

**FINDING OF SUITABILITY TO TRANSFER  
(FOST)**

**TWIN CITIES ARMY AMMUNITION PLANT  
RAMSEY COUNTY, MINNESOTA**

**February 2013**

**FINDING OF SUITABILITY TO TRANSFER  
(FOST)  
Twin Cities Army Ammunition Plant  
Arden Hills, Minnesota  
January 2013**

**1. PURPOSE**

The purpose of this Finding of Suitability to Transfer (FOST) is to document the environmental suitability of certain property at the Twin Cities Army Ammunition Plant (TCAAP) for transfer to an as yet unidentified purchaser consistent with Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 120(h) and Department of Defense (DOD) policy. In addition, the FOST includes the CERCLA Notice, Covenant, Access Provisions and other Deed Provisions; and the Environmental Protection Provisions (EPPs) necessary to protect human health and welfare and the environment after such transfer.

**2. PROPERTY DESCRIPTION**

The property to be transferred under this FOST consists of approximately 397 acres and includes 42 buildings (the Property). Portions of the Property were used for administrative purposes, residential purposes, facility support, and the production and warehousing of military munitions from 1941 until 1992. The Property does not include 30 acres at the TCAAP that will not be transferred until further investigation and/or cleanup have been completed. A site map of the Property is provided at Enclosure 1.

**3. ENVIRONMENTAL DOCUMENTATION**

A determination of the environmental condition of the Property was made based upon the TCAAP Preliminary Assessment, dated February 1988; TCAAP Environmental Site Assessment (ESA), dated 20 February 2004 (ESA); and ESA Addendum, dated February 2006, 135 PA/SI, Site I, Site K, Site C, and additional characterization data. The information provided is a result of a complete search of TCAAP files during the development of these environmental surveys.

A complete list of documents providing information on environmental conditions of the Property is attached (Enclosure 2).

**4. ENVIRONMENTAL CONDITION OF PROPERTY**

The DOD Environmental Condition of Property (ECP) category for the Property is ECP Category 4.

ECP Category 4 is defined as a property where release, disposal and/or migration of hazardous substances has occurred, and all removal or remedial actions to protect human health and the environment have been taken.

**4.1. MUNITIONS AND EXPLOSIVES OF CONCERN (MEC)**

Based on the past use of the Property for the production and warehousing of military munitions and a review of existing records and available information, there was evidence that Munitions and Explosives of

Concern (MEC) were present on the Property. The term “MEC” means military munitions that may pose unique explosives safety risks, including: (A) unexploded ordnance (UXO), as defined in 10 U.S.C. §101(e)(5); (B) discarded military munitions (DMM), as defined in 10 U.S.C. §2710(e)(2); or (C) munitions constituents (MC) (e.g., TNT, RDX), as defined in 10 U.S.C. §2710(e)(3), present in high enough concentration to pose an explosive hazard.

In 2003 and 2006, the Army conducted an inspection of the Property buildings and equipment for the presence MC in concentrations high enough to pose a potential explosive hazard. The Army conducted these inspections by visually surveying the entirety of each building and conducting analytical tests of suspect areas (e.g., walls, piping, cracks in the floor).

The Army addressed all areas determined to pose a potential explosive hazard using standard procedures (e.g., disassembly, removal, thermal treatment). Following the inspection for MC, the Army:

- Demolished Buildings 103, 120, 192A, and 192B;
- Thermally treated Buildings 129A, 130, 135, 327, 329 and 330, which consisted of indirectly heating a room or building to temperatures above explosive decomposition temperatures (ranging from 261 to 443 degrees Fahrenheit);
- Removed all munitions production equipment from the Property;
- Performed high volume/high pressure flushing of sewers and drains; and
- Conducted follow-up testing to confirm decontamination. (See Building Decontamination/Demolition, Plexus Scientific Corporation and Explosives Technologies & Services Corporation, dated February 2005 for additional information.)

Because of the munitions response activities and testing for MC that it completed, the Army has determined that the buildings and associated subsurface drains and sewers do not contain MC in concentrations high enough to pose an explosive safety hazard. The Department of Defense Explosives Safety Board (DDESB) has reviewed an Explosive Safety Submission (ESS) that identifies the munitions response activities that the Army completed at the Property. The DDESB’s approval of the protectiveness of the completed munitions response activities, without use restrictions related to MC, is documented in a memorandum dated June 29, 2007

Additional information is available in the TCAAP ESS; TCAAP 3X Building Assessment, dated July 2003; TCAAP, Ramsey County, Minnesota, Building Decontamination/Demolition Final Report, dated February 2005; and Explosive Testing and Evaluation of Buildings 104, 125, 126, 127 and 502 Report, dated January 2006. A summary of MEC discovered on the Property is provided as Notification of Munitions and Explosives of Concern at Enclosure 3. Given the past use of the Property, the EPPs will include Enclosure 3 and a MEC Notice (see Enclosure 7).

## **4.2. ENVIRONMENTAL REMEDIATION SITES**

The Property is within what has been designated as Operable Unit 2 (OU2) of the New Brighton/Arden Hills Superfund Site. Investigation and cleanup work has been conducted under the framework of a Federal Facilities Agreement, dated 1987, and signed by the Army, U.S. Environmental Protection Agency (EPA), and the Minnesota Pollution Control Agency (MPCA). Remedies were selected in the OU2 Record of Decision (ROD), dated 1997, based on an exposure scenario for a site specific industrial land use. Areas that may require but have not yet been remediated to Minnesota Tier 2 industrial SRVs are not part of the Property determined to be suitable for transfer under this FOST. Following is a summary of environmental investigation and remediation conducted at the Property:

- Site J. A portion of the sanitary sewer system servicing the production buildings, Site J, was investigated for potential contamination with hazardous substances such as trichloroethene (TCE). Sections of the sewer were cleaned. The soils and groundwater along and surrounding the sewer were sampled and analyzed. On the basis of the analytical results it was concluded that there was no release of hazardous substances to the environment. No further action was recommended in the Site J Closure Report, which was approved by the U.S. Environmental Protection Agency Region V and the Minnesota Pollution Control Agency in December 1993.
- Site I, Groundwater. At Building 502, a former production building, releases of hazardous substances resulted in limited areas of soil and groundwater contamination identified in the Installation Restoration Program investigations. For shallow groundwater, monitoring and use restrictions have been chosen as the remedy. The OU2 ROD selected a remedy of extraction and treatment, but pilot studies showed this to be infeasible. The OU2 ROD was amended accordingly. The Army will continue to be responsible for the groundwater remedy implementation at Site I. Because the groundwater has not been remediated to levels suitable for unrestricted use, the EPPs will include a groundwater use restriction. (See Enclosure 7.) The Site I areas of soil contamination are not addressed in this FOST because they have not been completely remediated to MN Tier 2 industrial Soil Reference Value (SRV).
- Site K, Groundwater. At Building 103, a former production building, releases of hazardous substances resulted in limited areas of soil and groundwater contamination identified in the Installation Restoration Program investigations. The OU2 ROD selected a remedy of extraction and treatment for shallow groundwater contamination. The system has been operating successfully since 1986 and consists of an extraction trench, treatment by air stripping and discharge to Rice Creek. The Army will continue to be responsible for the groundwater remedy implementation at Site K. Because the groundwater has not been remediated to levels suitable for unrestricted use, the EPPs will include a groundwater use restriction. (See Enclosure 7.) An area of soil contamination on Site K is not included in this FOST because it has not been determined suitable for transfer because of an iron (Fe) exceedance of MN Tier 2 industrial SRVs.
- Deep Groundwater. Releases of hazardous substances at Site D and G (not on the Property to be transferred) and at Site I resulted in contamination of groundwater beneath a portion of the Property. The OU2 ROD selected the TCAAP Groundwater Recovery System (TGRS) as the final remedy for this groundwater contamination. The TGRS has been operating since 1987 and includes 13 extraction wells along the southwest boundary of the Property and five source control wells near known contamination sources. Groundwater pumped selectively from the wells is treated through air strippers and recharged via a gravel pit not located on the Property. The TGRS has been determined to be operating properly and successfully. The Army will continue to operate the TGRS after the transfer of the Property. Because the groundwater has not been remediated to levels suitable for unrestricted use, the EPPs will include a groundwater use restriction for the entire Property. (See Enclosure 7.) As an additional control on groundwater use at the Property, the Minnesota Department of Health will be requested by the Army to establish a Special Well Construction Area governing the installation and use of wells on the Property.
- Property Soils. Soil characterization activities were performed both as part of the Superfund work and as part of the land transfer Environmental Site Assessment (ESA). Based on the reviews of historical records, the ESA soil testing was biased to locations most likely to have had releases of hazardous substances to the environment. No soil contamination above MN

Tier 2 residential SRVs was found on the approximately 44 acres of land that was previously used for residential purposes. This area is identified as the Area with Unrestricted Use on Enclosure 1 and no land use restrictions are proposed for this area other than the groundwater use restriction. No soil contamination above site-specific industrial use standards, the land use prescribed by the OU2 ROD, or the MN Tier 2 industrial SRV's was found on the remainder of the Property. This area of the Property, to be called the Restricted Area, is not appropriate for residential purposes or uses not in compliance with the Land Use Control Remedial Design (LUCRD). The EPPs, in addition to the groundwater use restriction, will include restrictions that limit uses of the Restricted Area to those that comply with the LUCRD and not for residential purposes. (See Enclosure 7.)

In order to address the groundwater and land use restrictions to be imposed on the Property, the Army will execute an Environmental Covenant pursuant to Minn. Stat. Ch. 114E and an Affidavit Concerning Real Property Contaminated with Hazardous Substances pursuant to Minn. Stat. Ch. 115B and an easement to allow the State to enforce land use control terms and conditions against the transferee(s), as well as subsequent property owner(s) or user(s) or their contractors, tenants, lessees, or other parties. Such an instrument may be incorporated by reference in the transfer deed or associated environmental covenant, and will run with the land in accordance with the State real property law and parallel to the U.S. Army's own deed restrictions.

A summary of the environmental remediation sites is provided in Enclosure 4, Notification of Hazardous Substance Storage, Release, or Disposal.

