



DEPARTMENT OF THE NAVY
CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, DC 20350-2000

IN REPLY REFER TO

5090
Ser N453C/4U596183
17 Jun 94

From: Chief of Naval Operations
To: Office of the Assistant General Counsel (Installations and Environment)
Subj: PAYMENT OF STIPULATED PENALTIES ASSESSED FOR NON-COMPLIANCE WITH THE FEDERAL FACILITIES AGREEMENT FOR NAVAL EDUCATION AND TRAINING CENTER, NEWPORT, RHODE ISLAND
Ref: (a) PHONCON btwn Patricia Ferrebee (N453C) and Pete Kushner (OAGC(I&E)) of 7 Jun 94
Encl: (1) U.S. EPA Region I ltr of 21 Apr 94
(2) NORTHNAVFACENGCOM ltr 5090 Ser 2110/1823/dec of 29 Apr 94
(3) U.S. EPA Region I ltr of 4 May 94
(4) NORTHNAVFACENGCOM ltr 5090 Ser 2117/1823/dec of 5 May 94
(5) U.S. EPA Region I ltr of 3 Jun 94

1. The source of funds for payment of stipulated penalties assessed for failure to meet deadlines established under a Federal Facilities Agreement (FFA) was discussed during reference (a). The understanding from reference (a) was that the Defense Environmental Restoration Account (DERA) might not be available to pay stipulated penalties because the authorization for FY94 did not include language specifically allowing DERA to be used for that purpose.

2. Enclosures (1) through (4) address an alleged failure on the part of the Navy to meet deadlines established in the FFA for the Naval Education and Training Center Newport. Enclosure (5) assesses penalties for that alleged failure. The Navy must be aware of its options during the dispute resolution process and therefore this office would like your legal opinion on the following:

(a) Are DERA funds available for payment of stipulated penalties assessed pursuant to an FFA in the absence of a specific statutory authorization of such use?

(b) If DERA funds cannot be used for the above purpose, what source of funding is available for paying stipulated penalties? Can the Navy be forced to use O&M funds for payment of penalties when the intent of FFAs is to limit funding to DERA?

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(c) It is our understanding that the Army has been assessed stipulated penalties at some of their installations. Is there any information available on how they resolved these cases? If so, the Navy needs to know how the issues were resolved in order to determine if the response sets a precedent which we will be expected to follow?

3. Your attention to this matter is appreciated. The Environmental Protection Agency expects a response to their 3 June letter by 30 June 1994. Our point of contact is Dave Olson, N453, or Patricia Ferrebee, N453C.



R. L. STEINBRUGGE
By direction

Copy to:
NAVFACENGCOM (40)
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