



**DEPARTMENT OF THE NAVY**  
SOUTHWEST DIVISION  
NAVAL FACILITIES ENGINEERING COMMAND  
1220 PACIFIC HIGHWAY  
SAN DIEGO, CA 92132-5190

AR\_M60050\_002419  
MCAS EL TORO  
SSIC NO. 5090.3.A

5090  
Ser 06CC.DG/0182  
14 February 2001

Mr. John Scandura, Chief  
Southern California Branch  
Office of Military Facilities  
Department of Toxic Substances Control  
5796 Corporate Avenue  
Cypress, CA 90630

Ms. Karen Baker, C.E.G., C.H.G., Chief  
Geology and Corrective Action Branch  
Permitting Division  
Department of Toxic Substances Control  
5796 Corporate Avenue  
Cypress, CA 90630

Dear Mr. Scandura and Ms. Baker:

This is in response to your letter of December 15, 2000 regarding the Draft Work Plan, Phase II Remedial Investigation for Installation Restoration Site 1, Explosives Ordnance Disposal (EOD) Range, MCAS El Toro. In that letter, you requested the Department of the Navy (Navy) submit a RCRA closure plan covering the area identified in the MCAS El Toro's 1988 Part A Resource Conservation and Recovery Act (RCRA) permit application for open burn/open detonation treatment of explosive ordnance.

MCAS El Toro submitted the Part A RCRA permit application in anticipation that routine EOD training might be viewed as hazardous waste treatment of explosive ordnance. However, the USMC maintains that no hazardous waste treatment of explosive ordnance occurred at Site 1, EOD Range. Pursuant to the requirements of Marine Corps Order 3571.2 (Explosive Ordnance Disposal Program) and Marine Corps Order 1510.78A (Individual Training Standards System for Ammunition and Explosive Ordnance Disposal Occupation Field 23), munitions were used at the EOD Range for their intended purpose, including the training of military personnel and explosive ordnance emergency response specialists. This use of military munitions is not regulated by RCRA and should not be regulated by California's implementation of RCRA's regulatory hazardous waste management program. Training in the destruction of excess propellant and other military munitions constitutes the legitimate use of the munitions product and is not waste disposal.

In November of 1999 the USMC and DTSC met to discuss the El Toro EOD range. DTSC took the position that the USMC's explosive ordnance detonation activities at the EOD Range included the unauthorized operation of an open burning/open detonation hazardous waste treatment unit between January 1, 1992 and July 1, 1999. The USMC, however, made it clear that munitions were only used at the EOD range as explained above. Further, the Federal Facility Agreement executed by Navy, EPA and DTSC lists the EOD Range as Site 1 demonstrating the FFA parties' intent that the EOD range's investigation and selected remedy (i.e. closure) would be conducted pursuant to CERCLA. Section 17 of the FFA specifically states the intent of the FFA parties that RCRA corrective action requirements for RCRA permitted and interim status facilities be integrated into the Navy's CERCLA response obligations covered by the FFA. In addition, the FFA states in Section 12 that any dispute over sites listed in the FFA must follow the dispute resolution process set forth in the FFA.

As a result of the November 1999 meeting, the USMC and DTSC agreed these differences could be resolved with an appropriate amendment to the FFA. From November 1999 through July 2000, the Navy and DTSC negotiated a proposed FFA amendment whereby the Navy would comply with any promulgated State of California hazardous waste facility closure and post-closure substantive requirement deemed legally applicable or relevant and appropriate to the EOD Range pursuant to CERCLA section 121. The Navy agreed in the proposed amendment that the substantive portions of the State of California's facility closure and post-closure plan requirements would be treated as relevant and appropriate to the CERCLA response action for the EOD Range. We understood DTSC would be entering into the amendment in lieu of pursuing an enforcement action against the USMC.

Unfortunately, the negotiations did not result in an amendment to the FFA. After a conference call sometime in August 2000 with DTSC and the Navy's Office of the Assistant General Counsel, Installations and Environment, the Navy concluded negotiations following DTSC's insistence upon the Navy agreeing to file a post-closure permit application with payment of associated post-closure permit fees.

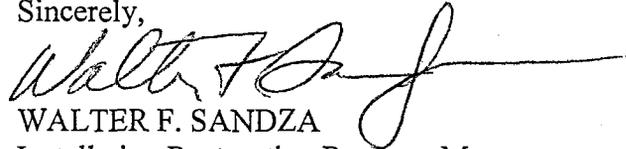
Since that time, the Navy has chosen to go forward with the initial proposed settlement terms incorporating the State's substantive closure and post-closure requirements as relevant and appropriate requirements in the CERCLA response being taken at the EOD Range. Accordingly, the Navy submitted the Draft Work Plan Phase II Remedial Investigation dated September 2000 and the associated draft Health and Safety Plan dated October 2000 with the substantive requirements for the closure and post-closure of a hazardous waste facility addressed where relevant and appropriate and where information was available. DTSC provided comments on the Draft Work Plan with your letter of December 15, 2000. The Navy's responses to these comments are enclosed.

The Navy has made every attempt to settle this matter in recognition of the State's important role in the regulation of hazardous waste and our continuing desire to maintain a successful partnership with the State of California in the cleanup of our BRAC facilities. We continue to believe in our agreement with you that CERCLA and the FFA

provide the framework and all the necessary tools for accomplishing our mutual cleanup goals at the former MCAS El Toro.

Please contact me at (619) 532-1234 with any questions regarding the Navy's position on CERCLA's applicability to IR Site 1, and Mr. Dean Gould, the BEC for MCAS El Toro with any questions concerning the enclosure.

Sincerely,



WALTER F. SANDZA

Installation Restoration Program Manager  
By direction of the Commander

Encl: (1) Response to BCT Comments on Draft Work Plan Phase II RI IRP Site 1, Draft Amendment to Draft Work Plan Phase II RI IRP Site 1, and Draft Health and Safety Plan Phase II RI IRP Site 1

Copy to:

Mr. John Broderick  
California Regional Water Quality Control Board  
Santa Anna Region  
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Riverside, CA 92501-3339

United States Environmental Protection Agency, Region IX  
Hazardous Waste Management Division (SFD 8-2)  
ATTN: Ms. Nicole Moutoux  
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ENCLOSURE

RESPONSE TO COMMENTS ON THE DRAFT AMENDMENT  
TO THE DRAFT WORK PLAN PHASE II  
REMEDIAL INVESTIGATION  
INSTALLATION RESTORATION PROGRAM SITE 1

DATED 01 FEBRUARY 2001

THIS RECORD IS ENTERED IN THE DATABASE AND FILED  
AS

RECORD NO. AR\_M60050\_000838

RESPONSES TO COMMENTS ON THE DRAFT  
WORK PLAN AND DRAFT HEALTH AND SAFETY PLAN  
PHASE II REMEDIAL INVESTIGATION  
INSTALLATION RESTORATION PROGRAM SITE 1

THIS ENCLOSURE WAS NOT SUBMITTED TO THE  
RESTORATION RECORD FILE.

FOR ADDITIONAL INFORMATION, CONTACT:

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