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MOFFETT FIELD  
SSIC NO. 5090.3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX  
213 Fremont Street  
San Francisco, CA 94105

JUN 02 1987

In Reply  
Refer To: T-4-3

Commanding Officer  
Western Division Naval  
Facilities Engineering Command  
Attn: Alex Dong, Code 1142  
P.O. Box 727  
San Bruno, CA 94066

Subject: Lead Agency for the Oversight of the Remedial  
Investigation at Moffett Field Naval Air Station.

Dear Mr. Dong:

This letter is written to confirm the phone conversation between Louise Lew of your staff and Lewis Mitani of my staff regarding the lead agency for the oversight of the remedial investigation at Moffett Field Naval Air Station (Moffett). The South Bay Ground Water Contamination Enforcement Agreement (enclosure) between the San Francisco Bay Regional Water Quality Control Board (RWQCB), the California Department of Health Services (DHS) and the Environmental Protection Agency (EPA) has designated the RWQCB as the lead agency.

Moffett is on the proposed National Priorities List (NPL) and is required to meet all EPA requirements and guidances for site investigation as per Section 120 of the Superfund Amendments and Reauthorization Act (SARA). All work performed by Moffett will be evaluated against EPA requirements and guidances. However, for continuity, most EPA comments on Moffett's work will be addressed through the RWQCB.

Although the RWQCB is the lead agency, by law (Section 120 (e)(4) of SARA) the EPA and Moffett must enter into an Interagency Agreement (IAG) for the selection of the final remedy. The selection of the final remedy will be made in accordance with Section 121 of SARA which outlines new cleanup standards. These standards must be used in the Remedial Investigation (RI) when evaluating the severity of contamination and when proposing and evaluating remedial alternatives in the Feasibility Study (FS).

Moffett, in meeting its obligations under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by SARA, should address all sources of contamination on base. All waste releases into the environment which may pose an environmental or health threat are subject to investigation as required by the National Oil and Hazardous Substances Pollution

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EPA / NAVY 3

Contingency Plan, 40 CFR Part 300 (NCP). Therefore, Moffett should consider all releases into the environment from a basewide contamination perspective before remedial alternatives can be considered.

If you any questions, please contact Lewis Mitani at (415) 974-7836.

Sincerely,



Amy K. Zimpfer, P.E.  
Chief, Federal Response Section

Enclosure

cc: Tom Berkins, RWQCB San Francisco Bay Region  
Gil Torres, California Water Resources Control Board  
Dwight Hoenig, DHS/North Coast California Section  
Cdr J.G. Sims, NAS Moffett Field, Public Works Dept.  
Tom Iwamura, Santa Clara Valley Water District

**SOUTH BAY GROUND WATER CONTAMINATION  
ENFORCEMENT AGREEMENT**

**I. INTRODUCTION**

This Agreement sets forth the strategy for implementation of an effective enforcement relationship concerning ground water contamination in the South Bay between the following agencies:

San Francisco Bay Regional Water Quality Control Board,  
(hereinafter "the Regional Board")

California Department of Health Services,  
(hereinafter "DOHS")

Environmental Protection Agency Region 9,  
(hereinafter "EPA").

The purpose of this Agreement is to define the roles of the participating State and Federal agencies for enforcement action at ground water contamination sites in the South Bay. The goal is to attain and maintain high levels of continuing compliance with environmental laws. To achieve this goal, the participating agencies will monitor compliance and establish an effective enforcement presence. All necessary actions will be taken to reduce incentives for noncompliance and to target enforcement actions for maximum public health and environmental protection.

**II. LEGAL AUTHORITIES**

**A. California Regional Water Quality Control Board**

Regulatory mechanisms available to the Regional Board include administrative (staff level) enforcement, Waste Discharge Requirements, and two formal enforcement orders: Cleanup and Abatement Orders and Cease and Desist Orders. The Regional Board may refer a case to the State Attorney General for assessment of monetary penalties, both for the initial unauthorized discharge and for violation of a formal Board Order, should such violation occur. The Regional Board may also impose administrative civil penalties under recent State legislation.

Administrative Enforcement is staff level activity directed to obtaining investigation and cleanup of unauthorized discharges. In general, such activity is carried out under Section 13267 of the California Water Code which allows the Regional Board's Executive Officer to require technical reports. The Regional Board uses this mechanism only to obtain initial information in the early stages of site investigation.