#### **4.3. STORAGE, RELEASE OR DISPOSAL OF HAZARDOUS SUBSTANCES**

Hazardous substances were stored for one year or more and released or disposed of on the Property in excess of reportable quantities specified in 40 CFR Part 373. All hazardous substance storage operations have been terminated on the Property. Any release of hazardous substances associated with the storage operations were remediated at the time of the release or as part of the Installation Restoration Program. (See Section 4.2., Environmental Remediation Sites for additional information.) A summary of the buildings or areas in which hazardous substance activities occurred is provided in Enclosure 4, Notification of Hazardous Substance Storage, Release, or Disposal. The CERCLA 120(h)(3) Notice, Description and Covenant will be included in the deed. (See Enclosure 6.)

#### **4.4. PETROLEUM AND PETROLEUM PRODUCTS**

##### **4.4.1. UNDERGROUND AND ABOVE-GROUND STORAGE TANKS (UST/AST)**

- **Current UST/AST Sites** - There are no underground and no above-ground petroleum storage tanks on the Property.
- **Former UST/AST Sites** – A total of 65 USTs and ASTs were formerly on the Property. Many of these tanks were removed prior to the date that state and federal tank regulations were implemented and lack closure documentation. As part of the ESA, 17 of the former tank locations were investigated because of evidence of leaks or releases, or because of size (300 gallons or more). Diesel Range Organics (DROs) were detected at 14 of the locations in either the subsurface soil or groundwater. The other 48 tank locations were not investigated because they were ASTs (36); closed USTs with the appropriate closure documentation (9 USTs); or tanks that did not have a record of leaks (3 USTs). (See the ESA and ESA Addendum for additional information.) The MPCA

Petroleum Remediation Program performed some additional investigation in 2010-2011. Based on that investigation they notified the Army, by letter dated December 15, 2011, that have closed the petroleum tank release site file that includes all of the property in this FOST.

A summary of the UST/AST petroleum product activities is provided in the Notification of Petroleum Products Storage, Release, or Disposal. (See Enclosure 5.)

#### **4.4.2. Non-UST/AST Storage, Release, or Disposal of Petroleum Products**

There was non-UST-AST storage of petroleum products in excess of 55-gallons for one year or more on the Property. The petroleum products were used for a variety of production and maintenance activities at the following locations: Buildings 103, 104, 111, 112, 114, 116, 135, 151,157, 190, 501, 503, 594, 961 and 962. There was no evidence of petroleum releases in excess of 55 gallons as a result of these activities. All non-UST/AST petroleum product storage operations have been terminated on the Property.

#### **4.5. POLYCHLORINATED BIPHENYLS (PCBs)**

All of the electrical transformers on the Property are owned by the Xcel Energy Company (Xcel). Prior to the transfer of ownership to Xcel, several programs had been implemented in the 1980s and 1990s to evaluate the presence of PCBs in equipment and investigate for leaks from the equipment on the Property. As part of these programs, equipment containing PCBs was cleaned or removed from the Property. There may, however, be transformers that contain PCBs remaining on the Property. Xcel is responsible for their maintenance, operation, and proper labeling in accordance with federal and state regulations. Additional information is provided in the ESA.

Insulation containing PCBs is located in the Eastern High Bay of Building 502. There is no evidence of releases to the environment from this insulation. The EPPs will include a PCB notification and covenant which requires that the transferee of the Property comply with all applicable laws and regulations for the maintenance and future removal and disposal of the PCB-containing insulation. (See Enclosure 7.)

#### **4.6. ASBESTOS**

Property wide asbestos surveys have been conducted and abatement has occurred in all of the buildings on the Property except for Buildings 105 and 502. (See the ESA for additional information.) In some of the buildings in which abatement occurred, small amounts of asbestos containing materials (ACM), such as insulation, flooring, window caulking and transite, may remain. This ACM does not pose a threat to human health or welfare of the environment in its current state, however, because all friable asbestos that posed an unacceptable risk to human health has been removed or encapsulated.

Friable asbestos has been identified in Buildings 105 and 502. Because the transfer of the Property will occur before abatement is conducted, the EPPs will include an asbestos warning and covenant which requires that the transferee of the Property undertake any and all asbestos abatement or remediation as may be required under applicable law or regulation. (See Enclosure 7.)

An underground steam supply system, no longer in use, connects most of the buildings on the Property. It is insulated with ACM. Because it is buried this ACM is not directly accessible and consequently does not present an unacceptable risk to human health in its current setting. A health risk would be posed if the insulation were disturbed such as during the demolition of buildings, removal of the piping, or excavation in the vicinity of the piping. As a precautionary measure in addition to the asbestos

warning and covenant included in the deed, the steam system piping and associated vaults have been added to the Gopher State One-Call (call before you dig program) to ensure notification of the presence of the steam piping insulated with ACM.

#### **4.7. LEAD-BASED PAINT (LBP)**

Most of the buildings on the Property were constructed in 1942. Because of their age, it is likely that they have been painted with lead-based paint (LBP) and therefore, it is presumed that all buildings on the Property contain LBP. The EPPs will include a lead-based paint warning and covenant that requires the transferee of the Property to prohibit occupancy or use of any building on the Property without complying with all applicable federal, state and local laws and regulations regarding LBP. (See Enclosure 7.)

#### **4.8. RADIOLOGICAL MATERIALS**

The following buildings on the Property were used for radiological activities: Buildings 103, 113, 120 and 502. The radiological activities included: processing, manufacturing and storage of uranyl acetylacetonate and depleted uranium. The Nuclear Regulatory Commission (NRC) licensed all regulated use of radionuclides at TCAAP. There is no evidence of any release of radiological materials at these buildings. Radiological surveys were conducted at these buildings and based on the survey results, the buildings were released by NRC for unrestricted use. Subsequently Buildings 103 and 113 were demolished. All of the licensed activities were released for unrestricted use by the NRC. The last letter from the NRC closing the file on radionuclides was sent to 3M and is dated February 2<sup>nd</sup>, 2006.

#### **4.9. RADON**

Radon surveys were conducted in 1990 and 1991 for all occupied structures and a representative number of unoccupied structures on the Property. None of the structures contained radon levels exceeding the EPA residential action level of 4 picocuries per liter (pCi/L).

#### **4.10. OTHER PROPERTY CONDITIONS**

There are no other hazardous conditions on the Property that present an unacceptable risk to human health and the environment under current conditions. VOC emissions from remediation systems and soil vapors may need to be reevaluated if a new land use/occupancy is pending.

### **5. ADJACENT PROPERTY CONDITIONS**

The following other potentially hazardous conditions exist on adjacent property: the New Brighton/Arden Hills Superfund Site environmental remediation areas. Some of the areas are shown on the site map at enclosure 1 as lease areas. Some of the remediation areas are located on the Arden Hills Army Training Site (AHATS). The Army retains responsibility for the remediation of all of these areas. The presence of the TCAAP Superfund remediation areas adjacent to the Property does not present an unacceptable risk to human health and the environment because remedies are in place and the Property will be transferred with use restrictions in place and requirements to remediate areas immediately adjacent to or surrounded by the Property to prevent exposure to contaminated soil and groundwater.

### **6. ENVIRONMENTAL REMEDIATION AGREEMENTS**

The following environmental orders/agreements are applicable to the Property: TCAAP Federal Facility Agreement, dated August 1987. All remediation activities on the Property, required by such

agreement or order, are completed or in place and operating properly and successfully (See Section 4.2). The EPPs will include a provision reserving the Army's right to conduct remediation activities if necessary in the future. (Enclosure 7).

The U.S. Environmental Protection Agency (EPA) Region V issued a Resource Conservation and Recovery Act (RCRA) permit (EPA Identification Number MND 000 819 268) to the Army in 2003 and was terminated in 2008.

## 7. REGULATORY COORDINATION

The EPA Region V and MPCA were notified of the initiation of this FOST. A previous draft of the FOST was submitted to the EPA Region V and MPCA for review and comment. Comments received were incorporated, as appropriate. A copy of the comments and the Army Response will be provided at Enclosure 9.

## 8. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE

The environmental impacts associated with the proposed transfer of the Property were analyzed in accordance with the National Environmental Policy Act (NEPA). The results of this analysis are documented in an Environmental Assessment dated January 26, 2011.

## 9. FINDING OF SUITABILITY TO TRANSFER

Based on the above information, I conclude that all removal or remedial actions necessary to protect human health and the environment have been taken and the Property is transferable under CERCLA Section 120(h)(3). In addition, all Department of Defense requirements to reach a finding of suitability to transfer have been met, subject to the terms and conditions set forth in the attached Environmental Protection Provisions that shall be included in the deed for the Property. The deed will also include the CERCLA Section 120(h)(3) Notice, Covenant, and Access Provisions and Other Deed Provisions. Finally, the hazardous substance notification (Enclosure 4) shall be included in the deed as required under the CERCLA Section 120(h) and DOD FOST Guidance.



William J. O'Donnell, II  
Chief, Reserve, Industrial, and Medical Branch  
Army Base Realignment and Closure Division

FEB 20 2013

9 Enclosures

Encl 1 -- Site Map

Encl 2 -- List of Environmental Studies

Encl 3 -- Notification of Munitions and Explosives of Concern

Encl 4 -- Notification of Hazardous Substance Storage, Release, or Disposal

Encl 5 -- Notification of Petroleum Products Storage, Release, or Disposal

- Encl 6 -- CERCLA Notice, Covenant, and Access Provisions, and Other Deed Provisions
- Encl 7 -- Environmental Protection Provisions
- Encl 8 -- Environmental Covenant and Affidavit Concerning Real Property Contaminated with Hazardous Substances and Affidavit Concerning Real Property Contaminated with Hazardous Substances
- Encl 9 -- Regulatory/Public Comments and Army Response

**ENCLOSURE 1**

**SITE MAP**



**TWIN CITIES ARMY AMMUNITION PLANT**  
397 Acre FOST Area

**Wenck**  
Engineers - Scientists  
Business Professionals  
www.wenck.com  
1800 Pioneer Creek Center  
Maple Plain, MN 55359-0429  
1-800-472-2232

JAN 2013

## ENCLOSURE 2

### LIST OF ENVIRONMENTAL STUDIES

TCAAP Preliminary Assessment, (Argonne National Laboratory, February 1988)

Final Preliminary Assessment 135 Primer/Tracer Area, (Alliant Techsystems, December 2001)

Summary Report for 135 Primer/Tracer Area Site Inspection Investigation, (Techumseh/Wenck January 2005)

Remedial Action Completion and Shallow Soil Sites Close Out Report, Site C Activities, Volume VI, Revision 2. (Shaw, May 29, 2009)

Final Report, Phase I - PCB Sampling Program, Building 502 & Vicinity, TCAAP. (Conestoga-Rovers & Associates, September 1, 1983).

