



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
US ARMY INSTALLATION MANAGEMENT COMMAND
HEADQUARTERS, UNITED STATES ARMY GARRISON
4551 LLEWELLYN AVENUE
FORT GEORGE G. MEADE, MARYLAND 20755-5000

IMNE-MEA-PWE

2 July 2008

MEMORANDUM FOR: Restoration Advisory Board Members

SUBJECT: MINUTES FOR THE JULY 9, 2008 RESTORATION ADVISORY BOARD MEETING

1. The Restoration Advisory Board (RAB) meeting was held on July 9, 2008, at 7 p.m. in the Fort Meade Directorate of Information Management (DOIM) conference room. The next RAB meeting will be **Thursday, September 11, 2008, at 7 p.m. in the DOIM Conference Room.**

2. The following RAB members were present:

Mr. Mick Butler, Fort Meade Co-Chair
Ms. Zoe Draughon, Community Co-Chair
Mr. Paul Fluck
Ms. Laurie Haines
Mr. Robert Morton
Mr. Howard Nicholson
Mr. Douglas Scarborough
Mr. Robert Stroud
Mr. David Tibbetts
Ms. Kerry Topovski

Members not present:

Mr. Blight Carter
Mr. Wayne Dixon
Mr. Ed Dosek
Ms. Kathy Scott

Others present were:

Mr. Chris Boes	Plexus Scientific
Mr. Wayne Ballard	URS Corporation
Ms. Summer Barkley	Public Affairs Office, Fort Meade
Ms. Heather Campbell	U.S. Senator Ben Cardin's Office
Mr. Steve Cardon	Kemron
Mr. Markus Craig	US Army, BRAC Office
Mr. Jeff Dozier	Office of the Staff Judge Advocate, Fort Meade
Mr. Butch Dye	Maryland Department of the Environment
Ms. Katrina Harris	Bridge Consulting Corp.
Mr. Burl Keller	Architect of the Capitol
Mr. Brad Knudsen	Patuxent Research Refuge
Mr. Ali Sadrieh	Plexus Scientific

Mr. Kurt Scarbro
Mr. Harry Sinclair
Mr. John Tesner
Mr. Scott Yager
Mr. Gary Zolyak

Maryland Department of the Environment
Severn Improvement Association
Office of the Deputy Asst. Secty. of Army (ESOH)
Office of the Staff Judge Advocate, Fort Meade
Office of the Staff Judge Advocate, Fort Meade

5. Announcements and Minutes:

Ms. Zoe Draughon opened the meeting and welcomed everyone. She invited everyone to introduce themselves.

Ms. Draughon asked for comments on the January, March and May 2008 meeting minutes. A motion was made, seconded and unanimously passed to approve the minutes.

Mr. Paul Fluck announced that Doug Scarborough would be moving on to a new assignment and providing assistance to Aberdeen Proving Ground. Mr. Fluck introduced Ms. Laurie Haines who will be replacing Mr. Scarborough. Mr. Fluck thanked Mr. Scarborough for the service he had provided to the installation and said he would be missed. Mr. Fluck briefly reviewed Ms. Haines' expertise and experience and welcomed her to the team.

6. Outstanding Items:

The Board agreed there were no outstanding items.

7. Operable Unit 4 Remedial Investigation/Feasibility Study:

Mr. Fluck introduced the presentation by noting it would focus on some relatively new data that ties into older data. Mr. Fluck said the presentation would postulate the potential connectivity between Operable Unit 4, the southeast groundwater sites, and the Closed Sanitary Landfill. Mr. Fluck introduced Mr. Steve Cardon of Kemron to discuss the proposed conceptual approach to better understand if there is any association between these two sites. Mr. Fluck emphasized the approach is still conceptual, and final plans will be closely coordinated with all stakeholders. Mr. Fluck asked Mr. Butler if he had anything to add before Mr. Cardon began his presentation.

Mr. Mick Butler reminded the Board that in 2004 the Army had installed some deep wells in Piney Orchard to try and delineate contamination found in wells near the landfill. Mr. Butler said the sampling results from the deep wells found three solvents--TCE, PCE and carbon tetrachloride. He stated the Army had met with the County, advised them of the results, and committed to continued study. Mr. Butler said there was no clear evidence that the source of the solvents was the landfill. Mr. Butler said the remedial investigations were finished for Operable Unit 4 and the Closed Sanitary Landfill, and there still was no clear answer. Mr. Butler said the approach Mr. Cardon would be discussing is part of the Army's commitment to evaluate the issue again and try to determine the source of the solvents in the groundwater.

