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EMAIL REGARDING U S EPA REGION IV COMMENTS ON DRAFT RECORD OF DECISION
FOR SITE 1 INCINERATOR LANDFILL WITH ATTACHMENTS MCRD PARRIS ISLAND SC
4/25/2006
U S EPA REGION IV

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Subject: Parris Island OU1 draft ROD revision
Date: Tuesday, April 25, 2006 7:23:26 PM
Attachments: [MCRD OU 1 ROD Final Comments.doc](#)
[LUC RODRDchecklistfinalSept7.doc](#)
[LUC Principles Procedures v8.0.doc](#)
Importance: High

Hi folks,

Attached you will see a cover letter and set of comments which went in the mail officially today. These comments are intended to assist the Navy in moving forward with revising and finalizing the OU1 ROD.

UNFORTUNATELY, I had previously been led to believe that all comments had been addressed, RTCs processed, the ROD revised, and put on the shelf waiting for whatever minor changes were necessitated by resolution of the Post-ROD Authority dispute and finalization of the FFA. However, after speaking with a few folks, it became apparent that rather numerous comments EPA had issued back in June of 2002 had never been responded to or incorporated. As a result, it was decided that it might be helpful to the Navy for EPA to update those comments, making them more appropriate for current day status quo, rather than the Navy trying to respond to them as is. Additional comments were added to meet the requirements for explaining the delay in the ROD, changing LUCAP/LUCIP language, as well as conforming better with the EPA ROD Guidance.

The impact of addressing all of these issues in one set of comments has resulted in many more comments than I had envisioned or desired. However, David Buxbaum and I have spent numerous hours attempting to provide as much direct language substitution as can reasonably be expected. Where exact language changes were too voluminous/extensive/complex to include in the comments themselves, we have included references to either Guidance, EPA/Navy Principles, and/or EPA's LUC Checklist. (See all attached or website provided.) The Guidance has fairly specific instructions and many language examples from which you may borrow. You may also find it simple to borrow language from the old LUCIP as well (Appendix A in the May 2002 Draft ROD).

Please feel free to contact me with any questions or concerns you may have with these comments as you revise the OU1 ROD. My cover letter requests that the comments be addressed, changes made to the ROD, and the revised ROD be submitted within 30 days, or no later than June 6, 2006 in accordance with the currently approved SMP schedule. Please let me know if there is anything I can do to help the Navy and the Team meet this deadline.

Thanks,
Lila

(See attached file: MCRD OU 1 ROD Final Comments.doc)
(See attached file: LUC RODRDchecklistfinalSept7.doc)
(See attached file: LUC Principles Procedures v8.0.doc)

EPA ROD Guidance: <http://www.epa.gov/superfund/resources/remedy/rods/>

September 2004

**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)

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

_____1. Map/Figure showing boundaries of the land use controls

_____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.)

_____3. Describe the risks necessitating the LUCs.

_____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.
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.

_____5. Generally describe the LUC, the logic for its selection and any related deed restrictions/notifications

_____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.”

_____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

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.

another party should the site-specific circumstances warrant it.

_____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.”

_____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.”

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

_____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.”

_____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 as 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.”

_____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.”

_____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].”

_____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.”

_____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.”

_____ 16. A comprehensive list of LUCs. If the description of the LUCs in #5 above is comprehensive, it could substitute for #16's listing of LUCs.

_____ 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, #s 18 and 19 apply at a BRAC installation, but they may have application elsewhere.

_____ 18. Other property transfer language:

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 superseded 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.”

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

PRINCIPLES AND PROCEDURES FOR SPECIFYING, MONITORING AND ENFORCEMENT OF LAND USE CONTROLS AND OTHER POST-ROD ACTIONS

PREAMBLE

Since the DoD/EPA Model Interagency Agreement (IAG)/Federal Facility Agreement (FFA) was developed in 1988, EPA and DoD have gained considerable knowledge and understanding about post-ROD activities, especially land use controls (LUCs). Thinking, policies, regulations and procedures concerning LUCs have evolved considerably since DoD and EPA developed the 1988 FFA model language. New statutes and regulations related to LUCs are being considered in many states. Accordingly, EPA and the Department of Navy (DoN) believe that a set of Principles will assist Navy field commands and EPA Regions to better implement our respective CERCLA responsibilities. The Principles described below do not replace or substitute for any existing CERCLA statutory or regulatory requirement. Rather they provide a mutually agreeable framework to provide a more efficient process to implement LUCs at National Priority List installations.

