



DEPARTMENT OF THE NAVY

NAVAL AIR STATION
MOFFETT FIELD, CA 94035-5000

N00296.000139
MOFFETT FIELD
SSIC NO. 5090.3

IN REPLY REFER TO:
5090
Ser 00/ 2859
04 SEP 1987.

California Regional Water Quality Control Board
San Francisco Region
Attn: Mr. Roger James
1111 Jackson Street
Oakland, CA 94607

Dear Mr. James:

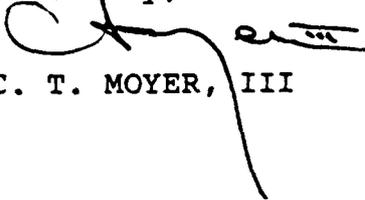
Enclosed are our formal comments in response to your Tentative Cease and Desist Order dated 28 July 1987. As you will note, we feel that rather basic questions have arisen as a result of our recent inclusion on the National Priorities List.

Please recognize that we do not raise these questions as a means of delaying the cleanup actions that we both agree must proceed as quickly as possible. As a Federal facility on the NPL, we are required by CERCLA, as amended, to conduct a Remedial Investigation and Feasibility Study (RI/FS) and enter into an interagency agreement with the EPA for the completion of any necessary remedial actions. We share the common purpose of appropriate cleanup, but the rules have changed somewhat and we are actively working to define our new relationship among EPA, CRWQCB and NAS Moffett Field. To this end, I propose we seek an administrative means among our three staffs to develop a mutually acceptable plan of action that will satisfy Moffett Field's obligations under both CERCLA and applicable State requirements.

I am new to NAS Moffett Field and have been on board less than a month. As I study this complex issue, it is obvious that our two agencies have not been in mutual agreement in the past and that we at NAS Moffett Field must reevaluate our total environmental program. I pledge my complete attention and total commitment to implementing agreed remedial actions here at Moffett Field as quickly as we are allowed under law and regulation.

By strengthening the cooperative relationship between our organizations, rather than going through the adversary process of a Cease and Desist Order, I believe we can best serve the public interest.

Sincerely,


C. T. MOYER, III

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ADOR 3

Copy to:

COMNAVBASE, SF

Regional Administrator

Region Nine

U. S. Environmental Protection Agency

~~CONFIDENTIAL/COMSCOM~~

1 COMMENTS OF NAVAL AIR STATION, MOFFETT FIELD, CALIFORNIA, IN
2 RESPONSE TO THE TENTATIVE ORDER OF THE STATE OF CALIFORNIA
3 REGIONAL WATER QUALITY CONTROL BOARD, SAN FRANCISCO BAY
4 REGION, PERTAINING TO THE NAVAL AIR STATION, MOFFETT FIELD,
5 CALIFORNIA

6 Naval Air Station, Moffett Field, California ("NAS
7 Moffett Field" or "NAS"), submits the following comments in
8 response to the tentative order requiring the United States
9 Department of the Navy, Moffett Field Naval Air Station,
10 Moffett Field, Santa Clara County, to Cease and Desist
11 Discharging Waste in Violation of Waste Discharge Requirements,
12 the California Water Code, Prohibitions of the Water Quality
13 Control Plan for the San Francisco Bay Basin, the Federal
14 Superfund Amendments and Reauthorization Act of 1986, and from
15 Threatening to Discharge Waste in Violation of the California
16 Water Code and the Toxic Pits Cleanup Act of 1984, which the
17 State of California Regional Water Quality Control Board, San
18 Francisco Bay Region ("RWQCB"), issued on 28 July 1987:

- 19 A. The State of California Regional Water Quality
20 Control Board Lacks Subject Matter Jurisdiction to
21 Require NAS Moffett Field to Comply with the Tasks
22 Set Forth in Its Tentative Order; NAS Moffett Field
23 Will Respond to the Release, and Threatened Release,
24 of Hazardous Substances Under the Comprehensive
25 Environmental Response, Compensation, and Liability
26 Act, As Amended

27 The State of California Regional Water Quality Control
28 Board lacks subject matter jurisdiction to require Naval Air
Station, Moffett Field, to perform the tasks according to the
schedule set forth in the tentative order under the Federal
and State authorities identified therein. Like any legal
entity, states are barred under the doctrine of Federal

