

San Jacinto River Waste Pits Superfund Site

Comments
of
International Paper Company
and
McGinnes Industrial Maintenance Corporation
on
Environmental Protection Agency Region 6
Proposed Remedial Action Plan

Appendix E

Documents Related to Requests for Extension of
Comment Period and FOIA Requests and Not Included
by Region 6 in the Administrative Record

January 12, 2017

Appendix E¹

Documents Related to FOIA Requests for Extension of Comment Period and Requests Not Included by Region 6 in the Administrative Record

DOC NO	DOC DATE	PAGE COUNT	TITLE	ADDRESSEE	AUTHOR
E-1	3/25/2015	3	[REQUEST FOR INFORMATION UNDER FREEDOM OF INFORMATION ACT (FOIA)]	(U.S. ENVIRONMENTAL PROTECTION AGENCY)	Peticolas, Betsy (WINSTEAD PC)
E-2	7/15/2016	3	[REQUEST FOR INFORMATION UNDER FREEDOM OF INFORMATION ACT (FOIA)]	(U.S. ENVIRONMENTAL PROTECTION AGENCY)	Quintanilla, Linda (WINSTEAD PC)
E-3	7/15/2016	3	[REQUEST FOR INFORMATION UNDER FREEDOM OF INFORMATION ACT (FOIA)]	(U.S. ENVIRONMENTAL PROTECTION AGENCY)	Quintanilla, Linda (WINSTEAD PC)
E-4	9/12/2016	2	[REQUEST FOR INFORMATION UNDER FREEDOM OF INFORMATION ACT (FOIA)]	Chouinard, Christopher M. (U.S. ARMY CORPS OF ENGINEERS)	Rickelman, Magdalena (WINSTEAD PC)
E-5	9/13/2016	1	[RECEIPT OF FOIA REQUEST (FOIA 16-19)]	Rickelman, Magdalena (WINSTEAD PC)	Egger, Daniel, L (U.S. ARMY CORPS OF ENGINEERS)
E-6	9/26/2016	5	[PARTIAL DENIAL AND CONCLUSION OF SEARCH REGARDING FREEDOM OF INFORMATION ACT (FOIA) REQUEST EPA-R6-2016-008572]	Rickelman, Magdalena (WINSTEAD PC)	McDonald, James (U.S. ENVIRONMENTAL PROTECTION AGENCY)
E-7	9/28/2016	3	[INITIAL PRODUCTION REGARDING FREEDOM OF INFORMATION ACT (FOIA) REQUEST FP-16-028460 (FOIA 16-19)]	Rickelman, Magdalena (WINSTEAD PC)	Woodard, Bill, D (ENGINEER RESEARCH AND DEVELOPMENT CENTER)
E-8	10/28/2016	3	[REQUEST FOR EXTENSION OF THE PUBLIC COMMENT PERIOD]	Miller, Gary, G (U.S. ENVIRONMENTAL PROTECTION AGENCY)	Axe, Albert (WINSTEAD PC)

¹ Documents titles are set forth in the format of the Administrative Record.

DOC NO	DOC DATE	PAGE COUNT	TITLE	ADDRESSEE	AUTHOR
E-9	11/29/2016	2	[UPLOAD OF MODELING RUN FILES FOR SAN JACINTO WASTE PITS]	Axe, Albert (WINSTEAD PC)	(U.S. ARMY CORPS OF ENGINEERS)
E-10	12/13/2016	5	[FOIA REQUEST FP-16-028460 (FOIA 16-19)]	Johnston, Susan, R (U.S. ARMY CORPS OF ENGINEERS); Egger, Daniel, L (U.S. ARMY CORPS OF ENGINEERS)	Axe, Albert (WINSTEAD PC)
E-11	12/19/2016	3	[FOIA REQUEST FP-16-028460 - FOIA 16-19]	Axe, Albert (WINSTEAD PC)	Egger, Daniel, L (U.S. ARMY CORPS OF ENGINEERS)
E-12	12/19/2016	4	[FOIA REQUEST FP-16-028460 - FOIA 16-19]	Egger, Daniel, L (U.S. ARMY CORPS OF ENGINEERS)	Axe, Albert (WINSTEAD PC)
E-13	12/20/2016	3	[SUPPLEMENTAL FOIA PRODUCTION]	Rickelman, Magdalena (WINSTEAD PC)	Woodard, Bill, D (ENGINEER RESEARCH AND DEVELOPMENT CENTER)
E-14	12/20/2016	6	[REQUEST FOR EXTENSION OF THE PUBLIC COMMENT PERIOD]	Miller, Gary, G (U.S. ENVIRONMENTAL PROTECTION AGENCY)	Axe, Albert (WINSTEAD PC)
E-15	12/22/2016	13	[APPEAL OF FOIA REQUEST FP-16-028460]	(ENGINEER RESEARCH AND DEVELOPMENT CENTER)	Axe, Albert (WINSTEAD PC)
E-16	1/5/2017	1	[REQUEST FOR SAN JACINTO WASTE PITS MODELING INFORMATION]	Hayter, Earl J (U.S. ARMY CORPS OF ENGINEERS)	Miller, Gary, G (U.S. ENVIRONMENTAL PROTECTION AGENCY)
E-17	1/6/2017	2	[DENIAL OF REQUEST FOR EXTENSION OF THE PUBLIC COMMENT PERIOD]	Axe, Albert (WINSTEAD PC)	Miller, Gary, G (U.S. ENVIRONMENTAL PROTECTION AGENCY)

401 Congress Avenue
Suite 2100
Austin, TX 78701

512.370.2800 OFFICE
512.370.2850 FAX
winstead.com

Betsy Peticolas
direct dial: 512.370.2862

March 25, 2015

Regional Freedom of Information Officer
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue (6MD-OE)
Dallas, Texas 75202-2733

Via Electronic Filing

Re: Freedom of Information Act Request
San Jacinto River Waste Pits Superfund Site (TXN000606611) located in Channelview,
Texas

Dear Sir or Madam:

This is a request for public information under the Freedom of Information Act (5 U.S.C. § 552.001 *et. seq.*) ("FOIA"). I hereby request a copy of the following "information" as defined by the FOIA, within the possession of Gary Miller, the Project Coordinator for the San Jacinto River Waste Pits Superfund Site (the "Site"):

- Any and all written correspondence, including letters or emails, that address or provide comment on the Feasibility Study ("FS") for the Site or any other proposal for remediating the Site.
- Any and all written correspondence, including letters or emails, that address or provide comment concerning the review of the FS by the United States Army Corps of Engineers.
- Any and all written correspondence, including letters or emails, concerning the review of the FS by the National Remedy Review Board.
- This request is limited to information submitted to EPA on or after March 21, 2014 to the present date.
- This request excludes information submitted to EPA by Anchor QEA or Integral Consulting Inc.

Regional Freedom of Information Officer
March 25, 2015
Page 2

As provided in the FOIA, please respond to this request within twenty (20) business days. I may be contacted at (512) 370-2862 or bpeticolas@winstead.com if you have any questions. Thank you very much for your assistance.


Very truly yours,


Betsy Petcolas

Search Results

You searched for the terms (EPA-R6-2015-005589) from documents of type (Request) from the following agencies: EPA. *Refine Search*

One item found.

Results 25 

1

<i>Tracking Number</i>	<i>Type</i>	<i>Phase</i>	<i>Requester</i>	<i>Requester Organization</i>	<i>Submitted</i>	<i>Due</i>	<i>Detail</i>
EPA-R6-2015-005589	Request	Closed	Betsy Peticolas	Winstead PC	03/25/2015	N/A	

Please see attached request for information regarding the San Jacinto River Waste Pits Site.

One item found.

1

401 Congress Avenue
Suite 2100
Austin, TX 78701

512.370.2800 OFFICE
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winstead.com

Betsy Peticolas
direct dial: 512.370.2862

March 25, 2015

Regional Freedom of Information Officer
U.S. Environmental Protection Agency
Region 6
1445 Ross Avenue (6MD-OE)
Dallas, Texas 75202-2733

Via Electronic Filing

Re: Freedom of Information Act Request
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- This request is limited to information submitted to EPA on or after March 21, 2014 to the present date.
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Regional Freedom of Information Officer
March 25, 2015
Page 2

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Betsy Petcolas

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You searched for the terms (EPA-R6-2015-005589) from documents of type (Request) from the following agencies: EPA. *Refine Search*

One item found.

Results 25 

1

<i>Tracking Number</i>	<i>Type</i>	<i>Phase</i>	<i>Requester</i>	<i>Requester Organization</i>	<i>Submitted</i>	<i>Due</i>	<i>Detail</i>
EPA-R6-2015-005589	Request	Closed	Betsy Peticolas	Winstead PC	03/25/2015	N/A	

Please see attached request for information regarding the San Jacinto River Waste Pits Site.

One item found.

1

401 Congress Avenue
Suite 2100
Austin, Texas 78701

512.370.2800 OFFICE
512.370.2850 FAX
winstead.com

direct dial: 512.370.2991
lquintanilla@winstead.com

July 15, 2016

Via Electronic Submission

U.S. Environmental Protection Agency, Region 6
ATTN: Regional Freedom of Information Officer
1445 Ross Avenue (6MD-OE)
Dallas, TX 75202-2733

Re: Freedom of Information Act Request
San Jacinto River Waste Pits Superfund Site

Dear Sir or Madam:

This is a request for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. Part 552.

I hereby request a copy of the following "information" as defined by FOIA regarding the San Jacinto River Waste Pits Superfund Site ("Site"):

The U.S. Army Corps of Engineers report submitted to USEPA on or about June 30, 2016 that provides the Corps' analysis of remedial alternatives for the Site. The report is in the possession of Gary Miller of EPA Region 6 who is the Remedial Project Manager for the Site.

I am willing to pay for any search and review fees. Please forward the information directly to me at the following address:

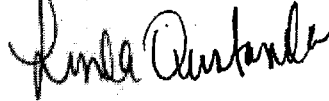
Linda Quintanilla
Winstead PC
401 Congress Avenue, Suite 2100
Austin, TX 78701

U.S. Environmental Protection Agency
Region 6
July 15, 2016
Page 2

As provided in FOIA, please respond to this request within twenty (20) business days. I may be contacted at (512) 370-2991 or lquintanilla@winstead.com if there are any questions. Thank you very much for your assistance.

Very truly yours,

WINSTEAD PC

A handwritten signature in black ink, appearing to read "Linda Quintanilla", written over the typed name.

Linda Quintanilla

cc: Gary Miller, EPA Region 6
Anne Foster, EPA Region 6

Request Details

Tracking Number : EPA-R6-2016-008571

Submitted

Evaluation

Assignment

Processing

Request Information

Full Name : Linda
 Quintanilla Quintanilla
 Organization : Winstead
 PC
 Date Submitted :
 07/15/2016
 Closed Date :
 08/08/2016
 Final Disposition :
 Request withdrawn

Description :

FOIA request 1-SJRWP.

Attached Supporting Files

Attached File	Type	Size (MB)
<i>SJRWP.1.PDF</i>	PDF	0.05

Released Records

No records have been released.

401 Congress Avenue
Suite 2100
Austin, Texas 78701

512.370.2800 OFFICE
512.370.2850 FAX
winstead.com

direct dial: 512.370.2991
lquintanilla@winstead.com

July 15, 2016

Via Electronic Submission

U.S. Environmental Protection Agency, Region 6
ATTN: Regional Freedom of Information Officer
1445 Ross Avenue (6MD-OE)
Dallas, TX 75202-2733

Re: Freedom of Information Act Request
San Jacinto River Waste Pits Superfund Site

Dear Sir or Madam:

This is a request for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. Part 552.

I hereby request a copy of the following "information" as defined by FOIA regarding the San Jacinto River Waste Pits Superfund Site ("Site"):

1. The U.S. Army Corps of Engineers report submitted to USEPA on or about June 30, 2016 that provides the Corps' analysis of remedial alternatives for the Site. The report is in the possession of Gary Miller of EPA Region 6 who is the Remedial Project Manager for the Site.
2. Any drafts or other versions of the report specified in 1. above.
3. Any communications associated with the reports specified in 1. or 2., above.

