

EPA Comments on the
25 Sites Feasibility Study, revised April, 2010
Picatinny Arsenal, NJ
July 1, 2010

General Comment

The FS must be modified to reflect EPA's letter from Walter Mugdan to Irene Kropp, NJDEP Assistant Commissioner, dated May 12, 2010 on the New Jersey Soil Remediation Standards (NJSRSs). Per the referenced correspondence, EPA does not recognize the soil cleanup standards based on the inhalation criterion. However, as pointed out in a June 17, 2010 e-mail from Bill Roach to Ted Gabel the inhalation pathway must still be considered when developing soil cleanup standards.

Specific Comments

- 1- Section 2.3.3.1, Surface Soil, second paragraph, page 2-6 – Please refer to the General Comment regarding the NRSRS for beryllium.
- 2 - Section 2.8.2.1, Dames and Moore Phase I 1995 RI, second paragraph, page 2-16 – The NRSRS for thallium is 79 mg/kg.
- 3 - Section 2.8.4, Summary of Risk Assessment, third paragraph, page 2-18 – Please refer to the General Comment 1 regarding the NRSRS for manganese.
- 4 - Section 2.9.3.1, Surface Soil, second paragraph, page 2-22 - Please refer to the General Comment regarding the NRSRS for manganese.
- 5 - Section 2.10.2.2. Dames and Moore Phase I RI, 1998, second paragraph, page 2-25 – Please refer to the General Comment regarding TCE and beryllium.
- 6 - Section 2.10.3.1, Surface Soil, second paragraph, page 2-26 – Please refer to the General Comment regarding PCE.
- 7 - Section 2.11.2.3, Dames and Moore Phase I RI, 1998, second paragraph, page 2-29 – Please refer to the General Comment regarding mercury.
- 8 - Section 2.11.3.1, Surface Soil, second paragraph, page 2-30 - Please refer to the General Comment regarding mercury.
- 9 - Section 2.14.3.2, Subsurface Soil, second paragraph, page 2-35 - Please refer to the General Comment regarding methylene chloride.
- 10 - Section 2.16.3.2, Subsurface Soil, third paragraph, page 2-38 - Please refer to the General Comment regarding methylene chloride.

11 - Section 3.1.3.1, Surface and Subsurface Soils, ARARs, page 3-2 – This section should be updated to reflect the promulgation of the New Jersey Soil Remediation Standards and the subsequent EPA letter regarding those standards dated May 12, 2010.

12 - Section 2.10.5, Facility-Wide Investigation of Dry Wells and Sumps, page 2-28 – It is requested that the second to last sentence that was deleted be reinserted into the FS as follows: “LUCs will be put in place at Building 3518 to ensure the building continues to serve as an effective cap over the contaminated soil.”

13 - Revise Table 3.2 to reflect EPA’s letter regarding the NJSRSs dated May 12, 2010.

14 - Revise Table 3.9 to reflect EPA’s letter regarding the NJSRSs dated May 12, 2010.

15 - Revise Table 3.10 to reflect EPA’s letter regarding the NJSRSs dated May 12, 2010.

16 - Section 4.4.2.2, Evaluation of Screening Criteria, Compliance with ARARs, page 4-15 – The language used in this section is no longer valid since the issuance of EPA’s letter regarding the NJSRSs dated May 12, 2010.

17. Section 4.4.2.2, Evaluation of Screening Criteria, Long-Term Effectiveness and Permanence, page 4-16 – In the first sentence change “provides” to “provide”.

18. Section 4.4.2.2, Evaluation of Screening Criteria, Implementation, page 4-16 – Change “is” to “are”.

19. Section 4.4.3.2, Evaluation of Screening Criteria, Compliance with ARARs, page 4-15 – The language used in this section is no longer valid since the issuance of EPA’s letter regarding the NJSRSs dated May 12, 2010.

20. Table 4-3, Comparative Analysis of Remedial Alternatives – The site analyses under the column heading Compliance with ARARs will have to be revised based on consideration of the General Comment.