Mr. Cardon distributed copies of his presentation and pointed out the first page contained a list of acronyms used in the presentation. Mr. Cardon reviewed the acronyms for the solvents found in the groundwater.

Mr. Cardon displayed a list of sites included within Operable Unit 4, located in the southeast corner of the installation. He noted he would be discussing primarily Site 47, the Post Laundry Building, and Site 86, the Former Motorpool Maintenance Facility.

Mr. Cardon showed an aerial photo of the installation and pointed out the boundaries and sites within Operable Unit 4.

Mr. Cardon discussed historical environmental investigations, noting groundwater studies have indicated PCE, TCE, and cis-1,2-dichloroethylene concentrations in groundwater at approximately 20 feet below ground surface at Buildings 2276 and 2286 (Site 86) on the west side of the site. He said TCE and PCE concentrations in groundwater are at 8 to 25 feet below ground surface in areas east of Huber Road, primarily under the Former Post Laundry Building. He stated data from previous investigations was used to develop a work plan for additional data collection for the current remedial investigation, and the work plan was approved by EPA on May 5, 2006 and MDE on June 22, 2006.

Mr. Cardon explained that 31 soil samples were collected from 29 soil borings, as well as three surface soil samples. He said 29 monitoring wells were installed to supplement the numerous pre-existing monitoring wells, and 26 groundwater samples collected as three of the wells were dry. Mr. Cardon noted that six surface water samples were also collected.

Mr. Cardon summarized the results of the remedial investigation. He said the primary constituents of concern are TCE and PCE in groundwater in the shallow aquifer. Mr. Cardon said the draft final remedial investigation/feasibility study was submitted to MDE and EPA, and comments from both agencies have been received. Mr. Cardon advised that responses to those comments are being prepared.

Mr. Cardon displayed a map showing the TCE and PCE plumes in groundwater. He explained 5 ppb is the maximum contaminant level established by EPA which is how the contamination boundaries were determined. Mr. Butler added there are no drinking water wells installed in the shallow aquifer at Fort Meade.

Mr. Cardon said the draft final remedial investigation/feasibility study showed the plumes in the shallow aquifer are sitting on clay, and they are continuous clays. He explained that after reviewing the draft final remedial investigation, the Army and regulators asked about the possibility of some preferential pathway existing in the clays. Mr. Cardon stated the Army wanted to determine if a preferential pathway could be allowing contamination to migrate to the wells at the Close Sanitary Landfill. Mr. Cardon said the Army provided Kemron with a copy of the Closed Sanitary Landfill remedial investigation report which postulated that contamination in the Lower Patapsco (deep) aquifer has migrated from a source northwest and upgradient from the Closed Sanitary Landfill. He stated the Closed Sanitary Landfill remedial investigation indicates the contaminants of concern include PCE, TCE and carbon tetrachloride in the deep aquifer. Mr.

Cardon said the source of the carbon tetrachloride found at the Closed Sanitary Landfill has not been determined.

Mr. Cardon explained that Kemron reviewed all previous investigation data and current data for Operable Unit 4, including 196 soil samples and 118 groundwater samples, and carbon tetrachloride was not detected in any soil or groundwater sample at Operable Unit 4. Mr. Cardon said groundwater contaminants found at both Operable Unit 4 and the Closed Sanitary Landfill partially overlap in that TCE and PCE have been detected at both sites; however, carbon tetrachloride has not been detected at Operable Unit 4.

Mr. Cardon showed a map of Fort Meade and said the current focus is trying to figure out the relationship between Operable Unit 4 and the Closed Sanitary Landfill. He reminded the Board that regional groundwater flow is southeast.

Mr. Cardon discussed a graphic showing the regional geology. He noted PCE was detected in the Lower Patapsco Aquifer below the Closed Sanitary Landfill. Mr. Cardon displayed additional graphics to better portray how the plumes overlay the geologic formations. He noted that if there is a preferential pathway that would allow seepage from the top of the clays to the lower aquifer, the contamination could be migrating to the southeast to the Closed Sanitary Landfill.

