



State of Ohio Environmental Protection Agency

Southwest District Office

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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 14th 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 11th 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 expeditiously as possible so that further cleanup at the PBOW site could legally proceed. The Army Corps' February 20th 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 20th letter did not dispute Ohio EPA's conclusion in our January 11th 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 blue ink that reads "Thomas A. Winston". The signature is written in a cursive, flowing style.

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