

STATE OF CALIFORNIA  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO DISTRICT

EXECUTIVE OFFICER SUMMARY REPORT  
HEARING DATE: September 16, 1987

**TITLE:**

**SUBJECT:** U.S. DEPARTMENT OF THE NAVY, MOFFETT FIELD NAVAL AIR STATION,  
MOFFETT FIELD, SANTA CLARA COUNTY - REQUEST TO CONSIDER  
ISSUANCE OF CEASE AND DESIST ORDER

**CHRONOLOGY:** MAY 15, 1983 - Waste Discharge Requirements adopted  
July 17, 1985 - Status Report on site investigation

**DISCUSSION:** In many ways, the Navy's Moffett Field Naval Air Station resembles a small industrialized city. It occupies almost seven square miles of land and has a very complex industrial operation involving solvent and fuel storage, heavy equipment testing and maintenance, and hazardous waste generation and disposal.

In recent years, the number of environmental laws and regulations dealing with the storage, handling and disposal of hazardous waste as well as the investigation and cleanup of polluted soil and groundwater has grown dramatically. Yet the Navy has not geared up with sufficient staff and/or contracting resources to keep up with the demands of these new requirements. This has resulted in numerous violations of Federal and State laws - most notably the failure to meet deadlines for the groundwater investigation and cleanup contained in the Board's Waste Discharge Requirements adopted in 1985 - and in threatened violations of statutory deadlines for completing necessary technical studies with respect to surface impoundments and landfills. (See attached staff report in Appendix B for further details.)

Issuance of a Cease and Desist Order would serve notice to the Navy that the Regional Board expects them, as we do all other dischargers, to provide the necessary resources to comply with applicable laws and regulations in a timely manner.

The Order (Appendix A) would establish time schedules for investigations and remedial or closure actions for: (1) subsurface contamination sites, (2) surface impoundments, and (3) abandoned landfills. With respect to subsurface contamination sites, the Order would establish schedules for defining the extent of contamination, developing and implementing an interim cleanup plan, and investigating and properly sealing abandoned wells which pose a threat of

transmitting contaminants to deeper aquifers.

The Order would also require submission by October 1, 1987 of a report indicating tasks and a time schedule for the Navy to acquire the necessary resources to complete the required work by the compliance dates prescribed in the Order. The intent of this is to assure proper planning so as to avoid undue delays associated with the Navy's contracting and budgeting procedures.

The Navy submitted comments (Appendix C) regarding the Tentative Order on September 8, 1987. Due to the late date of submittal, staff has not had time to prepare a response to the Navy's comments for inclusion in the Board's agenda package. Although the Commanding Officer of Moffett Field has stated the Navy's commitment to implement remedial actions at Moffett Field, the Navy has claimed "sovereign immunity", challenging State authority to issue an enforcement order against a federal facility. We expect to meet with the Navy and staff counsel prior to the hearing to attempt to resolve this issue. Staff intends to prepare a response to the Navy's comments as a supplementary report to the Board.

RECOMMENDATION

DECISION: I will have a recommendation at the end of the hearing.

File No. 2189.8009

Appendices

- A. Tentative Order
- B. Staff Report
- C. Correspondence
- D. Public Notice

APPENDIX A

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

TERMINATIVE ORDER

REQUIRING THE UNITED STATES DEPARTMENT OF THE NAVY, MOFFETT FIELD NAVAL AIR STATION, MOFFETT FIELD, SANTA CLARA COUNTY, TO CEASE AND DESIST DISCHARGING WASTE IN VIOLATION OF WASTE DISCHARGE REQUIREMENTS, THE CALIFORNIA WATER CODE, PROVISIONS OF THE WATER QUALITY CONTROL PLAN FOR THE SAN FRANCISCO BAY BASIN, THE FEDERAL SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986, AND FROM THREATENING TO DISCHARGE WASTE IN VIOLATION OF THE CALIFORNIA WATER CODE AND THE TOXIC PIT CLEANUP ACT OF 1984.

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter called the Board), finds that:

1. The United States Department of the Navy, Moffett Field Naval Air Station (hereinafter called the discharger) occupies approximately 4,000 acres of land at Moffett Field, located between the Cities of Sunnyvale and Mountain View, Santa Clara County. The discharger commenced operations at this site in 1933. Since its beginning, the discharger's site has been utilized for a number of Army and Navy operations, including assembly, overhaul, repair, fueling, and landing facilities for dirigibles, helicopters, airplanes and jets.
2. The discharger's operations have involved the storage, handling, and disposal of raw and waste product hazardous materials. The hazardous materials used onsite, either currently or historically, include trichloroethane (TCE), 1,1,1-trichloroethane (TCA), tetrachloroethane (PCE), polychlorinated biphenyls (PCBs), various pesticides, fuels, oils, and other organic solvents.
3. Subsurface investigations were initiated at two underground solvent tanks in April 1983 and revealed volatile organic compound (VOC) pollution in both soil and groundwater adjacent to one of the tanks.
4. In addition to further groundwater investigations near the solvent tanks, the discharger also began conducting an Initial Assessment Study (IAS) in 1983 to identify possible environmental pollution from past use and disposal of hazardous materials on the entire site. In April 1984, the discharger requested that additional investigations of groundwater pollution be delayed until the Initial Assessment Study was completed and that further investigations be included in the "Confirmation Study," which was to be the next phase of the discharger's investigation program.
5. The Initial Assessment Study was submitted to the Regional Board in May 1984. The study identified nine sites at Moffett Field where potentially hazardous materials were disposed or spilled. The nine sites identified in the IAS are listed below:

<u>Site Number</u>	<u>Description</u>
1	Runway Landfill
2	Golf Course Landfill

- 3 Marriage Road Ditch
- 4 Former Industrial Wastewater Surface Impoundments
- 5 Fuel Farm French Drains
- 6 Runway Apron
- 7 Unpaved Areas Surrounding Hangars 2 and 3
- 8 Waste Oil Transfer Area
- 9 Old Fuel Farm

6. In a report dated April 1986, the discharger identified four active sites at Moffett Field where discharge was occurring in violation of law. These sites are listed below:

<u>Site Number</u>	<u>Description</u>
10	Active Industrial Wastewater Surface Impoundments
11	Engine Test Stand Area
12	Firefighting Training Area
13	Equipment Parking Area - Building 142

7. The discharger has also identified 68 underground tanks and sumps (active, inactive, and abandoned) located throughout Moffett Field which are used to store and/or treat raw and waste product hazardous materials. The tanks/sumps are classified as follows:

<u>Site Number</u>	<u>Description</u>
14	40 Motor Fuel and Diesel Fuel Tanks
15	10 Oil and Waste Oil Tanks, and Oil/Water Separators
16	13 Other Tanks and Tanks of Unknown Previous Use
17	5 Solvent and Other Hazardous Waste Tanks/Sumps

8. Moffett Field Naval Air Station is a hazardous waste site listed on the final Federal Superfund National Priorities List (NPL) pursuant to the Superfund Amendments and Reauthorization Act of 1986.

9. The Board adopted Waste Discharge Requirements, Order No. 85-66, for the nine sites listed in Finding 5, on May 15, 1985. The Order established a compliance schedule for the discharger to define the extent of pollution associated with these sites as well as requiring an interim cleanup plan. The Board has not adopted requirements for sites 10 through 17 listed in Findings 6 and 7.

10. Provision C.3.d, of Order 85-66, required the discharger to submit a technical report by June 1, 1986, transmitting the results of an investigation for Sites 1, 2, 5, 8, and 9, to further define A aquifer pollution and to determine whether the groundwater was polluted in the B aquifer.

11. Provision C.4.e, of Order No. 85-66, required the discharger to submit a technical report by June 1, 1986, transmitting the results of an investigation for Sites 3, 4, 6, and 7, to address full definition of pollution in the A and B aquifers and further definition of any C aquifer pollution identified.

12. The discharger is in violation of Order 85-66, for failing to submit a satisfactory technical report required by the January 1, 1986 compliance date for Provisions C.5a and C.5b. The discharger's preliminary technical report dated November 13, 1985 contained initial investigations for sites 1 through 9; however, additional investigations at all nine sites were needed to complete the scope of work required to comply with these Provisions. To date, the discharger has not conducted the necessary additional investigations.
13. Provision C.5 of Order 85-66 required the discharger to undertake an investigation to identify, locate, and collect information on wells which are potential or act as conduits for pollution to migrate into deeper aquifers according to the following compliance schedule:
  - a. Provision C.5.a - Identify private wells, to the extent feasible, in the vicinity of the site with potential to act as conduits for inter-aquifer cross-contamination. Compliance Date: November 1, 1985
  - b. Provision C.5.b - Locate and collect additional information on private wells identified in Provision C.5.a to assess if the wells may be potential conduits for inter-aquifer cross-contamination. Compliance Date: January 1, 1986
  - c. Provision C.5.c - Develop a program to respond to any potential conduits and submit a technical report with options for addressing closure. Compliance Date: February 1, 1986
14. The discharger is in violation of Order No. 85-66, for failing to submit satisfactory technical reports required by the January 1, 1986 compliance date for Provision C.5.b. and February 1, 1986 compliance date for Provision C.5.c. The discharger submitted a technical report on November 13, 1985 that identified some active, inactive, and abandoned wells, and submitted a technical report on March 21, 1986 that contained additional data on the active wells. However, these reports were inadequate because the abandoned well search was incomplete, abandoned wells were not field located, and the additional data needed to evaluate the threat posed by the wells was not provided.
15. Provision C.8, of Order No. 85-66, stated that "interim containment of the pollution plume shall commence in areas of known pollution as soon as practicable, but in any event shall not be delayed pending defining the full extent of pollution in any aquifer. The interim cleanup and containment plans, including time schedule, shall be submitted by January 15, 1986."
16. The discharger violated the compliance date for Provision C.8 by submitting the interim cleanup plan on March 21, 1986 - two months later than required. As of July 1987, the discharger had not undertaken any field work to implement the interim cleanup plan since its approval on July 23, 1986. Thus, the discharger has failed to comply with the intent of Provision C.8. by failing to commence interim containment in a timely manner.

