



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

N60087.AR.001519
NAS BRUNSWICK
5090.3a

JOHN ELIAS BALDACCI
GOVERNOR

DAWN R. GALLAGHER
COMMISSIONER

November 09, 2005

Mr. Orlando Monaco
Department of Navy
Engineering Field Activity-Northeast
Code 1823/OM
10 Industrial Highway, Mailstop 82
Lester, PA 19113-2090

Re: Site 9 Barrack Removal Non-Compliance
Naval Air Station, Brunswick, Maine

Dear Mr. Monaco:

The Maine Department of Environmental Protection (MEDEP) was extremely surprised and dismayed to read the Navy's response (October 28, 2005) to MEDEP's letter of October 19, 2005, regarding the non compliance for removing of the barracks without prior written approval as required by the ROD. The Navy denies that approval was needed but did not provide supporting documentation. The demolition of the buildings was performed as a separate action from the removal of the ash landfill and the Record of Decision (ROD) is very clear that "Should the barracks be removed, modified, or excavated, the Operations Instruction will restrict excavation in the inactive landfill area without prior written approval from EPA and MEDEP..." (This language is the direct result of the action specific State Applicable or Relevant and Appropriate Requirements. Copy attached.)

The ROD is supported by the Brunswick Instruction (5090.1.B) dated 31 December 2000. These Instructions in part state: "Purpose. To provide detailed information on the location of hazardous waste and petroleum sites on NAS Brunswick and Topsham Annex, and to enact internal land use restrictions—in the form of administrative controls—on soil excavation activities or groundwater use at these sites to prevent human exposure to hazardous chemicals. This instruction is intended to enact institutional controls that are legally specified in Records of Decision, the Federal Facilities Agreement, consensus statements, and other documents signed by the Navy in teamwork with the U.S. Environmental Protection Agency (EPA) and Maine's Department of Environmental Protection (DEP).

The section of the Operations Instructions for Site 9 states: "Digging is restricted anywhere within the area shown by the thick solid line as labeled on Figure 5. Groundwater is restricted by Site 9 in the area as previously described and shown by the dashed line box on Figure 5." These restrictions were reviewed and accepted by MEDEP and EPA. Figure 5 of the Base Instructions (attached) which clearly denotes that the barracks are within the solid line and therefore their removal required approval.

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769-2094
(207) 764-0477 FAX: 764-1507

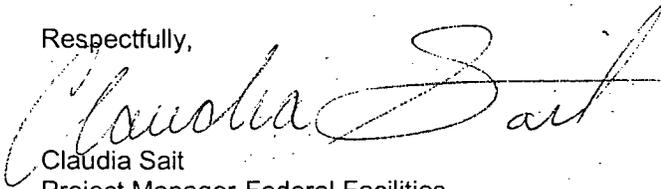
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Also the Navy has requested and received approval for the construction of a parking lot (April 2004), demolition of Building 217 (April 2004), and the installation of a generator at Building 201 (Sept 2005). These projects were clearly outside of the actual ash landfill. Therefore the Navy cannot decide without discussing with the stakeholders, that it was unnecessary to obtain approval to remove three barracks directly over the ash landfill. Agreement in principle should never be confused with written approval. MEDEP always has and will continue to provide its approvals in writing.

Obviously there was lack of communications but now we must try to resolve this matter and prevent it from happening again. To that end the Navy needs to provide the information on the demolition of the buildings including exactly what is the status of the foundations?

This situation can only be considered a failure of the process including the interaction of the Navy with the stakeholders and the implementation of Base Instructions. To ensure that this does not happen again the Navy must determine if it was a failure of the written instruction or human error and implement the necessary corrective measures. To overlook this incident puts the protectiveness of all the institutional controls in question. MEDEP's goal is to resolve this matter quickly and amicably so that long standing teamwork between the stakeholders continues.

