

----- Forwarded by John Beach/R9/USEPA/US on 04/18/2007 03:50 PM -----

John Beach/R9/USEPA/US

To Dan Hirsch

cc Steve Armann/R9/USEPA/US@EPA, Kathy Setian/R9/USEPA/US@EPA

Subject Re: EE/CA issues for Wk Group (Document link: John Beach)

Dan:

Thank you for sending your written questions and concerns regarding the United States Environmental Protection Agency's ("EPA") role and position with respect to the Engineering Evaluation/Cost Analyses ("EE/CA") prepared by the United States Department of Energy ("DOE") for Building 4024 and the Radioactive Materials Handling Facility ("RMHF") (collectively, the "Two EE/CAs") at the Santa Susana Field Laboratory's ("SSFL") Energy Technology Engineering Center ("ETEC") in Simi Valley, California (the "Site"). We understand that the SSFL Workgroup requested that an EPA representative address the concerns expressed in your March 23, 2007 email at the next Workgroup meeting. Unfortunately, the EPA staff member, Kathy Setian, who provided EPA's comments to DOE on the Two EE/CAs is not available for the April 19, 2007 Workgroup meeting. I plan to attend the meeting, and with input from Ms. Setian, I have prepared the following response to the issues you have raised.

Before addressing the specific issues you have raised, EPA offers the following background information in order to help clarify its role in the consultation process for the Two EE/CAs.

Under Executive Order 12580 (52 Fed Reg 2923, January 23, 1987), the President delegated to DOE the authority to conduct cleanup actions at DOE facilities when the cleanup is undertaken pursuant to the Comprehensive Environmental Response, Compensation & Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq. Under Executive Order 12580, DOE, rather than EPA, has primary decision-making authority at the Site, including authority to select the response action and set the cleanup standards.

Although DOE is the primary decision-making authority at SSFL, it agreed, as specified in the 1995 DOE/EPA "Policy on Decommissioning Department of Energy Facilities Under CERCLA" ("Joint Policy")

(attached), to consult with EPA when decommissioning its facilities under CERCLA. Although the Joint Policy gives EPA a consultation role, it gives EPA no legal authority to take any additional action at Building 4024, the RMHF, or at any other part of the Site. Neither Executive Order 12580 nor the Joint Policy gives EPA authority to formally approve, disapprove, or otherwise authorize DOE's actions.

DOE has elected to use its authority as the lead agency to address the radiological contamination at Building 4024 and the RMHF using non time-critical removal actions. In November 2006, DOE initiated consultation with EPA under the Joint Policy, and it requested that EPA review working drafts of the Two EE/CAs the following month. EPA provided DOE with comments on the Two EE/CAs on January 11, 2007 (attached). Those comments are strictly limited to DOE's non time-critical removal actions proposed for the Building 4024 and RMHF facility footprints.

On April 26, 2002 EPA provided DOE with comments on the Draft Environmental Assessment for ETEC, and on December 5, 2003 provided DOE with comments on the Final Environmental Assessment for ETEC (both attached). In its comments, EPA recommended that DOE: (1) use the CERCLA process to evaluate and select a cleanup alternative for ETEC, and (2) collect additional site investigation data of a quantity and quality sufficient to support a risk-based cleanup level and remedy for the Site. EPA stands by the position it expressed in its April 26, 2002 and December 5, 2003 comment letters. EPA communicated that fact in its February 21, 2007 letter to DOE (attached).

As you know, EPA recently announced that it will perform a new Hazard Ranking System analysis to determine whether the SSFL property as a whole has a preliminary score sufficient for possible listing on the National Priorities List. That action does not change these comments.

To address the specific issues you raised in your e-mail, I have inserted EPA's responses into the text of your original e-mail below.

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om

03/23/2007

John Beach/R9/USEPA/US@EPA

To
09:16

AM
associates.com
EE/CA issues for Wk Group

cc

[marie@rainwater-](mailto:marie@rainwater-associates.com)
Subject

John --

You asked for a summary of the issues we would like EPA to address about its EE/CA consultation:

1/ The basis for EPA reversing its long-held position that the site should be cleaned up to the most restrictive (from a health standpoint) land use scenario, which in the case of SSFL was held to be rural residential, given current zoning and other factors. Instead, EPA OK'd the EE/CAs using the suburban residential scenario.

