



ORANGE
COUNTY
WATER
DISTRICT

M60050.002642
MCAS EL TORO
SSIC #5090.3

July 11, 1996

Major General P. A. Fratarangelo
MCAS El Toro
P. O. Box 95001
Santa Ana, CA 92709-5001

Re: Marine Corps Air Station ("MCAS") El Toro Superfund Site

Dear General Fratarangelo:

Attached is a copy of a letter that we recently sent to Ms. Felicia Marcus of the U. S. Environmental Protection Agency.

Please help us to resolve the problem of participation at meetings.

Very truly yours,

William R. Mills Jr.
General Manager

Attachment

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ORANGE
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DISTRICT

July 3, 1996

Ms. Felicia Marcus
Regional Administrator
U.S. Environmental Protection
Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Re: Marine Corps Air Station ("MCAS") El Toro Superfund
Site

Dear Ms. Marcus:

I write on behalf of Orange County Water District ("OCWD") to request your help in correcting a serious administrative error. Specifically, we request that EPA take all steps necessary to ensure that OCWD is given the opportunity to attend and participate at meetings between EPA and the Department of Navy ("DON") in connection with the above-referenced site. I am writing similar letters to Gerard Thibeault of the Regional Water Quality Control Board ("RWQCB"), Jesse Huff at the Department of Toxic Substances Control ("DTSC") and Major General P. A. Fratarangelo, the new Commander of MCAS El Toro, to request their assistance as well.

OFFICE OF THE
GENERAL MANAGER

I. BACKGROUND OF THE PROBLEM.

MCAS El Toro is one of several Marine Corps bases in California which have been impacted by contamination from decades of military activity. The extent of the contamination originating at MCAS El Toro began to be realized in 1985, when OCWD discovered that a plume of trichloroethane ("TCE") which originated from MCAS El Toro had impacted two irrigating wells near the Base. The DON reacted slowly to this discovery, to the point that Governor Pete Wilson, while he was a United States Senator, undertook a fact-finding mission to the Base in July, 1988. As a result of his visit, Governor Wilson criticized the military for refusing to investigate off-Base contamination. Governor Wilson stated:

"When you have the situation where the liability is pretty clear, there is no reason for this delay."

Because the Marine Corps had taken no action to stop the spread of the plume, the Orange County Water District, in 1989, commenced construction of Well No. ET-1 as an emergency measure to slow down the expansion of the plume.

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In February 1990, EPA placed MCAS El Toro on the National Priorities List. Nonetheless, the military continued to be reluctant to accept responsibility for the offsite contamination. In March 1990 Brigadier General D. V. Shuter, U.S. Marine Corps Commander, wrote:

"There is no scientific data that shows that the TCE ground-water contamination discovered on MCAS El Toro is connected to the contamination beneath the City of Irvine.

More recently, consultants retained by DON have confirmed that the contamination originating at MCAS El Toro has, in fact, migrated offsite, and now extends approximately three miles downgradient of the Base. DON's consultants further report that the plume contains numerous chemicals of concern, including TCE.

The aquifer which is being damaged by this plume is a critically important groundwater resource. This aquifer supplies approximately 70% of local drinking water needs. As David N. Kennedy, then Director of Water Resources, stated in 1989:

"The wells which are threatened by this plume are not replaceable in any thinkable way.

"They are worth billions of dollars compared to anything you would have to do as an alternative. They are of incalculable value."

II. ORANGE COUNTY WATER DISTRICT'S STATUTORY RESPONSIBILITY.

OCWD was formed in 1933 by a special act of the California Legislative, which may be found in the California Water Code App. at § 40-1, et seq. The Legislature has charged OCWD with the responsibility of protecting the groundwater supplies of the Orange County groundwater basin, and grants OCWD broad authority to:

"Transport, reclaim, purify, treat, inject, extract, or otherwise manage and control water for the beneficial use of persons or properties within the district and to improve and protect the quality of groundwater supplies within the district."