Waste Discharge Requirements are the Regional Board's normal means of regulating ongoing discharges. WDRs, considered case-by-case by the Board in public hearings, contain findings, specifications and provisions (including time schedules), prohibitions, and where applicable, concentration limits for the discharge of pollutants. These orders have not historically been applied to clean-ups or accidental discharges, but ground water contamination cases have certain characteristics which make regulation under WDRs desirable. These characteristics include the probability of continued discharge from soil to ground water long after the discharge from containment is abated, the longterm nature of investigation and cleanup, and the need for an ongoing monitoring program to continue even after remedial measures are completed, in order to verify their effectiveness. The Regional Board intends to use Waste Discharge Requirements as the primary mechanism for routine regulation of investigation and cleanup at groundwater contamination sites where extended investigation and cleanup activities are necessary.

The Cleanup and Abatement Order can be issued by the Regional Board's Executive Officer under Section 13304 of the California Water Code. Such an order can be issued with or without formal Board action, and is directly referable to the Attorney General for judicial enforcement in the event of a violation. The CAO represents a more formal approach to the administrative resolution of these cases. As such, it has the advantage of expeditious issuance and of being directly enforceable when a satisfactory cleanup is not achieved within an acceptable timeframe. The CAO is primarily intended as an expedient but formal method to deal with accidents, single incidents, or other short-term occurrences which can be abated and cleaned up in a relatively short time with no residual discharge or long-term implications.

The Cease and Desist Order described in Section 13301 of the Water Code can be issued by the Regional Board for cases of ground water contamination with hazardous materials. The basis for issuance would be violation of the Basin Plan prohibition against discharge of hazardous materials to ground water. The CDO is the Board's strongest administrative enforcement tool. A violation can result in immediate liability for monetary penalties. As with the adoption of WDRs, a CDO is considered by the Board at a public hearing. The Regional Board believes that the CDO should be reserved for cases where satisfactory cleanup efforts are not being obtained through more routine regulatory efforts.

The assessment of Civil Monetary Penalties is another enforcement option for the Regional Board. The California Water Code provides several levels of penalties for discharges depending on the circumstance and the materials discharged. Under these provisions, the option of referral of the illegal discharge incident to the Attorney General for penalties is available regardless of which type of Board action is used to formalize the requirement for remedial measures. California law requires in most cases that legal action for recovery of monetary remedies be filed within three years of discovery of the discharge. The possibility of referral for violation of a Board Order will exist as long as the Order remains in effect. Additionally, under recent legislation (McCorquodale Bill AB 2131, 1984) the Regional Board may impose administrative civil penalties for a number of situations, including discharge without a permit, violation of a Board Order, or failure or refusal to submit technical reports.

**B. California Department of Health Services - Toxic Substances Control Division**

The legal authorities of the California Department of Health Services, Toxic Substances Control Division are cited in the California Health and Safety Code, Division 20, Chapters 6.5, 6.7 and 6.8. Regulations promulgated pursuant to the above are contained in Title 22 of the California Administrative Code.

DOHS is also authorized to implement certain portions of the Federal Resource Conservation and Recovery Act and the Federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund).

The application of these authorities to the cleanup of a hazardous waste site depends largely on the existence of responsible parties and their ability or willingness to undertake remedial actions.

The Notice of Violation is an administrative order issued by the DOHS Regional Section Chief in situations where a small spill or release of hazardous materials has occurred, and the violator is willing and capable of taking immediate corrective action, and where no further enforcement action is contemplated. The notice consists of a list of violations, a list of corrective actions, and schedules for compliance. After issuance, followup inspections are performed to enforce compliance. If compliance is not achieved, the site is referred to the Division's enforcement coordinator for referral to a local district attorney or the Attorney General's office for prosecution.

