



DEPARTMENT OF THE NAVY

NAVAL FACILITIES ENGINEERING COMMAND

200 STOVALL STREET

ALEXANDRIA, VA 22332-2300

IN REPLY REFER TO

February 27, 1991

Jerome Kujawa
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection
—Agency, Region V
230 S. Dearborn St.
Chicago, IL 60604

Re: FFA for NIROP Fridley, MN

Dear Jerry:

I received your letter dated February 21, 1991 which enclosed EPA's fifth draft of the Federal Facility Agreement (FFA) for the Naval Industrial Reserve Ordnance Plant (NIROP) Fridley, Minnesota. I have reviewed the draft FFA and am enclosing a list of comments which we can discuss, if necessary, during our telephone conference tomorrow, which has been moved up, at your request, to 1:00 p.m. (my time zone).

With three exceptions (regarding paragraphs IV(N), 36.2 and 39.2), all of my comments relate either to areas where the draft FFA does not reflect what was agreed upon by the Parties during the last negotiation session (which took place in Minnesota on January 16-17, 1991) or to minor typographical or grammatical matters. I do not expect my comments on those three paragraphs (or for that matter, on the rest of the listed paragraphs) to generate any great need for discussion.

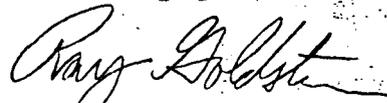
Tomorrow, we need to discuss paragraph 5.4 (regarding Area C), stipulated penalties and, if I have some additional information, State reimbursement. With regard to stipulated penalties, the Navy is tentatively willing to accept the State's latest proposal provided that the State agrees to limit the penalties that it would seek outside of the FFA to the amounts in the model provision. With regard to State reimbursement, I am not yet able to state the Navy's official position. However, I think that it is very, very unlikely that the Navy will be able to accept the State's latest proposal. Tomorrow, I hope to be able to state the Navy's position more definitively regarding the State's latest proposal on reimbursement.

It is my understanding that the Project Managers are still working on the Deadlines section of the FFA and the attachments to the FFA. While I am waiting for those materials, I would appreciate it if you would send me a copy of the word-processing disk for the draft FFA.

Also enclosed with your letter was a copy of a memorandum dated February 12, 1991 (at the top of which appears "CONFIDENTIAL--ATTORNEY-CLIENT PRIVILEGE") from you to Tom Bloom, EPA's Remedial Project Manager for NIROP Fridley, regarding the Navy's draft final Community Relations Plan (CRP) for NIROP Fridley. In your letter you inquire as to the status of the CRP in light of your comments (presumably those raised in the memorandum). Although the Navy may be willing to consider some of the comments raised in your memorandum, the status of the CRP is that the Navy received EPA Region V's formal written comments to the draft final CRP some time ago and the CRP is being revised in light of those previous comments. Please let me know if you need any further information regarding the CRP.

I appreciate your cooperation in this matter.

Sincerely yours,



RAY GOLDSTEIN
Assistant Counsel (Environmental)

Enclosure

cc: S. Shakman
R. Hanson
K. Homick
J. Shafer
N. Pryor
P. Kushner
D. Olson
G. Davidson (w/o enclosure)

Comments - EPA's Fifth Draft FFA for NIROP Fridley

General Comments - The document is inconsistent, even within Sections, as to whether numbered paragraphs are indented. See, i.e., Section XIII. In addition, on many pages the indentations are not aligned. See, i.e., Section IV.

Table of Contents (page i) - Delete "NIROP IAG" in the title. Delete "Introduction" line. For Section X, delete "Interim" and "Actions" and insert "Investigation" after "Remedial". For Section XXI, insert "/Document" immediately after "Data".

Table of Contents (page ii) - Delete "NIROP IAG" in the title. Delete "2" at the top of the page.

Table of Contents (page iii) - Insert "Guidelines for" before the first and second attachment titles. Delete "1-A18" and "1-B8". Insert "Letter by" before the fourth attachment title and insert "Governor Arne Carlson" after "Minnesota" on that same line and delete "State Agencies identified in Section III". Put the date of the RoD in parentheses and move it to the end of the fifth attachment title and at the end of that title insert "Fridley" after "NIROP". Delete "3" at the top of the page.