I am willing to pay for any search and review fees. Please forward the information directly to me at the following address:

Linda Quintanilla
Winstead PC
401 Congress Avenue, Suite 2100
Austin, TX 78701

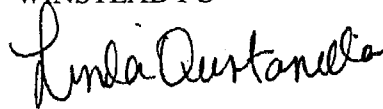
4827-9801-0421v.1
48434-1 7/15/2016

U.S. Environmental Protection Agency
Region 6
July 15, 2016
Page 2

As provided in FOIA, please respond to this request within twenty (20) business days. I may be contacted at (512) 370-2991 or lquintanilla@winstead.com if there are any questions. Thank you very much for your assistance.

Very truly yours,

WINSTEAD PC

A handwritten signature in black ink, appearing to read "Linda Quintanilla". The signature is fluid and cursive, with the first name "Linda" being more prominent than the last name "Quintanilla".

Linda Quintanilla

cc: Gary Miller, EPA Region 6
Anne Foster, EPA Region 6

Request Details

Tracking Number : EPA-R6-2016-008572

Submitted

Evaluation

Assignment

Processing

Request Information

Full Name : Linda Quintanilla Quintanilla	Closed 07/15/2016	Date Submitted :
Organization : Winstead PC	09/28/2016	Closed Date :
		Final Disposition : Partial grant/partial denial

Description :

FOIA request 2-SJRWP.

Attached Supporting Files

Attached File	Type	Size (MB)
<i>SJRWP.2.PDF</i>	PDF	0.05

Released Records

No records have been released.

401 Congress Avenue
Suite 2100
Austin, Texas 78701

512.370.2800 OFFICE
512.370.2850 FAX
winstead.com

direct dial: 512.370.2941
mrickelman@winstead.com

September 12, 2016

Via Electronic Submission

Christopher M. Chouinard
Senior Paralegal Specialist
U.S. Army Corps of Engineers
Engineer Research and Development Center
3909 Halls Ferry Road
Vicksburg, Mississippi 39180-6199

Re: Freedom of Information Act Request
San Jacinto River Waste Pits Superfund Site

Dear Mr. Chouinard:

This is a request for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. Part 552.

I hereby request a copy of the following "information" as defined by FOIA regarding the San Jacinto River Waste Pits Superfund Site ("Site"):

All information regarding the U.S. Army Corps of Engineers' evaluation of the San Jacinto River Waste Pits Superfund Site ("Site"), including, but not limited to:

- I. The design and construction of the cap at the Site;
- II. Alleged damage to the cap discovered in December 2015;
- III. The Site Feasibility Study; and
- IV. The remedial alternatives for the Site.

In order to help you determine my status for the purpose of assessing fees, you should know that I am affiliated with a private business and am seeking information for use in the company's business.

I am willing to pay the appropriate fees for this request up to a maximum of \$250. If you estimate that the fees will exceed this limit, please inform me first. I authorize you to remove

4850-8735-2888v.1
48434-1 9/12/2016

Christopher M. Chouinard
Senior Paralegal Specialist
U.S. Army Corps of Engineers
Vicksburg District
September 9, 2016
Page 2

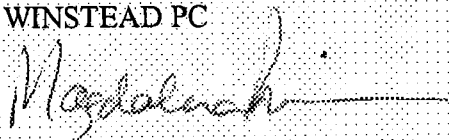
exempt materials as defined in Title 5 United States Code, Section 552, *et seq.* Please provide a log of such exempt materials. Please forward the information directly to Tiffany Williams at the following address:

Tiffany Williams
Winstead PC
401 Congress Avenue, Suite 2100
Austin, TX 78701

As provided in FOIA, please respond to this request within twenty (20) business days. Ms. Williams may be contacted at (512) 370-2904 or tpwilliams@winstead.com if there are any questions. Thank you very much for your assistance.

Very truly yours,

WINSTEAD PC



Magdalena Rickelman
Secretary to Al Axe

TPW:mr



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
ENGINEER RESEARCH AND DEVELOPMENT CENTER, CORPS OF ENGINEERS
WATERWAYS EXPERIMENT STATION, 3909 HALLS FERRY ROAD
VICKSBURG, MISSISSIPPI 39180-6199

September 13, 2016

Office of Counsel

VIA ELECTRONIC MAIL

Magdalena Rickelman
Winstead PC
401 Congress Avenue, Suite 2100
Austin, TX 78701

RE: Freedom of Information Act (FOIA) Request FOIA 16-19

Dear Ms. Rickelman:

This letter is in reference to your FOIA request dated September 12, 2016 that was received at the US Army Engineer Research and Development Center (ERDC) Office of Counsel that same date. Your request is being processed to determine if the ERDC has releasable copies of the following:

All information regarding the U.S. Army Corps of Engineers' evaluation of the San Jacinto River Waste Pits Superfund Site ("Site), including, but not limited to:

1. The design and construction of the cap at the Site;
2. Alleged damage to the cap discovered in December 2015;
3. The Site Feasibility Study; and
4. The remedial alternatives for the Site.

If you have any questions, please feel free to contact me at the above address or at telephone number (601) 634-4203.

Sincerely,

Daniel L. Egger
ERDC Assistant Counsel

Digitally signed by
EGGER,DANIEL.L.1387367620
DN: c=US, o=U.S. Government, ou=DoD,
ou=PKI, ou=USA,
cn=EGGER,DANIEL.L.1387367620
Date: 2016.09.14 09:41:45 -05'00'



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

VIA FOIAonline

SEP 26 2016

Ms. Magdalena Rickelman
Winstead PC
401 Congress Avenue, Suite 2100
Austin, Texas 78701

RE: Freedom of Information Act (FOIA) Request EPA-R6-2016-008572

Dear Ms. Rickelman:

This letter concerns the above-referenced FOIA request, received by the U.S. Environmental Protection Agency on July 19, 2016, in which you requested information on the San Jacinto River Waste Pits Superfund Site (TXN000606611), located in Channelview, Texas. Specifically, your request states you are seeking the following:

- A report submitted to EPA by the U.S. Army Corp of Engineers on or about June 30, 2016, that provides the Corps' analysis of remedial alternatives for the Site;
- Any drafts or other versions of the report specified in item # 1 above; and
- Any communications associated with the reports specified in item # 1 or # 2 above.

EPA Region 6 Superfund Division has concluded its search for records responsive to your request and determined that you can find public information responsive to your request at <https://foiaonline.regulations.gov/foia/action/public/search> and searching FOIA request numbers EPA-R6-2016-009093 and EPA-R6-2016-009094.

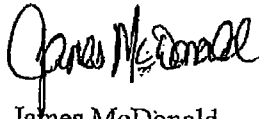
However, some responsive records have been withheld in whole or in part as redacted documents with information being partially released. The information being withheld in whole or in part has been determined to be exempt from the mandatory disclosure requirements pursuant to 5 U.S.C. § 552(b)(5) as Privileged Inter/Intra – Agency Memoranda. The withheld records are listed on the enclosed denial log.

You may appeal this partial denial by email at hq.foia@epa.gov, or by mail to the National Freedom of Information Office, U.S. EPA, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only). Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal via hand delivery, courier service, or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001.

Your appeal must be made in writing, and it must be received no later than 90 calendar days from the date of this letter. The Agency will not consider appeals received after the 90 calendar day limit. Appeals received after 5:00 pm EST will be considered received the next business day. The appeal letter should include the FOIA tracking number listed above. For quickest possible handling, the subject line of your email, the appeal letter, and its envelope, if applicable, should be marked "Freedom of Information Act Appeal." Additionally, you may seek assistance from EPA's FOIA Public Liaison at hq.foia@epa.gov or (202)566-1667, or from the Office of Government Information Services (OGIS). You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD 20740-6001; e-mail, ogis@nara.gov; telephone, 301-837-1996 or 1-877-684-6448; and facsimile, 301-837-0348.

This is the final response to your request, and you may receive a final billing (if appropriate) from the Regional FOIA Office. If you have any questions concerning this response, you may contact the Superfund FOIA Coordinator, Diana Ortiz, who can be reached at (214) 665-7315.

Sincerely,

A handwritten signature in dark ink, appearing to read "James McDonald", written in a cursive style.

James McDonald
Assistant Regional Administrator
for Management

DOC ID	DATE	PAGE#	TITLE	ADDRESSEE	AUTHOR
9774232	05/20/2016	6	[RECOMMENDATIONS FOR LANGUAGE IN UAO RIFS AND ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION]	WERNER ROBERT (U.S. EPA)	MILLER GARY G (U.S. EPA)
9774234	07/14/2016	1	[TRANSMITTAL OF COMMENTS ON TECHNICAL DOCUMENT]	FOSTER ANNE (U.S. EPA)	MILLER GARY G (U.S. EPA)
9774238	07/14/2016	1	[TRANSMITTAL OF COMMENTS ON TECHNICAL DOCUMENT]	MILLER GARY G (U.S. EPA)	FOSTER ANNE (U.S. EPA)
9774266	07/14/2016	2	[COMMENTS ON TECHNICAL DOCUMENT]	None (NONE SPECIFIED)	None (NONE SPECIFIED)
9774270	07/14/2016	3	[COMMENTS ON TECHNICAL DOCUMENT]	None (NONE SPECIFIED)	None (NONE SPECIFIED)
9786861	07/19/2016	31	DRAFT FACT SHEET: EPA REGION 6 ANNOUNCES PROPOSED PLAN	None (NONE SPECIFIED)	None (U.S. EPA)
9786846	07/20/2016	1	[TRANSMITTAL OF DRAFT PROPOSED PLAN FOR THE SAN JACINTO RIVER WASTE PITS SUPERFUND SITE]	LEGARE AMY (U.S. EPA) POORE CHRISTINE (U.S. EPA)	MILLER GARY G (U.S. EPA)
9786847	07/20/2016	1	[TRANSMITTAL OF DRAFT PROPOSED PLAN FOR THE SAN JACINTO RIVER WASTE PITS SUPERFUND SITE]	SALINAS AMY (U.S. EPA)	FOSTER ANNE (U.S. EPA)
9786860	07/20/2016	10	PROPOSED PLAN FIGURES	None (NONE SPECIFIED)	None (U.S. EPA)

DOC ID	DATE	PAGE#	TITLE	ADDRESSEE	AUTHOR
9786851	07/26/2016	1	[TRANSMITTAL OF DRAFT FINAL EVALUATION OF FEASIBILITY STUDY REMEDIAL ALTERNATIVES]	SANCHEZ CARLOS (U.S. EPA) [FOSTER ANNE (U.S. EPA)] MEYER JOHN (U.S. EPA)	MILLER GARY G (U.S. EPA)
9786878	08/01/2016	1	NRRB QUESTION 16, RESEARCH, AND PROPOSED RESPONSE	None (NONE SPECIFIED)	None (NONE SPECIFIED)
9761815	07/14/2016	1	[TRANSMITTAL OF SAN JACINTO COMMENTS]	MILLER GARY G (U.S. EPA)	FOSTER ANNE (U.S. EPA)

Withheld Redacted Document Exempt by Virtue of 5 U.S.C. § 552(b)(5)

Page 3 of 3

DOC ID	DATE	PAGE#	TITLE	ADDRESSEE	AUTHOR
R06-9645150	05/23/2016	15	[REDACTED] ARMY ERDC EPA SUPERFUND PROGRAM MONTHLY PROGRESS REPORTS MARCH AND APRIL 2016 - IA NO. DW9695854901-4	NONE (NONE SPECIFIED)	SCHROEDER, PAUL (U.S. ARMY CORPS OF ENGINEERS)



DEPARTMENT OF THE ARMY
ENGINEER RESEARCH AND DEVELOPMENT CENTER, CORPS OF ENGINEERS
WATERWAYS EXPERIMENT STATION, 3909 HALLS FERRY ROAD
VICKSBURG, MISSISSIPPI 39180-6199

September 28, 2016

Office of Counsel

VIA ELECTRONIC MAIL

Magdalena Rickelman
Winstead PC
401 Congress Avenue, Suite 2100
Austin, TX 78701

RE: Freedom of Information Act (FOIA) Request FP-16-028460 (FOIA 16-19)

Dear Ms. Rickelman:

I am the Initial Denial Authority (IDA) for Freedom of Information Act (FOIA) matters at the U.S. Army Engineer Research and Development Center (ERDC). This letter is in reference to your FOIA request dated September 12, 2016 that was received at the US Army Engineer Research and Development Center (ERDC) Office of Counsel that same date by Mr. Daniel Egger, ERDC FOIA Attorney. In it, you requested all information regarding the U.S. Army Corps of Engineers' evaluation of the San Jacinto River Waste Pits Superfund Site ("Site"), including, but not limited to the design and construction of the cap at the Site; alleged damage to the cap discovered in December 2015; the Site Feasibility Study; and the remedial alternatives for the Site.