Mr. Cardon discussed the path forward, noting that there would be further exploration of the deep aquifer. He said the review would continue of remedial investigation data from Operable Unit 4 and the July 2006 Architect of the Capitol and August 2007 Closed Sanitary Landfill reports. He stated the goal would be to connect all the data together to look at the big picture and interrelationship. Mr. Cardon said the Army is planning additional data collection to determine if inter-connectivity exists between Operable Unit 4 PCE and TCE contamination in the shallow aquifer and contamination in the Lower Patapsco below Closed Sanitary Landfill. He stated Kemron is developing a remedial investigation work plan addendum to install deep wells downgradient of Operable Unit 4 in the area where Architect of the Capitol is located to evaluate whether shallow aquifer contamination has migrated into the deep aquifer. He explained the wells will be about 200 feet deep, and sonic drilling would be used to allow continuous core samples to be collected and to take discrete groundwater samples every 20 feet. Mr. Cardon said measures will be in place to ensure there is no cross-contamination between the aquifers.

Ms. Kerry Topovski asked if the number of deep wells to be installed has been determined. Mr. Cardon responded that plans are still in the conceptual stage but thinking at least three downgradient wells.

Mr. Cardon said the goal is to characterize site conditions and determine any interrelationship with surrounding sites as current data is not sufficient to provide clear groundwater flow and quality information. He noted data from the additional wells and groundwater samples will be used to further evaluate sub-surface geology and groundwater quality to assess Operable Unit 4 and Closed Sanitary Landfill interrelationship.

Mr. Cardon explained the work plan addendum will be prepared, coordinated with stakeholders, and implemented after stakeholder input. Mr. Cardon said future updates will be provided to the Board as work progress.

Ms. Draughon asked if samples will be able to be taken from Architect of the Capitol property. Mr. Burl Keller said he would need to see the proposed sampling plan before he could answer that question. Mr. Butler noted that to date the Architect of the Capitol had not interfered with any proposed investigative work.

Ms. Draughon stated that for many years the Board has been told the Post Laundry Facility sits on a lens and all the contamination is self-contained on the lens. Mr. Cardon responded that the contamination is sitting on a clay formation. Mr. Doug Scarborough said it might help to picture the site as a bowl with the edges being scalloped where groundwater could escape.

Mr. David Tibbetts asked if Kemron had looked at contaminant loading. Mr. Cardon responded that concentrations of PCE found at the Closed Sanitary Landfill could have come from Operable Unit 4, but the same is not true for TCE or carbon tetrachloride.

Ms. Topovski expressed concern about drawing down contamination into the lower aquifer and stated there did not appear to be a confining clay unit above the Lower Patapsco in the region where the deep wells are expected to be installed. Mr. Cardon noted the presentation had just shown the major geologic formations, and there are clay lenses scattered throughout the area. Mr. Cardon said as the drilling proceeds and contact is made with a clay layer, and if it is a lens, they will punch through, grout, and conduct a slug test to make sure there is no seepage and then continue drilling to the desired depth.

Mr. Kurt Scarbro asked if the clay lens to the west could be connected to the Mid-Patapsco clay below the surface. Mr. Cardon responded there is some information that suggests there may be some connection but nothing will be taken for granted during the field investigation. Mr. Scarbro asked how fast the ground water is moving, and Mr. Cardon said they will be looking at flow data during the investigation.

Mr. Cardon said if contamination is found, the next logical step will be to go upgradient and set some wells and conduct additional sampling.

Mr. Scarborough clarified that the chemical analysis for volatile compounds is all one test, and there is not a separate test just for carbon tetrachloride.

Ms. Draughon asked if Kemron would continue to investigate any contamination found, and Mr. Cardon confirmed their contract calls for the delineation of any contamination found.

Mr. Butler asked if it is possible Kemron might be able to connect the TCE and PCE contamination and still not find the carbon tetrachloride source. Mr. Cardon responded that what Mr. Butler described is a possible scenario as they have found no previous historical data that indicates carbon tetrachloride was used at the site nor has any been detected in the analysis of many soil and groundwater samples. Mr. Butler asked if sampling is being conducted where

contamination is most likely to be present. Mr. Cardon responded that historic information shows where TCE and PCE was used at these locations, but they do not have any data as to where carbon tetrachloride was used. Mr. Fluck added that the investigation will be looking at site-specific groundwater flow patterns which may be different than regional patterns so it is possible carbon tetrachloride may be coming from a location that was previously unanticipated.

