Del Amo Superfund Site  
Soil and NAPL OU Feasibility Study  
Institutional Controls Meeting Notes  
Environmental Safeguards for Local Planning and Permitting  
Oakland, California  
June 1, 2006

Attendees: Dante Rodriguez (US EPA)  
Roberta Blank (US EPA)  
Michele Benson (US EPA)  
Safouh Sayed (DTSC)  
Larry McDaniel (DTSC)  
George Landreth (Shell)  
Randy Heldt (Shell)  
Larry Bone (Dow)  
Steve McKae (Wendel, Rosen, Black & Dean, LLP)  
Patrick Gobb (NewFields)  
John Dudley (URS)  
Jude Francis (URS)

Topic 1) The meeting was initiated with viewing of an Institutional Control (IC)-related video followed by a general overview of the FS and IC mechanisms being evaluated. The following IC mechanisms were described:

- Site Registry  
- Web-Based Information  
- Land Activity Monitoring  
- Zoning Restrictions  
- Building Permits  
- Grading/Excavation Permits  
- Restrictive Covenants

Topic 2) Dante led the discussion of the ICs Layering Plan that was originally presented to EPA as a memo on December 16, 2005. The ICs Layering Plan was presented by parcel groups based on ascending risk ranging from Groups 1 through 5. There was general consensus by attendees that parcels determined through the Risk Assessment to be suitable for residential use were less likely to require restrictions, but might still need permit requirements for land owners to give notice of certain construction activities.
While discussing the site registry ICs, Larry McDaniel requested information regarding the FINDS and US INST CONTROL components that are site databases. Presented below is a description of each:

**FINDS** – Facility Index System/Facility Registry System contains both facility information and “pointers” to other sources that contain more detail. This database is maintained by the US EPA and can be located at [www.epa.gov/frs/index.htm](http://www.epa.gov/frs/index.htm).

**US INST CONTROL** – This database contains a listing of sites with institutional controls in place. The database is managed by the US EPA; however, a public link is currently not available. The US EPA is currently working on this and anticipates a public link to this information in the near future.

**Note:** Both of these databases are included in the ASTM Standard 1527-00 for Phase I Environmental Site Assessments (Phase I ESA) and will be part of the All Appropriate Inquiries standard which takes effect on November 1, 2006.

For informational purposes, the All Appropriate Inquiries process will be utilized to evaluate a property’s environmental condition and potential liability for any contamination. The final All Appropriate Inquiries requirements are applicable to any party who may potentially claim protection from CERCLA liability as an innocent landowner, a bona fide prospective purchaser, or a contiguous property owner.

Another database, DTSC’s “Envirostor” was discussed briefly. Envirostor is a database of sites in California regulated by DTSC (Site Mitigation and Brownfields Reuse Program) that includes a listing of deed restricted sites as well as a searchable database of all NPL, state response, Voluntary Cleanup Program sites and school cleanup sites [http://www.envirostor.dtsc.ca.gov/public/deed_restrictions.asp](http://www.envirostor.dtsc.ca.gov/public/deed_restrictions.asp)

Larry McDaniel also voiced a concern regarding the lack of groundwater ICs within our IC layering plan and stated that some of the Group 1 parcels (Information IC only) may need a restriction for groundwater use if there is contaminated groundwater below the parcel. Dante responded that EPA’s groundwater team was reviewing ICs associated with the Groundwater OU and EPA would coordinate to the extent possible to avoid implementation of requirements in two phases rather than one.
Topic 3) At this point, the group started discussing IC Layer 2 (Permit Review ICs) that include Groups 2 and greater (as defined in the ICs Layering memo).

The group concurred that based on the results of the Risk Assessment none of the Group 2 sites were above Unrestricted Use/Unrestricted Exposure (UU/UE); however, concerns were expressed regarding areas which might not have been investigated because they were inaccessible (e.g., located beneath a large footprint building).

A cut off point for the use of land use covenants was discussed at length. The function of the buildings on the site working as a cap was noted and it was suggested that a deed restriction may be needed to protect the cap. For example, the buildings could be demolished or damaged by an earthquake in the future. Randy responded that permits would be needed for any rebuilding if any of these events occurred. Randy summarized the permits review IC as “regulating use of the land” and perhaps not “restricting use of the land” (i.e. prohibiting a use).

After some discussion, the group concluded that a “deed restriction” likely would not be required for Group 2 sites; however, if there is a targeted former facility that has not been sampled, then some additional sampling may be appropriate prior to issuance of a permit.

