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LETTER FROM U S NAVY REGARDING APPLICATION OF DIRECT EXPOSURE CIRTERIA
FOR RECREATIONAL USE SITES NS NEWPORT RI
3/9/2007
NAVFAC MIDLANT



DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING COMMAND, MID-ATLANTIC
9742 MARYLAND AVENUE
NORFOLK, VA 23511-3095

IN REPLY REFER TO:

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15/OPNEEV4/6053
09 MAR 2007

Mr. Matt DeStefano
Supervisor, Office of Waste Management
State of Rhode Island Department of Environmental Management
235 Promenade Street
Providence RI 02908-5767

Dear Mr. DeStefano:

Subject: APPLICATION OF DIRECT EXPOSURE CRITERIA FOR
RECREATIONAL USE SITES; NAVAL STATION NEWPORT, NEWPORT,
RHODE ISLAND

The Navy would like to acknowledge receipt of your letter dated January 19, 2007, regarding the application of Residential and Industrial/Commercial Standards to sites located at Naval Station (NAVSTA) Newport, Rhode Island and would also like to thank you for providing clarification regarding the definition of each as outlined in Sections 3.58 and 3.34, respectively, of the Rules and Regulations for the Investigation and Remediation of Hazardous Materials Releases as amended February 2004. The Navy is pleased to see that RIDEM is acknowledging that the State's regulations allow for the application of Industrial/Commercial Standards for "restricted recreational use scenarios".

Additionally, your letter states that the Navy would be required to conduct a formal risk analysis in order to reasonably demonstrate that any land use restriction and/or other institutional controls would be protective for a given exposure scenario as defined in the above-referenced sections of RIDEM's regulations. The Navy concurs with this requirement and routinely includes such analysis as part of the Feasibility Study (FS) submission. Specifically, this approach will be utilized in the upcoming revision to the FS for Installation Restoration (IR) Site 9 - Old Fire Fighter Training Area (OFFTA) for which land use restrictions will be applied in order to limit potential exposures to residual chemicals. A draft version of the Revised FS for OFFTA is scheduled to be submitted to RIDEM (and USEPA Region I) for review in late May 2007.

The Navy also recognizes RIDEM's concern regarding the implementation of such land use controls (LUCs) on military installations and the need for the Navy to demonstrate that any use restriction remains protective. This has also been of concern to the Department of Defense as well as the USEPA. Accordingly, the Office of the Under Secretary of Defense has issued policy, dated January 16, 2004, to Deputy Assistance Secretary of the Navy (Environment) regarding CERCLA Records of Decision (ROD) and Post-ROD activities (attached). Briefly, it is now Navy policy to develop internal procedures with respect to LUC monitoring, reporting, and enforcement in order to make LUC management an Installation responsibility and to ensure that base personnel are aware of the restriction(s). The policy also contains a notification requirement to obtain regulatory concurrence prior to the modification or termination of any LUC or implementation action.

In keeping with the above-referenced policy, appropriate language regarding the placement of a land use control or restriction on property owned by NAVSTA Newport will be included into NAVSTA Newport's Base Master Plan, or other base wide instruction, issued by the Commanding Officer, that addresses land use. These documents are consulted by Base Development personnel when planning expansion or redevelopment. NAVSTA and NAVFAC environmental personnel will provide such language to RIDEM for review prior to its inclusion.

With regards to ensuring the continued maintenance of any land use restriction, the Navy will rely on the CERCLA requirement to conduct a Five Year Review of all remedial actions for the very reason of ensuring that any use restriction placed on a property continues to be implemented and to also ensure that the land use has not changed.

Finally, with regards to RIDEM's concern regarding enforcement capability on military installations and the ability to inspect and take enforcement action(s) if necessary, Section IX of the Federal Facilities Agreement (FFA) specifically addresses this issue and obligates the Navy to allow access to the State (and also to the USEPA) for such activities. Therefore, the Navy does not see the need to pursue a separate Memorandum of Understanding to outline regulatory authority language that is already contained within the FFA.

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If you have any additional questions or concerns regarding this issue, please do not hesitate to contact the Navy's Remedial Project Manager (RPM) for NAVSTA Newport, Mr. James Colter, at (757) 444-4217 or by email at ~~james.colter@navy.mil~~.

Sincerely,

Robert G. Schirmer

ROBERT G. SCHIRMER, P.E.
Environmental Restoration
Product Line Team Leader
By direction of the
Commanding Officer

Enclosure

Copy to:

RIDEM, Paul Kulpa

USEPA Region I, Kymberlee Keckler

NAVSTA Newport, Cornelia Mueller

TtNUS, Steve Parker

Administrative Record