

5090/13
Code 18610
9 May 1996

Mr. Tom Bloom (HSRM-6J)
U. S. Environmental Protection Agency
Region V
77 West Jackson Blvd.
Chicago, IL 60604-3590

Subj: NAVAL INDUSTRIAL RESERVE ORDNANCE PLANT (NIROP), FRIDLEY -
SITE MANAGEMENT PLAN (SMP)

Dear Mr. Bloom:

The Navy has received EPA comments to the draft SMP for the NIROP, Fridley in your letter dated January 9, 1996. The Navy has also received MPCA comments to the same in an MPCA letter dated December 19, 1996. The Navy has reviewed comments from both agencies and integrated responses to satisfy the concerns of both the EPA and the MPCA. Comment responses are provided as Enclosure (1) to this letter.

Please review Enclosure (1) and provide comments within 30 days of receipt of this letter. The Navy will reissue the SMP consistent with Enclosure (1) responses if no additional comments are received.

Should you have any questions or comments, please contact me at (803) 820-5587 or by fax at (803) 820-5563.

Sincerely,



SCOTT A. GLASS, P.E.
Remedial Project Manager
Installation Restoration II Branch

Encl:
(1) Attachment A - Response to Agency Comments

Copy to:
MPCA, David Douglas

Attachment A

Response to Agency Comments on Draft Site Management Plan Naval Industrial Reserve Ordnance Plant Fridley, Minnesota

The following responses are provided to EPA's 9 January 1996 and MPCA's 19 December 1995 comments on the Navy's 31 October 1995 draft Site Management Plan (SMP) for NIROP Fridley.

1. EPA - General Comments:

Comments: SMP was proposed by the U.S. Navy (Navy) as part of the settlement offer made during enforcement negotiations. Navy offered a \$130,000 cash component, another Project manager to assist at NIROP, a Supplemental Environmental Project (SEP) equal to \$325,000, and a Site Management Plan (SMP). Navy explained that the SMP would be a technical document which would assist Navy with management deficiencies discussed during negotiations, address enforcement concerns uncovered during negotiations, e.g. interpretation of which deliverable documents are enforceable (primary, secondary, or other), and specific stipulated penalties for noncompliance with Federal Facility Agreement (FFA). Therefore, the goals of the SMP at NIROP are to: 1) assist Navy with management of remedial activities; 2) define primary, secondary, and other deliverable documents due during the current Fiscal Year (FY), and planned for the following FY, and 3) present specific penalties for noncompliance with the FFA. Incorporation of specific penalties will be accomplished via modification to the FFA.

Response: The Navy concurs in part. The Navy does not agree that we "explained" during enforcement discussions that an SMP could be used as a means to establish specific stipulated penalties for noncompliance with the FFA. Rather, EPA indicated that it wanted to see incorporated into the FFA specific penalties for various types of violations in lieu of the "amount not to exceed" language currently set forth in that agreement. We fully agree that the incorporation of any such change should properly be made via amendment(s) to the FFA rather than by SMP incorporation and hence, cannot agree that one goal of the SMP should be to "present" such penalties. Consistent with such an approach, during enforcement discussions the Navy provided both EPA and MPCA with sample "Site Management Plan" and "Deadlines" provisions for suitable incorporation of the SMP concept into the FFA. We still await EPA's and MPCA's responses to those sample provisions as well as EPA's specific stipulated penalty revision proposal.

In regards to the SMP assisting "the Navy" with the management of remedial activities, while it is true that the Navy has lead-agency authority under CERCLA to manage the installation restoration program at the NIROP, we believe that one of the primary reasons for developing an SMP is to facilitate a cooperative effort amongst all the parties to effectively chart the course of those necessary investigative and remedial efforts which must be undertaken to ensure that the general goals / purposes identified in the

FFA are met. Another objective of SMP development is to have one comprehensive document which the RAB as well as public at large can turn to in order to readily gain an understanding of what specific environmental restoration activities are being undertaken or will be undertaken by the Navy in pursuit of those purposes. Since the Navy generally concurs with MPCA's comment 4 that any goals set forth in the SMP should not conflict with those set out in the FFA we have eliminated the discussion of program goals both under Section II and Section IV of the draft SMP and have revised Section II, Site Management Strategy, as reflected under paragraph 2 below.

