

SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS
AND INTERNATIONAL RELATIONS

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MEMORANDUM

To: Members of the Subcommittee on National Security, Emerging Threats, and International Relations

From: Christopher Skaluba, Presidential Management Intern

Re: Briefing memo for the hearing *Army Contract Management: Compliance with Outreach and Public Acceptance Agreements* scheduled for 12:30 p.m. at the Fred Smith Auditorium, Sinclair Community College, 444 West Third Street, Dayton, Ohio 45402-1460.

PURPOSE OF THE HEARING

The purpose of the hearing is to review Army contract and subcontract management in the chemical weapons demilitarization program, specifically a subcontract with Perma-Fix of Dayton Inc. (through prime contractor Parsons Inc.) involving the treatment and disposal of VX hydrolysate, the waste product from neutralized VX nerve agent.

HEARING ISSUES

1. **To what extent have the public acceptance measures of the Perma-Fix subcontract been fulfilled?**
2. **What implications does the Dayton process have for U.S. compliance with obligations for chemical weapon demilitarization under the Chemical Weapons Convention?**

BACKGROUND

The Chemical Weapons Convention (CWC) entered into effect on April 29, 1997, prohibiting the development, production, acquisition, stockpiling, transfer, and use of chemical weapons. The CWC requires each signatory, including the United States, to destroy chemical weapons and chemical weapons production facilities it possesses, as well as any chemical weapons it may have abandoned on the territory of another State Party. **(Web Resource 1)**

The United States currently maintains eight military sites with stockpiles of chemical weapons awaiting destruction by the CWC 2007 deadline, including a stockpile of VX chemical nerve agent housed in Newport, Indiana. **(Attachment 1)** Initial plans called for the material to be destroyed through incineration at the Army facility in Newport, but community concerns about emissions forced the Army to adopt a process called neutralization to destroy the Newport VX. **(Attachment 1)**

Neutralization is a two step process. Step one involves mixing VX with water and sodium hydroxide through a process called hydrolysis. Hydrolysis destroys the VX and produces a Drano-like byproduct called VX hydrolysate. **(Attachment 2)** Step two involves treating the hydrolysate through a series of oxidation and biodegradation processes that, ostensibly, transform the hydrolysate into an effluent byproduct safe enough to discharge into a sanitary sewer system. **(Attachment 2)**

Initially, steps one and two of the neutralization process for the VX at Newport were to take place at that site. But fears that chemical weapon stockpiles were vulnerable to terrorists after the events of September 11, 2001 provoked the United States to expedite the schedule for chemical

weapon destruction. As a means to accelerate destruction of the Newport stockpile, the Army decided to contract out the second step of the neutralization process, involving oxidation and biodegradation of VX hydrolysate. **(Attachment 3)**

Upon the completion of a nation-wide, competitive selection process in December 2002, Permafix of Dayton, Inc. was awarded a \$9 million “limited notice to proceed” contract to treat and dispose of hydrolysate shipped from the Newport site. **(Attachment 3)** The Army contends Permafix was chosen because the company was “capable of safely accepting, handling, and treating...hydrolysate.” **(Attachment 3)** The agreement between Army prime contractor, Parson Inc., and Permafix required that contracting parties establish “a measure of public acceptance for planned hydrolysate transport and disposal.” **(Attachment 4)**

Permafix sponsored an open house in January 2003 in a public outreach effort to explain the nature of the contract but quickly incurred resistance from the local community. Permafix continued outreach efforts by establishing a citizen’s advisory panel in March 2003. **(Attachment 5)** Local residents formed an organization called “Citizens for the Responsible Destruction of Chemical Weapons” that spearheaded grass-roots opposition. **(Attachment 6)**

A lawsuit was filed against the Army alleging racial and economic discrimination because of the ethnic makeup of the neighborhood where Permafix is located. **(Attachment 6)** To date, thirty-six local boards and councils have passed resolutions against the transport of hydrolysate to Montgomery County, Ohio. **(Attachment 7)**

The Montgomery County commissioners required a report to assess the scientific basis of the proposed treatment plan and safety for the surrounding communities. The report, prepared by Dr. Bruce E. Rittmann, professor of Environmental Engineering at Northwestern University, was released October 6, 2003. **(Attachment 2)** Rittmann concluded that while there is a sound scientific basis for the proposed treatment plan, the plan itself is new and unique and should be considered experimental. **(Attachment 2)** In that light, he offered a set of recommendations to be adopted by Permafix before accepting hydrolysate for treatment. The recommendations, if followed, would redirect some of the oxidation process back to the Newport

facility, while extending the time and increasing the cost for executing the remainder of the process at Permafix. **(Attachment 2)**

