

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

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Mr. Stephen Chao
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Department of the Navy
Naval Facilities Engineering Command
900 Commodore Way, Bldg. 101
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October 18, 1993
File No. 2189.8009 [EA]

Subject: OU5 Draft Final Remedial Investigation Report Informal
Dispute Issues

Dear Mr. Chao:

San Francisco Bay Regional Water Quality Control Board (RWQCB) staff received the "response-to-comments" letter for the Draft Final OU5 RI Report, dated September 28, 1993, and was discouraged to see that the Navy maintains their position as stated at the remedial project managers meeting on September 9, 1993, that no feasibility study will be recommended for the groundwater contamination in OU5, and consequently no clean up of the contamination will be conducted. The letter states:

"The CERCLA process provides for a risk based decision as to whether or not a FS is needed for a site. If the decision to proceed to remedial action was/is to be determined by other than the CERCLA process, then this should have been identified and communicated to the Navy prior to the initiation and preparation of the OU5 baseline risk assessment. It is the Navy's position that the conclusion of this RI should be that no FS is required."

Legal Issues

These conclusions are based on the residential risk assessment which is presented and concludes, in the Remedial Investigation report, that there are unacceptable levels of risk, greater than 10^{-4} to 10^{-6} , for contaminants in the groundwater within OU5. The conclusions are based only on the assumption that there are no current or future exposure pathways since the groundwater is not currently being utilized as a drinking water source, and NASA will be taking over the lease of the site. These assumptions are contrary to fundamental State of California regulations and policies which were developed to protect the groundwater resource as a potential drinking water source. In addition, the RI conclusion and risk assessment does not address all exposure routes which may currently apply, or will apply in the future.

State Board Resolution 68-16, policy on maintaining the High Quality of State Waters and State Board Resolution 88-63, Sources

of Drinking Water Policy are promulgated applicable or relevant and appropriate requirements (ARARs) which have been applied to all other industrial sites within our region and are State regulations developed to protect water resources as required by the federal Clean Water Act. RWQCB staff has provided these ARARs to the Navy throughout the RI/FS process for the various operable units at Moffett Field. RWQCB comments on the Draft Final OU5 RI included the text of these State requirements as an attachment. CERCLA law specifies that State ARARs be considered as one of the nine criteria for determining the appropriate remedial action. EPA's "CERCLA Compliance with other Laws Manual", September 1989, states that "CERCLA Section 121 requires a selection of a remedial action that is protective of human health and the environment. EPA's approach to determining protectiveness involves risk assessment, considering both ARARs and to-be-considered material (TBCs)." The risk assessment alone can not determine a No Action Record of Decision as proposed by the Navy.

Incomplete Risk Assessment

The RI risk assessment did not evaluate several potential exposure routes for the OU5 groundwater. The current potential exposure of inhalation from volatilized chlorinated solvents from the shallow groundwater through the soil into the atmosphere was not evaluated in the risk assessment. Several future exposure routes were not evaluated either. The groundwater gradient within OU5 will move contaminants towards the San Francisco Bay and the commercial salt flats surrounding Moffett Field as well as discharging to several ditches and surface water bodies on site. The RI states that these routes are not evaluated because the surface water is not within the boundaries of OU5, and that the OU6 risk assessment will include some of the groundwater discharge areas. Neither of these rationales are acceptable, and do not adequately evaluate the potential risks posed by the OU5 groundwater contaminants. Data for the OU6 risk assessment is currently being collected and will not address the future movement and discharges of the OU5 contaminant hot spots. In addition, it is the Navy's responsibility to evaluate all potential future risks associated with mobile contamination sources, such as groundwater, that may reach beyond the finite boundaries of an operable unit.

Conclusion

The Navy's current position, as stated in the response-to-comment letter on the RWQCB comments on the Draft Final OU5 RI is not acceptable to our agency for the reasons stated above. State Board Resolution 92-49, Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304, establishes policies and procedures for the cleanup of waste discharges which affect or threaten water quality. In general, it requires cleanup and restoration of affected water aimed at achieving background conditions in accordance with Resolution 68-16, water quality control plans and policies, and Title 23 California Code of Regulations as feasible. All groundwater at

Moffett Field, except at sites 1, 2 and 11 meet the State requirements of a potential drinking water source, and therefore, at a minimum, this beneficial use must be protected. To comply with State regulations the Navy must complete a feasibility study which evaluates remedial alternatives from no action to clean up of the groundwater to background conditions, and includes an ARAR analysis.

If the Navy intends to 'disregard these State policies and regulations and proceed directly to the proposed plan, which was released in draft form and recommends no further action to address the chemicals detected in the OU5 aquifer, then RWQCB staff can see no reason to continue the current informal dispute on the Draft Final OU5 RI. We have an obligation to resolve this issue as quickly as possible. Our agency is prepared to invoke formal dispute on these issues, as outlined in Section 10.5 of the Moffett NAS Federal Facilities Agreement (FFA), if these issues can not be resolved in the remaining days of the informal dispute.

RWQCB staff hopes that these issues can be resolved between all parties on an informal basis, and look forward to hearing from the Navy as soon as possible to avoid any additional delays with the project.

If you have any questions or concerns, please feel free to call me at the San Francisco Bay Regional Water Quality Control Board, at (510) 286-3980.

Sincerely,


Richard K. McMurtry
Division Chief

cc: Michael Gill, US EPA
Mail Stop H-9-2

Chip Gribble, DTSC