The Director's Order is used as an enforcement tool for violations of Chapter 6.5 of the Health and Safety Code which are deemed of moderate seriousness. This chapter of the Code relates primarily to the generation, treatment, storage, transportation, and disposal of hazardous wastes. The order is issued after a public hearing and is backed by civil penalties of up to \$25,000 per day of noncompliance with the order upon conviction. Other penalties can be levied for specific violations ranging from \$1,000 to \$25,000 per day per violation. These penalty provisions were added by statutes in 1980 along with other specific prohibitions against the disposal of hazardous wastes at unauthorized locations. Consequently, Director's Orders under this chapter are not routinely used to enforce cleanup of hazardous substances disposed prior to January 1, 1981. Violations of these orders are also referred to the enforcement coordinator for subsequent enforcement by the District Attorney or the Attorney General. These orders can be issued for a broad range of corrective actions including site investigation, feasibility studies, and cleanup.

The Imminent or Substantial Endangerment Order is generally reserved for those situations where the threats of harm to public health or the environment are very serious and immediate in nature. These orders are issued without public notice or hearings and can encompass all actions necessary to remove or remedy the hazards. Where a court order is necessary to facilitate remedial actions, the Attorney General is empowered to seek relief in Superior Court. Noncompliance with such an order results in the expenditure of State funds to perform the necessary remedial work and the filing of a civil action in which the State may seek up to three times its costs in damages.

Fencing and Posting Orders are issued to owners of property where an unauthorized release of hazardous substances has occurred and there is a direct contact hazard to public health or domestic animals. Property owners have 60 days in which to comply or are subject to \$25,000 per day in civil penalties. State funds are available for fencing and posting a site if the site owner fails to comply or if the site is abandoned.

The Hazardous Substance Clean-Up Fund can be used for remedial investigations and cleanup of any site which ranks high enough on the State Priority Ranking List ("State Superfund List"). Before State funds are expended, responsible parties are given notification of the State's intent and have the opportunity to initiate and complete these activities.

Upon completion of site characterization, the Fund authorizes the State to develop a draft remedial action plan which also allocates financial responsibility among known responsible parties. This draft plan is presented for comment at a public hearing and is issued by DOHS in final form after the comments are considered and incorporated. Upon issuance of a final remedial action plan, the responsible parties may file for binding arbitration of financial liability. Such a request does not, however, prevent the implementation of the remedial action plan.

If an Imminent or Substantial Endangerment Order is not issued and the State funds are activated to perform investigations or cleanup, the State can recover its costs plus 10% for administrative overhead in a civil action filed by the Attorney General.

### C. Environmental Protection Agency

Regulatory mechanisms available to the EPA are provided by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA).

CERCLA authorizes EPA to request information and conduct investigations to determine the extent of a release of hazardous substances. EPA can take immediate actions to remove hazardous substances and can undertake longer term remedial actions when appropriate. CERCLA also authorizes EPA to order responsible parties to clean up hazardous substances and provides a mechanism for EPA to recover any funds expended for investigation or cleanup.

The authority for funding removal and remedial actions is found in CERCLA §104. EPA is authorized to act whenever any hazardous substance is released, when there is a substantial threat of such release, or whenever there is a release or substantial threat of release of any pollutant or contaminant which may present an imminent and substantial endangerment. Section 104 also authorizes EPA to undertake investigations to identify the existence and extent of hazardous waste problems.

CERCLA §106 authorizes EPA to order responsible parties to clean up hazardous substance problems. EPA can "issue such orders as may be necessary to protect public health and welfare and the environment" where EPA finds that there "may be an imminent and substantial endangerment to the public health or welfare or the environment" because of an "actual or threatened release"

of a hazardous substance. The critical condition for §106 Orders is the endangerment finding. Once endangerment has been substantiated, the statute allows a very broad scope of potential remedial actions.

CERCLA §107 authorizes cost recovery. This allows EPA, the State of California and, in certain circumstances, other persons to recover all costs of removal or remedial actions from past and present owners and operators of facilities at which hazardous substances were disposed of, and from generators and transporters of hazardous substances. Normally, these costs would be sought in federal district court.

RCRA establishes a regulatory system to track hazardous substances from the time of generation to disposal. It also requires safe and secure procedures to be used in treating, storing, and disposing of hazardous substances, including regulations for underground tanks.

As part of this system, RCRA §3008 authorizes EPA to order corrective action to protect human health and the environment whenever EPA determines that there is or has been a release of hazardous waste into the environment from an interim status facility. Corrective action orders include timeframes for compliance and authority to impose civil penalties for noncompliance.

RCRA §3013 allows EPA to require site characterization where the presence or release of a hazardous substance "may present a substantial hazard to human health or the environment."

