



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100  
BOSTON, MASSACHUSETTS 02114-2023

November 6, 2002

Al Haring, Chief  
U.S. Department of the Navy  
Naval Facilities Engineering Command  
Northern Division  
Installation Restoration Program  
10 Industrial Highway  
Code 1823, Mail Stop 82  
Lester, PA 19113-2090

Dear Mr. Haring:

Thank you for your e-mail message dated October 18, 2002 where you inquire about addressing Tank Farms 1 through 5 under a State lead scenario. It is EPA's understanding from the September 19, 2002 meeting that the Navy intends to address the investigation and any required cleanup of the Tank Farms under Superfund. Our concerns outlined in our July 29, 2002 letter remain and this letter should in no way be construed to agree to remove the Tank Farms from either the FFA or the Superfund. RIDEM's October 8, 2002 letter reiterates this.

EPA's 1997 *Lead Regulator Policy for Cleanup Activities at Federal Facilities on the National Priorities List* discusses the circumstances where EPA might transfer lead regulator status to a state (see <http://www.epa.gov/swerffr/documents/leadreg.htm>). The policy is clear that even when a cleanup becomes state lead, EPA retains all of its authority under CERCLA to implement a remedy at the site which is compliant with the statute and the NCP. Therefore, while the proposed approach appears to cost more and take just as long, EPA is amenable to this approach.

EPA and RIDEM have entered into an Enforcement Agreement to transfer lead regulator status to the State at the private West Kingston/URI Dump Superfund Site. This agreement took a significant amount of time to negotiate and makes clear that investigations would be conducted in compliance with federal standards regarding risk assessment and contaminant identification. While RIDEM's letter mentions that the State-lead scenario will involve cleanup under the State's *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases*, EPA policy is clear that **all** Applicable or Relevant and Appropriate Requirements must also be addressed. The Navy must ensure that the investigation (and any required cleanup) addresses such requirements. All Superfund concerns must be satisfied regardless of which regulatory agency is the lead. In particular, EPA maintains that site investigations for contaminants regulated under CERCLA are required to determine whether additional investigations are necessary and to ensure that the proposed use of the property is compatible with site contamination levels. Finally, the agreement is clear the EPA retains the right to take back its lead regulator status if the state-lead cleanup is determined to inadequately address CERCLA requirements.

Toll Free • 1-888-372-7341

Internet Address (URL) • <http://www.epa.gov/region1>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Min)

Enclosure (2)

The terms found in the Enforcement Agreement for the West Kingston Superfund Site need to be incorporated as an amendment to the FFA before EPA could agree to transfer the lead agency status to the State. Alternatively, the site could remain as an EPA-lead site under the existing FFA and the Navy could proceed with an investigation to address data gaps at the Tank Farms. As stated in my letter to you dated July 29, 2002, if no CERCLA contaminants are located a No Further Action ROD could be pursued.

On October 25, 2002, Kymberlee Keckler of my staff e-mailed a guidance document entitled *Reusing Superfund Sites: Golf Facilities Where Waste is Left on Site* to Jim Shafer of your staff. This information may be useful when considering golf facility reuse options during the process of selecting, designing, and implementing a cleanup plan for a Superfund Site.

I look forward to working with you and the Rhode Island Department of Environmental Management toward the cleanup of the Tank Farms at Naval Station Newport. Issues related to the environmental assessment conducted under NEPA will be transmitted under separate cover. Please do not hesitate to contact me at (617) 918-1431 should you have any questions or wish to arrange a meeting.

Sincerely,



Dennis Gagne, Chief  
Federal Facilities Superfund Section

cc: Terrence Gray, RIDEM, Providence, RI  
Paul Kulpa, RIDEM, Providence, RI  
Melissa Griffin, NETC, Newport, RI  
David Peterson, USEPA, Boston, MA  
Jennifer Stump, Gannet Fleming, Harrisburg, PA