8. Manor View Site Gas Recovery System Update:

Mr. Fluck introduced Mr. Chris Boes of Plexus Scientific.

Mr. Boes reminded the Board that Plexus had been contracted to monitor the existing system, including collecting weekly readings and performing weekly operations and maintenance activities.

Mr. Boes reviewed recent activities which included continuing the weekly monitoring and maintenance. He stated the new regenerative blower had been installed in mid-May which has proven to be more efficient and reliable and slightly larger in capacity. Mr. Boes advised that a larger knockout pot was also installed which provides a tank for condensate to collect in and then it is drained when full. Mr. Boes noted another recent activity was the contracting with an after-hours response contractor who has had to respond three times since the new blower was installed due to power outages and one electrical malfunction. Mr. Boes said data collected continues to be evaluated for trends.

Mr. Boes displayed a map of the site and pointed out the boundary of the landfill and features of the system. Mr. Boes discussed the locations of the monitoring points and explained data is evaluated on an ongoing basis and valves adjusted to optimize the system to run as efficiently as possible. Mr. Boes said there is an area where elevated levels of methane have continually been detected, and they are not sure how that methane is getting there. He stated the trench is about 15 feet deep which may not be deep enough. Mr. Boes explained that the valve at MP-E was recently shut down to see what would happen in the surrounding area, and the data showed a gradual increase in concentrations in some of the monitoring points. He highlighted two points, VMP-42 and VMP-43, which are early warning systems for the housing units on the opposite side of road, and these two points continually have shown no detections of methane. Mr. Boes said when the valve at MP-E was re-opened; they started to see concentrations go down again.

Mr. Boes reviewed the readings over the last four weeks. He noted the chart shows an average for the last four weeks, and the blue highlighting indicates a downward trend and the yellow highlighting shows a slightly increasing trend in detections. He stated the data does fluctuate as weather conditions have an impact.

Ms. Draughon asked about detections at VMP-36 and VMP-37. Mr. Butler responded that the levels at this points are not high; the detections are about 1,000 and the lower explosive limit is 5,000.

Mr. Tibbetts asked if the homes are still unoccupied, and Mr. Butler confirmed that the houses are still unoccupied.

9. Update on EPA Unilateral Administrative Order/Federal Facilities Agreement:

Mr. Fluck introduced Mr. Gary Zolyak, installation counsel to discuss the status of Fort Meade's Federal Facility Agreement and the EPA Unilateral Order.

Mr. Zolyak reminded the Board that a unilateral order had been issued by EPA to Fort Meade last August. Mr. Zolyak mentioned there had been some recent newspaper articles in the Washington Post, the Baltimore Sun, and the Annapolis Capitol, as well as an editorial. Mr. Zolyak said he thought it was important to point out some inaccuracies in these articles.

Mr. Zolyak discussed the two key issues. He explained the dispute is about the legal authority and legal procedure for the order issued by EPA Region 3 in August of last year and secondly, the status of DoD cleanup agreements also called federal facility agreements. He stated the dispute is not about cleanup remedies.

Mr. Zolyak said Fort Meade is proceeding with cleanup under CERCLA, which is commonly referred to as Superfund, with State and EPA oversight and public coordination.

Mr. Zolyak said that in August 2007 EPA issued to Fort Meade and three other DoD facilities unilateral orders alleging "imminent and substantial endangerment" to the public.

Mr. Howard Nicholson asked if there was some significance to a unilateral order versus another type of order. Mr. Zolyak explained that in his experience many orders are consent orders where the parties get together and agree on the provisions.

Mr. Zolyak explained there are two major laws governing environmental cleanups—the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA). He explained CERCLA is designed to clean up sins of the past, and RCRA addresses current issues. Mr. Zolyak said Fort Meade's restoration program is being implemented under CERCLA, but EPA issued the unilateral order using RCRA authority. Mr. Zolyak said DoD and Fort Meade do not believe there is any imminent or substantial endangerment, and when EPA has been asked to prove such a condition exists, EPA has been reluctant to provide evidence for their conclusion.