1 sovereign immunity from subjecting departments of the United
2 States to their requirements, or bringing actions against
3 departments of the United States, except under express,
4 unequivocal waiver of sovereign immunity by the United States.
5 Generally, the Regional Water Quality Control Board can
6 subject NAS Moffett Field to its requirements, or bring
7 administrative actions against NAS Moffett Field to enforce
8 such requirements, only with regard to subject matters
9 concerning which sovereign immunity has been explicitly
10 waived in Federal statutes such as the Comprehensive
11 Environmental Response, Compensation, and Liability Act, as
12 amended by the Superfund Amendments and Reauthorization Act;
13 the Federal Water Pollution Control Act, as amended; the Safe
14 Drinking Water Act, as amended; or the Resource Conservation
15 and Recovery Act, as amended. The waivers of sovereign
16 immunity under these statutes are limited and confine the
17 jurisdiction of the Regional Water Quality Control Board over
18 subject matters at NAS Moffett Field more narrowly than the
19 Regional Board apparently defined it in its tentative order.
20 Moreover, once a Federal facility has been designated on the
21 National Priorities List for Uncontrolled Hazardous Waste
22 Sites, CERCLA preempts any waiver of sovereign immunity under
23 other Federal statutes.

24 Section 120(a) of the Comprehensive Environmental
25 Response, Compensation, and Liability Act (CERCLA), as amended,
26 requires Naval Air Station, Moffett Field, to comply with
27 CERCLA, as amended, and the National Oil and Hazardous
28

1 Substances Contingency Plan in responding to the release, and
2 the threatened release, of hazardous substances on NAS Moffett
3 Field. Section 120(e) of CERCLA, as amended, requires NAS
4 Moffett Field, as a result of its designation on the National
5 Priorities List for Uncontrolled Hazardous Waste Sites, to
6 conduct a remedial investigation and feasibility study and
7 enter into an inter-agency agreement with the Environmental
8 Protection Agency for the completion of any necessary remedial
9 action at NAS Moffett Field in responding to the release, and
10 the threatened release, of hazardous substances at NAS
11 Moffett Field.

12 To comply with Section 120(e) of CERCLA, as amended,
13 the Western Division, Naval Facilities Engineering Command
14 (WESTDIV), plans to conduct a remedial investigation and
15 feasibility study of sites where hazardous substances have
16 been released, or threaten to be released, at NAS Moffett
17 Field through its Installation Restoration Program on behalf
18 of NAS Moffett Field. Following the completion of the RI/FS,
19 WESTDIV plans to undertake any remedial action necessary to
20 respond to the release, and threatened release, of hazardous
21 substances. If appropriate, WESTDIV may undertake planned
22 removal as part of its response before undertaking remedial
23 action. NAS Moffett Field and/or WESTDIV plan to consult
24 with the Regional Water Quality Control Board in the
25 initiation, development, and selection of remedial action as
26 required in Section 121(f) of CERCLA, as amended. As part of
27 such consultation, NAS Moffett Field and/or WESTDIV plan to
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1 consult with the Regional Water Quality Control Board in the
2 identification of applicable or relevant and appropriate
3 cleanup requirements for sites where hazardous substances
4 have been released, or threaten to be released. WESTDIV's
5 tentative plans for responding to the release, and threatened
6 release, of hazardous substances at Naval Air Station, Moffett
7 Field, are attached hereto and incorporated herein by
8 reference as Exhibits A and B.

9
10 B. Undertaking the Tasks Set Forth in the Tentative Order
11 by the Regional Water Quality Control Board Would
12 Prevent NAS Moffett Field From Undertaking Actions
13 Mandated By the Comprehensive Environmental Response,
14 Compensation and Liability Act, as Amended

15 Undertaking the tasks set forth in proposed order
16 provision No. B and proposed finding No. 28, in accordance
17 with the vague requirements and schedule set, would prevent
18 NAS Moffett Field from undertaking other actions mandated by
19 the Comprehensive Environmental Response, Compensation, and
20 Liability Act, as amended. Section 120(a) of CERCLA, as
21 amended, prohibits the Naval Air Station, Moffett Field, from
22 utilizing any guidelines, rules, regulations, or criteria
23 which are inconsistent with the guidelines, rules, regulations,
24 and criteria established by the Environmental Protection
25 Agency under CERCLA, as amended. Section 117 of CERCLA, as
26 amended, requires that NAS Moffett Field provide an
27 opportunity for submission of comments and for public meeting
28 before NAS Moffett Field adopts a remedial action plan.

1 C. The Regional Water Quality Control Board Has Not
2 Given NAS Moffett Field Adequate Notice of Alleged
3 Violations

4 The Regional Water Quality Control Board has not given
5 NAS Moffett Field adequate notice of the State requirements
6 which NAS Moffett Field has allegedly violated, as stated in
7 proposed finding No. 30. Nor has the RWQCB given NAS Moffett
8 Field adequate notice of any Federal authority which may
9 waive the sovereign immunity of the United States with regard
10 to any requirements which NAS Moffett Field has allegedly
11 violated. In addition, many of the terms used in the tentative
12 order by the RWQCB are vague. For example, the terms "waste,"
13 "waters of the state," and "condition of pollution or nuisance"
14 are vague. Proposed finding No. 30 should be deleted because
15 of the RWQCB's failure to give NAS Moffett Field adequate
16 notice. Proposed finding Nos. 27 and 28 should be deleted
17 because the terms used therein are vague and because of the
18 lack of evidence to support such findings.

