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NSY PORTSMOUTH  
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LETTER AND COMMENTS FROM MAINE DEPARTMENT OF ENVIRONMENTAL  
PROTECTION REGARDING DRAFT RECORD OF DECISION FOR OPERABLE UNIT 2 (OU  
2) SITES 6 AND 29 NSY PORTSMOUTH ME  
09/16/2011  
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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September 16, 2011

Ms. Linda Cole  
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9742 Maryland Ave  
Bldg Z-144, 1st Floor  
Norfolk VA 23511-3095  
Attn: Linda Cole

re: Draft Record of Decision, OU2 – Site 6, Site 29, and DRMO Impact Area, Portsmouth Naval Shipyard, Kittery, Maine, Aug. 2011

Dear Linda,

The Maine Department of Environmental Protection has reviewed the Draft ROD for OU2 at the Portsmouth Naval Shipyard. Our comments follow.

1. MEDEP agrees with US EPA's September 7, 2011 comments 1 - 5 and 7 - 12. Under EPA Comment 2 the additional language should say, "...prepare and submit to EPA and MEDEP for review and approval..."
2. The ROD must include a discussion regarding the fact that the western boundary of Site 6 has not been delineated and therefore the extent of contamination at Site 6 is currently unknown. It should be explicitly stated that the ROD does not account for a remedy in this area. How will the Navy document a remedial decision for this area?
3. Please include a Table of Contents and a glossary or list of acronyms.
4. 1.6, p. 4. In the last sentence change, "If contamination posing..." to "If previously unknown contamination posing..." (assuming this is what the Navy intended).
5. Should Table 2-1 include the Pre-Design Investigation? Although no conclusions have been made and the report is not finalized the investigation itself was performed.
6. 2.5.2, p. 15, last paragraph. The second sentence should indicate that risk to occupational workers exposed to surface soil could also be a concern if the asphalt or interim cap were not maintained and cracks developed allowing exposure to surface soil.

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7. 2.5.3, Nature and Extent, p. 17. Please include a figure indicating the extent of contamination at OU2. Also, include text indicating that the western boundary of contamination has yet to be defined. In the second paragraph indicate when the fate and transport modeling was conducted.

8. 2.7.1., p. 18. This section includes discussion regarding risk at the DRMO Impact Area calculated in the 2000 HHRA for OU2 and references Table D-4. As stated in the text additional contamination was found at the Impact Area in 2007/2008 thereby negating the results of the 2000 Impact Area risk assessment. Table D-4, and any other tables regarding the Impact Area from the 2000 risk assessment should be removed from the ROD or the Navy should indicate that they are included for historical purposes only and do not accurately indicate potential risk at the Impact Area prior to the 2010 removal action.

9. 2.7.1, p. 19, first full paragraph. Please provide a footnote or some other reference for the cited EPA guidance.

10.2.7.1, p. 22, DRMO Impact Area. See Comment 8.

11. 2.8, p. 24, last paragraph. Please change, "The cleanup level for a resident..." to "The lead cleanup level for a resident..." as this sentence refers to the OSWER screening level of 400 mg/kg.

12.2.8, p. 24, last paragraph. "All of the cleanup levels are based on average residual soil concentrations, or EPCs, for the DRMO area and the waste disposal area." Except for lead, EPCs for calculation of risk in the 2000 HHRA were based on the 95% UCL of the soil concentrations. Why are they based on average concentrations here? It is possible that the EPC based on average is below the cleanup level while the EPC based on the 95% UCL is above the cleanup level.

13. Table 2-6, p. 26, Alt. WDA-3 LUCs. This section discusses LUCs preventing unauthorized digging in the proposed soil cover limits. The Final FS for OU2, p. 2-12, states, "Construction activities are anticipated to be limited at OU2; there are no plans to construct additional buildings based on current land use. Therefore, construction worker exposure to contaminated soil is most likely to occur during utility repair or upgrade that requires excavation of soil." Are there utilities located within the proposed soil cover limits? If not, based on the FS text, it appears there would be no reason to excavate soil within this area. Therefore, it would be more protective to prevent any digging (not just unauthorized) within this area except for critical reasons. If there are utilities in this area is it possible that they could be moved so that no excavation would be necessary?

14. 2.10, p. 32, Comparative analysis of Alternatives, Threshold Criteria – WDA. "Both Alternative WDA-3 and WDA-4... ..would be equally protective and provide the most protection...". WDA-4 involves removing soil to 6 feet whereas WDA-3 removes soil to 2 feet. Therefore, the potential for a construction worker to come in contact with contaminated soil is

greater for WDA-3. Please discuss the post-excavation lead EPC for WDA-3 as compared with the post-excavation lead EPC for WDA-4.

