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LETTER REGARDING DISCREPANCIES WITH DATA GAP FORMAT AND REGULATORY
COMMENTS ON THE DATA GAP ASSESSMENT REPORT FOR SITES 12 AND 13 NETC
NEWPORT RI
10/5/2011
RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



RHODE ISLAND

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

235 Promenade Street, Providence, RI 02908-5767

TDD 401-222-4462

5 October 2011

Timothy A. Reisch, P.E.
NAVFAC MIDLANT (Code OPTE3)
Northeast Environmental Business Line Team Lead
Building Z-144, Room 109
9742 Maryland Avenue
Norfolk, VA 23511-3095

Bryan Olson
USEPA REGION 1 - New England
Office of Site Remediation and Restoration
5 Post Office Square, *Mail Code:* OSRR07-5
Boston, MA 02109-3912

Re: Data Gaps Assessment (DGA) Report
Sites 12 & 13, Tank Farms 4 & 5

Dear Sirs,

As has been communicated informally to the Navy and the U.S. Environmental Protection Agency (USEPA) pursuant to Section 13.2 of the Federal Facility Agreement (FFA), there are a number of outstanding issues the Rhode Island Department of Environmental Management (RIDEM) feel need to be addressed in regards to the *Draft Final Data Gaps Assessment (DGA) Report* for Tank Farms 4 & 5 (Sites 12 & 13) and the *Revised Draft Feasibility Study* for the Naval Undersea Warfare Center (NUSC) Disposal Area (Site 08), both dated July 2011. Although RIDEM contends that these same issues apply to other sites at Naval Station Newport, and should be carried forward to all sites at the Base, the focus of this letter will be on the documents listed above.

The Navy, USEPA, and RIDEM have participated in several informal dispute discussions regarding these issues from the project manager level to the manager level. Most recently, on 28 September 2011 and 4 October 2011, respectively, two separate teleconferences were held by RIDEM, USEPA and Navy managers to try to resolve these issues informally. Unfortunately, at the conclusion of the 4 October 2011 call, it was agreed by all parties that these issues could not be resolved informally and that formal Dispute Resolution was the only remaining option. As a result, RIDEM is formally requesting Dispute Resolution on the following issues pursuant to Section 13.3 of the FFA and formation of a Dispute Resolution Committee (DRC) pursuant to Section 13.4. You are hereby notified that the RIDEM representative on the DRC shall be Mr. Leo Hellested, P.E., P.L.S., Chief of the Office of Waste Management, and that I shall be RIDEMs alternate.

The RIDEM contends that the items listed below are not being addressed consistent with the FFA:

1. **Section 7.5(a) of the FFA** states: *“The State shall identify all potential State ARARs as early in the remedial process as possible consistent with the requirements of CERCLA 121 and the NCP. The Navy shall consider any written interpretations of ARARs provided by the State. ... The parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be reexamined throughout the RI/FS process until a ROD is issued;”*

In the Data Gaps Assessment Report, Tank Farms 4&5, Section 4.1.1 Nature and Extent of Contamination, 2nd paragraph, it states the following: *“Soil results are compared against EPA RSLs for residential soils and industrial soils”*.

RIDEM’s written Comment 5 on this document states: *“Please revise these tables and figures in Section 4.0 to include the more stringent of either EPA or RIDEM’s criteria”*.

The Navy’s comment response was: *“To describe the nature and extent of contamination, the Navy selected EPA screening criteria which are presented in the Section 4 tables. The EPA criteria are the most appropriate standards to use for data comparison in Category 1 areas.”*

The Navy response is a direct contradiction to what was stated in the Agencies approved Sampling and Analysis Plan (SAP) (to use the lowest risk based criteria EPA RSL and RIDEM Residential Direct Exposure Criteria or RDECs) as well as the CERCLA Human Health Risk Assessment Process for Soil at NAVSTA Newport Navy Flow Chart sent to Matthew DeStefano from Timothy Reisch on 4 October 2011 (attached). In that Flow Chart, the first diamond clearly states the following: *“Are detected concentrations above RDECs or RSLs?”*

RIDEM’s RDECs are risk-based standards which are appropriate for screening values in such determinations. Failure to include RDECs in the risk screening may result in Remedial Actions which do not comply with ARARs. This exact situation has occurred at Site 8, NUSC Disposal Area, in the case of Lead. Specifically, the RDEC for lead was not used in the screening process, which was more stringent than the EPA RSL for lead, and therefore based on EPA’s RSL lead was screened out as a potential Contaminant of Concern (COC). Although not selected as a COC at any point in the process, concentrations of lead in the surface and subsurface soil exceed RIDEM’s risk based criteria residential criteria for lead of 150 mg/kg and even our Commercial/Industrial standard of 500 mg/kg. Specifically, in exposed areas, the maximum concentrations of lead detected were 2,870 mg/kg in the surface soil and 4,650 mg/kg in the subsurface soil. In the paved area, a concentration of 27,200 mg/kg was detected in the subsurface soil.