Mr. Zolyak said the second issues relates to the federal facility agreement. He explained a federal facility agreement outlines the way a installation communicates with EPA and how both parties will work on disputes. He stated a federal facility agreement contains provisions for selection of remedies by DoD and EPA, schedules, and arrangements for long-term operation and maintenance. Mr. Zolyak noted it has typically been DoD's experience that the provisions are negotiated through CERCLA and not imposed unilaterally by EPA. Mr. Zolyak said this conclusion is based on the many years DoD and EPA have worked well together to develop federal facility agreements for 129 installations and bases. He said Fort Meade is one of three Army installations where there has been no agreement as to what the federal facility agreement should incorporate based on a dispute about what property should be included at Fort Meade. Mr. Zolyak advised that in discussions with EPA in January of 2008, EPA wanted to unilaterally

add provisions to the model federal facility agreement, and DoD and Fort Meade strongly disagreed with the approach.

Mr. Zolyak explained that DoD offered to resolve the dispute with EPA by incorporating the three CERCLA cleanup agreement requirements in site-specific cleanup decision documents; signing DoD/EPA model cleanup agreements at the 11 DoD facilities currently without agreements; and negotiating with EPA on their preferred changes or additions to the model. He continued that when DoD determined the parties were at loggerheads, DoD appealed EPA's unilateral order with the Office of Management and Budget and the Department of Justice. Mr. Zolyak said some newspaper articles have painted Fort Meade and DoD as secretive and obstinate which is not true. Mr. Zolyak said Fort Meade has worked well and hard with EPA trying to come to an agreement but has not been able to resolve the issues. Mr. Zolyak explained that DoD is using the same appeal rights as any other agency or corporation might have.

Mr. Zolyak discussed DoD's key concerns with EPA's unilateral order. He said DoD thinks the order duplicates work already being done at Fort Meade and has the potential to delay cleanup and waste resources. Mr. Zolyak said DoD has the same problem with EPA using RCRA authority for a CERCLA-type cleanup. Mr. Zolyak noted another concern is if EPA believes there is imminent and substantial endangerment, why has EPA offered to withdraw the order if DoD agrees to a federal facility agreement on EPA's terms.

Mr. Zolyak stated some of the newspaper articles did not paint an accurate picture of the cleanup program at Fort Meade. He continued that while articles emphasized DoD and EPA are at loggerheads with the legal portion none mentioned that despite the legal dispute, good work continues in the cleanup program. Mr. Zolyak said Fort Meade continues to identify and remediate sites and give updates to the public.

Mr. Zolyak said that while the EPA order cites imminent and substantial endangerment, EPA web sites indicate that human exposures are under control at Fort Meade and groundwater migration is under control. Mr. Zolyak said there are no risks to public health.

Mr. Zolyak said it was important to emphasize that Fort Meade is continuing to make progress and working with the State, EPA and the public and that nothing is secretive. He stated one newspaper article mentioned waste from NSA is contaminating the groundwater, and there is no evidence to support that statement.

Mr. Zolyak noted Fort Meade has spent \$78.4 million to date, and 27 of 42 sites have a remedy in place with signed cleanup decision documents. Mr. Zolyak said the Army plans to spend significant sums in the future to continue the cleanup at Fort Meade.

Ms. Draughon stated she has been a member of the Board since its inception, before Fort Meade was a Superfund site. She said there have been significant positive differences since Fort Meade was made a Superfund site. Ms. Draughon said the partnering meetings which used to be held with EPA, the State and Army have stopped so they are not working together like they used to. Ms. Draughon said the issue about what is included in the National Priority List (NPL) listing arose almost immediately after Fort Meade was put on the list with the Army saying only the four sites used in the scoring were part of the listing and EPA saying the assessment stopped

when the number was reached that was necessary to place Fort Meade on the NPL. She noted that the Department of Interior had sent a letter asking to be added to the Superfund listing. Ms. Draughon acknowledged that much good work had been accomplished; however, the public wants to be ensured that all the sites can be managed. Ms. Draughon said that once the Superfund cleanup is complete, the Board can be disbanded. Mr. Scarborough noted that under Army policy as long as there is an ongoing cleanup program and public interest, the Board can continue. Ms. Draughon stated she believes the oversight provided by Superfund is needed so there continues to be no imminent danger. Ms. Draughon reminded the Army that when the dispute over the order first began, she had expressed her concern about tax dollars being used to appeal the issue, and she continues to have this concern.

