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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION I**

**J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211**

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VIA FACSIMILE AND MAIL

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July 22, 1994

To	<u>Al Haring</u>	From	<u>Mary Sanderson</u>
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RE: Assessment of Stipulated Penalties for Non-Compliance with the Federal Facility Agreement for the Naval Education and Training Center (NETC) - Newport, Rhode Island

Dear Mr. Haring: Al \_\_\_\_\_

This letter is a complete response to your letter of June 27, 1994, which responded to EPA's letter of June 3, 1994 assessing stipulated penalties for the Navy's failure to submit a complete draft Phase II RI report for the Old Fire Fighter Training Area and McAllister Point Landfill. EPA sent a preliminary response to your letter of June 27, 1994 in which we agreed to extend the period of informal dispute until Monday, August 1, 1994. EPA also stated that it is not willing to rescind, but is willing to hold in abeyance, its assessment of stipulated penalties during the period of informal dispute resolution.

Your letter of June 27, 1994 made several statements which require EPA's response. I have followed the outline of your letter and address the issues raised in your letter in the order presented.

**SUBMISSION OF PHASE II RI REPORTS**

Although the Navy believes that the submission of an incomplete draft Phase II Remedial Investigation (RI) report without an ecological risk assessment is acceptable, EPA disagrees. The submission of a draft RI report without an ecological risk assessment report (or any other required section) in order to meet the deadline for its delivery is not acceptable. EPA does not and will not consider the submission of an incomplete deliverable to have met the deadlines set forth in the Federal Facility Agreement (FFA). The approved Phase II RI workplan defined the scope and content of the draft Phase II RI report, and required the inclusion



of a specific chapter presenting the findings of the ecological risk assessment requirements.

In fact, the Navy's response to EPA comment number 3 on the Phase I RI report, states that the ecological risk assessment would be part of the draft Phase II RI report. The Navy further states "The remedial action objective to protect or restore environmental resources will be discussed in the final Phase I/Phase II report based upon the findings of the Phase II ecological risk assessments." It is the Navy's responsibility to ensure that the draft Phase II RI reports submitted to EPA fully comply with the scope and intent of the contents of the approved Phase II RI workplan.

In a letter dated October 27, 1993, the Navy requested a twenty-two (22) week extension, from November 7, 1993 to March 31, 1994, for the submission of the draft Phase II RI reports for McAllister Point landfill and the Old Fire Fighting Training Area. The basis for the Navy's request was that the additional time would ensure that quality draft Phase II RI reports for Sites 01 and 09 would be submitted to EPA for review and comment.

In order to ensure that the information from the draft Phase II RI report was incorporated into the landfill cap design which was under review at that time, EPA approved a fifteen (15) week extension to the deadline for submitting the draft Phase II RI report for McAllister Point landfill and approved the full twenty-two (22) week extension to the deadline for submitting the draft Phase II RI report for the Old Fire Fighting Training Area. When the Navy submitted the draft Phase II RI reports for McAllister Point landfill and the Old Fighting Training Area without the ecological risk assessments, the Navy did not submit a complete draft report, let alone a quality report, which was the rationale the Navy provided to EPA for extending the deadlines for submitting these reports and was basis for the EPA approval of this extension.

In addition, the source control Record of Decision (ROD) for the McAllister Point landfill specifically requires the Navy to determine the nature, extent and location of near-shore sediments which may have been affected by site-related contamination. Therefore, the management of migration ROD for McAllister Point landfill, which would address the near-shore sediments along with all other investigations required in the source control ROD, must be finalized by the start of the landfill cap construction, which is December 27, 1994 (15-month statutory deadline). Since the Navy did not submit the ecological risk assessment required by the Phase II RI workplan and the source control ROD for McAllister Point landfill, the Navy has not only missed the revised deadlines for submitting the draft Phase II RI reports for McAllister Point landfill and the Old Fire Fighting Training Area, but has also jeopardized the schedule specified in the source control ROD. In summary, because the Navy had requested the extension of the

deadline for completion of the ecological risk assessment for the near-shore sediments and because the sediments were explicitly addressed as part of the source control ROD for McAllister Point landfill, EPA understood the Navy to be fully aware of the critical role that the ecological risk assessment for the near-shore sediments would assume at NETC-Newport, and EPA believes the Navy could have managed the site-related field work in a more effective and timely fashion.