17. The Toxic Pits Cleanup Act of 1984 (TPCA) prohibits discharge, including ~~discharges after June 30, 1988~~, of liquids to hazardous waste surface impoundments which are within one-half mile upgradient of a potential source of drinking water [Section 25208.4(a) of the Health and Safety Code]. The Toxic Pits Cleanup Act also requires the submittal of a hydrogeological assessment report by January 1, 1988 for all subject facilities.
18. Site 10 identified in Finding 6, above, consists of surface impoundments that are within one-half mile upgradient of a potential source of drinking water and which may be subject to the Toxic Pits Cleanup Act. Studies are needed to determine if the surface impoundments are subject to the Toxic Pits Cleanup Act, and if so, a hydrogeological assessment report must be submitted by January 1, 1988. Because of the limited time before the Toxic Pits Cleanup Act deadlines, and the amount of work that must be performed, the discharger is threatening to violate the requirements of the Toxic Pits Cleanup Act.
19. California Administrative Code Title 23, Chapter 3, Subchapter 15 (Subchapter 15) requires the submittal of a report of waste discharge for existing waste management units by January 26, 1985 and the submittal of groundwater monitoring programs by May 26, 1985.
20. California Water Code Section 13260 requires that any person discharging waste that could affect the quality of waters of the State shall file a report of waste discharge, containing such information as may be required by the Board.
21. The Site 10 surface impoundments are subject to regulation under Subchapter 15 and discharges at these sites could affect groundwater quality. Therefore, the discharger is in violation of Subchapter 15 for failing to submit either report referred to in Finding 19 and in violation of Water Code Section 13260 for failing to submit a report of waste discharge.
22. By letter dated July 1, 1987, the discharger has indicated that it is their intention to close the Site 10 surface impoundments. Such an intention does not relieve the discharger of the responsibility to comply with the laws and regulations cited in Findings 17 through 21, above.
23. The Regional Board adopted a revised Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) on December 17, 1986. The Basin Plan prohibits the discharge of "all conservative toxic and deleterious substances" to waters of the Basin.
24. The discharge of waste to land at Sites 11, 12, and 13 identified in Finding 6, above, threatens to violate the Basin Plan prohibition cited in Finding 23, because of potential migration of pollutants to shallow groundwater and the discharger is in violation of Water Code Section 13260 for failure to file a report of waste discharge for these sites.

25. The tanks and sumps at Sites 14 through 17 constitute a violation and threatened violation to the Basin Plan prohibition cited in Finding 23. Documented releases to groundwater have occurred at 6 of the 31 tanks/sumps that have been investigated and therefore are in violation of the Basin Plan. An additional 6 of 31 tanks/sumps investigated have failed pressure testing of the piping or tank, which indicates a leak has occurred. Also, there remain 37 tanks and sumps which have not been investigated. Some of these tanks may be leaking - based on the high percentage (12 of 31) of investigated tanks found to be leaking and the similarity in age and composition of these compared to the uninvestigated tanks. Therefore, they constitute a threatened violation of the Basin Plan prohibition. In addition, the discharger is in violation of Water Code Section 13260 for failure to file a report of waste discharge for the documented releases.
26. The discharger is required to submit a Solid Waste Assessment Test (SWAT) report pursuant to Section 13273 of the California Water Code for Sites 1 and 2 landfills by July 17, 1988. The discharger has not submitted a plan to perform the required test.
27. The discharger has caused or permitted, and threatens to cause or permit waste to be discharged or deposited where it is or probably will be discharged to waters of the State and creates or threatens to create a condition of pollution or nuisance.
28. Onsite and offsite interim containment and cleanup measures need to be implemented to alleviate the threat to the environment posed by the continued migration of pollutants and to provide a substantive technical basis for designing and evaluating the effectiveness of final cleanup alternatives.
29. This action is an order to enforce the laws and regulations administered by the Board. This action is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15321 of the Resources Agency Guidelines.
30. The Board has notified the discharger and interested agencies and persons of its intent under California Water Code Section 13301 to issue this Order and has provided them with an opportunity for a public hearing and an opportunity to submit their written views and recommendations.
31. The Board, in a public hearing, heard and considered all comments pertaining to the discharge.

IT IS HEREBY ORDERED, pursuant to Section 13301 of the California Water Code, that the discharger Cease and Desist from discharging waste in violation of Waste Discharge Requirements, the California Water Code, the prohibitions of the Water Quality Control Plan for the San Francisco Bay Basin, the Federal Superfund Amendments and Reauthorization Act of 1986, and from threatening to discharge waste in violation of the California Water Code and the Toxics Pit Cleanup Act of 1984 as described in Findings 3 through 26, above. Compliance shall be achieved as follows:

A. PROHIBITIONS

1. The discharge of wastes or hazardous materials in a manner which will degrade water quality or adversely affect the beneficial uses of the waters of the State is prohibited.
2. Further significant migration of pollutants through subsurface transport to waters of the State is prohibited.

B. PROVISIONS

1. The discharger shall comply with Prohibitions A.1 and A.2, above, and the Specifications and Provisions specified in Order 87-66, in accordance with the following time schedule and tasks:

a. Site Characterization

(1) INITIATE FURTHER INVESTIGATIONS: Initiate investigations to further define the extent of pollution at sites 3 through 9, and 17 (solvent tanks/sumps #2, 43, 61, 66, and 89), in accordance with an approved Sampling Plan and Quality Assurance Project Plan (QAPP).

COMPLIANCE DATE: ~~October 15, 1987~~ March 15, 1988

(2) SUBMIT TECHNICAL PROPOSAL: Submit a technical report acceptable to the Executive Officer containing a proposal to determine the vertical and lateral extent of soil and groundwater pollution at sites 11 through 16. The investigation proposal should be in accordance with an approved Sampling Plan and Quality Assurance Project Plan, including a map showing the locations of any soil borings and monitoring wells to be installed.

COMPLIANCE DATE: ~~October 1, 1987~~ Dec 15, 1987

(3) INITIATE INVESTIGATION FOR SITES 11 THROUGH 16: Initiate the investigations to comply with Provision L.a.(2), above.

COMPLIANCE DATE: ~~October 30, 1987~~ March 15, 1988 <sup>Jan. '88</sup>

(4) COMPLETION OF IDENTIFICATION AND CHARACTERIZATION: Submit a technical report acceptable to the Executive Officer documenting completion of the necessary tasks identified in the technical reports submitted for Provisions L.a.(1) and L.a.(2), above.

COMPLIANCE DATE: ~~February 27, 1988~~ November 15, 1988

(5) SUBMIT TECHNICAL PROPOSAL: Submit a technical report acceptable to the Executive Officer containing a proposal to further define the vertical and lateral extent of soil and groundwater pollution at sites 3 through 9, and 11 through 17. The investigation proposal should be in accordance with an approved Sampling Plan and Quality Assurance Project Plan,

including a map showing the locations of any soil borings and monitoring wells to be installed.

~~COMPLIANCE DATE: March 15, 1988~~ November 30, 1988

**(6) COMPLETION OF CORRECTIVE ACTION:** Submit a technical report acceptable to the Executive Officer documenting completion of the necessary tasks identified in the technical report submitted for Provision 1a(5), above.

~~COMPLIANCE DATE: July 15, 1988~~ July 15, 1989

**(7) SUBMIT TECHNICAL PROPOSAL:** Submit a technical report acceptable to the Executive Officer containing a proposal to complete definition of the vertical and lateral extent of soil and groundwater pollution at all sites. The investigation proposal should be in accordance with an approved Sampling Plan and Quality Assurance Project Plan, including a map showing the locations of any soil borings and monitoring wells to be installed.

~~COMPLIANCE DATE: July 15, 1988~~ July 30, 1989

b. **Potential Conduit Investigation, Evaluation, and Closure**

**(1) IDENTIFICATION OF POTENTIAL CONDUITS:** Submit a technical report acceptable to the Executive Officer which summarizes the results of a record search, aerial photography search, and interviews conducted to identify any private and public wells which may act as vertical conduits for pollution to migrate from shallow to deep aquifers.

~~COMPLIANCE DATE: October 15, 1987~~ January 15, 1988

**(2) EVALUATION OF POTENTIAL CONDUITS:** Submit a technical report acceptable to the Executive Officer which summarizes the results of field work conducted to evaluate potential conduits identified in the technical report submitted to comply with Provision 1b(1), above. The field work shall include, at a minimum, the results of any sampling, geophysical techniques, and television inspections, conducted to locate and evaluate potential conduits.

~~COMPLIANCE DATE: December 15, 1987~~ June 30, 1988

**(3) POTENTIAL CONDUIT CLOSURE REPORT:** Submit a technical report acceptable to the Executive Officer which describes well sealing or other effective measures which will be taken to prevent migration of pollutants to lower aquifers via any potential conduits identified in the technical report submitted to comply with Provision 1.b(2), above.