These Principles will guide the EPA and DoN personnel involved in these decisions. They are written in full knowledge that state regulatory and trustee organizations have independent responsibilities and authorities. EPA and the Navy recognize the importance of the state role in helping to ensure a cleanup is protective of human health and the environment. EPA and the Navy will jointly develop a communications plan to ensure we include the states in this important issue.

PRINCIPLES

- At sites where remedial action is determined necessary to protect human health and the environment, the actions must be documented in accordance with CERCLA and its implementing regulation, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).
- At sites where contaminants are left in place, Land Use Controls (LUCs) are used to ensure that the contaminants do not pose an unacceptable risk to human health or the environment. LUCs consist of engineering controls and/or institutional controls.
- EPA and the Department of Navy (DoN) desire to ensure that LUCs are specified, implemented, monitored, reported on, and enforced in an efficient, cost-effective manner that ensures long-term protectiveness
- EPA acknowledges DoN's role and responsibilities as the Federal Lead Agent for response actions. This role includes selecting remedies with EPA at NPL sites and funding response actions.
- DoN acknowledges EPA's role and responsibilities for regulatory oversight and enforcement, particularly at National Priority List (NPL) sites. This role includes

ultimate ability to select the remedy at NPL sites if EPA disagrees with DoN's proposed remedy and dispute resolution fails.

- Federal Facilities Agreements (FFAs) are CERCLA 120 agreements used by DoD and EPA to describe in detail the roles and relationships among DoD, EPA and often the state. They form the foundation for these relationships regarding DoD's response actions at NPL sites. FFAs also contain installation specific details and procedures for planning, budgeting, and dispute resolution. DoN and EPA desire FFAs to be as standardized as possible and relatively static (i.e., the FFA should not need to be changed for a given installation).
- Primary Documents developed under the FFA are relatively dynamic and document important plans and actions. In that sense, they are action-oriented. For example, a Site Management Plan is revised yearly via collaboration among DoN and EPA remedial project managers and is an important tool for planning response actions and demonstrating commitment to the public. Likewise, a LUC Remedial Design (RD) or Remedial Action Work Plan (RAWP) describes actions that will ensure viability of both long-term engineered and institutional control remedies.
- Records of Decision should document the remedy selection process and remedy decision in accordance with **CERCLA and the NCP, as well** as applicable guidance, regulations, standards, criteria, and policy. With regard to LUCs, the ROD should describe the LUC objectives, explain why and for what purpose the LUCs are necessary, where they will be necessary, and the entities responsible for implementing, monitoring, reporting on and enforcing the LUCs. The ROD will refer to the RD or RAWP for implementation actions.
- Given the above, EPA and DoN agree that the most efficient framework for specifying, implementing, monitoring, reporting on and enforcing LUCs is:
 - A standard FFA for NPL sites.
 - A clear, concise ROD with LUC objectives.
 - RD or RAWP with LUC implementation actions.
- *Note: These documents are described more fully below.*
- EPA and DoN will move expeditiously to finalize all outstanding FFAs using a standard FFA template as a guide to minimize the development/writing process.
- *Note: A "standard FFA" means the Agreement presently being used between EPA and DoN using the DoD-EPA model language, plus site-specific statements of fact, plus the additional primary and secondary documents shown in Attachment 1.*
- EPA and DoN will initiate a task force with appropriate headquarters and field representatives from EPA and the military services. The task force will examine ways to reduce document size, review time and revisions. The task force will seek ways to

recommend changes to guidance and policy that will help reduce document size or streamline the process. The task force may also include other stakeholders.

GENERAL PROCEDURES

1. Federal Facility Agreement

- LUC implementation and operation/maintenance actions will be included in the RD or RAWP which are already primary documents deliverable under standard FFAs. In addition, a Remedial Action Completion Report (RACR) will be provided as a primary document for new FFAs. For existing FFAs without a RACR, the RACR will be provided as an attachment to the RD or RAWP with the same enforceability as a primary document. For existing FFAs without a Five-year review, the Five-year review will be submitted to EPA as a secondary document and is subject to dispute resolution under the FFA.

Note: Model FFA language will need to be supplemented to reflect these Principles and Procedures. Attachment 1 contains necessary modifications to FFA language.