Final Report, Remedial PCB Investigation/Feasibility Study, Building 502 and Vicinity, TCAAP. (Conestoga-Rovers & Associates, June 1984)

Final Engineering Report, PCB Remediation, Building 502, TCAAP. (Conestoga-Rovers & Associates, March 1987)

TCAAP Operable Unit 2, Feasibility Study, Sites I and K Field Investigation Data Report. (Conestoga-Rovers & Associates, May 1994)

Predesign Investigation Work Plan, Site I, TCAAP. (Conestoga-Rovers & Associates, January 1999)

Final Report, Phase I - Sampling Program, Building 103, Storm Sewer Discharge, TCAAP (Conestoga-Rovers & Associates, October 1983)

Final Report, Remedial Investigation, Building 103 Storm Sewer Discharge, TCAAP. (Conestoga-Rovers & Associates, August 1984)

TCAAP Operable Unit 2, Feasibility Study, Sites I and K Field Investigation Data Report. (Conestoga-Rovers & Associates, May 1994).

Predesign Investigation Report, Site K, TCAAP. (Conestoga-Rovers & Associates, December 2001).

Removal Action Completion Report, Site K, TCAAP. (Conestoga-Rovers & Associates, August, 2009)

Environmental Site Assessment for 774-Acre Excess Parcel Phase I and Phase II Report, Volume 1 and Volume 2, Final, TCAAP (Plexus Scientific Corporation, February 20, 2004).

Addendum Report for Phase I and Phase II Environmental Site Assessment, TCAAP. (TWISS, February 2006).

Supplemental Remedial Investigation, Field Sampling Plan, TCAAP, 585-Acre Transfer Property (Tetra Tech, September, 2008)

Operable Unit 2 (OU2) Land Use Control Remedial Design (LUCRD), (Wenck Associates, Inc., September 2001)

**ENCLOSURE 3**

**NOTIFICATION OF MUNITIONS AND EXPLOSIVES OF CONCERN (MEC)\***

<b>Site</b>	<b>Type of MEC</b>	<b>Date of MEC Activity</b>	<b>Munitions Response Actions</b>
Buildings 103, 120, 192A, and 192B	Munitions Constituents	1941 - 1992	Buildings 103, 120, 192A and 192B were used for the production of military munitions. The buildings were demolished.
Buildings 129A, 130, 135, 327, 329, and 330	Munitions Constituents	1941 - 1992	Buildings 129A, 130, 135, 327, 329, and 330 were used for the production of military munitions and were determined to have munitions constituents present in high enough concentrations to present an explosives hazard. In 2004 these buildings were remediated to remove the explosive hazard.
Sewers and Drains	Munitions Constituents	1941 - 1992	The sewers and drains serviced buildings used for the production of military munitions and were determined to be at risk of having munitions constituents present in high enough concentrations to present an explosives hazard. In 2004 these sewers and drains were high volume/high pressure flushed to remove the explosive hazard.
<p>* Munitions and Explosives of Concern (MEC). This term, which distinguishes specific categories of military munitions that may pose unique explosives safety risks, means: (A) Unexploded Ordnance (UXO), as defined in 10 U.S.C. §101(e)(5); (B) discarded military munitions (DMM), as defined in 10 U.S.C. §2710(e)(2); or (C) munitions constituents (MC) (e.g., TNT, RDX), as defined in 10 U.S.C. §2710(e)(3), present in high enough concentration to pose and explosive hazard.</p>			

**ENCLOSURE 4**

**NOTIFICATION OF HAZARDOUS SUBSTANCE STORAGE, RELEASE OR DISPOSAL**

Site	Name of Hazardous Substance(s)	Date of Storage, Release, or Disposal	Remedial Actions
Restricted Area	Trichloroethene 1,1-dichloroethene 1,2-dichloroethene 1,1-dichloroethane 1,2-dichloroethane 1,1,1-trichloroethane Lead Copper Iron Poly Aromatic Hydrocarbons	Unknown	The results of site characterization showed that a portion of the Property meets the remediation goals for industrial use without any further remedial action, but may not meet the standards for residential use. This area includes portions of Restoration Program Site I and Site K and is designated as the Restricted Area. Its use will be restricted to industrial purposes. See the Operable Unit 2 Record of Decision for additional information.
Site J	Trichloroethene Heavy Metals	Unknown	The soils and groundwater along and surrounding the sanitary sewer servicing the production buildings were characterized. No further action was recommended in the Site J Closure Report, which was approved by the U.S. Environmental Protection Agency Region 5 and the Minnesota Pollution Control Agency in December 1993.
Groundwater, Operable Unit 2	Trichloroethene cis-1,2-dichloroethene 1,1-dichloroethene 1,1-dichloroethane 1,1,1-trichloroethane 1,1,2-trichloroethane	Unknown	As part of the Operable Unit 2 remedy, a groundwater containment pump and treat system was completed in 1987. The TCAAP Groundwater Recovery System (TGRS) includes 13 extraction wells along the southwest boundary of the Property, and five source control wells near known contamination sources. The TGRS has been determined to be operating properly and successfully. The U.S. Department of the Army (Army) will continue to operate the TGRS after the Property transfer. Also as part of the Operable Unit 2 remedy, a groundwater containment pump and treat system was implemented at Site K and has been determined to be operating properly and successfully. In addition, the OU2 ROD was amended to make monitoring and use restrictions the remedy for Site I. See the

			Operable Unit 2 Record of Decision; TCAAP Environmental Site Assessment, dated 20 February 2004 (ESA); and ESA Addendum, dated February 2006, for additional information.
Building 502 Tank 43	Trichloroethene	1941 – Early 1990s	Trichloroethene was stored in a 20,000 gallon above ground storage tank for use in the production of military munitions and munitions constituents. No remedial actions were required.
All Buildings	Paints, solvents, metals and chemicals associated with munitions manufacture and facilities operations.	1941 - 2005	Records regarding the quantities and specific identity of hazardous substances stored in the buildings are incomplete. However, due to the long history of industrial use of the buildings, these types of hazardous substances are believed to have been stored and used. Any releases associated with the storage of these hazardous substances were remediated at the time of the releases or as part of the Installation Restoration Program. See the TCAAP Preliminary Assessment dated February 1988 for additional information.

The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or 'Superfund') 42 U.S.C. §9620(h). This table provides information on the storage of hazardous substances for one year or more in quantities greater than or equal to 1,000 kilograms or the hazardous substance's CERCLA reportable quantity (which ever is greater). In addition, it provides information on the known release of hazardous substances in quantities greater than or equal to the substances CERCLA reportable quantity. See 40 CFR Part 373.

## ENCLOSURE 5

### NOTIFICATION OF PETROLEUM PRODUCTS STORAGE, RELEASE, OR DISPOSAL

Building Number	Tank Number	Type	Volume (gallons)	Contents	Installation Date	Removal Date	Remedial Actions
101	1	UST	2,100	Diesel	1943	July 1985	Upon removal holes were found in the tank. Discolored soil was noted but no odor. No contaminated soils were reported. Minnesota Pollution Control Agency (MPCA) approved backfill.
102	2	UST	2,100	Diesel	1953	July 1985	Upon removal holes were found in the tank. Discolored soil was noted but no odor. No contaminated soils were reported. MPCA approved backfill.
118	22	AST	265	Diesel	1985	1990	A three gallon fuel leak from a hole in the bottom of the tank reported in 1991.
117B	19	AST	265	Diesel	May 1985	1990	None
117B	20	AST	265	Diesel	Unknown	May 1985	Tank was reported leaking. Ten cubic feet of contaminated soils were removed.
117C	21	AST	265	Diesel	Unknown	1990	None
113	6	AST	265	Diesel	1983	Unknown	None
115	17	AST	375	Diesel	1941	Unknown	None
115	44	AST	265	Diesel	1985	January 1987	Tank reportedly leaked. 3 cubic feet of contaminated soils were removed.
115	83	AST	265	Diesel	January 1985	1990	None

<b>Building Number</b>	<b>Tank Number</b>	<b>Type</b>	<b>Volume (gallons)</b>	<b>Contents</b>	<b>Installation Date</b>	<b>Removal Date</b>	<b>Remedial Actions</b>
114 (Fueling area)	7	UST	15,000	Leaded Gasoline	1951	October 1986	Four cubic yards of contaminated soils were removed.
114 (Fueling area)	8	UST	15,000	Unleaded Gasoline	195	October 1986	20 cubic yards of contaminated soils were removed.
114 (Fueling area)	9	UST	2,000	Diesel	May 1980	October 1986	24 cubic yards of contaminated soils were removed.
114 (Fueling area)	10	UST	10,500	Heating Oil	August 1972	June 1986	No contaminated soil was identified during removal.
114 (Fueling area)	11	AST	265	Waste Oil	November 1983	1990	None
114 (Fueling area)	12	UST	2,000	Diesel	1951	May 1980	Nothing reported during removal.
114 (Fueling area)	13	UST	265	Waste oil	1951	November 1983	120 cubic feet of contaminated soils were removed.
114 (Fueling area)	14	UST	10,500	Heating Oil	1951	August 1972	Nothing reported during removal.
114 (Fueling area)	15	UST	15,000	Gasoline	October 1986	October 1993	Soil was removed and groundwater monitoring was conducted. Closed by MPCA on May 31, 1996.
114 (Fueling area)	16	UST	15,000	Gasoline	October 1986	October 1993	Soil was removed and groundwater monitoring was conducted. Closed by MPCA on May 31, 1996.
114 (Fueling area)	81	UST	6,000	Diesel	October 1986	October 1993	Soil was removed and groundwater monitoring was conducted. Closed by MPCA on May 31, 1996.

