

OCT - 7 2010

Mr. James Daniel  
US Army IMCOM @ J&M Business Park  
AEC, Suite 110  
11711 North IH 35  
San Antonio, TX 78233

Dear Mr. Daniel,

I am writing to clarify the position of the Environmental Protection Agency (EPA) with respect to the use of Land Use Controls (LUCs) as remedy components for actions at the Picatinny Arsenal Superfund Site. In addition, I am requesting additional information from your office on how the Army intends to use LUCs at the Picatinny site to meet applicable or relevant and appropriate requirements (ARARs).

Section 121(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, requires that on-site remedial actions must attain Federal and more stringent State ARARs. In May 2010, EPA identified, with certain exceptions, the numerical soil remediation standards (SRS) promulgated by the New Jersey Department of Environmental Protection (NJDEP) for the ingestion/dermal exposure as ARARs (see May 12, 2010 letter, enclosed). Draft language provided by the Army's staff on the PICA-001 (25 Site) Proposed Plan includes language that indicates that the Army intends to meet these ARARs through the implementation of LUCs. The draft Proposed Plan also includes a statement that "USEPA also indicated that in cases where the site risks were acceptable for the current and reasonably anticipated future use these ARARs and TBCs can be met through land use controls." This statement is overly broad and does not accurately express EPA's position on the use of LUCs to meet ARARs

LUCs are generally considered to be composed of both engineering controls and institutional controls. Engineering controls (ECs) can be proposed for wastes that pose relatively low risk or where treatment is impracticable. Institutional controls (ICs) are non-engineered instruments such as administrative and/or legal controls that minimize the potential for human exposure to contamination by limiting land or resource use and are generally used in conjunction with, rather than in lieu of, engineering measures such as waste treatment or containment. Where protectiveness depends on reducing exposure, ICs are a response action under CERCLA and where a record of decision (ROD) only requires the implementation of ICs, it is considered to be a "limited action," not a "no action" ROD. Furthermore, the National Oil and Hazardous Substances Pollution Contingency Plan cautions against the use of ICs as the sole remedy unless active response measures are determined to be impracticable.

In preparing risk assessments for the site, the Army has generally maintained that the reasonably anticipated future land use for the Picatinny site will remain the same as the current use, military/industrial. As such, an IC to preclude a change in future land use is necessary since these risk assessments generally do not assess an unlimited use, unrestricted exposure scenario. Since a response action, in this case an IC is required, ARARs must be met.

Based on discussions with Mr. Bill Roach, EPA's Remedial Project Manager, I understand that the Army intends to meet ARARs in some areas through LUCs. However, since the term "LUC" is used, it is unclear as to whether or not the Army intends to implement both ECs and ICs to meet ARARs. ICs alone are not sufficient to meet a numerical remediation standard. At a minimum, an appropriate EC is necessary, and would be in conjunction with an IC, as discussed in the preceding paragraph. A brief description of the components of the LUC (both EC and IC) for each site should be included in the PICA-001 (25 Site) Proposed Plan and any future proposed plans and/or decision documents for the site so that reviewers can determine how, or whether, ARARs will be met.

I also understand that the NJDEP case manager recently requested that the Army provide a list of all the Picatinny sites where the SRS have been exceeded and that have proposed remedies of LUCs and/ or "maintenance of existing engineering controls" including a discussion of the existing ECs and why the Army considers these to be a protective remedy for each area under consideration. Once this document is prepared please provide Mr. Roach with a copy as well. This document will be helpful in providing both NJDEP and EPA with the information needed to determine whether or not ARARs will be met and the remedy will be protective of human health and the environment.

Please feel free to contact me at 212 37-4435 if you have any questions.

Sincerely,

Angela Carpenter, Chief  
Special Projects Branch

Enclosure

cc: E. Putnam w/enc., NJDEP