2. EPA - Specific Comments:

Comment 1: Page 1, Introduction, 1st sentence: Please reword with language "...is prepared in accordance with the requirements of the Federal Facility Agreement between the U.S. EPA, MPCA, and Navy).

Response: The Navy believes the inclusion of such language would not be appropriate until the Parties actually amend the FFA since no provision in that document currently requires the Navy to produce an SMP. The Navy's use of the words "prepared pursuant to" were predicated upon inclusion of the words "as thereafter amended" to reflect the fact that as so amended, the newly revised FFA would then require SMP development / submission. In light of EPA's comment, the Navy proposes compromise language which would change this sentence to read as follows:

" This Site Management Plan (SMP) is prepared to promote the objectives expressed in the Federal Facility Agreement (FFA) executed between the Department of the Navy ("Navy"), the U.S. Environmental Protection Agency, Region V (U.S.EPA) and the Minnesota Pollution Control Agency ("MPCA"), (hereinafter referred to as "the Parties") on 28 March 1991. The basic intent of this plan is to provide: "

Once the FFA is appropriately amended to incorporate the SMP concept, the Navy would be amenable to revising the language to that now proposed by EPA.

Comment 2: Page 1, Introduction, #3: Please add "primary, secondary, and other", to specifically describe which type of deliverables are being prepared.

Response: Sentence changed to read as follows:

"3. A schedule of work to be accomplished and primary, secondary and other document deliverables to be prepared and submitted by the Navy to U.S.EPA and MPCA, with the primary document submittal dates being enforceable due dates under the FFA. "

Comment 3: Page 1, Introduction, #4: Please add specific type of deliverable (primary, secondary, other).

Response: Sentence changed as requested.

Comments 4, 5 and 6: Comment 4: Page 1, Site Management Strategy, 4th sentence: Please reword sentence to explain goals as stated in the General Comments section of this letter; Comment 5: Page 1, Site Management Strategy, 5th sentence: Please reword or delete; Comment 6: Page 1, Site Management Strategy, last sentence: Please reword as follows, "This goal shall be accomplished by developing an overall strategy to locate and remediate source areas and groundwater on site" and add the following to this section to specifically describe the current site management strategy.

"The site management strategy at NIROP has recently been modified. Site management strategy involves hydraulic containment of contaminated groundwater, on-site treatment, and discharge via existing NPDES outfall. Investigation and remediation of subsurface source areas outside of the NIROP manufacturing building (OU2) was to be conducted separately from investigation and remediation of subsurface areas beneath the NIROP manufacturing building (OU3). The combination of subsurface source remediation and groundwater containment and treatment is the over all strategy to remediate the site.

Recent modification of site strategy was made because preliminary results of subsurface sources area beneath the NIROP manufacturing building indicate that soils are visually contaminated and groundwater is highly (1700 ppm) contaminated. If a large subsurface area beneath the NIROP (OU3) is highly contaminated when compared to subsurface source areas outside of the NIROP manufacturing building (OU2), it may be advantageous for the Navy to address remedy selection of both OU2 and OU3 concurrently. Therefore, modification to the site management strategy involves combination of remedy selection for OU2 and OU3."

