

ARMY RESPONSE TO PUBLIC COMMENTS

The Army received comments from 18 individuals responding to the public notice of the Preliminary Finding of Suitability for Early Transfer (FOSET). These comments are attached, addresses and phone numbers for individuals have been removed for privacy reasons, organizations' addresses and phone numbers were not removed. Many of the individual comments were similar, and can be grouped into certain broad categories for response.

1. Comment: The Army is progressing on or ahead of schedule on the clean up. An early transfer would not speed up the process.

Response: The early transfer could accelerate cleanup of Sunflower's contaminated soil and groundwater by allowing the Army to take advantage of private sector financial and technical resources. While the Army does not currently have detailed information on the developer's proposed remediation time frames, it is expected that an early transfer could speed up the Sunflower cleanup of contaminated soil and groundwater by at least several years. Conversely, Army's fiscal budgetary constraints would continue to impede restoration efforts. The Army cannot guarantee continuing funding at the current levels.

2. Comment: The FOSET would exempt the transfer of the most contaminated Sunflower land from the CERCLA defined covenants.

Response: Conveyance under the CERCLA early transfer authority does not exempt contaminated Sunflower land from CERCLA covenants, it only defers the CERCLA covenant until land is clean. Army will provide the appropriate CERCLA covenants, parcel-by-parcel, as remediation is complete. Prior to the CERCLA covenant being provided, those areas requiring remediation will be subject to restrictions as to usage and redevelopment. In addition, approximately 2,824 acres containing explosive residue would be excluded from the early transfer and would remain in Army ownership until explosively decontaminated, after which Army will transfer those portions of the property to State or local agency also.

3. Comment: The FOSET would put KDHE as the lead agency instead of the EPA. The KDHE does not have the resources to guarantee the long-term stewardship of the cleanup or provide for the enforcement of the privately imposed deed restrictions that will be required, and state control eliminates the federally accommodated public participation element of the Army's cleanup.

Response: In June 2001, EPA Region 7 and KDHE negotiated a Memorandum of Agreement (MOA) defining how they will work together at cleanup sites without duplicating effort. EPA relies heavily on KDHE's technical experience for the review and approval of documents. The EPA anticipates, as with the previous transfer proposal, that once a consent order outlining investigation and remediation to be completed on the property by the Developer is signed and the appropriate permit modifications are in place that KDHE will be the lead agency. At the appropriate time KDHE and EPA will enter into a MOA defining roles and responsibilities for oversight of the Sunflower remediation. The Army believes that these measures will ensure that Sunflower is fully remediated and that there will be public participation in accordance with applicable laws and regulations.

4. Comment: The FOSET provides no information to the public regarding the "response action assurances" that are required by CERCLA Section 120, nor the precise contents of the deed that will transfer the site. These assurances must, with regard to the contamination at SFAAP: (a) provide for necessary restrictions on the use of the property to ensure the protection of human health and the environment; (b) provide that there will be restrictions on use necessary to ensure that required

remedial investigations, response action, and oversight activities will not be disrupted; (c) provide that all necessary response action will be taken; (d) identify the schedules for investigation and completion of all necessary response action as approved by KDHE; and (e) provide that the Army (DOD) responsible for the property subject to transfer will submit a budget request to the Director of the Office of Management and Budget that adequately addresses schedules for investigation and completion of all necessary response actions.

Response: The purpose of this Preliminary Finding of Suitability for Early Transfer (FOSET) is to provide information necessary for the Governor of Kansas to make a preliminary determination regarding the deferral of the CERCLA Covenant requirement and the transfer of certain portions (approximately 6, 239 acres) of Sunflower prior to completion of all remedial action. A final FOSET will be prepared and made available for public comment upon the completion of a KDHE/Developer Consent Order and other agreements relating to the transfer of Sunflower (See Section 4.0 of the Preliminary FOSET for additional information). The final FOSET will include all the information required by CERCLA Section 120(h)(C).

