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LETTER FROM ILLINOIS ENVIRONMENTAL PROTECTION AGENCY REGARDING
COMMENTS ON LAND USE CONTROL MEMORANDUM OF AGREEMENT FOR FOUR
SITES FORT SHERIDAN IL

6/8/2004

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



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June 8, 2004

Department of the Army
Headquarters, Forces Command
Deputy Chief of Staff, G1
Attn: AFG1-BC (Victor Bonilla)
1777 Hardee Avenue, SW
Fort McPherson, Georgia 30330-1062

Re: Land Use Control Memorandum
of Agreement (LUC MOA) for Four Sites on
the Former Fort Sheridan Army Base,
Fort Sheridan, Illinois

0970555001 - Lake
Fort Sheridan (BRAC)
Superfund/Technical

Dear Mr. Bonilla:

The purpose of this letter is to convey the position of the Illinois Environmental Protection Agency (Illinois EPA) regarding the need of the Department of the Army (Army) to enter into a Land Use Control Memorandum of Agreement (LUCMOA). During the last 18 months or so, Illinois EPA and the Army have been negotiating over the need for the Army to enter into a LUCMOA with Illinois EPA and over the content of any such agreement. These discussions concerned property retained by the Federal Government at the former Fort Sheridan Military Reservation. This facility is being remediated pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (CERCLA or Superfund).

On March 30, 2004, the Army informed Illinois EPA, just prior to a Base Realignment and Closure (BRAC) Cleanup Team (BCT) meeting, that it would not be able to enter into such an agreement. At that time, Illinois EPA informed the Army that the LUCMOA was required if the Army wanted to leave contamination in place above unrestricted reuse standards. After some discussion, it was preliminarily agreed that the critical portions of the LUCMOA document would be included in the Design Documents for the remaining sites as a separate appendix and that as much information as was allowed by the Department of Defense (DoD) Guidance Document on Land Use Controls would be included in the final Decision Documents for those sites. Subsequent to this meeting, the Army forwarded to the Illinois EPA additional information on the Department of Defense's Guidance Policy for Land Use Controls and also provided

examples, from other sites, on how the Army has handled similar situations in other states.

Illinois EPA reviewed the submitted information and has re-evaluated the previous determination that a LUCMOA was required at Fort Sheridan. The agreement between the U.S. Navy and U.S. EPA ("Principles and Procedures for Specifying, Monitoring, and Enforcement of Land Use Controls and Other Post-ROD Actions") appears to be a substantial departure from the position U.S. EPA held in 2000, when the LUCMOA was finalized. In light of this new information and the U.S. Army's adoption of these principles, Illinois EPA has determined that a LUCMOA is not required for the remaining four sites at the former Fort Sheridan. However, in lieu of a signed LUCMOA agreement, the Illinois EPA does require all of the following:

- 1) The Army must include, in an appendix of each of the design documents, all of the critical elements from the negotiated LUCMOA, including the Land Use Control Implementation Plans (LUCIPs) for each site, except for the "agreement" language and the signature page.
- 2) The Decision Document for each site must include as many specifics as possible concerning the contamination, associated risks, current and projected future land uses, the types of engineered barriers and institutional controls being used, parties responsible for implementing, monitoring, reporting on, and enforcing the land use controls (as that term is defined in the LUCMOA document), legal description of the area, maps, etc...
- 3) The Decision Document for each site must reference the institutional controls delineated within the Design Document as part of the chosen remedy and must state the duration of said controls. The duration shall be listed as in perpetuity or until such time as the concentration of hazardous substances in the soil and/or groundwater beneath is reduced to levels that allow for unlimited exposure and unrestricted reuse, and Illinois EPA concurrence is obtained.
- 4) Throughout the DoD Guidance Document, there is reference to "LUC performance objectives" or "LUC objectives." Illinois EPA takes issue with this terminology because for purposes of remediation in our programs, institutional controls and engineered barriers are not "objectives". They are absolute prerequisites to closure of sites where contamination is left in place above the 1×10^{-6} carcinogenic human health risk value or a non-carcinogenic hazard quotient greater than unity, or an Industrial/Commercial property use assumption. Thus, Illinois EPA does not approve of the use of the term "objectives" relating to land use controls or institutional controls. It is understood that this is the terminology incorporated in the DoD guidance; however, for the Decision Documents yet to be completed at Fort Sheridan, Illinois EPA requests the terms "LUC performance objectives" or "LUC objectives" not be used. They should be replaced with language that does not allow for interpretation that the land use

controls may not perform as intended or may not be required at all.

- 5) Finally, the frequency for inspections and reporting specified in the model LUCMOA document should be incorporated into the forthcoming Decision Documents. For example, the guidance document mentions annual inspections and reports. Illinois EPA requires them more frequently in the LUCMOA. Illinois EPA also requires notice further in advance of when the property will transfer or when land uses change. It is important to note that Illinois EPA requires advance notice for any land use change, not just a "major land use change." These discrepancies will need to be corrected to match the information in the model LUCMOA, if Illinois EPA is to concur with those documents.

This determination applies only to the four remaining sites at the former Fort Sheridan, namely, Landfill 1, Landfill 5, Landfills 6 and 7, and Coal Storage Area #3. It does not apply to any other site at Fort Sheridan or any other federal facility.

If you have any questions regarding this correspondence, you may contact me at 217/557-8155 or via e-mail at Brian.Conrath@epa.state.il.us.

Sincerely,

Brian A. Conrath

Brian A. Conrath
Remedial Project Manager
Federal Facilities Unit
Federal Site Remediation Section
Bureau of Land

BAC
BAC:\FRAC:H:\fortsh\LUCMOA\unnecltr

cc: Owen Thompson, USEPA (SR-6J)
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