Responses: Consistent with the Navy response to EPA's General Comments as well as our response to MPCA's comment 4 below regarding this same Section, the Navy has revised Section II, Site Management Strategy as set forth below. We believe these paragraphs adequately address the matters / concerns raised by both EPA and MPCA:

" This SMP sets forth a comprehensive schedule of those primary and secondary document submittals and site response activities to be undertaken in Calendar Year (CY) 1996. It also sets forth a target work completion and document submittal schedule for CY 1997. SMPs are intended to be tools for effective program management which are updatable on an annual basis or as may otherwise be warranted and mutually agreed upon by the Parties. SMP utilization is designed to enhance program flexibility and to ensure maximum utilization of available resources by facilitating a comprehensive approach to site management. (Section continued on next page)

The overall site management strategy for the NIROP has recently been modified. Prior management strategy involved the hydraulic containment, on-site treatment and off-site discharge of contaminated groundwater. The Investigation and remediation of on-site subsurface source areas outside of the NIROP manufacturing building (OU2) was to be conducted separately from the investigation and remediation of those on-site subsurface areas beneath the building (OU3). Now, however, it has been decided that combining the investigation and remediation of on-site subsurface source areas located both outside and beneath the manufacturing building will be the best overall management strategy for the NIROP. This change in strategy was prompted by results obtained from on-site preliminary sampling of subsurface source areas beneath the manufacturing building. It is believed that if a large on-site subsurface area beneath the NIROP (OU3) is highly contaminated relative to on-site subsurface source areas outside the manufacturing building then it may be advantageous to address remedy selection for both OU2 and OU3 concurrently. Therefore, modification of the site management strategy involves combining remedy selection for OU2 and OU3."

Comments 7, 8, 9, and 10: Comment 7: Page 2, Operable Units, 2nd sentence: Please reword as follows, "OU1 encompasses contaminated groundwater on-site". Comment 8: Page 2, Operable Units, 3rd sentence: Please reword as follows, "OU2 encompasses subsurface source areas outside of the Main Industrial Building as identified in the RI for OU2." Comment 9: Page 2, Operable Units, 4th sentence: Please reword as follows, "OU3 encompasses subsurface source areas beneath the Main Industrial Building." Comment 10: Page 2, Operable Units, 5th sentence: Please replace the word "facility" with "site". Please remove the word "likely" and add the word "groundwater" before contamination.

Response: In response to EPA Comments 7-10 and MPCA comments 6 and 7, Section III, Operable Units has been revised as follows:

"Three Operable Units (OUs) have been established at the NIROP in order to facilitate the timely and effective investigation and clean-up of contaminated soils and groundwater at the Site. OU1 encompasses contaminated groundwater on-site. OU2 encompasses on-site subsurface source areas in the unsaturated zone outside of all buildings and other structures as identified in the RI for OU2. OU3 encompasses all on-site subsurface source areas beneath the main manufacturing building and on-site subsurface source areas in the saturated zone outside the main manufacturing building. Consistent with the recent change in overall Site Management Strategy if practicable, remedy selection for OU2 and OU3 will be addressed concurrently. Prior investigations conducted at the site indicate that the source areas in both OU2 and OU3 are contributing to the groundwater contamination detected in OU1. Table 1 below further describes each OU and indicates the present status of each in terms of those investigative and remedial efforts which have been undertaken to date."

Although EPA requested use of the term "on-site" in connection describing OU1 the Navy believes that addition of those same qualifying terms is appropriate in connection with describing OU 2 and OU3 in order to preclude those OUs from being construed to incorporate "off-site" (i.e., adjacent property) contamination not the responsibility of the Navy. "Site" under the NIROP FFA is defined as NIROP Fridley [which is defined under the FFA as consisting of that portion of the NIROP "owned by the United States"] and any areas outside or off of the NIROP where hazardous substances, pollutants or contaminants have been deposited, stored, disposed of, or placed, or otherwise come to be located "as a result of migration of" such hazardous substances, pollutants or contaminants from the property currently identified as NIROP Fridley. Hence, the Navy specifically does not believe that under the terms of the FFA it is responsible for the investigation and clean-up of separate source areas not on NIROP Fridley (i.e., sources beneath UDL's portion of the main manufacturing building).

Comment 11: Page 2, Table 1, OU2: Please replace the word "Soils" with "subsurface source areas". Also correct Status of Investigative/ Remedial Activities description. An interim drum removal action is not in progress.