5. Comment: It is a fact that a deactivated military site has never been transferred where hazardous chemicals of unknown quantity and involving contamination of unknown extent are present. This fact should be of significant concern to the taxpayers in Kansas who might wind up paying for the cleanup of this site.

Response: There have been several DoD and federal properties conveyed under the early transfer authority with varying degrees of contamination, known and unknown. The early transfer authority provides a vehicle to do so while ensuring remediation continues to completion. The State of Kansas has expressed an interest in acquiring Sunflower through a duly authorized State or local agency. The duly authorized State or local agency will reconvey the property to a private developer, selected by the State. Prior to transfer, the Army and State of Kansas will require the developer to provide environmental remediation insurance and other safeguards, to ensure the remediation of Sunflower in accordance with applicable laws and regulations. If these safeguards are not sufficient, the Army recognizes that it is ultimately responsible for the Sunflower environmental cleanup as required by CERCLA 120(h).

6. Comment: It is also a fact that a deactivated military site of this size with documented hazardous materials contamination has never been transferred without an Environmental Impact Statement under NEPA. Neither the FOSET nor any other document prepared by GSA (i.e., Environmental Assessment) adequately addresses the potential adverse impacts of the transfer to the site, surrounding lands, or the community as required by federal law. GSA has failed to live up to its obligations under NEPA.

Response: In December 1999, the Army/GSA prepared an Environmental Assessment (EA). The Sunflower EA resulted in a finding of no significant impact, which removes the requirement for an Environmental Impact Statement (EIS). The Army believes that all requirements under NEPA associated with the Sunflower transfer have been met.

7. Comment: The FOSET does not address the environmental impacts nor how they will be resolved. The costs to remediate SFAAP remain as uncertain as they have ever been. The FOSET does not provide a firm schedule for public scrutiny for any cleanup, and there is no report or study that clearly prescribes what remedial measures are planned for implementation at Sunflower and what contingencies are being made in case whatever is being contemplated is later found to be inadequate. What happens when the cleanup cost exceeds estimates (which it does regularly)?

Response: As noted above, a final FOSET will be prepared and made available for public comment upon the completion of a KDHE/Developer Consent Order and other agreements relating to the transfer of Sunflower. The final FOSET will include schedules for investigation and completion of

all necessary response actions, including all information required by CERCLA Section 120(h)(C). In addition, the Army and the State of Kansas will require the developer to provide environmental remediation insurance and other safeguards, to ensure the remediation of Sunflower in accordance with applicable laws and regulations. If these safeguards are not sufficient, the Army recognizes that it is ultimately responsible for the Sunflower environmental cleanup as required by CERCLA 120(h).

8. Comment: The FOSET allows the GSA to ignore their investigative obligations.

Response: The Sunflower transfer will be conducted in accordance with all applicable laws and regulations governing transfer of federal property.

9. Comment: Costs from contaminants found in the future may need to be remediated and paid for by local, county, and/or state of KS.

Response: As noted above, the Army and the State of Kansas will require the developer to provide environmental remediation insurance and other safeguards, to ensure the remediation of Sunflower in accordance with applicable laws and regulations. If these safeguards are not sufficient, the Army recognizes that it is ultimately responsible for the Sunflower environmental cleanup as required by CERCLA 120(h).

10. Comment: The FOSET has no assurances for money for clean up, and no way for the public to be informed or involved.

Response: The KDHE/Developer consent agreement will require the developer to remediate Sunflower in accordance with all applicable laws and regulations. The developer will be required to comply with all applicable laws to ensure adequate public participation. As noted above, the Army and the State of Kansas will require the developer to provide environmental remediation insurance and other safeguards. If these safeguards are not sufficient, the Army recognizes that it is ultimately responsible for the Sunflower environmental cleanup as required by CERCLA 120(h).

11. Comment: It would be very difficult for a private company to sell contaminated land until it is cleaned up. Even if a private company could find a buyer, that buyer would probably require the seller to pay the cost of cleanup or lower the purchase price to nearly nothing. Here, the polluter (Army) wants off the hook by inducing a private company to take the land at a bargain basement price, and allow a private company (Kessinger/Hunter) to sell off the uncontaminated parcels to pay for cleaning up the remaining parcels, take tax breaks for the public benefit conveyances.

