From: Ohl, Matthew
To: [redacted] Exemption 6
Subject: Pines Site - PRP dispute letters
Date: Thursday, May 23, 2013 11:08:57 AM
Attachments: 5-2-13 Letter to Ohl re Dispute Resolution.pdf
Pines_DisputeResolutionNotice_2013-04-17.pdf
Pines_DisputeResolutionLetter_2013-05-16 (2).pdf

Cathi:
Here are the dispute letters you requested.
Thank you.
Matt Ohl

From: Cathi Murray [mailto:[redacted] Exemption 6
Sent: Wednesday, May 22, 2013 3:35 PM
To: Ohl, Matthew
Subject: Pines PRP Dispute letter

Good Afternoon Matt,

I wanted to follow up on our conversation from Monday, May 20th regarding the copy of the dispute letter from the PRPs. I look forward to receiving that document when you get a chance to forward it to me.

Thank you for your attention on Monday, I believe that you truly listened to Alan and I, and for that I'm grateful.

Have an excellent evening.
Cathi Murray

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May 2, 2013

VIA ELECTRONIC MAIL

Mr. Matthew J. Ohl
Remedial Project Manager
Superfund Division (SR-6J)
U.S. EPA, Region 5
77 W. Jackson Boulevard
Chicago, IL 60604-3590

Re: Dispute Resolution Letter of Understanding
Administrative Order On Consent Docket No. V-W-04-C-784 (the "AOC")
Pine Site, Pines, Porter County, Indiana

Dear Mr. Ohl,

As you know, the AOC Respondents jointly submitted a Notice of Dispute Resolution to you on April 17, 2013 (the "Notice") in response to the comments you provided on April 3, 2013 regarding the draft Feasibility Study concerning the Pines Area of Investigation (the "EPA Comments"). Your subsequent dialog with Respondents' representatives has helped clarify many aspects of the EPA Comments mentioned in the Notice. This letter documents those clarifications to ensure a common understanding. If you agree with the below-listed clarifications, we ask that you please so advise us in writing. On the other hand, if any of the below does not reflect your understanding of clarifications to the EPA Comments, please write to me or Lisa Bradley of AECOM immediately so that we may discuss further.

Assuming we have agreement to the below-listed clarifications, it appears that additional dispute resolution dialog is necessary solely with respect to the EPA Comments concerning Appendix G of the draft Feasibility Study. Specifically, while you have clarified that the EPA Comments should be interpreted to require residential confirmatory sampling at only a limited subset of the residential properties within the Area of Investigation, the precise objectives and scope of the sampling to be reflected within a revised Appendix G remain unclear. We propose to continue to work with you during the next two weeks to achieve clarification regarding those matters. If you agree with that proposal, we ask that you so indicate in the responsive writing requested by the above paragraph.

* * *

Clarification 1 – Timing of Residential Yard Sampling Implementation

A conceptual residential property sampling program (the scope of which will require further clarification) will be presented in revised Appendix G of the revised Feasibility Study, to be submitted to EPA on June 3, 2013. A Residential Property Confirmatory Sampling and Analysis Plan (RPC SAP) will be developed as an Addendum to the Field Sampling Plan, Volume 2 of the Remedial Investigation/Feasibility Study Work Plan for the Pines Area of Investigation, dated September 16, 2005. This RPC SAP will be submitted to EPA following EPA's approval of a revised Appendix G of the revised Feasibility Study. The RPC SAP for the sampling program to be outlined in revised Appendix G will include a schedule similar to that stipulated by the AOC for the conduct of the work and report submission and revisions to EPA comments. The Respondents acknowledge that the residential confirmation sampling work cannot take place prior to the development of the RPC SAP and its subsequent approval by EPA. EPA's stakeholder engagement can occur either before or after a final RPC SAP is approved by EPA.

Clarification 2 – Specific Cross References of the EPA Comments

The following cross-references of the EPA Comments are clarified as follows:

- The reference to SC-24 of SC-25.d refers to SC-26
- The reference to SC-21 of SC-26 refers to SC-20
- The reference to SC-16 of SC-23 refers to SC-21

Clarification 3 – Yard 520 Alternatives

The revised Feasibility Study will acknowledge that, while Yard 520 is regulated by IDEM and is fully compliant with applicable IDEM regulations, the EPA has requested more clear inclusion of Yard 520 remedial alternatives. Accordingly, the revised Feasibility Study will include consideration of cap effectiveness, and the report will make clear that the groundwater remedial alternatives considered are specifically to address Yard 520.