19 D. Proposed Finding Nos. 6, 7, and 8 in the Regional
20 Water Quality Control Board's Tentative Order Are
21 Not Accurate

22 1. Proposed Finding No. 6:

23 Proposed finding No. 6 is not accurate. Proposed finding
24 No. 6 should be amended to state:

25 In the Industrial Waste Engineering Study completed
26 in April 1986, NAS Moffett Field identified four
27 active sites at Moffett Field where discharge was
28 occurring.

1 Group VI. Other Sumps (3)

2 60 (PW Steam Rack), 61 (Paint Shop Sump), 66 (Dry
3 Cleaners Sump)

4 3. Proposed Finding No. 8:

5 Proposed finding No. 8 is not accurate. Proposed
6 finding No. 8 should be amended to state:

7 Naval Air Station, Moffett Field, is a Federal
8 facility which was listed on the Federal section of
9 the National Priorities List for Uncontrolled
10 Hazardous Waste Sites included in the National Oil
11 and Hazardous Substances Contingency Plan, which was
12 promulgated on 22 July 1987 pursuant to Section 105
of the Comprehensive Environmental Response,
Compensation, and Liability Act, as amended (52
Fed.Reg. 27620).

13 E. The State of California Regional Water Quality Control
14 Board Lacked Subject Matter Jurisdiction to Require
15 NAS Moffett Field to Comply With Many of the Tasks
Set Forth in Its Order No. 85-66

16 1. Proposed Finding Nos. 9, 10, 11, 13, and 15:

17 With respect to proposed finding Nos. 9, 10, 11, 13,
18 and 15, when it issued Order No. 85-66 the RWQCB did not have
19 subject matter jurisdiction over waters except with regard
20 to requirements respecting the control and abatement of the
21 discharge of pollutants into waters of the United States.
22 Nor did the RWQCB have subject matter jurisdiction over
23 groundwater on NAS except with regard to requirements
24 respecting the provision of safe drinking water and the
25 operation of any activities resulting, or which may result,
26 in underground injection which endangers drinking water. Nor
27 did the RWQCB have subject matter jurisdiction over solid
28

1 waste or hazardous waste except with regard to requirements
2 respecting the control and abatement of activities resulting,
3 or which may result, in the disposal, storage, or treatment
4 of solid waste or hazardous waste. The RWQCB has cited no
5 State authority or Federal authority which the RWQCB
6 administered, to which the United States was subject, which
7 required NAS to comply with the provisions C3, C4, C5, or C8
8 of Order No. 85-66. Moreover, any subject matter jurisdiction
9 which the RWQCB has over waters, groundwater, and/or solid
10 waste or hazardous waste is preempted by the designation of
11 NAS Moffett Field on the National Priorities List. Proposed
12 finding Nos. 9, 10, 11, 13, and 15 should be deleted because
13 of the RWQCB's lack of subject matter jurisdiction to issue
14 such provisions of Order No. 85-66.

15
16 2. Proposed Finding No. 12:

17 With respect to proposed finding No. 12, because the
18 RWQCB did not have subject matter jurisdiction to issue
19 Order No. 85-66, as stated above, NAS is not in violation
20 of provisions C3d and C4e of such order. The RWQCB did not
21 have subject matter jurisdiction to require NAS to submit
22 a technical report according to the schedule set forth in
23 Provisions C3d and C4e of such order and summarized in
24 proposed finding No. 12 of the tentative order. NAS is not
25 in violation of provisions C3d and C4e of Order No. 85-66.
26 Proposed finding No. 12 should be deleted because of the
27 RWQCB's lack of subject matter jurisdiction to issue such
28 provisions of Order No. 85-66.

1 3. Proposed Finding No. 14:

2 With respect to proposed finding No. 14, because the
3 RWQCB did not have subject matter jurisdiction to issue Order
4 No. 85-66 as stated above, NAS is not in violation of
5 Provision C5c of Order No. 85-66. The RWQCB did not have
6 subject matter jurisdiction to require NAS to conduct the
7 investigation to identify, locate, and collect information
8 on wells with potential to act as conduits for pollution
9 to migrate into deeper aquifers according to the schedule
10 set forth in Provisions C5a, C5b, and C5c of the RWQCB's
11 Order No. 85-66 and summarized in proposed finding No. 13
12 of the tentative order. NAS is not in violation of Provisions
13 C5a, C5b, and C5c of Order No. 85-66. Proposed finding No.
14 14 should be deleted because of the RWQCB's lack of subject
15 matter jurisdiction to issue such provisions of Order No.
16 85-66.

