

DEFENSE

Environmental Clean-up

Agreement Between the
UNITED STATES OF AMERICA
and CANADA

Effected by Exchange of Notes
Signed at Washington October 7 and 9, 1996



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89-497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

“ . . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

CANADA

Defense: Environmental Clean-up

*Agreement effected by exchange of notes
Signed at Washington October 7 and 9, 1996;
Entered into force October 9, 1996.*

The Acting Secretary of State to the Canadian Ambassador

DEPARTMENT OF STATE
WASHINGTON

October 7, 1996

Excellency:

I have the honor to refer to discussions which have taken place between representatives of the Government of the United States of America and the Government of Canada concerning the settlement of certain costs of environmental clean-up at four former U.S. military installations in Canada.

As you know, our Department of Defense follows a policy of risk management, remediating environmental damage that constitutes a substantial endangerment to human health and safety. Based upon this policy, the U.S. Government believes that \$100 million (constant-year 1995-1996 United States dollars) represents an appropriate settlement amount for clean-up at the four former military installations: the 21 Dew Line sites returned to Canada between 1989 and 1993 as described in the appendix; the former U.S. naval facility at Argentia, except for approximately 33 acres of land retained as specified at paragraph 1.4.3 of the United States Navy's Base Realignment Plan of May 22, 1993, pursuant to Article 21 of the Leased Naval and Air Bases Agreement of 27 March 1941 between the United States and the United Kingdom;¹ a section of the Canadian Forces Base at Goose Bay, Labrador; and the Haines-Fairbanks pipeline.

His Excellency

Raymond Chretien,
Ambassador of Canada.

¹EAS 235; 55 Stat. 1560.

It is the view of the United States Government that it has no legal obligation under current United States and international law to reimburse the costs of environmental clean-up at the four former military installations described above. Nevertheless, because the remediation in question concerns work that would ordinarily have been conducted by United States forces at the four installations in Canada prior to their closure, the United States Government shall make an ex gratia settlement in the sum of \$100 million (constant-year 1995-1996 United States dollars). It would be the United States Government's intent to place funds equalling this amount in the Canadian Foreign Military Sales Trust Account over a ten-year period commencing in U.S. fiscal year 1998.

In the absence of legislative authority, the United States Government's ex gratia offer must necessarily be subject to the obtaining of specific legislative authority from the United States Congress. Such Congressional action (i.e., authorizations and appropriations) lies within the discretion of the Congress. Nevertheless, the United States Government undertakes to seek such legislative authority at an early date.

The points of contact for implementation of this Agreement shall be the Principal Assistant Deputy Under Secretary of Defense for Environmental Security for the Government of the United States of America, and the Assistant Deputy Minister, Infrastructure and Environment, Department of National Defense for the Government of Canada. With regard to the four aforementioned installations, these officials shall be authorized to implement this Agreement fully, including, as mutually agreed, the establishment of and the making of adjustments to, the schedule of payments that are to be made into the Canadian Foreign Military Sales Trust Account.

If the foregoing meets with the approval of the Government of Canada, I have the honor to propose that this note and Your Excellency's affirmative note in reply shall constitute an Agreement between our two Governments, which shall enter into force on the date of Your Excellency's note in reply.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Acting Secretary of State:

Earl Anthony Wayne

Appendix to the U.S. Note

List of DEW Line Sites

Komakuk Beach	BAR-1
Shingle Point	BAR-2
Tuktoyaktuk	BAR-3
Nicholson Point	BAR-4
Cape Parry	PIN-M
Clinton Point	PIN-1
Cape Young	PIN-2
Lady Franklin Point	PIN-3
Byron Bay	PIN-4
Cambridge Bay	CAM-M
Jenny Lind Island	CAM-1
Gladman Point	CAM-2
Shepherd Bay	CAM-3
Pelly Bay	CAM-4
Mackar Inlet	CAM-5
Hall Beach	FOX-M
Longstaff Bluff	FOX-2
Dewar Lakes	FOX-3
Cape Hooper	FOX-4
Broughton Island	FOX-5
Cape Dyer	DYE-M

The Canadian Ambassador to the Acting Secretary of State

Canadian Embassy

Ambassade du Canada

NOTE NO. 0318

EXCELLENCY:

I have the honour to acknowledge receipt of your Excellency's note of October 7, 1996, concerning environmental issues at the four former U.S. military installations in Canada mentioned in your note.

I have the honour to inform you that the United States Government's proposal contained therein is acceptable to the Government of Canada. However, contrary to the views of the United States Government, it is the view of the Government of Canada that the Government of the United States has legal obligations under international law to pay claims for the environmental clean-up of these former U.S. military installations.

I wish to assure you that the Government of Canada understands that the specific legislative authority, i.e. authorizations and appropriations, to which the United States' *ex gratia* settlement is subject shall be a matter for decision by the United States Congress. The Government of Canada also understands that payment in full of the *ex gratia* settlement shall constitute a full and final settlement of all claims for costs of environmental clean-up at the four installations described.

I have the honour to confirm that your note and this reply, done in duplicate in English and French, shall constitute an Agreement between the Governments of the United States and Canada on this matter, that enters into force on this date.

Accept, Excellency, the renewed assurances of my highest consideration.

Washington, D.C.

October 9, 1996

Canadian Embassy

Ambassade du Canada

NOTE NO. 0318

EXCELLENCE,

J'ai l'honneur d'accuser réception de la Note de votre Excellence du 7 octobre 1996 concernant les questions environnementales à quatre anciennes installations militaires américaines au Canada mentionnées à votre Note.

J'ai l'honneur de vous informer que la proposition du Gouvernement des États-Unis contenue dans la Note de votre Excellence agréée au Gouvernement du Canada. Cependant, le Gouvernement du Canada estime, contrairement à l'opinion du Gouvernement des États-Unis, que ce dernier a l'obligation légale, en vertu du droit international, de régler des indemnités pour la décontamination de ces anciennes installations militaires des États-Unis.

Je tiens à vous assurer que le Gouvernement du Canada reconnaît que l'autorité législative spécifique, c'est-à-dire les autorisations et les affectations de crédits, à laquelle est assujettie le règlement *ex gratia* des États-Unis est une question qu'il appartient au Congrès des États-Unis de décider. Le Gouvernement du Canada, de plus, reconnaît que le paiement en entier du règlement *ex gratia* constituera un règlement complet et définitif de toutes réclamations de frais relatifs à la décontamination aux quatre installations décrites.

J'ai l'honneur de confirmer que votre Note et cette Note en réponse, faites en double exemplaire en français et en anglais, constituent à cet égard un Accord entre les Gouvernements des États-Unis et du Canada, lequel entre en vigueur en date de ce jour.

Veillez agréer, Excellence, l'expression de mes sentiments distingués.

Washington, D.C.

le 9 octobre, 1996