



# Minnesota Pollution Control Agency

October 1, 1998

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Patrick K. Morrow  
Department of the Navy  
5001 East River Road  
Minneapolis, Minnesota 55421-1406

RE: Naval Industrial Reserve Ordnance Plant/Draft Covenant Deferral Request

Dear Mr. Morrow:

This letter will serve as the Minnesota Pollution Control Agency's (MPCA) comments on the draft Covenant Deferral Request the Navy has placed on public notice regarding the anticipated transfer of the Navy Industrial Reserve Ordnance Plant (NIROP) in Fridley, Anoka County, Minnesota. Because the Covenant Deferral Request (CDR) is not effective until the Governor concurs in the language, the MPCA expects that the Navy will meet with the agency to resolve the agency's concerns before the Navy goes forward with the request.

We have enclosed a modified version of the Navy's draft CDR with proposed changes that address our concerns. The changes are self-explanatory and are issues we have raised in the past. The following explanation discusses several of our concerns.

1. Compliance Deadline. Several times in the draft CDR the Navy refers to the year 2010 as the outside date for completion of remedial action. The Navy has never before indicated to the MPCA that remedial action was going to take until the year 2010 to complete. If the Navy is going to request a change in the dates specified in the Federal Facilities Agreement for completion, the Navy should do that independent of the CDR. We propose eliminating any references to a compliance deadline that has not been discussed, let alone approved, outside the CDR process, and our version contains no such references.
2. Risk Analysis. There is a risk associated with the use of ground water at the site and the CDR should recognize that. The Remedial Investigation for Operable Unit 3 (OU3) was just completed at the end of August. While what remedial action may be required for OU2 and OU3 is still uncertain, the CDR should recognize that there are concerns about the risks associated with these two operable units and that some restrictions regarding use of the property may be necessary.

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3. Notice in the Deed. CERCLA is clear that any deed transferring federal property for which remedial action is not complete must include language identifying certain information about past practices at the property and future remedial action. While it may not be practical to identify every chemical that has been stored at NIROP at one time or another, attaching the Environmental Baseline Survey for Transfer (EBST) as the Navy proposes to do does not give potential purchasers the information that CERCLA anticipates. We think it is acceptable to attach the EBST document, but the deed should also provide a summary of past practices. We have drafted language to do that.
4. Applicable Regulatory Authority. The Navy has eliminated language in several paragraphs that would identify certain authorities that the U.S. Environmental Protection Agency (EPA) and the MPCA both have regarding cleanup of the NIROP site. We would prefer that the CDR include a specific recognition that the MPCA and the EPA both have certain regulatory authorities over the site.
5. Transferee's Obligations. The EPA guidance provides that if the Transferee will perform any response action, the landholding federal agency must provide EPA with documentation demonstrating that the Transferee has or will become legally obligated to conduct the required response action. The CDR should contain language reflecting the requirement to provide the EPA with that documentation, and the MPCA would also like to receive the same documentation.
6. Industrial Use Standards. The Navy must recognize that although the EPA has determined that the anticipated future land use for the site is industrial, the land use could change. The Navy retains responsibility for further actions that may be necessary for another land use, e.g., an unrestricted (residential) land use, and the CDR should recognize that. Therefore, we have suggested some changes in the language in several paragraphs where references to industrial standards or industrial uses are made.

We will be happy to meet with you to discuss our comments. We are confident that the Navy and the MPCA can agree upon language in the CDR that will allow the Governor to concur with EPA that the property is suitable for transfer. We also await receipt of any other comments that the Navy receives on the draft CDR so we can discuss the issues raised in those comment letters as well.

Sincerely,



David N. Douglas, Project Manager  
Superfund/RCRA Unit I  
Site Remediation Section  
Metro District

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Enclosure

cc: Scott Glass, U.S. Navy  
Thomas Bloom, Region V, EPA