17
18 4. Proposed Finding No. 16:

19 With respect to proposed finding No. 16, because the
20 RWQCB did not have subject matter jurisdiction to issue
21 Order No. 85-66, as stated above, NAS is not in violation
22 of Provision C8 of such Order. The RWQCB did not have subject
23 matter jurisdiction to require that "interim containment of
24 the pollution plume shall commence in areas of known
25 pollution as soon as practicable, but in any event shall not
26 be delayed pending defining the full extent of pollution
27 in any aquifer. The interim cleanup and containment plans,
28 including time schedule, shall be submitted by January 15,

1 1986." NAS is not in violation of Provision C8 of the RWQCB's
2 Order No. 85-66. Proposed finding No. 16 should be deleted
3 because of the RWQCB's lack of subject matter jurisdiction
4 to issue such provisions of Order No. 85-66.

5
6 F. The State of California Regional Water Quality Control
7 Board Lacks Subject Matter Jurisdiction to Require
8 NAS Moffett Field to Comply with the Tasks Set Forth
9 in Its Tentative Order Under Section 25208 of the
10 California Health and Safety Code (the Toxic Pits
11 Cleanup Act) or Section 13260 of the California Water
12 Code; NAS Moffett Field Will Conduct a Hydrogeologic
13 Assessment Report

14
15 1. Proposed Finding Nos. 17-18:

16 With respect to proposed finding Nos. 17-18, the RWQCB
17 does not have subject matter jurisdiction over surface
18 impoundments except with regard to requirements respecting
19 the control and abatement of activities resulting, or which
20 may result, in the disposal, storage, or treatment of solid
21 waste or hazardous substances. Moreover, any subject matter
22 jurisdiction which the RWQCB has over surface impoundments is
23 preempted by the designation of NAS Moffett Field on the
24 National Priorities List. No evidence exists that the surface
25 impoundments, identified in the tentative order as "Site 10
26 Active Industrial Wastewater Holding Ponds" and as "Site
27 11 Active Industrial Wastewater Holding Ponds" in Item B1
28 above, are used for treatment, storage, or disposal of
hazardous waste. Nor does evidence exist that NAS is
threatening to violate Section 25208 of the California Health
and Safety Code (the Toxic Pits Cleanup Act). WESTDIV awarded
a contract for the performance of a hydrogeological assessment

1 report concerning such surface impoundments on 14 August
2 1987. WESTDIV plans to complete a hydrogeological assessment
3 report by 1 January 1988, and submit such report to the RWQCB
4 by the same date, barring unforeseen circumstances. Proposed
5 finding No. 18 should be deleted because of the RWQCB's lack
6 of subject matter jurisdiction and because of lack of evidence
7 to support such finding.

8
9 2. Proposed Finding Nos. 19-22:

10 With respect to proposed finding Nos. 19-22, the
11 RWQCB does not have jurisdiction over waters except with
12 regard to requirements respecting the control and abatement
13 of the discharge of pollutants into the waters of the United
14 States. Moreover, any subject matter jurisdiction which the
15 RWQCB has over waters is preempted by the designation of
16 NAS Moffett Field on the National Priorities List. No
17 evidence exists that pollutants have been or are being
18 discharged into waters of the United States from the surface
19 impoundments identified in the tentative order as "Site 10
20 Active Industrial Wastewater Holding Ponds and as "Site 11
21 Active Industrial Wastewater Holding Ponds" in Item B1 above.
22 NAS is not in violation of Section 13260 of the California
23 Water Code. Proposed finding No. 21 should be deleted
24 because of the RWQCB's lack of subject matter jurisdiction
25 and because of lack of evidence to support such finding.
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1 3. Proposed Finding No. 23-24:

2 With respect to proposed finding Nos. 23-24, the RWQCB
3 does not have subject matter jurisdiction over waters except
4 with regard to requirements respecting the control and
5 abatement of the discharge of pollutants into the waters of
6 the United States. Moreover, any subject matter jurisdiction
7 which the RWQCB has over waters is preempted by the designation
8 of NAS Moffett Field on the National Priorities List. No
9 evidence exists that pollutants have been or are being
10 discharged into waters of the United States from the surface
11 areas identified in the tentative order as "Site 11 Engine
12 Test Stand Area, Site 12 Firefighting Training Area, and
13 Site 13 Equipment Parking Area-Building 142" and as "Site 12
14 Engine Test Stand Area, Site 13 Firefighting Training Area,
15 and Site 14 Equipment Parking Area-Building 142" in Item B1
16 above. The RWQCB does not have subject matter jurisdiction
17 over groundwater on NAS except with regard to requirements
18 respecting the provision of safe drinking water and the
19 operation of any activities resulting, or which may result,
20 in underground injection which endangers drinking water. No
21 evidence exists that underground injection has occurred on
22 NAS or has resulted, or may result, in the presence of
23 contaminants in groundwater which endangers drinking water.
24 NAS is not in violation of Section 13260 of the California
25 Water Code. Proposed finding No. 24 should be deleted
26 because of the RWQCB's lack of subject matter jurisdiction
27 and because of lack of evidence to support such finding.
28

