



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

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NSB NEW LONDON
5090.3a

October 22, 2004

Mark Evans, Remedial Project Manager
U.S. Department of the Navy
Naval Facilities Engineering Command
Northern Division
10 Industrial Highway
Code 1823, Mail Stop 82
Lester, PA 19113-2090

Re: Draft Record of Decision for Sites 3, 7, 14, 15, 18, and 20 Groundwater

Dear Mr. Evans:

Thank you for the opportunity to review the draft Record of Decision for Sites 3, 7, 14, 15, 18, and 20 Groundwater. Detailed comments are provided in Attachment A. The Land Use Control ROD Checklist provided in Attachment B.

The ROD should be expanded to describe the land use controls in more detail. Most of EPA's comments follow the model language that was approved by the Navy and e-mailed to you on May 12, 2004.

EPA recommends that you include a reference to the LUCs required for the source control RODs because in practice there will only be one set of restrictions put on the land (citing both the soil and groundwater RODs). All LUCs should be included in the Base Instruction.

Throughout the document the term "deed notification" should be changed to "deed restriction" since the CT Remediation Regulation requirements (which are an ARAR) call for "land use restrictions" rather than just a notification that contamination is present in a deed.

I look forward to working with you and the Connecticut Department of Environmental Protection to protect the groundwater resources of the Naval Submarine Base. Please do not hesitate to contact me at (617) 918-1385 should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kymberlee Keckler".

Kymberlee Keckler, Remedial Project Manager
Federal Facilities Superfund Section

Toll Free • 1-888-372-7341

Internet Address (URL) • <http://www.epa.gov/region1>

Attachment

cc: Mark Lewis, CTDEP, Hartford, CT
Melissa Cokas, NSBNL, Groton, CT
Bryan Olson, USEPA, Boston, MA
David Peterson, USEPA, Boston, MA
Chau Vu, USEPA, Boston, MA
Jennifer Stump, Gannett Fleming, Harrisburg, PA

ATTACHMENT A

<u>Page</u>	<u>Comment</u>
p. viii	Add a citation for CERCLA to the glossary.
p. x	Add a citation for NCP to the glossary.
§1.2	Add citations for CERCLA and NCP.
§1.4.1, bullet 2	Change “deed notification” to “deed restriction.”
p. 2-6, §2.2.1.1, ¶2	Add a new second to last line: “A Record of Decision was signed on _____, that called for _____.”
§2.2.1.3	At the end of the paragraph describe the ROD for the area.
§2.2.1.5	At the end of the paragraph describe the ROD for the area.
§2.2.2, ¶2	Add the citation for RCRA.
§§2.2.2.2 & 2.2.2.3	Describe the ROD for each area.
§2.2.2.5	Describe the ROD of the area.
§2.2.2.5	In the last sentence specify whether the area was cleaned to residential or commercial levels.
p. 2-56, §2.8.1, ¶4	Cite the ROD.
p. 2-59, ¶4	Change “deed notification” to “deed restriction.”
p. 2-60, ¶5	Change “deed notification” to “deed restriction.”
§2.12.1.1	Please include a map that clearly depicts the boundaries of the land use controls.
§2.12.1.1	Please describe the reasonably anticipated land uses, as well as any known prohibited uses that might not be obvious based on the reasonably anticipated land uses.

- §2.12.1.1 Please clearly state the specific LUC performance objectives. For example, 1) Prevent access or use of the groundwater until cleanup levels are met; 2) Maintain the integrity of any current or future remedial or monitoring system; and 3) Prohibit the development and use of property for residential housing, elementary and secondary schools, child care facilities and playgrounds.
- §2.12.1.1 Please expand the discussion to generally describe the LUC, the logic for its selection, and any related deed restrictions/notifications.
- §2.12.1.1 Please describe the duration of the LUCs. Add: “Land Use Controls will be maintained until the concentration of hazardous substances in the soil and groundwater are at such levels to allow for unrestricted use and exposure.”
- §2.12.1.1 Please add the following language to expand the third paragraph of Section 2.12.1.1: “Although the Navy may later transfer these procedural responsibilities to another party by contract, property transfer agreement, or through other means, the Navy shall retain ultimate responsibility for remedy integrity.”
- §2.12.1.1 Please add the following language to Section 2.12.1.1: “A LUC Remedial Design will be prepared as the land use component of the Remedial Design. Within 90 days of ROD signature, the Navy shall prepare and submit to EPA for review and approval a LUC remedial design that shall contain implementation and maintenance actions, including periodic inspections.”
- p. 2-72, §2.12.1.1, ¶4 Replace “deed notification” with “deed restriction.”
- Table 2-39 For “Action to be Taken” for CT Remediation Regs. replace “deed notification” with “deed restriction.”
- Tables 2-40 & 2-42 Under “Status” change all “Potentially Applicable” to “Applicable” to be consistent with all other RODs in the Region.