2. Record of Decision

- It is EPA's and DoN's intent that Records of Decision (RODs) continue to be consistent with CERCLA and the National Contingency Plan. Relative to land use controls and institutional controls, the ROD shall:
 - Describe the risk(s) necessitating the remedy including LUCs;
 - Document risk exposure assumptions and reasonably anticipated land uses;
 - Generally describe the LUC, the logic for its selection and any related deed restrictions/notifications;
 - State the *LUC performance objectives*. (See attachment 2 for examples of LUC performance objectives);
 - List the parties responsible for implementing, monitoring, reporting on, and enforcement of the LUC;
 - Provide a description of the area/property covered by the LUC (should include a map);
 - Provide the expected duration of the LUCs; and
 - Refer to the RD or RAWP for LUC *implementation actions*, since these details may need to be adjusted periodically based on site conditions and other factors. (See attachment 2 for examples of LUC implementation actions).
- RODs at **transferring** properties will need to be crafted based on the responsibilities of the new owner and state-specific laws and regulations regarding LUCs. At **transferring** properties, compliance with the LUC performance objectives may involve actions by the subsequent owners in accordance with deed restrictions, however, **ultimate** responsibility

for assuring that the objectives are met remains with DoN as the party responsible under CERCLA for the remedy. DoN and regulators will consult to determine appropriate enforcement actions should there be a failure of a LUC objective at a transferred property.

3. LUC Remedial Design (RD) or Remedial Action Work Plan (RAWP)

- The RD or RAWP will be provided as a primary document in accordance with the FFA.
- The RD or RAWP will describe short and long-term implementation actions and responsibilities for the actions in order to ensure long-term viability of the remedy which may include both LUCs (e.g., institutional controls) and an engineered portion (e.g., landfill caps, treatment systems) of the remedy. The term “implementation actions” includes all actions to implement, operate, maintain, and enforce the remedy. Depending on the LUC and site conditions, these actions can include:
 - Conducting CERCLA 5-year remedy reviews for the engineered remedies and/or LUCs.
 - Conducting periodic monitoring or visual inspections of LUCs; frequency to be determined by site specific conditions.
 - Reporting inspection results.
 - Notifying regulators prior to any changes in the risk, remedy or land use including any LUC failures with proposed corrective action.
 - Including a map of the site where LUCs are to be implemented.
 - *For active bases,*
 - Developing internal DoN policies and procedures with respect to LUC monitoring, reporting, and enforcement in order to institutionalize LUC management and to ensure base personnel are aware of restrictions and precautions that should be taken; Consulting with EPA at least 14 days prior to making any changes to these policies and procedures to ensure that any changes maintain a remedy that is protective of human health and the environment.
 - Developing a comprehensive list of LUCs with associated boundaries and expected durations.
 - Notifying regulators of planned property conveyance, including federal-to-federal transfers. “Property conveyance” includes conveying leaseholds, easements and other partial interests in real property.
 - Obtaining regulator concurrence before modifying or terminating land use control objectives or implementation actions.
 - *For closing bases/excess property:*
 - Notifying regulators of planned property conveyance, including federal-to-federal transfers.
 - Consulting with EPA on the appropriate wording for land use restrictions and providing a copy of the wording from the executed deed.
 - Defining responsibilities of DoN, the new property owner and state/local government agencies with respect to LUC implementation, monitoring,

reporting, and enforcement.

- Providing a comprehensive list of LUCs with associated boundaries and expected durations.
- Obtaining regulator concurrence before modifying or terminating land use control objectives or implementation actions.

Note: the mix of responsibilities among DoN, new property owner and other government agencies depends on state and federal laws and regulations that are applied in the state. Implementation actions at closing bases may include components characteristic of both active and closing bases, depending on the timing of transfer.

- Should there be a failure to complete LUC implementation actions at an active base, the EPA Region shall notify the installation and seek immediate action. Should there be a failure to complete LUC actions after such notification to the base, EPA may notify the Deputy Assistant Secretary of the Navy (Environment) who will ensure that LUC actions are taken.
- Should there be a failure to complete implementation actions that are the responsibility of a subsequent owner or third party at a transferred property, EPA and DoN will consult on the appropriate enforcement action. Should there be a failure to complete implementation actions that are the remaining responsibility of DoN at a transferred property, the EPA Region will notify the cognizant Navy Engineering Field Division. If necessary, EPA may notify the Deputy Assistant Secretary of the Navy (Environment) who will ensure that corrective action is taken.