Mr. Bob Stroud stated the order issued by EPA is a RCRA order; however, EPA does not have RCRA authority at CERCLA sites. He continued that RCRA provides for an order to be issued when there is the potential for imminent and substantial endangerment; EPA had conducted substantial research prior to issuing the order and would not have made the statement if the potential did not exist.

Mr. Stroud explained EPA regulations state that 180 days after the first remedial investigation/feasibility study is signed at a Superfund site, a federal facility agreement is to be negotiated. Mr. Stroud said the first remedial investigation/feasibility study at Fort Meade was signed December 30, 1998 so the issue has been ongoing for nine years. He continued explaining that the unilateral order was issued because of the Army's refusal to negotiate an agreement with EPA. Mr. Stroud reiterated the issue for a number of years has been the Army's claim that only the four sites used in the scoring to place Fort Meade on the Superfund list were included in the Superfund site designation. Mr. Stroud noted that EPA uses whatever number of sites are needed until a qualifying score of 28.5 is reached, and then there is no reason to continue the scoring process. Mr. Stroud said if one site scored 28.5, there would have been no need to continue beyond the one site.

Mr. Stroud stated EPA had met with the Army in February of 2006 to discuss negotiating an agreement, and the Army said they only wanted to include the four sites. Mr. Stroud said EPA agreed any other sites where work is being conducted could be included in the findings of fact. He noted the Army said they would get back to EPA and, when they did, they said they were not interested in negotiating a federal facility agreement. Mr. Stroud explained EPA then issued the unilateral order as all other means of trying to negotiate an agreement seemed to be exhausted. Mr. Stroud said he does not understand what Mr. Zolyak means by DoD offering to resolve the dispute through site-specific documents. Mr. Stroud stated EPA has said if a federal facility agreement can be negotiated, EPA would withdraw the order. Mr. Stroud advised that the Army had recently signed an agreement at Fort Eustis, and EPA suggested the same language be used at Fort Meade but the Army has not agreed to use this language for Fort Meade.

Mr. Stroud said the federal facility agreement issues center around the Architect of the Capitol and the DOI property for which the Army claims they are not responsible.

Mr. Stroud informed the Board that the model cleanup agreement was negotiated in 1990 which was the beginning of EPA's Federal Facilities program and additional provisions have evolved over the years.

Mr. Stroud said they tried to have a technical meeting, without attorneys, on the findings of fact. He stated the technical meeting was a good meeting but there was no follow-up by the Army. Mr. Stroud said the next communication was that the Army was appealing the unilateral order. Mr. Stroud said the order does not ask the Army to duplicate work; the order recognizes the work done under CERCLA and the order was only issued because of the refusal to negotiate an agreement. Mr. Stroud noted that EPA would prefer to have a federal facility agreement rather than a unilateral order. Mr. Stroud reiterated that the order will be rescinded if an agreement is signed. Mr. Stroud said there had been no federal facility agreement discussions for several years until the order was issued.

Mr. Stroud stated that with respect to unilateral documents, the Army also has issued its own unilateral decision document at the Ordnance Demolition Area since the Army does not think this site is part of the NPL listing.

Mr. Stroud noted that he and the current Fort Meade environmental staff work well together, but if Fort Meade decided not to continue work or respond to EPA comments, there is no legal arm with which EPA can respond.

Ms. Draughton stated that as a community member she agreed with Mr. Stroud's comments.

Mr. John Tesner re-introduced himself and noted that he works for the Deputy Assistant Secretary of the Army for Environmental, Safety and Occupational Health. Mr. Tesner also advised he had been involved in Tipton and other Fort Meade projects in early 2000 when he worked for the Corps of Engineers in Baltimore. Mr. Tesner said it saddened him personally when he saw Fort Meade being misrepresented in the press and all the work done at Fort Meade not being recognized.

Mr. Tesner said the topic is difficult to understand if not a lawyer, it is not easy to explain, and progress at Fort Meade will continue despite what is going on at higher levels. He noted Mr. Zolyak's first four slides articulated the general argument DoD makes about federal facility agreements. He stated there is nothing specific to Fort Meade in this argument, and it is generally about a framework.

Mr. Tesner confirmed the Army recently signed a federal facility agreement at Fort Eustis so the Army will sign these agreements; the Army has 33 Superfund Sites and 31 have signed federal facility agreements. Mr. Tesner acknowledged Fort Meade has a property ownership issue, but the Under Secretary of Defense has said DoD will abide by OMB and DOJ's decision on the appeal. He also noted DoD has had an opinion about the model language used in the federal facility agreements since 1999. Mr. Tesner advised that DoD asked the Army to hold off on negotiations until the issues can be resolved, and the Army is abiding by that request at this time.

