



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
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January 4, 2013

Mr. Robert Simeone  
BRAC Environmental Coordinator  
BRAC Environmental Office  
Fort Devens  
30 Quebec Street, Box 100  
Devens, MA 01434

Re: Draft Explanation of Significant Differences  
Land Use Controls to Restrict Use of Groundwater  
For Shepley's Hill Landfill Superfund Site  
Former Fort Devens, MA  
October 2012

Dear Mr. Simeone:

EPA has reviewed the "Draft Explanation of Significant Differences, Land Use Controls to Restrict Use of Groundwater for Shepley's Hill Landfill Superfund Site, Former Fort Devens, MA," dated October 2012, as prepared by Sovereign Consulting, Inc., on behalf of the Army (hereafter "Draft ESD"). The Draft ESD was submitted in order to amend the Shepley's Hill Landfill (SHL) Record of Decision (ROD) to incorporate institutional controls (ICs) prohibiting the use of groundwater in the area within the Town of Ayer where the groundwater plume from SHL has traveled beyond the former Fort Devens boundaries (referred to as the "impacted area," "North Impact Area," or "NIA"). EPA's comments on the Draft ESD are enclosed.

The ESD for ICs over the North Impact Area is critical to the long-term protectiveness of the SHL remedy and has been a scheduled goal for EPA and the Army for many years. In our 'Additional Work' letter issued on May 14, 2009 (as amended by EPA's August 20, 2009 letter, Army's October 28, 2010 extension letter, and EPA's November 8, 2012 letter), EPA required that, in order for the Shepley's Hill Landfill remedy to be protective in the long term, the Army incorporate enforceable institutional controls (ICs) into the ROD that will prohibit the use of groundwater in the impacted area until cleanup levels are met, in addition to other stated additional work items.

Further, in the 2010 Five Year Review (FYR) issued in September 2010, the SHL remedy was determined to be protective in the short-term. However, in order for the remedy to remain protective in the long-term, the FYR required that the Army complete several action items. One of those major action items was to prepare a Draft ROD ESD that would specify the ICs that prohibit the use of groundwater in the impacted area.

As EPA has stated in past correspondence, robust and reliable institutional controls are necessary because of the extremely high levels of arsenic under SHL and private properties in the North Impact Area. Even short or intermediate term human exposure to groundwater at the levels of arsenic currently found under the North Impact Area can result in serious or potentially life threatening illness.

Through the Draft ESD, Army has proposed reliance on governmental controls, in the form of local land use control (LUC) ordinances, along with informational devices, including regular surveys and communications with property owners in the impacted area, to meet the LUC objectives of restricting access to groundwater and prohibiting use of groundwater within the NIA. As noted in EPA's enclosed comments, the Town of Ayer's existing regulations and the proposed education and outreach outlined in the Draft ESD are not capable of meeting the LUC performance objective of prohibiting the withdrawal and/or use of groundwater from the LUC Area without the inclusion of a specific groundwater moratorium prohibiting use of groundwater in the LUC Area depicted in Figure 3. A moratorium provides for a strong LUC, since the groundwater plume map and specific restrictions for the area are incorporated directly into the Town's well regulations and as it applies to both existing and new wells. EPA believes that this type of LUC is necessary to address potential gaps in the existing local regulatory controls cited by the Army as LUC layers in the Draft ESD.

Army and EPA have had initial discussions with the Town of Ayer regarding the Draft ESD and particularly the request for a moratorium on groundwater wells in the LUC area. Town representatives have indicated that they are willing to enact a moratorium, but further discussions and coordination are required to ensure that the Town will agree to partner with the Army and EPA to implement and enforce a groundwater use moratorium. EPA is scheduled to meet with Town of Ayer representatives on January 9, 2013 to further these discussions. Army, likewise, should schedule additional discussions with appropriate Town officials to advance these discussions and in order to address many of the enclosed comments.

If a moratorium is not enacted by the Town, or if the Town's by-laws remain inadequate to prevent exposure to contaminated groundwater from existing or potential future groundwater wells, the ESD as proposed will not meet statutory requirements for protectiveness. Other alternatives, including proprietary controls (for example, easements that restrict groundwater use for each of the affected properties) must then be considered.

In addition to the enclosed comments, Army should also review and consider the recently released EPA guidance documents related to Institutional Controls entitled, "A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites" and "A Guide to Preparing Institutional Control Implementation and Assurance Plans at Contaminated Sites," both issued in December 2012 and available at <http://www.epa.gov/superfund/policy/ic/guide/index.htm>.

If you have any questions, please contact me at (617) 918-1754 or at [lombardo.ginny@epa.gov](mailto:lombardo.ginny@epa.gov).

Sincerely,



Ginny Lombardo  
Remedial Project Manager

Attachments

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