Response: Table 1, OU2 was changed to read as follows: "*On-site subsurface source areas outside all buildings and other structures. Interim drum removal currently underway.*"

Comment 12: Page 2, Table 1, OU3: Please replace the word "Soils" with "subsurface source areas". Also add the word "unknown" to Waste type column.

Response: Table 1, OU3 will be changed to read as follows: "*On-site subsurface source areas beneath the main manufacturing building and on-site subsurface source areas in the saturated zone outside the main manufacturing building.* The word "unknown" will be added as requested.

Comments 13 and 14: Comment 13: Page 3, Installation Restoration Program Goals and FY 1996 Deliverables, 1st sentence: Please remove pursuant to this SMP". Please replace the word "soil" with "subsurface source areas". Please remove "in a timely and cost-effective manner". Comment 14: Page 3, Installation Restoration Program Goals and FY 1996 Deliverables, 2nd sentence: Please replace the words "intends on" with "will continue". Please omit the phrase "previously agreed to by the Parties". Please remove the word "follow-on".

Response: In response to these comments and MPCA comment 4 in which MPCA objected to the SMP stating goals which may be construed as being inconsistent with those in the FFA, the Navy has elected to delete paragraph 1 in its entirety under Section IV and to rename the Section as follows:

IV. CY 1996 Program Objectives and Document Deliverables

Comment 15: Page 3, CY 1996 IR Program goals for the NIROP, 3rd bullet: Please add the words "if necessary".

Response: Bullet changed as requested.

Comment 16: Page 3, CY 1996 IR Program goals for the NIROP, 4th and 5th bullet: Please delete. The recent modification to site management strategy allows the Navy to postpone completion of the Proposed Plan and ROD for OU2 and address remedy selection of OU2 in combination with remedy selection of OU3. Please change Primary Documents to reflect the abovementioned review comment. Please list Secondary Documents.

Response: Bullets 4 and 5 were deleted as requested. Primary document listing revised to reflect comment and additional listing provided for Secondary Documents.

Comment 17: Page 3, Primary Document: Please add the SMP as a primary document.

Response: The Navy does not agree with such a revision. Section 14.3 of the FFA presently contains a specific listing of primary documents to which stipulated penalties may be assessed for late submission. The proper method for recognizing the SMP as a primary document is for the Parties to mutually agree to revise the FFA in accordance with Section XXIX of that agreement. Once that is accomplished the Navy would be amenable to having subsequent SMPs indicate that they are Primary documents under the FFA.

Comment 18: Page 3, Installation Restoration Program Goals and FY 1996 Deliverables, Other Deliverables: Please remove Responsiveness Summary to PP for OU2.

Response: Deleted as requested.

Comment 19: Page 4, Schedule, 2nd line, indentation: Please reword as follows: "Navy incorporation of review comments and delivery of draft final". In some cases a Response to Comments memorandum will not be necessary.

Response: Sentence changed to read as follows: "*Navy written responses to comments (when required by FFA) and delivery of draft final - 45 days.*"

Comment 20: Page 4, Schedule: Please add language stating that the U.S. Navy shall submit and implement (when approved) an updated schedule to the SMP by October 1, each year. (or when the Navy knows the upcoming Fiscal Year funding has been approved).

Response: In response to this comment and MPCA comments on Section V, Schedule, this Section has been revised to read as follows:

*" The schedule contained with this SMP reflects both site activity and primary and secondary document submittal dates for a two (2) calendar year period.
(Section continued on next page)*

As required by Section _____ of the FFA, no later than 1 October of each year, the Navy shall submit to EPA and MPCA a new draft SMP containing an updated two (2) year schedule. It is the intent of the Parties that, to the greatest extent practicable and after mutual review of the progress of each previous year's site activities, that the second calendar year schedule reflected in each previous SMP become the first year enforceable schedule for the follow-on SMP with a new second calendar year schedule to be proposed as part of each new draft SMP submission. The finalization and associated enforceability of all SMPs shall be in accordance with the provisions of the FFA. Upon SMP finalization, any Party may seek to extend the deadlines set out in the first year schedule in accordance with Section 14.7 of the FFA. The schedule set forth for the second fiscal year is tentative as of the date of finalization of the SMP. "

