

M00263.AR.000447  
MCRD PARRIS ISLAND  
5090.3a

EMAIL REGARDING U S EPA REGION IV COMMENTS ON STEPS TO A RECORD OF  
DECISION FOR SITE 3 CAUSEWAY LANDFILL MCRD PARRIS ISLAND SC  
12/20/2006  
U S EPA REGION IV

**From:** [Koroma-Llamas.Lila@epamail.epa.gov](mailto:Koroma-Llamas.Lila@epamail.epa.gov)  
**To:** [art.sanford@navy.mil](mailto:art.sanford@navy.mil); [hargrodc@dhec.sc.gov](mailto:hargrodc@dhec.sc.gov); [koroma-llamas.lila@epa.gov](mailto:koroma-llamas.lila@epa.gov); [Sladic, Mark -- NUS: mmcrae@TechLawInc.com](mailto:Sladic, Mark -- NUS: mmcrae@TechLawInc.com); [stampsjm@dhec.sc.gov](mailto:stampsjm@dhec.sc.gov); [stephen.beverly@navy.mil](mailto:stephen.beverly@navy.mil); [timothy.j.harrington@usmc.mil](mailto:timothy.j.harrington@usmc.mil)  
**Subject:** MORE ON: Action Items  
**Date:** Wednesday, December 20, 2006 11:03:45 AM  
**Attachments:** [Draft LUC RD-Site 13 - 11-13-06.pdf](#)  
[Camp Lejuene LUC RD for Site 93 11-16-2006 submittal to Navy.doc](#)  
[LUC RODRDchecklistfinalSept7.doc](#)

---

Hi Folks (and Steve) again,

I spoke with David again this morning, and then with Steve and Art, and then with Jerry. This is to document what was discussed regarding the remaining action items:

\* Site 3 resolution - There are three possible approaches to finishing Site 3. Each approach brings with it different requirements. The following briefly describes each approach and related requirements, however, the ROD Guidance should be followed for official submissions. They are :

1) Issue a Final ROD - If the Navy/MCRD chooses to issue a Final ROD, it would necessitate the development and issuance of a Proposed Plan, as well as the public notice, review and comment process. The ROD would need to follow complete ROD guidance requirements.

2) Issue a ROD Ammendment, ammending the Site 3 Interim ROD - If the Navy/MCRD chooses to issue a ROD Ammendment, it would require Notice of Availability and public review and comment for the Ammended portion only, I believe. The Ammendment would need to address 1) A description of the additional sampling results, the findings that no further remedy or cap/cover was necessary and a determination that the remedy is Final, rather than interim; 2) Updated LUC language, as used in RODs 1 and 5 (Site12); and 3) Findings regarding the need/lack of need for monitoring sediment, and more detail on the monitoring requirements for GW.

3) Issue an Explanation of Significant Differences (ESD) for the Site 3 Interim ROD - At this point, EPA and SCDHEC would support this approach, however, we are awaiting some feedback from EPA HQ. If the Navy/MCRD chooses to issue an ESD, the ESD would modify the Interim ROD in the same way as described above in the ROD Ammendment approach, however, an ESD would only require a Notice of Availability of the ESD, but would not require a Public Review and Comment Period.

My understanding is that after the calls this morning, Steve wishes to review the ROD guidance and the NCP, consult with Art and Tim, and make a determination as to what they are comfortable pursuing, however, they seem to be leaning towards the ESD approach. In order to be able to move forward on the SMP, once decided, the Navy/MCRD will submit the SMP reflecting their chosen route. If the Navy/MCRD chooses the ESD approach and at some point we hear back from EPA HQ with significant objections (not likely), we have the understanding that we will revisit the SMP on that point only.

\* LUC RACR "Letter" examples - The EPA FLA/AL/MS Section Chief has stated that this "Letter" approach was used at Cecil Field. Unfortunately, there are two EPA RPMs on that site, and both are out of the office. Today is my last day in the office until after the

holidays. Steve offered to attempt to obtain copies of examples from his counterparts, and perhaps Art will try also, and share them with the team if they are successful. I offered to draft a sample letter, but Steve and Art preferred to pursue finding the existing examples. Therefore, this reassigns my action item to Steve and Art for the meantime. If I return from the holidays and the sample has not been found, I will make another attempt within this office.

That should answer all that is needed for submittal of the SMP, as well as all that is needed for now on my action items.

Call me with questions today..... otherwise.....

YOU ALL HAVE A WONDERFUL HOLIDAY!!!!!!

LILA

Lila  
Koroma-Llamas/R4  
/USEPA/US  
12/19/2006 03:27 PM  
art.sanford@navy.mil,  
hargrodc@dhec.sc.gov,  
koroma-llamas.lila@epa.gov,  
mark.sladic@ttnus.com,  
stampsjm@dhec.sc.gov,  
timothy.j.harrington@usmc.mil,  
mmcrae@TechLawInc.com  
cc  
stephen.beverly@navy.mil  
Subject  
Action Items

Hi Folks (and Steve),

After our meeting I arrived home to find my 6 year-old at home with the flu. Today is his first day back at school and my first day back in the office. Therefore, my "due dates" of next day are technically passed, but please forgive. Here's what I have now:

\* Below you will see the DRAFT Whiting Field example file that David Buxbaum looked at and thought it looked ok. Please note that this is only draft. I have no idea if it will go final as such, or if it meets EPA HQs needs. So see next bullet also.

(See attached file: Draft LUC RD-Site 13 - 11-13-06.pdf)

\* I have also included the file David helped DRAFT for the Camp Lejuene LUC RD. This LUC RD meets the checklist requirements and HQ was satisfied.

(See attached file: Camp Lejuene LUC RD for Site 93\_11-16-2006 submittal to Navy.doc)

The bottom line for a LUC RD is it must cover the LUC requirements in the ROD, and meet the needs of the LUC RD Checklist from EPA HQ (based on the Post-ROD Authority Dispute Resolution and Navy Principles), and to a certain degree, the requirements of a remedial design/remedial action work plan.

\* Therefore, I have included the checklist again, for ease of access. Please note that Checklist items 1-9 are for the ROD, but if you continue past that you see the Section that covers Navy RD/RAWP items (as well as AF RODs).

(See attached file: LUC RODRDchecklistfinalSept7.doc)

\* By tomorrow I hope to provide you with a sample LUC Completion Letter which would satisfy the requirement of a RACR for LUCs, since they are not currently covered in your RACRs for the main remedies.

\*\* I have called David Buxbaum to discuss, again, the need for a PP for the Site 3 Final ROD. He and I talked about a couple of possible streamlined approaches. He needed to check a couple of things before I can get back to you. He has committed to call me back this afternoon, but I don't know if we can get a final answer that quickly or not. Will let you know as soon as I know. So I still owe you this, too.

Call me with questions.

Lila

404-562-9969

September 2004

**SAMPLE FEDERAL FACILITY LAND USE CONTROL ROD CHECKLIST WITH  
SUGGESTED LANGUAGE<sup>1</sup>**

(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

---

<sup>1</sup>While 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.