~~COMPLIANCE DATE: March 15, 1988~~ July 30, 1988

c. Interim Cleanup Plans

(1) **INITIAL INTERIM REMEDIAL ACTIONS:** Submit a technical report acceptable to the Executive Officer which contains an evaluation of interim remedial alternatives at solvent tank #43, located at the northeast corner of hangar 3, a recommended plan for interim remediation, and an implementation time schedule. This report shall include an evaluation of: the removal of the tank, excavation and/or cleanup of polluted soils, and alternative hydraulic control systems to contain and cleanup polluted groundwater. The report shall also include a completed NPDES application to discharge to surface waters, if such discharge is an element of the plan.

COMPLIANCE DATE: ~~October 1, 1987~~ August 15, 1988

(2) **COMPLETION OF INTERIM REMEDIAL ACTIONS:** Submit a technical report acceptable to the Executive Officer documenting completion of the necessary tasks identified in the technical report submitted for Provision I.C.(1), above.

COMPLIANCE DATE: ~~March 1, 1988~~ August 15, 1988

(3) **ADDITIONAL INTERIM REMEDIAL ACTIONS:** Submit a technical report acceptable to the Executive Officer which contains an evaluation of interim remedial alternatives, based on the results of the technical report submitted to comply with Provision I.A.(4), above. The report shall include a recommended plan for interim remediation, and an implementation time schedule. This report shall evaluate: the removal of tanks, excavation and/or cleanup of polluted soils, and an evaluation of alternative hydraulic control systems to contain and cleanup polluted groundwater. The report shall also include a completed NPDES application to discharge to surface waters, if such discharge is an element of the plan.

COMPLIANCE DATE: ~~April 30, 1988~~ December 30, 1988

(4) **COMPLETION OF ADDITIONAL INTERIM REMEDIAL ACTIONS:** Submit a technical report acceptable to the Executive Officer documenting completion of the necessary tasks identified in the technical report submitted for Provision I.C.(3), above.

COMPLIANCE DATE: ~~November 30, 1988~~ December 30, 1989

2. Surface Impoundments

a. Toxics Pit Cleanup Act (TPCA)

(1) **SUBMIT HYDROGEOLOGICAL ASSESSMENT REPORT (HAR):** Submit a Hydrogeological Assessment Report (HAR) acceptable to the Executive Officer in accordance with Section 25208.8 of the Health and Safety Code.

COMPLIANCE DATE: January 1, 1988

(2) REMOVE LIQUID HAZARDOUS WASTES: Remove all liquid hazardous waste or hazardous material containing free liquids from the Site 10 surface impoundments.

COMPLIANCE DATE: June 30, 1988

b. Subchapter 15 Requirements

(1) REPORT OF WASTE DISCHARGE: Submit a Report of Waste Discharge acceptable to the Executive Officer in accordance with Subchapter 15 for the Site 10 surface impoundments.

COMPLIANCE DATE: March 1, 1988

(2) CLOSURE PLAN: Submit a closure plan acceptable to the Executive Officer in accordance with Subchapter 15 for the Site 10 surface impoundments.

COMPLIANCE DATE: March 1, 1988

3. Landfills

a. SOLID WASTE ASSESSMENT TEST PROPOSAL: Submit a technical report acceptable to the Executive Officer outlining the program for conducting a Solid Waste Assessment Test for Sites 1 and 2 landfills.

COMPLIANCE DATE: ~~October 30, 1987~~ December 15, 1987

b. SUBMIT SOLID WASTE ASSESSMENT TEST REPORT: Submit a technical report acceptable to the Executive Officer documenting completion of the necessary tasks identified in the technical report submitted for Provision 3.a., above.

COMPLIANCE DATE: July 1, 1988

4. COMPLETION OF INVESTIGATION DEFINING THE VERTICAL AND LATERAL EXTENT OF POLLUTION IN SOILS, GROUNDWATER AND SHALLOW SEDIMENTS OF RECEIVING WATERS AT AND FROM ALL SITES: The discharger shall submit a final Remedial Investigation (RI) report acceptable to the Executive Officer completely defining the extent of soil and groundwater pollution associated with all sites at Moffett Field. The report shall be consistent with guidance provided by Subpart F of the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300), as amended; the Superfund Amendments and Reauthorization Act of 1986; Section 25356.1(c) of the California Health and Safety Code; and CERCLA guidance documents with reference to Remedial Investigations.

COMPLIANCE DATE: ~~November 20, 1988~~ May 15, 1990

5. PROPOSED FINAL CLEANUP OBJECTIVES AND ACTIONS: Submit a Feasibility Study (FS) technical report acceptable to the Executive Officer containing an evaluation of the installed interim remedial measures; an evaluation of alternative final remedial measures; the recom-

needed measures necessary to achieve final cleanup objectives; and the tasks and time schedule necessary to implement the recommended final remedial measures.

~~COMPLIANCE DATE: April 30, 1989~~ *October 30, 1990*

6. **COMMITMENT TO COMPLY:** The discharger shall submit a report acceptable to the Executive Officer, indicating the discharger's commitment to comply with the terms of this Order by the specified due dates, including a schedule of tasks relative to budgeting, contracting, and other administrative arrangements necessary to secure needed funding and technical resources.

~~COMPLIANCE DATE: October 1, 1987~~ *October 30, 1987*

7. The discharger shall provide immediate notification to the Regional Board regarding any leakage of hazardous waste, including fuels and oil, from underground facilities (tanks, sumps, separators, etc.). This applies to any failed tank test (pressure or precision), any monitoring device installed (vapor or groundwater) which detects a leak, or any spill. A full written report shall be transmitted by the discharger within five working days of the occurrence of the release.
8. The submittal of technical reports evaluating immediate, interim, and final remedial measures will include a projection of the cost, effectiveness, benefits, and impact on public health, welfare, and environment of each alternative measure. The remedial investigation and feasibility study shall be consistent with the guidance provided by Subpart F of the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300), as amended; the Superfund Amendments and Reauthorization Act of 1986; Section 25356.1(c) of the California Health and Safety Code; CERCLA guidance documents with reference to Remedial Investigation, Feasibility Studies, and Removal Actions; and the State Water Resources Control Board's Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California."
9. Technical reports on compliance with the Prohibitions and Provisions of this Order shall be submitted monthly to the Board commencing on ~~September 15, 1987~~, and covering the previous month. On a monthly basis thereafter, these reports shall consist of a letter report that, (1) summarizes work completed since the submittal of the previous report, and work projected to be completed by the time of the next report, (2) identifies any obstacles which may threaten compliance with the schedule of this Order and what actions are being taken to overcome these obstacles, and (3) includes, in the event of non-compliance with Provision C.2. or any other Provision, Specification, or Prohibition of this Order, written notification which clarifies the reasons for non-compliance and which proposes specific measures and a schedule to achieve compliance. This written notification shall identify work not completed that was projected for completion, and shall identify the impact of non-compliance on achieving compliance with the remaining requirements of this Order.

On a quarterly basis, commencing with the monthly report due on December 15, 1987, the monthly reports shall include, but need not be limited to, updated water table and piezometric surface maps for all installed water bearing screens, cross-sectional geologic maps describing the hydrogeologic setting of the site, and appropriately scaled and detailed base maps showing the location of all monitoring wells, piezometers, and extraction wells, and identifying adjacent facilities and structures.

10. All hydrogeologic plans, specifications, reports, and documents shall be signed by or stamped with the seal of a registered geologist, engineering geologist or professional engineer.
11. All samples shall be analyzed by State certified laboratories or laboratories accepted by the Board using approved EPA methods for the type of analysis to be performed. All laboratories shall maintain quality assurance/quality control records for Board review.
12. Copies of all correspondence, reports, and documents pertaining to compliance with the Prohibitions and Provisions of this Order shall be provided to the following agencies:
  - a. Santa Clara Valley Water District
  - b. Santa Clara County Health Department
  - c. City of Mountain View
  - d. State Department of Health Services/TSCD
  - e. State Water Resources Control Board
  - f. U. S. Environmental Protection Agency, Region 9

The Executive Officer may additionally require copies of correspondence, reports and documents pertaining to compliance with this Order to be provided to a local repository for public use.

13. If any hazardous substance is discharged in or on any waters of the State, or discharged and deposited where it is, or probably will be discharged in or on any waters of the State, the discharger shall report such discharge to this Regional Board, at (415) 464-1255 on weekdays during office hours from 8 a.m. to 5 p.m., and to the Office of Emergency Services at (800) 852-7550 during non-business hours. A written report shall be filed with the Regional Board within five (5) working days and shall contain information relative to: the nature of waste or pollutant, quantity involved, duration of incident, cause of spill, Spill Prevention, Control, and Countermeasure Plan (SPCC) in effect, if any, estimated size of affected area, nature of effects, corrective measures that have been taken or planned, and a schedule of these activities, and persons/agencies notified.
14. The Board will review this Order periodically and may revise the requirements when necessary.

I, Roger B. James, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on

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Roger B. James  
Executive Officer

**APPENDIX B**

REGIONAL WATER QUALITY CONTROL BOARD

SAN FRANCISCO BAY REGION

INTERNAL MEMO

File No. 2189.8009 (IUB)

TO: Roger B. James  
Executive Officer

FROM: Thomas J. Berkins  
Water Resources Control Engineer

DATE: September 8, 1987

SIGNATURE: *Thomas J. Berkins*

SUBJECT: Cease and Desist Order for the U.S. Department of the Navy,  
Moffett Field Naval Air Station

SUMMARY

Moffett Field is a very large and complex industrial facility requiring substantial efforts to assure that environmental laws and regulations are complied with. The Navy has not provided the necessary project management and contractor resources to accomplish this and the result has been numerous violations of Federal and State laws and requirements.