15. 2.12.1, p. 40, LUC performance objectives. This list should also include instituting dig restrictions at unexcavated areas of the DRMO that contain lead concentrations greater than 4000 mg/kg.

16. Fig. 2-5 shows excavation limits for the DRMO area which imply that there will be no excavation beyond what is shown in the figure. There have not been any discussions among the Navy, USEPA, and MEDEP regarding the high concentrations of lead seen in the pre-investigation design area, nor has the western boundary been fully delineated. Therefore, it is possible that excavation will be required in the western part of Site 6. The text should indicate this possibility.

17. Table 2-10, p. 43, first Comments box. "Excavation of surface soil...and construction of a soil cover will address unacceptable risks..." "Address" is a bit vague. It would be better to say the remedial actions will prevent risk or reduce risk to acceptable levels or something similar.

18. App. B, PRAP. It would be useful to attach MEDEP and USEPA comments and the Navy's responses to this appendix.

19. App. E, Tables E-1 and E-2. The Navy must include as To Be Considered (TBC) the Maine DEP and CDC June 2009 "Guidance for Human Health Risk Assessments for Hazardous Substance Sites in Maine" and MEDEP's 2010 "Remedial Action Guidelines for Soil Contaminated With Hazardous Substances" under State Chemical-Specific ARARs in both tables.

We recognize that EPA has previously instructed the Navy to remove these guidance documents from ARARs tables stating, "Under CERCLA and the NCP only federal risk standards are used for CERCLA risk assessment, so remove the citations to the state guidance" (Jan. 5, 2010 USEPA comment letter on Draft FS for OU1). MEDEP disagrees with EPA's comment.

The State's position is supported by EPA's Feb. 12, 1998 memorandum Use of Soil Cleanup Criteria in 40 CFR Part 192 as Remediation Goals for CERCLA Sites, Directive no. 9200.4-25. This memo states, "To-be-considered material (TBCs) are non-promulgated advisories or **guidance issued by Federal or State governments** that are not legally binding and do not have the status of potential ARARs. However, **TBCs will be considered along with ARARs as part of the site risk assessment** and may be used in determining the necessary level of cleanup for protection of health and the environment [emphasis added].

Likewise, EPA's August 1988 CERCLA Compliance with Other Laws Manual: Interim Final (EPA/540/G-89/006) states,

"Superfund staff should also consider Federal and State environmental and public health criteria, advisories, guidance, and proposed standards ("to-be-considered" materials, or TBCs). TBCs

will be evaluated along with ARARs as part of the risk assessment conducted for each CERCLA site..." (1.2, p. 1-6)

"As a starting point for setting cleanup goals, the risk calculations are developed using **chemical-specific** requirements. If there are no chemical-specific ARARs, then specified Federal or State TBC values are used in the calculations." (1.2.3.1, p. 1-13)

In addition, EPA's 1989 publication 9434.2-05/FS, CERCLA Compliance With State Requirements, states,

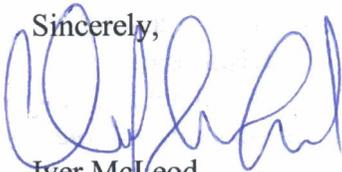
"Although they are not ARARs, State advisories, guidance and policies, etc., may help EPA define and develop protective remedies and interpret State laws. These State policies and guidance, known as 'to be considered'...are not potential ARARs because they are neither promulgated nor enforceable. It may be necessary to consult TBCs to interpret ARARs or to determine preliminary remediation goals when ARARs do not exist for particular contaminants. States should **indentify** or communicate to EPA TBCs that they consider to be pertinent to the remedy."

In addition, as stated in MEDEP's letter to EPA dated April 5, 2010, both the Guidance Manual for Human Health Risk Assessments and the Remedial Action Guidelines have been listed as TBCs in other State of Maine Records of Decision for Navy CERCLA sites. The Human Health Risk Assessment Guidance has been listed as a TBC in the **RODs** for the Portsmouth Naval Shipyard Operable Unit 3 and for Brunswick Naval Air Station's Site 7.

We note that there are no Federal Chemical-Specific ARARs for this site (only TBCs) and therefore these State guidance documents are as relevant as the Federal TBCs. Finally, for at least the past 15 years, the Navy's IR program has taken Maine's risk assessment guidance manual and soil remedial action guidelines under consideration for all investigations and cleanups. Therefore, it makes no sense to indicate they are not considered by excluding them from the ARARs table.

Please feel free to contact me at (207) 287-8010 if you have any questions.

Sincerely,



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