

Letter For Electronic Distribution

Original signed letter on file at the following address:

Nevada Division of Environmental Protection,
Bureau of Federal Facilities
333 W. Nye Lane
Carson City, NV 89706-0851

June 9, 2000

COMMANDER, NAVY REGION SOUTHWEST
ATTN: Rear Admiral Frederic R. Ruehe
937 North Harbor Drive
San Diego, CA 92132-0058

RE: Navy Position on State Regulatory Authority Under Department of Defense State Memorandum of Agreement/ Cooperative Agreement (DSMOA/CA)

In September 1990, the Nevada Division of Environmental Protection (NDEP) entered into the DSMOA/CA with the Department of Defense (DoD) for the express purpose of providing a reasonable process for implementing state regulatory oversight of DoD Defense Environmental Restoration Program (DERP) funded remediation activities in Nevada. We entered into the DSMOA/CA in lieu of formally negotiating a consent agreement with each installation. Since signing, Naval Air Station (NAS) Fallon has been one of the installations included in and covered under this Agreement. During the initial years, when the site identification activities were ongoing, generally, there was a cooperative interface and partnering between the state and NAS Fallon. As time progressed and the adequacy of characterization activities and remedial determinations needed to be addressed, a less than cooperative attitude began to emerge.

The State has two principal concerns at the present time.

1. NAS Fallon has stated their position is that state regulatory concurrence is not required for the implementation of proposed remedial actions or the subsequent closure of sites. This position is based on paragraph 1.1.4.2. of the February 1997 Navy/Marine Corps Installation Restoration Manual which states '..... regulatory concurrence is not required but highly recommended.....'. Their assertion has been that the DSMOA/CA is an Agreement that provides funding to the states but does not convey or acknowledge the state as the lead regulatory authority. The state asserts that the DSMOA/CA clearly

addresses the role of both parties. While the DoD service component retains its responsibilities for non NPL sites under CERCLA 120 (a) as lead for the implementation of appropriate remediation activities, the state is the lead regulator for these sites. The state believes its position on this matter is clearly supported by what is identified as the “Best Practice” in DoD’s March 31, 2000 report Cleanup Program Review: Best Practices for Defense Environmental Restoration Program.

Over the past two years there have been numerous meetings and discussions (some of which included the participation of Al Hurt, Mary Kay Faryan, and Robert Wickett of the of the Navy’s Southwest Division - SWDIV) during which NDEP’s concerns with NAS Fallon were identified. NDEP is seeking formal SWDIV acknowledgement that appropriate state regulations (i.e., NAC 445A.226 - 445A.22755) are in place defining the requirements for IRP corrective actions under the DSMOA/CA. We are also seeking acknowledgement that regulatory authority lead resides with NDEP for IRP sites, not with NAS Fallon.

2. NAS Fallon either does not have, or is unwilling to prepare and submit to the state, defensible documentation supporting their determinations that No Further Actions (NFA) are required at sites being proposed for closure. The completeness of the supporting information, being presented to justify NAS Fallon’s proposed determinations, is a major point of disagreement between the state and NAS Fallon. These concerns have been raised, at a heightened level over the past two years, during many meetings and in many letters. Most recently, between February 28, 2000 and April 12, 2000, NDEP transmitted detailed comments, many in excess of 10 pages per site, on eleven (11) sites for which Draft Final Decision Documents had been submitted. These letters can be viewed on the NDEP web site at www.state.nv.us/ndep/boff/fallon00.htm.

NAS Fallon has not adequately addressed the issues of concern raised by the state. Over the past five years, NAS Fallon has made verbal commitments to provide documentation and submit proposed work plans prior to the initiation of actions. NAS Fallon has continually failed to follow through on these commitments. Therefore, issues of concern to the state were not addressed when field activities were conducted.

NDEP believes part of the basis for NAS Fallon’s taking issue with having to obtain state regulatory concurrence is their inability to construct a defensible NFA decision document. This perception is supported by a recent letter from NAS Fallon (copy attached) in which it is stated that they have made a determination that there are no problems with a site and they have closed it. The letter goes on to state that if NDEP wants any further documentation they are welcome to come and independently evaluate the site however the Navy will not conduct any additional work.

On April 10, 2000, after being unable to obtain copies of records and documents from NAS Fallon related to these sites, Engineering Field Activity Northwest (EFA/NW)

requested NDEP provide copies of a list of missing NAS Fallon records, if available. Many of these were able to be provided from our files. The NDEP is not asserting all data gaps or missing information must be recreated or newly acquired, only that NAS Fallon identify those limitations and the degree to which they limit the proposed determinations.

The adequacy and accuracy of the information in these documents should reasonably be able to support present, as well as future, challenges to these actions. The NDEP is presently unwilling to provide concurrence on NAS Fallon's proposed NFA determinations as the supporting records are not deemed to be defensible to support that ARARs have been met.

As a result of reorganization, EFA/NW recently assumed some oversight responsibility for IRP activities at NAS Fallon and has been collecting and reviewing NAS Fallon's records. The NDEP is unsure why the Naval Facilities Engineering Command - EFA/NW is not directly responsible for implementation of the IRP program at NAS Fallon as is the protocol for most other Navy installations. Under the present conditions, it appears it may be necessary to go through the formal Dispute Resolution process in order to achieve an acceptable outcome.

However, based on the limited interactions the NDEP has had with EFA/NW, NDEP believes that if EFA/NW were authorized to assume authority and responsibility for the IRP actions on NAS Fallon, the program could move forward and achieve acceptable resolutions. NDEP looks forward to the prospect of forming a partnership with EFA/NW to resolve issues and accelerate the Installation Restoration Program at NAS Fallon.

NDEP believes the ability to make the programmatic decisions needed to address the stated concerns and enabling NAS Fallon's IRP projects to proceed to and reach acceptable completions reside with your authority.

I can be contacted at (775) 687- 4670 extension 3039, if you would like to discuss any of these issues further.

Sincerely,

Paul J. Liebendorfer, P.E.
Captain, USPHS
Chief, Bureau of Federal Facilities

Enclosure

PJL/kkb/ren/

cc : E. Munsil, Deputy Asst. Sec. Of Navy Environment & Safety, Pentagon
K. Perri, Assistant Deputy Under Sec. of Defense for Env. Cleanup
Capt. Conaway, EFANW
Capt. Phillips, SWD/NFC
Capt. Rogers, NAS Fallon
Capt. Stathos, Asst. Chief of Staff for Environment
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