From: Yogi, David
To: Sanchez, Yolanda
Subject: RE: News Update: EPA, State Raise New Concerns In Dispute Over Air Force Cleanup Levels (InsideEPA)
Date: Friday, March 13, 2015 4:37:00 PM

Yes, this is interesting. I know this site has received a lot of attention recently, and we should remember to bring this to bear in our team discussions. Thanks for sharing.

From: Sanchez, Yolanda
Sent: Friday, March 13, 2015 4:17 PM
To: Yogi, David
Subject: FW: News Update: EPA, State Raise New Concerns In Dispute Over Air Force Cleanup Levels (InsideEPA)

FYI… Note, the similarities with pCBSA and Del Amo/Montrose, except here, DTSC actually promulgated a health standard.

From: Bland, Naseera
Sent: Monday, March 09, 2015 4:39 AM
Subject: News Update: EPA, State Raise New Concerns In Dispute Over Air Force Cleanup Levels (InsideEPA)

Daily News

EPA, State Raise New Concerns In Dispute Over Air Force Cleanup Levels

Posted: March 05, 2015

In a high-level dispute over which perchloroethylene (perc) toxicity levels should govern cleanup at an Air Force base in California, EPA and state regulators have added a new element to their arguments, contending the military's position would require a fundamental remedy revision that warrants a full public vetting.

The Air Force counters that the regulators, under the Federal Facility Agreement (FFA) that governs the cleanup, cannot introduce new arguments at this stage of the dispute and is reiterating its rejection of a proposed compromise suggested by California regulators last November. The compromise would have averaged the two disparate toxicity values at the center of the argument, and labeled the new number a "site-specific toxicity value."

In addition, California environmental and citizen groups expect to soon sign on to a letter in support of the state's more stringent standard, one environmental source says.

At issue is the interpretation of EPA guidance on how to set cleanup levels when federal and state toxicity values differ. The dispute, which was invoked last August, escalated to a

higher level in January. Eventually, EPA Administrator Gina McCarthy may have to weigh in on the issue.The Air Force argues the guidance requires the use of so-called Tier I values -- EPA Integrated Risk Information System (IRIS) criteria -- to always be applied when available.

But the California Department of Toxic Substances Control (DTSC) and EPA Region 9 maintain that where a chemical has multiple toxicity criteria considered scientifically valid and current, "the most health-protective criteria should be applied for risk screening, risk assessments, and selecting cleanup levels," DTSC says in a formal dispute statement issued last August. In this case, the more stringent criteria are California's perc toxicity criteria. And, EPA Region 9 in a Feb. 4 document says the agency's guidance documents give the region flexibility to follow a longstanding protocol to apply California's perc toxicity criteria in the state.

The toxicity values in dispute for the dry cleaning solvent that is a common contaminant at hazardous waste sites would inform groundwater vapor compliance levels at Edwards Air Force Base.

And DTSC has contended that applying EPA, rather than state, toxicity values would produce a "marked change" for determining the boundaries where vapor intrusion mitigation would be required at the site for perc. These boundaries are a land use control.

The Air Force says EPA's 2012 IRIS number is about 23 times less stringent than the state's toxicity value. Therefore, the groundwater vapor compliance levels and vapor intrusion control boundary are 23 times "overly conservative and overly protective," the service says in a description of its position. It contends the cleanup plan at the site needs to be modified in order to match EPA guidance and the new IRIS value -- so as not to overstate risk and impacts -- and to prevent wasting scarce cleanup dollars and unnecessarily limiting further development of the site.

It contends in its latest document that DTSC must show that peer reviewers have found the state value to be "more recent, more relevant, and more credible than the 2012 IRIS value," but says so far DTSC has not been able to demonstrate that.

Toxicity Value

Regulators have contended that altering the perc toxicity value from the state level to EPA's would set precedent in California. The two have a 20-year agreement in place to apply the toxicity value that is more stringent, when comparing numbers developed by the state and EPA, for pollutants being cleaned up in the state.

According to DTSC in a Feb. 4 supplemental statement of the dispute, the new issue of dispute is whether the service's proposed decision to alter the toxicity value it wants to use at the site is a "fundamental" change to the remedy, rather than a significant change, and therefore requires an amendment to the Record of Decision (ROD), rather than the Air

Force's proposed Explanation of Significant Differences (ESD).

A ROD amendment would trigger public participation requirements, as well as require a new analysis of nine remedy criteria weighing environmental protection and compliance with applicable or relevant and appropriate requirements -- often state standards -- among other criteria, and require issuance of a revised proposed plan, according to EPA. A new nine criteria analysis is not required for ESDs, nor are additional public comment opportunities, according to EPA.

This issue arose during discussions among the parties over the past few months. EPA Region 9 maintains in its Feb. 4 document that the less stringent toxicity value the Air Force is advocating for in its proposed ESD is actually "a fundamental change to the remedy that warrants full disclosure to the public through the ROD Amendment process."

The region notes that any dispute over a remedy selection between EPA and the Air Force -- if unresolved -- would eventually be decided by the EPA administrator. Should that result in a less stringent value than currently exists, Region 9 will not support making such a change through an ESD, the region says in the document.

"The proposed change to a less stringent toxicity value will require advance public disclosure, a public meeting and comment period where the public can ask questions, and be given an opportunity to comment on the proposed change," EPA says. "This is particularly true where selecting the less stringent value would mark a fundamental departure from twenty years of EPA's practice in selecting toxicity values in the State of California."

EPA says no "bright line" exists "as to what constitutes a significant change versus a fundamental change to the remedy. However, EPA Region 9 believes that since the planned change to the toxicity value would be less stringent and thereby result in a smaller vapor intrusion compliance boundary, in its judgment, this change, if it were to be adopted, would need to be made through a ROD Amendment," EPA says.

The public disclosure process and nine criteria evaluation triggered with a ROD amendment would allow the regulators to determine if the community has a strong preference regarding the perc toxicity value and related vapor intrusion compliance boundary, the agency adds.

ROD Amendment

On this issue, the Air Force in its Feb. 4 memo argues that regulators raised the ROD amendment issue for the first time in November, long after the deadline for disputing the draft ESD, which the Air Force submitted to the other parties last May. The Air Force points to a clause in the FFA that requires a written statement of dispute be made within 30 days after receipt of a draft final primary document.

The Air Force also argues that its proposed toxicity value change does not fundamentally alter the remedy approach, scope or remedial goals of the vapor intrusion remedy, and says its proposal would still meet the same cancer risk protection level of 1x10^-6.

EPA in its Feb. 4 document, however, says it is "not aware of any restriction on when EPA

can bring forward arguments during a dispute resolution process that has been initiated in accordance with the FFA."

DTSC in its supplemental statement also says it was agreed by the parties to add the ROD amendment issue to the dispute as the dispute was elevated to the next level.

The Air Force in its Feb. 4 memo also reiterates that it is rejecting the DTSC proposal made last November to average Tier 1 and Tier 3 toxicity values. "The Air Force simply cannot transparently and scientifically find any justification for this mathematical average given the comparative currency, credibility and relevance of the EPA IRIS 2012 reassessment and accompanying peer review," the memo says.

But DTSC in the supplemental statement says the Dispute Resolution Committee had directed the parties to develop a compromise perc level. Subsequently on a Nov. 26 teleconference, DTSC proposed a compromise level, but that was rejected by the Air Force, DTSC says. -- *Suzanne Yohannan* (syohannan@iwpnews.com)

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