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FORMAL DISPUTE RESOLUTION AGREEMENT REGARDING THE DRAFT FINAL  
SAMPLING AND ANALYSIS PLAN FOR TANK FARM 1 SITE 7 NS NEWPORT RI  
04/24/2012  
DEPARTMENT OF THE NAVY

## Formal Dispute Resolution Agreement – April 24, 2012

On April 2, 2012, the Rhode Island Department of Environmental Management initiated formal dispute pursuant to Section 13.2 of the Naval Station Newport Federal Facility Agreement (FFA) regarding four specific items (outlined below) regarding the *Draft Final Sampling and Analysis Plan* for Tank Farm 1 (Site 07). On April 4, 2012, the members of the members of the Dispute Resolution Committee formally requested the first line supervisors meet and attempt to resolve the disputed items informally. On April 11, 2012, the first line supervisors, Mr. Bryan Olson (EPA), Mr. Matt DeStefano (RIDEM), and Mr. Tim Reisch (Navy) met to discuss the items of dispute. All items of dispute were resolved during this meeting. Details of this agreement are provided in the meeting minutes below.

After introductions, there was a discussion of the NAVSTA Federal Facility Agreement (FFA) comment and dispute resolution processes. We agreed that the preferred method to resolve comments and outstanding issues is through continued dialogue and to extend the comment/response time periods, as needed, rather than the rigid formal process defined in the FFA.

Each item raised by the Rhode Island Department of Environmental Management (RIDEM) in their letter of April 2, 2012 was discussed as outlined below. Following the summary of the discussion on each item, the "AGREEMENT" describes the action(s) that will be taken as formally agreed to by the Navy, USEPA and RIDEM.

1. Additional Areas of Concern. Matt stated that the document should not imply that the investigation proposed within the Sampling and Analysis Plan is comprehensive for all Category 1 areas within Tank Farm 1. The ensuing discussion focused on the categorization of areas within the tank farm for future investigation/remediation. Tim said the categorization is driven by funding and responsibility. The Defense Energy Support Center (DESC), formerly the Defense Logistics Agency (DLA), operated the tank farm bulk petroleum operations and is responsible to address the contamination resulting from those operations prior the property being "returned" to the Navy. In their investigation, DESC is working with RIDEM to identify the tanks, distribution piping, and support structures requiring investigation/remediation. Historic aerial photography was used to identify other areas at each tank farm for investigation/remediation (approximately 40 areas of concern (AOCs) per tank farm); additionally, RIDEM provided other areas of concern to be investigated/remediated. The category of areas within the tank farms:

Category 1 (CERCLA-regulated) areas - locations of a release/suspected release of a CERCLA hazardous substance(s). At Tank Farm 1, these areas would include the ethyl blending plant AOCs and PCBs from transformers, and potentially other areas of potential concern for which the scope of investigation has not been determined (i.e. the Category 3 areas). The Sampling and Analysis Plan for the Data Gaps Assessment (SAP and DGA) of Tank Farm 1 will be revised to define the categorization of sites.

Category 2 (RIDEM UST regulated) areas – these locations relate to petroleum contamination resulting from DESC operations, and which have been, or are currently, being addressed by DESC.

Category 3 areas (additional areas of concern) - areas for which the scope of investigation has not been determined. As these areas were recently identified and the scope of the investigation is undetermined, the Sampling and Analysis Plan (SAP) for the Category 1 sites were scoped and developed. Tim stated that the Navy will conduct a site assessment of these Category 3 AOCs; the document will provide the elements of a SAP to investigate those AOCs which the project manager's recommend further investigation. Bryan indicated that if the event of disagreement between RIDEM and the Navy as to whether specific areas require investigation and should be addressed as part of Category 1, the EPA may consider conducting sampling and analysis.

**AGREEMENT -- The Navy will revise the title of the document to:**

**FINAL SAMPLING AND ANALYSIS PLAN  
(FIELD SAMPLING PLAN AND QUALITY ASSURANCE PROJECT PLAN)  
APRIL 2012**

**DATA GAPS ASSESSMENT  
CATEGORY 1 AREAS ETHYL BLENDING PLANT AND TRANSFORMER SITES, TANK FARM 1  
NAVAL STATION NEWPORT  
NEWPORT, RHODE ISLAND**

Additionally, for this document to be consistent with proposed document revisions to other Tank Farm documents, Section 10.6, 2<sup>nd</sup> paragraph, 2<sup>nd</sup> sentence will be replaced with the following: "In accordance with decisions made by the Project Team (Worksheet #9), the Site has been broken up into Category 1 (CERCLA-regulated) areas and Category 2 (RIDEM UST Division regulated) areas. Also, RIDEM has identified several other areas of potential concern for which the scope of investigation has not been determined; these Category 3 areas will be further evaluated to determine if additional investigation of these areas, if any, will be performed as a Category 1 or Category 2 AOC.