First, the Navy has violated several compliance dates in the Board's Waste Discharge Requirements adopted in 1985. They have not completed definitional work required by June 1986. They submitted their interim cleanup plan two months late (March 1986), and more importantly, have not implemented it even though 15 months have passed. Inadequate reports were submitted with respect to potential deep well conduits, especially with regard to doing field surveys and aerial photographic reviews to locate old abandoned agricultural wells that predate local Water District records.

Secondly, an April 1986 report identified potential problems at an industrial wastewater surface impoundment and three land disposal sites, but the report wasn't submitted to the Regional Board until December 1986 and even then the Navy took little or no action to initiate investigations or perform appropriate followup investigations.

Thirdly, though the Navy was provided guidance in June 1987 as to state requirements with respect to assessment of two abandoned landfills, a satisfactory sampling plan was not submitted by the August deadline.

Failure to begin the necessary studies for the industrial wastewater surface impoundments threatens to violate the January 1, 1988 statutory deadline for submitting a "Hydrogeological Assessment Report" and the June 30, 1988 statutory deadline for cessation of discharge to surface impoundments within one-half mile of a drinking water source. Failure to begin the necessary studies for the landfills threatens to violate the July 1, 1988 statutory deadline for completing the "solid waste assessment test".

The difficulties at Moffett also pose problems for adjacent investigations. Contaminants from the Middlefield-Ellis-Whisman group in Mountain View

has moved onto Moffett Field and development of an effective cleanup program requires that Moffett define the location of its own sources of contamination within the merged plume. Further delays in Moffett's program could delay implementation of part of the MHW group cleanup plan.

Staff proposes that the Board consider adoption of a Cease and Desist Order establishing tasks and a compliance time schedule to complete necessary investigations and remedial actions. The schedules proposed are comparable to the time frames being met by other dischargers in Santa Clara County.

The Tentative Order contains tasks and compliance dates for:

- 1) Characterize the extent of pollution at all identified sites
- 2) Investigate and seal potential deep well conduits
- 3) Develop and implement interim cleanup plans
- 4) Comply with statutory deadlines associated with surface impoundments and landfills
- 5) Develop final cleanup plans
- 6) Document ability to provide the needed funding and resources to comply with the Order
- 7) Require immediate notification of any release of a hazardous substance to the environment

#### INTRODUCTION

In many ways, the Navy's Moffett Field Naval Air Station resembles a small industrialized city. It occupies almost seven square miles of land and has a very complex industrial operation involving solvent and fuel storage, heavy equipment testing and maintenance, and hazardous waste generation and disposal.

Since commencing operations at the site in 1933, the Navy has been involved with the storage, handling, and disposal of raw and waste product hazardous materials including, trichloroethane (TCE), 1,1,1-trichloroethane (TCA), perchloroethane (PCE), polychlorinated biphenyls (PCBs), various pesticides, fuels, oils, and other organic solvents.

The Navy has identified a minimum of 81 potential pollution sources, including 68 underground tanks and sumps located throughout the site. Subsurface investigations have been initiated at some of these potential sources; however, most of the investigations have been inadequate and at many of these sites no subsurface investigations have been conducted.

In recent years, the number of environmental laws and regulations dealing with the storage, handling and disposal of hazardous waste, as well as the investigation and cleanup of polluted soil and groundwater associated with these activities, has grown dramatically. Yet the Navy has not provided sufficient staff and funding and has not improved their contracting procedures to keep up with the demands of these new laws and regulations, especially those related to groundwater cleanup, underground storage tanks, surface impoundments, landfills and disposal areas.

The Navy's inability to keep up with the many laws and regulations has resulted in numerous violations of Federal and State laws - most notably the failure to meet deadlines in the groundwater investigation and cleanup compliance schedule of the Board's Waste Discharge Requirements adopted in 1985 as well as violations of Basin Plan and Water Code and threatened violations of the Toxic Pits Cleanup Act of 1984 (TPCA) and the Water Code.

The Tentative Cease and Desist Order as proposed by staff would serve notice to the Navy that the Regional Board expects them, as we do all other dischargers, to comply with applicable laws and regulations in a timely manner.

The discussion that follows provides detailed information on the nature and history of problems encountered at Moffett Field, including the enumeration of violations of requirements, the Basin Plan and the Water Code that have led to preparation of the proposed Cease and Desist Order. This is followed by a brief summary of the requirements of the Tentative Order.

### BACKGROUND

Subsurface investigations were initiated at two underground solvent tanks in April 1983 which revealed volatile organic compound (VOC) pollution in both soil and groundwater adjacent to one of the tanks. In addition to further groundwater investigations near the solvent tanks, the Navy also began conducting an Initial Assessment Study (IAS) in 1983 to identify possible environmental pollution from past use and disposal of hazardous materials on the entire site.

The Initial Assessment Study was submitted to the Regional Board in May 1984. The Study identified nine sites at Moffett Field where potentially hazardous materials were disposed or spilled. Detailed descriptions of the nine sites are contained in Attachment 1. The nine sites identified in the IAS are:

<u>Site Number</u>	<u>Description</u>
1	Runway Landfill
2	Golf Course Landfill
3	Marriage Road Ditch
4	Former Industrial Wastewater Surface Impoundments
5	Runway Apron
6	Unpaved Areas Surrounding Hangars 2 and 3
7	Waste Oil Transfer Area
9	Old Fuel Farm

On May 15, 1985, the Regional Board adopted Waste Discharge Requirements, Order No. 85-66, which required the Navy to define the extent of soil and groundwater pollution associated with sites 1 through 9. In addition, Order 85-66 required the Navy to submit an interim cleanup plan and conduct an investigation to identify, locate, and evaluate deep wells with potential to serve as conduits for pollutants to reach deeper aquifers. The Navy has conducted preliminary investigations at each of these nine sites

In a report dated April 1986, the Navy identified four active sites (10 through 13) at Moffett Field where discharge was occurring to land in violation of laws. This report was not provided to the Regional Board until December 1986. Detailed descriptions of these four sites are also contained in Attachment 1. The Navy has modified their waste disposal practices at sites 11 and 13; however, no subsurface investigations have been conducted at any of these sites. The four sites are:

<u>Site Number</u>	<u>Description</u>
10	Active Industrial Wastewater Surface Impoundments
11	Engine Test Area
12	Firefighting Training Area
13	Equipment Parking Area - Building 142

In a report dated June 1986, the Navy also identified 68 underground tanks and sumps, including inactive and abandoned tanks. The majority of the tanks/sumps store fuel related products (40 of 68). Limited investigations have been conducted at less than 1/2 of the tanks and sumps and no investigations or an inadequate investigation has been conducted on the other tanks. A more detailed description of the 68 tanks and sumps is contained in Attachment 1. The tanks and sumps are classified as follows:

<u>Site Number</u>	<u>Description</u>
14	40 Motor Fuel and Diesel Fuel Tanks
15	10 Oil and Waste Oil Tanks, and Oil/Water Separators
16	13 Other Tanks and Tanks of Unknown Previous Use
17	5 Solvent and Other Hazardous Waste Tanks/Sumps

### DISCUSSION

The three major pollution areas of concern at Moffett Field are: (I) subsurface contamination including, leaks and spills from underground and above ground fuel, solvent, and waste tanks; and improper waste handling and disposal practices resulting in discharge to land, (II) surface impoundments, and (III) abandoned landfills.

#### I. Subsurface Contamination Sites

The first of the three areas of concern are sites with subsurface contamination. These sites include both those addressed by the 1985 Waste Discharge Requirements (Sites 1 through 9) and those brought to light in the past year by more recent studies (Sites 11 through 17). Inadequate action by the Navy at the former sites has resulted in violations of the Waste Discharge Requirements and at the latter sites has resulted in violations and threatened violations of the Basin Plan and Water Code.

##### A. Waste Discharge Requirements, Order No. 85-66, Sites 1 through 9

Waste Discharge Requirements, Order No. 85-66, adopted by the Board on May 15, 1985, required the Navy to: (1) define the extent of pollution associated with sites 1 through 9, (2) submit an interim cleanup plan

and, (3) conduct an investigation to identify, locate, and evaluate potential deep well conduits. The Navy is in violation of Order 85-66 for failing to submit satisfactory technical reports by the compliance dates specified for the three tasks.

The following discusses the violations for each of the three separate tasks in greater detail:

1. Define The Extent Of Soil And Groundwater Pollution At Sites 1 through 9.

Provision C.3.d, of Order 85-66, required the Navy to submit a technical report by June 1, 1986, transmitting the results of an investigation for Sites 1, 2, 5, 8, and 9, to further define A aquifer pollution and to determine whether the groundwater was polluted in the B aquifer.

Provision C.4.e, of Order 85-66, required the Navy to submit a technical report by June 1, 1986, transmitting the results of an investigation for sites 3, 4, 6, and 7, to address full definition of pollution in the A and B aquifers and further definition of any C aquifer pollution identified.

The Navy submitted a preliminary technical report dated November 13, 1985 to comply with the initial investigations specified. A total of 33 monitoring wells were installed during this phase of the investigation. Based on the results of the November 13, 1985 technical report, the extent of soil and groundwater pollution remained undefined at all sites. Thus, Regional Board staff recommended that it was necessary for the Navy to conduct additional investigations at all nine sites to comply with Provisions C.3.d. and C.4.e.