3. MPCA - General Comments:

General Comments: The MPCA staff agrees to modify the FFA in the matter of stipulated penalties for noncompliance with the FFA. This matter is outside the scope of the SMP and, therefore, will be addressed separately. For the MPCA staff, this means requesting the MPCA Citizens Board approval of the modification. The MPCA staff hereby proposes that to settle the issue of any ambiguity regarding stipulated penalties is to change the phrase "an amount not to exceed" to "the amount of" in the third sentence of Section 31.1 on page 67 of the FFA.

Response: The Navy concurs in part. We agree that how stipulated penalties may be assessed in the future is not properly includable in the SMP and that any changes in such regard would require modification of the FFA. We do not agree that the appropriate approach is to simply revise the current stipulated penalties provision to mandate the assessment of the maximum weekly amounts now specified therein. The current language reflects the fact that FFA Parties believed discretion should be exercised in the making of any assessment based upon considerations such as the seriousness of the violation in terms of its impact on program execution or objectives. We believe those considerations should be similar to those currently used by EPA in arriving at proposed civil penalties under RCRA. The Navy believes there must be a rational basis for any fixed penalty amounts to be agreed to in advance. To merely substitute the present maximum weekly amounts would be a purely arbitrary and unacceptable to the Navy.

4. MPCA - Specific Comments:

Comment 1: The Navy shall cite the applicable provisions of the Federal Facility Agreement (FFA) that the Navy believes provides for the Site Management Plan (SMP).

Response: There are currently no provisions in the FFA which provide for use of an SMP. In previous penalty settlement discussions the Navy proposed specific SMP and Deadlines provisions to both EPA and MPCA for incorporation into the FFA but to date has not received a specific response as to the use of those proposed provisions.

Comment 2: The first sentence shall be modified to add the following narrative between "prepared" and "pursuant", as part of settlement of the dispute over stipulated penalties which have been assessed by the U.S. Environmental Protection Agency ("USEPA") against the Department of the Navy ("Navy"). The following narrative shall be deleted from the same sentence because the SMP should be agreed to before the FFA is modified "as thereafter amended by the Parties on _____."

Response: The Navy does not concur. The SMP is intended as a tool to assist the Parties in effectively managing future restoration activities at the NIROP. Hence, we see no justifiable reason for inclusion of the requested penalty settlement language. Though EPA assessed such penalties, it did not make a similar request. Moreover, the terms for resolution of the stipulated penalty dispute will be separately documented in an appropriate settlement agreement to be signed by the Parties.

The Navy's inclusion of the "thereafter amended" language was based upon our assumption that the FFA would be amended to encompass the SMP concept prior to the Parties finalizing the SMP since the FFA does not presently speak to the submission, use or enforceability of this document. During settlement discussions the Parties reached agreement over certain terms for the use of this document (see EPA letter of 25 August 1995). The Navy believes that modification of the FFA to incorporate the utilization of SMPs and agreed upon conditions relating thereto is essential to both final resolution of the penalty dispute and effective future utilization of SMPs as a management tool. Such an approach would also serve to satisfy the requirements of Section XXIX of the FFA.

Comment 3: The following narrative shall be added as Item 5 in the second sentence of the first paragraph: "5. Due dates that are enforceable under the FFA."

Response: In response to this comment and EPA Comment #2, the Navy revised Sentence #3 under Section I, Introduction, to read as follows:

"3. A schedule of work to be accomplished and primary, secondary and other document deliverables to be prepared and submitted by the Navy to U.S.EPA and MPCA, with the first year primary document submittal dates being enforceable due dates under the FFA. "

Comment 4: The goals of the SMP shall not conflict with those of the FFA. Since funding difficulties are covered in the FFA under Force Majeure provisions, all statements that mean or imply the "no dough, no go" concept shall be removed from the SMP, e.g., "... the enhancement of program flexibility to meet ... resource constraints" could be interpreted as a "no dough, no go" concept and shall be deleted from the SMP.