The following will be added as the last paragraph to Section 10.6, "The Category 2 AOCs at Tank Farm 1 are still under investigation and/or remediation by DESC. Once DESC completes the investigation and/or remediation of these petroleum releases to RIDEM's DEC's, any additional actions will be coordinated with RIDEM. The UST at the ethyl blending plant and its associated piping, if present, will be addressed by the Navy as a Category 2 AOC. With the exception of the perimeter fence, the areas identified for additional investigation by RIDEM (inactive fuel loading area, former oil-water separator (central), former gasoline-water separator (west side), electrical structures, and sludge pits) are included within the Category 2 AOCs being investigated by DESC. Once DESC completes the investigation and/or remediation of these areas, actions required to address remaining contamination, if any, will either be under Category 1 and coordinated with USEPA and RIDEM or if it is not jurisdictional under CERCLA, addressed as a Category 3 AOC will be coordinated with RIDEM."

2. Test Pits vs. Borings/UST at ethyl blending plant. Matt said the vent pipe reported at the ethyl blending plant is indicative of a UST at the location; the SAP should include test pits to locate and remove the UST and associated piping. Tim stated that if a UST is present it would be addressed as a Category 2 AOC, but could be funded using ER'N as the operations were associated with the ethyl blending plant operations. The existence of the vent pipe was unknown when the SAP was developed; the Navy will conduct a search for any records pertaining to the existence and status of this UST. If the Navy can locate detailed information related to the UST, and its closure, the Navy will provide the information to RIDEM and EPA to determine future action. If no specific information can be located, the Navy will conduct a geophysical survey of the area to locate the UST and associated piping, if present.

**AGREEMENT** -- The Navy will conduct a search for any records pertaining to the existence and status of the UST at the ethyl blending plant. If the Navy can locate detailed information related to the UST, and its closure, the Navy will provide the information to RIDEM and EPA to determine future action. If no specific information can be located, the Navy will conduct a geophysical survey of the area to locate the UST and associated piping, if present. The geophysical survey, to be included in the SAP, will be used to clear the area such that the borings can be located to avoid the UST and associated piping.

If the UST at the ethyl blending plant exists, the Navy will develop plans to remove the UST and associated piping following RIDEM UST regulations.

3. Additional sampling locations. In addition to the field verification of sampling locations, Tim indicated that a limited number of additional samples, when requested based on field evidence/rationale to support the sample, would be considered by Navy. The SAP includes Appendix D, Field Documentation Forms, these forms can be used to add samples based on field conditions; therefore, a specific revision to the SAP is not required to provide for any additional samples. Matt stated that there would be a basis for any requested additional samples, and suggested the number of additional samples be limited to five. Bryan requested that since the Navy was proposing to revise the SAP to include information to define the Category 1, 2, and 3 AOCs, and to incorporate the geophysical survey to locate the UST and its associated piping to ensure the boring locations are selected to avoid them, the SAP should include a statement that additional samples, up to five, would be added to the investigation if field evidence supports their collection.

**AGREEMENT** -- The Navy will revise the SAP to include a provision for the collection of additional samples, up to 5 locations, based on field evidence found during the sampling verification site visit with the agencies and at the direction of the field team leader at the request of the regulatory agencies. This information is likely to be added to Worksheet #17 (pg 56); the last paragraph will be revised to include: the geophysical survey to locate the UST and associated piping, and to clear/locate boring locations in the vicinity of this UST and piping; and, the collection of additional soil sampling locations, up to 5, if field evidence supports their collection, the addition of these samples will be dependent upon the field team leader formally at the request of the regulatory agencies during a site visit to verify the locations proposed for soil sampling.

4. Sampling for Total Petroleum Hydrocarbons. The discussion of this item focused on two areas: 1) the need to include TPH as an analytical parameter for the samples collected at the Tank Farms, including Final SAP and DGA noted in item 1; and 2) whether the CERCLA petroleum exclusion is applicable to NETC.

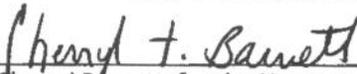
A). Previous investigation of the ethyl blending plant by DESC included TPH as an analytical parameter. Matt asked if sampling for TPH was reasonable given the operations at the ethyl blending plant, mixing fuel with tetraethyl lead fluid to raise the octane. Tim responded that sampling for TPH at the ethyl blending plant was reasonable; and, that as a result of internal discussion, the Navy was agreeable for TPH analysis given the scope of this investigation, but such sampling/analysis is to be conducted to provide additional site information to delineate and remediate any petroleum contamination under State regulations, not CERCLA. Without review of the existing DESC data, Tim stated that TPH would be added as an analytical parameter for the samples collected as part of this Final SAP and DGA. In future documents at other areas of NETC, specifically at the Tank Farms (e.g. EE/CA, FS, Proposed Plan, and ROD) the Navy would discuss the results of any TPH sampling performed as part of the investigation of that site, and, if necessary, establish remediation goals for petroleum (specifically RIDEM's DEC's) and remediate the contamination to RIDEM's DEC's following State regulations. The Navy would, however, not include petroleum standards as ARARs in these CERCLA documents. Assuming TPH sampling and remediation was conducted at Category 1 AOCs in this fashion, RIDEM agreed to leave their petroleum standards out of the ARAR tables of relevant documents.

