



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

July 2, 2008

Desi Crouther, Chief
Office of Small Sites Projects
Office of Environmental Management
Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585-0001

Re: Santa Susana Field Laboratory, Ventura County, California,
Implementation of H.R. 2764

Dear Mr. Crouther:

I am writing to express concerns about the approach we have been taking on the radiological survey at the Santa Susana Field Laboratory (SSFL) site. The 2008 Appropriations Law (H.R. 2764) appropriated \$13M to the Department of Energy (DOE) for environmental remediation activities at SSFL Area IV (the site). This legislation requires that DOE use a portion of this funding to enter into an interagency agreement with EPA to conduct "a joint comprehensive radioactive site characterization of Area IV."

History of Negotiations Between EPA and DOE

In early 2008, EPA and DOE initiated discussions regarding scoping and completing a radiological survey in Area IV per the requirements of H.R. 2764. Initially, EPA offered to develop a scope of work for this comprehensive radiological survey with the starting point being the work done by EPA's RCRA program a number of years ago. The projected cost of that work was estimated to be at least \$18 million.

In March 2008, DOE forwarded a draft MOU to EPA which proposed that DOE contractors would conduct the work under a joint DOE/EPA decision-making structure.

In April 2008, EPA proposed, as an alternative, that a reimbursable interagency agreement (IAG) be issued designating EPA as the Lead Agency, under CERCLA, for this work. Under the IAG proposal, EPA

would perform a comprehensive radiological survey using DOE funding. This proposal was rejected by DOE.

In early June 2008, DOE made another proposal under which DOE would do an *initial* radiological survey of Area IV work (and SSFL Buffer Zone areas adjacent to Area IV) and EPA would conduct a background study with funding through an IAG. DOE proposed that the DOE work would be done pursuant to an EPA Administrative Order on Consent (AOC) and EPA would provide oversight for all work conducted by DOE.

While this DOE proposal was not what the public desired nor what the congressional staff have indicated they had in mind when drafting H.R. 2764, EPA was willing to consider this alternative because it was consistent with EPA's "enforcement first" approach under which Potentially Responsible Parties (PRPs) often conduct work under EPA oversight at National Priorities List (NPL) sites. Critical to the success of such an approach was DOE's articulated commitment to be transparent to EPA and the public on how the work will be conducted. We also agreed to defer discussion of later phases of the sampling and analysis work necessary to complete a "comprehensive" radiological survey of Area IV per H.R. 2764. Together, we presented the DOE proposal to Congressional staff and the public in June.

Recent Events

Recent events have led EPA to re-evaluate the DOE proposal that we have been considering for SSFL. We are concerned about DOE handling of issues under NEPA. For example, although DOE stated in their draft EIS Data Gap Analysis Report that EPA default Agricultural preliminary remediation goals (PRGs) for radionuclides would be used as screening levels for radiological work conducted at the site, the screening levels used in the DOE report to evaluate existing data were in some cases several orders of magnitude higher than published EPA Agricultural PRGs. When DOE was questioned about this issue by the public on June 19, and again in the technical meeting held at DTSC's offices on June 20, DOE representatives failed to explain whether they in fact plan on using EPA's Agricultural PRGs as the basis for detection limits in their radiological investigation.

In addition, during the technical meeting on June 20, DOE informed EPA for the first time that some of the radiological sampling proposed to be done by DOE would actually be done by Boeing, so that sampling efforts and costs could be shared. DOE's plans to have Boeing conduct radiological sampling were never disclosed before the meeting and are contrary to DOE's representations to EPA that DOE radiological sampling would be conducted by DOE's contractor, CDM.

These recent events demonstrate a significant lack of transparency in DOE's interactions with EPA and the public. These events have damaged DOE's credibility and DOE has misrepresented EPA's role as an oversight agency.

During the public meeting on June 19, community members repeatedly and strenuously objected to the proposal that DOE conduct sampling under EPA oversight. These members and representatives of the community stated that, given DOE's history at the site, any sampling work conducted by DOE would not be accepted by the community as credible or reliable data.

Finally, in a conference call on June 30, 2008, EPA learned that DOE could only transfer \$500,000 to EPA in FY 08 to implement the provisions of H.R. 2764. DOE also indicated that DOE views the provisions of H.R. 2764 as limited to FY 08 and that DOE's appropriations planning for FY 09, to date, does not include any provision for additional funding for EPA activities begun in FY 08 to implement H.R. 2764. From the outset, EPA has made clear that EPA's willingness and ability to move forward was dependent on commitments from DOE to provide EPA with all funding needed to begin and complete the work. To learn from DOE, after five months of negotiations, that DOE does not have the money to fund EPA's work is inconsistent with DOE's statements during our negotiations.

EPA's New Approach

At this point, EPA sees that there is one viable approach for making some progress. In that approach, EPA would conduct the radiological survey work as the Lead Agency under Superfund and in accordance with EPA's, not DOE's, schedule. DOE would make a commitment, in writing, to provide funding to EPA, now or in the future, in order that EPA can to perform the rest of the initial phases of radiological survey work for SSFL Area IV and adjacent Buffer Zone Areas. Should this approach be acceptable to DOE, EPA would plan to share a draft scope of work, cost estimate and schedule for the gamma walkover and shallow soil sampling with DOE in September 2008.

At the very least, DOE should enter into an IAG by August 1, 2008 to transfer at least \$1.5 million to EPA so that EPA may conduct the SSFL site specific study to determine background values for radiological contaminants. EPA understands that DOE may have to redirect FY 08 funds from other DOE activities to meet EPA's funding needs of \$1.5 million. However, EPA is not willing to undertake this important and significant work without all or most of the funding being provided

contemporaneously. EPA notes that FY 08 Appropriations Law provided DOE with \$13 million and clearly envisioned a reasonable portion of that funding would be transferred to EPA by DOE.

If DOE cannot agree to this approach, EPA will have no choice but to inform the public and interested elected officials that while EPA has tried its utmost, EPA and DOE have failed to reach agreement regarding the implementation of H.R. 2764. Until SSFL is added to the CERCLA National Priorities List, EPA's role at SSFL would then be limited to providing technical assistance to the State of California.

I would like to discuss the path forward with you and your staff as soon as practicable. EPA requests that DOE provide a written response to this letter by July 11, 2008. Should you have any questions or comments, please contact me at 415-972-3438.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael M. Montgomery", with a long horizontal line extending to the right.

Michael M. Montgomery, Chief
Federal Facilities and Site Cleanup Branch

cc: Mr. Norman E. Riley, SSFL Project Director, California Department of Toxic Substances Control