

Tri-Valley CAREs' Comments
on the
Draft Final Site-Wide Record of Decision
for the
Lawrence Livermore National Laboratory Site 300 Superfund Cleanup

June 18, 2008

1. Public Outreach and Access to Information.

This issue is particularly important to Tri-Valley CAREs (TVC) and its members, all of the community members who commented previously (e.g., on the Proposed Plan) and other members of the public. We understand that a table, as we have described below, would consider the two alternatives that the Department of Energy (DOE) evaluated in the draft and draft final Record of Decision (ROD). The Table should show the two DOE alternatives for each Site 300 Operational Unit (OU, or contaminated area) and evaluate them against the nine Environmental Protection Agency (EPA) criteria for allowing a Superfund cleanup remedy outlined in the National Contingency Plan.

We note that DOE had responded to our prior comment calling for a table delineating DOE's analysis of the remedy(ies) against the nine EPA evaluation criteria by stating that the previous analysis in the interim remedy are the same as those for this ROD. The general public cannot be asked to go back to a relatively obscure document that DOE issued in 2000; therefore we request that this analysis be incorporated into the ROD.

We also request that the Responsiveness Summary identify all items that have been altered from the Proposed Plan to the Draft and/or Draft Final ROD, particularly those that occurred as a result of public comment. If it is a simple statement that no changes have occurred as a result of public comment, then please state it.

2. Cleanup Standards.

We appreciate the Explanation of Cleanup Standards that was added in the responsiveness summary to the ROD. We respectfully disagree with some of DOE's conclusions, thus we remain convinced of and resubmit the following points for further consideration:

- A more appropriate way to develop cleanup standards is to set them at the most stringent level; either the Water Quality Numeric Limits (WQNLs) or

background. If the more stringent standard cannot be met for technical reasons, then the ROD can be modified at a later date. We believe that this is the correct approach, rather than establishing the most lenient groundwater standard as the initial foundation for cleanup.

- Increasing residential growth in the Bay Area in general and the Central Valley around Tracy in particular and the strain on water resources throughout the state demands that the highest level of cleanup of all potential drinking water supplies be given the highest priority.
- While DOE had analyzed the cost and time to achieve various levels of cleanup in the Site-Wide Remedial Evaluation Summary Report (SWRESR), as far as we know, it has not analyzed the risk reduction from the various levels. TVC believes that it is indisputable that cleaning up to more stringent levels would provide an added level of protection for future users and neighbors of the site.
- Regarding the DOE response to TVC's prior comment (2e), TVC continues to believe that State Water Resources Control Board (SWRCB) Resolution 68-16 (i.e., the non-degradation policy for waters) applies to the Site 300 Superfund cleanup and thus there is an absolute need to control contaminant migration in order demonstrate compliance.

3. Land-Use Assumptions.

TVC notes that the DOE Responsiveness Summary adds a section under cleanup standards that addresses this topic. Yet we continue to disagree with DOE, and our original comment stands. We therefore resubmit the following for further consideration:

In its response to TVC's comments calling for residential standards for cleanup, DOE states that if land-use of Site 300 ever changes, cleanup standards will be re-evaluated. The fact is that changes in land-use at Site 300 are already being contemplated by DOE.

We think that by setting the cleanup levels to industrial standards, the costs of returning the land to residential standards will bias the reevaluation, and may prohibit this land from ever being used productively. Once decisions are made to leave a contaminant in place, it is difficult to obtain needed funds to continue research on how the contaminant could be safely treated, or to go back and remove or treat the contaminant.

In sum, this means that a decision now to use industrial standards for cleanup may haunt us all in the future by limiting what would otherwise be viable options for the site. Further, it may prejudice the "remedy" chosen in the ROD. It

is wiser - and will be cheaper in the long run - to clean up to more stringent standards from the outset rather than "reevaluate" at a later date when cleanup facilities may have been taken out of service or torn down (or were not what would have been chosen in the first place) and equipment mothballed or sold.

4. Continuing Operations.

We appreciate the information that DOE National Nuclear Security Administration activities at outdoor firing tables will be discontinued by year-end 2009. Yet we are disconcerted with the caveat that open air testing is being considered as part of DOE's "Work-for-Others Projects". Please explain what procedures would be in place that would authorize these projects, if any, as well as the role anticipated for public notification and/or approval, as well as regulatory approvals. We strongly object to this program without any public notification and opportunity for input or notification and approval by the regulatory agencies with Superfund authority.

