Response Options* at Explo Systems, Inc.
8/7/13

Leave the 18,000,000 pounds of propellants in the magazines – No Action

PROS: No initial outlay of money.

CONS: Does not address threat.
Increases the likelihood of auto-ignition and explosion.
Will not allow the magazines to be used for commerce.

- The Explosive Safety Board (ESB) reported that the stability class of some lots indicates that problems could begin within 2 years. The propellant could auto-ignite and result in the entire magazine exploding. The magazines were constructed to isolate the contents from other magazine – based on WWII era ordnance and calculations. There is no guarantee that an explosion would be confined to a single magazine. The October 15, 2012 explosion of a single magazine rocked homes in Minden and Doyline and caused damage to windows and walls. Explosions or chain explosions threaten the people in the cities of Minden and Doyline, the other commercial operations on Camp Minden, National Guard, the prison, and the state school located on the base.
- Costs to cleanup afterwards and insure the safety from any remaining unexploded propellant. LANG estimated $300,000 to cleanup after the October explosion. The magazine was completely destroyed. Costs of repairs to homes.
- 98 magazines with 18,000,000 pounds of explosives.

Create a Stability Monitoring Program and Disposal as indicated.

PROS: Management of the threat.
Costs are spread for many years.

CONS: May be the most costliest option.
Risk of accidental detonation while handling.
Handling is increased and repetitive.
Since the "lot integrity" has been lost, re-establishment of lot integrity requires significant initial sampling.

Periodically test samples of the lots of explosives. Stabilizers in the propellants are reduced over the years, making the propellants more susceptible to auto-ignition. Testing identifies those lots. Protocols based on stability include additional testing as well as prompt disposal. The Program should include the destruction of lots as they are identified in the tests.

* Ultimate solution could be a combination of options, parties, and legal instruments. I.e. Per FFA, Army disposes M6 on-site, LSP disposes of picrate, EPA disposes the nitrocellulose offsite.

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- "Lot integrity" is not complete. The repackaging of the propellants and the practices of Explo makes the lot integrity suspect. To regain lot integrity means sampling of each container, i.e. 18,000,000 pounds, 880 pounds at a time.
- Long term investment. Periodic sampling, testing and destruction.

Disposal of black powder, ammonium picrate, and H6.

PROS: Partial removal of the threat.
Removal of material that cannot be easily managed or monitored.
Removal of the most unstable explosives.

CONS: Is not a stand-alone option.
Addresses a nominal amount, 600 pounds.

- While the costs associated with off-site disposal is not prohibitive, the shock sensitive nature of the picrate would make it impractical to do anything but destroy the material onsite.
- Incomplete action, only addresses about 600 pounds of the total explosives.

Transport to Army facilities with established stability monitoring programs and disposal capabilities.

PROS: Removal of the threat at Camp Minden.
Opens magazines for commercial use.
Explosives stored in managed facility

CONS: Risk of accidental detonation while handling and transport.
Sec of Army has denied previous LANG request.

- Facilities such as McAllister and Crane have magazine for storage, personnel and equipment for stability testing, and the ability to burn lots of unstable material.

Seek end users for the majority of the explosives, 15,000,000 lbs M6, 109,000 lbs M30.

PROS: Reuse of material.
Possible cost offset.

CONS: History predicts a very slow process.
Protracted amount of time.
Requires market expertise and contacts.

- Market the material to coal mines, copper and silver mines (including Mexico). This process did not produce satisfactory results when employed by Explo.

Offsite Disposal of 18,000,000 lbs of propellants and explosives.

PROS: Complete removal of the threat.
Opens magazines for commercial use.
Least amount of handling.

CONS: Estimated costs up to $400,000,000.
Could be decades to complete due to limited capacity.
Risk of accidental detonation while handling and transport.