1 4. Proposed Finding No. 25:

2 With respect to proposed finding No. 25, the RWQCB does
3 not have subject matter jurisdiction over waters except with
4 regard to requirements respecting the control and abatement
5 of the discharge of pollutants into the waters of the United
6 States. Moreover, any subject matter jurisdiction which the
7 RWQCB has over waters is preempted by the designation of NAS
8 Moffett Field on the National Priorities List. No evidence
9 exists that pollutants have been or are being discharged into
10 the waters of the United States from the areas identified in
11 the tentative order as "Site 14 40 Motor Fuel and Diesel
12 Fuel Tanks, Site 15 10 Oil and Waste Oil Tanks, and Oil/Water
13 Separators, Site 16 13 Other Tanks and Tanks of Unknown
14 Previous Use, and Site 17 5 Solvent and Other Hazardous
15 Waste Tanks/Sumps" and as "Group I Active Tanks (23),
16 Group II Bulk Tanks (11), Group III Leaking Tanks (4),
17 Group IV Abandoned Tanks (not-in-service) (18), Group V
18 Sumps/Oil Water Separators (9), and Group VI Other Sumps
19 (3)" in Item B2 above. NAS is not in violation of Section
20 13260 of the California Water Code. Proposed finding No. 25
21 should be deleted because of the RWQCB's lack of subject
22 matter jurisdiction and because of lack of evidence to support
23 such finding.

24
25 G. The State of California Regional Water Quality
26 Control Board Lacks Subject Matter Jurisdiction to
27 Require NAS Moffett Field to Comply with the Tasks
28 Set Forth in Its Tentative Order Under Section 13273
 of the California Water Code

1 1. Proposed Finding No. 26:

2 With respect to proposed finding No. 26, the RWQCB does
3 not have jurisdiction over landfills except with regard to
4 requirements respecting the control and abatement of activities
5 resulting, or which may result, in disposal, storage, or
6 treatment of solid waste or hazardous waste. Moreover, any
7 subject matter jurisdiction which the RWQCB has over landfills
8 is preempted by the designation of NAS Moffett Field on the
9 National Priorities List. Proposed finding No. 26 should be
10 deleted because of the RWQCB's lack of subject matter
11 jurisdiction.

12
13 H. The State of California Regional Water Quality Control
14 Board Lacks Subject Matter Jurisdiction to Require NAS
15 Moffett Field to Comply with the Prohibitions Set
16 Forth in Provisions Nos. A1-A2 of Its Tentative Order

17 1. Proposed Order Provision No. A1:

18 With respect to proposed order provision No. A1, the
19 RWQCB does not have subject matter jurisdiction over waters
20 except with regard to requirements respecting the control and
21 abatement of the discharge of pollutants into waters of the
22 United States. Moreover, any subject matter jurisdiction
23 which the RWQCB has over waters is preempted by the designation
24 of NAS Moffett Field on the National Priorities List. The
25 terms "degrade water quality or adversely affect the beneficial
26 uses of the waters of the State" used in proposed order
27 provision No. A1 should be deleted because of the RWQCB's
28 lack of subject matter jurisdiction to issue such provision
and because the terms used therein are vague.

1 2. Proposed Order Provision No. A2:

2 With respect to proposed order provision No. A2, the
3 RWQCB does not have subject matter jurisdiction over waters
4 except with regard to requirements respecting the control and
5 abatement of the discharge of pollutants into waters of the
6 United States. Moreover, any subject matter jurisdiction
7 which the RWQCB has over waters is preempted by the
8 designation of NAS Moffett Field on the National Priorities
9 List. The terms "significant migration of pollutants through
10 subsurface transport to waters of the State" are vague.
11 Proposed Order Provision No. A2 should be deleted because of
12 the RWQCB's lack of subject matter jurisdiction to issue such
13 provision and because the terms used therein are vague.

14
15 I. The State of California Regional Water Quality
16 Control Board Lacks Subject Matter Jurisdiction to
17 Require NAS Moffett Field to Comply With the
Provisions Set Forth In Provisions Nos. B1-B13 of
Its Tentative Order.

