



OFFICE OF THE UNDER SECRETARY OF DEFENSE  
3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

MAY 14 2008

ACQUISITION  
TECHNOLOGY  
AND LOGISTICS

Mr. Jim T. Bates, Associate Director for Natural Resource Programs  
Mr. Joseph Bowab, Associate Director for National Security Programs  
The Office of Management and Budget  
725 17th Street, NW  
Washington, D.C. 20503

Dear Mr. Bates and Mr. Bowab:

This letter submits a dispute between the Department of Defense (DoD) and the Environmental Protection Agency (EPA) for your resolution pursuant to Section 10 of Executive Order 12580, *Superfund Implementation* (January 23, 1987), Section 7 of Executive Order 12866 (September 30, 1993), and Section 1-602 of Executive Order 12088 (October 13, 1978). DoD is asking for your intervention and assistance in resolving a dispute over the terms of interagency agreements regarding cleanup at DoD facilities. These interagency agreements are required under Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for federal facilities on CERCLA's National Priorities List (NPL). In 1988, with supplements in 1999, DoD and EPA agreed to Model Federal Facility Agreement (Model FFA) provisions to implement this interagency agreement requirement. The provisions in the Model FFA had been developed with the knowledge and involvement of OMB, and include numerous EPA oversight provisions such as stipulated penalties, and cleanup schedules. DoD is not seeking to change any of these Model FFA provisions. Rather, DoD is seeking an end to EPA's approach of imposing additional provisions to the Model FFA ("additional provisions") without negotiation or agreement between EPA and DoD. We request that you facilitate negotiations between DoD and EPA on the terms of the "additional provisions" and other issues surrounding FFAs. Additional background is provided in Enclosure 1.

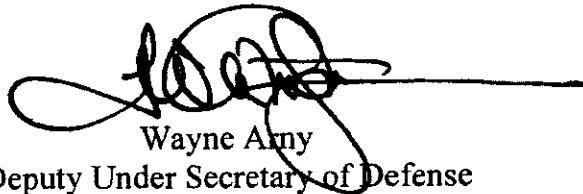
DoD currently has eleven installations that have been listed on the NPL for which we have not been able to reach agreement with EPA on the terms of a CERCLA interagency agreement. Through FY07, DoD has spent over \$650M on cleanup efforts at these eleven installations which have an aggregate estimated cost in excess of \$1.3B. Four of the eleven installations have over 90% of their sites at site closeout or remedy in place. In order for DoD to complete cleanup at these installations, it is essential that we be able to work in full cooperation and partnership with EPA. Predictable, transparent, and consistent processes and expectations are key for DoD to plan and estimate accurately, and to manage its cleanup program.



The Department, at different levels and times, has exhausted every available avenue with EPA to resolve these issues. Considerable time and effort has been expended to reach out to EPA to attempt negotiation, prior to taking the significant step of seeking your assistance on resolving this issue between two agencies of the Executive Branch. Our intention in raising this dispute is to protect human health and the environment in a manner that provides for good government and best serves the taxpayer. A timeline that summarizes significant DoD-EPA discussions on interagency agreements is provided at Enclosure 2. For ease of use, Enclosure 3 lists and provides referenced documents.

DoD is further seeking a termination of EPA's recent practice of imposing unilateral enforcement orders under statutes other than CERCLA in order to compel DoD's signature on FFAs that include the additional provisions. DoD is concurrently raising the legal issues associated with EPA's issuance of four Orders to DoD facilities currently without FFAs to the Department of Justice under Executive Order 12146.

I appreciate your consideration of this matter. If you or your staff should have any questions on this matter, please contact Ms. Maureen Sullivan, Director of Environmental Management, at (703) 695-7957.



Wayne Army  
Deputy Under Secretary of Defense  
(Installations and Environment)

Enclosures  
As stated

cc:

Mr. Grant Nakayama, EPA, Assistant Administrator for the Office of Enforcement and Compliance Assurance  
Ms. Susan Bodine, EPA, Assistant Administrator for the Office of Solid Waste and Emergency Response  
Mr. Keith Eastin, Assistant Secretary of the Army (Installations and Environment)  
Mr. BJ Penn, Assistant Secretary of the Navy (Installations and Environment)  
Mr. Bill Anderson, Assistant Secretary of the Air Force (Installations and Environment)  
Mr. Steven Bradbury, DOJ, Principal Deputy Associate Attorney General  
Mr. Robert Fairweather, OMB, Deputy Associate Director for Natural Resources  
Ms. Kathleen Peroff, OMB, Deputy Associate Director for National Security  
Mr. Jeffrey Rosen, OMB General Counsel