On Tuesday, October 14, Parsons Inc. announced the cancellation of the contract with Permafix because it was “evident that constraints related to Perma-Fix’s operational permit with Montgomery County would preclude the use of Perma-Fix. **(Attachment 8)** While Permafix had obtained the necessary permit from the Ohio EPA for installation of industrial wastewater pretreatment equipment, there are still outstanding legal questions about whether or not an operational permit for this equipment from Montgomery County was necessary. **(Attachment 5)**

The annulment of the Permafix contract leaves at issue what the Army and Parsons will do with the hydrolysate produced at Newport. The Army has begun construction of a tank farm at Newport to temporarily store the hydrolysate while a decision about a way forward is debated. **(Attachment 9)** Options include finding another contractor to treat the hydrolysate or treating the hydrolysate at the Newport facility. Any option will have time and cost implications for the Army.

DISCUSSION OF HEARING ISSUES

1. To what extent have the public acceptance measures of the Perma-Fix subcontract been fulfilled?

While the Permafix subcontract contains a specific section on public outreach, the Army maintained at an October 1 briefing to Subcommittee staff that the “public acceptance” stipulation of the Permafix subcontract was not a requirement or “deliverable.”

The subcontract states, “completion of subcontract work may be contingent upon the establishment and maintenance of public acceptance throughout the subcontract period of performance.” **(Attachment 4)** The Army contends, therefore, that the subcontract can be executed without explicit public acceptance or support.

Nevertheless, the Army worked with Permafix to address concerns of the Montgomery County community and elected officials, albeit in a haphazard and ultimately unsuccessful fashion. For instance, a study involving a two-

gallon batch of VX hydrolysate conducted in June and July 2003 to demonstrate Permafrix could safely handle the caustic byproduct was rejected by opponents as too small to be representative. **(Attachment 10)**

Moreover, an environmental impact study conducted by the Army at the Newport site was labeled irrelevant by opponents because it did not account for differences in the Newport and Dayton communities. While there are no residential homes within two miles of the Newport facility, Permafrix of Dayton is located squarely in the middle of a residential neighborhood. **(Attachment 10)**

Part of the Army's problem was an inconsistent responsiveness and a lack of coherence on the issue. For example, even as the Army maintained that Permafrix had every right and intention to execute the subcontract, it started building a tank farm at the Newport facility to store the hydrolysate as a contingency. **(Attachment 9)** While this certainly constitutes good planning, it made for at best, confusing, and at worst, disingenuous public relations.

Repeated Army claims that it had sufficiently addressed the public acceptance requirements of the contract often seemed ludicrous in light of thirty-six local government resolutions condemning the project, a lawsuit, and a constant stream of negative media coverage. Certain the Army had not fulfilled the public acceptance requirement, Rep. Turner was compelled to ask for "some reasonable...definition of what is 'public acceptance' before the Army could move ahead with its plan." **(Attachment 11)**

A July 6 editorial in the Dayton Daily News characterizes the Army as "cagey...seemingly incapable of the plain talk owed [the Dayton] community since Day 1 of this sensitive project" and "ill-prepared to answer the community's tough questions." **(Attachment 11)**

The height of Army illogic may have come in a May 15, 2003 letter to Rep. Turner in which Assistant Secretary of the Army for Acquisition, Logistics, and Technology, Claude M. Bolton Jr., wrote "that the Ohio EPA will solicit public input in connection with the approval process, and we believe that this established procedure is the most appropriate method to measure public acceptance for the Newport program." **(Attachment 5)**

The Ohio EPA responded to Bolton, saying “there is no applicable public involvement process to be undertaken by this agency. Even if there were required notices or hearings, public acceptance is not one of the criteria Ohio law allows us to consider when evaluating a permit application. I am certain that you understand that a contract between two private parties cannot obligate a government agency to perform functions that it has no legal basis to undertake.” **(Attachment 5)**