<EPA Response 1> EPA has not reversed its position on DOE's cleanup at SSFL. EPA's position, as expressed in our April 26, 2002 and December 5, 2003 comment letters to DOE, remains that the cleanup at the Site should follow the CERCLA process. EPA's CERCLA guidance calls for the lead agency at a site to consider the reasonably anticipated future land use when setting cleanup levels and selecting a remedy (OSWER Directive No. 9355.7-04) (attached). Under the guidance, DOE, as the lead agency, is directed to consult with local land use officials and the public about anticipated future land uses at the facility footprints for Building 4024 and the RMHF and at the Site as a whole. After consultation, DOE, not EPA, has the authority to make a final determination regarding the reasonably anticipated future land use and the appropriate cleanup levels and remedy.

The Two EE/CAs, having been issued prior to DOE's final land use determination, refer to "unrestricted land use". EPA generally defines unrestricted land use to mean residential use. In rare instances if land use was reasonably anticipated to be subsistence farming, EPA would provide an alternative exposure scenario. Unless DOE makes an alternative land use determination, it is appropriate to use residential exposure as the baseline for unrestricted use.

EPA has conducted a file review and interviewed the Site's previous project manager, Tom Kelly. Although Mr. Kelly drafted a table in 1999 entitled "A Comparison of DOE Approved Cleanup Levels for ETEC, 10-6 Residential Levels and "Background" Levels",

the purpose of that table was to illustrate differences in ideal detection limits for EPA's proposed Area 4 survey and the final status survey that DOE proposed at the time. The values presented in that table as "EPA 10-6 Level" were based on a subsistence farming exposure scenario, named "rural residential" in the source document cited. To the best of our knowledge, EPA has never taken the position that subsistence farming is the appropriate exposure scenario for setting cleanup levels at the Site. We do not believe that the table was ever intended to be, or represented as, our position on what the final cleanup levels should be at SSFL.

2/ The basis for EPA reversing its long-held policy that the cleanup objective was to get as close to 10-6 as feasible, falling back on the minimum amount necessary and only after justifying it by the 9 CERCLA criteria. Instead, EPA OK'd the EE/CAs setting the objective as cleaning the site up to anywhere in the 10-4 to 10-6 range for the scenario chosen, which in the real world means 10-4. The reversals by EPA on Items 1 and 2 collectively meant approving standards that were as much as 10,000 times less protective than EPA previously had insisted upon.

<EPA Response 2> EPA has not reversed its position regarding DOE's use of the appropriate risk scenarios for setting cleanup levels at the Site. The Two EE/CAs incorporate EPA's recommendation that the removal actions achieve the objective of "[lowering] the excess cumulative cancer risk to an individual from exposure to site radiological contaminants in soil to a nominal range of 10-4 to 10-6, using 10-6 as the point of departure" (italics added). This wording is based on language in the National Oil and Hazardous Substances Pollution Contingency Plan (The NCP, 40 CFR 300), the regulation that defines that standard.

3/ The basis for EPA saying in its January letter that the EE/CAs don't meet EPA guidance for EE/CAs, but EPA would give its assent to them anyway.

<EPA Response 3> EPA did not say that the Two EE/CAs did not meet EPA guidance for EE/CAs. EPA's guidance on preparation of EE/CAs allows for flexibility based on the circumstances at each site. EPA believes that DOE's "streamlined" approach to the Two EE/CAs is appropriate given the nature of the cleanup activities and the circumstances presented at Building 4024 and the RMHF.

4/ The basis for EPA reversing its long-standing insistence that there be a new site characterization (in this case, characterization of the two areas to be remediated) rather than rely on the earlier Rocketdyne work that EPA formally found flawed and needing to be redone.

