



# RE: LUCs: Revised Picatinny Arsenal TPP Meeting Minutes and RTC Table\_v2 (UNCLASSIFIED)

Thursday, June 23, 2011 2:05 PM

From:

"Roach.Bill@epamail.epa.gov" <Roach.Bill@epamail.epa.gov>

To:

"Gabel, Ted Mr CIV USA IMCOM" <ted.gabel@us.army.mil>

Cc:

"Gregory Zalaskus" <Greg.Zalaskus@dep.state.nj.us>, jim@uxopro.com, "Jim Kealy" <Jim.Kealy@dep.state.nj.us>, "Joe Marchesani" <Joe.Marchesani@dep.state.nj.us>, "Michael Glaab" <michaelglaab@worldnet.att.net>, "B Dolce" <subsurfacesolns@earthlink.net>

Ted, my previous statement regarding who is the lead agency per CERCLA Section 104 may have been incorrect, but being the lead agency does not mean that the actions of the lead agency are not subject to dispute resolution. Section IX, Removal Actions, of the Federal Facility Agreement stipulates the submittal of documentation for non-time critical removal actions for EPA review which makes it implicit that they would be subject to dispute. Section 9.4 referenced in the Army's response to comments only re-affirms that the Army is the lead agency in removal actions, not that they would not be subject to dispute.

From: "Gabel, Ted Mr CIV USA IMCOM" <ted.gabel@us.army.mil>

To: Bill Roach/R2/USEPA/US@EPA

Cc: "Gregory Zalaskus" <Greg.Zalaskus@dep.state.nj.us>, <jim@uxopro.com>, "Jim Kealy" <Jim.Kealy@dep.state.nj.us>, "Joe Marchesani" <Joe.Marchesani@dep.state.nj.us>, "Michael Glaab" <michaelglaab@worldnet.att.net>, "B Dolce" <subsurfacesolns@earthlink.net>

Date: 06/23/2011 01:34 PM

Subject: RE: LUCs: Revised Picatinny Arsenal TPP Meeting Minutes and RTC Table\_v2 (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

**Bill:**

**Regarding your disagreement with the response to comment 10.b. , I asked AEC legal about the correctness of your statement. AEC legal responded that "... EPA's statement is incorrect. Executive Order 12580 supersedes any authority delegated to the EPA with the following, "[T]he functions vested in the President by Sections 104(a), (b) and (c)(4), 113(k), 117(a) and (c), 119, and 121 of the Act are delegated to the Secretaries of Defense and Energy, with respect to releases or threatened releases where either the release is on or the sole source of the release is from any facility or vessel under the jurisdiction, custody or control of their departments, respectively, including vessels bare-boat chartered and operated." This is what is meant by being the "lead Agency" under CERCLA. "**

**As I do not believe this issue for this NTCRA for LUC will be immediately relevant, the minutes will remain the same and this set of emails shall be part of the record. There seems to be enough more relevant issues to address.**

**Greg:**

**Since I have not received comments on the response sent to you about 3 weeks ago, I will close the comment window and finalize the minutes.**

Ted Gabel

Project Manager

for Environmental Restoration

US Army Garrison, Picatinny Arsenal

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**From:** Roach.Bill@epamail.epa.gov [<mailto:Roach.Bill@epamail.epa.gov>]

**Sent:** Wednesday, June 08, 2011 2:24 PM

**To:** Gabel, Ted Mr CIV USA IMCOM

**Cc:** Gregory Zalaskus; jim@uxopro.com; Jim Kealy; Joe Marchesani; Michael Glaab; B Dolce

**Subject:** RE: LUCs: Revised Picatinny Arsenal TPP Meeting Minutes and RTC Table\_v2 (UNCLASSIFIED)

Ted, I disagree with the Army's response to Comment 10.b. CERCLA Section 104 states that "the President is authorized to

act, consistent with the NCP" and also goes on to state: "When the President determines that such action will be done properly and promptly by the owner or operator of the facility or vessel or by any other responsible party, the President may allow such person to carry out the action,..." EPA acts for the President under CERCLA.

From: "Gabel, Ted Mr CIV USA IMCOM" <ted.gabel@us.army.mil>  
To: Bill Roach/R2/USEPA/US@EPA, "Gregory Zalaskus" <Greg.Zalaskus@dep.state.nj.us>  
Cc: "Jim Kealy" <Jim.Kealy@dep.state.nj.us>, <jim@uxopro.com>, "Joe Marchesani" <Joe.Marchesani@dep.state.nj.us>, "B Dolce" <subsurfacesolns@earthlink.net>, "Michael Glaab" <michaelglaab@worldnet.att.net>  
Date: 06/08/2011 01:40 PM  
Subject: RE: LUCs: Revised Picatinny Arsenal TPP Meeting Minutes and RTC Table\_v2 (UNCLASSIFIED)

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Classification: **UNCLASSIFIED**

Caveats: NONE

Bill/Greg:

Attached are responses to comments and revised meeting minutes from our May 5<sup>th</sup> Teleconference. Copying TAPP contractor and RAB Co-Chair. Once you say OK to the Meeting Minutes only, the document will be sent hard copy to Bill.

See you next Thursday.

Ted Gabel

Project Manager

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**From:** Young, Layne [<mailto:Layne.Young@arcadis-us.com>]

**Sent:** Wednesday, June 08, 2011 12:20 PM

**To:** Gabel, Ted Mr CIV USA IMCOM

**Cc:** Orosz, Maria T NAB02; Travis.Mccoun@usace.army.mil; Maly, Mary Ellen H Ms CIV USA IMCOM AEC; Szegedi, Lisa; Albe, Mark

**Subject:** LUCs: Revised Picatinny Arsenal TPP Meeting Minutes and RTC Table\_v2

Ted,

Attached are the revised RTC and minutes based on your comments.

Comment #3: Replaced RTC response with revised response verbatim. No changes to Meeting Minutes.

Comment #5: Added language provided to the existing response. No change to Meeting Minutes.

Comment #10: Replaced RTC response for item “b” with revised response verbatim and added language provided to the existing response for item “c”. No changes to Meeting Minutes.

Let me know if you have any questions or concerns.

- Layne

**Layne Young** | [layne.young@arcadis-us.com](mailto:layne.young@arcadis-us.com)

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Classification: **UNCLASSIFIED**

Caveats: NONE[attachment "Picatinny Arsenal\_5 May 2011 NTCRA LUC TPP Meeting 1 Teleconference Notes\_Revised v2\_8 June 2011.docx" deleted by Bill Roach/R2/USEPA/US] [attachment "RTC Table\_5 May 2011 Picatinny NTCRA LUC TPP Meeting \_Revised v2\_8 June 2011 for regulator reveiw.xlsx" deleted by Bill Roach/R2/USEPA/US]

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Caveats: NONE

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