#### **SPECIFIC WORK COMPLETED TO DATE**

Your letter of June 27, 1994 also described the work which has been completed to date. Several of the items listed, although demonstrating progress in many areas, describe actions that the Navy has either voluntarily chosen to initiate or are required by other regulatory agencies or requirements. I would like to offer the following comments, on a point by point basis:

**- Interim Remedial Action at Tank Farm Five**

The interim ROD for this site was signed in September 1992. The Navy has awarded the construction contract for a ground water treatment system in accordance with the ROD. Construction is not yet completed and actual pump-and-treat is not yet underway.

**- Source Control ROD at McAllister Point Landfill**

The Navy's signature for this source control ROD committed the Navy to complete several studies during the Phase II RI fieldwork. Until the Navy satisfies all of the objectives, the Navy has not fully complied with all of the requirements of the source control ROD.

**- Remedial Design for RCRA Subtitle C multilayer cap at McAllister Point Landfill**

The Navy's management of the field work defined within the approved Phase II workplan and the work associated with the design of the landfill cap did incorporate the data from the field work into the design of the landfill cap. Award of the construction contract this month presumably precludes any on-site sediment disposal option.

**- Phase II RI field work and submission of draft reports for McAllister Point Landfill and the Old Fire Fighting Training Area**

As previously discussed, the Navy did not complete all of the requirements for the Phase II field work, and the draft RI reports were submitted after the revised submission deadlines. In addition, the Navy did not provide EPA with any information to justify missing the revised deadlines, and these documents are not yet complete.

**- Remedial Design/Remedial Action (RD/RA) for Soil Removal at Tank 53 at Tank Farm Five**

The interim ROD for Tank Farm Five stated that the soil removal at Tank 53 would be performed in compliance with the State of Rhode Island's Resource Conservation and Recovery Act (RCRA) requirements. The Navy must comply with the State requirements as well.

**- RD/RA for Tank Content Removal/Closure of USTs**

The closure of these tanks is being performed under the State of Rhode Island's Underground Storage Tank (UST) program.

**- Removal Action at Melville North Landfill**

**- RD/RA for Hot Spot Removal at Melville North Landfill**

**- Phase II RI Implementation for Melville North Landfill**

The Melville North Landfill is listed as a Formerly Used Defense Site (FUDS), and is not part of the NETC-Newport site, as defined on the National Priorities Listing (NPL). This remedial action is outside the scope of the CERCLA, and therefore this action is not part of the Federal Facility Superfund Program.

**- Preliminary Study at Derecktor Shipyard**

The Navy has recognized the risk posed by the on-shore and off-shore contamination at this portion of the base, and has initiated field work to further delineate the extent of contamination. This site must still be formerly incorporated in the Federal Facility Agreement for the NETC-Newport site.

We acknowledge that the Navy has many environmental responsibilities to maintain compliance at NETC. Regardless of whether the Navy has completed all of the work outlined above, this does not relieve the Navy from their obligations under the FFA for timely completion of the work for the Old Fire Fighting Training Area and McAllister Point landfill, which is the subject of EPA's assessment of stipulated penalties.

**NAVY'S COMMITMENT TO ECOLOGICAL RISK ASSESSMENTS**

In your letter, you claim that the Navy is committed to addressing ecological risk issues, however, notwithstanding eight (8) years in which to do so, the Navy has not provided the necessary information to resolve several critical ecological risk issues at NETC-Newport.

With respect to the near-shore sediments at McAllister Point landfill, the Navy stated in the Executive Summary for Confirmation Study on Hazardous Waste Sites at NETC, dated May 15, 1986 (Loureiro Engineering Associates), "The verification step data seem to indicate that the landfill has caused or is continuing to cause metal deposition near Stations Nos. 12 and 13." and "In general,

the off-shore sediments sampled in the characterization step were found to be less contaminated than the near-shore sediments. Elevated levels of lead, copper, and nickel were found in sediments close to shore but the chromium concentrations at these stations were only slightly above the control sample concentrations." On April 1, 1994, the Navy and their contractors presented the results of fieldwork defined in workplans from Battelle Ocean Sciences and a draft ecological marine assessment workplan from Menzie Cura and Associates (dated July 19, 1993). A summary of these results are as follows:

Site 01 - McAllister Point Landfill

PAHs: Contamination noted in near- and far-shore sediments. No significant contamination noted in tissues.

PCBs: Elevated contamination in near-shore sediments, variable concentrations of contaminants in far-shore sediments.