Mr. Egger referred your letter to me because nine (9) of the twenty-three (23) documents, letters and emails found during the records search are being withheld in their entirety under FOIA exemption 552 (b)(5). All of these records are pre-decisional and deliberative and therefore exempt from release under the deliberative process privilege contained in exemption (b)(5). Some information in the fourteen (14) releasable documents has also been withheld under the FOIA exemptions 552 (b)(6) and 552 (b)(7)(C). The names of Department of the Army personnel have been redacted from the releasable documents.

One purpose of the deliberative process privilege is to protect the quality of agency decisions by encouraging frank and open discussions within the agencies involved. In this case, the twenty-three documents found responsive to your request are part of the deliberative process with regard to the writing and submission of the letter report entitled "Evaluation of the San Jacinto Waste Pits Feasibility Study Remediation Alternatives" which was posted on the EPA's website around August 10, 2016. Deliberative documents that are withheld under exemption 5 must reflect "the give-and-take of the consultative process. The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency." Coastal States Gas Corp. v. DOE, 617 F.2d 854, 866 (D.C. Cir. 1980). The

draft copy of the letter report, four emails with attachments and one comment paper that are being withheld in their entirety contain specific recommendations and frank opinions regarding the superfund site's remediation alternatives. As such, these documents form part of the give-and-take between agency officials involved in the decision-making process. These recommendations and opinions do not necessarily represent the views of the agencies involved since the final letter report is itself a pre-decisional document. Revealing this information would inhibit candor in the decision-making process.

All individual names and contact information of federal employees have been redacted from the documents as this type of information is exempt from disclosure under FOIA exemption (b)(6) when "information about individuals" "that if disclosed to a requestor ... would result in a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552 (b)(6)(2016). Exemption (b)(6) requires that we determine whether there is any public interest in the personal information embedded in the documents that you have requested and balance that against the privacy interests involved. We also must take into consideration whether or not disclosure of this personal information would shed any light on our agency's performance of official duties, which is the core purpose of the FOIA. This type of information is also exempt from disclosure under FOIA exemption (b)(7)(c) because disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C)(2016). Since this request seeks no official information about the government agency but merely records that the Government happens to be storing, the result is an invasion of privacy that is "unwarranted." U.S. Dept. of Justice v. Reporters Committee For Freedom of Press, 489 U.S. 749, 780 (1989).

You have the right to appeal this partial denial determination to the Secretary of the Army (to the attention of the General Counsel). You must send your appeal through this office. To be considered timely your appeal must be received by the Army General Counsel no later than 90 calendar days after the date of this letter. Your appeal should state the basis for your disagreement with this denial and include a copy of this denial. Enclose your appeal letter in an envelope bearing the notation, "Freedom of Information Act Appeal." Address your appeal to:

Commander
U.S. Army Engineer Research and Development Center
ATTN: Office of Counsel (CEERD-OC-Z)
3909 Halls Ferry Road
Vicksburg, MS 39180-6199

[3]

You also have the right to seek dispute resolution services from the FOIA Public Liaison of USACE or the Office of Government Information Services (OGIS). Contact information is provided below.

USACE FOIA Liaison:

Emily Green
U.S. Army Corps of Engineers
ATTN: CECC-L
441 G Street, NW
Washington, DC 20314-1000
Email: foia-liaison@usace.army.mil
Phone: 202-761-4791

OGIS FOIA Liaison:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
Website: <https://ogis.archives.gov>
Email: ogis@nara.gov
Phone: 202-741-5770 or 1-877-684-6448

You will receive a separate fee bill from Mr. Egger outlining the fees associated with this request. If you have any questions, please feel free to contact me at the above address or at telephone number (601) 634-3311.

Sincerely,



Bill D. Woodard
ERDC Counsel
Initial Denial Authority

14 Enclosures

- 1) ERDC Letter Report, August 2016
- 2) Paper, "Temporary Structures"
- 3) Picture
- 4) Picture
- 5) Picture
- 6) Email dated October 27, 2015
- 7) Email dated July 15, 2016
- 8) Letter from Galveston Bay Foundation
- 9) Letter from Harris County
- 10) Comments from Port Authority of Houston
- 11) Letter from San Jacinto River Coalition
- 12) Letter from Ms. Gossett, San Jacinto River Coalition
- 13) Letter from Anchor, QEA
- 14) ERDC Final Report, September 2013

401 Congress Avenue
Suite 2100
Austin, Texas 78701

512.370.2800 OFFICE
512.370.2850 FAX
winstead.com

direct dial: 512.370.2806
aaxe@winstead.com

October 28, 2016

Gary Miller
Remedial Project Manager
U.S. Environmental Protection Agency, Region 6
Superfund Division (6SF-RA)
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

*Via Overnight Delivery and Electronic Mail Miller.Garyg@epa.gov
and R6_San_Jacinto_Waste_Pits_Comments@epa.gov*

Re: San Jacinto River Waste Pits Superfund Site, Harris County, Texas
Proposed Remedial Action Plan

Dear Mr. Miller:

This letter is written on behalf of McGinnes Industrial Maintenance Corporation (“MIMC”) regarding the public comment period on the Proposed Remedial Action Plan (“PRAP”) for the above-referenced Site. With its issuance of the PRAP, EPA Region 6 announced a 60-day public comment period beginning on September 29, 2016 and closing on November 28, 2016. Pursuant to this letter, MIMC requests a 90-day extension of this public comment period, ending on February 26, 2017.

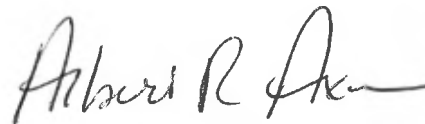
MIMC requests this extension for the following reasons:

1. The EPA Administrative Record for this Site is massive, entailing 880 documents, many of which have not previously been made available to the public;
2. The Feasibility Study (“FS”) for this Site was issued simultaneously with the PRAP, thus providing the currently identified responsible parties no opportunity to review this significant document prior to the beginning of the current public comment period;
3. The FS includes several new remedial alternatives not analyzed in the responsible parties’ Interim Final FS, and includes 534 pages of information;
4. The Site was reviewed by the National Remedy Review Board whose memorandum on the Site was not issued in final form until after the issuance of the PRAP;

5. The PRAP is based, in large part, on technical presumptions such as change in river course, that were not analyzed during the Remedial Investigation/Feasibility Study process, and are not analyzed or described in the Administrative Record, requiring the responsible parties to perform their own analyses in order to provide responsive comments;
6. The preferred alternative described in the PRAP is poorly defined and ripe with ambiguities and uncertainties that need to be analyzed in order to determine the proposed remedy's implementability, constructability, and potential adverse effects on the environment;
7. The PRAP has national implications on the EPA's national sediment policy and guidance;
8. The preferred remedy set out in the PRAP is inconsistent with and departs from the recommended remedial alternative put forth by the Interim Final FS;
9. The U.S. Army Corps of Engineers issued a report in August 2016 that addresses the site remedial alternatives yet the modeling and other technical information that support the report's conclusions have not yet been made available to the public;
10. Region 6 directed the responsible parties to conduct extensive sampling of Site groundwater, porewater, surface water, sediments and tissue yet those data have not been addressed in the PRAP; and
11. The current 60-day comment period and proposed extension thereto include several holidays, which effectively reduces the comment period by at least 14 days.

As a result of the factors set out above, the current public comment period does not provide adequate time for a full and complete analysis of the PRAP and the implications of various omissions and ambiguities in the Administrative Record. In order to provide an adequate opportunity for comment by MIMC, we respectfully request an extension of the public comment period to February 26, 2017.

Sincerely,

A handwritten signature in black ink, appearing to read "Albert R. Axe, Jr.", with a stylized flourish at the end.

Albert R. Axe, Jr.

ARA:mr

Gary Miller, Remedial Project Manager
October 28, 2016
Page 3

cc: Satya Dwivedula *Via electronic mail: satya.dwivedula@tceq.texas.gov*
TCEQ Project Manager
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Anne Foster	<i>Via electronic mail: foster.anne@epa.gov</i>
David Keith	<i>Via electronic mail: dkeith@anchoragea.com</i>
John F. Cermak, Jr.	<i>Via electronic mail: jcermak@bakerlaw.com</i>
Sonja A. Inglin	<i>Via electronic mail: singlin@bakerlaw.com</i>

Rickelman, Magdalena

From: Axe, Al
Sent: Tuesday, November 29, 2016 9:08 AM
To: Rickelman, Magdalena
Subject: FW: AMRDEC Safe Access File Exchange Delivery Notice

This is from Susan Johnston of USACE. Al

Albert R. Axe, Jr.
Winstead PC | 401 Congress Avenue | Suite 2100 | Austin, Texas 78701
512.370.2806 direct | 512.370.2850 fax | aaxe@winstead.com | www.winstead.com profile link:
<http://www.winstead.com/Attorneys/aaxe>

-----Original Message-----

From: No-Reply@amrdec.army.mil [mailto:No-Reply@amrdec.army.mil]
Sent: Tuesday, November 29, 2016 9:07 AM
To: Axe, Al
Subject: AMRDEC Safe Access File Exchange Delivery Notice

Direct replies will not be read by a human.

=====

DO NOT FORWARD

Please note, IAW Para 4-5.a(8) and 4-12.c, AR 25-2, it is a violation of SAFE security policy to share/forward Package passwords.

You must contact the Package originator to have the Package re-sent via SAFE (<https://safe.amrdec.army.mil/safe/>) to other users.

NOTICE: If any doubt exists as to the safety or origin of the file(s) or the veracity of the sender, the recipient reading this message should NOT download the file(s) and should contact the appropriate Information Assurance Security Officer immediately for further guidance.

Susan Johnston, susan.r.johnston@usace.army.mil has granted you access to a file(s) uploaded on 11/29/2016 9:07:17 AM Central Time Zone, USA.

File Description: Modeling run files for San Jacinto Waste Pits

Package ID: 8021891

The file(s) will be available at:

<https://safe.amrdec.army.mil/safe/pickupfiles.aspx?id=8021891>

Until: 12/9/2016

The password is ddYs#97fnCxq2*3

NOTE: This password can only be used ONCE.

If you require assistance, please contact usarmy.redstone.rdecom-amrdec.mbx.safe-team@mail.mil and reference Package ID 8021891 and include a copy of this email message in your request.

NOTICE: This e-mail message is intended solely for the use of the addressee. If the reader of this message is not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying, or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately.

Thank you.

This message may be forwarded to usarmy.redstone.rdecom-amrdec.mbx.safe-team@mail.mil for technical support purposes.

Rickelman, Magdalena

From: Axe, Al
Sent: Tuesday, December 13, 2016 2:58 PM
To: Johnston, Susan R CIV USARMY CEERD (US) (Susan.R.Johnston@usace.army.mil); daniel.l.egger@usace.army.mil
Cc: Rickelman, Magdalena
Subject: FW: FOIA Request FP-16-028460 (FOIA 16-19)
Attachments: Pages from final_report_san_jacinto_river_site_0-2 Figures E-5_6.pdf; Pages from final_report_san_jacinto_river_site_0 Figure 3-1.pdf

Susan and Daniel,

Following up on the attached email and our FOIA request, I have now obtained additional information regarding the USACE modeling information that is still needed.

