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JK 10/12/94



DEPARTMENT OF THE NAVY

NORTHERN DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
10 INDUSTRIAL HIGHWAY
MAIL STOP, #82
LESTER, PA 19113-2090

N62661.AR.000479
NAVSTA NEWPORT RI
5090.3a

IN REPLY REFER TO

11
⑦ October 1994

Mr. Frank Ciavattieri
Waste Management Division
U.S. Environmental Protection Agency
Region I
JFK Federal Building
Boston, MA 02203-2211

Mr. Terrence Gray
State of Rhode Island and Providence Plantations
Department of Environmental Management
Division of Site Remediation
291 Promenade Street
Providence, RI 02908-5767

Dear Mr. Ciavattieri and Mr. Gray:

I am in receipt of EPA's letter of 30 September 1994 and RIDEM's letter of 4 October 1994 concerning the Navy's Statement of Dispute dated 20 September 1994. Although my staff has indicated to me some areas of disagreement with EPA's response, in the interest of resolving this matter as soon as possible, I defer offering a written detailed rebuttal on the belief that it will enhance our opportunity to settle this matter among ourselves. Should it be necessary to submit the dispute to the Senior Executive Committee, however, a written rebuttal may need to accompany the other documentation.

What is most striking to me about EPA's response is the absence of any acknowledgement that the workplan from which the draft Phase II Remedial Investigation Reports came was mutually agreed upon by the EPA, the State, and the Navy; that the qualitative and quantitative investigations contemplated by that workplan were timely conducted; and that the investigations which are continuing to date are the result of the mutual agreement of all concerned parties.

Mr. Gray's letter of 4 October very effectively summarizes the current situation when he states that "changes in circumstances" make "both achieving and evaluating compliance difficult." It is changes in circumstances, which are an expected part of the cleanup process, that necessitate the ongoing investigations. It is these same changing circumstances which have generated the disagreement to the completeness of the draft RI reports. Putting aside for the moment the Navy's position that an assessment of stipulated penalties on a draft primary document is not warranted in accordance with the Federal Facilities Agreement

(FFA) especially when the procedure of Paragraph 7.6 of the FFA are not followed, the Navy considers such action particularly inappropriate when everyone involved recognizes that the Navy has not intentionally submitted what EPA has alleged to be a materially deficient document simply to meet a deadline during what we all know to be a very dynamic process.

For these reasons, I reiterate my earlier statement that the primary focus of our future discussions should be to improve communications between the State, EPA and Navy personnel. Continuing to expend each of our limited valuable resources to resolve this issue only detracts from achieving further environmental successes at Newport.

I would suggest that we hold a meeting only between the three of us in an attempt to resolve this matter expeditiously. However, I would pose no objection to Mr. Angell attending our meeting if Mr. Gray considers it necessary. To accommodate RIDEM's request for at least a week notice prior to the meeting, I recommend either 24/25/26 October in Boston. I await your replies. Please call me personally at 610-595-0600.

Sincerely,

W. A. WATERS
Captain, CEC, U.S. Navy
Commanding Officer