

Doctor, Wilson E (EFDSW)

Subject: FW: Additional IC language for Site 22 ROD

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From: Lee.Alana@epamail.epa.gov [mailto:Lee.Alana@epamail.epa.gov]
Sent: Tuesday, March 05, 2002 9:10 AM
To: lansdalell@efdsw.navfac.navy.mil; bollonr@efdsw.navfac.navy.mil
Cc: Dreyfus.Bethany@epamail.epa.gov
Subject: Additional IC language for Site 22 ROD

Hi Lawrence and Nick,

Here is EPA's proposed additional language for the ICs section. Please call Bethany Dreyfus, Assistant Regional Counsel, at 415.972.3886 or me at 415.972.3141 to discuss further. We appreciate your willingness to resolve these issues in an expeditious manner.

As has been discussed, the Institutional Controls section of the Draft Final ROD for Site 22 (Section 9.2.3) provides an outline for institutional controls at the site. However, the section does not provide the specific components for those institutional controls. Also, there is no provision for monitoring and reporting on the implementation or efficacy of the controls. In order to provide such information, EPA proposes adding the following language to Section 9.2.3 (EPA's proposed language is underlined):

As noted in Section 9.1, the restrictions would be implemented by NASA per a MOA to be entered into between the DoN and NASA after review and concurrence by EPA.

The MOA ... will include the following elements:

? Requirement of annual reporting to EPA regarding the implementation, monitoring and efficacy of the institutional controls.

Additionally, EPA would like to clarify a point made earlier in the Navy's response to EPA's comments, dated May 21, 2001, regarding assurances that institutional controls will be conveyed with the land upon transfer to a non-federal entity. When property is conveyed from a federal agency to a non-federal entity, the federal agency may require the purchase to include land use restrictions through the conveyance of land while retaining a negative easement. That negative easement, or restrictive covenant, would include the restrictions and requirements that comprise the site's institutional controls, and the easement could be retained by the federal agency, or it could transferred to another entity such as the state. The MOA between DoN and NASA could include this as a contingency in case the property transfers to a non-federal entity. Accordingly, EPA requests that the following language be added to the Institutional Controls section of the ROD as well:

? Requirement that transfer of the site to a non-federal entity includes a restrictive covenant conveying the property with the institutional controls as provided in the MOA in place.