* * *

Thank you for working with us to afford the above-stated clarifications. We look forward to working with you clarify the remaining issues referenced in the Notice and to complete the AOC.

Sincerely,

Gabriel M. Rodriguez

cc: Timothy Thurlow (via email)
Marcy A. Toney (via email)
Lou Rundio (via email)
Dan Deeb (via email)
Lisa Bradley (via email)

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April 17, 2013

VIA ELECTRONIC MAIL AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Matthew J. Ohl
Remedial Project Manager
Superfund Division (SR-6J)
U.S. EPA, Region 5
77 W. Jackson Boulevard
Chicago, IL 60604-3590

Re: Notice of Dispute Resolution
Administrative Order On Consent Docket No. V-W-04-C-784 (the "AOC")
Pine Site, Pines, Porter County, Indiana

Dear Mr. Ohl:

Thank you for providing comments dated April 3, 2013 regarding the draft Feasibility Study (FS) (the "EPA FS Comments") timely submitted by the AOC Respondents. Respondents' review of those comments concluded that several important aspects of the EPA FS Comments appear to require additional actions well outside of those required by the AOC Statement of Work ("SOW") or the Remedial Investigation/Feasibility Study ("RI/FS") Work Plan. Respondents respectfully disagree that such additional actions are necessary for a complete RI/FS and further submit that those same aspects of the EPA FS Comments are contrary to applicable authority and guidance. Consequently, Respondents, by counsel, are jointly providing this Notice of Dispute Resolution pursuant to AOC sections 34 and 45, identifying their combined objections. A definition of the disputes and an explanation of Respondents' basis for objections are provided within the below numbered items.

* * *

1. *The EPA FS Comments require Respondents to conduct extraordinary unjustified and unnecessary further radiological and non-radiological investigations.*

After considering the radiological concerns expressed by the PINES Group, EPA stated as follows in its March 20, 2013 letter to the PINES Group (emphasis added):

> The data presented in the PINES survey and the results of the Pines site Human Health Risk Assessment (HHRA) do not indicate a need for further radiological investigation

because the measured levels are either similar to background or within the acceptable risk range.[1]

Nonetheless, despite the fact that no new radiological information has arisen since the foregoing EPA statement, the EPA FS Comments require a truly massive further radiological investigation. Specifically, Specific Comment ("SC")-25 of the EPA FS Comments requires, at a minimum, that all residential properties within the Pines Area of Investigation be subdivided into $100m^2$ units. Assuming there to be 368 residential properties within the Area of Investigation with an average area of 0.86 acre (as estimated by tax records and completion of the CCB visual inspection program), the Area of Investigation is estimated to contain approximately 12,800 residential $100m^2$ units. Each of those units are, pursuant to SC-25, to be subject to 3 levels of radiological surveys and the collection of 5-point composite surface soil samples at 3 different depths (and perhaps an unspecified degree of subsurface sampling, and further sampling of gardens, driveways and play areas). Such sampling would result in the collection of at least 1,664,000 radiological data points and 38,400 samples for analytical testing.[2] Our initial estimates are that it would take well over a year to accomplish such an additional investigation at a cost of tens of millions of dollars. Respondents believe that, at most, only a small fraction of the required additional sampling may even arguably be necessary for a complete RI/FS.

In addition to requiring sampling for each $100m^2$ area of all 368 residential properties in the Area of Investigation, the EPA FS Comments direct Respondents to sample all other locations desired (but not yet identified by) the PINES Group and Town of Pines Council.[3] In other words, the EPA FS Comments require a completely open-ended degree of sampling that is to be determined by 3rd parties rather than EPA. Such an open-ended requirement has no basis in science and is inherently arbitrary. By allowing 3rd parties to effectively prescribe a sampling and analysis program, we believe the agency has acted contrary to guidance and the NCP which require EPA and Respondents to develop investigative plans including all sampling and analysis plans based on sound science.

The only rationale reflected in the EPA FS Comments for the additional sampling required by SC-25 appears to be 40 CFR 192.12(a) and "community concerns." However, 40 CFR 192.12(a) does not require the above-described extensive sampling; at most, it provides authority for a small subset.