The presence of lead at these levels, considerably and sometimes orders of magnitude above our RDEC lead standards is in direct violation of **Section 1.2 (d) of the FFA** which states: *“Implement the selected Remedial Action(s) in accordance with CERCLA applicable Records of Decision, and the following State laws to the extent that they are legally applicable, relevant, and appropriate requirements in accordance with Section 121 of*

CERCLA ...” Clearly by not including lead in the screening process for the risk assessment, the proposed Remedial Action at the site ignores the presence of lead and therefore may also not be protective of lead and consistent with CERCLA as it is an Applicable or Relevant and Appropriate Requirement (ARAR). The on-going failure of the Navy to use the RDECs for screening levels will inevitably result in many more cases where the Remedial Action is not protective and not consistent with ARARs and also calls into question any past Remedial Actions where RIDEMs risk-based standards were ignored in the screening process.

It should also be noted that the RIDEM is not being afforded an iterative process throughout the RI/FS pursuant to **Section 7.5(a) of the FFA**. Both the Navy and USEPA have contended that ARARs only come in at the FS stage and should not be considered for risk screening or any other purpose before then. This course of action is inappropriate and inconsistent with the approach taken at other Superfund sites across Rhode Island and we believe across the country.

2. **Section 7.5(b) of the FFA** states: “ARARs *shall apply under this Agreement in the same manner and to the same extent that ARARs are applied to a non-Federal Facility pursuant to CERLA 120 (a) (1) and the NCP.*”

In accordance to Section 8.8 of the Data Gaps Assessment Report Tank Farms 4&5, there is a CERCLA risk for the site which means all State ARARs and all portions of State ARARs come into effect. Table 6-38 should contain a list of all constituents retained as Chemical of Concern that are above RIDEM’s DEC. To the contrary, chemicals above RIDEM’s Direct Exposure Criteria have been omitted from this list.

Furthermore, Site 8 NUSC Disposal Area lead concentrations are in violation of Section 7.5 (b) of the FFA in that at several other Superfund sites in Rhode Island, once a site poses a risk, all aspects of the given ARAR must be complied with. Specifically, if there is a risk at a site, the remedy must be protective of all contaminants in the ARAR, not just the COCs or Remedial Goals (RGs). Lead concentrations in surface and subsurface soil were found above the RIDEM DEC, however lead was not listed as a COC in the Revised Draft Feasibility Study (FS) dated July 2011 at NUSC. Since there is a CERCLA risk at NUSC and lead was detected above the RIDEM DEC then lead should be listed a COC in the FS.

In numerous other cases for Superfund sites in Rhode Island, including most recently the Naval Construction Battalion Center (NCBC), Centerdale Manor Restoration Superfund Site, and the Peterson-Puritan Superfund Site, once a risk is triggered for the site, and the RIDEM Remediation Regulations are an ARAR, all aspects and standards of the regulations are applicable, not just the individual constituents that constitute a risk pursuant to the risk assessment.

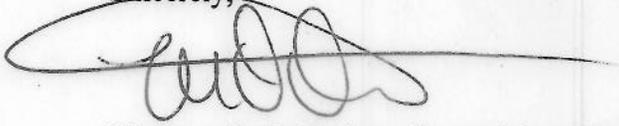
It is RIDEM’s firm belief that these issues can be resolved quickly, if all parties are willing to work together, so that the cleanup of these tank farms can move forward. If these issues can not be resolved to all the parties satisfaction, please be advised that the RIDEM may be forced to exercise our right under **Section 13.10 of the FFA**, to request that USEPA stop all work on these

sites and others at Naval Station Newport, as by proceeding in this manner the Navy is not only violating the FFA, but CERCLA and State law as well.

We look forward to meeting with you to discuss these issues within our designated twenty one (21) day resolution period which will begin upon receipt of this letter.

If you have any questions in regards to this letter, please contact me at (401) 222-2797, extension 7141 or by e-mail at matthew.destefano@dem.ri.gov.

