



STATE OF MINNESOTA

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February 20, 1991

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Re: Remaining Issues in NIROP FFA Negotiations

Dear Ray and Jerry:

This letter is intended to summarize the issues remaining after Tuesday morning's conference call and to advise you of further refinements of the MPCA's position resulting from a discussion with the head of the MPCA Superfund section.

The "five plus" issues remaining after our call are as follows:

1. Stipulated Penalties
2. State Options in the Event Navy Invokes Lack of Funding
3. Reimbursement of State Response Costs
4. Attachments A and B
5. Deadlines

The "plus" is the RCRA/CERCLA Integration issue as it relates to Hazardous Waste Storage Area C. Jerry needs to check with supervisors to confirm the tentative agreement we reached in the conference call.

From our internal discussion, I have further proposals on issues 1, 2, and 3. I will outline them here and, if they are acceptable, will draft more complete terms in time for our next conference call at 1:00 p.m. (Central Standard Time) on February 28, 1991.

1. Stipulated Penalties. We continue to prefer the "contingency" approach drafted with EPA in 1989 for the Twin Cities Air Force Reserve Base (TCAFRB) negotiations. That approach reflected a significant concession by Minnesota from the power to assess stipulated penalties it has under the 1987 FFA with the Army and EPA for the Twin Cities Army Ammunition Plant

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(TCAAP). As I pointed out in the conference call, the TCAFRB provision has appeared in all four EPA drafts of the NIROP FFA and only last week did Jerry advise me that EPA Headquarters now finds it unacceptable. Jerry sent for MPCA consideration with his February 14 letter several stipulated penalty provisions from other FFA's. MPCA would accept the terms of Section XXI of the three-party Brunswick Naval Air Station FFA with the following addition (rough draft) before the last sentence of paragraph 21.1.

If no stipulated penalty is assessed by EPA at the conclusion of dispute resolution, MPCA retains all rights it may have to seek any other penalties or sanctions against the Navy for the failure alleged including, but not limited to, penalties pursuant to 42 U.S.C. § 9622(1).

2. State Options in the Event Navy Invokes Lack of Funding. Paragraph 40.5 of the Navy's January 29, 1991, "unofficial draft" accurately presents the MPCA's proposal (based on the Bangor Subbase FFA) made at our January 17, 1991, negotiation session. From Tuesday's conference call and prior discussion, I understand that the Navy objects to the MPCA having rights both to seek judicial enforcement and to withdraw from the FFA. To facilitate agreement, MPCA will drop the request to have a right to withdraw. This can be accomplished by deleting the last sentence in the "unofficial" paragraph 40.5.

3. Reimbursement of State Response Costs. The MPCA will modify its January 16, 1991, proposal as follows:

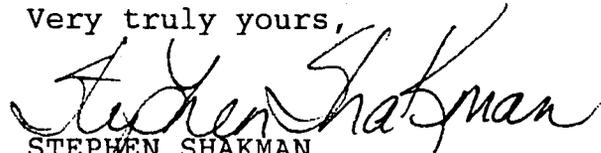
- a. For expense since enactment of SARA (October 17, 1986), MPCA will continue efforts to negotiate a multi-site DSMOA with the Department of Defense, while preserving its rights to bring a cost recovery action relating to NIROP in the event a DSMOA is not reached.
- b. For pre-SARA expenses, the Navy will reimburse the MPCA \$26,759.40, subject to Navy review (as review is provided the Army for pre-SARA MPCA expenses under the TCAAP FFA).

We hope these proposed modifications will enable MPCA, EPA, and the Navy to reach final agreement on a three-party

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FFA. Although extra time will be required for consideration by the MPCA Citizen Board, we will make every effort to seek agreement within the statutory time frame set forth in 42 U.S.C. § 9620(e)(2).

Very truly yours,



STEPHEN SHAKMAN
Special Assistant
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Environmental Protection Division

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cc: Gary Eddy, MPCA
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