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LETTER REGARDING U S EPA REGION I COMMENTS ON U S NAVY REDRAFT OF
SETTLEMENT AGREEMENT REGARDING 4 MAY 1994 ASSESSMENT OF STIPULATED
PENALTIES NS NEWPORT RI
12/2/1994
U S EPA REGION I



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

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

VIA FIRST CLASS U.S. MAIL

9

December 2, 1994

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: Naval Education and Training Center Newport CERCLA Federal Facility Agreement, dated March 23, 1992, as amended-- Settlement Agreement regarding EPA's May 4, 1994 Assessment of Stipulated Penalties

Dear Captain Waters:

This letter is in reply to your November 16, 1994 letter concerning the above-captioned settlement agreement.

I am disappointed that you found the November 8, 1994 draft settlement agreement which I forwarded to you and Mr. Grey to be unacceptable. I believe that the draft captured the essence of our agreement.

Unfortunately, your November 16, 1994 redraft is unacceptable to EPA as it does not contain sufficient detail concerning the Navy's commitments under the settlement agreement. I believe that we should include such detail now so that there is no misunderstanding of what the Dispute Resolution Committee has agreed to.

In the hope of moving this matter forward, I have worked with your draft agreement and attempted to make only those changes which I believe are necessary to put it in a form which is acceptable to EPA. I am enclosing a red-lined version of your draft with these changes.



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I propose that you, Mr. Grey and I have an additional conference call to discuss the enclosed draft. I am hopeful we can then reach agreement on final language to memorialize the agreement we reached on November 1, 1994.

Sincerely,

A handwritten signature in cursive script that reads "Frank Ciavattieri".

Frank Ciavattieri, Acting Director
Waste Management Division

Enclosure

cc (w/enc.): Terrence Gray, RIDEM
Warren Angell II, RIDEM/DSR

Draft
12/02/94

SETTLEMENT AGREEMENT

Whereas the EPA has alleged that the Navy has violated certain terms and conditions of the Naval Education and Training Center Newport (NETC) CERCLA Federal Facility Agreement dated March 23, 1992 as amended (FFA) (U.S. Environmental Protection Agency, Region I, (EPA) letter dated May 4, 1994);

Whereas the Navy has denied the allegations made by the EPA (Navy letter of September 20, 1994 to EPA and the State of Rhode Island (RIDEM) (Navy statement of dispute);

Whereas the EPA, RIDEM, and the Navy are desirous of resolving the issues raised by EPA's allegations:

Now, therefore, in consideration of the foregoing, pursuant to the EPA Section 13.5, the undersigned, as members of the Dispute Resolution Committee, hereby acknowledge and confirm that we have agreed as follows in order to resolve the dispute:

1. The Navy will make a cash payment stipulated penalty to the EPA of \$30,000 to the Hazardous Substance Superfund.
2. The Navy will arrange for a partnering session among the parties and contribute \$10,000 to such an endeavor.
3. The Navy will perform a supplemental environmental project (SEP) of not less than \$220,000 at an activity in the State of Rhode Island located at either/or Construction Battalion Center Davisville or the former Derecktor Shipyard facilities near Newport. The scope of the projects would be agreed to by will be subject to the approval of the RIDEM and EPA; the Navy will submit its proposed supplemental environmental project(s) to EPA and RIDEM by within thirty days after the date this agreement is signed by all parties. Within thirty days after written approval of the project(s) by EPA and RIDEM, the Navy will submit a scope of work for the project(s) to EPA and RIDEM for their review and approval. EPA will review the proposal and scope of work of the SEPs for compliance with EPA SEP policy and guidance. The SEP and scope of work will be incorporated into a consent agreement between the Navy and EPA.

In the event EPA, RIDEM and the Navy do not reach agreement in connection with the SEP(s), this agreement shall be null and void and the original Navy statement of dispute shall be submitted to the Senior Executive Committee pursuant to the FFA Section 13.5.

4. The Navy's compliance with the conditions herein is subject to the availability of appropriations for the purposes specified herein. In the event that funding is not available from current appropriations, the Navy will request authorization from Congress for such funding as part of its FY 1996 budget. The Navy will provide EPA and RIDEM written notification by [insert date] of the source of funding of this agreement and with documentation by [insert date] for any request for authorization of funds needed to comply with this agreement. The Navy will not use funds currently appropriated or allocated for the NETC Installation Restoration Program and/or Superfund cleanup as a source of funding for this agreement.
5. The Navy shall submit to EPA and RIDEM a schedule which includes deadlines for the submission of the draft ecological risk assessments (and appropriate milestones, including the submission of a draft scope of work for each ecological risk assessment) which are the subject of this dispute by [insert date]. The deadlines agreed to by EPA and RIDEM will be enforceable under the FFA as if they had been part of the Phase II Remedial Investigation Workplan.
6. Nothing in this agreement shall be construed as an admission by the Navy of any violation or of any issue of law or fact, nor shall this agreement be used against the Navy as evidence of any violation or as an admission against interest, nor shall it prejudice or impair any right, remedy or defense the Navy may have in future proceedings other than in a proceeding to enforce this agreement.

* * *

U.S. Environmental Protection Agency, Region I

Frank Ciavattieri
Acting Director
Waste Management Division

Date

U.S. Department of the Navy

CAPT W.A. Waters
Commanding Officer
Northern Division
Naval Facilities Engineering Command

Date

Rhode Island Department of Environmental Management

Terrence Grey, P.E.
Chief
Division of Site Remediation

Date