

11/21/01-00904



DEPARTMENT OF THE NAVY

ATLANTIC DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
1510 GILBERT ST
NORFOLK, VA 23511-2699

TELEPHONE NO

IN REPLY REFER TO

5800
09CH:WJM

NOV 21, 2001

Mr. Frank Fritz
(Mail Code 3RC44)
U.S. Environmental Protection Agency
Region III
Office of Regional Counsel
1650 Arch Street
Philadelphia, PA 19103

Subject: EPA Comments on Final Record of Decision for Sites 9 and 10,
Naval Amphibious Base Little Creek, dated 9/13/2001

Dear Mr. Fritz:

I wanted to express my appreciation for your participation in the telephone conference on September 18th, regarding your comments to this Record of Decision. It presently appears that there is no reconciliation of this issue possible at our level.

As lead agency for remediation, the Navy possesses the authority to implement land use restrictions and to maintain and manage Land Use Controls (LUCs) required by environmental restoration activities on naval installations. These LUCs would include the operation and maintenance of applicable engineering and institutional controls identified in the Record of Decision (ROD). The Navy may also choose to impose additional control measures to supplement and reinforce the selected remedy. The Navy (as outlined in the current draft ROD) may enter into agreements with interested parties to define site-specific terms for institutional control management; however, such agreements are further assurances and measures, which the Navy chooses to voluntarily put into place at our operating bases, and is an addition to the obligations and responsibilities under CERCLA, with respect to implementation and management of the chosen remedy.

The Navy recently obtained DoD's approval for the wording contained in the Naval Weapons Station Yorktown Land Use Control Assurance Plan (LUCAP), with the intention of using this LUCAP as the basis of a regional LUCAP for all National Priorities List (NPL) Naval activities in the Norfolk/Virginia Beach Area. As such, it was our intention to incorporate the Naval Amphibious Base Little Creek into this regional LUCAP. While we basically agree with the content of your comments, it is the placement of these comments into the ROD that poses the problem. The Navy is currently prohibited by DoD policy to include these LUCs in the ROD, and, as I am sure you are aware, your request that such comments be put in the ROD in the form you have

Mr. Frank Fritz

Page 2

requested is not consistent with the agreement we made with you in the ready-to-be-signed LUCAP for Naval Weapons Station Yorktown. The most appropriate place to cover these comments would be in the regional LUCAP discussed above; however, based on our telephone conversation, it is now my understanding that you have been directed by HQ EPA to back out of this agreement and to demand from us that the terms of side agreements like the LUCAP be put directly in the RODs.

Although we disagree with your HQ-directed approach that would make the Navy's voluntary institutional controls mandatory ROD terms, there is agreement on the underlying remedial decision that the Navy, EPA and the Commonwealth have worked so long in fashioning. In fact, the Navy has signed this ROD on the understanding that EPA had concluded its comments. As a result, the Navy will execute the ROD to reflect the remedial decision that the parties do agree upon, and upon publishing the ROD, will note for the administrative record those EPA requests that have not been included in the ROD.

We appreciate the fine working relationship that has been established between the Navy and EPA, and look forward to continuing this relationship in the future. The Navy remains committed to concluding the LUCAPs and to adhering to the spirit of those agreements. We trust EPA will be able to do so as well. Should you have any further questions or concerns, please feel free to call me at (757) 377-4774.



WAINA MCFARLANE
Assistant Counsel

Copy to:
Paul Yaroschak
D Olson
B Harrison
B K Schafer
G Kohns
T. H Hoffman
P A Rakowski
B.C. Brant
R.G Schirmer
D M Haves