<b>Building Number</b>	<b>Tank Number</b>	<b>Type</b>	<b>Volume (gallons)</b>	<b>Contents</b>	<b>Installation Date</b>	<b>Removal Date</b>	<b>Remedial Actions</b>
155	25	UST	28,400	No. 6 Fuel Oil	1941	1991	Free product was discovered. Soil removal and dewatering were conducted. Closed by MPCA on Dec. 18, 1996.
155	26	UST	28,400	No. 6 Fuel Oil	1941	1991	Free product was discovered. Soil removal and dewatering were conducted. Closed by MPCA on Dec. 18, 1996.
155	27	UST	29,900	No. 6 Fuel Oil	1941	1991	Free product was discovered. Soil removal and dewatering were conducted. Closed by MPCA on Dec. 18, 1996.
155	28	UST	28,400	No. 6 Fuel Oil	1941	1991	Free product was discovered. Soil removal and dewatering were conducted. Closed by MPCA on Dec. 18, 1996.
155	29	UST	28,400	No. 6 Fuel Oil	1941	1991	Free product was discovered. Soil removal and dewatering were conducted. Closed by MPCA on Dec. 18, 1996.
155	30	AST	94,800	No. 6 Fuel Oil	1941	1993-96	Several spills and overfills were reported.
155	31	AST	87,800	No. 6 Fuel Oil	1941	1993-96	Several spills and overfills were reported.
155	32	AST	67,700	No. 6 Fuel Oil	1941	1993-96	Several spills and overfills were reported.
103	3	AST	500	Gasoline	Unknown	Unknown	None
103	4	AST	500	Gasoline	Unknown	Unknown	None
103	5	AST	300	Diesel	Unknown	Unknown	None

<b>Building Number</b>	<b>Tank Number</b>	<b>Type</b>	<b>Volume (gallons)</b>	<b>Contents</b>	<b>Installation Date</b>	<b>Removal Date</b>	<b>Remedial Actions</b>
5186	57	AST	265	Heating Oil	1942	1987	None
5200	58	AST	265	Heating Oil	1942	1987	None
5220	59	UST	715	Heating Oil	1942	1987	A leak was reported. The Leak Report was closed by MPCA on Feb. 10, 1992.
5232	60	AST	265	Heating Oil	1942	1987	None
5240	61	AST	265	Heating Oil	1942	1987	None
5256	62	AST	265	Heating Oil	1942	1987	None
5265	63	AST	265	Heating Oil	1942	1987	None
5282	64	AST	265	Heating Oil	1942	1987	None
5292	65	AST	265	Heating Oil	1942	1987	None
5302	66	AST	265	Heating Oil	1940	1987	None
5320	67	AST	265	Heating Oil	1942	1987	None
5324	68	AST	265	Heating Oil	1942	1987	None
5330	69	AST	265	Heating Oil	1942	1987	None
5342	70	AST	265	Heating Oil	1940	1987	None
5342	71	AST	265	Heating Oil	1940	1987	None

Building Number	Tank Number	Type	Volume (gallons)	Contents	Installation Date	Removal Date	Remedial Actions
North of Site C		Unknown	Unknown	Oil	1941	1945-47	None
117A	18	AST	265	Diesel	Unknown	Unknown	None
176	33	AST	265	Diesel	Unknown	April 1985	No contaminated soil was noted during removal.
557	51	UST	2,200	Gasoline/Diesel	1941	July 1985	100 cubic feet of contaminated soils were removed.
501	36	AST	27,200	Quench Oil	1941	1992	None
501	38	UST	2,750	Waste Oil	1941	August 1985	18 cubic feet of contaminated soils were removed.
501	39	UST	2,100	Heating Oil	1941	August 1985	Holes were noted at end of tank. 50 cubic feet of contaminated soils were removed.
502	40	UST	2,200	Gasoline	1941	August 1985	Three holes were noted on bottom of tank. No soil contamination noted.
502	41	AST	265	Diesel	N/A	August 1985	None
502	42	AST	20,000	Cutting Oil	1941	Unknown	None
962	55	AST	300	Gasoline	Unknown	Unknown	None
961	56	AST	300	Gasoline	Unknown	Unknown	None
502	75	AST	550	Gasoline	September 1985	Unknown	None
502	82	AST	2,000	Hydraulic Oil	1941	January 1991	None
Gate 25	37	AST	265	Heating Oil	1941	Unknown	None

## **ENCLOSURE 6**

### **CERCLA NOTICE, COVENANT, AND ACCESS PROVISIONS AND OTHER DEED PROVISIONS**

The following CERCLA Notice, Covenant, and Access Provisions along with the Other Deed Provisions, will be placed in the deed to ensure protection of human health and the environment and to preclude any interference with ongoing or completed remediation activities.

#### **1. CERCLA NOTICE**

For the Property, the Grantor provides the following notice, description, and covenant:

A. Pursuant to Section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(3)(A)(i)(I) and (II)), available information regarding the type, quantity, and location of hazardous substances and the time at which such substances were stored, released, or disposed of, as defined in Section 120(h), is provided in Exhibit FOST Enclosure 4, attached hereto and made a part hereof. Additional information regarding the storage, release, and disposal of hazardous substances on the Property has been provided to the Grantee, receipt of which the Grantee hereby acknowledges. Such additional information includes, but is not limited to, the following documents: Preliminary Assessment, dated February 1988, Environmental Site Assessment, dated February 2004, Environmental Site Assessment Addendum, dated February 2006, and Finding of Suitability to Transfer, dated February 2013..

B. Pursuant to Section 120(h)(3)(A)(i)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(3)(A)(i)(III)), a description of the remedial action taken, if any, on the Property is provided in FOST Enclosure 4, attached hereto and made a part hereof. Additional information regarding the remedial action taken has been provided to the Grantee, receipt of which the Grantee hereby acknowledges. Such additional information includes, but is not limited to, the following documents: Operable Unit 1 Record of Decision, Operable Unit 2 Record of Decision and Operable Unit 3 Record of Decision.

#### **2. CERCLA COVENANT**

Pursuant to Section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(3)(A)(ii) and (B)), the United States warrants that:

A. All remedial action necessary to protect human health and the environment with respect to any hazardous substance identified pursuant to Section 120(h)(3)(A)(i)(I) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 remaining on the Property has been taken before the date of this Deed, and

B. Any additional remedial action found to be necessary for contamination identified at concentrations that exceed the cleanup criteria established in the New Brighton/Arden Hills OU2 Record of Decision after the date of this Deed shall be conducted by the United States.

This warranty shall not apply in any case in which the person or entity to whom the Property is transferred is a potentially responsible party with respect to such Property. For purposes of this warranty, Grantee shall not be considered a potentially responsible party solely due to the presence of a hazardous substance

remaining on the Property on the date of this instrument, provided that Grantee has not caused or contributed to a release of such hazardous substance.

### **3. RIGHT OF ACCESS**

A. Pursuant to Section 120(h)(3)(A)(iii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(3)(A)(iii)), the United States retains and reserves a perpetual and assignable easement and right of access on, over, and through the Property, to enter upon the Property in any case in which a remedial action or corrective action is found to be necessary on the part of the United States, without regard to whether such remedial action or corrective action is on the Property or on adjoining or nearby lands. Such easement and right of access includes, without limitation, the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring, test-pitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for the United States to meet its responsibilities under applicable laws and as provided for in this instrument. Such easement and right of access shall be binding on the Grantee, its successors and assigns, and shall run with the land.

B. In exercising such easement and right of access, the United States shall provide the Grantee or its successors or assigns, as the case may be, with reasonable notice of its intent to enter upon the Property and exercise its rights under this covenant, which notice may be severely curtailed or even eliminated in emergency situations. The United States shall use reasonable means that do not result in significant additional costs to the United States, to avoid or minimize interference with the Grantee's and the Grantee's successors' and assigns' quiet enjoyment of the Property. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the Property at a reasonable charge to the United States. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the Grantee nor its successors and assigns, for the exercise of the easement and right of access hereby retained and reserved by the United States.

C. In exercising such easement and right of access, neither the Grantee nor its successors and assigns, as the case may be, shall have any claim at law or equity against the United States or any officer or employee of the United States based on actions taken by the United States or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this clause: Provided, however, that nothing in this paragraph shall be considered as a waiver by the Grantee and its successors and assigns of any remedy available to them under the Federal Torts Claims Act.

### **4. "AS IS"**

A. The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property and accepts the condition and state of repair of the subject Property. The Grantee understands and agrees that the Property and any part thereof is offered "AS IS" without any representation, warranty, or guaranty by the Grantor as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose(s) intended by the Grantee, and no claim for allowance or deduction upon such grounds will be considered.

B. No warranties, either express or implied, are given with regard to the condition of the Property, including, without limitation, whether the Property does or does not contain asbestos or lead-based paint. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any asbestos, lead-based paint, or other conditions on the Property. The failure of the Grantee to inspect or to exercise due diligence to be fully informed as to the condition of all or any portion of the Property offered, will not constitute grounds for any claim or demand against the United States.

C. Nothing in this “As Is” provision will be construed to modify or negate the Grantor’s obligation under the CERCLA Covenant or any other statutory obligations.

## **5. HOLD HARMLESS**

A. To the extent authorized by law, the Grantee, its successors and assigns, covenant and agree to indemnify and hold harmless the Grantor, its officers, agents, and employees from (1) any and all claims, damages, judgments, losses, and costs, including fines and penalties, arising out of the violation of the Notices, Use Restrictions, and Restrictive Covenants in this Deed by the Grantee, its successors and assigns, and (2) any and all claims, damages, and judgments arising out of, or in any manner predicated upon, exposure to asbestos, lead-based paint, or other condition on any portion of the Property after the date of conveyance.

B. The Grantee, its successors and assigns, covenant and agree that the Grantor shall not be responsible for any costs associated with modification or termination of the Notices, Use Restrictions, and Restrictive Covenants in this Deed, including without limitation, any costs associated with additional investigation or remediation of asbestos, lead-based paint, or other condition on any portion of the Property.

C. Nothing in this Hold Harmless provision will be construed to modify or negate the Grantor’s obligation under the CERCLA Covenant or any other statutory obligations.