Respectfully,



Claudia Sait
Project Manager-Federal Facilities
Bureau of Remediation & Waste Management

Cf: File
Captain George Womack-BNAS
Franco Lagreca-EFANE
Lisa Joy-BNAS
Christine Williams-EPA
Carolyn Lepage-Lepage Environmental

APPENDIX B

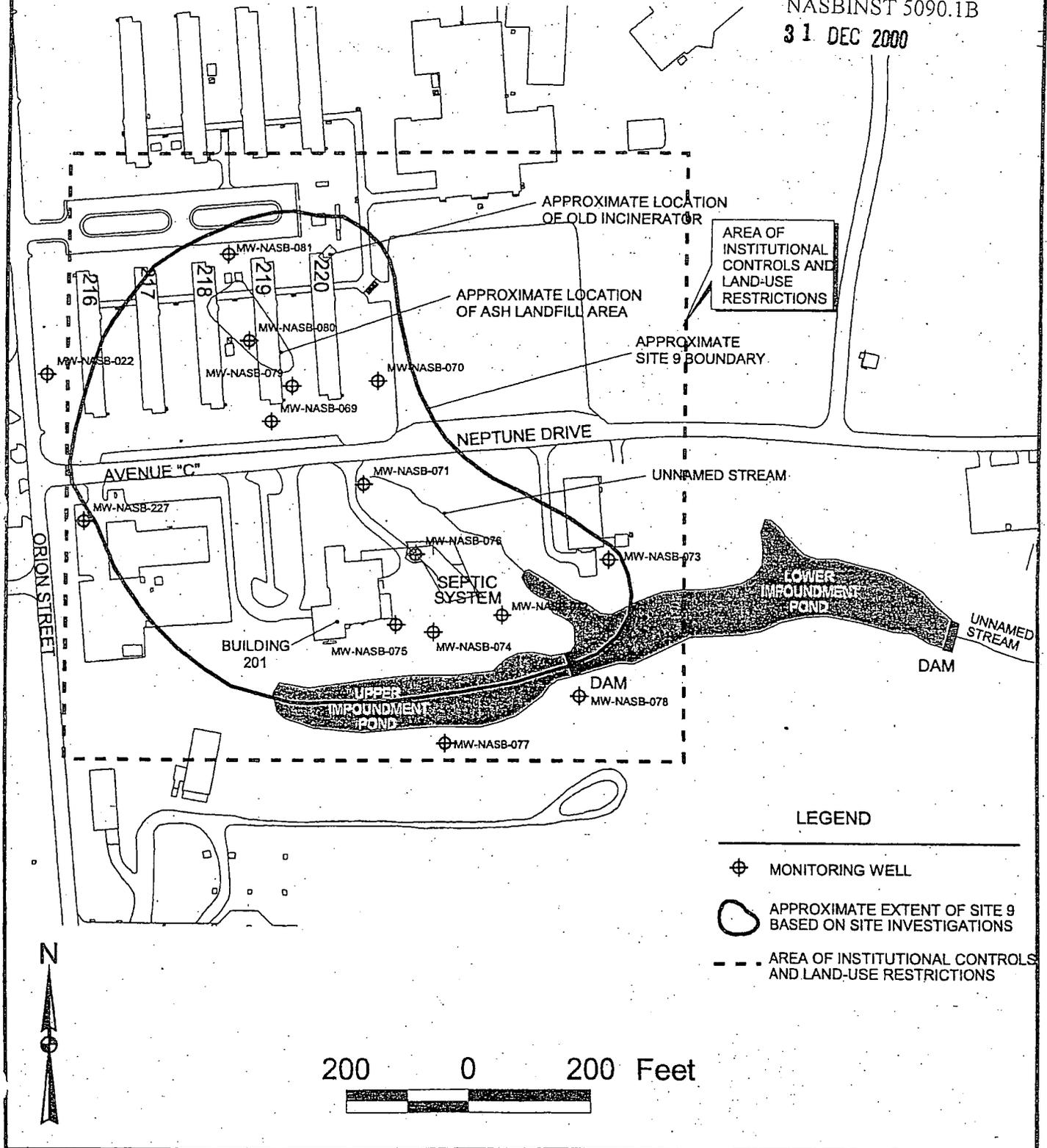
LIST OF APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS FOR SITE 9