---

[1] Although the same letter went on to express that EPA intended for the FS to include additional residential property sampling "to mitigate potential uncertainties regarding the findings of the HHRA" it, in no way, indicated the extraordinary extent of additionally requested sampling of all properties. In fact, in its August 31, 2012 comments to Respondent's Alternative Screening Memorandum, EPA indicated an intent to require only a limited degree of further individual property sampling ("Therefore, it will be necessary to conduct some degree of property specific sampling for use in comparing to an updated soil background data set (see Section 6.2.4) and to calculate property-specific risks and hazards.").

[2] The guidance reference by SC-25, MARRSIM, does not require $100m^2$ units for sampling of outdoor locations. Rather, it allows units to be up to $2,000m^2$. Nowhere in the EPA FS Comments has the agency provided a rationale supporting the much smaller $100m^2$ units for all aspects of the additional sampling required by SC-25.

[3] "Residential lots investigated should include those of interest to the PINES group and Town of Pines Council." SC-25(a). "Investigations should include playgrounds and other areas of interest to the Pines Group and the Town of Pines Council." SC-25(b). "The Background Reference Area(s) should be selected with consensus from local stakeholders such as the PINES group and the Town of Pines Council." SC-25(e).

"Community concerns" similarly fails to justify the required additional sampling, especially given EPA's consistent prior acknowledgements that such concerns are misplaced, and despite the agency's efforts to address those concerns by providing technical information to the community in public meetings.

2. *The EPA FS Comments arbitrarily require the inclusion of unnecessary additional COCs.*

Respondents expended significant effort, with EPA concurrence and following EPA guidance, to develop the previously approved COC list via the EPA-approved HHRA. That approved COC list formed the basis for the 2012 background sampling program also approved and overseen by EPA. Nonetheless, SC-27 of the EPA FS Comments requires, without explanation or supporting rationale, the addition of lead, total uranium, uranium-235, and uranium-234 to the COC list for the required residential sampling. It further requires the reporting and use of "all common CCB metals, including lead and uranium" beyond the FS's COC list "for completeness." The inclusion of these analytes is inconsistent with all project work that has been conducted and approved by EPA to date. Respondents know of no sound scientific basis for the requirements of SC-27 and submit that "completeness" is insufficient to justify the same.

3. *Requirements of EPA FS Comments are inconsistent with requirements of the AOC.*

AOC Section 26(b) allows EPA to require respondents to submit a revised FS incorporating agency comments within 60 days of Respondents' receipt of the EPA FS Comments. Accordingly, the EPA FS Comments expressly direct Respondents to submit a revised FS fully incorporating the agency's comments within 60 days of April 3, 2013. Implicit in the parties agreement to reflect such a short (60 day) period within the AOC for FS revisions is the expectation that, after many years of cooperative EPA/Respondent work to accomplish AOC tasks 1-7, the scope of required FS revisions would be relatively modest. As explained above, aspects of the EPA FS Comments are instead extraordinary in scope; in effect, EPA is essentially requiring an entirely new RI. The extent of the additional sampling requirements simply cannot be accomplished within the stated 60-day period. Indeed, it would take more (possibly much more) than a year to accomplish all of the additional activities that appear to be required by the EPA FS Comments.[4]

The additional activities likely to require the most time beyond the aforementioned 60-day deadline are those required by General Comment ("GC")-3 of the EPA FS Comments. GC-3 directs that "data from the proposed sampling described in Appendix G will need to be incorporated into the revised FS." As explained above, the sampling EPA has mandated by Appendix G (as modified by SCs 20-28) is extraordinary. It will be wholly impossible to complete that sampling within 60-days.[5]

4. *Aspects of the EPA FS Comments are ambiguous and internally inconsistent.*

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[4] Respondents note as well that it will likely be very time-consuming to obtain access to all properties in order to accomplish the required sampling.

[5] A requirement to complete the additional sampling required by SCs 20-28 post-FS would also be objected to by Respondents as contrary to the AOC and the prior EPA approvals of other AOC tasks.

While SC-23 of the EPA FS Comments appears to allow for the possibility of focusing much of the soil sampling required by SC-20 and SC-25, such is not entirely clear as neither SC-20 nor SC-25 explain their nexus to the SC-23. Consequently, the EPA FS Comments fail to provide a clear avenue for developing a tiered and reasoned approach to the residential sampling that builds upon the previously completed investigations.

