



## REGION 4

ATLANTA, GA 30303

**11/8/2024**

Mr. James Foster  
Department of the Army  
Office of the Deputy Chief of Staff, G9  
Base Realignment and Closure Branch, ISE Division  
600 Army Pentagon  
Washington, DC 20310-0600

Dear Mr. Foster,

The purpose of this letter is to address the issues relating to fencing requirements at Defense Depot Memphis, Tennessee (DDMT) which remains part of the remedial actions selected for Dunn Field, Operable Unit 1 as defined in the 2004 *Memphis Depot Dunn Field Record of Decision* (Dunn Field ROD). In addition, this letter aims to respond to the United States Army (Army/lead agency) July 25, 2024, letter, *SUBJECT: Fencing at Dunn Field former Defense Depot Memphis, Tennessee*. As a preliminary matter, the U.S. Environmental Protection Agency (EPA/USEPA) does agree with the 2004 Dunn Field ROD, which identifies fencing requirements for just the western portion of Dunn Field (DFW).<sup>1</sup> The EPA also recognizes that DFW was later the subject of a *Land Use Control Implementation Plan* (LUCIP), which further defined the nature and scope of the land use controls (LUCs), their implementation, monitoring, maintenance, and enforcement.<sup>2</sup> However, the EPA disagrees with the Army's interpretation of these requirements, as will be explained in detail below.

The EPA is herein addressing the Army's apparent view that fencing at DFW is not part of the CERCLA remedy and that, as a result, the lead agency can unilaterally deconstruct the DFW fencing. Specifically, EPA does not agree that fencing can be unilaterally terminated by the lead agency because the fencing is part of the remedial action selected in the Dunn Field ROD to the same degree that other LUCs further were defined in the 2008 LUCIP.

While some of the other LUCs were discussed in more detail in the ROD, *"It is recognized that at the time of decision document signature there may be some uncertainty as to the specific IC*

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<sup>1</sup> This areas remains available for industrial use only.

<sup>2</sup> Appendix A of the Off Depot Groundwater Remedial Design, September 2008, was the LUCIP for Dunn Field West. See LUCIP Figure 1, *Dunn Field Land Use Restrictions*, that shows that the LUC Boundary corresponds to Dunn Field West.

*instrument to be implemented at the site.*<sup>3</sup> The fact that the LUCIP has more detail about all the LUCs, it should be not used to diminish the role of LUCs identified in the Dunn Field RODs or the LUCIP. As provided in the 2004 Dunn Field ROD:

*As part of the Remedial Design, a LUCIP will be developed. This portion of the Remedial Design will detail how the land use controls in the selected remedy will be implemented, maintained, enforced, and monitored over time. Although DLA and/or the Army may later transfer the monitoring responsibilities to another party, DLA and/or the Army shall retain ultimate responsibility for protectiveness and integrity of the remedy. As a planning document pursuant to a ROD, the LUCIP will be enforceable by any party under CERCLA.*

Furthermore, the details in the 2008 LUCIP provide that the use of fencing “*may*” be considered non-essential as a LUC after the property has been transferred from federal ownership, “*so long as the owner or its tenants occupy the Property on a regular basis.*”<sup>4</sup> Additionally, the determination of whether the fencing is “*non-essential*” or does not create an unacceptable risk to human health or the environment is to be made by Army, EPA, and the Tennessee Department of Environment and Conservation (TDEC).<sup>5</sup> Although, there is nothing in the record, including the lead agency’s July 25, 2024, letter,<sup>6</sup> that could indicate whether the current owner or tenants occupy the property on a regular basis and whether deconstruction of the fencing would or would not create an unacceptable risk.

The EPA interprets the LUCIP’s description of fencing status at Operable Unit 1 across different property transfer stages as follows: The text aims to specify that fencing removal may be considered only after property transfer, rather than implying that fencing ceases to be LUC or loses its LUC status post-transfer. While the LUCIP language could be more explicit, the EPA maintains that fencing remains an integral part of the LUCs, both before and after property transfer until the EPA, TDEC and the Army has been established a writing agreement.

Moving forward, the EPA recommends that the lead agency, if it intends to remove fencing at locations specified in both the Dunn Field ROD and the LUCIP, should develop a comprehensive analysis. This analysis should align with the language cited in the LUCIP and provide justification

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<sup>3</sup> *Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites*, EPA, OSWER 9355.0-89, December 2012. Federal facilities, especially in Region 4, began using the term LUCs instead of ICs in the late 1990s, recognizing that fencing and signage, which would be LUCs but not ICs, were also important means of controlling use at cleanup sites. The only EPA LUC or IC policy in existence at the time of the Dunn Field ROD was one from Region 4, *Assuring Land Use Controls at Federal Facilities*, EPA Region 4, April 21, 1998. This policy similarly recognizes that specific LUCs will be identified in the LUCIP and may or may not be included in the decision documents (“The LUC Implementation Plan . . . must specify the particular controls and mechanisms which will be used to achieve each identified LUC objective.” The policy further provides that the “[s]pecific means to achieve the LUC objectives *may* be included in the decision document on a case-by-case basis. In general, the specific means of achieving the LUC objectives will be included in the site-specific LUC implementation plan.” Italics added, LUC policy at pp. 4 and 6).

<sup>4</sup> LUCIP, pp. 8-9: (“After transfer, so long as the owner or its tenants occupy the Property on a regular basis, the fencing may be deconstructed without creating an unacceptable risk to human health or the environment.”).

<sup>5</sup> LUCIP, p. 9. (“This determination will be made by the Army, EPA, and TDEC.”)

<sup>6</sup> The Army’s letter merely asserts that the fencing is not requirement of the CERCLA remedy and is not required after transfer, with which EPA disagrees as explained in this letter.

for the proposed removal. Once prepared, the EPA and the TDEC will review this analysis. Based on this review, all parties can work towards reaching a consensus on whether the fencing can be classified as "*non-essential*" for the specified locations.

The EPA commends the Army for its efforts on further investigating the DDMT environmental conditions. If you have any questions about this letter, please contact me via email at [martinez-torres.fernando@epa.gov](mailto:martinez-torres.fernando@epa.gov) or at 404-695- 4991.

Sincerely,

Fernando Martinez Torres  
Remedial Project Manager  
Department of Defense Section  
Superfund & Emergency Management Division  
United States Environmental Protection Agency

**cc:** Jamie A. Woods, TDEC  
William Millar, CALIBRE  
James Ferreira, USEPA, R4  
Kevin Koporec, USEPA, R4  
Shannon Berg, USEPA, R4