



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, NEW YORK 10278

FEB 02 1993

T. G. Sheckels, Head
Restoration Management Section
Department of the Navy
Northern Division
Naval Facilities Engineering Command
10 Industrial Highway, Mail Stop #82
Lester, Pennsylvania 19113-2090

Re: Federal Facility Agreements at the Calverton and
Bethpage Naval Weapons Industrial Reserve Plants

Dear Mr. Sheckels:

Thank you for your letter dated December 21, 1992, responding to our October 30, 1992 letter requesting that you consider the negotiation of Federal Facility Agreements ("FFAs") prior to the final listing of the Calverton and Bethpage Naval Weapons Industrial Reserve Plants on the National Priority List ("NPL").

Your response indicates that you are willing to participate in developing FFAs pursuant to the Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for these two federal facilities, with the following prerequisites:

1. That any negotiated FFA would not be effective until after listing on the NPL.
2. That the FFA language taken from either the FFAs completed for the NAEC Lakehurst or NWS Earle be accepted by Region II.
3. That the pre-listing negotiations be conducted in an informal manner without required schedules or commitments to utilize certain and limited resources for the negotiations.
4. In the event that the informal negotiations impact the ongoing onsite work, in any way, any party may terminate negotiations at any time.

Regarding your first concern, the effective date of FFAs are set forth in the final negotiated agreement. Generally this there is a provision which states that such an agreement will become effective after a public comment period and, if any public

(2)

comment is received, such comments are addressed or the agreement is appropriately modified with mutual consent. The concept that the effective date of the FFAs be no earlier than NPL listing is acceptable to EPA, and the provision setting forth the effective date of these proposed FFAs can easily be drafted to accommodate your concern, such as by including language indicating that the effective date shall be at the end of the public comment period or the date of listing on the NPL, whichever is later.

Regarding your second concern, I am certain you are aware that EPA and the Department of Defense have negotiated model FFA language for many provisions of CERCLA Section 120 agreements. It is certainly our intent to incorporate this model language into the proposed FFAs, as I assume it was used in the NAEC Lakehurst and NWS Earle agreements. For the provisions of the FFA for which there is no model language, EPA will look to the NAEC Lakehurst and NWS Earle agreements, but because the State of New Jersey elected not to participate in those two agreements, in contrast to the expressed intentions of the State of New York, certain modifications must be made to reflect the distinction between a three party agreement and a Navy-EPA agreement. Other relevant sources other than the NAEC Lakehurst and NWS Earle agreements include New York State and Federal RCRA permits, documents which have been generated as part of the Installation Restoration and RCRA corrective action activities, and other CERCLA Section 120 agreements with the Department of Defense to which New York has become a party (Departments of Air Force and Army). Please note that the Navy and Grumman Aerospace Inc., as co-permittees, are responsible for ensuring that corrective action activities proceed for all areas specified in the EPA HSWA permit, regardless of whether these areas will be covered under the FFA. This applies to all currently defined areas identified in Module III, Section A.3. of the EPA HSWA permit and any newly discovered areas as specified in Module III, Sections C and D of the HSWA permit.

Regarding your third concern, EPA does not intend to follow our policy of issuing a formal "notice letter" to initiate negotiations, nor will we set deadlines for the traditional ninety-day negotiation period. One of the reasons for the proposed early FFA negotiations for these facilities is to provide a more flexible schedule to negotiate the FFAs while simultaneously achieving an agreement in advance of when we might otherwise. At the onset of negotiations, we would expect that all parties could discuss and agree upon a reasonable schedule to achieve our goal, and we would conduct the negotiations in accordance with that agreed upon schedule. Clearly, the schedule could be modified during the course of negotiations, if necessary.

(3)

Regarding your last concern, EPA agrees that progress in the ongoing remedial work is very important and that negotiations should not slow or impede that work. CERCLA clearly states when an agreement must be reached, and until that time, you are not compelled by law to enter into such an agreement. EPA is not requesting that you commit yourself to anything to the contrary, but we do request that you discuss any impacts that your participation in any proposed negotiations has on the site work prior to exercising your discretion and terminating negotiations. It is possible that if the negotiations are impeding the progress of the site work, a resolution can be reached.

EPA is preparing draft FFAs for the Bethpage and Calverton sites, and we anticipate distribution of the draft agreements in late February. We propose to address the non-site specific provisions for each agreement independently from the site-specific provisions for each facility. This should substantially reduce time by allowing us to negotiate the non-site specific provisions once for use in both FFAs.

EPA's negotiating team for each site will include the following EPA personnel at 26 Federal Plaza, New York, New York, 10278. In the future, correspondence and discussions should be directed to the appropriate negotiating team member.

Counsel RCRA Permit/Corrective Action Superfund Project Manager

James Doyle
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Carol Stein
Room 1037
(212) 264-5130

Mary Logan
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(212) 264-1841

If you have any questions regarding this letter or the status of the draft FFAs, please contact either Mr. Doyle or Ms. Logan. If you have any questions regarding the ongoing RCRA corrective action work, please contact Ms. Stein. We look forward to the development of FFAs for the Bethpage and Calverton sites.

Sincerely,

for 

Robert J. Wing, Chief
Federal Facilities Section

cc: D. Felton, Navy
F. Klancher, Navy
J. Ohlman, Grumman
J. Middlekoop, NYSDEC-Albany
S. Ervolino, NYSDEC-Albany
J. Eckl, NYSDEC