Further examples of ambiguous and internally inconsistent requirements of the EPA FS Comments manifest through stated cross-references. SC-25(d) references SC-24 for specific information regarding 5-point composite sampling. SC-24, however, provides no such information. We can only guess that SC-25(d) meant to refer to SC-26 instead. SC-26 references SC-21 regarding sampling depths even though SC-21 does not concern sampling depths. SC-23 cites to SC-16 for the proposition that concentrations may vary among residential properties. SC-16, however, does not speak to the same.[6]

Collectively, the inconsistencies and ambiguities of the EPA FS Comments effectively preclude Respondents from a reasonable understanding of the full extent of EPA's FS requirements.

5. *The EPA FS Comments arbitrarily and unnecessarily require that the revised FS include a direct remedial alternative for Yard 520.*

After noting that groundwater from Yard 520 is the source of much of the proximate groundwater impact, SC-3 of the EPA FS Comments states "Yard 520 is part of the Pines Site and, therefore, must be included under the alternatives section of this FS report." This statement appears to ignore the fact that groundwater alternatives were, in fact, included within the submitted draft FS (see draft FS sections 8.3.2 through 8.3.10). If the unstated intent of SC-3 is to require the inclusion of additional alternatives which control Yard 520 source material, Respondents submit that (a) an appropriate source control remedy (an IDEM-approved cap) has already been implemented for Yard 520 and (b) a groundwater remedy (the extension of a municipal public water supply) has already been implemented as well. The capping of a non-hazardous waste landfill and installation of municipal water are presumptive remedies in situations that parallel Yard 520 and the AOC. Moreover, Yard 520 is in full compliance with the IDEM regulations for a closed Restricted Waste Site, which regulations are the ARARs for Yard 520. Those IDEM regulations include requirements for groundwater monitoring, groundwater investigation, and groundwater remediation which are parallel to the RCRA Subtitle D requirements for landfills. Yard 520 is in compliance with those reguirements. With this in mind, Respondents believe that further remedy alternatives, beyond those suggested by the draft FS, are unnecessary for a complete RI/FS.

* * *

[6] Another illustrative example of confusion created by the EPA FS Comments is SC-1's requirement to delete text materially identical to that of the EPA-approved HHRA (see HHRA section 6.4.3) as vague and misleading. It is not clear to Respondents why the text approved for the HHRA is somehow objectionable for the FS.

We look forward to working with you during the following 14 days to resolve this matter.

Sincerely,

Gabriel M. Rodriguez

cc: Timothy Thurlow (via email)
Lou Rundio (via email)
Dan Deeb (via email)
Lisa Bradley (via email)

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May 16, 2013

VIA ELECTRONIC MAIL AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Matthew J. Ohl
Remedial Project Manager
Superfund Division (SR-6J)
U.S. EPA, Region 5
77 W. Jackson Boulevard
Chicago, IL 60604-3590

Re: Confirmation of Resolution of Dispute Resolution and Alternative Request for Determination by EPA Remedial Response Branch Chief Administrative Order On Consent Docket No. V-W-04-C-784 (the "AOC") Pine Site, Pines, Porter County, Indiana

Dear Mr. Ohl:

Thank you for meeting yesterday to discuss the scope of necessary revisions to the draft Feasibility Study submitted to you on November 29, 2012 (the "FS"). We found the meeting to productive and, as a result of the meeting, believe the parties may have resolved all of the issues described in the Notice of Dispute Resolution submitted to you on April 17, 2013 (the "Notice"). A summary reflecting our understanding of the agreements reached yesterday regarding the substance of FS Appendix G is attached to this letter as Exhibit A (the "Summary"). Our letter to you dated May 2, 2013 reflected our understanding of mutually acceptable clarifications regarding all other issues described in the Notice. If you agree that the Summary and May 2, 2013 letter accurately reflect the mutually-agreed clarifications and agreements, the Respondents will consider the disputed issues described in the Notice to be fully resolved.

We recognize that you may have a different perspective as to one or more aspects of the Summary and/or May 2, 2013 letter and that further dialog may be necessary to address the same. While we have made substantial progress toward resolving the disputed matters, the AOC deadline for Respondents to request a determination by the Remedial Response Branch Chief is today. Consequently, by way of this letter, Respondents are jointly requesting a determination by EPA's Remedial Response Branch Chief pursuant to AOC Section 45 as to all of the issues described in the Notice (a corresponding Statement of Position is attached as Exhibit B). However, because Respondents believe that all Notice issues may, or soon will, be fully resolved through contuning negotiations with you, we suggest that the Remedial Response Branch Chief refrain from acting upon this request for 30 days. Within that 30-day period we anticipate confirming a mutually acceptable resolution with you in writing and withdrawing the afore-stated request.