Near-shore contamination (3-5 times greater than reference stations) noted in mussels, some contamination noted in clams. No "significant" concentrations of contaminants detected.

Metals: Elevated concentrations of metals noted in near-shore sediments, variable concentrations of metals in far-shore sediments.

In the near-shore areas, variable concentrations of metals noted in mussels and clams (high hit of lead in one clam sample). Far-shore areas did not indicate significant elevation over reference locations.

In the eight years since the initial confirmation study, the Navy has still not delineated the extent of contamination in the near-shore and far-shore sediments at McAllister Point landfill and the Old Fighting Training Area nor provided an ecological risk assessment to determine if this contamination poses an unacceptable risk to the marine environment.

Furthermore, the Navy composited the sediment and biota samples in the 1993 effort, despite explicit demands from EPA, both verbally and in a letter dated August 12, 1993, to avoid compositing of sediment samples. As a result of using composite samples, the Navy was only able to conclude that contamination exists, but could not define the extent of the contamination because of the lack of discrete sampling. When comparing the results of the recent sediment and biota sampling efforts to the Confirmation Study from 1986, it appears that no additional information regarding the extent of contamination within the near- and far-shore sediments, and the associated risk, has been gathered during the past eight years. The Navy's commitment to completing an ecological risk

assessment is not clear to EPA when considering a review of the work described above.

#### EPA'S CONTINUING CONCERNS

On Friday, July 15, 1994, representatives from EPA and NOAA attended the first session of the ecological risk assessment workgroup at NETC-Newport. Some of these members are the same representatives that have been working with the Navy since NETC-Newport became an NPL site in 1989.

The goal of this meeting was to review, comment and discuss the "Draft Work/Quality Assurance Project Plan for the Narragansett Bay Ecorisk and Monitoring for Navy Sites: Off-shore Ecological Risk Assessment for the Lower East Passage Study Area, dated 12 July 1994". At a minimum, EPA was expecting a portion of this workplan to include a site-specific investigation of the near-shore sediments at McAllister Point landfill as was discussed in the meeting of many of the same participants on April 1, 1994. This was not part of the workplan. The Navy instead directed its contractor, the University of Rhode Island's Graduate School of Oceanography to generate a regional workplan which focuses on the lower passage of Narragansett Bay. By the end of the day, the Navy and the other members of the workgroup had "fast tracked" a focused discussion on McAllister Point landfill to describe the work that would be required to determine the impact caused by base activities on the near-shore and far-shore sediments, and the associated risk to the marine environment. This discussion was essentially identical to that which took place on April 1, 1994.

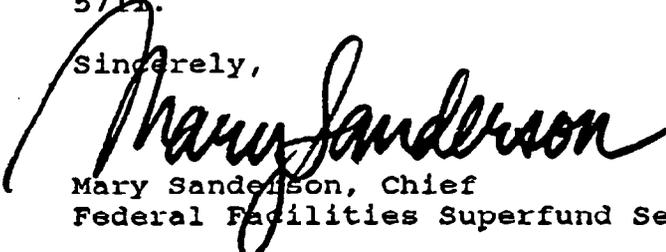
I am unclear how the Navy's regional workplan would have addressed these site-specific Superfund issues, and I am concerned that the Navy would submit such a workplan in light of the on-going informal dispute resolution. We are looking forward to reviewing the revised, McAllister Point landfill workplan which has been promised to us by the end of the month. As is evident from the foregoing discussion, EPA has a very different interpretation of the Navy's commitment to completing an ecological risk assessment than you have presented in your June 27 letter, and we continue to doubt the Navy's understanding of how to proceed, despite repeated conversations regarding EPA's expectations.

As previously mentioned in my letter to you dated July 13, 1994, EPA agreed to extend the period of informal dispute until Monday, August 1, 1994. EPA is not willing to rescind, but is willing to hold in abeyance, its assessment of stipulated penalties during the period of informal dispute resolution. I note, however, that the Navy has twice requested an extension to the period of informal dispute resolution, yet has not made any efforts to settle this dispute. EPA is not inclined to grant further extensions. I believe that an offer to settle the assessed stipulated penalties

would allow us to bring this issue to closure and move on with the business of determining the need for any sediment cleanup needed.

If there are any questions regarding this matter, please feel free to contact either Andrew Miniuks at 617/573-9614 or me at 617/573-5711.

Sincerely,



Mary Sanderson, Chief  
Federal Facilities Superfund Section

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