that there is some degree of confusion in our ecological risk evaluation regulations and guidance. We will re-evaluate, clarify, and take appropriate actions to make the regulations and guidance clear. As you pointed out, the ecological risk evaluation should move you from Tier 1 straight to Tier 3 if you fail to meet any of the Tier 1 conditions (i.e. straight to EPA Risk Evaluation Procedures). To make changes or clarifications to the regulations requires that we comply with the State Administrative Procedures Act that includes public participation and cannot be done quickly or easily.

ISSUE #4 – Completion of the Correction Action Plan (CAP)

Again as with Issue #1, the Department can accept the postponement of the CAP but please be aware that if the CERCLA remediation action remediates the site to where no further remediation is required, then the property will be removed from the Brownfield Program and handled under the CERCLA Program.

If you have further questions or concerns please call me at 601-961-5221 or email me at Jerry_Banks@deq.state.ms.us.

Sincerely,



Jerry B. Banks, P.E., DEE
Chief, Groundwater Assessment & Remediation Division