Despite recommendations by staff, the Navy has not conducted any subsurface investigations (installation of soil borings and monitoring wells) at sites 1 through 9 since the initial phase was conducted in August 1985 - over two years ago. The extent of soil and groundwater pollution still remains undefined at all nine sites. Thus, the Navy is in violation of the June 1, 1986 compliance dates by 15 months.

Though approximately 6 of the 15 months delays have been due to additional requirements set forth by Superfund, the ability of the Navy to award a contract to their consultant in a timely fashion to develop the required reports has been the major factor in the long delays.

2. Interim Cleanup Plan

Provision C.8 of Order No. 85-66 required the Navy to submit an interim cleanup plan for Moffett Field by January 15, 1986. The Navy violated the compliance date for Provision C.8. by submitting the interim cleanup plan on March 21, 1986 - two months later than required.

A Regional Board staff letter signed by the Executive Officer dated February 28, 1986 formally informed the Navy that they had violated Provision C.8. for failing to submit the interim cleanup plan by the January 15, 1986 compliance date. The February 28th letter also informed the Navy that they had not provided sufficient justification for delaying the report and that staff was considering bringing this matter to the Regional Board for adoption of a Cease and Desist Order.

As mentioned above, the Navy submitted an interim cleanup plan on March 21, 1986. The plan called for the installation of an extraction trench (french drain) downgradient of sites 4, 6, and 7. The purpose of the extraction trench would be to contain polluted groundwater from the shallowest aquifers at these sites. The transmittal letter stated that "a minimum of eight months will be required prior to construction for design and contract procurement."

Regional Board staff approved the plan by letter dated July 23, 1986; however, a number of questions were raised by staff since very little detail was provided in the March 21, 1986 plan.

During the past year the Navy has been unsuccessful in awarding a contract to their consultant to implement the approved plan. The scope of work proposed by the Navy's consultant to evaluate the proposed extraction trench and the associated cost to complete the study has resulted in the Navy not awarding a contract to implement the proposed plan.

On June 15, 1987, Regional Board staff recommended that the Navy concentrate their cleanup efforts on the northeast corner of hangar 3, adjacent to an underground waste solvent tank which had recently failed a pressure tank test. Staff recommended this limited approach since the Navy had not awarded a contract to implement the initially proposed extraction trench. The Navy submitted a letter dated July 6, 1987 stating that they would proceed with Regional Board staff's recommendation mentioned above.

One year and eight months have passed since the plan was first due and the Navy has still not undertaken any field work to implement an interim cleanup plan. Provision C.8. expressed the requirement that "interim containment of the pollution plume shall commence in areas of known pollution as soon as practicable." Thus, the Navy has failed to comply, not only with the Provision's cleanup plan submission date but also with the intent of the Provision by failing to commence interim cleanup in a timely manner.

### 3. Potential Conduits

Three subprovisions of Order 85-66 dealt with the potential conduit wells:

Provision C.5.a. of Order 85-66 required the Navy to "identify private wells, to the extent feasible, in the vicinity of the site

with potential to act as conduits for inter-aquifer cross-contamination" by November 1, 1985.

Provision C.5.b. of Order 85-66 required the Navy to "locate and obtain additional information on private wells identified in Provision C.5.a. to assess if the wells may be potential conduits for inter-aquifer cross-contamination" by January 1, 1986.

Provision C.5.c. of Order 85-66 required the Navy to "develop a program to respond to any potential conduits and submit a technical report with options for addressing closure" by February 1, 1986.

The Navy submitted a draft technical report (referred to by the Navy as the "Confirmation Study") on November 13, 1985 to comply with Order 85-66. Appendix G of the report contained the "Survey of Private Wells on Moffett Field NAS" which was submitted to comply with Provision C.5.a. (identify private wells). In general, the report was complete but it was limited to onsite wells and most of the information was obtained from technical reports prepared by other companies in the vicinity. Based on the results of the November 13, 1985 technical report, it was necessary for the Navy to conduct additional investigations to comply with Provision C.5.b. (locate wells) and Provision C.5.c. (closure plans).

A Regional Board staff letter signed by the Executive Officer dated February 28, 1986 formally informed the Navy that they had violated Provision C.5.c. for failing to submit the potential conduit closure report by the February 1, 1986 compliance date. Although it was not specifically stated in the February 28, 1986 letter, the Navy had also violated Provision C.5.b. for failing to conduct additional investigations to locate potential conduits by the January 1, 1986 compliance date. These investigations involve the use of metal detectors, magnetometers, aerial photo review, etc. in an effort to uncover potential conduits. The February 28th letter also informed the Navy that they had not provided sufficient justification for delaying the report and that staff was considering bringing this matter to the Regional Board for adoption of a Cease and Desist Order.

The Navy submitted a technical report on March 21, 1986 to comply with Provision C.5.c. The report contained additional data on the inactive and active wells including, water quality data, depth of wells, and estimated pumping rates for the wells. However, the report was inadequate since it did not include a field investigation (metal detectors, aerial photo search, etc.) to uncover wells whose general location, but not exact location, was known. Also, the report was incomplete since it did not contain the necessary closure plans for wells identified as potential conduits.

On July 17, 1986, Regional Board staff sent a letter to the Navy requesting a technical proposal by August 22, 1986, to conduct a more thorough investigation in accordance with recently developed Regional Board staff Guidelines. The Navy submitted a work plan on September 2, 1986 to conduct the necessary investigations. In general, the work plan was consistent with staff's guidelines.

However, the time to complete the work was excessive. The Navy proposed an eighteen month time schedule, from the time the contract was awarded, to complete the necessary work.

The Navy began negotiating with their consultant in September 1986 for the contract to conduct the potential conduit investigation. The contract to conduct the investigation was awarded on May 7, 1987, eight months after the plan was first submitted. The Navy's scheduled date to submit the final report on the results of the investigation is not until late December 1987, almost 1 - 1/2 years after the technical proposal was requested by staff.

#### B. Discharge Of Waste To Land, Sites 11 through 13

An April 1986 technical report titled "Final Report Industrial Waste Engineering Study, Naval Air Station Moffett Field, California" was prepared for the Navy to evaluate their industrial waste handling and disposal practices. The report was not submitted to the Regional Board until December 1986 and was not released to the other regulatory agencies until May 1987. The report identified a number of improper and illegal waste disposal practices that were ongoing, including discharge of hazardous waste to surface waters of the State without permit, in violation of the Water Code and Federal Clean Water Act. The Navy has indicated that all of the improper discharges to surface waters have been eliminated in the past year.

The April 1986 report identified four sites where disposal of hazardous waste to land was occurring. The Navy has modified their waste disposal practices at three of the land disposal sites to reduce or eliminate further releases; however, no subsurface investigations have been conducted at these sites. The sites are:

<u>Site Number</u>	<u>Description</u>
11	Engine Test Area
12	Firefighting Training Area
13	Equipment Parking Area - Building 142

The fourth site, Site 10, which is a hazardous waste surface impoundment, will be addressed later in this report.

The April 1986 report identified these improper disposal sites to the Navy and recommended certain corrective actions be taken to modify, reduce, or eliminate further releases to the environment. Regional Board staff conducted an investigation of these sites on May 14, 1987 to determine whether these disposal practices had been corrected. A Compliance Monitoring Report (CMR) dated May 14, 1987, signed by the Executive Officer, notified the Navy that the operations at these sites were in violation of Regional Board requirements. The May 14th letter requested a written reply, describing the nature and schedule of the proposed corrective actions, within fifteen days of the date of the letter.

The Navy responded to the May 14th letter on May 29, 1987. In general, the corrective actions and time schedule presented by the Navy was not

acceptable to Regional Board staff. By letter dated June 16, 1987 staff requested that more immediate measures be taken to discontinue the existing practices of illegal discharges and also requested a proposal to investigate the extent of soil and groundwater pollution resulting from these discharges.

By letter dated July 23, 1987 the Navy presented plans to reduce or eliminate further discharges to land at Sites 11 through 13. However, the proposed soil and groundwater investigations at these sites were inadequate. Staff has discussed the deficiencies of the proposed subsurface investigations with the Navy's consultant and expects a revised technical proposal by September 4, 1987.

The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) prohibits the discharge of "all conservative toxic and deleterious substances" to waters of the Basin. Also, Water Code Section 13260 requires that any person discharging waste that could affect the quality of waters of the State shall file a report of waste discharge.

The discharge of waste to land at Sites 11 through 13 threaten to violate the Basin Plan prohibition cited above, because of potential migration of pollutants to shallow groundwater. In addition, the Navy is in violation of Water Code Section 13260 for failure to file a report of waste discharge for these sites.

#### C. Underground Tanks and Sumps

As previously mentioned, the Navy has submitted a technical report dated June 10, 1986 for the underground tanks and sumps located on Moffett Field. The report was submitted to comply with State and County regulations regarding registration and monitoring requirements for underground storage tanks containing hazardous wastes.

The report contains a listing of 68 underground tanks and sumps. For the purpose of the Tentative Order the tanks and sumps are classified as follows:

<u>Site Number</u>	<u>Description</u>
14	40 Motor Fuel and Diesel Fuel Tanks (#4-14, 16-22, 27-29, 32-40, 44-51, 53 and #55)
15	10 Oil and Waste Oil Tanks and Oil/Water Separators (Oil and waste oil - #1, 3, 26, 41 and #57) (Oil/water separators - #25, 54, 58, 59, and #64)
16	13 Other Tanks and Tanks of Unknown Previous Use (Other - #42, 60, 62, 63, and #65) (Unknown use - #15, 52, 56(A - D), 67, and #68)
17	5 Solvent and Other Hazardous Waste Tanks/Sumps (#2, 43, 61, 66, and #69)

The Navy has undertaken limited investigations at 31 of the 68 tanks and sumps. The investigations revealed that 12 of the 31 tanks investigated by pressure testing or subsurface investigations indicated a release of hazardous materials to soil and/or groundwater. The remaining 37 tanks and sumps have had no investigation initiated as of July 1987.

