



environmental management, inc.

From: Deni Chambers
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Date: October 6, 2010

To: Shannon Harbour, NDEP

RE: Response to NDEP's July 30, 2010 Comments to *Revised Environmental Covenants, Institutional and Engineering Control Plan dated June 9, 2010*

1. *General comment, TRX appears to use the term “environmental covenants” throughout this document where “engineering controls” would be the more appropriate term. Please revise as necessary.*

Response: The Environmental Covenants, Institutional and Engineering Control Plan (the Plan) has been revised to clarify the difference between environmental covenants and engineering controls, and to use the term “engineering controls” where appropriate.

2. *General comment, TRX should additionally include a section discussing the demonstration of financial assurance for the establishment and long-term implementation of any institutional and/or engineering controls and environmental covenants. Including demonstrating financial assurance for the remediation of the current operational areas when operations cease.*

Response: Tronox has been working with NDEP, the U.S. Government and others to establish the Henderson Environmental Response Trust Account (Trust Account), in accordance with the Settlement Agreement to Tronox's Reorganization Plan. The Trust Account will provide long-term funding to remediate the Site. Upon the Effective Date of Tronox's Reorganization Plan and transfer of the Henderson Properties and funding of the Henderson Environmental Response Trust Account as set forth in the Settlement Agreement to the Reorganization Plan, the Governments will agree not to seek and covenant not to sue or assert any administrative or other civil claims or causes of action against Tronox, the Henderson Environmental Response Trust or the Administrative Trustee, solely in his official capacity, with respect to any financial assurance required under environmental law relating to the site.

3. *Areas of Site with Soil Exceeding Remedial Goals, page 3, NDEP has the following comments:*
- a. *TRX should replace “soil exceeding remedial goals” with “contaminated soil”.*
 - b. *1st paragraph, TRX should remove the statement that removing “all contaminated soils within 10 feet of the post-remediation surface” would be in accordance with the December 14, 2009 Order.*
 - c. *1st paragraph, the definition of “contaminated soil” should include a leaching component.*
 - d. *1st paragraph, TRX should replace “agreed to by NDEP” to “approved by NDEP”.*
 - e. *2nd paragraph, last sentence, TRX has not demonstrated that excavation is not possible in these areas; and therefore, should remove this sentence.*
 - f. *3rd paragraph, 1st sentence, TRX should revise this statement to indicate that the areas where institutional controls and/or engineering controls will be requested will be shown in the individual RZ Excavation Plans. NDEP will not review and approve institutional controls, engineering controls, or environmental covenants in the responses to the Excavation Plans.*

Response:

- a. The requested change has been made.
 - b. The requested change has been made.
 - c. The definition of “contaminated soil” in the Plan has been revised to include a leaching component.
 - d. The requested change has been made.
 - e. The Plan has been revised to provide detailed information regarding each of the areas that are being proposed for Institutional Controls/Engineering Controls (ICs/ECs).
 - f. The Plan includes a figure that shows each of the areas where ICs/ECs have been proposed. The individual RZ Excavation Plans will be revised following NDEP’s review of the Plan.
4. *Utilizing Screening Criteria, page 3, 1st sentence, NDEP has the following comments:*
- a. *Excavation is not the only remediation option for Site soils. TRX should revise this sentence to reflect that other remediation options will need to be considered for feasibility before institutional and/or engineering controls will be considered by NDEP.*
 - b. *TRX should note that a feasibility study of remedial options should demonstrate whether the options are “commercially unreasonable”. Please revise as necessary.*

Response:

- a. The “Utilizing Screening Criteria” section of the Plan has been deleted, and text has been included in the Plan to indicate that remedial alternatives other than excavation are being considered for the Site.
- b. The “Utilizing Screening Criteria” section of the Plan has been deleted.



5. *Appendix A, NDEP has the following comments:*
- a. *Item 1, TRX should revise these Deliverable submittal dates as necessary to reflect the current schedule.*
 - b. *Items 3 and 5, TRX should remove any review timing for NDEP from this schedule. NDEP has previously stated that the Environmental Covenant process is onerous and lengthy. NDEP cannot predict how long review of an Environmental Covenant document will take, especially when the length of review would be dependent upon the document quality and completeness.*

Response:

- a. Appendix A has been deleted from the Plan, and there is no reference to schedule in the Plan. Future ICs/ECs will be implemented subject to NDEP's approval, in accordance with the overall project schedule.
 - b. Appendix A has been deleted from the Plan, and there is no reference to schedule in the Plan.
6. *Response to Comments (RTC), NDEP has the following comments:*
- a. *RTC 2, there is not section I.B in this Deliverable as indicated in TRX's response to this comment.*
 - b. *RTC 5, TRX should additionally note that any additional setback requested in the Environmental Covenant plans should have technical rationale. For example, the 50 foot setback from Ponds GW-11, WC-E, and WC-W berms should contain structural and geotechnical analysis backup.*
 - c. *RTC 8, NDEP notes that active portions of the Site may change in the future and that new buildings may be constructed; however, this should not impact the current remediation efforts at the Site.*
 - d. *RTC 9.b, TRX has not demonstrated that these areas "cannot be excavated at this time" either. Please remove this sentence as requested above.*

Response:

- a. The Plan has been revised to clarify the difference between environmental covenants and engineering controls, and use the term "engineering controls" where appropriate.
- b. Text in the Plan has been revised to indicate that a 50-foot setback has been proposed, and that engineering studies regarding the extent of the setback from the berms for Ponds GW-11, WC-E and WC-W are underway, and that the setback distance may be modified.
- c. We have indicated in the Plan which areas of the Site are operational and are anticipated to remain in operation in the future.
- d. The Plan has been revised to provide detailed information regarding each of the areas that are being proposed for ICs/ECs. We believe this information is sufficient to demonstrate that the areas cannot be excavated at this time.

