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U S EPA REGION I REVISED DRAFT SETTLEMENT AGREEMENT REGARDING
ASSESSMENT OF STIPULATED PENALTIES WITH TRANSMITTAL LETTER NS NEWPORT
RI
1/12/1995
U S EPA REGION I



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

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

7

VIA FAX AND FIRST CLASS U.S. MAIL

January 12, 1995

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

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

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 and Mr. Gray:

This letter is a follow-up to our conference call on December 19, 1994 concerning the above-captioned settlement agreement. I found the call quite productive and believe that we now have the essence of a final agreement.

I have attempted to revise the 12/02/94 draft agreement in accordance with the conference call. Please note that, in order to ensure that closure is ultimately reached on the ecological risk schedule, I have provided in paragraph 5 for dispute resolution if we cannot reach agreement at the partnering session.

Enclosed are a clean and red-lined version of the revised draft. Please review it and, if meets with your approval, I would ask that Captain Waters sign and forward it to Mr. Gray who in turn should sign and forward it to me. I will then sign it and forward copies of the fully executed document to each of you.

I am hopeful that the enclosed draft will meet with your approval. However, if you believe that additional revisions are required, please contact me and, if necessary, we can set up another call.

OPTIONAL FORM 89 (7-90)

FAX TRANSMITTAL

of pages 8

To	Captain W.A. Waters	From	Andrew Minulks
Dept. Agency	Northern Division	Phone #	617/573-9614
Fax #	610/595-6555	Fax #	617/573-9662
NSN 7540-01-317-7388		5009-101 GENERAL SERVICES ADMINISTRATION	



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I appreciate your cooperation in reaching a settlement of this dispute, and I look forward to returning our full energies to the NETC cleanup.

Sincerely,

Frank Ciavattieri

Frank Ciavattieri, Acting Director
Waste Management Division

Enclosures

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 FFA 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 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 Derektor Shipyard facilities near Newport. The projects 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 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 for consistency with EPA SEP policy and guidance. In the event that the Navy fails to comply with a term or condition of the SEP(s) or scope of work as approved by EPA and DEP, the Navy will be subject to the assessment of stipulated penalties under FFA Section 22 for such failure.

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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. Within thirty days after the date that this agreement is signed by all parties, the Navy will provide EPA and RIDEM written notification of the source of funding of this agreement and with documentation for any request for authorization of funds needed to comply with this agreement. The performance of the SEP(s) approved under this agreement shall not result in any deferral or delay of any projects presently scheduled under the NETC Installation Restoration Program and/or Superfund cleanup.
5. Within sixty days after the date this agreement is signed by all parties, the Navy, EPA and RIDEM agree to hold a partnering session to negotiate and reach agreement upon a schedule 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. The Navy shall arrange a mutually agreeable time, place, and agenda for the partnering session. If the parties are unable to reach agreement on such schedule at the partnering session, the dispute shall be subject to the dispute resolution provisions of FFA Section 13.
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 Gray, P.E.
Chief
Division of Site Remediation

Date

Draft
1/10/95

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-2-

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In the event that the Navy fails to comply with a term or condition of the SEP(s) or scope of work as approved by EPA and RIDEM, the Navy will be subject to the assessment of stipulated penalties under FFA Section 22 for such failure.

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. Within thirty days after the date that this agreement is signed by all parties, the Navy will provide EPA and RIDEM written notification of the source of funding of this agreement and with documentation for any request for authorization of funds needed to comply with this agreement. The performance of the SEP(s) approved under this agreement shall not result in any deferral or delay of any projects presently scheduled under the NETC Installation Restoration Program and/or Superfund cleanups.

-3-

5. [REDACTED] shall have after the date this agreement is entered into, provided the Navy, EPA and Rhode Island shall hold a partnering session to negotiate and reach agreement upon a schedule for the submission of the draft ecological risk assessments (and appropriate mitigation, including the submission of a draft scope of work for each ecological risk assessment) which are the subject of this dispute. The Navy shall arrange a mutually agreeable time, place, and agenda for the partnering session. If the parties are unable to reach agreement on such schedule at the partnering session, the dispute shall be subject to the dispute resolution provisions of EPA section 13.

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 Gray, P.E.
 Chief
 Division of Site Remediation

 Date