ACTION-SPECIFIC			
Requirement	Status	Requirement Synopsis	Action to be Taken to Attain Applicable or Relevant and Appropriate Requirements
Federal Applicable or Relevant and Appropriate Requirements			
Resource Conservation and Recovery Act Identification and Listing of Hazardous Waste Toxicity Characteristics (40 CFR 261.24)	Relevant and Appropriate	This requirement identifies the maximum concentrations of contaminants for which the waste would be a Resource Conservation and Recovery Act characteristic waste because of its toxicity. The analytical test set out in Appendix II of 40 CFR Part 61 is referred to as the Toxicity Characteristic Leaching Procedure.	In the event that the barracks or their foundations are removed, modified, or disturbed and/or the contents of the inactive ash landfill are disturbed, the landfill contents will be analyzed by the Toxicity Characteristic Leaching Procedure to determine whether they are characteristic hazardous wastes under Resource Conservation and Recovery Act. Excavated materials that are determined to exceed Toxicity Characteristic Leaching Procedure allowable concentrations will be disposed offsite in a Resource Conservation and Recovery Act Subtitle C treatment, storage, or disposal facility. Excavated materials that are determined to be below Toxicity Characteristic Leaching Procedure allowable concentrations will be disposed offsite in a Resource Conservation and Recovery Act Subtitle D or other appropriate treatment, storage, or disposal facility.
State Applicable or Relevant and Appropriate Requirements			
Maine Surface Water Toxics Control Program (38 MRSA Sections 420, 464, 06-096 CMR-530)	Relevant and Appropriate	These rules set forth the ambient water quality criteria for toxic water pollutants and procedures necessary to control levels of toxic pollutants in surface waters.	Under Alternative 2, the selected remedy, surface water will be monitored under the Long-Term Monitoring Program to ensure that it meets the standards set out in these rules.
Maine Hazardous Waste Rules relating to Performance Standards for Establishing, Constructing, Altering, and Operating Certain Types of Hazardous Waste Units (06-096 CMR 854)	Relevant and Appropriate	This requirement outlines the State of Maine's rules relating to establishing, constructing, altering, and operating certain types of hazardous waste units.	This applicable or relevant and appropriate requirement will be met in the event that the inactive ash landfill is disturbed or excavated, or the barracks and its foundations were removed or modified.

ACTION-SPECIFIC			
Requirement	Status	Requirement Synopsis	Action to be Taken to Attain Applicable or Relevant and Appropriate Requirements
Maine Solid Waste Management Rules - General Provisions (06-096 CMR 400)	Relevant and Appropriate	These rules regarding administrative matters and general standards concerning solid waste facilities and solid waste handling.	The substantive requirements of these rules will be met in the event that the inactive ash landfill is disturbed or excavated, or the barracks and its foundation are removed or modified.
Maine Solid Waste Management Rules - Landfill Siting, Design and Operation (06-096 CMR 401)	Relevant & Appropriate	This establishes requirements for siting, design, and operation of landfills for the disposal of municipal solid waste, special wastes, construction/demolition debris, land clearing debris, and wood wastes.	The substantive requirements of the closure and post-closure provisions of these rules will be met in the event that the inactive ash landfill is disturbed or excavated, or the barracks and its foundation are removed or modified.
Maine Solid Waste Management Rules - Water Quality Monitoring, Leachate Monitoring, and Waste Characterization (06-096 CMR 405)	Relevant & Appropriate	Water quality monitoring, leachate monitoring and the characterization of wastes stored or disposed of are tools used for the detection and analysis of potential threats to public health and safety or the environment. The applicable tools are required to be implemented at solid waste facilities where the Department identifies potential threats to public health and safety or the environment because of the nature of the wastes stored or disposed of and/or the type, location, design or operation of the solid waste facilities.	The substantive requirements of these rules will be used in the monitoring of the inactive landfill.

FIGURE 5 - LOCATION OF SITE 9 INSTITUTIONAL CONTROLS

Enclosure 2
Figure 5
NASBINST 5090.1B
31 DEC 2000



AREA OF INSTITUTIONAL CONTROLS AND LAND-USE RESTRICTIONS

- LEGEND**
- ⊕ MONITORING WELL
 - APPROXIMATE EXTENT OF SITE 9 BASED ON SITE INVESTIGATIONS
 - - - AREA OF INSTITUTIONAL CONTROLS AND LAND-USE RESTRICTIONS