



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

Military Integration Division

MAR 3 2008

Thomas A. Winston, PE  
Ohio Environmental Protection Agency,  
Chief, Southwest District Office and Federal Facilities Unit  
401 East Fifth Street  
Dayton, Ohio 45402-2911

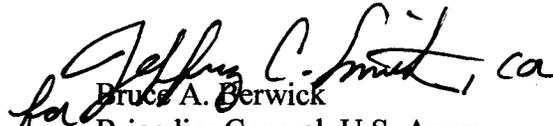
Dear Mr. Winston:

This is in response to your October 22, 2007, letter concerning a possible determination that someone other than the Department of Defense (DoD) may be responsible for cleanup at the former Plum Brook Ordnance Works (PBOW). I have attached a copy of your letter for reference as well as a copy of the response from headquarters, U.S. Army Corps of Engineers (HQUSACE) to a similar letter from the PBOW Restoration Advisory Board (RAB).

Since the inception of the Formerly Used Defense Sites (FUDS) program, there have been requirements to evaluate the circumstances of the past transfer of properties from DoD to others for the purpose of considering responsibility for the site. As a result of clarifying guidance recently issued by HQUSACE, we are evaluating project eligibility at PBOW. In the meantime, USACE is continuing to work on on-going projects.

I appreciate you putting your concerns in writing and assure you that they will be considered. Should you have additional concerns related to cleanup of PBOW, please do not hesitate to contact me.

Sincerely,

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

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State of Ohio Environmental Protection Agency

Southwest District Office

401 East Fifth Street  
Dayton, Ohio 45402-2911

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

October 22, 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

**Re: Plum Brook Ordnance Works, Sandusky, Ohio**

Dear Brig. Gen. Berwick:

On September 14, 2007, Ohio EPA attended the Restoration Advisory Board meeting for the former Plum Brook Ordnance Works (PBOW) site. At this meeting, we were provided a copy of a Formerly Used Defense Sites (FUDS) program document entitled "Supplemental Guidance on the Determination of Appropriate Action for Eligible FUDS Properties with Clauses in Property Transfer Documents Affecting Responsibility" (dated September 5, 2007). Ohio EPA was also informed during the September 14<sup>th</sup> meeting that Army Corps legal staff felt that this guidance document justifies the Army Corps' position that the National Aeronautics and Space Administration (NASA) is liable for the investigation and remediation of contamination found at the PBOW site. Based on discussions with the Army Corps, Ohio EPA understands that this legal determination is based on a clause within the property transfer documentation that states that NASA accepted the property "as is" when it was transferred in 1963. The purpose of this letter is to explain Ohio EPA's objections to the Army Corps' determination.

On January 11, 2007, Ohio EPA sent you a letter raising our concerns regarding the Army Corps' decision to stop the initiation of new projects at the PBOW site until the Army Corps' legal review of deed transfer language was completed. Ohio EPA stated in that letter that, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the potentially responsible parties (PRPs) liable to address contamination include both past and present property owners and those parties that caused the contamination. Since 1994, the Army Corps had been investigating and remediating contamination associated with past Army activities at the PBOW site under the FUDS program. The only contamination found at the 13 remaining Areas of Concern (AOCs) at the PBOW site is directly related to the past operations of the facility as a former explosives production facility owned and operated by the Department of the Army during



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World War II. Since the FUDS program requires the Army Corps to determine if other parties may have caused contamination at a site before it can be investigated, Ohio EPA felt that an additional legal review would only delay necessary investigation and remediation at the PBOW site.

On February 20, 2007, the Army Corps sent a response to Ohio EPA's January 11<sup>th</sup> letter. In this response, the Army Corps stated that the legal review being conducted was based on information from the Huntington District that indicated that other PRPs may have been identified. The Army Corps also stated that, in order to comply with federal law and Department of Defense (DoD) regulations, a review must be conducted to determine DoD's liability associated with the contamination at the PBOW site. The letter also stated that expending FUDS program funds to remediate a site where DoD is not responsible for causing the contamination constitutes a federal fiscal law violation. While Ohio EPA remained concerned about the delay, the Army Corps agreed in their response to resolve these issues as expediently as possible so that further cleanup at the PBOW site could legally proceed. The Army Corps' February 20<sup>th</sup> letter did not mention that the Army Corps felt that NASA was responsible for addressing the contamination, since they accepted the property "as is" in 1963. Moreover, the February 20<sup>th</sup> letter did not dispute Ohio EPA's conclusion in our January 11<sup>th</sup> letter that the contamination investigated under the FUDS program at the PBOW site was caused by past DoD activities, not by activities conducted by NASA.

Ohio EPA understands that recent policy changes within the Army Corps may require a review of sites under the FUDS program. However, changes in Army Corps policy do not affect Ohio EPA's position regarding DoD's liability at FUDS in Ohio. Under CERCLA, the parties liable to address contamination include both past and present property owners and those parties that caused the contamination. Contamination at the 13 remaining AOCs at the PBOW site poses a potential threat to human health and the environment. Since the contamination found at the PBOW site is directly related to the Army's operation of an explosives production facility during World War II, the DoD is liable for addressing this contamination. We therefore request that you reconsider your decision to stop funding the necessary investigations and clean up actions at the 13 remaining AOCs at the PBOW site.

Ohio EPA feels that any further delays in addressing this contamination are unacceptable. Ohio EPA therefore reserves its right to take whatever action is necessary to ensure that this contamination is addressed as expeditiously as possible. Your prompt attention to this

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matter would be appreciated. Should you have any questions in this regard, please call me, at (937) 285-6016. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "Thomas A. Winston". The signature is written in black ink and is positioned above the printed name and title.

Thomas A. Winston, PE  
Chief, Southwest District Office and Federal Facilities Unit

cc: Cindy Hafner, DERR/CO  
Bonnie Buthker, DERR-FFS/SWDO  
Archie Lunsey/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  
Michael Saffran, USACE, Louisville District

DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS  
WASHINGTON, D.C. 20314-1000



Reply to  
Attention of:

FEB 20 2008

Great Lakes Ohio River  
Regional Integration Team

Mr. Mark F. Bohne, Co-Chairman  
The Plum Brook Ordnance Works Restoration Advisory Board (PBOW-RAB)  
311 East Mason Road  
P.O. Box 447  
Milan, Ohio 44846

Dear Mr. Bohne:

This letter is in response to your letter dated October 11, 2007 to multiple addressees with regard to the evaluation of cleanup responsibility at a property in Ohio known as Plum Brook Ordnance Works (PBOW). This response is on behalf of all the addressees in the Corps of Engineers.

The Corps of Engineers acts as DA's executive agent for the Formerly Used Defense Sites (FUDS) program. The Corps ensures all the properties meet the eligibility requirements for the cleanup under the program and USACE staff is currently reviewing PBOW eligibility requirements. All issues that you mentioned in your letter will be part of our evaluation. Currently there are no changes in cleanup plans for PBOW.

Thank you for your letter, which I received via our Great Lakes and Ohio River Division office. Should you have any question please feel free to contact US Army Corps of Engineers, Division Commander, BG. Bruce A. Berwick.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Joseph Tyler, P.E.", written over a horizontal line.

J. Joseph Tyler, P.E.  
Deputy Director of Military Programs