



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Environmental Management
DIVISION OF SITE REMEDIATION
291 Promenade Street
Providence, R.I. 02908-5767

4 October 1994

Mr. Frank Ciavattieri, Acting Director
Waste Management Division
U.S. EPA, Region I
J.F.K Federal Building
Boston, MA 02203-2211

Captain W.A. Waters
U.S. Department of the Navy
Northern Division
Naval Facilities Engineering Command
10 Industrial Highway
Code 1823, Mail Stop 82
Lester, PA 19113-2090

RE: Newport Education and Training Center (NETC), Newport, Rhode Island

Dear Mr. Ciavattieri and Captain Waters:

The Rhode Island Department of Environmental Management (RIDEM), Division of Site Remediation (DSR) is in receipt of the Navy's Statement of Dispute regarding the EPA's assessment of stipulated penalties against the Navy for non-compliance with the Federal Facilities Agreement (FFA) for the Naval Education and Training Center (NETC), Newport, Rhode Island. The EPA alleges that the Navy failed to submit a complete draft Phase II Remedial Investigation (RI) Report for the McAllister Point Landfill and the Old Fire Fighting Training Area by the schedules set forth by the FFA. Of particular concern is the lack of a comprehensive ecological risk assessment.

RIDEM agrees that the Navy failed to submit a complete and comprehensive draft Phase II RI for the McAllister Point Landfill and the Old Fire Fighting Training Area. As a result, critical decisions regarding whole site remediation are being delayed. However, we feel this situation, and the resulting dispute, may have been inevitable. Specifically, RIDEM has repeatedly expressed concerns over the segmenting of Areas of Concern (AOCs) into operable units. While such segmentation allows for additional milestones, it clearly clouds the language in the FFA. These changes in circumstances make both achieving and evaluating compliance difficult and, subsequently, leads to problems such as the one we are currently facing.

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RIDEM has continued to monitor this matter as it has evolved through informal dispute resolution to the point we are at today, which is that of Formal Dispute Resolution. While it is unfortunate that the matter has progressed to this point, I am optimistic that we can settle this issue within the time allotted by the FFA for the Dispute Resolution Committee, twenty-one days, and focus our future efforts on site remediation activities.

We are also in receipt of correspondence from the EPA dated 22 September 1994 informing all parties that EPA takes issue with the Navy's Statement of Dispute and of their intent to submit a written response. Although RIDEM declines the invitation to respond to the specifics contained within the Statement of Dispute and will withhold our discussion of said statement to the formal dispute process, we do, however, feel compelled to provide you with historical information regarding RIDEM's involvement in this matter which is noticeably excluded in much of the correspondence exchanged between your agencies.

In order to have a complete and accurate record prior to convening our committee, it should be noted that RIDEM has raised concerns on numerous occasions in the past with respect to the timely submittal and completeness of the draft Phase II RI, specifically with the adequacy of the ecological risk assessment for these sites. It is RIDEM who is entrusted to protect the health and environmental interests of the people of Rhode Island. These sites, McAllister Point Landfill in particular, have impacted and degraded portions of Narragansett Bay which is one of the State's most valued natural resources. For this reason, RIDEM has always maintained an active role in this effort in order to assure that the selected remedy be effective in protecting this resource from further contamination.

RIDEM has long recognized the significance of acquiring the necessary data required to generate a comprehensive ecological risk assessment in a timely manner. It was obvious to us that this assessment would be a major decision-making document for a management of migration ROD which was to follow the source control ROD. In the fall of 1992 we urged for completion of the Sediment and Biota Work Plan so that sampling could proceed expeditiously. In the spring of 1993, we stressed that Phase II field work needed to proceed by that summer if we were to receive a complete draft Phase II RI by the fall of 1993. It was obvious to us that the Navy was focusing much of its resources on the OUI ROD for McAllister Point and that the submission of a complete and comprehensive draft Phase II RI was of lower priority. We further stressed on numerous occasions that if a management of migration ROD was to be completed prior to the initiation of construction of the cap, particularly within 15 months as mandated, and if there were any plans to include potentially contaminated sediments under the cap, that such a document needed to be completed promptly.

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Quite frankly, we had concerns about proceeding with a ROD for this site without having a comprehensive and complete Phase II RI and a substantially complete and unbiased Feasibility Study (FS). As a result, the Department strongly considered not offering its concurrence with the ROD for this operable unit. A review of your records will provide you with many examples in which we express this concern. However, after meeting with the EPA and receiving their assurances that our concerns would be addressed, we decided to continue working towards the EPA and Navy's goal of signing a ROD for Source Control by September 1993.

Our concerns over gaps in the available data were repeatedly presented throughout the design and implementation of the scope of the RI during working meetings such as Technical Review Committee (TRC) meetings, RPM meetings, and telephone conferences. As previously mentioned, these concerns were also memorialized in several written correspondences and events which are contained in your records.

I am also concerned that three government agencies stood before the public one year ago and stated that we would have a management of migration ROD signed by this fall and that construction activities for the cap would begin as well. Obviously, we will not meet this goal and, as a result, our credibility will be compromised. Also, given that Northern Division has claimed NETC to be a model facility within this region, I am further concerned about this situation and its reflection upon our programs. For these reasons, along with the obvious benefit to human health and the environment, it is in our best interest to resolve this matter expeditiously.

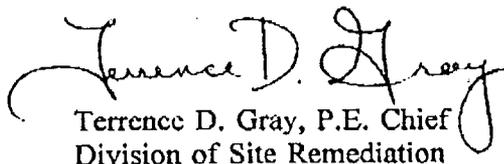
RIDEM staff will continue to work with both of your agencies in an effort to resolve the outstanding technical issues. We have dedicated technical staff to work on the recently convened ecological assessment work group advisory committee for NETC and we will also continue our ongoing efforts towards base-wide remedial efforts.

As you are already aware, and in accordance with the FFA, I shall be representing RIDEM on the Dispute Resolution Committee along with Warren Angell of my staff. We look forward to meeting with you in an effort to resolve this matter as soon as is possible so that we may proceed with the business of restoring the environment. Please contact Warren Angell or me at (401) 277-3872 if you have any questions regarding this matter.

Finally, it is my recommendation that we hold a meeting rather than a conference call in an initial effort to resolve this matter. Along these lines, we would appreciate at least one week's notice prior to the scheduling of any committee meetings. Please notify us as early as possible with a proposed schedule for meetings.

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Sincerely,



Terrence D. Gray, P.E. Chief
Division of Site Remediation

cc: Warren Angell, RIDEM DSR
Michael Annarummo, RIDEM, Director
Claude Cote, RIDEM Legal
James Fester, RIDEM, Associate Director
Mary Sanderson, EPA Region I
David Webster, EPA Region I