Army responsiveness to Subcommittee inquiries into the Permafix matter was mixed. The Army arranged a brief for Subcommittee staff on October 1 that explained the rationale for choosing Permafix, the science behind the neutralization process, and the Army’s stance with regard to the public acceptance obligation of the subcontract. But a July 16 Subcommittee request for documents and correspondence relating to the Permafix contract has been largely unanswered—yielding only a small percentage of what was requested. **(Attachment 12)**

The bottom line is the Army has been inconsistent—at best—about its stance with regard to the public acceptance measure of the Permafix subcontract. While maintaining “public acceptance” was not a requirement of the subcontract, the Army nonetheless made various attempts to prove that it had met such a requirement—even illogically attempting to displace the burden on the Ohio EPA. Responsiveness to Congressional inquiries has been inconsistent and mostly unsatisfactory.

Even upon cancellation of the subcontract, the Army has refused to admit its approach was flawed, insisting instead the decision to annul the subcontract was taken by the prime contractor, Parsons Inc. An unwillingness by the Army to recognize the problems inherent to its approach in the Dayton case bodes poorly for future Army contracts with public acceptance measures.

Whether or not the Army and Permafix technically had a legal requirement to “gain a measure of public acceptance” before executing the subcontract misses the point. Chemical weapon destruction is a sensitive issue that will require serious debate in any community it may affect. The Army failed to handle the Dayton case with the required sensitivity, and consequently wasted time and money. **(Attachment 7)** More seriously, the neutralization of the VX stockpile at Newport is now delayed. A project intended to

accelerate the destruction of chemical weapons as a means to increase security has instead slowed the process, arguably heightening vulnerability.

2. What implications does the Dayton process have for U.S. compliance with obligations for chemical weapon demilitarization under the Chemical Weapons Convention?

A September 2003 GAO report titled, “Chemical Weapons: Sustained Leadership, Along with Key Strategic Management Tools, Is Needed to Guide DoD’s Destruction Program” concludes that,

For more than a decade, the Chem-Demil Program has struggled to meet schedule milestones—and control the enormous costs—for destroying the nation’s chemical weapons stockpile. The program will also miss future CWC deadlines. Despite several reorganizations of its complex structure, the program continues to flounder. Program leadership at both the oversight and the program manager levels has shifted frequently, contributing to the program’s continued instability, ineffective decision making, and weak accountability. **(Attachment 13)**

Poor leadership, instability, ineffective decision-making, and weak accountability are all on display in the Dayton case. Failure to anticipate community opposition in Dayton, the inconsistent approach to what constituted “public acceptance,” the unwillingness to accept responsibility for the subcontract’s termination, the fact of the subcontract’s termination itself, and the consequent delay of the stockpile destruction only reinforce GAO criticisms.

The report’s conclusions states:

Unless program leadership is proactive in identifying potential internal and external issues and preparing for them, or in reducing the chances that they will occur, the program remains at great risk of failing to meet its scheduled milestones and the deadlines set by the CWC. These problems, and subsequent delays, are likely to continue plaguing the program unless it is able to incorporate a comprehensive risk management system into its daily routine.... Without the advantage of having a risk management tool, the program will continue to be paralyzed by delays caused by unanticipated issues, resulting in spiraling program costs and missed deadlines that prolong the dangers of the chemical weapons stockpile to the American public. **(Attachment 13)**

While it would be comforting to think the problems encountered at Dayton are the exception rather than the rule, it is clearly not the case. Cost

overruns and missed deadlines plague the chemical weapons demilitarization program—motivation enough to urgently address GAO criticisms. There is also a very real possibility that the U.S. will default on CWC obligations.
(Attachment 13)

Most disturbing though is the prospect that Army mismanagement of the chemical weapons demilitarization program increases the American public's vulnerability to a terrorist attack by prolonging the existence of the chemical weapons stockpile. If for no other reason, the Army should use the experience at Dayton as an example of how not to do business.

WITNESS TESTIMONY

The Honorable Idotha Bootsie Neal, City of Dayton Commissioner is expected to detail the City of Dayton's interaction with the Army and Permafix with respect to attempts at public outreach, and explain why Dayton, the largest city in Montgomery county, opposed the treatment of hydrolysate.

The Honorable Angela Jones, Jefferson Township Trustee, is expected to detail Jefferson Township's interaction with the Army and Permafix with respect to attempts at public outreach, and explain why Jefferson Township, the home of Permafix, opposed the treatment of hydrolysate.