The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) prohibits the discharge of "all conservative toxic and deleterious substances" to waters of the Basin. Also, Water Code Section 13260 requires that any person discharging waste that could affect the quality of waters of the State shall file a report of waste discharge.

The tanks and sumps at Sites 14 through 17 constitute a violation to the Basin Plan prohibition cited above. Documented releases to groundwater have occurred at 6 of the 31 tanks/sumps that have been investigated and therefore are in violation of the Basin Plan.

An additional six tanks investigated have failed pressure testing of the piping or tank, which indicates a leak has occurred. These tanks constitute a threatened violation to the Basin Plan prohibition. Also, there remain 37 tanks and sumps which have not been investigated. Some of these tanks may be leaking - based on the high percentage (12 of 31) of investigated tanks found to be leaking and the similarity in age and composition of these compared to the uninvestigated tanks. Therefore, these tanks also constitute a threatened violation of the Basin Plan prohibition.

The Navy is also in violation of Water Code Section 13260 for failure to file a report of waste discharge for the documented releases from the tanks.

The Navy's June 1986 tank report does not recommend an investigation for five sumps listed as oil/water separators (#25, 54, 58, 59, and #64). The report also does not recommend an investigation for tanks with "other" contents (#42, 60, 62, 63, and #65). Staff believes that all of these tanks should be investigated. A number of these tanks have contained concentrations of hazardous waste and staff believes that there is good probability that all of these tanks or sumps have at one time contained hazardous waste. Therefore it is prudent to conduct an investigation at each of these tanks. The Tentative Order requires each of these tanks/sumps to be investigated.

## II. Active Industrial Wastewater Surface Impoundments, Site 10

The Navy's April 1986 technical report contained a description of the Site 10 industrial wastewater surface impoundments including, the wastes entering the impoundments, the treatment system, the violations, and recommendations to bring the impoundments into compliance with Federal and State law. A description of Site 10 is contained in Attachment 1.

Regional Board staff conducted an investigation of the Site 10 surface impoundments on May 14, 1987 to observe the waste disposal operations associated with this site. A Compliance Monitoring Report (CMR) dated May 14, 1987, signed by the Executive Officer, notified the Navy that a Report

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of Waste Discharge had not been filed for these impoundments. The letter also notified the Navy that these impoundments may be subject to the Toxic Pits Cleanup Act of 1984.

The Navy responded to the May 14th letter on May 29, 1987. However, the letter did not address the surface impoundments since the Board's May 14, 1987 letter did not specifically request them to do so. Thus, a followup letter dated June 16, 1987, signed by the Executive Officer, explained in more detail the violations associated with the impoundments and requested a formal response by July 17, 1987.

The June 16, 1987 Regional Board letter formally notified the Navy that a Report of Waste Discharge had never been filed for the surface impoundments; thus, the Navy had been, and continued to be, in violation of Section 13260 of the Water Code. The letter also informed the Navy that the surface impoundments were in violation of the California Administrative Code, Title 23, Chapter 3, Subchapter 15. Specifically, Subchapter 15 required the submittal of a Report of Waste Discharge for any existing waste management unit (the surface impoundments) on Moffett Field by January 26, 1985, and the submittal of groundwater monitoring programs by May 26, 1985.

The June 1987 letter also pointed out that the April 1986 report prepared for the Navy informed them that they were in violation of the Subchapter 15 requirements. Thus, the Navy had been aware of these violations on Moffett Field at least as early as April 1986, but had not yet complied. The letter formally requested the Navy to file a Report of Waste Discharge, along with the appropriate filing fee, by July 17, 1987, and requested the monitoring program report by July 31, 1987.

The Navy submitted a letter dated July 1, 1987 stating that they planned to close the surface impoundments and therefore did not consider that it would be necessary to file a Report of Waste Discharge. Regional Board staff has verbally informed the Navy that closing the ponds does not relieve them of the responsibility to file a Report of Waste Discharge in accordance with Subchapter 15.

A Regional Board staff letter dated July 2, 1987 formally informed the Navy that the Toxic Pits Cleanup Act of 1984 (TPCA) (California Health & Safety Code Section 25208.4) prohibits discharge, including storage, after June 30, 1988, of liquid hazardous waste and hazardous waste containing free liquids, to surface impoundments which are within one-half mile upgradient of a potential source of drinking water. The letter also informed the Navy that if the surface impoundments were subject to TPCA a Hydrogeologic Assessment Report (HAR) would be required by January 1, 1988. A sampling program to determine whether the impoundments were subject to TPCA was requested by August 3, 1987. The surface impoundments are within one-half mile upgradient of a potential source of drinking water.

The Navy submitted a letter dated August 18, 1987 stating that they did not consider the surface impoundments to be within one-half mile upgradient of a potential source of drinking water. However, the Navy stated that they would "use the Toxic Pits Cleanup Act as informational guidance, and will include a Hydrogeologic Assessment Report." Thus, the Navy did not propose sampling to determine whether the impoundments would be subject to TPCA.

Because of the limited time before the Toxic Pits Cleanup Act deadlines, and the amount of work that must be performed, the Navy is threatening to violate the requirements of the Toxic Pits Cleanup Act. As stated earlier, these impairments are in violation of Subchapter 15 requirements as well as Water Code Section 13260.

### III. Landfills, Sites 1 and 2

The Runway landfill (Site 1) and Golf Course landfill (Site 2) are abandoned, unlined landfills that were in operation from the early 1960's to 1978 and from the early 1940's to the early 1960's, respectively. A description of these sites is contained in Attachment 1. A preliminary investigation was conducted at both sites in 1985; however, the investigations were inadequate and the extent of soil and groundwater pollution remains undefined at both sites.

These sites were identified in the Navy's Initial Assessment Study report and were included in the Waste Discharge Requirements, Order No. 85-66, adopted by the Board in 1985. As previously mentioned, the Navy is in violation of Provision C.3.d. of Order No. 85-66 for failing to meet the compliance date to further define the extent of pollution at these sites.

Legislation adopted in 1984 (Calderson Bill) established new requirements for solid waste disposal sites. Regulations issued pursuant to this legislation (Section 13273 of the Water Code) requires that all owners of solid waste disposal sites perform a solid waste assessment test (SWAT) to determine if hazardous wastes have migrated from their site. In September 1984, the State Board adopted a revised statewide ranking of sites required to perform this study. The landfills at Moffett Field were listed in the second rank - therefore requiring the Navy to submit the solid waste assessment test by July 1, 1988.

By letter dated June 11, 1987, the Navy was informed of the above requirements. Attached to this letter was a draft Guidance Document prepared by the State Board which provides an outline to be followed for both the proposal and final report required to be submitted. The letter requested the Navy to submit a solid waste assessment test proposal by August 1, 1987.

The Navy submitted a letter dated August 18, 1987 stating that their legal counsel had not yet made a determination on whether the Calderson Assembly Bill applies to Moffett Field. However, the letter further stated that the Navy believed that their proposed investigation outlined in the July 27, 1987 Sampling Plan would satisfy the intent of the solid waste assessment test.

Regional Board staff believes that the proposed investigation contained in the Sampling Plan is inadequate to satisfy the solid waste assessment test requirements. The sampling plan proposes an insufficient soil and groundwater investigation within the landfills to satisfy the solid waste assessment test guidance.

#### IV. Other Areas Of Concern

##### A. Financial Contracting Constraints, and Technical Resources

As mentioned previously under the "Subsurface Contamination Sites" section of this report, the inability of the Navy to obtain the needed funds and subsequently award a contract to their consultant in a timely fashion to conduct the required investigations and cleanup activities is one of the primary reasons the Navy has violated several Provisions of the Waste Discharge Requirements. For example, it took the Navy approximately eight months from the time they began negotiating a contract to conduct the potential conduits investigation until the time they awarded the contract and it has been over one year since the Regional Board approved the interim cleanup plan and the Navy has not yet awarded a contract to implement the plan.

##### B. Failure To Report Leaks And Spills In A Timely Fashion

The Navy has failed to provide information and technical reports to the Regional Board and other government agencies in a timely fashion regarding releases of hazardous waste to the environment. These releases include: failed tank tests which indicate a release has occurred, discharges to land and surface waters, and subsurface investigations conducted which revealed soil and/or groundwater pollution.

For example, the Navy's April 1986 technical report which contained information regarding discharges to land and surface waters was not submitted to the Regional Board until December 1986 and was not provided to the other government agencies until May 1987. The Navy also conducted a subsurface investigation adjacent to a solvent sump in March 1987 which revealed significant pollution in both soil and groundwater. However, this information was not provided to the Regional Board until the end of June 1987.

The Navy has also failed to comply with local and State Regulations regarding reporting of leaks associated with underground tanks. The California Health and Safety Code as well as Santa Clara County's underground tank regulations require that "any unauthorized release shall be reported to the local agency within 24 hours after the release has been detected and a full written report shall be transmitted within five working days of the occurrence of the release." Specifically, the Navy conducted leak tests on 26 tanks, including two solvent tanks, during January 1987. Seven of the tanks, including both of the solvent tanks, failed the tank test indicating a leak of a hazardous substance to the environment. The Navy did not report these leaks until June 1987 - five months after the leaks were discovered. Even more critical than the failure to report the leaks in a timely fashion is the fact that that Navy did not take the tanks out of service until August 1987.