Topic 4) The group next discussed the modification that Dante had proposed for Group 3 parcels. Both DTSC and EPA stated that if a parcel does not have UU/UE, then it needs a restrictive covenant. Dante proposed modifying the IC Layering proposal to include deed restrictions for Group 3 parcels. This would increase the total number of parcels with deed restrictions from 17 to 31 parcels. After some discussion, EPA summarized their position as follows:

A deed restriction would be required for Group 3 parcels; however, the text of this restriction would not prohibit the use of the property for residential purposes. Text would be crafted to include some sampling requirements and either engineering controls or a removal that would need to be accomplished before the parcel could be considered for future residential development. Larry McDaniel stated that the DTSC has discussed and possibly used language like this in the past and the group considered placing this type of text into the deed restriction. Larry also stated that he could provide an example of some previous deed recordation language that the group could use to develop our language.

Topic 5) Execution of Deed Restrictions.

Both EPA and DTSC confirmed that any deed record would be executed by the property owner and DTSC. EPA would not be a signatory to the deed. In addition, EPA generally noted:

- The EPA has not experienced insurmountable push-back from property owners regarding executing deed restrictions although personalities could come into play where landowners are resistant in isolated cases. Present experience has been that
there were no specific instances of compensation demands associated with execution of deed restrictions.

- EPA has presented this information to property owners in a positive light, stating that it removes any doubt regarding property use and makes the property more marketable.
- If the property owner did not want to participate, remedies that might be available in extreme cases would include an EPA-requested order to have the property owner execute the deed restriction.
- Costs for development, negotiation, public agency oversight, annual inspection, reporting, legal support, and long-term monitoring of the ICs should be included as part of the FS evaluation.

**Topic 6) City of Los Angeles Meeting**

The group discussed the results of a recent meeting with the City of Los Angeles regarding the local permitting process and implementation of a program to assess environmental concerns on a specific parcel prior to permit issuance. Both Dante and Jude stated that the City was receptive to the idea and that Council woman Janice Hahn’s office requested implementation of this program sooner rather than later. To assess implementability and based on this request, Dante stated that EPA decided to implement this permit review IC as a pilot project performed as part of the FS.

**Topic 7) Pilot IC Work Plan for Permit Review with City of Los Angeles**

The draft Pilot Program text was distributed to the group for discussion and Jude presented the concept using a flow chart and discussed how the process would proceed. Dante requested that Jude e-mail a digital copy of the Work Plan to the group and that the group provide “red-lined” comments back to Dante.

The group then discussed the program as follows:

- Randy suggested that when the City of Los Angeles (Department of Building and Safety (DBS)) receives a permit application that requires excavation in excess of 1.5 feet below ground surface, the City would direct the applicant to a portal (web site).
- The applicant would access the portal, log in, click on their parcel, and obtain specific information regarding their parcel. This information would include the history of activities conducted on their parcel, historic site features, results of the RI, results of the BRA, and IC associated with the identified risk. This information will be of value to the applicant in developing an understanding of the potential environmental issues on his property and in the specific area of his project, and the institutional control(s) that may be applied to the project.
- There was general discussion about how the applicant would log onto the web portal, fill out a project questionnaire form that would be submitted simultaneously to the EPA, DTSC, and other members of the Del Amo Environmental Review team (DERT).
• DERT would contact the applicant and request any additional information required for DERT to complete its review and provide recommendations to EPA. DERT will work with the applicant to develop workable approaches to addressing any residual contamination associated with the former rubber plant. If it is determined that the applicant’s planned activities will not be performed in an area of question or concern, then the applicant could proceed with the activities following receipt of EPA’s concurrence with DERT’s recommendations and receipt of his permit(s) from the City of Los Angeles.
• After working with the applicant, the DERT would make appropriate recommendations to the EPA.
• EPA would (i) issue the environmental clearance and recommend that the applicant receive their required permits subject to appropriate conditions; or, (ii) require further review.

Michele wanted to know who would pay for any potential sampling and/or removal actions. Both Randy and George stated that each site would have to be evaluated on a case by case basis, but Shell would be willing to discuss this with the property owners as cases arise.

Larry McDaniel then stated that if remediation was required outside the CERCLA process, he thought that it would trigger “CEQA”. This would be the case for any action needed that wasn’t specified in the ROD. Per CEQA, public participation requirements would apply. He will confirm this and provide a response to Dante.

Note: The California Environmental Quality Act (CEQA) was adopted in 1970 and incorporated in the Public Resources Code. Its basic purposes are to inform governmental decision makers and the public about the potential significant environmental effects of proposed activities; identify ways that environmental damage can be avoided or significantly reduced; require changes in projects if significant environmental effects are involved.

The group then discussed the performance of a “removal” action conducted by a property owner and if future “removal actions” (i.e., similar to the recent truck well project) should be included in the ROD.