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In order to carry out the purposes of this charter, the Legislative authorized OCWD to:

"Commence, maintain, intervene in, defend and compromise, in the name of the district, or otherwise, . . . to prevent . . . diminution of the quality or pollution or contamination of the water supply of the district"

The Act also provides that the District shall have the right and power to:

"Act jointly with or cooperate with the United States or any agency thereof, the State of California or any agency thereof" (Water Code App. § 40-2.)

Pursuant to this charter, it is OCWD's duty and responsibility to be an active participant in all aspects of the CERCLA investigation and remediation process for the El Toro plume, and otherwise to take all steps necessary to expedite the process of responding to this major impairment of groundwater. Accordingly, OCWD has expended thousands of hours and millions of dollars studying the El Toro plume and providing technical assistance and input to DON, EPA, DTSC and RWQCB. Notwithstanding the extremely slow pace of progress (affected soils continue to leach chemicals into the aquifer, in the absence of onsite remediation), OCWD believes that continued communication with DON and the agencies is crucial to the protection of the health and safety of the residents of Orange County. Toward this end, OCWD has requested that DON keep OCWD informed of developments and notify OCWD of all meetings by DON with EPA, DTSC and RWQCB, so that OCWD can participate in these meetings.

III. THE NAVY'S POLICY OF EXCLUSION.

Recently, we learned through the RWQCB that DON has held a number of important directional meetings with EPA, DTSC and RWQCB, and has not notified OCWD of those meetings. Most recently, RWQCB notified OCWD that an important meeting was to be held on June 26, 1996, with DON, EPA, DTSC and RWQCB. In its memorandum describing the meeting, DON's representative stated:

". . . we are having a meeting next week to review and discuss the findings of the

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feasibility studies being developed for OU-1 (regional VOC groundwater) and OU-2 (VOC source area) in order to decide on the team's approach for the OU-1 proposed plan that will go out for public review and comment in early August 1996. The result of our discussion may be to propose a phased combination of OU-1 and OU-2A alternatives.

"I ask that each agency representative strongly invite their upper management, public participation specialist and counsel." (Emphasis in original.)

RWQCB advised OCWD that it should attend this meeting, as a major stakeholder and agency responsible for protection of the impacted groundwater. DON then contravened this invitation, and advised OCWD that it was expressly not invited to attend. DON's counsel advised OCWD that OCWD was being excluded from the meeting because DON did not want OCWD to express any disagreement with DON's remediation proposals. DON's counsel also stated that OCWD had no standing to attend these "nonpublic" meetings because OCWD's statutory responsibility for this groundwater was "outside of the CERCLA process."

At the suggestion of EPA, OCWD staff flew to San Francisco to request admission to the meeting. OCWD was not allowed to attend the meeting, but was invited to present a "statement of concerns" without having the benefit of the presentation by DON. DON then insisted that OCWD leave. Amazingly, neither the EPA, DTSC or agency representatives at the meeting interceded on behalf of OCWD.

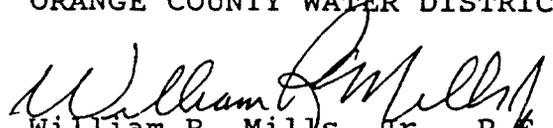
I find DON's position and the agencies' acquiescence to be extremely disturbing. The practice of exclusion appears to be based on an improper view of OCWD's responsibility and role in the protection of Orange County's groundwater supply. Further, this practice amounts to a repudiation of openness and informed participation in the investigation and remediation process. Rather than fostering consensus, this type of approach is bound to lead to distrust, further delays and increased expense, and poses the possibility that disagreements will be resolved through litigation rather than through the administrative process. I urge you to ensure that your agency does not participate in further

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closed door meetings with DON. I appreciate your assistance in working toward an administrative process which is open, consensual and ultimately productive.

Very truly yours,

ORANGE COUNTY WATER DISTRICT


William R. Mills, Jr., P.E.
General Manager

cc: Congressman Christopher C. Cox
Congressman Robert K. Dornan