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MAY 12 2010

Irene Kropp, Assistant Commissioner
Site Remediation Program
New Jersey Department of Environmental Protection
401 East State Street
P.O. Box 028
Trenton, New Jersey 08625

Subject: Application of New Jersey's Soil Remediation Standards
at Federal-Lead Superfund Sites

Dear Ms. Kropp:

This letter will discuss two issues that have been raised at several Federal-lead Superfund sites, relating to application of the New Jersey Soil Remediation Standards (SRS): 1) whether the U.S. Environmental Protection Agency (EPA) should or must rely on the SRS when deciding whether a remedial action will be taken at a Superfund site in New Jersey; and 2) whether the SRS are potentially applicable or relevant and appropriate requirements ("ARARs") under the provisions of Section 121(d) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9621(d).

As we have previously discussed, EPA will not rely on the SRS to make the threshold decision of whether to take a response action at a Federal-lead Superfund site. As a matter of policy, EPA generally uses the results of the baseline risk assessment to establish whether to take a remedial action using either CERCLA Section 104 or 106 authority. There are some exceptions to this policy approach: for example, if nonzero Maximum Contaminant Level Goals or Maximum Contaminant Levels in groundwater are exceeded, EPA will generally determine that action is warranted. If EPA's screening level ecological risk assessment has shown a need to conduct a baseline ecological risk assessment, EPA will also take into account the results of that risk assessment. We have had a previous exchange regarding this issue, and you indicated your understanding and agreement with EPA's position, but since it may arise again I am taking this opportunity to memorialize our discussions. I would also like to clarify that

baseline risk assessments are developed for each remedial investigation conducted at Superfund sites. Consistent with the National Contingency Plan, the baseline risk assessment is part of the remedial investigation (Section 300.430 (d) (1)) and "characterize(s) the current and potential threats to human health and the environment that may be posed by contaminants...." (Section 300.430 (d) (4)). Each operable unit or area of concern at which the nature and extent of contamination is assessed through the remedial investigation process will include a site-specific baseline risk assessment to determine whether a current or potential threat to human health and the environment exists and requires remediation.

The second issue that I would like to address is whether the SRS are ARARs. EPA has evaluated the SRS and we have concluded that the numerical soil remediation standards for the ingestion/dermal exposure pathway are potential ARARs under CERCLA (except the standard for lead, and except when the future use of a site will be limited to recreation), to the extent they are more stringent than federal standards.

In contrast, the SRS for the inhalation pathway are not ARARs. To be "applicable," a standard must be "of general applicability and legally enforceable." 40 C.F.R. § 400(g)(4). In certain instances, a party performing remedial work under New Jersey statutes apparently is not required to apply the SRS. Instead, the regulations allow the party performing a remediation to develop alternative remediation standards ("ARS") for the inhalation pathway pursuant to appendices and interpretive guidance documents issued by the New Jersey Department of Environmental Protection ("NJDEP"). The N.J.A.C. appendices outline specific methodologies for seeking an ARS, and NJDEP guidance documents allow parties to submit "other proposed approaches incorporating different models, assumptions and information," giving NJDEP the right to accept or reject the proposed approaches. By issuing the guidance along with the promulgated standards, New Jersey has opened up the standards to change on a site-by-site basis at the discretion of NJDEP. For those categories of contaminants (lead), land-use (recreational land use) and pathways (the inhalation pathway), the numerical Remedial Standards arguably are not "generally applicable," and EPA will continue to rely upon its own risk-based remediation goals in those situations.

Finally, New Jersey's methodologies for determining impact-to-groundwater soil remediation goals are not ARARs. New Jersey relies on a series of guidance documents to provide a basis for the party performing remediation under New Jersey law to develop site-specific impact-to-groundwater soil cleanup goals. Since the methodologies for developing the site-specific numbers have not been promulgated they are not ARARs. EPA may treat the New Jersey guidance documents as "to be considered" ("TBC") materials or, alternatively, EPA can develop site-specific cleanup objectives using its own methods.

Please do not hesitate to call me if you wish to discuss this matter further.

Sincerely yours,



Walter Mugdan, Director
Emergency and Remedial Response Division

cc: John LaPadula
Carole Petersen
Angela Carpenter
Doug Garbarini
Delmar Karlen, Esq.