

Minnesota Pollution Control Agency

June 27, 1996

Mr. Thomas Bloom, SR-6J
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

RE: Naval Industrial Reserve Ordnance Plant Superfund Site

Dear Mr. Bloom:

The Minnesota Pollution Control Agency (MPCA) Site Response Section (SRS) staff has reviewed the Navy's letter dated May 14, 1996, responding to the SRS staff letter of March 28, 1996, in which the staff requested that the U.S. Navy (Navy) include the portion of the main Naval Industrial Reserve Ordnance Plant (NIROP) building apparently owned by United Defense L.P. (UDLP) in the Remedial Investigation of Operable Unit 3 (OU3). (The Navy has neither provided definitive documentation that this portion of the main NIROP building is actually owned by UDLP nor that the portion of the main NIROP building to the north is owned by the Navy; however, the Navy and UDLP have repeatedly made representations to this effect.) For the purposes of this letter, the MPCA staff will refer to the portion of the main NIROP building at issue as the "UDLP portion of the main NIROP building."

The SRS staff made the above-cited request pursuant to the Federal Facility Agreement (FFA), dated March 27, 1991, between the MPCA, the U.S. Environmental Protection Agency (EPA), and the Navy. Although the Navy continues to contend that the FFA definition of "NIROP" excludes the UDLP portion of the main NIROP building, the SRS staff (after consultation with EPA) believes that the definition relied upon by the Navy is inconsistent with other FFA provisions and that the purposes of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the National Contingency Plan can only be fully served by the Navy addressing contamination wherever it may occur on the entire NIROP facility. Therefore, the SRS staff believes that the Navy is a responsible party for the UDLP portion of the main NIROP building.

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In addition to its March 28, 1996, letter, the SRS staff requested and the Navy rejected investigating under the UDLP portion of the main NIROP building: 1) in the Navy's letter of December 20, 1995, responding to the MPCA staff letter of November 7, 1995; 2) at the NIROP Site technical meeting of January 11, 1996; and 3) at the Restoration Advisory Board meeting of January 11, 1996.

In a conference call of June 4, 1996, between you, J. P. Singh, David Douglas and Gary Eddy, the SRS staff discussed the Navy's repeated refusals to investigate under the UDLP portion of the main NIROP building. We understand that EPA intends to utilize its FFA and CERCLA authority to request that the Navy investigate under the UDLP portion of the NIROP facility.

Even if we were to assume that the Navy's narrow reading of its FFA and CERCLA responsibilities were correct, nothing in the FFA (including paragraph 5.1) would relieve the Navy from its corrective action responsibilities under the authorized Minnesota hazardous waste program. Moreover, the Navy's claim of lack of access is not well founded since CERCLA, section 104(e), and presidential delegations under that section, give the Navy ample access authority.

As discussed on June 4, 1996, the Navy and UDLP are co-permittees under the Hazardous Waste Storage Facility Permit for the NIROP facility, EPA Identification Number MN3 170 022 914, dated March 1, 1996. (The MPCA is the administering agency for this permit.) This permit documents that there are solid waste management units on the UDLP portion (see page 28, Item 10, "Process distillation systems") and on the Navy portion (see page 26, Item 30, "Process distillation systems") of the main NIROP building. These are the same areas that the SRS staff believes need to be evaluated for releases or threatened releases during the OU3 Remedial Investigation. As you are aware, the Navy's recent investigation under the "East Plating Room" on the Navy portion main NIROP building revealed that hazardous substances have been released into the soil and ground water under the Navy portion of the main NIROP building.

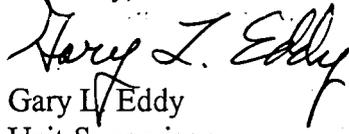
As discussed on June 4, 1996, if the Navy continues to refuse to investigate under the UDLP portion of the main NIROP building, the MPCA Hazardous Waste Division Regulatory Compliance Section (RCS) staff intends to take independent action pursuant to the Hazardous Waste Storage Facility Permit to require the Navy and UDLP to conduct remedial investigations and cleanups (if necessary) of this area. Also the RCS staff may require that these remedial investigations and cleanups (if necessary) be conducted concurrently with the remedial investigations and cleanups (if necessary) under the Navy portion of the main NIROP building that the Navy is conducting under the terms of the FFA.

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The RCS staff intends to take this action after EPA's mailing of the forthcoming EPA letter to the Navy requesting that this work be conducted under the terms of the FFA (if the Navy continues to refuse to do this work pursuant to the FFA).

If you have any questions regarding this letter, please contact David Douglas at (612) 296-7818.

Sincerely,



Gary L. Eddy
Unit Supervisor
Response Unit I
Site Response Section
Ground Water and Solid Waste Division

GLE:ch

cc: David Cabiness, U.S. Navy
Scott Glass, U.S. Navy
Jim Morris, U.S. Environmental Protection Agency
Steve Shakman, Attorney General's Office
Bruce Brott, Hazardous Waste Division, MPCA