Response: The Navy concurs that the goals of the SMP should not conflict with those set forth in the FFA. The language utilized was intended to reflect the desires of the Parties that their respective RPMs have flexibility to mutually adjust any established schedule in order to maximize efficient utilization of not only available funding but also in-house and/or contractor resources. Though we do not believe this language fairly implies

"no dough, no go" in light of MPCA's concerns and EPA's comment on this same paragraph we have revised this language to read as follows:

II. Site Management Strategy

" This SMP sets forth a comprehensive schedule of those primary and secondary document submittals and site response activities to be undertaken. In Calendar Year (CY) 1996. It also sets forth a target work completion and document submittal schedule for CY 1997. SMPs are intended to be tools for effective program management which are updatable on an annual basis or as may otherwise be warranted and mutually agreed upon by the Parties. SMP utilization is designed to enhance program flexibility and to ensure maximum utilization of available resources by facilitating a comprehensive approach to site management.

The overall site management strategy for the NIROP has recently been modified. Prior management strategy involved the hydraulic containment, on-site treatment and off-site discharge of contaminated groundwater. The investigation and remediation of on-site subsurface source areas outside of the NIROP manufacturing building (OU2) was to be conducted separately from the investigation and remediation of those on-site subsurface areas beneath the building (OU3). Now, however, it has been decided that combining the investigation and remediation of on-site subsurface source areas located both outside and beneath the main manufacturing building will be the best overall management strategy for the NIROP. This change in strategy was prompted by results obtained from on-site preliminary sampling of subsurface source areas beneath the manufacturing building. It is believed that if a large on-site subsurface area beneath the NIROP (OU3) is highly contaminated relative to on-site subsurface source areas outside the manufacturing building then it may be advantageous to address remedy selection for both OU2 and OU3 concurrently. Therefore, modification of the site management strategy involves combining remedy selection for OU2 and OU3."

Comment 5: The Navy shall eliminate all references to the Installation Restoration Program (IRP) in the SMP. The Minnesota Pollution Control Agency (MPCA) staff views the IRP as an internal Navy program that is beyond the scope of the FFA. How the Navy implements its requirements under the FFA is the Navy's business. The goals and requirements of the investigation and cleanup of the Naval Industrial Ordnance Plant (NIROP) Site have been memorialized in the FFA. It is not necessary or relevant for the Navy to state what the goals of the IRP are for purposes of this SMP. The Navy shall change all references to the "IRP" to the "SMP", where appropriate.

Response: The Navy cannot concur. The Navy has lead-agency authority / responsibility under CERCLA to initiate and manage those environmental investigation and restoration projects necessitated by the prior release or disposal of hazardous substances, pollutants or contaminants onboard our installations. The Navy implements this delegated authority by means of our Installation Restoration Program (IRP) and we believe completely appropriate that site management / implementation related documents such as SMPs which

we fully expect will be made available to the public (RABS, etc...) to refer to the existence of our IR program and its goals / purposes.

Comment 6: The SMP shall indicate that the sum of all the operable units shall encompass the Site as defined by the FFA. This definition of "Site" does not stop or start at property lines. The Navy shall review the definition of "Site" in the FFA and redefine the operable units accordingly. Note that "Site" as defined by the FFA " ... includes any area outside or off of the NIROP Fridley a hazardous substance, pollutant, or contaminant has been deposited, stored, disposed or, or placed, or otherwise come to be located ...". The description of the operable units in this draft does not comply with the FFA definition of "Site;" e.g., Operable Unit 3 (OU3) is not restricted to the soil under the part of the Main Industrial Building owned by the United States 83 acre facility, it includes all of the soil under this building that may have contributed to the ground water contamination and any other property contributing to Site contamination as defined by the Minnesota Environmental Response and Liability Act and the Comprehensive Environmental Response, Compensation and Liability Act.