## **6. POST-TRANSFER DISCOVERY OF CONTAMINATION**

A. If an actual or threatened release of a hazardous substance or petroleum product is discovered on the Property after the date of conveyance, Grantee, its successors or assigns, shall be responsible for such release or newly discovered substance unless Grantee is able to demonstrate that such release or such newly discovered substance was due to Grantor’s activities, use, or ownership of the Property. If the Grantee, its successors or assigns believe the discovered hazardous substance is due to Grantor’s activities, use or ownership of the Property, Grantee will immediately secure the site and notify the Grantor of the existence of the hazardous substances, and Grantee will not further disturb such hazardous substances without the written permission of the Grantor.

B. Grantee, its successors and assigns, as consideration for the conveyance of the Property, agree to release Grantor from any liability or responsibility for any claims arising solely out of the release of any hazardous substance or petroleum product on the Property occurring after the date of the delivery and acceptance of this Deed, where such substance or product was placed on the Property by the Grantee, or its successors, assigns, employees, invitees, agents or contractors, after the conveyance. This paragraph shall not affect the Grantor’s responsibilities to conduct response actions or corrective actions that are required by applicable laws, rules and regulations, or the Grantor’s indemnification obligations under applicable laws.

## **7. ENVIRONMENTAL PROTECTION PROVISIONS**

The Environmental Protection Provisions are at FOST Enclosure 7, which is attached hereto and made a part hereof. The Grantee shall neither transfer the Property, lease the Property, nor grant any interest, privilege, or license whatsoever in connection with the Property without the inclusion of the Environmental Protection Provisions contained herein, and shall require the inclusion of the Environmental Protection Provisions in all further deeds, easements, transfers, leases, or grant of any interest, privilege or license.

## **ENCLOSURE 7**

### **ENVIRONMENTAL PROTECTION PROVISIONS**

The following conditions, restrictions, and notifications will be attached, in a substantially similar form, as an exhibit to the deed and be incorporated therein by reference in order to ensure protection of human health and the environment.

#### **1. FEDERAL FACILITY AGREEMENT**

The Grantor acknowledges that the Twin Cities Army Ammunition Plant (TCAAP) has been identified as a National Priorities List (NPL) site under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. The Grantee acknowledges that the Grantor has provided it with a copy of the TCAAP Federal Facility Agreement (FFA) dated 1987. For so long as the Property remains subject to the FFA, the Grantee, its successors and assigns, agree that they will not interfere with United States Department of the Army activities required by the FFA. In addition, should any conflict arise between the FFA and any amendment thereto and the Deed provisions, the FFA provisions will take precedence. The Grantor assumes no liability to the Grantee, its successors and assigns, should implementation of the FFA interfere with their use of the Property.

#### **2. LAND USE RESTRICTIONS**

A. The United States Department of the Army has undertaken careful environmental study of the Property and concluded that the land use restrictions set forth below are required to ensure protection of human health and the environment. The Grantee, its successors or assigns, shall not undertake nor allow any activity or use of the Property that would violate the land use restriction contained herein.

- (1) Land Use Restriction. The Grantee, its successors and assigns, shall use the Restricted Area solely for activities compliant with the LUCRD and not for residential purposes. For purposes of this provision, residential use includes, but is not limited to, single family or multi-family residences; child care facilities; and nursing home or assisted living facilities; and any type of education purpose for children or young adults in grades kindergarten through 12.
- (2) Ground Water Restriction. The Grantee, its successors and assigns, shall not access or use ground water underlying the Property for any purpose. For the purpose of this restriction, "ground water" shall have the same meaning as in Section 101(12) of CERCLA.
- (3) Groundwater Remediation Infrastructure Restriction. There shall be no disturbance, removal or interference with the infrastructure needed for the groundwater remedies. Such infrastructure includes, but is not limited to monitoring wells, extraction wells, treatment equipment, and water conveyances.

B. Modifying Restrictions. Nothing contained herein shall preclude the Grantee, its successors or assigns, from undertaking, in accordance with applicable laws and regulations and without any cost to the Grantor, such additional action necessary to allow for other less restrictive use of the Property. Prior to such use of the Property, Grantee shall consult with and obtain the approval of the Grantor, the Minnesota Pollution Control Agency (MPCA) and the United States Environmental Protection Agency (EPA) Region V. Upon the Grantee's obtaining the approval of

the Grantor, MPCA and EPA Region V, the Grantor agrees to record an amendment hereto. This recordation shall be the responsibility of the Grantee and at no additional cost to the Grantor. The property recipient shall sign and record an Environmental Covenant and Easement. The Environmental Covenant and Easement will be prepared and signed by Grantee and MPCA in a form substantially consistent with FOST Enclosure\_ 8. The Environmental Covenant and Easement will be recorded within 10 days of the property's transfer by deed. These restrictions will be in effect until the deed provisions are terminated, removed, or modified as specified in an appropriate CERCLA decision document and protectiveness of human health and the environment can be assured by the modified restrictions or additional restrictions, if necessary.

### **3. NOTICE OF THE POTENTIAL PRESENCE OF MUNITIONS AND EXPLOSIVES OF CONCERN (MEC)**

A. The Grantee is hereby notified that due to the former use of the Property as a military installation, the Property may contain munitions and explosives of concern (MEC). The term MEC means military munitions that may pose unique explosives safety risks, including: (A) unexploded ordnance (UXO), as defined in 10 U.S.C. §101(e)(5); (B) discarded military munitions (DMM), as defined in 10 U.S.C. §2710(e)(2); or (C) munitions constituents (MC) (e.g., TNT, RDX), as defined in 10 U.S.C. §2710(e)(3), present in high enough concentration to pose and explosive hazard.

B. The Property was previously used for the production and warehousing of military munitions. In 2003 and 2006, the U.S. Department of the Army conducted an inspection of the Property buildings and equipment for the presence MC in concentrations high enough to pose a potential explosive hazard. All areas determined to pose a potential explosive hazard were addressed using standard procedures (e.g., disassembly, removal, thermal treatment). A summary of MEC discovered on the Property is provided in FOST Enclosure 3.

C. The Grantor represents that, to the best of its knowledge, no MEC is currently present on the Property. Notwithstanding the Grantor's determination, the parties acknowledge that there is a possibility that MEC may exist on the Property. If the Grantee, any subsequent owner, or any other person should find any MEC on the Property, they shall immediately stop any intrusive or ground-disturbing work in the area or in any adjacent areas and shall not attempt to disturb, remove or destroy it, but shall immediately notify the Local Police Department so that appropriate explosive ordnance disposal personnel can be dispatched to address such MEC as required under applicable law and regulations.

#### **D. Easement and Access Rights.**

(1) The Grantor reserves a perpetual and assignable right of access on, over, and through the Property, to access and enter upon the Property in any case in which a munitions response action is found to be necessary, or such access and entrance is necessary to carry out a munitions response action on adjoining property. Such easement and right of access includes, without limitation, the right to perform any additional investigation, sampling, testing, test-pitting, surface and subsurface clearance operations, or any other munitions response action necessary for the United States to meet its responsibilities under applicable laws and as provided for in this Deed. This right of access shall be binding on the Grantee, its successors and assigns, and shall run with the land.

(2) In exercising this easement and right of access, the Grantor shall give the Grantee or the then record owner, reasonable notice of the intent to enter on the Property, except in emergency situations. Grantor shall use reasonable means, without significant additional cost to the Grantor, to avoid and/or minimize interference with the Grantee's and the Grantee's successors' and assigns' quiet enjoyment of the

Property. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the property at a reasonable charge to the United States. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the Grantee nor its successors and assigns, for the exercise of the easement and right of access hereby retained and reserved by the United States.

(3) In exercising this easement and right of access, neither the Grantee or its successors and assigns, as the case may be, shall have any claim at law or equity against the United States or any officer, employee, agent, contractor of any tier, or servant of the United States based on actions taken by the United States or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this Paragraph. In addition, the Grantee, its successors and assigns, shall not interfere with any munitions response action conducted by the Grantor on the Property.

E. The Grantee acknowledges receipt of the TCAAP Explosive Safety Submission dated February 2007, approved 10 July 2007..

#### **4. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT**

A. The Grantee is hereby informed and does acknowledge that friable or non-friable asbestos or asbestos containing material (ACM) has been found on the Property. The Property may also contain improvements, such as buildings, facilities equipment, and pipelines, above and below the ground, that contain friable and non-friable asbestos or ACM. The Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency have determined that unprotected or unregulated exposure to airborne asbestos fibers increases the risk of asbestos-related diseases, including certain cancers that can result in disability or death.

B. The following buildings on the Property have been determined to contain friable asbestos: 105 and 502. The Grantee agrees to undertake any and all asbestos abatement or remediation in the aforementioned buildings that may be required under applicable law or regulation at no expense to the Grantor. The Grantor has agreed to transfer said buildings to the Grantee, prior to remediation or abatement of asbestos hazards, in reliance upon the Grantee's express representation and covenant to perform the required asbestos abatement or remediation of these buildings.

C. The Grantee covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos. The Grantee agrees to be responsible for any future remediation or abatement of asbestos found to be necessary on the Property to include ACM in or on buried pipelines that may be required under applicable law or regulation.

D. The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property as to its asbestos and ACM condition and any hazardous or environmental conditions relating thereto. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any asbestos or ACM hazards or concerns.

#### **5. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT (LBP) AND COVENANT AGAINST THE USE OF THE PROPERTY FOR RESIDENTIAL PURPOSES**

A. The Grantee is hereby informed and does acknowledge that all buildings on the Property, which were constructed or rehabilitated prior to 1978, are presumed to contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Every purchaser of any interest in Residential Real Property on which a residential dwelling was built prior to 1978 is notified that there is a

risk of exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning.

B. The Grantee covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on the Property as Residential Property, as defined under 24 Code of Federal Regulations Part 35, without complying with this section and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. Prior to permitting the occupancy of the Property where its use subsequent to sale is intended for residential habitation, the Grantee specifically agrees to perform, at its sole expense, the United States Department of the Army's abatement requirements under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992).

C. The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property as to its lead-based paint content and condition and any hazardous or environmental conditions relating thereto. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any lead-based paint hazards or concerns.

## **6. PCB NOTIFICATION AND COVENANT**

A. The Grantee is hereby informed and does acknowledge that polychlorinated biphenyls (PCBs) exist on the Property to be conveyed, described as follows: PCB containing insulation located in the Eastern High Bay of Building 502. Any PCB contamination or spills related to this insulation have been properly remediated prior to conveyance.