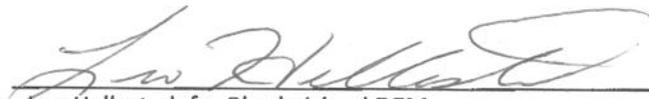
B. The Navy, RIDEM, and EPA discussed the relevance to CERCLA of a release of an additive to petroleum which contains a CERCLA hazardous substance being subject to investigation under CERCLA. There was also discussion as to whether the investigation and remediation of the petroleum into which the additive containing a known hazardous substance was mixed is subject to CERCLA. Matt said he had asked if the EPA's July 31, 1987 memorandum on the CERCLA petroleum exclusion was the most recent determination by EPA. Bryan stated that the 1987 Memorandum was the document that EPA generally uses to interpret the petroleum exclusion. After discussion, the Navy and RIDEM held to their initial position related application of the CERCLA petroleum exclusion at this site, and whether TPH (and other petroleum regulations) are ARARs. In defining ultimate objectives, both the Navy and RIDEM desire that the petroleum contamination at the site be remediated to State criteria (DEC's) following State petroleum regulations; Tim committed to investigate and remediate petroleum contamination for the Category 1 AOCs within Tank Farm 1 to RIDEM DEC's following the State regulations. Tim also agreed that for all future Category 1 investigatory and remedial activities at the Tank Farms, TPH will be addressed and remediated to applicable RIDEM DEC's following State regulations. If TPH sampling is not warranted at a Tank Farm AOC, the Navy will provide evidence and rationale for its exclusion that must be agreed to by all the parties of this agreement. The Navy and RIDEM agreed to disagree on the ARAR determination, and table it for future discussion if needed. The parties also agreed that this agreement in no way will impede or affect RIDEM's

ability to invoke dispute resolution under the FFA for the issue of TPH and petroleum sampling and remediation being a potential ARAR in the future.

**AGREEMENT**

- The Navy will add TPH to the analyst list for the sampling under this Final SAP and DGA, and commits to sampling for TPH and remediating to applicable RIDEM DEC's following State regulations for all Category 1 AOCs within the Tank Farms if warranted by the nature of the site;
- The Navy (or DESC) will remediate petroleum contamination to State remedial objective for the projected land use ;
- The Navy, USEPA and RIDEM have not reached agreement on whether TPH and petroleum are ARARs. The Navy will sample for TPH at Category 1 sites on NAVSTA Newport with known, or suspected, petroleum releases, and remediate found petroleum to applicable RIDEM DEC's following State regulations, including the CATEGORY 1 AREAS ETHYL BLENDING PLANT AND TRANSFORMER SITES, TANK FARM 1.
- The Navy and RIDEM agreed not to continue with the formal dispute related to this specific item at this time, if the Navy implements the action, as stated above, to address the petroleum contamination at this site and sample for TPH at Category 1 sites on NAVSTA Newport with known, or suspected, petroleum releases, and remediate found petroleum to applicable RIDEM DEC's following State regulations in the future. The Navy, RIDEM and USEPA also agree that RIDEM reserves the right to invoke dispute resolution under the FFA for this issue (i.e. petroleum at the Tank Farms should be an ARAR under CERCLA due to its position that a petroleum product and an added hazardous substance that are commingled and cannot be separated as a practical matter are subject to CERCLA authority) in the future at other areas of NETC under it's sole discretion. The parties further agree that nothing in this agreement shall prevent or impede RIDEM from invoking dispute resolution under the FFA relating to TPH or petroleum sampling under CERCLA and asking for a formal determination from USEPA on the scope of the petroleum exclusion. RIDEM further agrees to not dispute the specific issue outlined in this bullet as long as the Navy samples for TPH at the Tank Farms and remediates TPH at Category 1 AOCs to applicable RIDEM DEC's following State regulations.

 4/24/12  
Cheryl Barnett, for the Navy

 4-24-12  
Leo Hellested, for Rhode Island DEM

James T. Owens, for the EPA

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- The Navy and RIDEM agree not to continue with the formal dispute related to this specific item at this time. If the Navy implements the action, as stated above, to address the petroleum contamination at this site and sample for TPH at Category 1 sites on NAVSTA Newport with known, or suspected, petroleum releases, and remediate found petroleum to applicable RIDEM DEC's following State regulations in the future. The Navy, RIDEM and USEPA also agree that RIDEM reserves the right to invoke dispute resolution under the FFA for this issue (i.e. petroleum at the Tank Farms should be an ARAR under CERCLA due to its position that a petroleum product and an added hazardous substance that are commingled and cannot be separated as a practical matter are subject to CERCLA authority) in the future at other areas of NEFC under its sole discretion. The parties further agree that nothing in this agreement shall prevent or impede RIDEM from invoking dispute resolution under the FFA relating to TPH or petroleum sampling under CERCLA and asking for a formal determination from USEPA on the scope of the petroleum exclusion. RIDEM further agrees to not dispute the specific issue outlined in this bullet as long as the Navy samples for TPH at the Tank Farms and remediates TPH at Category 1 AOCs to applicable RIDEM DEC's following State regulations.

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