The model files that were transmitted by the USACE under the FOIA request were the coarse-resolution LTFATE model grid and associated input files (the model grid is shown in the attached Figures E-5 and Figures E-6 from the USACE Modeling report). We understand from the USACE Modeling Report that this model was used for hydrodynamic and wave simulations, and the output from these simulations were subsequently used in simulations with a high-resolution model grid. The conclusions described in the USACE Modeling Report were based on hydrodynamic and sediment transport modeling conducted with the high-resolution model grid.

As such, we need to obtain the LTFATE EFDC and SEDZLJ model input files, model grid, model source code, and solution files for the high-resolution grid as shown in the attached Figure 3-1 from the USACE Modeling Report.

Given the impending appeal deadline and the need for this information in order to prepare comments with EPA on the proposed plan for the site that is the subject of the requested modeling and other information, I would very much appreciate hearing back from you at your earliest convenience on whether any additional information is forthcoming. Thanks. Al

Albert R. Axe, Jr.
Winstead PC | 401 Congress Avenue | Suite 2100 | Austin, Texas 78701
512.370.2806 direct | 512.370.2850 fax | aaxe@winstead.com | www.winstead.com profile link:
<http://www.winstead.com/Attorneys/aaxe>

-----Original Message-----

From: Axe, Al
Sent: Thursday, December 08, 2016 10:09 AM
To: 'Johnston, Susan R CIV USARMY CEERD (US)'
Cc: daniel.l.egger@usace.army.mil; Rickelman, Magdalena
Subject: FOIA Request FP-16-028460 (FOIA 16-19)

Susan,

Thanks for getting us the modeling information. Our consultants are still working with the modeling files you sent to determine whether they contain all the information we need regarding the USACE modeling efforts and we should be back to you soon on that issue.

With respect to the rest of the information requested in our FOIA request dated September 12, 2016, is the USACE planning to send us a supplemental response prior to the appeal deadline of December 27, 2016? As Daniel and I have discussed, it is clear that many emails and potentially other information responsive to our FOIA request had not been reviewed by the USACE at the time of USACE's initial response dated September 28, 2016.

I look forward to your response. Thanks.

Albert R. Axe, Jr.

Winstead PC | 401 Congress Avenue | Suite 2100 | Austin, Texas 78701

512.370.2806 direct | 512.370.2850 fax | aaxe@winstead.com | www.winstead.com profile link:

<http://www.winstead.com/Attorneys/aaxe>

-----Original Message-----

From: Johnston, Susan R CIV USARMY CEERD (US) [<mailto:Susan.R.Johnston@usace.army.mil>]

Sent: Tuesday, November 29, 2016 9:10 AM

To: Axe, Al; dkeith@anchorgea.com

Cc: Rickelman, Magdalena

Subject: RE: File Transfer

All,

You should soon be receiving your email notice that AMRDEC sends out for retrieval of your file.

Susan R. Johnston

Paralegal Specialist, Office of Counsel

U.S. Army Engineer Research & Development Center

ATTN: CEERD-OC

3909 Halls Ferry Road

Vicksburg, MS 39180-6199

Ph: 601-634-4055

FAX: 601-634-4181



DEPARTMENT OF THE ARMY
ENGINEER RESEARCH AND DEVELOPMENT CENTER, CORPS OF ENGINEERS
WATERWAYS EXPERIMENT STATION, 3908 HALLS FERRY ROAD
VICKSBURG, MISSISSIPPI 39180-6199

December 20, 2016

Office of Counsel

VIA ELECTRONIC MAIL

Magdalena Rickelman
Winstead PC
401 Congress Avenue, Suite 2100
Austin, TX 78701

RE: Freedom of Information Act (FOIA) Request FP-16-028460 (FOIA 16-19)

Dear Ms. Rickelman:

I am the Initial Denial Authority (IDA) for Freedom of Information Act (FOIA) matters at the U.S. Army Engineer Research and Development Center (ERDC). This letter is in reference to your FOIA request dated September 12, 2016 that was received at the US Army Engineer Research and Development Center (ERDC) Office of Counsel that same date by Mr. Daniel Egger, ERDC FOIA Attorney. In it, you requested all information regarding the U.S. Army Corps of Engineers' evaluation of the San Jacinto River Waste Pits Superfund Site ("Site"), including, but not limited to the design and construction of the cap at the Site; alleged damage to the cap discovered in December 2015; the Site Feasibility Study; and the remedial alternatives for the Site. On September 28, 2016, I sent you fourteen documents that were found responsive to your request.

I received a call from your associate, Mr. Al Axe, on October 5, 2016 regarding our FOIA response and his concern that there were additional documents and information that should have been found responsive to your FOIA request. Since that call, our office has located another forty-two (42) releasable documents/photographs and a modeling file that was released to Mr. Axe on November 29, 2016 via the AMRDEC Safe website.

Some information in the forty-two (42) releasable documents/photographs has been withheld under the FOIA exemptions 552 (b)(6) and 552 (b)(7)(C). All individual names and contact information of federal employees have been redacted from the documents as this type of information is exempt from disclosure under FOIA exemption (b)(6) when "information about individuals" "that if disclosed to a requestor ... would result in a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552 (b)(6)(2016). Exemption (b)(6) requires that we determine whether there is any public interest in the personal information embedded in the documents that you have

requested and balance that against the privacy interests involved. We also must take into consideration whether or not disclosure of this personal information would shed any light on our agency's performance of official duties, which is the core purpose of the FOIA. This type of information is also exempt from disclosure under FOIA exemption (b)(7)(c) because disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C)(2016). Since this request seeks no official information about the government agency but merely records that the Government happens to be storing, the result is an invasion of privacy that is "unwarranted." U.S. Dept. of Justice v. Reporters Committee For Freedom of Press, 489 U.S. 749, 780 (1989).

You have the right to appeal this partial denial determination to the Secretary of the Army (to the attention of the General Counsel). You must send your appeal through this office. To be considered timely your appeal must be received by the Army General Counsel no later than 90 calendar days after the date of this letter. Your appeal should state the basis for your disagreement with this denial and include a copy of this denial. Enclose your appeal letter in an envelope bearing the notation, "Freedom of Information Act Appeal." Address your appeal to:

Commander
U.S. Army Engineer Research and Development Center
ATTN: Office of Counsel (CEERD-OC-Z)
3909 Halls Ferry Road
Vicksburg, MS 39180-6199

You also have the right to seek dispute resolution services from the FOIA Public Liaison of USACE or the Office of Government Information Services (OGIS). Contact information is provided below.

USACE FOIA Liaison:

Emily Green
U.S. Army Corps of Engineers
ATTN: CECC-L
441 G Street, NW
Washington, DC 20314-1000
Email: foia-liaison@usace.army.mil
Phone: 202-761-4791

OGIS FOIA Liaison:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
Website: <https://ogis.archives.gov>
Email: ogis@nara.gov
Phone: 202-741-5770 or 1-877-684-6448

[3]

If you have any questions, please feel free to contact me at the above address or at telephone number (601) 634-3311.

Sincerely,



Bill D. Woodard
ERDC Counsel
Initial Denial Authority

42 Enclosures sent via AMRDEC Safe:

- 1-25) Twenty-five (25) Individual Photographs
- 26) Word Document "December 23 Photos"
- 27) Word Document "Data Call"
- 28) Word Document "Review of SJ FS"
- 29) Word Document "San Jacinto Cap Inspection 3-8-16"
- 30) Word Document "San Jacinto Progress Report July 2013"
- 31) Word Document "SJRWP-USACE IAG SOW for Cap Damage 1-20-2016"
- 32) Word Document "SupplementalDataCall"
- 33) PowerPoint Document "OpenHouse-EJH"
- 34) PowerPoint Document "SJ"
- 35) Adobe Document "San Jacinto Progress Report Apr 2013"
- 36) Adobe Document "San Jacinto Progress Report August 2013"
- 37) Adobe Document "San Jacinto Progress Report June 2013"
- 38) Adobe Document "San Jacinto Progress Report Mar 2013"
- 39) Adobe Document "San Jacinto Progress Report May 2013"
- 40) Adobe Document "SanJac_Low_Tide_Visual_Inspection_20160224"
- 41) Adobe Document "SJ_poster"
- 42) Adobe Document "San Jac Historical Aerial Pics 1-9-2008"

Rickelman, Magdalena

From: Axe, Al
Sent: Monday, December 19, 2016 5:15 PM
To: 'Egger, Daniel L CIV CEERD CEERD (US)'
Subject: RE: FOIA Request FP-16-028460 (FOIA 16-19)

Daniel,

I discussed the modeling information needed with our consultant and they offered the following possible narrowing of the information but they weren't optimistic that this would result in less work for USACE:

- LTFATE EFDC/SEDZLJ high-resolution grid files (cell.inp, dxdy.inp, and lxly.inp)
- Master EFDC input file for the 1994 flood simulation as well as the hypothetical synoptic event (efdc.inp)
- The model output/solution files for these simulations (Fortran .bin files). We would need the model source code to be able to read these solution (.bin) files.

Please let me know if this helps. Al

Albert R. Axe, Jr.
Winstead PC | 401 Congress Avenue | Suite 2100 | Austin, Texas 78701
512.370.2806 direct | 512.370.2850 fax | aaxe@winstead.com | www.winstead.com profile link:
<http://www.winstead.com/Attorneys/aaxe>

-----Original Message-----

From: Egger, Daniel L CIV CEERD CEERD (US) [<mailto:Daniel.L.Egger@usace.army.mil>]
Sent: Monday, December 19, 2016 4:57 PM
To: Axe, Al
Subject: RE: FOIA Request FP-16-028460 (FOIA 16-19)

Al,

We will be providing additional documents via AMERDEC tomorrow December 19. These are mostly photos and other documents relating to the repair of the cap at the San Jacinto site.

The modelling data we have discussed on the phone is still a problem, and I do not have positive news regarding the production of that data before December 27th. I am continuing to work with the available scientists to determine what data is immediately available to them, but at this time I have not received any information leading me to believe that we will be able to provide additional modeling- run data before your proposed date.

If you have had the opportunity to talk to your technical people about prioritizing the modeling data that you seek, that may be beneficial, and we can discuss your thoughts by phone.

Daniel L. Egger
Assistant ERDC Counsel
Daniel.L.Egger@usace.army.mil
601-634-4203

-----Original Message-----

From: Axe, Al [mailto:aaxe@winstead.com]
Sent: Monday, December 19, 2016 4:01 PM
To: Egger, Daniel L CIV CEERD CEERD (US) <Daniel.L.Egger@usace.army.mil>
Cc: Johnston, Susan R CIV USARMY CEERD (US) <Susan.R.Johnston@usace.army.mil>
Subject: [EXTERNAL] FW: FOIA Request FP-16-028460 (FOIA 16-19)

Daniel,

We visited last week regarding the email set out below relevant to the above-referenced FOIA request. At that time, you told me that Earl Hayter, who was the team lead on the USACE report for the EPA on remedial alternatives for the San Jacinto Site, would be out of the office for the rest of the month of December. Once he returns in January 2017, you indicated that it will take him 20-40 hours to provide us the modeling information we are requesting. You stated that you would see if any of his team members could provide us the information we need and would call me back last week. Since I have not heard from you, I am following up. Please let me know if there is any chance that the requesting modeling information, or any of the other information we have requested regarding the USACE's work on behalf of the EPA at the Site, will be made available to us prior to December 27, 2016. Thanks. Al

Albert R. Axe, Jr.
Winstead PC | 401 Congress Avenue | Suite 2100 | Austin, Texas 78701
512.370.2806 direct | 512.370.2850 fax | aaxe@winstead.com | Blockedwww.winstead.com profile link:
Blockedhttp://www.winstead.com/Attorneys/aaxe

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From: Axe, Al
Sent: Tuesday, December 13, 2016 2:58 PM
To: Johnston, Susan R CIV USARMY CEERD (US) (Susan.R.Johnston@usace.army.mil); daniel.l.egger@usace.army.mil
Cc: Rickelman, Magdalena
Subject: FW: FOIA Request FP-16-028460 (FOIA 16-19)

Susan and Daniel,

Following up on the attached email and our FOIA request, I have now obtained additional information regarding the USACE modeling information that is still needed.