B. The Grantee covenants and agrees that its continued possession, use and management of any PCBs and PCB-containing equipment and insulation will be in compliance with all applicable laws relating to PCBs. The Grantee agrees to be responsible for any future remediation of PCB contamination from PCB-containing insulation found to be necessary on the Property.

C. The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property as to the presence of PCBs and PCB-containing equipment and insulation and any hazardous or environmental conditions relating thereto. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any PCB hazards or concerns.

## ENCLOSURE 8

### ENVIRONMENTAL COVENANT AND EASEMENT

[space above reserved for recording information]

### ENVIRONMENTAL COVENANT AND EASEMENT

This Environmental Covenant and Easement (“Environmental Covenant”) is executed pursuant to the Uniform Environmental Covenants Act, Minn. Stat. ch. 114E (2010) (“UECA”) in connection with an environmental response project approved by the Minnesota Pollution Control Agency.

#### 1. Grantor And Property Description.

##### A. Owner and Legal Description of Property.

The [Ramsey County] is the fee owner of certain real property located at Ramsey County, Minnesota (hereinafter the “Property”), shown on Exhibit 1 and legally described as follows:

[incorporate legal description here; if description is lengthy may refer here to an attachment that sets forth the legal description].

##### B. Grantor.

The [Ramsey County], is the Grantor of this Environmental Covenant.

#### 2. Grant of Covenant; Covenant Runs With The Land.

Grantor does hereby Covenant and Declare that the Property shall be subject to the Activity and Use Restrictions and associated terms and conditions set forth in this Environmental Covenant including the Easement in Paragraph 9, and that these Activity and Use Restrictions and associated terms and conditions constitute covenants which run with the Property and which shall be binding on Grantor, its heirs, successors and assigns, and on all present and future Owners of the Property and all persons who now or hereafter hold any right, title or interest in the Property. An Owner is bound by this Environmental Covenant during the time when the Owner holds fee title to the Property. Any other person that holds any right, title or interest in or to the Property is bound by this Environmental Covenant during the time the person holds the right, title or interest. Subject to Paragraph 14.D, an Owner ceases to be bound by this Environmental Covenant when the Owner conveys fee title to another person, and any other person that holds any

right, title or interest in or to the Property ceases to be bound when the person conveys the right, title or interest to another person.

### **3. Environmental Agency; Grantee and Holder of Environmental Covenant; Acceptance of Interest in Real Property.**

#### **A. Environmental Agency.**

The Minnesota Pollution Control Agency (“MPCA”) is the environmental agency with authority to approve this Environmental Covenant under UECA.

#### **B. Grantee and Holder; Acceptance of Interest In Property.**

The MPCA is the Grantee and Holder of the interest in real property conveyed by this Environmental Covenant. MPCA has authority to acquire an interest in real property, including an Environmental Covenant, for response action purposes under Minn. Stat. § 115B.17, subd. 15. MPCA’s signature on this Environmental Covenant constitutes approval of this Environmental Covenant under UECA and acceptance of the interest in real property granted herein for purposes of Minn. Stat. § 115B.17, subd. 15.

### **4. Environmental Response Project.**

The Property is the location of releases or threatened releases of hazardous substances, or pollutants or contaminants that are addressed by an environmental response project under the MPCA Superfund Program, Minn. Stat. §115B.01 - 115B.20. MPCA has determined that an Environmental Covenant is needed for the Property because concentrations of various contaminants in the soil and groundwater at the Property are above levels that allow for unlimited use or unrestricted exposure.

### **5. Statement of Facts.**

#### **A. Facts About the Release and Response Actions.**

In 1941, the United States War Department, through its Department of the Army, acquired approximately four square miles of land in Arden Hills, Minnesota and commenced construction of the Twin Cities Army Ammunition Plant (“TCAAP”) with a primary mission to produce small-caliber ammunition and related materials. Production levels varied over time beginning in 1942 and ceasing in 2005. The production operations resulted in the release of hazardous substances into the environment at and from TCAAP. In addition, the Army is the owner or operator of petroleum storage tanks on the Property that released petroleum into the environment.

In 1983, the site was placed on the National Priorities List (NPL) as the New Brighton/Arden Hills/TCAAP Superfund Site. In 1987, the Army, U.S. Environmental Protection Agency (USEPA) and the Minnesota Pollution Control Agency (MPCA) entered

into a Federal Facilities Agreement (FFA) requiring investigation and appropriate remedial action at the Site and establishing a framework for remedial action. The Record of Decision (ROD) for Operable Unit 2 (OU2) and subsequent amendments were prepared pursuant to the FFA to address particular source areas and hazardous substances or pollutants and contaminants, including, but not limited to, remediation of the soils at the Site to site-specific Army industrial standards. A list of the site-specific Army Industrial Standards applied at the Property is attached hereto and incorporated herein by reference as Exhibit 2.

The Property consists of 430-acres and is the largest undeveloped tract of land in Ramsey County. The Property is situated on the western border of TCAAP and is only a portion of the 2,383 acre former facility. The Property includes the existing buildings and slab material along with the remaining utility infrastructure. Soil and groundwater contamination exists at the Property as a result of past ammunition manufacturing and testing practices. Soil contaminants include lead, volatile organic compounds (VOCs), polycyclic aromatic hydrocarbons (PAHs) and polychlorinated biphenyls (PCBs).

Contamination is present in the shallow and deep groundwater on the Property, and in deep groundwater that extends off the facility. VOCs including trichloroethylene (TCE) and its breakdown products are the primary groundwater contaminants. The Army has installed and operated the TCAAP Groundwater Recovery System ("TGRS") under the ROD for OU2 and is required to continue operating that system to assure long-term protection of public health and welfare and the environment. Ownership of the groundwater cleanup infrastructure is retained by the Army, pending completion of the required cleanup of the groundwater.

The specific source areas on the Property that were addressed under the OU2 ROD and amendments are described below and depicted on Exhibit 3, attached hereto and incorporated herein by reference.

1. **Site C** is a former solid waste burial and burning site which was remediated by the Army through excavation, treatment, and landfill disposal of contaminated soil followed by construction of a four foot soil cover. Soil contamination at concentrations greater than the site-specific Army industrial standards remains in place below the cover. Shallow groundwater contaminated with dissolved lead resulting from a phytoremediation project was remediated through an extraction system that was shut down in 2008. The Army continues to monitor groundwater quality at Site C to evaluate attainment of cleanup goals and to verify that the groundwater extraction system can remain off.

2. **Site I (Building 502)**, was used for the production of various ammunition, projectiles and artillery ammunition components. Deep groundwater contaminated with chlorinated solvents originating from Site I was remediated by Alliant through operation of a ground water extraction and treatment system which, after attaining cleanup standards at the extraction well, was dismantled in 2007. Alliant continues to perform water quality monitoring to verify attainment of cleanup goals and to monitor contamination levels in the

northern portion of the plume. Shallow ground water and soils beneath the existing building will require further investigation and remediation at the time of building demolition.

3. **Site J (Sanitary Sewer System)** remediation has been completed. The MPCA and the United States Environmental Protection Agency (U.S. EPA) approved a March 1994 Final Site J Closure Report.

4. **Site K (Building 103)** was a manufacturing facility that involved the use of energetic compounds, chlorinated solvents, and other materials. An interceptor trench and treatment system for shallow groundwater prevents the migration of groundwater contaminants (chlorinated solvents) into the nearby Rice Creek. Building 103 was removed in 2006 although the concrete slab remains in place. An area of VOC-impacted soil beneath the building was excavated in 2009. Groundwater exposed in the 2009 soil excavation was treated by in-situ chemical oxidation as a supplementary groundwater response action. Alliant continues to operate the interceptor trench and treatment system and to monitor groundwater quality at Site K.

#### **B. Facts Constitute Affidavit Under Minn. Stat. § 115B.16, subd. 2.**

The facts stated in Paragraph 5.A. are stated under oath by the person signing this Environmental Covenant on behalf of the Grantor, and are intended to satisfy the requirement of an affidavit under Minn. Stat. § 115B.16, subd. 2. In the event of a material change in any facts stated in Paragraph 5.A. requiring the recording of an additional affidavit under Minn. Stat. § 115B.16, subd. 2, the additional affidavit may be made and recorded without amending this Environmental Covenant.

#### **6. Definitions.**

The terms used in this Environmental Covenant shall have the meanings given in UECA, and in the Minnesota Environmental Response and Liability Act (MERLA), Minn. Stat. §115B.02. In addition, the definitions in this Paragraph 6 apply to the terms used in this Environmental Covenant.

A. "Commissioner" means the Commissioner of the Minnesota Pollution Control Agency, the Commissioner's successor, or other person delegated by the Commissioner to act on behalf of the Commissioner.

B. "MPCA" means the Minnesota Pollution Control Agency, an agency of the State of Minnesota, or its successor or assign under any governmental reorganization.

C. "Owner" means a person that holds fee title to the Property and is bound by this Environmental Covenant as provided in Paragraph 2. When the Property is subject to a contract for deed, both the contract for deed vendor and vendee are collectively considered the Owner.

D. "Political Subdivision" means the county, and the statutory or home rule charter city or township, in which the Property is located.

E. "Property" means the real property described in Paragraph 1 of this Environmental Covenant.

## **7. Activity and Use Limitations.**

The following Activity and Use Limitations shall apply to the Property:

### **A. Use Limitations.**

The Property shall not be used for residential, recreational, or commercial purposes.

The Property shall only be used for industrial purposes until such time that additional soil investigation and/or remediation at the Property warrants a less restrictive property use and such property use is approved by the appropriate regulatory authorities.

### **B. Activity Limitations.**

The following activities on the Property are prohibited except as provided in Paragraph 8:

Use of the Property will be restricted to activities by adults that involve being on-site 250 days or less per year, and do not involve contact with bare soil on a routine basis.

There shall be no extraction of ground water from beneath the Property for any purpose and no installation of any wells, borings, trenches or drains which could be used to extract such ground water; except as approved by the Minnesota Department of Health (MDH), MPCA, and the United States Environmental Protection Agency. Wells or other devices that do not withdraw water (e.g., geothermal heat exchangers) are not restricted (but still require the normal MDH permit).

There shall be no disturbance, removal or interference with the infrastructure needed for the groundwater remedies. Such infrastructure includes, but is not limited to monitoring wells, extraction wells, treatment equipment, and water conveyances.

