



DEPARTMENT OF THE NAVY

NAVAL FACILITIES ENGINEERING COMMAND

200 STOVALL STREET

ALEXANDRIA, VA 22332-2300

IN REPLY REFER TO

February 11, 1991

Stephen Shakman
Special Assistant Attorney
General
Office of the Attorney General
520 Lafayette Road
St. Paul, MN 55155

Re: FFA for NIROP Fridley, MN

Dear Steve:

The Navy has completed its review of your proposal dated January 16, 1991 regarding a provision for the reimbursement of State oversight costs for the Federal Facility Agreement (FFA) for the Naval Industrial Reserve Ordnance Plant (NIROP) Fridley, Minnesota. I thought it might be helpful if I put down in writing some of the matters that I discussed with you during our telephone conversation last Friday afternoon along with some additional comments on the wording of your proposal.

Based on guidance from the Department of Defense (DoD), the Navy is not able to reimburse, out of the Defense Environmental Restoration Account (DERA) funds, the response costs of Minnesota incurred prior to 1986. In addition, the Navy is unable to reimburse out of DERA funds the response costs of Minnesota incurred from 1986 to fiscal year 1990. These response costs (1986 - FY1990) could be reimbursed by DoD, however, if Minnesota were to enter a Department of Defense/State Memorandum of Agreement (DSMoA). It is my understanding that negotiations between Minnesota and DoD regarding a DSMoA are still ongoing.

I am attaching a list of comments regarding the wording of your proposal. I can be available to discuss these comments at your convenience. My comments are principally based on the two positions stated in the previous paragraph and your proposal's deviations from the language agreed to in the FFA for Naval Air Station Brunswick, Maine.

I have passed on, both within the Navy and DoD, your argument that the combined effect of the 1% cap and the bar to payments for response costs incurred prior to 1986 works a hardship on a State like Minnesota that has a surplus of small sites and that initiated an aggressive enforcement program in the early days of the discovery of releases of hazardous substances. I hope that Minnesota understands the Navy and DoD's need to manage a nationwide environmental restoration program with some degree of consistency.

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The Navy and DoD continue to be interested in attempting to find a compromise to resolve the issue of reimbursement of the State of Minnesota's expenses. In that regard, I appreciate your tentative agreement to continue to negotiate the few remaining open issues in the rest of the NIROP FFA.

I appreciate your cooperation in this matter and look forward to hearing from you.

Sincerely yours,



RAY GOLDSTEIN

Assistant Counsel (Environmental)

cc: J. Kujawa
R. Hanson
K. Homick
J. Shafer
N. Pryor
P. Kushner
D. Olson
B. Velde

Comments to State Proposal Regarding
Reimbursement of Oversight Costs

I prefer that this section not be part of Section XXVIII - Recovery of U.S. EPA Expenses. I suggest that this section be Section XLI - Recovery of State Response Costs. The section will need to be re-numbered accordingly. In addition, in most of these provisions, "MPCA" should be replaced by "the State".

Section 28.2 - Insert "XL" prior to "Funding" in the second line. Insert "reasonable" before "Superfund" in the fourth line. Replace "has incurred or will incur" with "incurs" in the fourth line. Replace "with respect to" with "in direct support of" in the fourth through fifth lines. Insert "pursuant to this Agreement" after "activities" in the fifth line.

Section 28.3 - Insert "reasonable" before "overhead" in the second line. Insert "in providing assistance to the Navy" after "MPCA" in the second line.

Section 28.3(a) - Insert "specific" or "substantive" prior to "comment" in the first line.

Section 28.3(b) - Insert "at the Site" after "actions" in the second line.

Section 28.3(d) - Insert commas after "participation" and "Navy" in the first line. I noticed that "Federal" was capitalized here, but was lower-case in section 28.3(c). The phrase "and with the Agreement" in the third through fourth lines is a little awkward.

Section 28.3(e) - Has this type of assistance occurred in the past?

Section 28.4 - Delete "insofar as practicable" in the fifth line from the bottom. Delete the last four lines.

Section 28.7 - Insert "in the implementation of this Agreement" after "incurred" in the second line. Delete "after October 1, 1986" in the second line. Delete "from initial investigation" in the fourth line. Insert language similar to paragraphs 34.6(a) & (b) from the FFA for NAS Brunswick, Maine.

Section 28.8 - Delete "on the basis of changes in the MPCA's level of effort" in the first through second lines.

Section 28.9 - Insert "solely" after "expenses" in the second line. Delete "after the October 1, 1986" in the second line. Delete the last sentence.

Section 28.10(d) - Delete the last sentence.

Section 28.12 - Delete entire section. In this regard, let me suggest that you take another look at paragraph 34.11 of the FFA for NAS Brunswick, Maine.

Section 28.13 - Replace "Sections 28.02-28.11" with "this Agreement" in the second line. Delete "for this Site" at the end of the Section.