



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, Ca. 94105-3901

23 December 1991

Commander S.E. Tower
Head, Facilities Management Department
Southwest Division
Naval Facilities Engineering Command
1220 Pacific Highway
San Diego, California 92132-5190

Re: Schedule Extension Request for
Marine Corps Air Station, El Toro

Dear Commander Tower:

This letter is in response to your 13 December 1991 facsimile requesting schedule extensions for Federal Facility Agreement (FFA) deliverables for the Marine Corps Air Station (MCAS), El Toro. Your facsimile arrived at the Environmental Protection Agency (EPA) after working hours on Friday, December 13, 1991, and was not received by my staff until Monday, December 16. The due date for the Draft Remedial Investigation/Feasibility Study (RI/FS) Work Plan for the MCAS El Toro Operable Unit 4 was 15 December 1991. Therefore, your request lacks the timeliness specified in Section 9.1 of the FFA.

Section 9.1 of the FFA states that "timetables, deadlines and schedules shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension." The request shall specify (a) the deadline that is sought to be extended; (b) the length of the extension sought; (c) the good causes for the extension; and (d) the extent to which any related deadline or schedule would be affected if the extension were granted. Section 9.2 of the FFA identifies what constitutes "good cause" for seeking extensions.

Your 13 December 1991 facsimile states that you are requesting these extensions based on "good cause" provisions of Subsection 9.2 (a) and (g) of the FFA. A review of your request fails to provide evidence that the request fulfills the requirements of either Section 9.1 or 9.2 of the FFA. Your request fails to identify all of the requirements of Section 9.1, specifically Subsections 9.1 (c) and (d).

In addition, our review does not provide evidence that your request complies with Subsections 9.2 (a) and (g) of the FFA. Subsection 9.2 (a) requires the identification of an event of Force Majeure. Section 10 of the FFA identifies all the events that constitute Force Majeure. Your request fails to identify any Force Majeure event. Subsection 9.2 (g) of the FFA states that "good cause" exists when sought in regard to "any other event or series of events mutually agreed to by the Parties as constituting good cause." We have no information which leads us to believe that the Parties have mutually agreed that any event or series of events have constituted "good cause" for the MCAS El Toro extension request. In summary, your 13 December 1991 request for time extensions is late, incomplete and therefore not a timely request for extension as required by Section 9.1 of the FFA.

For these reasons, we must deny, at this time, your proposed schedule extension request. The Navy's failure to submit by December 15, 1991, in compliance with Section 9.1 of the FFA, the Draft Remedial Investigation/Feasibility Study Work Plan for Operable Unit 4 constitutes a failure to comply with Sections 7.3., 8.1, and 9.1 of the FFA. Section 14 of the FFA for the MCAS El Toro allows EPA to assess stipulated penalty against the Marine Corps for (a) failure to submit a primary document listed in Section 7 or for (b) failure to comply with a term or condition of the FFA.

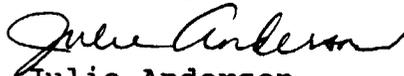
Therefore, in accordance with Section 14, Stipulated Penalties, of the FFA for Marine Corps Air Station, El Toro, the Environmental Protection Agency is notifying you of our intent to assess a stipulated penalty against the Marine Corps. In accordance with Section 14.1 of the FFA, the EPA is providing notice to the Marine Corps of our intent to assess a penalty of \$5,000 for the first week and \$10,000 for each additional week (or part thereof) until the Draft RI/FS Workplan for OU 4 is submitted, or a new schedule is agreed to by all the Parties.

Your 13 December 1991 facsimile stated that you would submit a Draft Detailed Project Schedule within seven days of the facsimile. We have not, as of today, received such Schedule. We hope that we can proceed with the negotiation of the Project Schedule, and eagerly await your new schedule proposal.

In accordance with Section 14.2 of the FFA, the Marine Corps has 15 days after receipt of this notice to invoke dispute resolution on the question of whether failure did in fact occur.

If you have any questions concerning these issues, please contact John Hamill of my staff at (415) 744-2391.

Sincerely,



Julie Anderson
Acting Chief
Federal Facility Enforcement
Branch

cc: A. Piszkin, Navy
M. Alonzo, DTSC
K. Williams, RWQCB
L. Serafini, USMC, El Toro
Commanding General, USMC, El Toro
Commandant of the Marine Corps, USMC Headquarters