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As such, we need to obtain the LTFATE EFDC and SEDZLJ model input files, model grid, model source code, and solution files for the high-resolution grid as shown in the attached Figure 3-1 from the USACE Modeling Report.

Given the impending appeal deadline and the need for this information in order to prepare comments with EPA on the proposed plan for the site that is the subject of the requested modeling and other information, I would very much appreciate hearing back from you at your earliest convenience on whether any additional information is forthcoming. Thanks. Al

Albert R. Axe, Jr.

Winstead PC | 401 Congress Avenue | Suite 2100 | Austin, Texas 78701

512.370.2806 direct | 512.370.2850 fax | aaxe@winstead.com | Blockedwww.winstead.com profile link:

Blockedhttp://www.winstead.com/Attorneys/aaxe

-----Original Message-----

From: Axe, Al

Sent: Thursday, December 08, 2016 10:09 AM

To: 'Johnston, Susan R CIV USARMY CEERD (US)'

Cc: daniel.l.egger@usace.army.mil; Rickelman, Magdalena

Subject: FOIA Request FP-16-028460 (FOIA 16-19)

Susan,

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I look forward to your response. Thanks.

Albert R. Axe, Jr.

Winstead PC | 401 Congress Avenue | Suite 2100 | Austin, Texas 78701

512.370.2806 direct | 512.370.2850 fax | aaxe@winstead.com | Blockedwww.winstead.com profile link:

Blockedhttp://www.winstead.com/Attorneys/aaxe

-----Original Message-----

From: Johnston, Susan R CIV USARMY CEERD (US) [mailto:Susan.R.Johnston@usace.army.mil]

Sent: Tuesday, November 29, 2016 9:10 AM

To: Axe, Al; dkeith@anchorqea.com

Cc: Rickelman, Magdalena

Subject: RE: File Transfer

All,

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Susan R. Johnston

Paralegal Specialist, Office of Counsel

U.S. Army Engineer Research & Development Center
ATTN: CEERD-OC
3909 Halls Ferry Road
Vicksburg, MS 39180-6199

Ph: 601-634-4055
FAX: 601-634-4181

Information contained in this transmission is attorney privileged and confidential. It is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone.

--

Rickelman, Magdalena

From: Egger, Daniel L CIV CEERD CEERD (US) <Daniel.L.Egger@usace.army.mil>
Sent: Monday, December 19, 2016 4:57 PM
To: Axe, Al
Subject: RE: FOIA Request FP-16-028460 (FOIA 16-19)

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Daniel L. Egger
Assistant ERDC Counsel
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601-634-4203

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To: Egger, Daniel L CIV CEERD CEERD (US) <Daniel.L.Egger@usace.army.mil>
Cc: Johnston, Susan R CIV USARMY CEERD (US) <Susan.R.Johnston@usace.army.mil>
Subject: [EXTERNAL] FW: FOIA Request FP-16-028460 (FOIA 16-19)

Daniel,

We visited last week regarding the email set out below relevant to the above-referenced FOIA request. At that time, you told me that Earl Hayter, who was the team lead on the USACE report for the EPA on remedial alternatives for the San Jacinto Site, would be out of the office for the rest of the month of December. Once he returns in January 2017, you indicated that it will take him 20-40 hours to provide us the modeling information we are requesting. You stated that you would see if any of his team members could provide us the information we need and would call me back last week. Since I have not heard from you, I am following up. Please let me know if there is any chance that the requesting modeling information, or any of the other information we have requested regarding the USACE's work on behalf of the EPA at the Site, will be made available to us prior to December 27, 2016. Thanks. Al

Albert R. Axe, Jr.
Winstead PC | 401 Congress Avenue | Suite 2100 | Austin, Texas 78701
512.370.2806 direct | 512.370.2850 fax | aaxe@winstead.com | Blockedwww.winstead.com profile link:
Blockedhttp://www.winstead.com/Attorneys/aaxe

-----Original Message-----

From: Axe, Al

Sent: Tuesday, December 13, 2016 2:58 PM

To: Johnston, Susan R CIV USARMY CEERD (US) (Susan.R.Johnston@usace.army.mil); daniel.l.egger@usace.army.mil

Cc: Rickelman, Magdalena

Subject: FW: FOIA Request FP-16-028460 (FOIA 16-19)

Susan and Daniel,

Following up on the attached email and our FOIA request, I have now obtained additional information regarding the USACE modeling information that is still needed.

The model files that were transmitted by the USACE under the FOIA request were the coarse-resolution LTFATE model grid and associated input files (the model grid is shown in the attached Figures E-5 and Figures E-6 from the USACE Modeling report). We understand from the USACE Modeling Report that this model was used for hydrodynamic and wave simulations, and the output from these simulations were subsequently used in simulations with a high-resolution model grid. The conclusions described in the USACE Modeling Report were based on hydrodynamic and sediment transport modeling conducted with the high-resolution model grid.

As such, we need to obtain the LTFATE EFDC and SEDZLJ model input files, model grid, model source code, and solution files for the high-resolution grid as shown in the attached Figure 3-1 from the USACE Modeling Report.

Given the impending appeal deadline and the need for this information in order to prepare comments with EPA on the proposed plan for the site that is the subject of the requested modeling and other information, I would very much appreciate hearing back from you at your earliest convenience on whether any additional information is forthcoming. Thanks. Al

Albert R. Axe, Jr.

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512.370.2806 direct | 512.370.2850 fax | aaxe@winstead.com | Blockedwww.winstead.com profile link:

Blockedhttp://www.winstead.com/Attorneys/aaxe

-----Original Message-----

From: Axe, Al

Sent: Thursday, December 08, 2016 10:09 AM

To: 'Johnston, Susan R CIV USARMY CEERD (US)'

Cc: daniel.l.egger@usace.army.mil; Rickelman, Magdalena

Subject: FOIA Request FP-16-028460 (FOIA 16-19)

Susan,

Thanks for getting us the modeling information. Our consultants are still working with the modeling files you sent to determine whether they contain all the information we need regarding the USACE modeling efforts and we should be back to you soon on that issue.

With respect to the rest of the information requested in our FOIA request dated September 12, 2016, is the USACE planning to send us a supplemental response prior to the appeal deadline of December 27, 2016? As Daniel and I have discussed, it is clear that many emails and potentially other information responsive to our FOIA request had not been reviewed by the USACE at the time of USACE's initial response dated September 28, 2016.

I look forward to your response. Thanks.

Albert R. Axe, Jr.

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-----Original Message-----

From: Johnston, Susan R CIV USARMY CEERD (US) [mailto:Susan.R.Johnston@usace.army.mil]

Sent: Tuesday, November 29, 2016 9:10 AM

To: Axe, Al; dkeith@anchorqea.com

Cc: Rickelman, Magdalena

Subject: RE: File Transfer

All,

You should soon be receiving your email notice that AMRDEC sends out for retrieval of your file.

Susan R. Johnston

Paralegal Specialist, Office of Counsel

U.S. Army Engineer Research & Development Center

ATTN: CEERD-OC

3909 Halls Ferry Road

Vicksburg, MS 39180-6199

Ph: 601-634-4055

FAX: 601-634-4181

Information contained in this transmission is attorney privileged and confidential. It is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone.

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DEPARTMENT OF THE ARMY
ENGINEER RESEARCH AND DEVELOPMENT CENTER, CORPS OF ENGINEERS
WATERWAYS EXPERIMENT STATION, 3909 HALLS FERRY ROAD
VICKSBURG, MISSISSIPPI 39180-6199

December 20, 2016

Office of Counsel

VIA ELECTRONIC MAIL

Magdalena Rickelman
Winstead PC
401 Congress Avenue, Suite 2100
Austin, TX 78701

RE: Freedom of Information Act (FOIA) Request FP-16-028460 (FOIA 16-19)

Dear Ms. Rickelman:

I am the Initial Denial Authority (IDA) for Freedom of Information Act (FOIA) matters at the U.S. Army Engineer Research and Development Center (ERDC). This letter is in reference to your FOIA request dated September 12, 2016 that was received at the US Army Engineer Research and Development Center (ERDC) Office of Counsel that same date by Mr. Daniel Egger, ERDC FOIA Attorney. In it, you requested all information regarding the U.S. Army Corps of Engineers' evaluation of the San Jacinto River Waste Pits Superfund Site ("Site"), including, but not limited to the design and construction of the cap at the Site; alleged damage to the cap discovered in December 2015; the Site Feasibility Study; and the remedial alternatives for the Site. On September 28, 2016, I sent you fourteen documents that were found responsive to your request.

I received a call from your associate, Mr. Al Axe, on October 5, 2016 regarding our FOIA response and his concern that there were additional documents and information that should have been found responsive to your FOIA request. Since that call, our office has located another forty-two (42) releasable documents/photographs and a modeling file that was released to Mr. Axe on November 29, 2016 via the AMRDEC Safe website.

Some information in the forty-two (42) releasable documents/photographs has been withheld under the FOIA exemptions 552 (b)(6) and 552 (b)(7)(C). All individual names and contact information of federal employees have been redacted from the documents as this type of information is exempt from disclosure under FOIA exemption (b)(6) when "information about individuals" "that if disclosed to a requestor ... would result in a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552 (b)(6)(2016). Exemption (b)(6) requires that we determine whether there is any public interest in the personal information embedded in the documents that you have

requested and balance that against the privacy interests involved. We also must take into consideration whether or not disclosure of this personal information would shed any light on our agency's performance of official duties, which is the core purpose of the FOIA. This type of information is also exempt from disclosure under FOIA exemption (b)(7)(c) because disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C)(2016). Since this request seeks no official information about the government agency but merely records that the Government happens to be storing, the result is an invasion of privacy that is "unwarranted." U.S. Dept. of Justice v. Reporters Committee For Freedom of Press, 489 U.S. 749, 780 (1989).

You have the right to appeal this partial denial determination to the Secretary of the Army (to the attention of the General Counsel). You must send your appeal through this office. To be considered timely your appeal must be received by the Army General Counsel no later than 90 calendar days after the date of this letter. Your appeal should state the basis for your disagreement with this denial and include a copy of this denial. Enclose your appeal letter in an envelope bearing the notation, "Freedom of Information Act Appeal." Address your appeal to:

Commander
U.S. Army Engineer Research and Development Center
ATTN: Office of Counsel (CEERD-OC-Z)
3909 Halls Ferry Road
Vicksburg, MS 39180-6199

You also have the right to seek dispute resolution services from the FOIA Public Liaison of USACE or the Office of Government Information Services (OGIS). Contact information is provided below.

USACE FOIA Liaison:

Emily Green
U.S. Army Corps of Engineers
ATTN: CECC-L
441 G Street, NW
Washington, DC 20314-1000
Email: foia-liaison@usace.army.mil
Phone: 202-761-4791

OGIS FOIA Liaison:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
Website: <https://ogis.archives.gov>
Email: ogis@nara.gov
Phone: 202-741-5770 or 1-877-684-6448

[3]

If you have any questions, please feel free to contact me at the above address or at telephone number (601) 634-3311.