18 1. Proposed Order Provision Nos. B1a, B1b, and B1c:

19 With respect to proposed order provision Nos. B1a, B1b,
20 and B1c, the RWQCB does not have subject matter jurisdiction
21 over waters except with regard to requirements respecting the
22 control and abatement of the discharge of pollutants into
23 waters of the United States. Nor does the RWQCB have subject
24 matter jurisdiction over groundwater on NAS except with regard
25 to requirements respecting the provision of safe drinking water
26 and the operation of any activities resulting, or which may
27 result, in underground injection which endangers drinking
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1 water. Nor does the RWQCB have subject matter jurisdiction
2 over solid waste or hazardous waste except with regard to
3 requirements respecting the control and abatement of activities
4 resulting, or which may result, in the disposal, storage, or
5 treatment of solid waste or hazardous waste. The RWQCB has
6 cited no State authority or Federal authority which the RWQCB
7 administers, to which the United States is subject, which
8 requires NAS to comply with the tasks set forth in proposed
9 order provisions Nos. B1a, B1b, or B1c. Moreover, any
10 subject matter jurisdiction which the RWQCB has over waters
11 is preempted by the designation of NAS Moffett Field on the
12 National Priorities List. Proposed order provision Nos. B1a,
13 B1b, and B1c should be deleted because of the RWQCB's lack of
14 subject matter jurisdiction to issue such provisions.

15
16 1. Proposed Order Provision No. B2a:

17 With respect to proposed order provision No. B2a, NAS
18 states that the RWQCB does not have subject matter jurisdiction
19 over surface impoundments except with regard to requirements
20 respecting the control and abatement of activities resulting,
21 or which may result, in the disposal, storage, or treatment
22 of solid waste or hazardous waste. Moreover, any subject
23 matter jurisdiction which the RWQCB has over surface
24 impoundments is preempted by the designation of NAS Moffett
25 Field on the National Priorities List. No evidence exists
26 that the surface impoundments, identified in the tentative
27 order as "Site 10 Active Industrial Wastewater Holding
28 Ponds" and as "Site 11 Active Industrial Wastewater Holding

1 Ponds" in Item B1 above, are used for the treatment, storage,
2 or disposal of hazardous waste. Nor does any evidence exist
3 that NAS is threatening to violate Section 25208 of the
4 California Health and Safety Code (the Toxic Pits Cleanup
5 Act). Proposed order provision No. B2a should be deleted
6 because of the RWQCB's lack of subject matter jurisdiction to
7 issue such provisions and because of the lack of evidence
8 to support such provisions.

9
10 3. Proposed Order Provision No. B2b:

11 With respect to proposed order provision No. B2b, the
12 RWQCB does not have subject matter jurisdiction over waters
13 except with regard to requirements respecting the control and
14 abatement of the discharge of pollutants into waters of the
15 United States. Nor does the RWQCB have subject matter
16 jurisdiction over groundwater on NAS except with regard to
17 requirements respecting the provision of safe drinking water
18 and the operation of any activities resulting, or which may
19 result, in underground injection which endangers drinking
20 water. Moreover, any subject matter jurisdiction which the
21 RWQCB has over waters and/or groundwater is preempted by the
22 designation of NAS Moffett Field on the National Priorities
23 List. Proposed order provision No. B2b should be deleted
24 because of the RWQCB's lack of subject matter jurisdiction to
25 issue such provision.
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1 4. Proposed Order Provision No. B3:

2 With respect to proposed order provision No. B3, the
3 RWQCB does not have subject matter jurisdiction over waters
4 except with regard to requirements respecting the control and
5 abatement of the discharge of pollutants into waters of the
6 United States. Nor does the RWQCB have subject matter
7 jurisdiction over groundwater on NAS except with regard to
8 requirements respecting the provision of safe drinking water
9 and the operation of any activities resulting, or which may
10 result, in underground injection which endangers drinking
11 water. Nor does the RWQCB have subject matter jurisdiction
12 over solid waste or hazardous waste except with regard to
13 requirements respecting the control and abatement of activities
14 resulting, or which may result, in the disposal, storage, or
15 treatment of solid waste or hazardous waste. The RWQCB has
16 cited no State authority or Federal authority which the RWQCB
17 administers, to which the United States is subject, which
18 requires NAS to comply with the tasks set forth in proposed
19 order provision No. B3. Moreover, any subject matter
20 jurisdiction which the RWQCB has over waters, groundwater,
21 and/or solid waste or hazardous waste is preempted by the
22 designation of NAS Moffett Field on the National Priorities
23 List. Proposed order provision No. B3 should be deleted
24 because of the RWQCB's lack of subject matter jurisdiction to
25 issue such provision.

