

Secretary's Order No. 99-A-0015

Date of Issuance: March 19, 1999

Re: Dravo Shipyard Site
Final Plan of Remedial Action -- Phase I Soils & Subsoils Action

I. BACKGROUND

On September 17, 1998, a public hearing was held at the DNREC Offices located at 391 Lukens Drive, New Castle, Delaware, beginning at 6:25 p.m. The subject of the public hearing was the *Proposed Plan of Remedial Action: Dravo Shipyard Interim Action* dated August 1998, developed by the Site Investigation and Restoration Branch of DNREC. This hearing was held pursuant to 7 Del. C. Chapter 91, following the procedural guidelines found in 7 Del. C. Chapter 60. The Department's Response Document dated September, 1998, is incorporated herein by reference.

The Hearing Officer prepared a report dated October 28, 1998, that was circulated so that the parties could comment on the report directly to the Secretary. After the expiration of this comment period, but before a decision was made by the Secretary, the Site Investigation and Restoration Branch

(SIRB) submitted a letter to the Hearing Officer. This December 18, 1998 letter written by SIRB's attorney Robert S. Kuehl, Deputy Attorney General, points out a what appears to be a minor legal error in the report but one that could have significant ramifications. Thus, the Hearing Officer in his discretion re-opened the record to include the December 18, 1998, letter and to give the public the opportunity to comment on the issue contained in the letter.

Proper notice of the re-opening of the record and solicitation of comments was provided as required by law. Comments were solicited to be submitted between January 21, 1999 through February 10, 1999. No comments were received during this period.

An Amended Hearing Officer's Report dated February 23, 1999, was prepared based on the supplemented record and that Report is incorporated herein by reference. The Amended Hearing Officer's Report and a proposed Secretary's Order consistent therewith was again circulated to the parties for comment before the Secretary made a decision.

II. FINDINGS

A. Findings of Fact

1. A public hearing was held beginning at 6:25 p.m. on Thursday, September 17, 1998, at the DNREC Office located at 391 Lukens Drive, New Castle, Delaware.

2. After the hearing, the Department prepared a Response Document entitled *Dravo Shipyard Site Departmental Response to Public*

Comments on Proposed Plan of Remedial Action DE-1096 dated September 1998, which is incorporated herein by reference.

3. The record was re-opened after the Hearing Officer's Report was prepared for the limited purpose of including a letter dated December 18, 1998, from Robert S. Kuehl, Deputy Attorney General, and any public comments concerning the content of the letter.

4. Proper notice of the re-opening of the record was provided as required by law.

5. No comments were received during the period from January 21, 1999 and February 10, 1999 while the record was re-opened.

6. The Dravo Shipyard Site in Wilmington, Delaware, requires remediation in order to protect the public health, welfare and the environment.

7. Remedial Alternative #1 includes excavation of severely contaminated areas and selective use of less contaminated soil.

8. Remedial Alternative #2 would provide substantially the same levels of protectiveness to the public health, welfare and the environment as Remedial Alternative #1, but at significantly higher cost.

9. Remedial Alternative #3 would not be protective of the public health, welfare and the environment in that individuals would likely be exposed to direct contact with the contaminated soil.

10. A Phase II Assessment of the Dravo Shipyard Site will be performed in order to address not only groundwater, surface water or sediment

issues but also soil contamination on the southern half of the property, which is not a part of this Phase I investigation.

11. Remedial Alternative #1, satisfied the community acceptance criteria of the Regulations even though the record shows the public was to some extent dissatisfied with the extent of public notice.

12. Regardless of public dissatisfaction with the extent of the public notice, proper notice of the hearing was provided as required by law.

13. No credible evidence was submitted to support a finding that it was either improper or environmentally harmful to use a phased approach to addressing the environmental problems at the Dravo site.

14. A phased approach is being utilized in this instance in order to allow for safe development in the area of the Dravo site.

15. Although allegations of bias or collusion were made concerning the Department and those undertaking this Voluntary Cleanup, there is insufficient evidence in the record to support such a claim; moreover, such claims were solely based on distorted perceptions of the process although the record does not support a finding that the substance of the proceeding was insufficient.

16. This is the final remedial action solely with respect to the portion of the soils and subsoils that have been remediated and upon which buildings and related improvements are to be constructed.

17. The record does not support making the findings,

determinations or inferences suggested by the Dravo Corporation in its post-hearing submission in the form requested by Dravo.

B. Conclusions of Law

1. The Department provided public notice and opportunity for the public to comment on the Proposed Plan of Remedial Action in accordance with the Regulations.

2. According to the *HSCA Regulations*, the Department is required to select a Remedial Alternative that meets all of the selection criteria for the established remedial action objectives and that is the most cost effective.

3. Remedial Alternative #1 meets all of the remedial action objectives and is the most cost effective of the Alternatives with the exception of Remedial Alternative #3 which would incur no costs, but would not be protective of the public health, welfare or the environment.

4. Remedial Alternative #1 is the appropriate final plan of remediation with respect to the portion of the soils and subsoils that have been remediated and upon which buildings and related improvements are to be constructed.

IV. Order

In view of the above findings, it is hereby ordered that Remedial Alternative #1 is the Final Remedial Action for the portion of the soils and subsoils that have been remediated and upon which buildings and related

improvements are to be constructed pursuant to 7 Del. C. § 9107(e)(3) and §8.7(3) of the *HSCA Regulations*.

V. Reasons

The record supports selection of Remedial Alternative #1 as the appropriate final remedy according to the *HSCA Regulations* and demonstrates that issuance of a Plan and implementation of the appropriate final remedy will further the policies and purposes of 7 Del. C. Chapters 60 and 91 in that the action will protect public health, welfare and the environment.

Mary L. McKenzie, Acting Secretary

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