Sincerely,



Bill D. Woodard
ERDC Counsel
Initial Denial Authority

42 Enclosures sent via AMRDEC Safe:

- 1-25) Twenty-five (25) Individual Photographs
- 26) Word Document "December 23 Photos"
- 27) Word Document "Data Call"
- 28) Word Document "Review of SJ FS"
- 29) Word Document "San Jacinto Cap Inspection 3-8-16"
- 30) Word Document "San Jacinto Progress Report July 2013"
- 31) Word Document "SJRWP-USACE IAG SOW for Cap Damage 1-20-2016"
- 32) Word Document "SupplementalDataCall"
- 33) PowerPoint Document "OpenHouse-EJH"
- 34) PowerPoint Document "SJ"
- 35) Adobe Document "San Jacinto Progress Report Apr 2013"
- 36) Adobe Document "San Jacinto Progress Report August 2013"
- 37) Adobe Document "San Jacinto Progress Report June 2013"
- 38) Adobe Document "San Jacinto Progress Report Mar 2013"
- 39) Adobe Document "San Jacinto Progress Report May 2013"
- 40) Adobe Document "SanJac_Low_Tide_Visual_Inspection_20160224"
- 41) Adobe Document "SJ_poster"
- 42) Adobe Document "San Jac Historical Aerial Pics 1-9-2008"

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aaxe@winstead.com

December 20, 2016

Gary Miller
Remedial Project Manager
U.S. Environmental Protection Agency, Region 6
Superfund Division (6SF-RA)
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

*Via Overnight Delivery and Electronic Mail Miller.Garyg@epa.gov
and R6_San_Jacinto_Waste_Pits_Comments@epa.gov*

Re: San Jacinto River Waste Pits Superfund Site, Harris County, Texas
Proposed Remedial Action Plan

Dear Mr. Miller:

This letter is written on behalf of McGinnes Industrial Maintenance Corporation (MIMC) to re-urge MIMC's original request for an extension to the public comment period on the Proposed Remedial Action Plan (PRAP) for the above-referenced Site. MIMC's original request was submitted via letter dated October 28, 2016 and requested an extension of the public comment period to February 26, 2017. Region 6 subsequently extended the public comment period to January 12, 2017.

All of MIMC's reasons for the extension listed in the October 28, 2016 letter continue to be valid. The October 28, 2016 letter is attached hereto and the reasons listed for an extension to February 26, 2017 are incorporated herein.

In addition to the reasons listed in the October 28, 2016 correspondence, an extension of the public comment period to February 26, 2017 is further justified for the following reasons:

1. The modeling that supports the U.S. Army Corps of Engineers (USACE) report, mentioned in reason number "9" in the attached letter, has still not be made available to the public. Two Freedom of Information Act (FOIA) requests dated July 15, 2016 were submitted to EPA for information on the USACE Remedial Alternatives Report. On August 1, 2016, we agreed to grant EPA an extension of time to provide the requested information. On September 27, 2016, we received an email stating that all information responsive to our FOIA requests had been provided and that the requests were being closed; however, the modeling information was not provided. Following receipt of the PRAP on September 28, 2016, our consultant attempted to arrange a meeting with USACE representatives to discuss the modeling results; however, EPA

Region 6 decided that such a meeting could not be arranged. The inability to visit with USACE about the modeling makes our review of the modeling information even more important.

2. A FOIA request was also submitted to the USACE on September 12, 2016 for information related to its work associated with the Site. USACE submitted a response to us dated September 28, 2016 but much of the requested information was missing, including the modeling information. We have been in contact with the USACE regarding this missing information on multiple occasions and although we have now received some of the requested information, we have still not obtained the LTFATE EFDC and SEDZLJ model input files, model grid, model source code, and solution files for the high-resolution grid. This information is necessary in order to prepare MIMC's comments on the PRAP. On December 14, 2016, I had a telephone conference with the USACE attorney assigned to this matter. At that time, I was informed that the person at USACE who would be able to get us the requested information is out of the office for the rest of December and that upon his return in January 2017, he will need 20-40 hours to provide us the requested information. Again, this is information that should have been provided to us long ago.

Inasmuch as the modeling information is the basis for conclusions reached in the USACE Remedial Alternatives Report, it clearly does not fall within any of the exceptions to disclosure contained in FOIA. Region 6 has required that all modeling information that supports the reports of MIMC's consultants be submitted to EPA for review with the reports. The same requirement should apply to EPA and USACE. This information should have been provided as a part of the Administrative Record for the PRAP but has been withheld by EPA.

3. We have also submitted a FOIA request dated September 29, 2016 for additional Site information (EPA-R6-2016-010715). A partial response was provided by EPA on December 12, 2016. The time deadline for EPA to provide the requested information was on or before November 17, 2016 but much of the responsive information has not yet been provided.

Because EPA and USACE have not fulfilled their legal obligations under FOIA to make information available to the public that is directly relevant to the PRAP, it is impossible for MIMC to submit fully-informed comments. For this reason and for the reasons set out in the attached October 28, 2016 letter, MIMC re-urges EPA to extend the comment period to February 26, 2017. MIMC also urges EPA to fully and timely respond to the referenced FOIA requests.

Sincerely,

A handwritten signature in black ink, appearing to read "Albert R. Axe". The signature is fluid and cursive, with a large, stylized "A" at the beginning.

Albert R. Axe, Jr.

ARA:mr

cc: Satya Dwivedula *Via electronic mail: satya.dwivedula@tceq.texas.gov*
TCEQ Project Manager
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Anne Foster *Via electronic mail: foster.anne@epa.gov*
David Keith *Via electronic mail: dkeith@anchoragea.com*
John F. Cermak, Jr. *Via electronic mail: jcermak@bakerlaw.com*
Sonja A. Inglin *Via electronic mail: singlin@bakerlaw.com*

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October 28, 2016

Gary Miller
Remedial Project Manager
U.S. Environmental Protection Agency, Region 6
Superfund Division (6SF-RA)
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

*Via Overnight Delivery and Electronic Mail Miller.Garyg@epa.gov
and [R6 San Jacinto Waste Pits Comments@epa.gov](mailto:R6_San_Jacinto_Waste_Pits_Comments@epa.gov)*

Re: San Jacinto River Waste Pits Superfund Site, Harris County, Texas
Proposed Remedial Action Plan

Dear Mr. Miller:

This letter is written on behalf of McGinnes Industrial Maintenance Corporation ("MIMC") regarding the public comment period on the Proposed Remedial Action Plan ("PRAP") for the above-referenced Site. With its issuance of the PRAP, EPA Region 6 announced a 60-day public comment period beginning on September 29, 2016 and closing on November 28, 2016. Pursuant to this letter, MIMC requests a 90-day extension of this public comment period, ending on February 26, 2017.

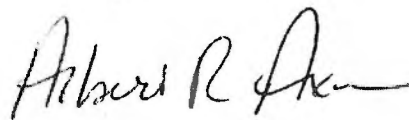
MIMC requests this extension for the following reasons:

1. The EPA Administrative Record for this Site is massive, entailing 880 documents, many of which have not previously been made available to the public;
2. The Feasibility Study ("FS") for this Site was issued simultaneously with the PRAP, thus providing the currently identified responsible parties no opportunity to review this significant document prior to the beginning of the current public comment period;
3. The FS includes several new remedial alternatives not analyzed in the responsible parties' Interim Final FS, and includes 534 pages of information;
4. The Site was reviewed by the National Remedy Review Board whose memorandum on the Site was not issued in final form until after the issuance of the PRAP;

5. The PRAP is based, in large part, on technical presumptions such as change in river course, that were not analyzed during the Remedial Investigation/ Feasibility Study process, and are not analyzed or described in the Administrative Record, requiring the responsible parties to perform their own analyses in order to provide responsive comments;
6. The preferred alternative described in the PRAP is poorly defined and ripe with ambiguities and uncertainties that need to be analyzed in order to determine the proposed remedy's implementability, constructability, and potential adverse effects on the environment;
7. The PRAP has national implications on the EPA's national sediment policy and guidance;
8. The preferred remedy set out in the PRAP is inconsistent with and departs from the recommended remedial alternative put forth by the Interim Final FS;
9. The U.S. Army Corps of Engineers issued a report in August 2016 that addresses the site remedial alternatives yet the modeling and other technical information that support the report's conclusions have not yet been made available to the public;
10. Region 6 directed the responsible parties to conduct extensive sampling of Site groundwater, porewater, surface water, sediments and tissue yet those data have not been addressed in the PRAP; and
11. The current 60-day comment period and proposed extension thereto include several holidays, which effectively reduces the comment period by at least 14 days.

As a result of the factors set out above, the current public comment period does not provide adequate time for a full and complete analysis of the PRAP and the implications of various omissions and ambiguities in the Administrative Record. In order to provide an adequate opportunity for comment by MIMC, we respectfully request an extension of the public comment period to February 26, 2017.

Sincerely,

A handwritten signature in black ink, appearing to read "Albert R. Axe, Jr.", with a stylized flourish at the end.

Albert R. Axe, Jr.

ARA:mr

Gary Miller, Remedial Project Manager
October 28, 2016
Page 3

cc: Satya Dwivedula *Via electronic mail: satya.dwivedula@tceq.texas.gov*
TCEQ Project Manager
Texas Commission on Environmental Quality
P.O. Box 13087
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Anne Foster *Via electronic mail: foster.anne@epa.gov*
David Keith *Via electronic mail: dkeith@anchoragea.com*
John F. Cermak, Jr. *Via electronic mail: jcermak@bakerlaw.com*
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December 22, 2016

Via Electronic Submission and Certified Mail

Commander
U.S. Army Engineer Research and Development Center
Attn: Office of Counsel (CEERD-OC-Z)
3903 Halls Ferry Road
Vicksburg, MS 39180-6199

Re: Freedom of Information Act (FOIA) Appeal of Request FP-16-028460

Dear Commander:

This letter presents an administrative appeal, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(6)(2016), of the U.S. Army Engineer Research and Development Center (ERDC) Office of General Counsel's response to FOIA Request 16-028460 ("FOIA Request").¹

I. The FOIA Request and ERDC Response

The FOIA Request asks for all information regarding the U.S. Army Corps of Engineers' (Corps) evaluation of the San Jacinto River Waste Pits Superfund Site (Site), including, but not limited to (1) the design and construction of the cap at the Site; (2) alleged damage to the cap discovered in December 2015; (3) the Site Feasibility Study; and (4) the remedial alternatives for the Site.

On September 28, 2016, ERDC made a partial determination in response to the FOIA Request, which concluded that 23 documents were responsive, but 9 were subject to the deliberative process privilege in 5 U.S.C. § 552(b)(5) (Exemption 5) and therefore withheld. Notably, even though ERDC stated that the withheld documents were pre-decisional and deliberative, ERDC did not discuss what harm would occur, if any, from disclosure of the documents. An additional 14 documents were withheld on grounds that they contained personnel information subject to the privacy provisions in 5 U.S.C. § 552(b)(6) (Exemption 6) and (b)(7)(C) (Exemption 7). After subsequent communications between the Requester and

¹ To facilitate your review of this Appeal, we have enclosed copies of our FOIA request, ERDC's partial denial determination dated September 28, 2016, and ERDC's subsequent decision on December 20, 2016.

ERDC regarding the FOIA Request, ERDC sent a follow up determination on December 20, 2016, indicating that another 42 documents had been identified that were responsive to the FOIA Request. Some information in the 42 documents was redacted, while other documents were entirely withheld under Exemption 6 and Exemption 7.

II. Statement of Basis of the Appeal

ERDC's withholding of documents under Exemptions 5, 6, and 7 is improper under FOIA for a number of reasons. With respect to the documents entirely withheld under Exemption 5, ERDC has not sufficiently demonstrated that the withheld documents are covered by the deliberative process privilege, or how harm would result from their disclosure. Similarly, even though there is a possibility that the withheld documents contain personal and private information, none of the documents requested in this case, if released, would result in an unwarranted invasion of personal privacy. Indeed, more likely than not, all personnel and private information can be redacted. Further, the requested documents are for the specific purpose of shedding additional light on the Corps' evaluation of various aspects of the Site, including its expert assessment of the remedial alternatives available for the Site. EPA released its Proposed Remedial Action Plan (PRAP) for the Site on September 28, 2016. This PRAP is of significant public interest and is currently the subject of a public comment period, of limited duration, that would benefit from the release of information covered by the FOIA Request. Accordingly, neither Exemption 6 nor Exemption 7 authorizes ERDC's withholding of the requested information. ERDC should therefore produce all information responsive to the FOIA Request without any further delay.

Moreover, it is clear, based on responses to similar FOIA requests made to the U.S. Environmental Protection Agency (EPA) for communications between EPA and the Corps regarding the Site, that the Corps has not provided the full universe of information responsive to the FOIA Request. It is clear, for example, that many emails between EPA and the Corps have not been provided and that modeling conducted by the Corps at the request of EPA has not been provided.