Response: The Navy concurs in part. "Site" under the FFA is defined as NIROP Fridley [which is separately defined as that portion of the NIROP "*owned by the United States*"] and any areas outside or off of the NIROP where hazardous substances, pollutants or contaminants have been deposited, stored, disposed of, or placed, or otherwise come to be located "*as a result of migration of* " such hazardous substances, pollutants or contaminants from the property currently identified as NIROP Fridley. Hence, the Navy does not agree that Operable Unit 3 (OU3) should properly encompass the soils under the entire main manufacturing building and "any other property" which might have contributed to site contamination. In short, we believe that under the terms of the FFA the Navy is not responsible for the investigation and clean-up of independent (i.e., non-migration related) source areas not on NIROP Fridley (i.e., not beneath the Navy owned portion of the main manufacturing building).

Comment 7: The SMP shall define the operable units pursuant to existing MPCA correspondence, e.g., the August 30, 1995, MPCA staff letter from Jim Warner to David Cabiness and shall state that OU2 and OU3 are now combined in OU3 for the OU3 Remedial Investigation (RI)/Feasibility Study/Remedial Design/Remedial Action. The SMP shall reflect the sequencing of work described in the letter dated August 30, 1995. For example, the Navy shall add the dense nonaqueous phase liquid (DNAPL) investigation in the SMP. DNAPL, if present, is a source to groundwater contamination. The Navy shall assign DNAPL to an operable unit and this shall be reflected in the SMP. The Navy shall review the August 30, 1995, letter and incorporate the sequence of events identified in this letter in the SMP.

Response: In light of this comment, subsequent discussions between the Parties and EPA's Comments 7, 8, 9, and 10, Section III, Operable Units, has been changed to read as follows:

"Three Operable Units (OUs) have been established at the NIROP in order to facilitate the timely and effective investigation and clean-up of contaminated soils and groundwater at the Site. OU1 encompasses contaminated groundwater on-site. OU2 encompasses on-site subsurface source areas in the unsaturated zone outside of all buildings and other structures as identified in the RI for OU2. OU3 encompasses all on-site subsurface source areas beneath the main manufacturing building and on-site subsurface source areas in the saturated zone outside the main manufacturing building. Consistent with the recent change in overall Site Management Strategy if practicable, remedy selection for OU2 and OU3 will be addressed concurrently. Prior investigations conducted at the site indicate that the source areas in both OU2 and OU3 are contributing to the groundwater contamination detected in OU1. Table 1 below further describes each OU and indicates the present status of each in terms of those investigative and remedial efforts which have been undertaken to date."

Although EPA requested use of the term "on-site" in connection describing OU1 the Navy believes that addition of those same qualifying terms is appropriate in connection with describing OU 2 and OU3 in order to preclude those OUs from being improperly construed to incorporate "off-site" subsurface sources of contamination not the responsibility of the Navy.

Comment 8: In addition, the Navy has stated that the Navy may produce a separate report that incorporates OU1, OU2, and OU3 data to meet the intent of the August 30, 1995, MPCA staff letter. If this is the way the Navy wants to proceed, the Navy shall outline this approach in the SMP.

Response: The Navy intends on incorporating OU2 data into the OU3 RI Report consistent with the agreed revised upon Site Management Strategy of looking at an eventual combined remedy selection for OU2 and OU3.

Comment 9: Pursuant to the MPCA staff letter of August 30, 1995, the MPCA staff does not require the Navy to produce the following for OU2 and shall eliminate them from the SMP: a draft and final Proposed Plan; a Responsiveness Summary to the Proposed Plan; and a draft and final Record of Decision. After the Navy completes the work the MPCA staff required in its letter of August 30, 1995, the MPCA staff views OU2 and OU3 as OU3 with the former "OU2" viewed as a subunit of OU3.

Response: The Navy concurs with the deletion of the draft and final Proposed Plan and Responsiveness Summary as well as draft and final Record of Decision for OU2 in light of the agreed upon change in Site Management Strategy for the NIROP.

Comment 10: The Navy shall list in the SMP all documents it believes are primary documents and all documents it believes are secondary documents as these terms are defined by the FFA.