ATTACHMENT B
SAMPLE FEDERAL FACILITY LAND USE CONTROL ROD CHECKLIST WITH SUGGESTED LANGUAGE¹

(Navy/Army, DLA RODs, #s 1-9 below and RD/RAWP, #s 10-19 below /Air Force RODs, #s 1-19 below)

**Completed for the Draft Interim ROD for Sites 3,7,14,15 and 20 Groundwater
NSB-NLON, Groton, CT
Document Dated August 2004**

Where appropriate, Regions should consider including concepts and provisions in RODs, etc.; similar to the samples provided below in order to ensure protective remedies:

No 1. Map/Figure showing boundaries of the land use controls.

Supporting Information: Figures 2-17 and 2-20 are mentioned in text as showing areal extent of deed restriction. However, the figures do not depict the LUC boundaries. The COPC boundary is depicted.

Yes 2. Document risk exposure assumptions, and reasonably anticipated land uses, as well as any known prohibited uses which might not be obvious based on the reasonably anticipated land uses. (For example, where “unrestricted industrial” use is anticipated, list prohibited uses such as on-site company day-care centers, recreation areas, etc.)

Supporting Information: See Table 2-24 on page 2-40 for risk exposure assumptions and land use discussion on page 2-39.

Yes 3. Describe the risks necessitating the LUCs.

Supporting Information: See Page 2-64, Tables 2-25 to 2-28 and Appendix D.

No 4. State the LUC performance objectives. We have had comments on these because several of the objectives have not been clear. The following are some examples of what we have been looking for:

1. Prevent access or use of the groundwater until cleanup levels are met.
2. Maintain the integrity of any current or future remedial or monitoring system such as monitoring wells, impermeable reactive barriers.

¹While the checklist applies to land use controls, ROD reviews indicated a slight problem with the Declaration language which often states who selected the remedy. Where that language is included, please ensure that the military service and EPA select the remedy.

3. Maintain the 12 inch vegetative soil layer to limit ecological contact.
4. Prohibit the development and use of property for residential housing, elementary and secondary schools, child care facilities and playgrounds.

Supporting Information: Only RAOs are presented. No LUC performance objectives have been specified.

Yes 5. Generally describe the LUC, the logic for its selection and any related deed restrictions/notifications.

Yes 6. Duration language: "Land Use Controls will be maintained until the concentration of hazardous substances in the soil and groundwater are at such levels to allow for unrestricted use and exposure."

Supporting Information: See page 2-62 and page 1-3.

Yes 7. Include language that the [military service] is responsible for implementing, maintaining, reporting on, and enforcing the land use controls. This may be modified to include another party should the site-specific circumstances warrant it.

Supporting Information: See page 2-72.

Yes 8. Where someone else will or the military service plans that someone else will ultimately be implementing, maintaining, reporting on, and enforcing land use controls, the following language should be included:

"Although the [military service] may later transfer [has transferred] these procedural responsibilities to another party by contract, property transfer agreement, or through other means, the [military service] shall retain ultimate responsibility for remedy integrity."

Supporting Information: See page 2-72. This concept is presented on this page but the wording is slightly different.

No- Exact language is not used 9. **[ONLY INCLUDE IN NON-AF RODS]** Refer to the remedial design (RD) or remedial action work plan (RAWP) for the implementation actions. Because this is a new idea (i.e., including the LUC implementation actions in either or both of these two primary documents), to ensure that the requirement is clear and enforceable, we developed the following language where it makes sense:

"A LUC Remedial Design will be prepared as the land use component of the Remedial Design. Within 90 days of ROD signature, the [military service] shall prepare and submit

to EPA for review and approval a LUC remedial design that shall contain implementation and maintenance actions, including periodic inspections.” Another option is to refer to the enforceable schedule in the IAG for the RD or RAWP.”

Supporting Information: This subject is touched on in Section 2.12.1.1 on page 2-72. However, the precise language listed is not included.

NAVY/ARMY/DLA RD or RAWP CHECKLIST AND AF ROD CHECKLIST
CONTINUED

No- Exact language is not used 10. Commitment by military service to address any situation that may interfere with the effectiveness of LUC:

“Any activity that is inconsistent with the IC objectives or use restrictions, or any other action that may interfere with the effectiveness of the ICs will be addressed by the [military service] as soon as practicable, but in no case will the process be initiated later than ___ days [10 days suggested] after the [military service] becomes aware of the breach.”

Supporting Information: This subject is touched on in Section 2.12.1.1 on page 2-72. However, the precise language listed is not included.

No 11. Commitment by military service to notify EPA of and address any situation that may interfere with the effectiveness of LUC:

“The [military service] will notify EPA and [the state] as soon a practicable but no longer than ten days after discovery of any activity that is inconsistent with the IC objectives or use restrictions, or any other action that may interfere with the effectiveness of the ICs The [military service] will notify EPA and [the state] regarding how the [military service] has addressed or will address the breach within 10 days of sending EPA and [the state] notification of the breach.”

