



DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DIVISION, GREAT LAKES AND OHIO RIVER
CORPS OF ENGINEERS
550 MAIN ST.
CINCINNATI, OH 45202

FEB 20 2007

Military Integration Division

Bonnie B. Buthker
Ohio Environmental Protection Agency,
DSMOA Program Manager for Ohio
401 East Fifth Street
Dayton, Ohio 45401-2911

Dear Ms. Buthker:

This is in response to your January 11, 2007, letter concerning the decision to stop new work at Plum Brook Ordnance Works (PBOW) and a possible determination that someone other than the Department of Defense (DoD) may be responsible for cleanup as well as the assignment of project management responsibilities at PBOW. I have attached a copy of your letter for reference.

I appreciate your recognition of the work that Huntington and Nashville Districts are accomplishing at PBOW. I agree with your assessment that they are a high performing team, they are performing work at PBOW in an exemplary manner, and that progress is being made on cleaning up the property. Recent changes at the national level have been instituted to improve the efficiency and effectiveness of the Formerly Used Defense Sites (FUDS) Program. It has been agreed that the Huntington District will retain project management responsibilities for on-going work at PBOW and that the Nashville District will continue to support the Huntington District at PBOW. Any change in team composition as members retire or are reassigned, will be coordinated with all stakeholders, including OEPA. The Louisville District has been designated as the Program and Project Management District for this work and will exercise oversight in this capacity.

Regarding DoD's responsibility at the site, Huntington District's recent records review reveals that other potentially responsible parties (PRPs) may have been identified. These initial findings show that an operational analysis of the site to determine these PRPs' responsibility must be undertaken. This analysis is necessitated by federal law and Department of Defense (DoD) regulations. These rules provide that the United States Army Corps of Engineers (USACE), in its efforts to restore Formerly Used Defense Sites (FUDS) and in complying with the Defense Environmental Restoration Program (DERP), must attempt to ascertain DoD's liability and negotiate a fair and equitable settlement with other PRPs before proceeding with its own response action. Expending FUDS funds to cleanup a site where DoD is not responsible for causing the contamination constitutes a federal fiscal law violation.

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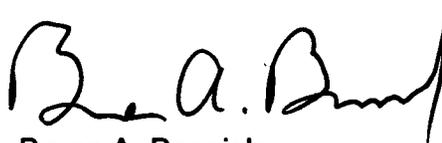
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I share your concerns with the need for prompt resolution of these matters. Coordination with our Headquarters to initiate an investigation of the operational history at the site has already begun. USACE will resolve these issues as expediently as possible so that further cleanup can legally proceed. You will be kept informed of our decision-making process.

I look forward to working with you on this issue so that USACE can act in accordance with law and in the best interest of the public. Should you have additional concerns related to cleanup of PBOW, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "B. A. Berwick". The signature is fluid and cursive, with a prominent vertical stroke at the end.

Bruce A. Berwick
Brigadier General, U.S. Army
Division Engineer

Enclosure



State of Ohio Environmental Protection Agency

Southwest District

401 East Fifth Street
Dayton, Ohio 45402-2911

TELE: (937)285-6357 FAX: (937)285-6249
www.epa.state.oh.us

Ted Strickland, Governor
Lee Fisher, Lt. Governor
Laura Powell, Acting Director

January 11, 2007

Brig. Gen. Bruce A. Berwick, Commander
U.S. Army Corps of Engineers
Great Lakes and Ohio River Division
P.O. Box 1159
Cincinnati, Ohio 45201-1159

Dear Brig. Gen. Berwick:

On December 21, 2006, Ohio EPA was informed of two changes that would impact the investigation and remediation of the former Plum Brook Ordnance Works (PBOW). The purpose of this letter is to convey our concerns regarding these changes and to request that the Army Corps reconsiders these decisions.

The first change concerns the decision to stop the initiation of new projects at the PBOW until a legal review of deed transfer language is complete. The rationale for this decision was to provide time for the Army Corps to evaluate if language in the transfer documents completed in the 1960s indemnifies the Department of Defense (DoD) from addressing contamination found at PBOW before they expend any additional funds. I understand that the Army Corps does not want to expend funding to address contamination that may be the responsibility of another party {the National Aeronautics and Space Administration (NASA)}. Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the parties liable to address contamination include both the property owners and those that caused the contamination. The contamination being investigated under the Formerly Used Defense Sites (FUDS) Program was caused by past DoD activities at PBOW, and not caused by activities conducted by NASA. In addition, the transfer of property at PBOW occurred in the early 1960s, before the hazards associated with past waste management and disposal practices were understood. Ohio EPA feels that it is unlikely that the personnel involved at the time would have agreed to take on liability to address contamination, when no one knew it was a hazard. Unfortunately, while the Army Corps tries to decide whether these indemnification clauses apply to environmental liability or only liability associated with health and safety, the contamination present at PBOW is not being remediated – and poses a potential risk to human health and the environment. I ask that the Army Corps reconsiders this decision and commits to address contamination associated with the past DoD activities at the PBOW under the Formerly Used Defense Site Program.

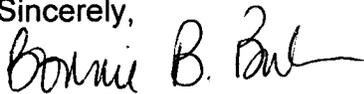
The second change concerns the Army Corps decision to change project management responsibilities from the Huntington District to the Buffalo district. Ohio EPA is very

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U.S. Army Corps of Engineers
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concerned about this change. The Huntington District (with technical support from the Nashville District) has been managing this project for over 12 years now. Their expertise in dealing with this site is essential as projects move from investigation to the remediation stage. Changing project management now to a district with personnel that have no knowledge of PBOW will jeopardize progress and extend remediation schedules. In addition, the current Army Corps team has worked very hard to address stakeholder concerns about this site and has support of the PBOW RAB. According to the December 29, 2006 letter from the PBOW RAB Community Co-Chair, the RAB unanimously agreed that the current Army Corps project management team should remain. They therefore decided to send a letter to you (with copies to elected officials) requesting that the current Army Corps team remain. If the RAB feels this strongly about the current team, changing project teams could cause the RAB to no longer support your activities. This lack of support from the RAB may potentially impact progress as well. I therefore ask that the Army Corps reconsiders this decision.

Thank you for considering these requests. If you have any questions or wish to discuss these concerns with me, please contact me at (937) 286-6469.

Sincerely,



Bonnie B. Buthker
DSMOA Program Manager for Ohio
Federal Facilities Section
Division of Emergency and Remedial Response.

CC: Cindy Hafner, DERR/CO
Paul Jayko, DERR/NWDO
Patricia Bertsch, USACE, Ohio River Division
Richard Meadows, USACE, Huntington District
Robert F. Lallier Jr., NASA
Mark Bohne, PBOW RAB Community Co-Chair

BBB/plh