III. Argument

A. ERDC has not demonstrated that the withheld documents are exempt from disclosure under Exemption 5.

Under Exemption 5 of FOIA, information and documents are protected from disclosure when they involve "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). The privileges incorporated into Exemption 5 include the deliberative process privilege, which protects documents that are "deliberative and pre-decisional." To qualify for the deliberative process privilege, however, the agency must demonstrate that the withheld documents are both "pre-decisional" and "deliberative." *Judicial Watch, Inc. v. FDA*, 449 F.3d 141 (D.C. Cir. 2006). Claiming the exemption therefore requires more than simply declaring the exemption applies. The privilege also does not protect material that is purely factual; final opinions; policies and interpretations; or documents that have "the force and effect of law." See generally *e.g., In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997). Further, in determining

whether the document should be withheld from disclosure, the relevant inquiry is “whether the document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communication within the agency.” *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980)).

In withholding 9 responsive documents under the deliberative process privilege, ERDC merely concludes that the documents were protected because they reflect the “give and take of the consultative process” and were completed in advance of a formal report completed in August of 2016. ERDC’s assertion does not however, identify the deliberative process involved for which the documents are being withheld or what substantive role, if any, the documents played in that process. Moreover, the FOIA Request encompasses much more information than that pertinent to the ERDC’s report of August 2016, which addressed ERDC’s evaluation of the remedial alternatives but not the other three categories of information requested.

ERDC also makes no attempt to analyze whether any material in the documents should be disclosed as a result of the information being purely factual. The ERDC’s modeling information, for example, is factual information that serves as the basis for opinions in the August 2016 report and clearly does not fall within an exception to public disclosure. A portion of this modeling information has now been provided by the ERDC, but another portion vital to the preparation of comments on the PRAP (due on January 12, 2017) has not been made available as of this date.

Finally, even though ERDC’s conclusion states that disclosure of the documents “would inhibit candor in the decision-making process,” ERDC does not fully explain how this harm could occur from the documents’ disclosure, which is required to invoke Exemption 5. *See Mead data Cent., Inc. v. U.S. Dep’t of Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977). ERDC has therefore failed to provide a sufficient justification to withhold information in response to the FOIA Request under Exemption 5.

B. The public’s interest in the requested information significantly outweighs any privacy interests present in the withheld documents such that Exemption 6 and Exemption 7 do not apply.

To assert an exemption under the privacy protections embodied in FOIA Exemption 6, a document must contain personnel and medical information, or other similar information, that if disclosed would constitute a “clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). Exemption 6 covers information that applies to a specific individual, provided that information is truly personal. *See generally, U.S. Dep’t of State v. Wash. Post Co.*, 456 U.S. 595, 601-02 (1982), *vacated on other grounds* 898 F.2d 793 (U.S. App. D.C. 1990). However, internal agency communications containing names, titles, email addresses, phone numbers, and mundane discussions related to the subject material, without containing personal information, are generally outside the scope of Exemption 6. *See e.g., Families for Freedom v. U.S. Customs & Border Prot.*, 837 F.Supp.2d 331 (S.D.N.Y. 2011)(holding that email address of certain government employees are not exempt from FOIA’s disclosure requirements). *See also, Dep’t of Air Force v. Rose*, 425 U.S. 354, 375 n.14 (1976)(holding that U.S. Air Force Academy case summaries of honor code hearings were not “personnel files” because they did not contain personal data ordinarily found in a personnel file such as birthplace, parents’ names, or work

performance evaluations). Furthermore, even if a document contains private personal information, the document cannot be withheld under a blanket exemption. See *id.* at 371. The agency is instead required to make a determination as to whether the personal privacy interest is outweighed by the public's interest in disclosure of the information. See generally, *Kimberlin v. Dep't of Justice*, 139 F.3d 944, 948 (D.C. Cir. 1998) (requiring a case-by-case weighing of the public and private interests at stake).

Asserting a privacy interest under Exemption 7, similar to Exemption 6, requires a reasonable agency determination that disclosure of "records or information compiled for law enforcement purposes," could "reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C). Exemption 7, however, provides broader protection of privacy interests related to records or information compiled for law enforcement purposes that could result in an unwarranted personal privacy invasion, rather than just those that would result in such an invasion. *Id.* See also, *Schoenman v. FBI*, 576 F. Supp. 2d 3, 8 (D.D.C. 2008). Like Exemption 6, the protections in Exemption 7 only apply when the public's interest in disclosure is outbalanced by an individual's privacy interest. See *Kimberlin*, 139 F.3d 944, 948. Federal courts analyzing an agency's FOIA balancing analysis have determined that public interests exist where disclosure would inform an ongoing public policy discussion; confirm or refute allegations of government wrongdoing or negligence; or serve a core purpose under FOIA such as "contributing significantly to public understanding of the operations or activities of the government." *U.S. Dep't of Def. v. Fed. Labor Relations Authority*, 510 U.S. 487, 495 (1994).

Even if the records and information requested in the FOIA Request contained information subject to a privacy interest, ERDC's refusal to disclose the information is without merit because any privacy interests present in the requested documents cannot outweigh the public's interest in scrutinizing how the Corps has evaluated the Site. This is particularly true as the EPA's PRAP relies heavily on the Corps' evaluation of remedial alternatives and other aspects of the Site. Indeed, the PRAP and the EPA's Final Interim Feasibility Study both make repeated references to the work conducted by ERDC relevant to the Site. Thus, a full understanding of the bases for ERDC's conclusions and recommendations is necessary. Further, it is beyond dispute that the public has a substantial and compelling interest in assessing how well federal agencies are carrying out their statutory duties with respect to matters that pertain to environmental, health, and safety issues. See generally *e.g.*, *United States v. Westinghouse Elec. Corp.*, 638 F.2d 570, 579 (3d Cir. 1980)(acknowledging a substantial public interest in matters pertaining to health and safety); *Calvert Cliffs' Coordinating Comm., Inc. v. United States Atomic Energy Com.*, 449 F.2d 1109, 1119 (1971)(recognizing the public's interest in health and safety and environmental protection). Moreover, any truly personal information covered by Exemptions 6 and 7 could be easily redacted by the ERDC and the rest of the information provided. The Requester has no interest in obtaining personal information subject to Exemptions 6 and 7.

IV. Conclusion

In light of the foregoing, we hereby request that ERDC reconsider its response to FOIA Request No. FP-16-028460. We look forward to working with you to resolve this matter without delay. Please do not hesitate to contact us with any questions.

Commander
U.S. Army Engineer Research and Development Center
Attn: Office of Counsel (CEERD-OC-Z)
December 22, 2016
Page 5

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Albert R. Axe, Jr.", with a stylized flourish at the end.

Albert R. Axe, Jr.

Enclosures

1. Freedom of Information Act Request: San Jacinto River Waste Pits Superfund Site, FP-16-028460, dated September 12, 2016.
2. Letter from Bill D. Woodard, ERDC Counsel Initial Denial Authority, to Magdalena Rickelman re: Freedom of Information Act (FOIA) Request FP-16-028460 (FOIA 16-19), dated September 28, 2016.
3. Letter from Bill D. Woodard, ERDC Counsel Initial Denial Authority, to Magdalena Rickelman re: Freedom of Information Act (FOIA) Request FP-16-028460 (FOIA 16-19), dated December 20, 2016.

cc: Gary Miller, EPA Region 6
Anne Foster, EPA Region 6

401 Congress Avenue
Suite 2100
Austin, Texas 78701

512.370.2800 OFFICE
512.370.2850 FAX
winstead.com

direct dial: 512.370.2941
mrickelman@winstead.com

September 12, 2016

Via Electronic Submission

Christopher M. Chouinard
Senior Paralegal Specialist
U.S. Army Corps of Engineers
Engineer Research and Development Center
3909 Halls Ferry Road
Vicksburg, Mississippi 39180-6199

Re: Freedom of Information Act Request
San Jacinto River Waste Pits Superfund Site

Dear Mr. Chouinard:

This is a request for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. Part 552.

I hereby request a copy of the following "information" as defined by FOIA regarding the San Jacinto River Waste Pits Superfund Site ("Site"):

All information regarding the U.S. Army Corps of Engineers' evaluation of the San Jacinto River Waste Pits Superfund Site ("Site"), including, but not limited to:

- I. The design and construction of the cap at the Site;
- II. Alleged damage to the cap discovered in December 2015;
- III. The Site Feasibility Study; and
- IV. The remedial alternatives for the Site.

In order to help you determine my status for the purpose of assessing fees, you should know that I am affiliated with a private business and am seeking information for use in the company's business.

I am willing to pay the appropriate fees for this request up to a maximum of \$250. If you estimate that the fees will exceed this limit, please inform me first. I authorize you to remove

4850-8735-2888v.1
48434-1 9/12/2016

Christopher M. Chouinard
Senior Paralegal Specialist
U.S. Army Corps of Engineers
Vicksburg District
September 9, 2016
Page 2

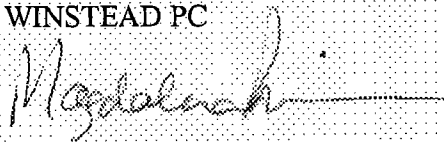
exempt materials as defined in Title 5 United States Code, Section 552, *et seq.* Please provide a log of such exempt materials. Please forward the information directly to Tiffany Williams at the following address:

Tiffany Williams
Winstead PC
401 Congress Avenue, Suite 2100
Austin, TX 78701

As provided in FOIA, please respond to this request within twenty (20) business days. Ms. Williams may be contacted at (512) 370-2904 or tpwilliams@winstead.com if there are any questions. Thank you very much for your assistance.

Very truly yours,

WINSTEAD PC



Magdalena Rickelman
Secretary to Al Axe

TPW:mr



DEPARTMENT OF THE ARMY
ENGINEER RESEARCH AND DEVELOPMENT CENTER, CORPS OF ENGINEERS
WATERWAYS EXPERIMENT STATION, 3909 HALLS FERRY ROAD
VICKSBURG, MISSISSIPPI 39180-6199

September 28, 2016

Office of Counsel

VIA ELECTRONIC MAIL

Magdalena Rickelman
Winstead PC
401 Congress Avenue, Suite 2100
Austin, TX 78701

RE: Freedom of Information Act (FOIA) Request FP-16-028460 (FOIA 16-19)

Dear Ms. Rickelman:

I am the Initial Denial Authority (IDA) for Freedom of Information Act (FOIA) matters at the U.S. Army Engineer Research and Development Center (ERDC). This letter is in reference to your FOIA request dated September 12, 2016 that was received at the US Army Engineer Research and Development Center (ERDC) Office of Counsel that same date by Mr. Daniel Egger, ERDC FOIA Attorney. In it, you requested all information regarding the U.S. Army Corps of Engineers' evaluation of the San Jacinto River Waste Pits Superfund Site ("Site), including, but not limited to the design and construction of the cap at the Site; alleged damage to the cap discovered in December 2015; the Site Feasibility Study; and the remedial alternatives for the Site.

Mr. Egger referred your letter to me because nine (9) of the twenty-three (23) documents, letters and emails found during the records search are being withheld in their entirety under FOIA exemption 552 (b)(5). All of these records are pre-decisional and deliberative and therefore exempt from release under the deliberative process privilege contained in exemption (b)(5). Some information in the fourteen (14) releasable documents has also been withheld under the FOIA exemptions 552 (b)(6) and 552 (b)(7)(C). The names of Department of the Army personnel have been redacted from the releasable documents.

One purpose of the deliberative process privilege is to protect the quality of agency decisions by encouraging frank and open discussions within the agencies involved. In this case, the twenty-three documents found responsive to your request are part of the deliberative process with regard to the writing and submission of the letter report entitled "Evaluation of the San Jacinto Waste Pits Feasibility Study Remediation Alternatives" which was posted on the EPA's website around August 10, 2016. Deliberative documents that are withheld under exemption 5 must reflect "the give-and-take of the consultative process. The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency." Coastal States Gas Corp. v. DOE, 617 F.2d 854, 866 (D.C. Cir. 1980). The

draft copy of the letter report, four emails with attachments and one comment paper that are being withheld in their entirety contain specific recommendations and frank opinions regarding the superfund site's remediation alternatives. As such, these documents form part of the give-and-take between agency officials involved in the decision-making process. These recommendations and opinions do not necessarily represent the views of the agencies involved since the final letter report is itself a pre-decisional document. Revealing this information would inhibit candor in the decision-making process.