No 12. Notification to EPA and the state regarding land use changes:

[For closing base]:[We are seeing in military service RODs language requiring the property transferee to notify EPA and the state prior to notifying the military service about possible land use changes. We have switched that around so that the military service reviews the proposal first. This should save EPA some resources.]

“Prior to seeking approval from the EPA and [the state] the recipient of the property must notify and obtain approval from the [military service] of any proposals for a land use change at a site inconsistent with the use restrictions and assumptions described in this ROD Amendment.”

[For active base]:

“The [military service] shall notify EPA and state ____ days [45 days suggested] in advance of any proposed land use changes that are inconsistent with land use control objectives or the selected remedy.”

No 13. Notification regarding transfers and federal-to-federal transfers:

“The [military service] will provide notice to EPA and [the state] at least six (6) months prior to any transfer or sale of [OUs at issue] so that EPA and [the state] can be involved in discussions to ensure that appropriate provisions are included in the transfer terms or conveyance documents to maintain effective ICs. If it is not possible for the facility to notify EPA and [the state] at least six months prior to any transfer or sale, then the facility will notify EPA and [the state] as soon as possible but no later than 60 days prior to the transfer or sale of any property subject to ICs. In addition to the land transfer notice and discussion provisions above, the [military service] further agrees to provide EPA and [the state] with similar notice, within the same time frames, as to federal-to-federal transfer of property. The [military service] shall provide a copy of executed deed or transfer assembly to EPA and [the state].”

No 14. Concurrence language: “The [military service] shall not modify or terminate Land Use Controls, implementation actions, or modify land use without approval by EPA and the [state]. The [military service] shall seek prior concurrence before any anticipated action that may disrupt the effectiveness of the LUCs or any action that may alter or negate the need for LUCs.”

No 15. Monitoring and reporting language:

“Monitoring of the environmental use restrictions and controls will be conducted annually [or more or less frequently as may be determined to be necessary based upon site activities or conditions] by the [military service]. The monitoring results will be included in a separate report or as a section of another environmental report, if appropriate, and provided to the USEPA and the [the state]. The annual monitoring reports will be used in preparation of the Five Year Review to evaluate the effectiveness of the remedy.

The annual monitoring report, submitted to the regulatory agencies by the [military service], will evaluate the status of the ICs and how any IC deficiencies or inconsistent uses have been addressed. The annual evaluation will address whether the use restrictions and controls referenced above were communicated in the deed(s), whether the owners and state and local agencies were notified of the use restrictions and controls affecting the property, and whether use of the property has conformed with such restrictions and controls.”

No 16. A comprehensive list of LUCs. If the description of the LUCs in #5 above is comprehensive, it could substitute for #17's listing of LUCs.

No 17. For active facilities, a description of the internal procedures for implementing the LUCs (e.g., orders, instructions, Base Master Plan) and a commitment by the [military service] to notify EPA in advance of any changes to the internal procedures that would affect the LUCs.

Generally, the following language #s 18 applies at a BRAC installation, but it may have application elsewhere.

No- Exact language is not used 18. Other property transfer language:

Supporting Information: This subject is mentioned on page 2-72. However, the precise language as listed below is not included.

a. “Deed Restrictions: “Each transfer of fee title from the United States will include a CERCLA 120(h)(3) covenant which will have a description of the residual contamination on the property and the environmental use restrictions, expressly prohibiting activities inconsistent with the performance measure goals and objectives.

The environmental restrictions are included in a section of the CERCLA 120(h)(3) covenant that the United States is required to include in the deed for any property that has had hazardous substances stored for one year or more, known to have been released or disposed of on the property. Each deed will also contain a reservation of access to the property for the [military service], USEPA, and [the State], and their respective officials, agents, employees, contractors, and subcontractors for purposes consistent with the [military service] Installation Restoration Program (“IRP”) or the Federal Facility Agreement (“FFA”). The deed will contain appropriate provisions to ensure that the restrictions continue to run with the land and are enforceable by the [military service].”

b. “Lease Restrictions: “ During the time between the adoption of this ROD and deeding of the property, equivalent restrictions are being implemented by lease terms, which are no less restrictive than the use restrictions and controls described above, in this ROD. These lease terms shall remain in place until the property is transferred by deed, at which time they will be superceded by the institutional controls described in this ROD.”

c. “Notice: “Concurrent with the transfer of fee title from the [military service] to transferee, information regarding the environmental use restrictions and controls will be communicated in writing to the property owners and to appropriate state and local agencies to ensure such agencies can factor such conditions into their oversight and decision-making activities regarding the property.”

Yes 19. Ensure that the document adequately describes pre-transfer LUCs, not just post-transfer LUCs.

Supporting Information: This subject is addressed in Section 2.12.1.1 on page 2-72. This section states that specific instructions would be provided to Navy personnel in the NSB-NLON Installation Restoration Site Use Restrictions Instruction document so that contaminated groundwater would not be extracted or used in a manner that would threaten human health or the environment.