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U S EPA REGION I REVISED DRAFT SETTLEMENT AGREEMENT REGARDING  
ASSESSMENT OF STIPULATED PENALTIES WITH TRANSMITTAL LETTER NS NEWPORT  
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2/10/1995  
U S EPA REGION I



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

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

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VIA FAX AND FIRST CLASS U.S. MAIL

February 10, 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 in response to your draft of the above-captioned settlement agreement, which was received via FAX on January 26, 1995.

I have revised the 01/25/95 draft agreement to clarify the relationship between the proposed Supplemental Environmental Project (SEP) and the requirements of the CERCLA program. The enclosed clean and red-lined versions of the revised draft reflect these changes.

Please review the draft agreement 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 believe this should be the final iteration of this agreement. However, if you still believe that additional revisions are still required, please contact me and, if necessary, we can arrange a conference call to settle this issue.



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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,



Handwritten signature of Frank Ciavattieri in cursive script, followed by a forward slash and the word 'for'.

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. The project will be subject to the approval of the RIDEM and EPA. The proposed project by the Navy is to accomplish the following:

Removal of approximately 2,000 cubic yards of sandblast grit generated by Robert E. Derecktor of Rhode Island, Inc. at the former Derecktor Shipyard facilities near Newport to eliminate the potential for leaching of heavy metals into Coddington Cove and the exposure to air-borne contaminants.

Within thirty days after the date of this agreement, the Navy will provide documentation to EPA and RIDEM which demonstrate that the proposed project is not work which would be required under the CERCLA and the FFA when it is amended to include the former Derecktor Shipyard facilities.

If EPA and RIDEM are satisfied with such documentation, EPA and RIDEM will provide written approval of the proposed project. Within fifteen days thereafter, the Navy will provide an expanded scope of work of the project to permit a review by EPA to insure consistency with EPA SEP policy and guidance. In the event that EPA, RIDEM and the Navy do not reach agreement in connection with the SEP, this settlement agreement shall be null and void and the original Navy Statement of Dispute shall be submitted to the Senior Executive Committee pursuant to FFA Section 13.5.

If and when the parties reach agreement on the scope of the SEP, and the EPA considers that the Navy has failed to comply with a term or condition of with the approved scope of work of the SEP, or has failed to complete the SEP within one year of the effective date of the settlement agreement, 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 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. The Navy shall arrange a mutually agreeable time, place, and agenda for the partnering session. A specific item on the agenda will be to reach agreement on the schedules and workplans for the ecological risk assessments which are the subject of this dispute. 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.

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U.S. Environmental Protection Agency, Region I

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Frank Ciavattieri  
Acting Director  
Waste Management Division

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Date

U.S. Department of the Navy

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W.A. Waters  
Captain, CEC, U.S. Navy  
Commanding Officer  
Northern Division  
Naval Facilities Engineering Command

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Date

Rhode Island Department of Environmental Management

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

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U.S. Environmental Protection Agency, Region I

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Frank Ciavattieri  
Acting Director  
Waste Management Division

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U.S. Department of the Navy

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W.A. Waters  
Captain, CEC, U.S. Navy  
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