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MCAS EL TORO
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Gray Davis
Governor

February 22, 2000

Mr. Dean Gould
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BRAC Operations Office
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REVISED SECTION 7 (DESCRIPTION OF ALTERNATIVES) AND SECTION 10 (STATUTORY DETERMINATIONS) FOR THE RECORD OF DECISION FOR OPERABLE UNIT (OU) 2B, INSTALLATION RESTORATION PROGRAM (IRP) SITES 2 AND 17, MARINE CORPS AIR STATION (MCAS) EL TORO

Dear Mr. Gould:

The Department of Toxic Substances Control (DTSC) reviewed the above revised Section 7 (received by electronic mail on February 17, 2000) and Section 10 (received by electronic mail on February 7, 2000) for the Record of Decision document for OU 2B, IRP Sites 2 and 17 at Marine Corps Air Station (MCAS) El Toro. Following review, DTSC has the following comments:

1. In general, DTSC requests that the language for Land Use Covenant agreements to be included in the ROD documents be consistent for all Navy facilities. Currently in Southern California, DTSC is working with the Navy on ROD documents for MCAS El Toro, Marine Corps Air Facility Tustin, and the Long Beach Naval Complex.
2. Section 7.2.1.4 - Environmental Restrictions in the Covenant and Agreement with DTSC and in the Deed: As proposed by the Department of the Navy in the December 21, 1999 letter to DTSC, the paragraph beginning with should include the Santa Ana Regional Water Quality Control Board as follows: "The Civil Code Section 1471 restrictive covenants will be executed by the transferee and will serve as a legally binding agreement between the transferee, its successor and assigns (the covenantor), and the United States, the State of California Department of Toxic Substances Control (DTSC) and the Santa Ana Regional

Water Quality Control Board (RWQCB), (who shall be identified in the deed as the covenantees (beneficiaries)) pursuant to Civil Code 1471." Additionally, DTSC verified this insertion with the RWQCB on February 17, 2000.

3. In the same paragraph referenced in Comment No. 2 above, DTSC requests the inclusion of soil gas migration monitoring and other monitoring equipment be included with groundwater wells.
4. Section 10.2.3 - Action-Specific ARARs, paragraph 7: In the paragraph that begins with "State regulations that have been accepted by DON as ARARs for implementing institutional controls and entering into an Environmental Restoration Covenant and Agreement with DTSC include", DTSC requests that "regulations" be revised to "statutes" and "Restoration" be revised to "Restriction."
5. Section 10.2.3 - Action-Specific ARARs, paragraph 8: In the paragraph that begins with "The substantive provisions of Civil Code Section 1741 are the following general narrative standard:", DTSC requests that the words "in the deed" in the last sentence of this paragraph be removed.
6. Section 10.2.3 - Action-Specific ARARs, paragraph 9: In the paragraph that begins with "The substantive provisions of HSC Section 25202.5", DTSC request that the words "in the deed" in the second sentence of this paragraph be removed.
7. Section 10.2.3 - Action-Specific ARARs, paragraph 11: In the paragraph that begins with "HSC 25222.1 provides the authority of the state to enter into voluntary agreements", DTSC requests that the second sentence "The HSC Section 25222.1 Land Use Covenant Agreement, itself, is in the form of an agreement, and this procedural form does not qualify as a legally binding "applicable or relevant and appropriate" requirement under CERCLA because it is administrative (procedural) in nature." be removed.
8. Section 10.2.3 - Action-Specific ARARs, last two paragraphs: DTSC requests that the paragraphs that begin with "Subsequent to DON's evaluation of the ARARs cited above, DON receive a letter from Mr. John Scandura" and "DON has reviewed HSC Section 25355.5 and has determined that the section consists of procedural and enforcement provisions" be removed in their entirety.
9. Based on discussions between Garry Brown (DTSC) and Rex Callaway (DON), DTSC understood that HSC Section 25234 regarding removal of land use

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restrictions would be referenced in the ROD. DTSC requests that this section of the HSC be referenced in both Sections 7 and 10.

10. Additionally, DTSC requests that the following language be included in Section 10 to clarify that environmental restrictions will be included in the Environmental Restriction Covenant and Agreement between DON and DTSC as well as in the deed between the United States and the transferee(s): "In addition to being referenced in the LUC incorporated in the quit claim deed between the DON and the transferee, the appropriate and relevant portions of the California Health and Safety Code Sections 25202.5, 25222.1, 25230, 25232 and 25233, and Civil Code Section 1471 shall also be incorporated into the Environmental Restriction Covenant and Agreement entered into between the DON and DTSC pursuant to the Memorandum of Agreement and model Environmental Restriction Covenant and Agreement currently being negotiated between the DON and DTSC."
11. DTSC also requests that a copy of the Memorandum of Agreement and model Environmental Restriction Covenant and Agreement be included in the appendices for the ROD.

As stated in previous correspondence, DTSC appreciates the DON's efforts to address these issues and we are hopeful that the agreements reached will facilitate our mutual efforts to finalize this ROD and future RODs at MCAS El Toro. Please contact me at (714) 484-5395 if you have any questions.

Sincerely,



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