Again, thank you for meeting with us yesterday and for your prior assistance in clarifying aspects of the EPA's comments to the FS. If you have any questions or wish to discuss any aspect of this matter, please contact me or Lisa Bradley of AECOM at your convenience.

Sincerely,

Gabriel M. Rodriguez

cc: Timothy Thurlow (via email)
Marci Toney (via email)
Lou Rundio (via email)
Dan Deeb (via email)
Lisa Bradley (via email)

Exhibit A

<u>Summary of Understanding</u>
Dispute Resolution
Administrative Order On Consent Docket No. V-W-04-C-784 (the "AOC")
Pine Site, Pines, Porter County, Indiana

The Respondents and EPA met on Wednesday May 15, 2013 to discuss various aspects of the EPA comments on the Draft Feasibility Study, Pines Area of Investigation. The following reflects our understanding of the issues and work required going forward. As discussed, Respondents will incorporate the elements of this understanding into Appendix G (and other relevant sections) of the revised Feasibility Study to be submitted to EPA by June 3, 2013. To expedite the document preparation and review process, Respondents intend to submit to EPA a draft of Appendix G for review by Thursday May 23, 2013, and to meet with you at EPA's office during the week of May 27 (ideally on Wednesday May 29, 2013) to address any outstanding issues or points of clarification.

1. Radiological Assessment

It was agreed that NaI gamma surveys and gamma dose surveys, with appropriate calibrations, will be conducted on a minimum of five (5) of the Fall 2012 background locations using a survey unit size of 2,000 m^2 to establish background conditions. The same surveys based on the same survey unit size will be conducted on a minimum of 12 properties within the Area of Investigation where coal combustion by-products (CCBs) have been identified. If anomalous readings or readings outside the range of background are identified on a property, Respondents will meet/discuss with EPA what additional actions may be taken.

2. CCB Visual Inspection Confirmation

The CCB visual inspections on private properties logged each 6-inch surface soil core based on percent CCB content using the following bins: 0-25% CCBs, 26-50% CCBs, 51-75% CCBs, and 76-100% CCBs. Few samples were classified in the 51-75% CCB bin, and no samples were classified in the 76-100% CCB bin. Based on EPA's statistical evaluation, it was agreed that discrete soil samples will be collected from areas previously visually inspected and logged. The locations will be selected in conjunction with USEPA, to target five (5) samples from locations previously logged in each of the three bins: 0-25% CCBs, 26-50% CCBs, 51-75% CCBs. These samples will be visually logged in the field using the same methods as used in the original analysis, and then submitted to the RJ Lee Group for particulate matter analysis. The results will be plotted to determine if the laboratory results match with the visual observations.

3. Property Sampling within the Area of Investigation

Analytical sampling for metals and inorganics of properties, both residential and nonresidential, will be conducted as discussed below.

a. <u>Quadrant approach for sample collection</u> – Each property will be divided into essentially equally sized quadrants, conceptually two (2) in the front yard and two (2) in the back yard. More "quadrants" will be used for larger properties as needed. The conceptual

locations of the quadrants for each property will be agreed upon with EPA prior to conducting the field work.

b. Additional quadrants to address specific property uses – In addition to the four (4) quadrants, a sampling quadrant will be set up to encompass each of the following if they occur on a specific property:
   i. A vegetable garden
   ii. An unpaved driveway
   iii. A child's play area, based on presence of swing sets or other outdoor play equipment

c. Sample collection locations within each quadrant – Five (5) essentially equally spaced locations within each quadrant will be identified for sample collection. Samples collected from each of the 5 locations at each soil sampling depth (see below) will be composited, so that one sample from each sampling depth from each quadrant will be submitted for laboratory analysis.

d. Sample depths within each quadrant – Sample depths will be as follows:

   i. 0-6 inches below ground surface (bgs) – to be referred to as surface soil
   ii. 6-18 inches bgs – to be referred to as near surface soil
   iii. 1.5- 3 or 5 feet (ft) bgs (final depth to be determined with EPA)