All individual names and contact information of federal employees have been redacted from the documents as this type of information is exempt from disclosure under FOIA exemption (b)(6) when "information about individuals" "that if disclosed to a requestor ... would result in a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552 (b)(6)(2016). Exemption (b)(6) requires that we determine whether there is any public interest in the personal information embedded in the documents that you have requested and balance that against the privacy interests involved. We also must take into consideration whether or not disclosure of this personal information would shed any light on our agency's performance of official duties, which is the core purpose of the FOIA. This type of information is also exempt from disclosure under FOIA exemption (b)(7)(c) because disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C)(2016). Since this request seeks no official information about the government agency but merely records that the Government happens to be storing, the result is an invasion of privacy that is "unwarranted." U.S. Dept. of Justice v. Reporters Committee For Freedom of Press, 489 U.S. 749, 780 (1989).

You have the right to appeal this partial denial determination to the Secretary of the Army (to the attention of the General Counsel). You must send your appeal through this office. To be considered timely your appeal must be received by the Army General Counsel no later than 90 calendar days after the date of this letter. Your appeal should state the basis for your disagreement with this denial and include a copy of this denial. Enclose your appeal letter in an envelope bearing the notation, "Freedom of Information Act Appeal." Address your appeal to:

Commander
U.S. Army Engineer Research and Development Center
ATTN: Office of Counsel (CEERD-OC-Z)
3909 Halls Ferry Road
Vicksburg, MS 39180-6199

You also have the right to seek dispute resolution services from the FOIA Public Liaison of USACE or the Office of Government Information Services (OGIS). Contact information is provided below.

USACE FOIA Liaison:

Emily Green
U.S. Army Corps of Engineers
ATTN: CECC-L
441 G Street, NW
Washington, DC 20314-1000
Email: foia-liaison@usace.army.mil
Phone: 202-761-4791

OGIS FOIA Liaison:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
Website: <https://ogis.archives.gov>
Email: ogis@nara.gov
Phone: 202-741-5770 or 1-877-684-6448

You will receive a separate fee bill from Mr. Egger outlining the fees associated with this request. If you have any questions, please feel free to contact me at the above address or at telephone number (601) 634-3311.

Sincerely,



Bill D. Woodard
ERDC Counsel
Initial Denial Authority

14 Enclosures

- 1) ERDC Letter Report, August 2016
- 2) Paper, "Temporary Structures"
- 3) Picture
- 4) Picture
- 5) Picture
- 6) Email dated October 27, 2015
- 7) Email dated July 15, 2016
- 8) Letter from Galveston Bay Foundation
- 9) Letter from Harris County
- 10) Comments from Port Authority of Houston
- 11) Letter from San Jacinto River Coalition
- 12) Letter from Ms. Gossett, San Jacinto River Coalition
- 13) Letter from Anchor, QEA
- 14) ERDC Final Report, September 2013



DEPARTMENT OF THE ARMY
ENGINEER RESEARCH AND DEVELOPMENT CENTER, CORPS OF ENGINEERS
WATERWAYS EXPERIMENT STATION, 3909 HALLS FERRY ROAD
VICKSBURG, MISSISSIPPI 39180-6199

December 20, 2016

Office of Counsel

VIA ELECTRONIC MAIL

Magdalena Rickelman
Winstead PC
401 Congress Avenue, Suite 2100
Austin, TX 78701

RE: Freedom of Information Act (FOIA) Request FP-16-028460 (FOIA 16-19)

Dear Ms. Rickelman:

I am the Initial Denial Authority (IDA) for Freedom of Information Act (FOIA) matters at the U.S. Army Engineer Research and Development Center (ERDC). This letter is in reference to your FOIA request dated September 12, 2016 that was received at the US Army Engineer Research and Development Center (ERDC) Office of Counsel that same date by Mr. Daniel Egger, ERDC FOIA Attorney. In it, you requested all information regarding the U.S. Army Corps of Engineers' evaluation of the San Jacinto River Waste Pits Superfund Site ("Site), including, but not limited to the design and construction of the cap at the Site; alleged damage to the cap discovered in December 2015; the Site Feasibility Study; and the remedial alternatives for the Site. On September 28, 2016, I sent you fourteen documents that were found responsive to your request.

I received a call from your associate, Mr. Al Axe, on October 5, 2016 regarding our FOIA response and his concern that there were additional documents and information that should have been found responsive to your FOIA request. Since that call, our office has located another forty-two (42) releasable documents/photographs and a modeling file that was released to Mr. Axe on November 29, 2016 via the AMRDEC Safe website.

Some information in the forty-two (42) releasable documents/photographs has been withheld under the FOIA exemptions 552 (b)(6) and 552 (b)(7)(C). All individual names and contact information of federal employees have been redacted from the documents as this type of information is exempt from disclosure under FOIA exemption (b)(6) when "information about individuals" "that if disclosed to a requestor ... would result in a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552 (b)(6)(2016). Exemption (b)(6) requires that we determine whether there is any public interest in the personal information embedded in the documents that you have

requested and balance that against the privacy interests involved. We also must take into consideration whether or not disclosure of this personal information would shed any light on our agency's performance of official duties, which is the core purpose of the FOIA. This type of information is also exempt from disclosure under FOIA exemption (b)(7)(c) because disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(7)(C)(2016). Since this request seeks no official information about the government agency but merely records that the Government happens to be storing, the result is an invasion of privacy that is "unwarranted." U.S. Dept. of Justice v. Reporters Committee For Freedom of Press, 489 U.S. 749, 780 (1989).

You have the right to appeal this partial denial determination to the Secretary of the Army (to the attention of the General Counsel). You must send your appeal through this office. To be considered timely your appeal must be received by the Army General Counsel no later than 90 calendar days after the date of this letter. Your appeal should state the basis for your disagreement with this denial and include a copy of this denial. Enclose your appeal letter in an envelope bearing the notation, "Freedom of Information Act Appeal." Address your appeal to:

Commander
U.S. Army Engineer Research and Development Center
ATTN: Office of Counsel (CEERD-OC-Z)
3909 Halls Ferry Road
Vicksburg, MS 39180-6199

You also have the right to seek dispute resolution services from the FOIA Public Liaison of USACE or the Office of Government Information Services (OGIS). Contact information is provided below.

USACE FOIA Liaison:

Emily Green
U.S. Army Corps of Engineers
ATTN: CECC-L
441 G Street, NW
Washington, DC 20314-1000
Email: foia-liaison@usace.army.mil
Phone: 202-761-4791

OGIS FOIA Liaison:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
Website: <https://ogis.archives.gov>
Email: ogis@nara.gov
Phone: 202-741-5770 or 1-877-684-6448

[3]

If you have any questions, please feel free to contact me at the above address or at telephone number (601) 634-3311.

Sincerely,



Bill D. Woodard
ERDC Counsel
Initial Denial Authority

42 Enclosures sent via AMRDEC Safe:

- 1-25) Twenty-five (25) Individual Photographs
- 26) Word Document "December 23 Photos"
- 27) Word Document "Data Call"
- 28) Word Document "Review of SJ FS"
- 29) Word Document "San Jacinto Cap Inspection 3-8-16"
- 30) Word Document "San Jacinto Progress Report July 2013"
- 31) Word Document "SJRWP-USACE IAG SOW for Cap Damage 1-20-2016"
- 32) Word Document "SupplementalDataCall"
- 33) PowerPoint Document "OpenHouse-EJH"
- 34) PowerPoint Document "SJ"
- 35) Adobe Document "San Jacinto Progress Report Apr 2013"
- 36) Adobe Document "San Jacinto Progress Report August 2013"
- 37) Adobe Document "San Jacinto Progress Report June 2013"
- 38) Adobe Document "San Jacinto Progress Report Mar 2013"
- 39) Adobe Document "San Jacinto Progress Report May 2013"
- 40) Adobe Document "SanJac_Low_Tide_Visual_Inspection_20160224"
- 41) Adobe Document "SJ_poster"
- 42) Adobe Document "San Jac Historical Aerial Pics 1-9-2008"

Sanchez, Carlos

From: Miller, Garyg
Sent: Thursday, January 05, 2017 12:15 PM
To: Earl Hayter
Cc: Paul R Schroeder (Paul.R.Schroeder@erdc.dren.mil); Foster, Anne; Sanchez, Carlos; Patrick, Dwayne; Ortiz, Diana
Subject: Request for San Jacinto River Waste Pits Modelling information

Earl,

As we discussed, a Freedom of Information Act request has been made for modelling information related to the Corps of Engineers model study for the San Jacinto River Waste Pits Superfund Site. The request covers the LTFATE, EFDC, and SEDZLJ models, and includes the model input files, the model grid, the model source code, and the solution files for the high resolution grid. Please send this information to the requestor with a copy to EPA as soon as possible.

Thanks,

Gary Miller
Remedial Project Manager
EPA Region 6 Superfund Division, TX/Ark Section
214-665-8318
miller.garyg@epa.gov



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

6 JAN 2017

McGinnes Industrial Maintenance Corporation
c/o Mr. Albert R. Axe, Jr.
Winstead PC
401 Congress Avenue, Suite 2100
Austin, Texas 78701

Re: San Jacinto River Waste Pits Superfund Site (06ZQ), Channelview, Harris County, Texas

Dear Mr. Axe:

This is in response to your letter dated December 20, 2016, on behalf of McGinnes Industrial Maintenance Corporation, requesting an extension to the public comment period on the Proposed Plan for the San Jacinto River Waste Pits Superfund site. The December 20 letter also incorporated information from your prior request letter dated October 28, 2016. In addition, Mr. John Cermak has informed Anne Foster of the Office of Regional Counsel that International Paper wishes to join in your client's request for an extension for the same reasons stated in your October and December letters.

The Environmental Protection Agency (EPA) previously extended the public comment period until January 12, 2017, so that the public comment period at this site will be open for a total of 105 days. For the reasons outlined below, the request for a further extension of the public comment period is denied.

The EPA prepared an extensive administrative record file for this site. We understand from your December 20 letter that the Corps of Engineers has provided some of the additional, detailed site modelling information you have requested, but has not provided to date model input files, model grids, model source code and solution files for the high-resolution grid. This is not the type of information the Region typically would provide as part of an administrative record. However, Gary Miller has contacted the Corps to encourage it to provide the information described in your letter, to the extent available and releasable, as soon as possible. Mr. Miller's e-mail to the Corps is enclosed.

We also understand that your client would like to review all of the information it has requested under the Freedom of Information Act, both from the Corps and the EPA, before providing comments on the proposed remedy. Unfortunately, the remedy selection process for this site has extended long beyond the time originally envisioned, and the public comment period has also been lengthened far beyond the typical 30-day period. Therefore, the EPA has determined that a further extension of the public comment period is not appropriate. The EPA already has received voluminous public comments, as well as comments provided by your client in meetings with EPA on September 8, 2016, and December 5, 2016, (in addition to any written comments your client may provide). The EPA does not believe that an additional delay to the remedy selection process is justified by the possibility that your client, or any

other party, may be able to develop or discover information beyond the extensive information already available for this site.

However, if, after the close of the public comment period, any party provides EPA significant information not contained elsewhere in the administrative record, which it could not have submitted during the comment period and which supports the need to significantly alter the remedial action for this site, the EPA certainly will consider this information as part of the remedy selection process, as provided in Section 300.825(c) of the National Contingency Plan. The EPA does not intend, by declining to extend the public comment period, to exclude any significant new information discovered by your client with a significant bearing on the remedy selection process, but merely desires to proceed with the process of evaluating the comments received and preparing a Record of Decision in the most timely manner possible.

If you have any questions regarding this letter, please contact me at (214) 665-6701.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'CEE', with a stylized flourish at the end.

Carl E. Edlund, P.E.
Director
Superfund Division

Enclosure

Cc: Mr. John F. Cermack, Jr.
Baker & Hostetler, LLP