### **C. Additional Limitations.**

In addition to the foregoing restrictions, the following restrictions apply to activities at specific locations on the Property:

Site C: The area designated as Site C is located immediately east of Mounds View Road within the central portion of the Property (Exhibit \_\_, attached hereto and incorporated herein by reference). A minimum 4-foot thick soil cover has been established at Site C as a barrier to prevent direct exposure with the underlying soil or sediment. No activities that would penetrate through the cover (e.g., utility work) may be undertaken without prior approval of the MPCA and Army. Signs have been posted along the designated soil cover boundary and will be maintained, as necessary, to inform visitors of potential hazards present.

#### **D. Affirmative Obligations of Owner.**

The Activity and Use Limitations imposed under this Environmental Covenant include the following affirmative covenants and obligations:

Owner shall not interfere with or minimize the protectiveness of the integrity of the 4-ft. thick soil cover at Site C.

### **8. Prior MPCA Approval Required For Activities Limited Under Environmental Covenant.**

#### **A. Approval Procedure.**

Any activity subject to limitation under Paragraphs 7.A., 7.B. or 7.C. shall not occur without the prior written approval of the Commissioner. The Commissioner's approval may include conditions which the Commissioner deems reasonable and necessary to protect public health or welfare or the environment, including submission to and approval of a contingency plan for the activity. Within 60 days after receipt of a written request for approval to engage in any activities subject to a limitation under Paragraphs 7.B. or C., the MPCA shall respond, in writing, by approving such request, disapproving such request, or requiring that additional information be provided. A lack of response from the Commissioner shall not constitute approval by default or authorization to proceed with the proposed activity.

#### **B. Emergency Procedures.**

Owner shall follow the procedures set forth in this Paragraph 8.B. when an emergency requires immediate excavation affecting contaminated soil or other media on the Property to repair utility lines or other infrastructure on the Property, or to respond to other types of emergencies (e.g., fires, floods):

i. notify the Minnesota Duty Officer, or successor officer, immediately of obtaining knowledge of such emergency conditions; the current phone numbers for the Duty Officer are 1-800-422-0798 (Greater Minnesota only); (651) 649-5451 (Twin Cities Metro Area and outside Minnesota); fax (any location) (651) 296-2300 and TDD (651) 297-5353 or 800-627-3529.

ii. assure that the persons carrying out the excavation limit the disturbance of contaminated media to the minimum reasonably necessary to adequately respond to the emergency;

iii. assure that the persons carrying out the excavation prepare and implement a site-specific health and safety plan for excavation and undertake precautions to minimize exposure to workers, occupants and neighbors of the Property to contaminated media (e.g., provide appropriate types of protective clothing for workers conducting the excavation, and establish procedures for minimizing the dispersal of contaminated dust); and

iv. assure preparation and implementation of a plan to restore the Property to a level that protects public health and welfare and the environment. The plan must be submitted to and approved by the MPCA prior to implementation of the plan, and a follow-up report must be submitted to MPCA after implementation so that the MPCA can determine whether protection of the public health and welfare and the environment has been restored.

#### **9. Easement; Right of Access to the Property.**

Owner grants to the MPCA an easement to enter the Property from time to time, to inspect the Property and to evaluate compliance with the Activity and Use Limitations set forth in Paragraph 7. In addition, for the purpose of evaluating compliance, Owner grants to the MPCA the right to take samples of environmental media such as soil, ground water, surface water, and air, and to install, maintain and close borings, probes, wells or other structures necessary to carry out the sampling.

MPCA and its employees, agents, contractors and subcontractors, may exercise the rights granted under this Paragraph 9 at reasonable times and with reasonable notice to the then-current owner, conditioned only upon showing identification or credentials by the persons seeking to exercise those rights.

#### **10. Duration; Amendment or Termination of Environmental Covenant.**

##### **A. Duration of Environmental Covenant.**

This environmental covenant is perpetual as provided in Minn. Stat. § 114E.40(a).

##### **B. Amendment or Termination By Consent.**

i. This Environmental Covenant may be amended or terminated in writing by the Owner and the MPCA. An amendment is binding on the Owner but does not affect any other interest in the Property unless the person holding that interest has consented to the amendment or agreed to waive its right to consent.

ii. The Grantor of this Environmental Covenant agrees that, upon conveying fee title to the Property to any other person, the Grantor waives the right to consent to amendment or termination of this Environmental Covenant.

**C. Termination, Reduction of Burden, or Modification By MPCA.**

The MPCA may terminate, reduce the burden of, or modify this Environmental Covenant as provided in Minn. Stat. § 114E.40.

**11. Disclosure in Property Conveyance Instruments.**

Notice of this Environmental Covenant, and the Activity and Use Limitations and Compliance Reporting Requirements set forth in Paragraphs 7 and 19 of this Environmental Covenant, shall be incorporated in full or by reference into all instruments conveying an interest in and/or a right to use the Property (e.g., easements, mortgages, leases). The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT UNDER MINN. STAT. CH. 114E, DATED \_\_\_\_\_, RECORDED IN THE OFFICIAL PROPERTY RECORDS OF \_\_\_\_\_ COUNTY, MINNESOTA AS DOCUMENT NO. \_\_\_\_\_.

**12. Recording and Notice Of Environmental Covenant, Amendments and Termination.**

**A. The Original Environmental Covenant.**

Within 30 days after the MPCA signs and delivers to Grantor this Environmental Covenant, the Grantor shall record this Environmental Covenant in the office of the County Recorder or Registrar of Titles of Ramsey County.

**B. Termination, Amendment or Modification.**

Within 30 days after MPCA signs and delivers to Owner any termination, amendment or modification of this Environmental Covenant, the Owner shall record the amendment, modification, or notice of termination of this Environmental Covenant in the office of the County Recorder or Registrar of Titles of Ramsey County.

**C. Providing Notice of Covenant, Termination, Amendment or Modification.**

Within 30 days after recording this Environmental Covenant, the Grantor shall transmit a copy of the Environmental Covenant in recorded form to:

- i. the MPCA;

- ii. each person holding a recorded interest in the Property;
- iii. each person in possession of the Property;
- iv. the environmental officer of each political subdivision in which the Property is located; and
- v. the U.S. EPA.

Within 30 days after recording a termination, amendment or modification of this Environmental Covenant, the Owner shall transmit a copy of the document in recorded form to the persons listed in items i to v above and to the Army.

### **13. Notices To Grantor and Environmental Agency.**

#### **A. Manner Of Giving Notice.**

Any notice required or permitted to be given under this Environmental Covenant is given in accordance with this Environmental Covenant if it is placed in United States first class mail postage prepaid; or deposited cost paid for delivery by a nationally recognized overnight delivery service; or transmitted by facsimile or electronic mail if followed by mailed notice or overnight delivery as above required.

#### **B. Notices to the Grantor.**

Notices to the Grantor shall be directed to:

[name, address and other contact information (telephone, fax, etc.)  
of person who is contact for grantor]

#### **C. Notices to MPCA.**

All notices, including reports or other documents, required to be submitted to the MPCA shall be submitted to:

Voluntary Investigation and Cleanup (VIC) Program  
Remediation Division  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
Saint Paul, Minnesota 55155  
Facsimile: 651/296-9707

### **14. Enforcement and Compliance.**

#### **A. Civil Action for Injunction or Equitable Relief.**

This Environmental Covenant may be enforced through a civil action for injunctive or other equitable relief for any violation of any term or condition of this Environmental Covenant, including violation of the Activity and Use Limitations under Paragraph 7 and denial of Right of Access under Paragraph 9. Such an action may be brought by:

- i. the MPCA;
- ii. a political subdivision in which the Property is located; or
- iii. a person whose interest in the Property or whose collateral or liability may be affected by the alleged violation.

**B. Additional Rights of Enforcement By MPCA.**

In addition to its authority under subparagraph A of this Paragraph 14, the MPCA may enforce this Environmental Covenant using any remedy or enforcement measure authorized under UECA or other applicable law, including remedies pursuant to Minn. Stat. §§ 115.071, subds. 3 to 5, or 116.072.

**C. No Waiver of Enforcement.**

Failure or delay in the enforcement of this Environmental Covenant shall not be considered a waiver of the right to enforce, nor shall it bar any subsequent action to enforce, this Environmental Covenant.

**D. Former Owners And Interest Holders Subject to Enforcement.**

Subject to any applicable statute of limitations, an Owner, or other person holding any right, title or interest in or to the Property, that violates this Environmental Covenant during the time when the Owner or other person is bound by this Environmental Covenant, remains subject to enforcement with respect to that violation regardless of whether the Owner or other person has subsequently conveyed the fee title, or other right, title or interest, to another person.

**E. Other Authorities of MPCA Not Affected.**

Nothing in this Environmental Covenant affects MPCA's authority to take or require performance of response actions to address releases or threatened releases of hazardous substances or pollutants or contaminants at or from the Property, or to enforce a consent order, consent decree or other settlement agreement entered into by MPCA, or to rescind or modify a liability assurance issued by MPCA, that addresses such response actions.

**15. Administrative Record.**

Subject to the document retention policy of the MPCA, reports, correspondence and other documents which support and explain the environmental response project for the Property are maintained by the MPCA Superfund Program at the MPCA's office at 520 Lafayette Road North, St. Paul, Minnesota in the file maintained for the New Brighton/Arden Hills/TCAAP Superfund Site.

**16. Representations and Warranties.**

Grantor hereby represents and warrants to the MPCA and any other signatories to this Environmental Covenant that, at the time of execution of this Environmental Covenant:

- A. Every fee owner of the Property has been identified;
- B. Grantor holds fee simple title to the Property which is free and clear of any encumbrances;
- C. Grantor has authority to grant the rights and interests and carry out the obligations provided in this Environmental Covenant; and
- D. Nothing in this Environmental Covenant materially violates, contravenes, or constitutes a default under any agreement, document or instrument that is binding upon the Grantor.

**17. Governing Law.**

This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Minnesota.

**18. Compliance Reporting.**

The Owner shall submit to MPCA on an annual basis a written report confirming compliance with the Activity and Use Limitations provided in Paragraph 7 and summarizing any actions taken pursuant to Paragraph 8 of this Environmental Covenant. Reports shall be submitted on the first July 1 that occurs at least six months after the effective date of this Environmental Covenant, and on each succeeding July 1 thereafter.