  - 109,000 lbs. of M30 propellant
  - 320,000 lbs. of Clean Burning Incendiary (CBI)
  - 661,000 lbs. of Nitrocellulose
  - 15 million lbs. of M6 propellant – prioritized by stability concerns
  - 1.817 million lbs. of Tritonal (aluminum/TNT) mixture

- Disposal could occur at one and only one facility, General Dynamics (GD). GD is the only licensed facility with permits and capability to handle the material. The available capacity of the GD facility would translate to more than seven years to dispose of the material.

Onsite Disposal of 18,000,000 lbs of propellants and explosives.

PROS: Complete removal of the threat.
Opens magazines for commercial use.
Least amount of handling.

CONS: Estimated costs up to $30,000,000.
Risk of accidental detonation while handling.

- 109,000 lbs. of M30 propellant
- 320,000 lbs. of Clean Burning Incendiary (CBI)
- 661,000 lbs. of Nitrocellulose
- 15 million lbs. of M6 propellant – prioritized by stability concerns
- 1.817 million lbs. of Tritonal (aluminum/TNT) mixture

- Burning of the material, is estimated at $30,000,000.
- A time frame of approximately two years of onsite activities to complete the burns.
- Includes constructing burn trays, pre- and post-sampling, air monitoring.

* Ultimate solution could be a combination of options, parties, and legal instruments. I.e. Per FFA, Army disposes M6 on-site, LSP disposes of picrate, EPA disposes the nitrocellulose offsite.

RCRA 7003 Order to Explo, Army, National Guard (State of Louisiana), General Dynamics, American Thiokol, and other PRPs to be identified.

- The indictments of Explo officers make it a felony if Explo handles or possesses any of the explosives.
- Explo states that the material is a valuable and sellable product.
- Financial ability to conduct a response is not known.
- RCRA 6001(b)(2) opportunity to confer before final order requirement; Presidential exemption from compliance if in the paramount interest of the U.S..
- Can only be pursued in Federal District Court, for noncompliance.
- Unitary Executive Theory
- RCRA 7003 Imminent and Substantial Endangerment provision less broad than CERCLA 106; 7003 requires a liable party to contribute or is contributing to treatment, storage, transportation or disposal 106 0 current own is strictly liable.
- Sackett Ruling – pre-enforcement judicial review for CWA administrative order; RCRA 7003 – no express pre-enforcement review prohibition; CERCLA 113 – express probation of pre-enforcement review.

Negotiate a CERCLA Administrative Order on Consent to Explo, Army, National Guard (State of Louisiana), General Dynamics, American Thiokol, and other PRPs to be identified.

- Army
  - Contends that their liability ceased when they sent the explosives off.
  - Cannot take action as long as the material is a product and belongs to a private company, Takings.
  - Offering assistance, but only if compensated.
- National Guard
  - Does not have the funding to conduct a response.
- General Dynamics
  - Information requests are being sought on both sides.
  - Negotiations have not started and their position is not known.
- Thiokol and other PRPs
  - Have not been notified of their potential responsibility.

Issue a CERCLA 106 Unilateral Order to those PRPs.

- Issuing an Order to the Army includes the Department of Justice.
- Executive Order 12580, Section 4(e) – required DOJ concurrence before issuance of a CERCLA106(a) Order; in practice this has been almost impossible.
- CERCLA 106(a) Orders can only be enforced in Federal District Court for noncompliance.
- Unitary Executive Theory

FFA enforcement by EPA.

- Difficulty in proving the large amount of materials were at the Site prior to January 1, 2005 transfer of ownership to the Louisiana National Guard.
- FFA Agreements are subject to extensive dispute resolution procedures up to the EPA Administrator.
- Administrative enforcement is available – stipulated penalties in the FFA; CERCLA 109 allows penalties subject to a 40 CFR Part 22 hearing.

LDEQ conducts the enforcement.

- The LDEQ order would include the U.S., the enforceability of the order on the U.S. is difficult.

CERCLA Fund-lead Removal Action.

- Funding is the primary issue.
- HQ concurrence on action to be taken and approval of ceiling.