



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

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

JUL 24 2007

Mr. Robert W. King, Jr.
President
Environmental Council of the States
444 North Capitol Street, N.W.
Suite 445
Washington, D.C. 20001

Dear Mr. King:

This responds to your letter of April 25, 2007, requesting clarification about the Department of Defense and State Memorandum of Agreements (DSMOA) Program. The Department concurs in your judgment that the DSMOA Program has facilitated cleanup successes at many installations by enabling states to work with the Department in an expedited manner.

Your impression that the Department of Defense is establishing new policy by withholding all DSMOA reimbursements when states use enforcement authority without first exhausting Dispute Resolution needs clarification. Section IV.B of the DSMOA provides that "(i)t is the intention of the parties that all disputes shall be resolved in this manner... In the event that the Governor and the Service Secretary are unable to resolve a dispute, the State/Territory retains any enforcement authority it may have under State/Territory and Federal law." It has always been the position of the Department that a refusal by a State to engage in dispute resolution pursuant to the DSMOA before engaging in an enforcement action would result in the suspension of all DSMOA payments. This position is not a change in interpretation. States have always followed accordingly.

You also questioned if it is the Department's determination that it can only fund state employees, through the DSMOA, for site-specific work exclusive of policy, training, and guidance development work related to Department sites. Section 6 of the standard DSMOA cooperative agreement provides that "(t)his CA shall apply to the installations listed in Attachment A, attached hereto and made a part hereof, which the parties adopt in accordance with the DSMOA." Other than a state's administration of the DSMOA or cooperative agreement, a state can only be reimbursed for work related to the installations listed in Attachment A of the cooperative agreement.



Your last question was whether the Department can use Defense Environmental Restoration Account (DERA) funds for organizations such as the Environmental Council of States (ECOS) and the Association of State and Territorial Solid Waste Management Officials (ASTSWMO). Section 2701(d) of title 10, United States Code, specifies with whom the Department of Defense may enter into agreements: "any other Federal agency, any State or local government agency, any Indian tribe, any owner of covenant property, or any nonprofit conservation organization...". ECOS and ASTSWMO do not meet that statutory requirement.

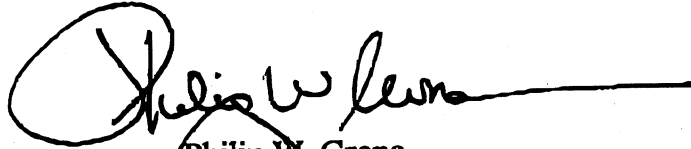
Periodically we review our cooperative agreements to ensure they are being performed within proper parameters. Our recent review of our DSMOA reimbursement practices determined that the specific language of the DSMOA and cooperative agreements do not support payment of expenses that are not associated with specific installations. The first state we examined was Colorado. The Department plans to conduct additional state-by-state reviews to further ensure the accuracy of reimbursement actions under our DSMOA cooperative agreements, based on the results of annual audits performed by Federal Cognizant Audit Agencies, and specific questions raised in the course of our reviews.

That being said, we would like to continue to evaluate ways in which we can improve the program, a process we began with state representatives six years ago through the DSMOA steering group. Those efforts, to include reducing states' administrative burden, revising the length of the agreements to enable states to better forecast resource requirements, and training to ensure more consistent implementation are contributing to a more efficient and effective program. We are currently automating the cooperative agreement process with input from state volunteers to further streamline the program, and plan to reach out to all state members on automation improvements in a webcast in August 2007.

Areas that I believe provide additional opportunities for improvement include clarification of eligibility requirements with regards to policy, guidance, and training, alluded to in your second question. We plan to initiate a review of current requirements in the cooperative agreements and will include interested states in that review in order to fully understand their concerns. We will follow up with interested states in the near future with further details for that meeting. We hope we can count on input from your organization as well as states, and hope to hear more from you over the next year.

We certainly desire to continue our relationship with the states and territories under the DSMOA program while ensuring that the DSMOA program fully complies with all legal requirements. We appreciate this opportunity to clarify the Department's current position with respect to its funding programs.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip W. Grone", with a long horizontal line extending to the right.

Philip W. Grone
Deputy Under Secretary of Defense
(Installations and Environment)