Mr. Tesner said the Army understands there is an outstanding unilateral order and that many of the items asked for in the order are items already completed which is recognized within the order. Mr. Tesner advised there was a letter sent by the EPA Administrator to his boss, Mr.

Davis, on May 22 outlining items within the order that had not been complied with. Mr. Stroud confirmed EPA had not received submittals required by the order. Ms. Tesner explained there was a misunderstanding where the Army thought the information requested was already known, such as the Fort Meade Project Manager, and no action was required. He continued the Army now understands that was not EPA's thinking and to extent the Army can provide the information, the Army stands ready to do so. Mr. Tesner reiterated that a great deal of work has been done at Fort Meade, and to the extent possible, the Army wants to account for the work and ensure it does not have to be re-done. Mr. Tesner stressed that the Army does want to sign a federal facility agreement at Fort Meade, but they need to let DoD finish the process underway.

Ms. Draughon stated the community is not comfortable being at the mercy of the Army, and she has trust in the regulators.

Mr. Stroud commented Mr. Tesner's statement is the first time that he has heard the Army was willing to abide by the order or sign a federal facility agreement at Fort Meade.

Mr. Bob Morton stated if there are legitimate concerns with the cleanup at Fort Meade the Army needs to move forward and sign a federal facility agreement. He stated the issue has gone on too long with no resolution, and even if it only deals with potential imminent and substantial endangerment, that is sufficient justification for moving forward. Mr. Morton suggested the Mr. Tesner take back to his office that the Board's position is for the Army to move forward with signing a federal facility agreement.

Mr. Markus Craig commented that he believes there has been miscommunication and issues at the legal level but not at the lower working level. He stated the issue with signing a federal facility agreement as proposed is the Army will be spending millions of extra dollars. Mr. Stroud stated the negotiations never got to the point where the Army provided feedback to EPA on portions of the document they did not agree with.

Mr. Morton stated the Board understands that Fort Meade's environmental issues were ignored for decades and that a substantial amount of money is going to be needed to address the problems. Mr. Morton said it is time to define what property is involved in the listing, let the Architect of the Capitol and DOI take care of their own issues, and be concerned with the imminent and substantial endangerment to human health, whether potential or real.

Mr. Brad Knudsen noted that DOI has expressed interest in being a party to the federal facility agreement, but the Army has been somewhat reluctant on this issue. Mr. Knudsen said there has been significant progress over the years at the DOI property. Mr. Knudsen reminded the Board that the transfer assembly document holds the Army responsible for cleanup on DOI, and the Army removed 53 tons of waste material from the Refuge just last summer. Mr. Knudsen advised DOI would like to be a party to the federal facility agreement but understands if it is not possible.

Mr. Tesner said there is nothing to stop the Army from discussing federal facility issues which are specific to Fort Meade, such as whether it is a two or three-party agreement, or what are the boundaries of the property included. He said if these discussions are not underway, Fort Meade and EPA should engage in them immediately.

Mr. Tibbetts asked if copies of the source documents are available such as the draft agreement and correspondence. He said the community trusts EPA with environmental protection, and the Army has been portrayed to the public as not wanting to comply with environmental laws. He stated the Army needs to be proactive about the environmental work done. Mr. Fluck responded that he had paper copies and electronic copies of the order available for anyone who would like a copy.

Ms. Draughon said the community trusts the regulators to look at documents the community does not have access to, such as NSA documents. Ms. Draughon said the community is worried the Army will someday say they are not going to show documents to the regulators either. Ms. Draughon said the community depends on EPA's expertise.

Mr. Fluck noted that he and Mr. Stroud meet every two weeks, and they have agreed to sit down and talk about federal facility agreement appendices on July 23 with no lawyers present.

Mr. Fluck concluded by saying the discussion had been productive, and he commended everyone for speaking so freely.

10: New Business:

The Board scheduled the next meeting for Thursday, September 11, 2008 at 7 p.m.

The meeting was adjourned at 9:17 p.m.



MICHAEL P. BUTLER
Chief, Environmental Division
Directorate of Public Works

DISTRIBUTION:

1-Each member

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