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Subject: Fw: EPA, Army Agreement On Propellant Cleanup Sidesteps Liability Questions
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EPA, Army Agreement On Propellant Cleanup Sidesteps Liability Questions

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EPA has reached an agreement with the Army and the state of Louisiana that breaks an impasse over the stalled cleanup of more than 15 million pounds of explosives and propellant abandoned by a demilitarization contractor at a National Guard facility owned by Louisiana, although the plan sidesteps questions over the Army's liability for the pollution.

Under the agreement, the cleanup at Camp Minden, LA, will be paid for by the United States' judgment fund -- a permanent appropriation used to pay court judgments and settlements of lawsuits against the government -- without the Army having to reimburse those costs, according to an Army spokesman.

EPA is hailing the agreement as abating the risks that the unstable site poses to the public and the environment and has withdrawn a Resource Conservation & Recovery Act (RCRA) endangerment order against the Army.

The dispute over whether the Army is responsible for cleaning up a site operated by an Army contractor but not owned by the Army highlighted EPA's inability to enforce a RCRA order in federal court as it lacks such authority against other federal agencies.

The case is one of three in recent months where EPA has stepped up pressure on the military to clean up contamination, with two other cases still pending. In those, the agency has also issued endangerment orders to

force the military to conduct a cleanup to address imminent hazards. At Camp Minden, the Army in August rejected a RCRA unilateral administrative order (UAO) requiring the cleanup of propellant and explosives stored at the National Guard base.

The Army has argued it lacked the authority and appropriations to take the actions ordered by regulators, and that the order misapplies hazardous waste and fiscal laws and undermines the service's recycling policy for demilitarizing munitions. [The Army said](#) that instead it would pursue settlement negotiations with the Justice Department, EPA and Louisiana under Superfund law as an alternative to the order.

At issue was a rare "imminent and substantial endangerment" order EPA issued under RCRA section 7003 against the Army to force it to clean up more than 15 million pounds of explosives and propellant abandoned by the demilitarization contractor Explo Systems at Camp Minden. EPA believes there is a substantial risk the propellant will auto-ignite and cause a large explosion. While the Army does not own the property where the contractor stored and processed the munitions, EPA argued the Army had contributed through a lack of oversight to the illegal storage and handling of waste explosives and therefore had created an imminent and substantial endangerment of public health and the environment under the law.

Under the agreement, EPA says in an Oct. 29 press release, the Louisiana Military Department, which owns and manages Camp Minden, will use controlled burning to destroy the smokeless propellants in specially designed burn trays, with funding coming from the judgment fund. EPA and the Louisiana Department of Environmental Quality (LDEQ) will oversee the work, it says.

"This agreement provides a comprehensive solution that protects public health and the environment," EPA Region 6 Administrator Ron Curry said in a statement. "It reflects the dedication and hard work of all our partners."

According to the Army spokesman, the Army will not reimburse the judgment fund, and will not pay any costs under the agreement, but will receive covenants against any further administrative or legal action by EPA or Louisiana. Also, both EPA and LDEQ are withdrawing orders against the Army on the matter, he says. The Louisiana Military Department will also pay for certain EPA past and future oversight costs, the spokesman adds.

RCRA Order

Meanwhile, in a separate pending case, the Army is debating with EPA a first-ever RCRA order requiring mitigation of vapor intrusion. Under [the "imminent and substantial endangerment" order](#) issued Sept. 24, EPA is mandating the Army address vapor intrusion in residences surrounding the now-closed Fort Gillem, GA, after the military allegedly retreated on commitments to take mitigation measures if vapor levels surpassed certain benchmarks.

Sources say EPA enforcement chief Cynthia Giles met with Army officials Oct. 31 over the order. In a brief interview at the Association of State & Territorial Solid Waste Management Officials' annual meeting Oct. 29 in Reston, VA, EPA waste chief Mathy Stanislaus stressed the importance of the order, calling the situation an imminent public health concern that needs immediate action.

In the Fort Gillem case, the Army has argued the indoor air contamination at issue is attributable to sources inside the homes, such as building materials or items people bring into their houses, rather than causes stemming from the Army. But EPA and state regulators say testing shows the contamination is clearly linked to the same contaminants found in soil, groundwater and air on Fort Gillem.

In a third case involving a RCRA UAO, the Navy is expected to meet after Veterans Day with Giles to raise questions over [the Oct. 9 order](#) requiring cleanup of waste stemming from the Gorst Creek Landfill, WA, following heavy rainfalls. EPA considers the Navy a waste generator at the site, and pursued the order after failing to get the Navy to voluntarily take response action to deter landfill slides at the site.

In response to the order, Navy Deputy Assistant Secretary for the Environment Donald Schregardus requested the conference with Giles, writing in [an Oct. 21 letter](#) that he wished to discuss several issues. These include "factual misstatements in the Order, Congressional authorization/appropriation and related fiscal issues, appropriateness of the remedy, identification of responsible parties and options for moving forward in an effective and cooperative manner," he said.