   A 0-6 inch composite sample and a 6-18 inch composite sample will be submitted for all quadrants sampled. If CCBs are not identified within the 18 inches to 3(5) feet bgs horizon at any of the composite locations, then no sample form this horizon will be submitted for analysis. If CCBs are present at a minimum of one composite location within the 1.5-3(5) ft bgs horizon within a quadrant, then a composite sample from that horizon will be submitted for analysis. The field logs will note if at any composite sample location the vertical extent of CCBs is not reached. It was agreed that materials present at depth will likely be homogeneous and that the 1.5-3(5) ft bgs sample will be representative of the material. Sampling will not be conducted at deeper depths to avoid the use of a drill rig, which would result in considerable damage to a property surface, and to avoid compromising subsurface utilities, especially septic systems, which are likely present on the majority of properties to be sampled.

e. Constituents to be analyzed – The exact constituents to be analyzed will be determined via further discussion between the Respondents and EPA. Radionuclides will be addressed by the radiological surveys outlined in Item 1 above. Thus, the options are:
   i. The constituents of concern (COCs) identified in the Final Human Health Risk Assessment (July 2012).
   ii. The constituents of potential concern (COPCs) identified for quantitative risk analysis in the Final Human Health Risk Assessment (July 2012).
   iii. The full list of metals and inorganics, excluding radionuclides, as analyzed for the CCBs in the Municipal Water Service Extension (MWSE).

f. Number of properties to be sampled – The number of properties to be sampled will be calculated on a statistical basis, similar to the example provided by EPA. The analysis will be based on the total number of properties where CCBs are expected to be present,

based on the visual inspections. This includes the 47 properties evaluated in the CCB visual inspections, as well as those properties where access was denied. The final decision on the total number of properties identified will be made in conjunction with EPA.

g. Identification of properties to be sampled – The statistical nature of the determination of the number of properties to be sampled assumes that the subsequent identification of the specific properties to sample will be made randomly from the population. However, it is proposed that the property identification be selected using a biased approach. Under this approach, the Respondents and EPA will identify the half of the total number of properties to be sampled to be biased to those properties expected to have the highest percent of CCBs or highest aerial coverage of CCBs. The remaining properties will be selected by representatives from the P.I.N.E.S. group and the Town of Pines Council.

Exhibit B

STATEMENT OF POSITION
SUPPORTING REQUEST FOR DETERMINATION BY
REMEDIAL RESPONSE BRANCH CHIEF

EPA provided written comments on April 2, 2013 (the "EPA FS Comments") to the draft Feasibility Study ("FS") submitted by Respondents pursuant to Administrative Order On Consent Docket No. V-W-04-C-784 concerning the Pines Site in Porter County, Indiana (the "AOC"). Respondents subsequently jointly submitted a written Notice of Dispute Resolution to EPA dated April 17, 2013 disputing aspects of the EPA FS Comments (the "Notice"). Although significant progress was made towards the resolution of the issues disputed by the Notice since its submission, a complete and documented resolution was not achieved within the period contemplated by AOC Section 45. Respondents have therefore requested a determination from the Remedial Response Branch Chief as to the issues described in the Notice. In addition to the Notice, Respondents respectfully ask that the Remedial Response Branch Chief consider the entire administrative record for this matter prior to issuing the requested determination. In particular, among other documents of the administrative record, we ask that the Remedial Response Branch Chief review and consider the following documents: *Site Management Strategy, Pines Area of Investigation* (conditionally approved by EPA on November 4, 2004 and finally submitted in January 2005); *Remedial Investigation/Feasibility Study Work Plan, Volumes 1-7* (September 16, 2005); *Remedial Investigation Report for the Pines Area of Investigation* (March 5, 2010); *Human Health Risk Assessment (HHRA), Pines Area of Investigation* (December 2011); and *Technical Memorandum - Background Soil Evaluation* (March 2013). All documents of the administrative record are hereby incorporated into this Statement of Position by reference.

As described in the Notice, Respondents believe that aspects of the EPA FS Comments reflect requirements that are ambigious, arbitrary and capricious, unjustified and unsupported by science or applicable law and contrary to applicable law. Specifically, Respondents dispute the below-described aspects of the EPA FS Comments.