Owner shall notify the MPCA as soon as possible of any actions or conditions that would constitute a breach of the Activity and Use Limitations in Paragraph 7.

**19. Notice of Conveyance of Interest in Property.**

Owner shall provide written notice to MPCA within 30 days after any conveyance of fee title to the Property or any portion of the Property. The notice shall identify the name and contact information of the new Owner, and the portion of the Property conveyed to that Owner.

**20. Severability.**

In the event that any provision of this Environmental Covenant is held by a court to be unenforceable, the other provisions of this Environmental Covenant shall remain valid and enforceable.

**21. Effective Date.**

This Environmental Covenant is effective on the date of acknowledgement of the signature of the MPCA.

THE UNDERSIGNED REPRESENTATIVE OF THE GRANTOR REPRESENTS AND CERTIFIES THAT HE/SHE IS AUTHORIZED TO EXECUTE THIS ENVIRONMENTAL COVENANT.

IN WITNESS WHEREOF, THIS INSTRUMENT HAS BEEN EXECUTED ON THE DATES INDICATED BELOW:

**FOR THE GRANTOR:**

[Ramsey County]

By \_\_\_\_\_ (signature)

[Name of signer] \_\_\_\_\_ (print)

[Title] \_\_\_\_\_ (print)

State of Minnesota )

) SS.

County of \_\_\_\_\_)

On \_\_\_\_\_, 20 \_\_, this instrument was acknowledged before me, and the facts stated herein were [sworn to or affirmed] [select one] by, <Name>, [use following when Grantor is an organization] [<Title> of <Name of Grantor>, on behalf of <Grantor>].

\_\_\_\_\_ (signature)

Notary Public

My Commissioner Expires \_\_\_\_\_

**FOR THE ENVIRONMENTAL AGENCY AND HOLDER:**

**MINNESOTA POLLUTION CONTROL AGENCY**



## ENCLOSURE 9

### REGULATORY COMMENTS AND ARMY RESPONSE

#### U.S. Army Responses to the U.S. Environmental Protection Agency's Comments on the Draft Finding of Suitability to Transfer (FOST), dated September 2006

##### Specific Comments

1. **Page 3, Section 4.2, Environmental Remediation Sites:** EPA is evaluating whether a formal determination that the TGRS is operating properly and successfully (OPS) needs to be made. Information provided in the TCAAP annual performance reports may be sufficient for this purpose.

**RESPONSE: No response is required.**

2. **Page 4, bullet, top of page, last sentence:** The Restricted Area is restricted to commercial or industrial activities. Both types of activities need to conform to ambient contaminant concentrations. How those activities differ with respect to remaining levels of contaminants (if they do differ) needs to be determined.

**RESPONSE: The Restricted area will be restricted in accordance with the LUCRD.**

3. **Page 6, Section 4.8, Radiological Materials, last sentence:** I believe that the statement, "The licensed activities were released for unrestricted use by NRC letter dated May 1994", is not true for Building 103. I believe that the NRC issued a separate release for that building around 2003.

**RESPONSE: Radionuclides used in Building 103 were not regulated by the NRC. The NRC determined that all criteria were met to support unrestricted use, as stated in their February 2<sup>nd</sup> 2006 letter to 3M. The section will be revised.**

##### Enclosure 4, Notification of Hazardous Substance Storage, Release or Disposal:

4. **Page 4-1, Groundwater, Operable Unit 2:** See Specific Comment 1.

**RESPONSE: No response is required.**

##### Enclosure 7, Environmental Protection Provisions:

5. **Section 2, Land Use Restrictions, B.(1):** See Specific Comment 2.

**RESPONSE: The LUCRD contains all restrictions to land use.**

**6. Section 3, Notice of the Potential Presence of Munitions and Explosives of Concern (MEC), C.:** EPA has previously commented that actions such as notification of the Local Police Department do not appear to be an adequate response requirement. EPA believes that the Army needs to take a more proactive approach, which approach should be documented in an approved LUCIP.

**RESPONSE:** If MEC is found on the Property, the first and quickest responders to the Property are the Local Police because they are local, because the public knows how to reach police personnel quickly and because the Local Police may secure the Property most efficiently until explosive ordnance personnel can arrive on scene. Local Police notify the Army, who sends qualified and appropriate explosive ordnance disposal personnel to remove the MEC. No changes will be made to the FOST.

Enclosure 8, Declaration of Restrictions and Covenants and Affidavit Concerning Real Property Contaminated with Hazardous Substances:

**7. Page 2, Par. 6:** The question regarding the need for an OPS determination (See Specific Comment 1 arises here. EPA is evaluating whether a formal determination that the TGRS is operating properly and successfully (OPS) needs to be made. Information provided in the TCAAP annual performance reports may be sufficient for this purpose.

**RESPONSE:** It is the position of the Army that the information provided in the TCAAP annual performance reports establishes that the TCAAP Groundwater Recovery System (TGRS) is operating properly and successfully.

**8. Page 3, Section 2.a.i.:** The Restricted Area is restricted to commercial or industrial activities. Both types of activities need to conform to ambient contaminant concentrations. How those activities differ with respect to remaining levels of contaminants (if they do differ) needs to be determined.

**RESPONSE:** The LUCRD contains all restrictions to land use.

**9. Page 6:** Why doesn't EPA also need to be a signatory to this document?

**RESPONSE:** The Declaration of Restrictions and Covenants and Affidavit Concerning Real Property Contaminated with Hazardous Substances is required under Minnesota statute (Minn. Stat. 115B.16, subd. 2 (2006)). The statute does not require the signature of the EPA Administrator.

**U.S. Army Responses to the Minnesota Pollution Control Agency's Comments on the Draft Finding of Suitability for Transfer (FOST), Twin Cities Army Ammunition Plant, Ramsey County, Minnesota, September 2006**

1. Section 4, page 1: It is not appropriate to say that "all" removal or remedial actions have been taken to protect human health and the environment if a use restriction is in place. Instead, it is appropriate to say that "some" removal or remedial actions have been taken or, alternatively, "to Army industrial levels use". If the definition of ECP Category 4 does not make this distinction, is there another category that more accurately describes the Environmental Condition of the Property as referenced in our comment?

**RESPONSE: The classification of the property as ECP 4 is correct because no additional remedial actions are required to protect human health and the environment with the land use restriction in place. Therefore, it is correct and appropriate to state that all remedial actions have been taken to protect human health and the environment. The land use restrictions that will be placed on the Property are fully described in Enclosure 7, Environmental Protection Provisions.**

2. Section 4.2, page 2, second to last line: Note that the land use was an Army industrial land use. There is a difference between the industrial cleanup levels at TCAAP and industrial cleanup levels at other sites that are proposed for industrial use. This comment applies throughout the FOST.

**RESPONSE: TCAAP industrial cleanup up levels are based on site specific assumptions and foreseeable industrial land uses and are not based on default guidelines or industrial cleanup levels developed for other industrial sites. The assumptions were based on an industrial worker exposure scenario. No change is needed in the FOST.**

3. Section 4.2, page 3, Site K and Deep Ground Water: As previously pointed out, vapors from the strippers will need to be reevaluated if/when a new land use is proposed.

**RESPONSE: Comment noted.**

4. Section 4.2, page 4, second to last paragraph: Please revise to read: "...must be filed with the Ramsey County Recorder. The Declaration of Restrictions is intended to fulfill the disclosure requirements..." Also note that the date for Minn. Stat. 115B.16, subd.2 is 2006. This date needs to be corrected in other sections of the FOST also.

**RESPONSE: The FOST will be revised accordingly.**

5. Section 4.4, page 4: Given the lack of sampling data for the majority of the 65 former UST/AST locations, additional investigation of these areas will be required, even for any proposed commercial and/or industrial use.

**RESPONSE: Comment noted.**

6. Section 6, page 6: The permit was reissued in 2003. The original permit was issued on August 26, 1991. It was reissued in 1996 and again in 2003.

**RESPONSE: The FOST will be revised accordingly.**

7. Section 6, pages 6 – 7: As stated in MPCA's comments to the FOSET, the Permit will be closed after Army has completed the approved changes to the FFA.

**RESPONSE: The Permit is closed in 2008.**

8. Enclosure 1: Please include the Site K ground water treatment system on the figure.

**RESPONSE: Enclosure 1 includes the Site K trench and treatment building as noted in the legend. The scale of the map makes these features relatively small on the figure. No change.**

9. Enclosure 8, page 2, last WHEREAS: Revise to read "WHEREAS THE Army has agreed to place a Declaration of Restrictions and Covenant and Affidavit Concerning Real Property Contaminated With Hazardous Substances..."

**RESPONSE: Enclosure 8 of the FOST will be revised accordingly.**

10. Enclosure 8, page 2, 1.a. Revise to read as follows: "As used herein, "Owner" means the United States, which is the grantor of the rights and covenants created in this Declaration, and includes its successors and assigns, and all present and future owners of the Property."

**RESPONSE: The Declaration of Restrictions and Covenants and Affidavit Concerning Real Property Contaminated With Hazardous Substances (Declaration of Restrictions) is intended to comply with the disclosure requirements of Minn. Stat. § 115B.16, subd. 2 (2006). The change proposed by the MPCA is not required by the statute, nor is it necessary. However, the Army will add the following definition of "Owner" to the Definition Sections on Page 2 of the Declaration: "Owner" means "the United States, which is the grantor of the rights and covenants created in this Declaration, its successors and assigns, and all future owners of the Property." The Property will be transferred shortly after or concurrently with the filing of the Declaration of Restrictions. Thus, once the property transfers out of Army ownership, the use restrictions will not be applicable to the United States by the deed or the Declaration of Restrictions.**

11. Enclosure 8, page 2, 1.b. Revise to read as follows: “As used herein, “Property” means the real property...”.

**RESPONSE: Section 1.a of Enclosure 8 provides the definition of Property.**

12. Enclosure 8, page 3, 2.a.i: Revise to read as follows:

- i. “Use Restriction. The Owner shall use the restricted area solely for industrial activities and not for residential purposes or other uses where access is not controlled. ... and any type of recreational or educational purposes.”

**RESPONSE: Please see the response to Comment No. 10.**