Page 2 - This page needs a number at the top of the page.

Paragraph I(iv) (Jurisdiction) (page 2) - In the second line, delete "interim" and insert "for operable units" after "action".

Paragraph I(v) (Jurisdiction) (page 2) - The last line should read "Chapters 115, 115B and 116,"

Paragraph 2.2(A) (Purpose) (page 3) - In the first line, "for" should be lower-case.

Paragraph 2.2(A) (Purpose) (page 4) - In the third line, "alternatives" should be lower-case. In the fourth line, insert "final" before "Remedial".

Paragraph 2.2(E) (Purpose) (page 5) - In the first line, replace "Assure" with "Ensure".

Paragraph 3.2 (Parties) (page 6) - The Parties agreed to delete this paragraph except for a brief cross-reference to another section of the FFA. See, T.Bloom draft FFA at page 6 and the last Navy draft FFA at page 5.

Page 7 - Unusual spacing in introductory paragraph.

Paragraph IV(K) (Definitions) (page 9) - In the next to last line, insert "the" before "subject".

Paragraph IV(N) (Definitions) (page 10) - In the second line, delete "or removal" in order for it to be consistent with 42 U.S.C. section 9601(24) and paragraph 13.6 of the FFA.

Paragraph IV(S) (Definitions) (page 11) - In the first line, delete the second or third set of quotation marks. In the second line, delete the "s" at the end of "explains" and "sets".

Paragraph IV(U) (Definitions) (page 11) - Insert a set of quotation marks immediately after "Schedule" and immediately before "Timetable".

Paragraph IV(Y) (Definitions) (page 12) - Insert a set of quotation marks immediately after "Schedule" and immediately before "Timetable". In the first line, delete the "s" at the end of "collections".

Paragraph IV(AA) (Definitions) (page 12) - With regard to the clause beginning in the next last line, I prefer that the brackets be replaced by parentheses and the comma after "(DOD)" be deleted.

Section VI (Determinations) (page 16) - In the second introductory paragraph, at the end of the second line, delete "the".

Paragraph VI(1) (Determinations) (page 16) - In the third line, delete "Site".

Paragraph VI(4) (Determinations) (page 17) - In the third line, replace "115(B)02" with "115B.02".

Paragraph VI(7) (Determinations) (page 18) - In the third line, capitalize "State" and delete "and".

Paragraph VII(2) (Factual Summary) (page 19) - In the first line, replace "Naval" with "Navy".

Paragraph VII(6) (Factual Summary) (page 20) - In the fifth line, replace "bi-phenyls" with "biphenyls".

Paragraph VII(7) (Factual Summary) (page 20) - In the next to last line, there is an unnecessary space before "Jordan".

Paragraph VII(12) (Factual Summary) (page 21) - In the third line, replace "Inc." with "Corp." In the last line, delete "a".

Paragraph VII(12) (Factual Summary) (page 22) - In the first line, delete the comma after "FMC" and replace "Inc." with "Corp."

Paragraph VII(14) (Factual Summary) (page 22) - In the second line, delete the parenthesis before "54" and delete the period after "29820".

Paragraph 8.1(E) (Scope of Agreement) (page 24) - In the third line, delete "in".

Section IX (Remedial Actions for Operable Unit(s)) (page 24) - In the last line, "for" should be lower-case.

Section IX (Remedial Actions for Operable Unit(s)) (page 25) - In the fifth line from the bottom, replace "the RAFOUs" with "remedial actions for operable units". In the next to last line, replace "RAFOUs" with "remedial actions for operable units".

Section X (Remedial Investigation) (page 26) - Beginning in the third line, delete "be performed in accordance with and". In the fifth line, replace "details" with "guidelines". Beginning in the fifth line, delete "RI work shall follow, but not be limited to, tasks described in Attachment A."