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1 5. Proposed Order Provision Nos. B4, B5, and B8:

2 With respect to proposed order provision Nos. B4, B5,
3 and B8, the RWQCB does not have subject matter jurisdiction
4 over waters except with regard to requirements respecting the
5 control and abatement of the discharge of pollutants into
6 waters of the United States. Nor does the RWQCB have subject
7 matter jurisdiction over groundwater on NAS except with
8 regard to requirements respecting the provision of safe
9 drinking water and the operation of any activities resulting,
10 or which may result, in underground injection which endangers
11 drinking water. Nor does the RWQCB have subject matter
12 jurisdiction over solid waste or hazardous waste except with
13 regard to requirements respecting the control and abatement
14 of activities resulting, or which may result, in the disposal,
15 storage, or treatment of solid waste or hazardous waste.
16 Moreover, any subject matter jurisdiction which the RWQCB has
17 over waters, groundwater, and/or solid waste or hazardous
18 waste is preempted by the designation of NAS Moffett Field on
19 the National Priorities List. Thus, the RWQCB does not have
20 subject matter jurisdiction to require, as proposed in proposed
21 order provision No. B4, that NAS "submit a final Remedial
22 Investigation (RI) Report acceptable to the Executive Officer
23 completely defining the extent of soil and groundwater
24 pollution associated with all sites at Moffett Field," which
25 is "consistent with guidance provided by Subpart F of the
26 National Oil and Hazardous Substances Pollution Contingency
27 Plan . . . , as amended; the Superfund Amendments and
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1 Reauthorization Act of 1986; Section 25356.1(c) of the
2 California Health and Safety Code; and CERCLA guidance
3 documents with reference to Remedial Investigations." Nor
4 does the RWQCB have subject matter jurisdiction to require,
5 as proposed in proposed order provision No. B5, that NAS
6 "[s]ubmit a Feasibility Study (FS) technical report acceptable
7 to the Executive Officer containing an evaluation of the
8 installed interim remedial measures; an evaluation of
9 alternative final remedial measures; the recommended measures
10 necessary to achieve final cleanup objectives; and the tasks
11 and time schedule necessary to implement the recommended
12 final remedial measure. Nor does the RWQCB have subject
13 matter jurisdiction to require, as proposed in provision No.
14 B8, that the submittal of technical reports evaluating immediate,
15 interim, and final remedial measures will include a projection
16 of the "cost, effectiveness, benefits, and impact on public
17 health, welfare, and environment of each alternative measure"
18 or to require that "[t]he remedial investigation and feasibility
19 study shall be consistent with the guidance provided by
20 subpart F of the National Oil and Hazardous Substances Pollution
21 Contingency Plan . . . , as amended; the Superfund Amendments
22 and Reauthorization Act of 1986; Section 25356.1(c) of the
23 California Health and Safety Code; CERCLA guidance documents
24 with reference to Remedial Investigation, Feasibility Studies,
25 and Removal Actions; and the State Water Resources Control
26 Board's Resolution No. 68-16, 'Statement of Policy with
27 Respect to Maintaining High Quality of Waters in California.'
28

1 Proposed order provision Nos. 4,5, and 8 be should deleted
2 because of the RWQCB's lack of subject matter jurisdiction to
3 issue such provisions.
4

5 6. Proposed Order Provision Nos. 6, 9, 10, and 11

6 With respect to proposed order provision Nos. 6, 9, 10,
7 and 11, the RWQCB does not have subject matter jurisdiction
8 over waters except with regard to requirements respecting the
9 control and abatement of the discharge of pollutants into
10 waters of the United States. Nor does the RWQCB have subject
11 matter jurisdiction over groundwater on NAS except with
12 regard to requirements respecting the provision of safe
13 drinking water and the operation of any activities resulting,
14 or which may result, in underground injection which endangers
15 drinking water. Nor does the RWQCB have subject matter
16 jurisdiction over solid waste or hazardous waste except with
17 regard to requirements respecting the control and abatement
18 of activities resulting, or which may result, in the disposal,
19 storage, or treatment of solid waste or hazardous waste. The
20 RWQCB has cited no State authority or Federal authority which
21 the RWQCB administers, to which the United States is subject,
22 which requires NAS to comply with the tasks set forth in
23 proposed order provision Nos. 6, 9, 10, or 11. Moreover, any
24 subject matter jurisdiction which the RWQCB has over waters,
25 groundwater, and/or solid waste or hazardous waste is preempted
26 by the designation of NAS Moffett Field on the National
27 Priorities List. Proposed order provision Nos. 6, 9, 10, and
28

1 11 should be deleted because of the RWQCB's lack of subject
2 matter jurisdiction to issue such provisions.