The Navy must take the necessary steps to ensure that future leaks and spills are reported to the Regional Board and other government agencies in a timely fashion in accordance with State and County regulations.

**C. Merged Groundwater Plume/Timing Considerations**

The groundwater pollution plume from upgradient companies has migrated onto Moffett Field. These companies have conducted significant soil and groundwater investigations and are in the process of developing a cleanup plan which will include the west side of the runway on Moffett Field. The Navy has a number of documented and potential pollution sources within the plume from these companies; however, as noted earlier the extent of pollution at these sources is not defined.

In order for these companies to proceed with developing an adequate cleanup plan that will not adversely impact sources at Moffett, it is critical for the Navy to expedite the investigations in this area.

**D. Lack Of Coordination Among Investigations**

The Navy currently has three separate consultants conducting independent investigations on the underground tanks, surface impoundments, and the other remaining sites. The Navy has stated that their funding process requires them to utilize different funds depending on whether the source of pollution is the result of active operations or past operations. Staff does not object to this approach; however, it has led to inconsistencies and improper investigations. For example, the consultants are not surveying the monitoring wells to the same reference point which makes it impossible to construct groundwater gradient maps. It is important for the Navy to ensure that the investigations are conducted in a consistent manner in accordance with an approved plan and to avoid future inconsistencies between the various investigations.

**PROVISIONS IN THE TENTATIVE CEASE AND DESIST ORDER TO ACHIEVE COMPLIANCE**

The Tentative Order is intended to establish realistic time schedules, comparable to those being met by other dischargers, for investigations and remedial actions at Moffett Field. To comply with this Order, the Navy must make compliance a much higher priority than it has been in the past and must improve their current process for acquiring funds, negotiating contracts, and managing projects.

The Tentative Order contains tasks and compliance dates necessary to:

- 1) Characterize the vertical and lateral extent of soil and groundwater pollution at all the sites,
- 2) Investigate, evaluate, and close potential deep well conduits,
- 3) Develop and implement interim remedial actions,
- 4) Achieve compliance with statutory deadlines associated with surface impoundments and landfills,
- 5) Develop final cleanup plans,
- 6) Ensure that the needed funding and resources are available to comply with the Tentative Order, and

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- 7) Require immediate notification of any release of a hazardous substance to the environment.

As of September 4, 1987, Navy comments on the tasks and schedule of the Tentative Order have not been received. A supplementary report to the Board will be prepared following receipt and review of their comments which are expected during the second week of September.

**RECOMMENDATION:**

I recommend the Board consider issuance of a Cease and Desist Order to the U.S. Navy, Moffett Field Naval Air Station establishing tasks and compliance time schedule for subsurface investigations and cleanup and for complying with statutory deadlines associated with surface impoundments and landfills, as described above.

Concur: Richard K. McMurtry  
Richard K. McMurtry  
Section Leader

Concur: Steve I. Morse  
Steve I. Morse, Chief  
South Bay Toxics Division

Concur as to legal form and sufficiency:

Gary G. Grinn  
Gary G. Grinn  
Staff Counsel

Attachment: Summary and Status of Existing and Potential Pollution Sources on Moffett Field Naval Air Station

## ATTACHMENT 1

**SUMMARY AND STATUS OF EXISTING AND POTENTIAL POLLUTION SOURCES ON MOFFETT FIELD NAVAL AIR STATION, SANTA CLARA COUNTY**

The following is a brief summary of all the known existing and potential pollution sources on Moffett Field which have been identified in various technical reports submitted to the Regional Board. In general, an inadequate or no subsurface investigations have been conducted at approximately 81 potential sites (including 68 underground tanks or sumps). The status of each source, including the adequacy of investigations conducted at the various sources, is based on staff's review of the technical reports. The existing and potential sources are listed by the specific technical report which identified each source.

**A. - SITES IDENTIFIED IN NAVY'S INITIAL ASSESSMENT STUDY (IAS)**

The following nine sites were identified in an April 1984 report prepared by the Naval Energy and Environmental Support Activity titled "Initial Assessment Study of Naval Air Station, Moffett Field, Surryvale California." The purpose of the report was to identify environmental pollution from past use and disposal of hazardous substances at Navy installations.

**SITE 1 - RUNWAY LANDFILL**

**BACKGROUND** - The runway landfill is an abandoned, unlined landfill that was used for disposal of refuse, scrap equipment, and hazardous wastes from the early 1960's to 1978. The total volume of hazardous waste, including solvents, paints, thinners, oil, and PCBs, disposed at this site was estimated to range from 75,000 to 150,000 gallons. This site is in the City of Surryvale and is on the upgradient edge of the Leslie Company evaporation ponds in the bay wetlands.

**STATUS** - Information regarding closure of the landfill has not been provided to the Regional Board. A preliminary investigation was conducted at the site during the fall of 1985. However, the monitoring wells installed during the preliminary investigation were not installed properly. In addition, soil sampling conducted at that time was inadequate to assess or define the extent of soil pollution.

**SITE 2 - GOLF COURSE LANDFILL**

**BACKGROUND** - The golf course landfill is also an abandoned, unlined landfill that was in operation from the 1940's to the early 1960's. Little information is available on the types or quantities of waste which were disposed at this site. However, this site was reportedly used to the same degree and received the same types of hazardous wastes as the runway landfill (Site 1). A golf course was constructed over the landfill by filling the area using soil from offbase.

**STATUS** - Same as Site 1.

**SITE 3 - MARRIAGE ROAD DITCH**

**BACKGROUND** - Marriage Road ditch was constructed prior to 1947 and received hazardous waste dumped into storm drains in and around Hangars 1, 2, and 3 until the 1970's. In addition, hazardous waste was also directly disposed of into the ditch. The ditch runs northward from the Hangars to the northern boundary of Moffett Field, and at this point the drainage water is pumped to a perimeter canal south of the evaporation ponds which leads to Guadalupe Slough. An estimated 150,000 to 750,000 gallons of hazardous waste, including waste oils, solvents, fuels, detergents, paints, and hydraulic fluids, were disposed into the storm drains which led to the ditch.

**STATUS** - A preliminary soil and groundwater investigation was conducted in the fall of 1985. However, the extent of soil and groundwater pollution associated with this site is poorly defined. In addition, a number of monitoring wells installed during previous investigations were not installed properly.

**SITE 4 - FORMER INDUSTRIAL WASTEWATER SURFACE IMPOUNDMENTS**

**BACKGROUND** - The former industrial wastewater surface impoundments, located immediately west of the existing ponds, were unlined and received approximately 15 million gallons of wastewater from aircraft washing, equipment maintenance, and operations in Hangars 2 and 3 from 1968 to 1978. The wastewater was held in the ponds, treated and discharged to the sanitary sewers. As much as 35,000 gallons of hazardous materials, including solvents, paint sludge, fuels and oil, may have been discharged to the ponds directly and in the wastewater.

**STATUS** - Similar to Sites 1 - 3, a preliminary soil and groundwater investigation was conducted in the fall of 1985. Current data indicates that the extent of soil and groundwater pollution associated with this site is poorly defined. In addition, a significant number of the existing monitoring wells were not installed properly.

**SITE 5 - FUEL FARM FRENCH DRAINS**

**BACKGROUND** - The Site 5 fuel farm was the main fuel facilities for Moffett Field from the 1950's to the 1960's. Water and fuel were pumped into French drains during routine tank drainage. The exact location of the drains and the quantities of fuel dumped in the drains are unknown. The Navy has estimated that as much as 28,000 gallons of fuel could be present on top of the groundwater at the site, based on observations of fuel levels in wells.

**STATUS** - A preliminary soil and groundwater investigation was conducted in the fall of 1985. The investigations confirmed the presence of fuel pollution; however, the monitoring wells were improperly installed to monitor for possible fuel pollution (e.g. floating product). Thus, the extent of soil and groundwater pollution at this site remains poorly defined.

SITE 6 - RUNWAY APRON

BACKGROUND - The runway apron disposal site was located adjacent to the former apron north and east of Hangar 3. The site was paved over in 1979 during enlargement of the apron. It is estimated that 120,000 to 600,000 gallons of hazardous waste from aircraft maintenance, including solvents, oils, fuels, and paints, were disposed of at this site from the 1940's to the 1970's.

STATUS - Same as Site 4.

SITE 7 - UNPAVED AREAS SURROUNDING HANGARS 2 AND 3

BACKGROUND - Site 7 consists of Hangars 2 and 3 and the unpaved areas surrounding the hangars. From 1942 until 1978 hazardous waste that accumulated in the unpaved areas surrounding the hangars flowed through deck drains to Marriage Road ditch. Unpaved areas at each corner of the hangars were used to dispose of an estimated 120,000 to 600,000 gallons of hazardous waste including solvents, paints, oil, and fuel. A power plant shop in the north-east corner of hangar 3 disposed of solvents down deck drains and on unpaved areas around hangar 3.

STATUS - Same as Site 4.

SITE 8 - WASTE OIL TRANSFER AREA

BACKGROUND - Site 8 consists of a 5,000 gallon waste oil tank that was in use from the 1940's until 1980. Waste oil was disposed of into a sump located adjacent to the tank and then the oil would be transferred into the tank. The tank reportedly also received about 100 gallons/year of transformer oil, possibly containing PCBs, and 200 gallons/year of solvents. Oil was also reportedly spilled onto the ground around the sump during oil transfer.

