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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

345 COURTLAND STREET, N.E.  
ATLANTA, GEORGIA 30365

OCT 02 1995

Mr. W.A. Quade, Jr.  
Director of Environment  
Naval Facilities Engineering Command  
200 Stovall Street  
Alexandria, Virginia 22332-2300

Dear Mr. Quade:

Thank you for your letter of 8 August, 1995 describing your efforts to meet the Navy's environmental commitments within a shrinking Defense Environmental Restoration Account (DERA) program budget. Your request for assistance and openness to the ideas of your program stakeholders is in keeping with the Navy's general relationship with this Region. I know of and thank you for your critical support of the Partnering efforts our organization have entered, and my reply will be in the spirit of that alliance.

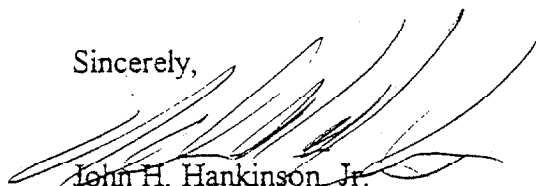
The role of environmental regulators, both Federal and state, is in part one that requires us to determine if sufficient and timely progress is being made by the regulated entity in meeting its obligations under permits, regulations, agreements or other documents. That often requires us to discuss the level of your "good faith efforts" to request and/or obtain sufficient funding to meet environmental requirements. We have taken the position in Region IV that it is crucial for each department to present a full and complete description of its required actions (multi-year plans) and the dollar and manpower requirements to meet them in any given fiscal year. We have tried to structure our agreements in a manner that looks three years ahead, beyond the horizon for preparation of the President's budget, to set enforceable milestones. Three years allows us to consider an unconstrained budget that reflects all requirements, while compliance with agreements is then determined by examining the completeness of presenting those requirements during budget formulation. If the full requirements are used to inform the budget formulation, then regulatory discretion is available to us if full funding is not received. In this manner, we are more certain that the Executive and Legislative Branches are debating the DERA budget with full knowledge of the scope of the program. Rather than change agreements to bring the requirements in line with the budget (once the budget is known), we will work with you to be sure that your available budget is used most efficiently on the highest priority actions. We will not, however, agree that requirements that do not receive funding are somehow no longer requirements. They may legitimately be moved to future years for implementation if we reach consensus on that move, but the requirements themselves do not change. This is vital to ensuring that the time and budget required to complete the clean-up program are widely known and acknowledged when budgets are determined.

Many of our agreements are three-party agreements with states, or permits that come in part from EPA and in part from a state. We cannot bilaterally change those agreements. In addition, the fact that a separate sovereign (the state) is a party to agreements changes the manner in which we view the budget preparation and its relevance to the issue of compliance. Once the budget is formulated and presented to Congress, EPA supports that budget as do all Federal agencies and departments. The states are not bound by that required support. Several Region IV states have voiced concern that the full requirements presentation discussed above has to reach outside the Executive to the Legislative Branch before they will consider amending current year response schedules in light of budget limits. As a separate sovereign, they are not bound by the Office of Management and Budget's budget targets, and believe that Congress has to receive information based on an unconstrained budget before the state will release a Federal department from its requirements. This makes it crucial that the budgets formulated for each facility based on full compliance with its permits and agreements make their way intact into your aggregate budget for DERA in the "out" years. Simply put, there is some degree of skepticism that Federal departments are really constrained by funding if they can't demonstrate that they asked Congress for the money.

We have met with or talked to both Atlantic and Southern Engineering Field Division managers about the funding shortfalls. I want to summarize the EPA's position from those discussions. The Navy's environmental vision needs to be based on prevention of harm to humans and the environment, not just compliance with agreements, permits or orders with legal "drivers". Legal drivers exist or can be created for almost all DERA actions, channeling the Navy's available budget to those facilities that are facing the most dire enforcement pressure. If we agree that the current budget climate will continue, then you will almost doubtless face enforcement action from some quarter. I urge you, therefore, to expand your priority-setting criteria to include other pertinent factors. Facility level teams, including regulatory personnel, must be empowered to set the priority for accomplishment of environmental requirements. They hold the core knowledge to make those decisions. Priority attention and funding needs to go to the teams where work is being done most efficiently and effectively, not where enforcement threats are the most stringent. If the Navy continues to create empowered teams including state and Federal environmental regulators, vests them with responsibility to prepare site management plan based on risk and common sense and openly present a complete picture of all requirements needed to complete the DERA program for its facilities, then we will work to accommodate the budget shortfalls within our authorities.

I want to specifically urge you to continue supporting the Defense-State Memoranda of Agreement (DSMOA) whereby you support our state partners so that they can be involved beyond a traditional regulatory role. I believe the investment in states will hold the most hope for a non-adversarial response to shrinking budgets, with special status afforded to those states that are partners in our strategic alliances.

Sincerely,



John H. Hankinson, Jr.  
Regional Administrator