5. Process-Related Issues.

Our comment still stands and we resubmit it herein for further consideration:

In response to comments about the change in Remedial Action Objectives (RAOs) in the SWRESR, DOE has agreed to re-evaluate cleanup standards once the Maximum Contaminant Levels are met, due to the lack of agreement between DOE and the regulatory agencies regarding "assumptions used for the technical and economic feasibility analysis". This is a repetition of the compromise that led to the "interim" ROD in 2001.

We ask that the regulatory agencies and DOE agree on assumptions, because we are concerned that at the next iteration, there will be no institutional memory about why the analysis is being done or what was in dispute. While it appears that DOE remains somewhat open to raising the cleanup standards, we find (and herein argue again) that decisions regarding cleanup standards should be set at the strictest levels; only after it is shown that these standards cannot be met, should they be made less stringent.

We also request that the ROD include a brief description and Table identifying all changes that have been made to the "interim" remedy in this ROD.

6. Remedial Action Objectives (RAOs).

Thank you for adding the RAOs to the ROD. We ask that DOE remove the words "and economically" from the first RAO under "Environmental Protection". As we noted at

the TAG meeting of June 16, 2008, the National Contingency Plan does not support adding economic considerations as is presently written into the draft final ROD.

7. Milestones.

Our original comment still stands, with a change in wording to reflect the discussion that we had on this topic at the June 16, 2008 TAG meeting. That is, we could support DOE replacing our initial word "milestones" with the word "objectives". That said, we continue to believe in the essence of our original comment. Including out-year objectives for the cleanup at regular intervals in the ROD will be valuable to the community, the regulators and the DOE in the future. We recognize that estimates of this kind are based on the best available information and we expect that the estimates would change during each Five-Year Review.

TVC commented that the plan should contain objectives by which the success of the subsequent cleanup can be evaluated. DOE responded that buildout of treatment systems adheres to CERCLA (the Superfund law). Further the DOE stated that mass removal and contamination trends and progress are all documented in the semi-annual Compliance Monitoring Reports. While this latter documentation serves some of the intent in our request, it would be advantageous to set forth in the ROD what the proposed schedule and milestones [objectives] are, particularly regarding estimates of mass removal rates and attainment of clean-up goals.

8. National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) Compliance.

TVC comment stands, and is resubmitted herein for further consideration:

We asked that the National Environmental Policy Act (required for the Interim ROD) and California Environmental Quality Act (required for the Pit 7 Amendment to the Interim ROD) be done in conjunction with this document. We have not received a response to this request. We reiterate the comment and request that the appropriate level of NEPA and CEQA reviews be carried out *prior* to the issuance of the final ROD.

NEPA applies whenever a federal agency proposes an action, grants a permit, or agrees to fund or otherwise authorize any other entity to undertake an action that could possibly affect environmental resources. The federal agency must prepare an Environmental Impact Statement (EIS) for actions "significantly affecting the quality of the human environment." 42 U.S.C. § 4332. CEQA applies to "projects" proposed to be undertaken or requiring approval by State and local government agencies. Under such circumstances, the lead agency must

complete the environmental review process required by CEQA, which necessitates the preparation of an Environmental Impact Report (EIR) where "significant" impacts are found.

9. Remediation.

The comment below still stands and is resubmitted here for further consideration:

TVC remains convinced that the remedy for the Pit 7 Complex should contain an element of downstream hydraulic control. We acknowledge DOE's disagreement with this point of view, and we incorporate by reference the arguments that we have already made in writing and in person on numerous occasions.

10. Specific Comments on the Proposed Plan and draft ROD.

The comments below still stand and are resubmitted for further consideration:

Additionally, in response to our prior comment that monitoring should be located upstream from the Building 850 firing table contaminant plume to ensure that diverted water does not alter the groundwater hydrology, DOE responded that monitoring is part of the remedy "as shown on page 10". It is not clear what document you are referring to. Please clarify, and the comment should be taken as a point of concern, as we are sure that DOE agrees that creating additional hydraulic head in this area will be counterproductive.

With regard to future activities at Site B-812 (OU9), and B-865, and the Sandia Test Site, please identify planned activities in the ROD.

We appreciate this opportunity to comment on the Draft Final Site-Wide ROD for the Livermore Lab Site 300 Superfund Cleanup. We strongly recommend that changes to the ROD based on these comments are necessary in order to achieve a comprehensive and environmentally sound cleanup of contaminated soil and groundwater at Site 300.

If you have any questions, or would like clarification of any of these comments, we stand ready to provide additional information.

Sincerely,

Marylia Kelley
Executive Director

Peter Strauss
President

Tri-Valley CAREs

PM Strauss and Associates