STATUS - A preliminary soil and groundwater investigation was conducted in the fall of 1985. Similar to the above sites, the extent of soil and groundwater pollution associated with this site is poorly defined.

SITE 9 - OLD FUEL FARM

BACKGROUND - This site consists of a number of underground fuel tanks (six 10,000 gallon steel tanks and two 5,000 gallon steel tanks) which were in use from the 1940's until 1964. Spillage reportedly occurred when filling the tanks and in the mid-1960's two of the 10,000 gallon tanks began leaking and they were never repaired. In 1964 the fuel farm was abandoned and the tanks were filled with water.

STATUS - Same as Site 8.

B. - UNDERGROUND TANKS AND SUMPS

A June 1986 report prepared by ERM-West & Aqua Resources titled "Hazardous Materials Underground Storage Tank Study, Naval Air Station Moffett Field, California" contains a listing of all the known underground tanks and sumps located on Moffett Field. There are 68 underground tanks and sumps (active and inactive/abandoned) used to store motor fuel, diesel fuel, oil, solvents and other hazardous waste. The majority of the tanks store fuel related products (40 of 68). The following is a summary list of the tanks on Moffett Field:

Motor fuel	-	25
Diesel fuel & kerosene	-	15
Oil & waste oil	-	5
Oil/water separators	-	5
Solvents & hazardous waste	-	5
Other	-	5
Unknown	-	8
		<u>68</u>

STATUS - The Navy has undertaken limited investigations at 31 of the 68 tanks and sumps. Leak tests were conducted on 26 of the tanks during January 1987. Four of the tanks (#2, 14, 43 and #53) failed the tank test indicating a leak of a hazardous substance to soil and/or groundwater. An additional three tanks (#32, 39 and #40) that were tested indicated piping leaks.

The Navy has also conducted an initial soil and groundwater investigation at five other tanks/sumps (#19, 20, 66, 67 and #68) which were not pressure tested. These investigations have detected soil and groundwater pollution at all five tanks. A subsurface investigation conducted at one of the solvent tanks (#43) which failed the pressure test has also detected both soil and groundwater pollution.

Thus, 12 of the 31 tanks investigated by pressure testing or subsurface investigations indicate a release of hazardous materials to soil and/or groundwater. The remaining 37 tanks and sumps have had no investigation initiated as of July 1987.

C. - DISPOSAL TO LAND WITHOUT PERMIT/NO REPORT OF WASTE DISCHARGE

Information regarding the following four sites is contained in the April 1986 technical report prepared by ERM-West & Aqua Resources titled "Final Report Industrial Waste Engineering Study, Naval Air Station Moffett Field, California." The report was not submitted to the Regional Board until December 1986 and was not released to other regulatory agencies until May 1987.

ACTIVE INDUSTRIAL WASTEWATER SURFACE IMPOUNDMENTS

BACKGROUND - The active industrial wastewater surface impoundments were relocated to their existing location in 1978 (see former ponds description). The ponds are unlined, 60 feet in diameter, about 10 to 12 feet deep, have a

total capacity of approximately 400,000 gallons, and depth to groundwater is less than five feet. The ponds receive wastewater containing solvents, metals, and oil from the washtrucks and cleaning racks associated with hangars 2 and 3. The wastewater entering the ponds either percolates or evaporates except during peak wet weather flow when the pond water is then pumped directly to the sanitary sewer without treatment.

STATUS - The ponds are still in operation and an investigation has not yet been conducted to determine the extent of pollution which may have resulted from these ponds.

#### FIREFIGHTING TRAINING AREA

BACKGROUND - A 100 by 200 foot area containing a dummy aircraft fuselage is periodically set on fire by igniting waste fuel. The fires are extinguished by fire crews as part of their training. The surface area is covered by compacted gravel which allows waste fuel, firefighting chemicals, and polluted water to percolate into the ground.

STATUS - This practice is reportedly ongoing. In addition, no subsurface investigations have been conducted at this site.

#### ENGINE TEST STAND AREA

BACKGROUND - This area is used to test repaired engines under power. A channel that has been cut in the concrete pad of the test area conveys collected waste to the south edge of the pad and onto soil. A large oil stained area of soil was reported in a technical report.

STATUS - This practice is ongoing; however, steps have been taken to reduce or eliminate future spills. No subsurface investigations have been conducted at this site.

#### EQUIPMENT PARKING AREA Northeast OF BUILDING 142

BACKGROUND - Industrial waste generated from leaks and spills of oil and hydraulic fluids and from maintenance activities is collected and routed to an unlined, surface storm drain east of building 142. Stained soil and standing "oily" water has been reported in the storm drain.

STATUS - This practice is ongoing; however, steps have been taken to prevent future spills. No subsurface investigations have been conducted at this site.

Appendix C



DEPARTMENT OF THE NAVY

NAVAL AIR STATION  
MOFFETT FIELD, CA 94035 5000

IN REPLY REFER TO  
5090  
Ser 00/2858  
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

CALIFORNIA REGIONAL WATER

SEP 08 1987

QUALITY CONTROL BOARD

Copy to:  
COMNAVBASE, SP  
Regional Administrator  
Region Nine  
U. S. Environmental Protection Agency  
COMWESTNAVFACENGCOM

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 interagency 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  
28

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

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

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

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

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.  
26  
27  
28

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           1. 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  
28

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 [REDACTED] 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.  
26  
27  
28

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.

26  
27  
28

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  
28

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

1 Based on the above comments, Naval Air Station, Moffett  
2 Field, California, requests that the State of California,  
3 Regional Water Quality Control Board, San Francisco Bay  
4 Region, dismiss its tentative order concerning Naval Air  
5 Station, Moffett Field, or, alternatively, continue the  
6 hearing until such time as representatives of Naval Air  
7 Station can meet with the staff of the Regional Board to  
8 discuss the appropriate response for the Naval Air Station.  
9

10 Respectfully submitted,

11   
12 \_\_\_\_\_  
13 J. MARTIN ROBERTSON  
14 Trial Attorney  
15 Department of the Navy  
16 Office of the General Counsel  
17 Litigation Office  
18 100 Van Ness Avenue, 22nd Floor  
19 San Francisco, CA 94102  
20 415/556-9027

21   
22 \_\_\_\_\_  
23 CAROLE A. HUGHES  
24 Senior Trial Attorney  
25 Department of the Navy  
26 Office of the General Counsel  
27 Litigation Office, Western Division  
28 Box 727  
San Bruno, CA 94066  
415/877-7109

EXHIBIT A

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)
    - Data Management Plan (15 Feb 88)
    - 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

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

APPENDIX D

**SAN FRANCISCO REGIONAL WATER QUALITY CONTROL BOARD**  
**SAN FRANCISCO BAY REGION**  
1111 JACKSON STREET, ROOM 6000, OAKLAND, CA 94607, (415) 464-1255

**NOTICE OF PUBLIC HEARING**  
**IN THE MATTER OF THE UNITED STATES, DEPARTMENT OF THE NAVY**  
**MOFFETT FIELD NAVAL AIR STATION**  
**MOFFETT FIELD, SANTA CLARA COUNTY**

The Regional Board will hold a public hearing on September 16, 1987 at a meeting which begins at 9:30 a.m. in the Assembly Room, State Building, 1111 Jackson Street, Oakland, to consider actions affecting the discharger named above.

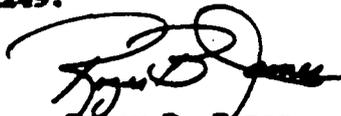
The Board will consider adopting a Tentative Order pursuant to Section 13301 of the California Water Code requiring the above named discharger to cease and desist from discharging waste in violation of Waste Discharge Requirements, the California Water Code, the Water Quality Control Plan for the San Francisco Bay Basin, the Federal Superfund Amendments and Reauthorization Act of 1986, and from threatening to discharge waste in violation of the California Water Code and the Toxic Pits Cleanup Act of 1986. The Tentative Order requires the discharger to comply with the above in accordance with a compliance time schedule.

Persons wishing to file written comments, on, or objections to, the prohibitions or provisions of the Tentative Order, or other aspects of this matter, are requested to do so within fifteen days after the date of this Notice so that the comments may be considered in preparing this matter for presentation to the Regional Board.

The Board's staff, the discharger, and other interested persons will also be given an opportunity to present evidence concerning whether there are violations or threatened violations of requirements and concerning plans and time schedules for obtaining compliance at the earliest practical date. The discharger and all other interested persons may, but need not, be represented by counsel. If possible, written copies of testimony to be presented at the hearing should be furnished to the Board in advance of the hearing.

The Regional Board file on this discharger is open to public inspection from 8:00 a.m. to 5:00 p.m. on weekdays in the Regional Board's office. Copies of evidence to be presented by the staff at the hearings are available upon request or may be reviewed at the Regional Board's offices located at Room 6000, 1111 Jackson Street, Oakland, California. For arrangements to review the file or for information regarding this notice, please contact Tom Berkins of the Regional Board at (415) 464-1249.

August 19, 1987  
DATE

  
Roger B. James  
Executive Officer

N00296.000149  
MOFFETT FIELD  
SSIC NO. 5090.3

REVISED TENTATIVE  
CEASE AND DESIST ORDER

DATED 16 SEPTEMBER 1987

IS FILED AS ADMINISTRATIVE RECORD NO.  
N00296.000150