TECHNICAL BRIEFING – USEPA RESPONSE ON LAND USE CONTROLS (LUCs) AND ARAR ISSUE – NOVEMBER 2012

The document reviewed was a letter dated November 27, 2012 from the U.S. Environmental Protection Agency [(USEPA) – William Roach, Project Manager – Federal Facilities Section] in regard to the PICA-001 Proposed Plan; the LUCs and Applicable and Relevant and Appropriate Requirements (ARARs) of which became the crux of long-lasting controversy and informal "dispute" between the USEPA and the Army. The document that finally brought pending work at Picatinny Arsenal to a virtual standstill was the 25 Sites Feasibility Study. The original document was submitted to regulators in August 2008 and was approved by the USEPA in August 2009. Disputed issues relating to the document and associated sites first arose at a December 2009 technical meeting with representatives of regulatory agencies and Picatinny Arsenal. Numerous exchanges between regulators and Picatinny Arsenal took place over the intervening years, never culminating in a formerly registered dispute, until the most recent November 2012 correspondence which appears to settle the matter. Several discussions of the issue can be found in past RAB correspondence.

<u>USEPA Response</u>

The letter is surprisingly brief for a matter so long to be resolved. The body of the letter is as follows:

> "*EPA is pleased to announce that the LUC/ARAR issue has been settled between EPA Region 2 and Picatinny Arsenal. Specifically, Picatinny, in conjunction with existing land use controls, will monitor land use at PICA-001 sites and report the monitoring results to EPA. This represents no further action. Consequently, compliance with ARARs will not be necessary. Please refer to the attached memo which details the agreement reached between Picatinny Arsenal and EPA on this issue.*"

The attached memo specifies that Picatinny Arsenal "shall ensure all Institutional Controls (ICs) are in place to protect human health and documented in the PP [Proposed Plan] for PICA-001 and other documents as appropriate." The memo is also very brief and specifies what Picatinny Arsenal must do to comply with the agreement. The list of six requirements is repeated below:

> *"1. The title of the PP should be something like: No Further Action with Monitoring of Land Use.*
>
> *2. Statement that Picatinny has all the ICs in place to ensure protection of human health.*
>
> *3. Monitoring of ICs will be conducted.*

4. EPA will be notified of any change in land use of sites being considered in the PP, and Picatinny Arsenal shall evaluate whether the remedy remains protective of human health and the environment under the new land use.

5. Specifically, monitoring of land use will include the maintenance and notification of the following existing Picatinny Arsenal-specific ICs and LUCs (based on LUCs documented in Picatinny CERCLA documents) and others as needed to be protective of human health:

a. Site Clearance/Soil Management Procedures

b. Munitions and Explosives of Concern Clearance Procedures

c. Picatinny Arsenal Installation Master plan environmental notations to include the picatinny Geographic Information System Database [showing the boundary of land use restrictions]

d. Picatinny Access Regulations

e. Picatinny Safety Program

f. Army Military Construction Program Development and Execution

6. Annual monitoring reports (certification) to be provided to EPA Region 2 reporting that the sites with existing ICs remain protective of human health (similar to current LUC certification reports)."

While it appears that the USEPA has entirely reversed their position from the March 2012 correspondence, the agency has instead considered that the Army approach will be a No Further Action (NFA) remedy with monitoring. From the risk-based perspective, sites where risk is lower than 1×10^{-4} do not require further action according to USEPA regulations. In the case of NFA there is no need to consider ARARs and no requirement to comply with NJDEP SRS. The USEPA considers that action at CERCLA sites is dictated by risk and not by NJDEP SRS (even promulgated standards).