Section XI (Feasibility Study) (page 26) - In the fourth line, replace "details" with "guidelines". Delete the last sentence. Insert at the end of the section the following sentence: "The FS will be subject to the review and comment process set forth in Section XIV of this Agreement, and shall be in accordance with the deadlines set forth in Section XXXII."

Paragraph 12.1 (Remedial Action Selection and Implementation) (page 27) - In the sixth line, replace "including" with "and provide". The last clause of the paragraph should read as follows: "pursuant to Sections 113(k)(2)(B)(iii) and 117(a) of CERCLA, 42 U.S.C. Section 9613(k)(2)(B)(iii) and 9617(a)."

Paragraph 12.3 (Remedial Action Selection and Implementation) (page 27) - In the last line, delete "or his delegatee". This was not in the last draft, nor do I recall it being discussed in Minnesota.

Paragraph 12.4 (Remedial Action Selection and Implementation) (page 27) - Before the beginning of the fourth line, insert "the purposes set forth in Section II of".

Paragraph 14.4(1)(g) (Consultation) (page 34) - The left-hand margin is out of alignment.

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Paragraph 14.7(2) (Consultation) (page 36) - In the ninth line from the bottom, delete the comma after "EPA".

Paragraph 14.9 (Consultation) (page 39) - The third line should end in a period rather than a comma.

Paragraph 14.10 (Consultation) (page 39) - "14.10" should be moved to immediately before the title to this sub-paragraph.

Paragraph 15.7 (Dispute Resolution) (page 45) - In the first line, replace "Waste Management Division Director and MPCA Commissioner" with "other Parties". This makes the provision more consistent with the replacement of "the Navy" by "a Party" in the next to last line on the bottom of the previous page.

Paragraph 16.5 (Permits) (page 47) - In the fourth line, "reopening" should be lower-case.

Paragraph 18.1 (Notification) (pages 49-50) - There is some unusual spacing in the first few lines and the Navy's address should not be split between two pages. In addition, the correct address can be found in the last Navy draft at page 46.

Paragraph 19.6 (Project Managers) (page 53) - In the third line from the bottom, "representative" is not spelled correctly.

Section XX (Technical Review Committee) (pages 53-54) - The draft does not reflect the changes agreed upon in Minnesota. See T. Bloom draft FFA at page 56 and the last Navy draft FFA at page 49.

Paragraph 22.1 (Retention of Records) (page 55) - In the third line, insert "and the Public" before "Information".

Section XXVI (Other Applicable Laws) (page 61) - In the third line, "State" should be capitalized.

Paragraph 27.4 (Confidential Information) (page 63) - In the next to last line, replace "CBI" with "CI".

Paragraph 30.3 (Covenant Not to Sue) (page 65) - Beginning in the first line, delete "this Section, Section XXX, Covenant [sic] Not to Sue and Reservation of Rights, and the remainder of this Agreement,".

Paragraph 35.1 (Public Participation) (page 78) - In the third line, "Site" should be capitalized. In the next to last line "guidance" should be singular.

Paragraph 35.4 (Public Participation) (page 79) - In the first line, insert "continue to" before "maintain".

Paragraph 36.2 (Public Comment) (page 80) - Insert at the end of this section the following sentence: "The Navy and the MPCA must concur in the contents of the Responsiveness Summary prior to its publication."

Paragraph 39.2 (Certification and Termination) (page 83) - In the sixth line, after "shall", insert "pursuant to Paragraph 14.10 (Modification) of this Agreement,". In the ninth line, after "work", insert "pursuant to this Agreement".

Paragraph 40.5 (Funding) (page 87) - In the sixth line from the bottom, "Disputes" should be capitalized. In the fifth line from the bottom, replace "the" with "this".

Paragraph 40.7 (Funding) (page 88) - This paragraph should be deleted.

Section XLI (Effective Date) (page 88) - The draft almost reflects the changes agreed upon in Minnesota. See, T.Bloom draft FFA at page 89 and the last Navy draft FFA at page 82.

Signature Page (page 89) - There is an unnecessary space in Navy's signature block.