Ms. Mary Johnson, a private citizen who helped spearhead grass-roots opposition to the Permafix contract, is expected to testify about why local residents opposed the treatment of hydrolysate in Montgomery County and detail her experience with the Army and Permafix with respect to attempts at public outreach.

Mr. Ellis Jacobs, Attorney at Law, Legal Aid Society of Dayton, is expected to testify about his experience representing local residents opposed to the treatment of hydrolysate and detail the legal basis on which he and his clients opposed the execution of the Permafix subcontract.

Mr. Dennis Bristow, Coordinator, Dayton Regional Hazardous Materials Team, is expected to detail his interaction with the Army and Permafix with respect to attempts at public outreach, and explain the technical rationale for the City of Dayton's opposition to the treatment of hydrolysate.

Witness TBD, Montgomery County, is expected to detail the county's interaction with the Army and Permafix with respect to attempts at public outreach, and explain why Montgomery County opposed the treatment of hydrolysate.

Mr. Louis Centofanti, President & CEO, Perma Fix Inc., is expected to testify about Permafix's efforts to gain "a measure of public acceptance" as obligated in the subcontract to treat hydrolysate.

WITNESSES

Panel I

The Honorable Idotha Bootsie Neal

Commissioner
City of Dayton

The Honorable Angela Jones

Trustee
Jefferson Township

Ms. Mary Johnson

Private Citizen

Mr. Ellis Jacobs

Attorney at Law
Legal Aid Society of Dayton

Mr. Dennis Bristow

Coordinator
Dayton Regional Hazardous Materials Team

Witness TBD

Montgomery County

Panel II

Mr. Louis Centofanti

President & CEO
Perma Fix Inc.

Mr. R.L. Brownlee (Invited)

Acting Secretary
U.S. Army

Mr. Claude A. Bolton Jr., (Invited)

Assistant Secretary of the Army
Acquisition, Logistics, and Technology

ATTACHMENTS

1. NPR Radio Interview, "Disposal of VX, A Nerve Gas," March 7, 2003.
2. Dr. Bruce E. Rittmann, "Treatment of VX Hydrolysate by Permafix of Dayton," October 6, 2003.
3. U.S. Army Brief to Subcommittee, "Accelerated Newport Hydrolysate Disposal," October 1, 2003.
4. Copy of subcontract between Parsons Inc. and Permafix of Dayton Inc., December 21, 2002.
5. Letter from Rep. Turner to Assistant Secretary of the Army, May 7 2003; Letter from Assistant Secretary of the Army to Rep. Turner, May 15 2003; and Letter from Ohio Environmental Protection Agency to Assistant Secretary of the Army, May 23, 2003.
6. Amelia Robinson, "More Than 100 Rally Against VX Plan," Dayton Daily News, August 22, 2003; and James Hannah, "Ohio Residents Say Army's Plan to Dispose of Hazardous Waste is Environmental Injustice," Associated Press, April 25, 2003.
7. Mary McCarty, "A Victory for the Little Guys," Dayton Daily News, October 15, 2003; and DDN Editorial, "Beating Back Army is Big Victory," Dayton Daily News, October 15, 2003.
8. Letter from Parsons Inc. to Citizens Advisory Commission, October 14, 2003.
9. "Contractor Proceeding with Plans for Tank Farm," Associated Press, September 23, 2003.
10. Jim DeBrosse, "VX Safety Test Fails to Impress Foes," Dayton Daily News, September 16, 2003; and Mary McCarty, "Neighbors Battling VX Plan," Dayton Daily News, July 20, 2003.

11. Jim DeBrosse, “Army Records Sought on Nerve Agent,” Dayton Daily News, July 26, 2003; and DDN Editorial, “Army Retreats, but VX Intentions Still Veiled,” Dayton Daily News, July 6, 2003.
12. Letter from Rep. Shays and Rep. Turner to Secretary Rumsfeld, July 16, 2003; and Letter from Acting Secretary of the Army to Rep. Shays, July 30, 2003.
13. GAO Report, “Sustained Leadership, Along with Key Strategic Management Tools, Is Needed to Guide DoD’s Destruction Program,” GAO-03-1031, September 2003.

WEB RESOURCES

1. The Chemical Weapons Convention website, found at <http://www.un.org/Depts/dda/WMD/cwc/>