Response: As noted above, the State of Kansas has expressed an interest in acquiring Sunflower through a duly authorized State or local agency. It is expected that that the duly authorized State or local agency will negotiate appropriate provisions to ensure a fair and equitable redevelopment of the property.

12. Comment: Before a transfer is to be permitted a full assessment of the contamination should take place. This assessment should include a determination of the full extent of contamination plus the nature of all contaminants. Furthermore, an estimate should be made that reflects how much a complete clean-up will cost. A realistic time-line for remediation should also be developed.

Response: Considerable information, cost estimates and time frames have already been developed about environmental conditions at Sunflower as part of the on-going corrective action program and as provided in the Army's Environmental Baseline Survey. The KDHE and Developer will have a consent order in place to assure an acceptable procedure to develop, review, and use this information. No property will be determined either uncontaminated or fully remediated without the full support of KDHE. Any property conveying before being fully remediated will be the subject of the covenant deferral process addressed in the FOSET.

13. Comment: Transfer Sunflower to the Shawnee Tribe of Oklahoma under the Federal Surplus Land Act of 1949.

Response: We are unable to respond to this comment at this time due to on-going litigation. If further information is needed, please contact Ms. Kena Rice, AUSA/Wichita – (316) 269-6481

14. Comment: There are no assurances in the FOSET that the proposed mixed use of the property will be protective of human health and the environment. Indeed, given the nature of the contaminants, there is reason to doubt that this site will ever be suited for residential development.

Response: The Consent Order between the Developer and KDHE will designate cleanup levels consistent with Johnson County's Reuse Plan for Sunflower which will be protective of human health and the environment. Much of Sunflower is uncontaminated and is available for immediate development as residential property. Additionally, the Army has already cleaned up several contaminated sites to residential levels, so the nature of contaminants is not an issue.

15. Comment: There must be legal assurances that local communities, Johnson County and/or the State of Kansas will be fully protected from future costs of remediation, as well as from any future litigation arising from damage to human health or the environment.

Response: As noted above, the Army and State of Kansas will require the developer to provide environmental remediation insurance and other safeguards, to ensure the remediation of Sunflower in accordance with applicable laws and regulations. If these safeguards are not sufficient, the Army recognizes that it is ultimately responsible for the Sunflower environmental cleanup as required by CERCLA 120(h).

16. Comment: The FOSET also leaves a privately owned developer (Kessinger/Hunter) as the entity in charge of funding the cleanup and hiring a contractor to do the cleanup. Kessinger/Hunter has never done a cleanup of this complexity and magnitude.

Response: Kessinger/Hunter will partner with Cherokee Investment Partners. Cherokee Investment Partners would be responsible for hiring contractors to clean up the land. Since 1990, Cherokee Investment Partners acquired, remediated, and redeveloped nearly 300 sites in 32 states and five other countries, including Canada. The Army believes that cleaning up Sunflower is within Cherokee Investment Partners capabilities.

17. Comment: Cost estimates to remediate the Sunflower site have ranged from \$40 million for industrial uses to \$130 million. In fact, to our knowledge the public has seen no cost estimate based on the uses contemplated in the Johnson County Comprehensive Land-Use Plan.

Response: The July 2002 Installation Action Plan for Sunflower has a Cost to Complete estimate for remediation of contaminated soil and groundwater at \$58 million. This is based on cleanup levels consistent with Johnson County's Land-Use Plan for Sunflower.

18. Comment: Letter from Kansas State University (KSU) stating that they want title to a 335 acres tract. KSU also stated they do not oppose the land transfer agreement because they have been assured by the proposed developer that the acreage will be transferred

Response: The Army is aware of KSU's interest and will work with the duly authorized State or local agency, who will reconvey the property to a private developer, to assure KSU's needs are met.