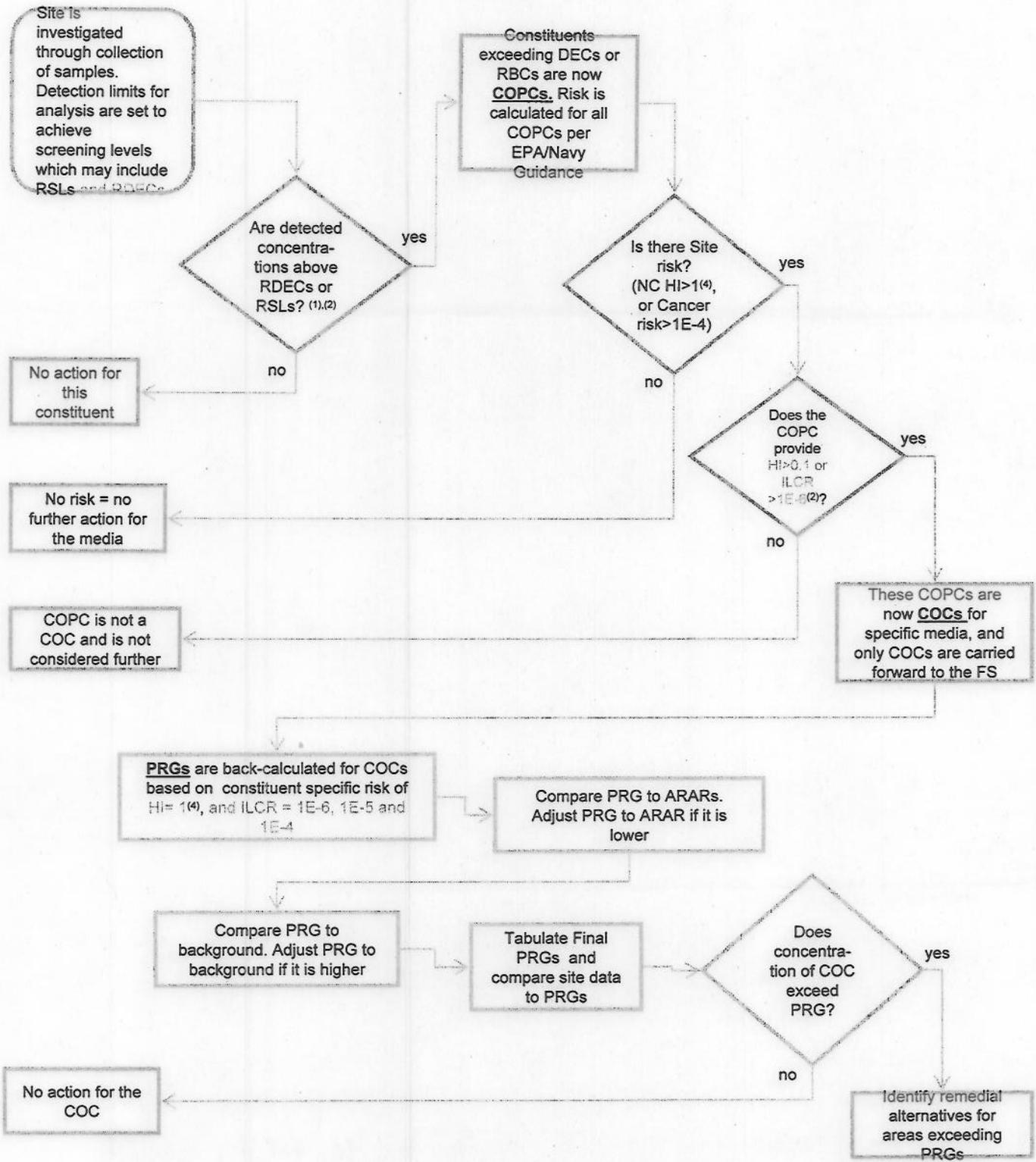
Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew D. DeStefano', with a long horizontal flourish extending to the right.

Matthew D. DeStefano, Supervising Engineer
Office of Waste Management

cc: Terrence Gray, DEM
Leo Hellested, DEM
Marisa Desautel, DEM
Richard Gottlieb, DEM
Deb Moore, NSN
James Owens, EPA Region I
Roberto Pagtalunan, NAVFAC

CERCLA Human Health Risk Assessment Process for Soil at NAVSTA Ne



Brown boxes are RI steps
Green boxes are FS steps

COPC: Contaminant of Potential Concern
COC – Contaminant of Concern
PRG – Preliminary Remediation Goal
ILCR – Incremental Lifetime Cancer Risk
RSL – EPA Regional Screening Level
RDEC – RIDEM Residential Direct Exposure Criteria

Red text shows key points that may vary from site to site based on site specific conditions and res

- (1) – RSLs are EPA screening criteria based on ILCR of 1E-6 or HI = 1, adjusted to 0.1 for COPC s
- (2) –Analytes are sometimes eliminated at this step using background
- (3) –Non-detected results are evaluated qualitatively in the uncertainty section of the risk assessme
- (4) –HI cited at this step is specific to the target organ/critical effects