1. *The EPA FS Comments arbitrarily require Respondents to conduct extraordinary unjustified and unnecessary further radiological and non-radiological investigations.*

After considering the radiological concerns expressed by the PINES Group, EPA stated as follows in its March 20, 2013 letter to the PINES Group (emphasis added):

> The data presented in the PINES survey and the results of the Pines site Human Health Risk Assessment (HHRA) <u>do not indicate a need for further radiological</u>

investigation because the measured levels are either similar to background or within the acceptable risk range.[1]

Nonetheless, despite the fact that no new radiological information has arisen since the afore-stated EPA statement, the EPA Comments require a truly massive further radiological investigation. Specifically, Specific Comment ("SC")-25 of the EPA FS Comments requires, at a minimum, that all residential properties within the Pines Area of Investigation be subdivided into $100m^2$ units. Assuming there to be 368 residential properties within the Area of Investigation with an average area of 0.86 acre (as estimated by tax records and completion of the CCB visual inspection program), the Area of Investigation is estimated to contain approximately 12,800 residential $100m^2$ units. Each of those units are, pursuant to SC-25, to be subject to 3 levels of radiological surveys and the collection of 5-point composite surface soil samples at 3 different depths (and perhaps an unspecified degree of subsurface sampling, and further sampling of gardens, driveways and play areas). Such sampling would result in the collection of at least 1,664,000 radiological data points and 38,400 samples for analytical testing.[2] Our initial estimates are that it would take well over a year to accomplish such an additional investigation at a cost of tens of millions of dollars.

In addition to requiring sampling for each $100m^2$ area of all 368 residential properties in the Area of Investigation, the EPA FS Comments direct Respondents to sample all other locations desired (but not yet identified by) the PINES Group and Town of Pines Council.[3] In other words, the EPA FS Comments require a completely open-ended degree of sampling that is to be determined by 3rd parties rather than EPA. Such an open-ended requirement has no basis in science and is inherently arbitrary. By allowing 3rd parties to effectively prescribe a sampling and analysis program, we believe the agency has acted contrary to guidance and the NCP which require EPA and Respondents to develop investigative plans including all sampling and analysis plans based on sound science.

---

[1] Although the same letter went on to express that EPA intended for the FS to include additional residential property sampling "to mitigate potential uncertainties regarding the findings of the HHRA" it, in no way, indicated the extraordinary extent of additionally requested sampling of all properties. In fact, in its August 31, 2012 comments to Respondent's Alternative Screening Memorandum, EPA indicated an intent to require only a limited degree of further individual property sampling ("Therefore, it will be necessary to conduct some degree of property specific sampling for use in comparing to an updated soil background data set (see Section 6.2.4) and to calculate property-specific risks and hazards.").

[2] The guidance referenced by SC-25, MARRSIM, does not require $100m^2$ units for sampling of outdoor locations. Rather, it allows units to be up to $2,000m^2$. Nowhere in the EPA FS Comments has the agency provided a rationale supporting the much smaller $100m^2$ units for all aspects of the additional sampling required by SC-25.

[3] "Residential lots investigated should include those of interest to the PINES group and Town of Pines Council." SC-25(a). "Investigations should include playgrounds and other areas of interest to the Pines Group and the Town of Pines Council." SC-25(b). "The Background Reference Area(s) should be selected with consensus from local stakeholders such as the PINES group and the Town of Pines Council." SC-25(e).

The only rationale reflected in the EPA FS Comments for the additional sampling required by SC-25 appears to be 40 CFR 192.12(a) and "community concerns." However, 40 CFR 192.12(a) does not require the above-described extensive sampling; at most, it provides authority for a small subset. "Community concerns" similarly fails to justify the required additional sampling, especially given EPA's consistent prior acknowledgements that such concerns are misplaced, and despite the agency's efforts to address those concerns by providing technical information to the community in public meetings.

2. *The EPA FS Comments arbitrarily require the inclusion of unnecessary additional COCs.*

Respondents expended significant effort, with EPA concurrence and following EPA guidance, to develop the previously approved COC list via the EPA-approved HHRA. That approved COC list formed the basis for the 2012 background sampling program also approved and overseen by EPA. Nonetheless, SC-27 of the EPA FS Comments requires, without explanation or supporting rationale, the addition of lead, total uranium, uranium-235, and uranium-234 to the COC list for the required residential sampling. It further requires the reporting and use of "all common CCB metals, including lead and uranium" beyond the FS's COC list "for completeness." The inclusion of said analytes is inconsistent with all project work that has been conducted and approved by EPA to date. Respondents know of no sound scientific basis for the requirements of SC-27 and submit that "completeness" is insufficient to justify the same.

