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UNITED S...ES ENVIRONMENTAL PROTECTI... AGENCY
REGION I
J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

May 25, 1995

Capt. Carl Strawbridge, USN
Shipyard Commander
Portsmouth Naval Shipyard
Portsmouth, NH 03803-5000

Dear Capt. Strawbridge:

As was indicated in our letter dated April 5, 1995, the Federal Facilities Superfund Section of the U.S. Environmental Protection Agency (EPA) recently took the lead for overseeing the Navy's remedial investigations and cleanup at the Portsmouth Naval Shipyard (PNS) site in Kittery, Maine. The PNS was added to the National Priorities List (NPL) in May 1994. Prior to April 1995 the Navy had been working with EPA's RCRA Corrective Action Program to ensure compliance with a HSWA permit issued in 1989.

This office has evaluated the CERCLA/RCRA integration issue. In general, EPA views both the RCRA and CERCLA remediation programs as having equivalent requirements and goals. We recognize that the Navy has been making an attempt to incorporate Comprehensive Environmental Response Compensation and Liability Act (CERCLA) requirements into ongoing work at the site since the site's inclusion on the NPL, and we understand that this effort will continue.

The existing HSWA permit covers activities at the site through completion of the Corrective Measures Study (CMS). At the present time, the Navy has separated the site into two operable units (OU). The CMS (also referred to as the Feasibility Study by the Navy) for the first OU has been submitted to EPA in draft form. A date for submittal of the CMS for the second OU has not yet been established, but it is anticipated that this document would not be submitted for another year or so as several feeder documents are still being prepared. Therefore, completion of all HSWA permit requirements will not be met until such time that CMSs (Feasibility Studies) for all OUs are approved by EPA.

The enforcement tool under CERCLA at federal facilities is a Federal Facility Agreement (FFA). Initiation of a FFA for PNS is not planned to begin until the beginning of FY96 at the earliest. This means that it is not likely that an FFA will be in place before mid-1996.

Given the above information, EPA plans to keep the existing HSWA permit in effect until such time that all major permit requirements (i.e., completion of all CMS reports currently contemplated under the permit) have been completed. Any newly identified areas of contamination which require investigation/ cleanup will be handled under the CERCLA program and will not be subject to the HSWA permit requirements. In the event that we

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successfully negotiate and implement an FFA prior to completion of all of the HSWA permit requirements, the FFA would supersede the permit. Language to this effect would be included in the FFA.

Issues

EPA has identified several potential issues associated with this approach.

1. Since the Onshore CMS (FS equivalent) has been submitted to EPA in draft form, the Navy may be ready to move forward with a Proposed Plan (PP) and Record of Decision (ROD) on this OU prior to implementation of an FFA. Although the existing HSWA permit does not include the equivalent of a PP or ROD requirement, under CERCLA, EPA concurrence is required on the remedial action. Therefore, EPA expects that the Navy will work very closely with EPA in the development of these documents.

The Navy, EPA and the Maine Department of Environmental Protection (DEP) may want to consider the use of consensus statements signed by the project managers or other vehicles to forge agreement on Proposed Plan and ROD work.

2. The Navy has indicated that it expects to have a ROD for the onshore OU ready for signature in mid-1996. We have requested that the Navy submit a schedule supporting this effort. To date, however, we have not received such a schedule. Since we do not anticipate initiating FFA negotiations until FY96, it is critical that the Navy provide a schedule as soon as possible so that we can ensure that the FFA negotiations are completed before the ROD is ready for signature.

The Navy, EPA and the Maine DEP must develop a strategy to focus FFA negotiations in order to enable the negotiations to be completed before the ROD is signed. One approach that the Navy has proposed to minimize the FFA negotiation period is to use the Yorktown agreement as a model. EPA will review the Yorktown agreement to determine whether it is the appropriate model for some or all of it to be used as a model for PNS.

If you have any questions or concerns regarding the enforcement approach outlined in this letter, please contact Meghan Cassidy at (617)573-5785.

Sincerely,

Paul Marchessault

Paul Marchessault, Acting Chief
Federal Facilities Superfund Section

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