Response: The Navy concurs. In response to this comment and EPA Comment 16 above, primary and secondary document listings were revised.

Comment 11: The Navy shall eliminate the second paragraph that begins "Consistent with ..." and ends with ... under the FFA". The Navy shall replace this paragraph with the following paragraph:

"First and second year dates may change with cause pursuant to the FFA. The Navy may seek schedule extensions of the first year dates only in accordance with paragraph 14.7 of the FFA. Second year dates shall be considered tentative as of the date of execution of the SMP."

Response: The Navy does not concur with use of this language which we believe to be rather contradictory and inconsistent with FFA requirements.

The first sentence MPCA proposes be used seems to imply that second year dates may only change for "cause" under the FFA (presumably pursuant to application of the "good cause" criteria set forth under Section XXXIII, Extensions of the FFA although that is not clear). In our view, Section XXXIII was intended to apply only to enforceable timetables, "schedules" and "deadlines" under the FFA to which stipulated penalties may apply and not "target" dates such as those which would be set out in the second year schedule contained in each SMP. We believe this interpretation is supported by the language under Section 33.7 which speaks to the application of stipulated penalties to missed "deadlines" and by the language set forth in Section 33.4 which affords the Navy the right to invoke dispute resolution over any refusal to grant a requested time extension in connection with an established deadline.

As the third sentence MPCA proposes suggests, the dates established for the second year covered by each SMP are "tentative" (i.e. target) dates set out for longer range planning purposes only. And though we fully anticipate that in most cases when each previously approved SMP is updated that those target dates will be rolled into first year enforceable deadlines, we do not believe that any decisions on finalization of that enforceable schedule must be hinged solely upon application of the "good cause" criteria set out in Section 33.2 for the extension of enforceable timetables, schedules or deadlines. Moreover, the Navy does not understand MPCA's reference to Section 14.7 which speaks solely to timeliness for the review and comment on draft documents and not to any "good cause" basis for an extension to any established work deadlines or primary document submittal dates.

Comment 11: The Navy shall add the following as the third paragraph:

The schedules for the first and second years shall reflect any schedule changes approved by the Navy, MPCA, and EPA pursuant to the FFA. The Navy shall provide a copy of any updated schedule to the MPCA and EPA project managers within two weeks of the approval of an updated schedule. The Navy shall place the current schedule on the agenda as an agenda item for each Restoration

Advisory Board (RAB) meeting with a copy of the current schedule attached to the agenda. The Navy shall discuss any schedule revisions made between RAB meetings at the next RAB meeting.

Response: New paragraph inserted as follows:

"The schedules for the first and second years shall reflect any schedule changes agreed upon by the Navy, MPCA, and EPA pursuant to the FFA. The Navy shall provide a copy of any updated schedule to the MPCA and EPA project managers within two weeks after such agreement is reached. The Navy shall place the current schedule on the agenda as an agenda item for each Restoration Advisory Board (RAB) meeting with a copy of the current schedule attached to the agenda. The Navy shall discuss any schedule revisions made between RAB meetings at the next RAB meeting."

Comment 12: The SMP schedule indicates that seismic imaging of the facility is to take place after the OU3 RI Work Plan. The Navy shall reverse this order and this reversal shall be reflected in the SMP. Seismic imaging shall be used to scope and focus the OU3 RI. Seismic imaging will determine the geologic controls for contaminant movements and the potential DNAPL accumulation. Coupled with other OU3 RI evaluation information, seismic imaging is essential in determining where the OU3 RI should occur.

Response: Seismic imaging to be conducted at the site will be addressed in the workplan for OU3. The Navy intends on using the results obtained from seismic imaging survey at the site as a tool to assist with the investigation of on-site DNAPL source areas. No changes to the draft SMP are required as a result of this comment.

Comment 13: The Navy shall modify the schedules outlined in Figures 1-3 to reflect the MPCA staff letter of August 30, 1995.

Response: Figure 1-3 schedules modified as requested.