3
4 7. Proposed Order Provision Nos. 7, 12, and 13:

5 With respect to proposed order provision Nos. 7, 12,
6 and 13, the RWQCB does not have subject matter jurisdiction
7 over waters except with regard to requirements respecting the
8 control and abatement of the discharge of pollutants into
9 waters of the United States. Nor does the RWQCB have subject
10 matter jurisdiction over groundwater except with regard to
11 requirements respecting the provision of safe drinking water
12 and the operation of any activities resulting, or which may
13 result, in underground injection which endangers drinking
14 water. Nor does the RWQCB have subject matter jurisdiction
15 over solid waste or hazardous waste except with regard to
16 requirements respecting the control and abatement of
17 activities resulting, or which may result, in the disposal,
18 storage, or treatment of solid waste or hazardous waste.
19 Moreover, any subject matter jurisdiction which the RWQCB has
20 over water, groundwater, and/or solid waste or hazardous
21 waste is preempted by the designation of NAS Moffett Field on
22 the National Priorities List. Proposed order provision Nos.
23 7, 12, and 13 should be deleted because of lack of subject
24 matter jurisdiction. NAS Moffett Field will provide the
25 RWQCB with reports and other information as appropriate.
26
27
28

EXHIBIT A ^{first}

PLANNED RESPONSE TO SITES 3, 4, 5, 6, 7 AND GROUP III A (TANKS #2, 43)

- Preliminary Assessment/Site Investigation
 - (Initial Assessment Study Completed Apr 84)
 - (Verification Study Completed Apr 86)
- Remedial Investigation (RI)
 - Preliminary Planning
 - Work Plan/Schedule (15 Jan 88)
 - Quality Assurance Project Plan (submitted 24 July 87, revision 15 Feb 88)
 - ✓ Sampling Plan (submitted 24 July 87, revision 15 Feb 88)
 - ✓ Health & Safety Plan (15 Feb 88) *sub 1 Aug 88 to (draft) revision 11 March 87 (red)*
 - Data Management Plan (15 Feb 88) *how we handle data*
 - Project Management Plan (15 Feb 88)
 - Community Relations Plan (15 Feb 88)
 - Public Health Evaluation Plan (15 Feb 88)
 - Request for Identification of Applicable or Relevant and Appropriate Requirements (1 Nov 87)
 - Field Investigations (In Accordance With Work Plan Schedule)
 - Removal Actions (If Required)
 - Work Plan to Evaluate Alternatives
 - Sampling Plan
 - Quality Assurance Project Plan
 - Fieldwork
 - Report Evaluating Alternatives
 - EPA Review/Concurrence
 - Public Comment
 - Record of Decision
 - Remedial Design
 - RI Final Report (In Accordance with Work Plan Schedule)
 - Site Characterization
 - Risk Assessment
 - Contamination Assessment
 - Environmental Assessment
 - Public Health Assessment
 - Feasibility Study (In Accordance with Work Plan Schedule)
 - Initial Technology Screening
 - Remedial Options
 - Evaluation of Alternatives
 - Report
 - Record of Decision
 - Draft 30 Day Comment Period
 - Final Record of Decision
 - Interagency Agreement
 - Remedial Design/Remedial Actions

EXHIBIT B 250

PLANNED RESPONSE TO SITES 1, 2, 8, 9, 12, 13, 14, GROUP III B (TANKS 14, 53),
GROUP VI (SUMPS #60, 61, 66), GROUP IV B (TANKS #19, 20, 67, 68)

•Preliminary Assessment/Site Investigation

Sites 1, 2, 8, 9 (Initial Assessment Study Completed Apr 84)
(Verification Study Completed Apr 86)

Sites 12, 13, 14 (Industrial Waste Engineering Study, April 86)
Groups VI, IV B (Tank Testing Study, Jun 87)

•Remedial Investigation (RI)

•Preliminary Planning

- Work Plan/Schedule (15 Feb 88)
- Quality Assurance Project Plan (15 Mar 88)
- Sampling Plan (15 Mar 88)
- Health & Safety Plan (15 Mar 88)
- Data Management Plan (15 Mar 88)
- Project Management Plan (15 Mar 88)
- Community Relations Plan (15 Mar 88)
- Public Health Evaluation Plan (15 Mar 88)
- Request for Identification of Applicable or Relevant and Appropriate Requirements (1 Nov 87)

•Field Investigations (In Accordance With Work Plan Schedule)

•Removal Actions (If Required)

- Work Plan to Evaluate Alternatives
 - Sampling Plan
 - Quality Assurance Project Plan
- Fieldwork
- Report Evaluating Alternatives
- EPA Review/Concurrence
- Public Comment
- Record of Decision
- Remedial Design

•RI Final Report (In Accordance with Work Plan Schedule)

- Site Characterization
- Risk Assessment
 - Contamination Assessment
 - Environmental Assessment
 - Public Health Assessment

•Feasibility Study (In Accordance with Work Plan Schedule)

- Initial Technology Screening
- Remedial Options
- Evaluation of Alternatives
- Report

•Record of Decision

- Draft 30 Day Comment Period
- Final Record of Decision

•Interagency Agreement

•Remedial Design/Remedial Actions