Note: The RD or RAWP should contain no more or no less implementation actions than needed to ensure the viability of the remedy. There is a delicate balance required. EPA and DoN both desire to ensure protectiveness while minimizing process and documents. The parties agree to work diligently to define the appropriate implementation actions for each LUC. EPA and Navy believe the key elements can be easily developed between RPMs in a matter of a few hours. Based on detailed discussions and the examples shown in Attachment 2, EPA and DoN expect that the LUC portion of the RDs or RAWPs to be in the range of 2-6 pages. If combined with a sampling plan, there may be additional pages needed to list the analyses, sampling locations and frequencies.

4. LUC Data

- DoN will ensure that all LUCs at its installations are included in the DoN LUC database.

**INCORPORATING LAND USE CONTROL (LUC) OBJECTIVES AND
IMPLEMENTATION ACTIONS INTO FEDERAL FACILITIES AGREEMENTS
(FFAs)**

:

FFA Model Template Additions/Changes

1. Definitions Section:

Add: "Land use controls" shall mean any restriction or administrative action, including engineering and institutional controls, arising from the need to reduce risk to human health and the environment.

2. Primary Documents:

Add: A Remedial Action Completion Report (RACR).

Note: EPA and DoN believe the RACR is an important document to (1) document the completion of remedy-in-place and/or site close-out and (2) receive concurrence from EPA. The document shall not duplicate information in the Administrative Record or previously provided to EPA. Previously provided information shall be referenced and itemized. New information/data (e.g., sampling data) may be needed to demonstrate that the Remedial Action Objectives have been met. The report shall also include any as-built drawings for remedies if different from the remedial design. EPA and DoN do not envision this to be a lengthy document, but shall contain only the information needed to justify the remedy completion. EPA and DoN believe the RACR should discuss how the remedial objectives in the ROD have been met. It should not be used to expand the scope of requirements beyond the original ROD.

Change: Eliminate the sub-bullets (subsidiary documents) under remedial action work plan for document streamlining purposes.

3. Secondary Documents:

Add: Five-Year Remedy Review (required by CERCLA)

- o Provided to EPA for review and comment
- o Subject to dispute resolution

Note: EPA has an important oversight role regarding the continuing protectiveness of the LUC. Therefore, EPA and Navy believe it is reasonable that EPA should review and comment on the Five-year Remedy Review. Since the review is required by CERCLA, it does not need to be a Primary Document.

EXAMPLES OF LUC OBJECTIVES AND LUC IMPLEMENTATION ACTIONS

(Note; actions are to be tailored to site specific conditions.

This is neither a mandatory nor a complete list)

LUC OBJECTIVES (contained in ROD)

- Ensure no construction on, excavation of, or breaching of the landfill cap.
- Ensure no residential use or residential development of the property.
- Ensure no withdrawal and/or use of groundwater.
- Ensure no excavation of soils without a use permit and special handling procedures.

LUC IMPLEMENTATION ACTIONS (contained in the RD or RAWP)

- Conduct a CERCLA five-year remedy review of the LUC and provide to EPA for review (as a secondary document deliverable under the FFA).
- Conduct annual inspections of the LUC and report results (active or BRAC – responsible party to be defined).
- Record the LUC in the base master plan. (active)
- Produce a survey plat of the LUC by a state registered land surveyor. (active or BRAC).
- File the survey plat with the local government/Circuit Court for purposes of public notification (active or BRAC)
- Place a survey plat in CERCLA administrative record, and send copies to EPA and state. (active or BRAC).
- Develop and implement a base procedure that requires excavation to be approved by the Public Works Officer or equivalent official. (active)
- Develop and implement a base procedure that requires changes in land use to be approved by the Public Works Officer or equivalent official. (active)
- Notify the regulatory agencies 45 days in advance of any Base proposals for a major land use change at a site inconsistent with the use restrictions and exposure assumptions described in the ROD, any anticipated action that may disrupt the effectiveness of the land use controls, any action that might alter or negate the need for the land use controls, or any anticipated transfer of the property subject to the land use controls.
- Obtain regulator concurrence before modifying or terminating land use control objectives or implementation actions.
- Maintain a comprehensive list of LUCs with associated boundaries and expected durations.

Note: These examples are consistent with draft EPA guidance: “Describing Institutional Controls in Remedy Decision Documents at Active Federal Facilities”.