3. *Requirements of EPA FS Comments are inconsistent with requirements of the AOC.*

AOC Section 26(b) allows EPA to require respondents to submit a revised FS incorporating agency comments within 60 days of Respondents' receipt of the EPA FS Comments. Accordingly, the EPA FS Comments expressly direct Respondents to submit a revised FS fully incorporating the agency's comments within 60 days of April 3, 2013. Implicit in the parties agreement to reflect such a short (60 day) period within the AOC for FS revisions is the expectation that, after many years of cooperative EPA/Respondent work to accomplish AOC tasks 1-7, the scope of required FS revisions would be relatively modest. As explained above, aspects of the EPA FS Comments are instead extraordinary in scope; in effect, EPA is essentially requiring an entirely new RI. The extent of the additional sampling requirements simply cannot be accomplished within the stated 60-day period. Indeed, it would take more (possibly much more) than a year to accomplish all of the additional activities that appear to be required by the EPA FS Comments.[4]

The additional activities likely to require the most time beyond the aforementioned 60-day deadline are those required by General Comment ("GC")-3 of the EPA FS Comments. GC-3 directs that "data from the proposed sampling described in Appendix G will need to be incorporated into the revised

[4] Respondents note as well that it will likely be very time-consuming to obtain access to all properties in order to accomplish the required sampling.

FS." As explained above, the sampling EPA has mandated by Appendix G (as modified by SCs 20-28) is extraordinary. It will be wholly impossible to complete that sampling within 60-days.[5]

4. *Aspects of the EPA FS Comments are vague, ambiguous, internally inconsistent and incapable of providing reasonable direction to Respondents.*

While SC-23 of the EPA FS Comments appears to allow for the possibility of focusing much of the soil sampling required by SC-20 and SC-25, such is not clear as neither SC-20 nor SC-25 explain their nexus to the SC-23. Consequently, the EPA FS Comments fail to provide a clear avenue for developing a tiered and reasoned approach to the residential sampling that builds upon the previously completed investigations.

Further examples of ambiguous and internally inconsistent requirements of the EPA FS Comments manifest through stated cross-references. SC-25(d) references SC-24 for specific information regarding 5-point composite sampling. SC-24, however, provides no such information. We can only guess that SC-25(d) meant to refer to SC-26 instead. SC-26 references SC-21 regarding sampling depths even though SC-21 does not concern sampling depths. SC-23 cites to SC-16 for the proposition that concentrations may vary among residential properties. SC-16, however, does not speak to the same.[6]

Collectively, the inconsistencies and ambiguities of the EPA FS Comments effectively preclude Respondents from a reasonable understanding of the full extent of EPA's FS requirements.

5. *The EPA FS Comments arbitrarily and unnecessarily require that the revised FS include a direct remedial alternative for Yard 520.*

After noting that groundwater from Yard 520 is the source of much of the proximate groundwater impact, SC-3 of the EPA FS Comments states "Yard 520 is part of the Pines Site and, therefore, must be included under the alternatives section of this FS report." Said statement appears to ignore the fact that groundwater alternatives were, in fact, included within the submitted draft FS (see draft FS sections 8.3.2 through 8.3.10). If the unstated intent of SC-3 is to require the inclusion of additional alternatives which control Yard 520 source material, Respondents submit that (a) an appropriate source control remedy (an IDEM-approved cap) has already been implemented for Yard 520 and (b) a groundwater remedy (the extension of a municipal public water supply) has already been implemented as well. The capping of a non-hazardous waste landfill and installation of municipal water are presumptive remedies in situations that parallel Yard 520 and the AOC. Moreover, Yard 520 is in full compliance with the IDEM regulations for a closed Restricted Waste Site, which regulations are the ARARs for Yard 520. Those IDEM regulations include requirements for groundwater monitoring, groundwater investigation, and groundwater remediation which are parallel to the RCRA Subtitle D requirements for landfills. Yard 520 is in compliance with those requirements. With this in mind, Respondents believe that further remedy alternatives, beyond those suggested by the draft FS, are unnecessary for a complete RI/FS.

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[5] A requirement to complete the additional sampling required by SCs 20-28 post-FS would also be objected to by Respondents as contrary to the AOC and the prior EPA approvals of other AOC tasks.

[6] Another illustrative example of confusion created by the EPA FS Comments is SC-1's requirement to delete text materially identical to that of the EPA-approved HHRA (see HHRA section 6.4.3) as vague and misleading. It is not clear to Respondents why the text approved for the HHRA is somehow objectionable for the FS.