Roberta and Michele brought up the need for EPA documentation required during such removal actions that occur during construction projects at site parcels. They mentioned the possibility of the need for preparation of action memos prior to providing clearance for projects entailing removal of contaminated soil. EPA viewed these actions that removed impacted soil from the site as small remediations and was concerned that over a period of time this could result in a significant amount of soil being removed from the site without EPA documentation. The group felt that any requirement for significant EPA documentation could slow the process and significantly impact any site redevelopment projects. Roberta said that contingencies can be built into the ROD for non-time-critical removal actions to allow shallow excavations and possibly vapor barriers. The possibility of creating a contingency action plan in the ROD as part of a
soil management plan for removal of low-level contaminants was mentioned as a possible way to satisfy the documentation requirement. Roberta stated that EPA would continue to flush out the details of this issue. The question of whether any EPA documentation would be required for any removal actions during the pilot IC program prior to ROD issuance still remained to be answered.

Michele then stated that the CERCLA Off-Site Rule (40 CFR 300.440) would apply to this type of situation and that any soil removed from a CERCLA site would require disposal at an EPA-approved facility. George then asked if this would apply even if the analytical laboratory results confirmed non-detect or background concentrations. Michele stated that it would apply for any soil removed from a site that contained Superfund site contaminants even if it were not at RCRA hazardous levels and that she would provide a copy of this rule for the group’s review.

**Topic 8) Participant Roles**

The group then discussed the potential roles of the Agencies, Applicant and PRPs in the environmental review process. During this discussion, Michele made the initial comment that she was concerned about the resource dedication that might be required by the EPA to support/staff the DERT. The group then agreed that they wanted to make the initial steps as easy as possible for the City DBS. The DERT would receive initial notification simultaneously to reduce sequential notification and would perform the initial review and make recommendations to EPA. EPA would review the DERT’s recommendations and make the final decisions regarding what needs to be done, if anything, before issuing a clearance recommendation to DBS. There was general consensus that this approach was sound.

**Topic 9) Street Ownership**

Larry McDaniel raised a question regarding the ownership of the public streets and whether we need to provide any special notice to the City, since the City would not likely obtain a permit from itself to perform a maintenance activity. The group acknowledged that we need to confirm street ownership. If the street property is owned by the City, this would likely be an easy issue and would not require much action, possibly a warning and some health and safety requirements for soil handling. If, however, the streets are part of an easement, then we need to assess whether to deed restrict the street portion of each parcel and have easement holder acknowledge the restriction. The action agreed on was that we need to confirm the ownership of the street property.

**Topic 10) Public Outreach**

The next topic was a public meeting or outreach to the business community. Dante started by saying that it would be helpful to introduce the deed restrictions concept to the property owners, but we would not be able to be specific regarding what ICs might apply to which property until issuance of the ROD.
The group agreed that any public outreach regarding deed restrictions should be delayed until the Draft FS is issued, which is tentatively scheduled for late October 2006. The group felt that it would be appropriate to conduct some outreach regarding the Pilot ERT process (a fact sheet mailing) in conjunction with the initiation of that project.

**ACTION ITEMS**

- Jude will distribute the Pilot Work Plan and Zimas language for review and comment and the group will provide any comments.
- Upon completion of Pilot Work Plan and Zimas language, submit this language to the City for their review and comment.
- Amend the AOC to include the Permit Review IC Pilot Test.
- Distribute additional information to the group after the next meeting with the City.
- Develop a web site that will provide basic contact information for the City permits, which will direct applicants to the DERT for additional information.
- Start to work on the contents of the final portal, which will include the following for each tract:
  - Parcel History
  - Historical Parcel Features
  - Results of RI
  - Results of BRA
  - Applicable ICs
  - Contacts
- Confirm the status of Groundwater-related ICs with the Groundwater OU team.
- Modify IC Layer Group 2 language as needed to include sampling requirements in areas of uncertainty.
- Modify IC Layer Group 3 language to account for potential land use for residential purposes, if certain sampling/controls/removal is performed.
- Obtain deed restriction language example from DTSC.
- Start drafting IC objectives for the parcels with deed restrictions on a parcel-by-parcel basis.
- Confirm with Larry McDaniel when remedial actions can trigger CEQA.
- Obtain the CERCLA Off-Site Rule from Michele and then develop an approach regarding “truck well” type projects.
- Confirm ownership of the streets within the boundary of the Del Amo site.
All,

Attached is the final version of the meeting notes from the Del Amo ICs meeting in Oakland on 6/1/06.

(See attached file: Permitting IC Meeting Notes_final.doc)

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