<EPA Response 4> As stated in the Two EE/CAs, before completion of the removal actions, DOE will perform additional sampling at Building 4024 and the RMHF, as part of a final status survey, to confirm that the removal action objectives identified in the EE/CAs have been met. With respect to site characterization for all other portions of the Site (i.e., everything but the facility footprints for Building 4024 and the RMHF) EPA's position, as expressed in the April 26, 2003 and December 5, 2003 comment letters to DOE, continues to be that the clean up should follow the CERCLA process. Our comments on and consultation regarding the EE/CA's does not changed that assessment.

5/ The basis for EPA reversing its long-standing position that the site would not be safe for unrestricted residential use given the lack of adequate characterization, use of insufficiently protective cleanup criteria, and failure to rigorously follow CERCLA. Instead, EPA approved RR/CAs saying those areas would be released for unrestricted residential use.

<EPA Response 5> In order to understand EPA's comments on the Two EE/CAs, it is critical to distinguish between (1) the facility footprints for Building 4024 and the RMHF and (2) the rest of the Site. EPA believes that the cleanup of the facility footprints at Building 4024 and the RMHF, as proposed in the Two EE/CAs, will make those two specific parcels safe for unrestricted use. With respect to the remainder of the Site, EPA has not reversed its position, expressed in the April 26, 2003 and December 5, 2003 comment letters to DOE, as discussed above. Our comments on and consultation regarding the EE/CA's does not change that assessment.

6/ The basis for EPA reversing its long-standing position that the cleanup decisions had to be subject to significant public opportunities for comment and involvement. Instead, EPA signed off on EE/CAs that were initially only noticed by single ad in two papers, with no notification of their availability via the mailing list for community members and no notification to reporters or legislators. <<SNIP>>

<EPA Response 6(a)> As the lead agency, DOE is responsible for providing public notice of the EE/CAs' availability for comment. EPA had no role in DOE's public notice process or decision making. Concerns regarding the adequacy of DOE's public involvement process should be raised with DOE.

6/ <<Continuation from SNIP above>> Additionally, EPA agreed to EE/CAs that did not even include the cleanup levels to be used, merely saying that after the public comment period was over, "a risk management decision would be made" about what those levels should be--with no indication of who would make the decision, on what basis, and with

no opportunity for public review and comment.

<EPA Response 6(b)> The EE/CAs describe the risk management decision process specified by CERCLA and the NCP. In that process, following a removal action, residual risks are evaluated. If the residual cancer risk estimates fall within the range of 10^{-6} to 10^{-4} , risk management decisions about the protectiveness of the remedy and the need for additional cleanup are made by the lead agency (DOE, in this case). The EE/CAs also describe the public involvement component of removal actions that is provided in the NCP.

The removal actions are DOE actions. Questions or concerns about future public involvement or DOE decision criteria for their risk management decisions should be directed to DOE.

7/ Whether, as DOE claims, EPA has now approved its cleanup decisions. Even if the approval is supposedly limited to these two EE/CAs, how can EPA do anything other than approve, or be seen as approving, the overall cleanup standards for the site, given that it has now approved the same standards for these two areas--reversing years of EPA position?

<EPA Response 7> EPA's comments on the Two EE/CAs are strictly limited to the removal actions at the facility footprints for Building 4024 and the RMHF. With respect to the rest of the Site, EPA stands by its position, as expressed in the April 26, 2003 and December 5, 2003 comment letters to DOE, that the cleanup should follow the CERCLA process.

8/ Any communications to and from legislators about EPA's actions with regards these EE/CAs. What concerns have been expressed by legislators? What commitments were made by EPA? Has EPA lived up to the commitments it made the legislators about the EE/CAs?

<EPA Response 8> We have had a number of conference calls with representatives of elected officials regarding our consultative role and comments on the EE/CAs. Their concerns are similar to those you expressed in your e-mail, including questions about the nature of our role in the removal actions and site-wide cleanup and whether our previous statements remain in force. EPA believes that it has met the commitments it has made to the legislators.

9/ Plans for future consultations with DOE over the remaining cleanup, which we understand is accelerating and will soon close out. Leach field; tritium contamination in groundwater; the overall release of the site, as to rad contamination?

<EPA Response 9> EPA will engage in additional consultation as needed and as appropriate under the Joint Policy.

Dan Hirsch