RCRA §7003 allows EPA, upon receipt of evidence that the handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to human health or the environment, to bring suit to immediately restrain such handling, storage, treatment, transportation, or disposal or to take such other action as may be necessary.

### III. IDENTIFICATION OF SITES

The sites to be addressed by the South Bay Enforcement Agreement are located in the geographical area defined in the Multisite Cooperative Agreement. This area includes 91 sites in Santa Clara and San Mateo counties which will comprise the initial list of sites to be tracked by the Site Management System, (see section IV).

#### IV. SITE MANAGEMENT SYSTEM

The site Management System (SMS) tracks site characterization, remedy selection, and cleanup at each site. As site specific data are entered into the SMS, case descriptions, remedial action and enforcement milestone reports, and case summary reports will be generated. With these reports, the SMS will identify potential candidates for Regional Board Enforcement action or for referral to DOHS or EPA for enforcement action. The SMS will aid Regional Board staff in managing case loads and providing summary information to Regional Board, DOHS, and EPA management.

##### A. SMS Input and Access

The Regional Board will enter most of the information into the SMS. DOHS and EPA will provide SMS information to the Regional Board for sites under DOHS and/or EPA lead designation on a monthly basis. EPA will have the ability to enter information on Federal lead sites as necessary and will be able to access the case descriptions, milestone tracking information, and summary reports. DOHS will receive SMS monthly reports from the Regional Board for schedule review.

The agencies should ensure the accuracy of data used to generate monthly, quarterly, and/or annual reports on the status of Federal and State compliance and enforcement activities. When possible, opportunity should be provided to verify information prior to release/transmittal.

The agencies will retain accessible records and summary data to substantiate all compliance and enforcement activities.

##### B. Addition of Sites to SMS

The criterion for adding a site to the System is the determination by a participating agency that a site requires complete characterization of the extent of contamination.

Because the SMS is used to track the status of sites, sites will not be deleted from the SMS. When it is determined that cleanup is complete, or additional action is not necessary, the final site designation is "No Further Action."

#### V. LEAD AGENCY DESIGNATION

For initial lead classification, the Regional Board assumes the lead agency role. If a Potential Responsible Party (PRP) exceeds a milestone deadline, the Regional Board will initiate enforcement action within 60 days after that exceedance. This enforcement action will trigger new milestones for tracking within the SMS.

If the Regional Board does not take enforcement action within 60 days of a PRP milestone exceedance, or if the Regional Board requests referral, the agencies will discuss whether the Board should retain the lead or shift the lead to EPA or DOHS, depending on the following factors:

- A. Types and severity of problems at the site:
  - NPL or proposed NPL site
  - Multi-source plumes
  - Abandoned sites
- B. Past site history:
  - Whether there has been EPA or State enforcement activity at the site
  - Type of action
- C. The effectiveness of enforcement actions to date
- D. The degree and adequacy of progress made by the PRPs toward site cleanup
  - Compliance vs. noncompliance, based on formal communications and timeframes
  - Ability of PRPs to do the work
- E. The strength of legal evidence to support EPA or State action
- F. State interest in EPA assistance
- G. The national significance of legal or technical issues presented by the site.
- H. The availability of EPA and State legal authorities, personnel, and funding resources adequate to enable effective action.
- I. Public interest considerations

Generally, the enforcement timeframes are meant to ensure timely response by the participating agencies. However, the agencies recognize that certain sites may require variances which will be considered on a case-by-case basis and explained in the SMS Case Milestone Report. Each agency reserves the right to take action if it disagrees with a variance and determines that a case requires more severe action. The other agencies will be contacted if such cases arise.

## VI. LEAD AGENCY RESPONSIBILITIES

The Lead Agency agrees to take the following actions on its sites:

- A. Conduct negotiations with PRPs formally (e.g. culminating in the issuance of an enforceable order, decree, or equivalent);
- B. Prepare, or have the PRP prepare, an RI/FS (or equivalent as agreed to by EPA and the State), and provide for public comment, in accordance with EPA RI/FS and Community Relations guidance documents;
- C. Provide for public comment on settlements, voluntary and negotiated cleanups, and consent orders and decrees in accordance with EPA Community Relations guidance documents;
- D. Pursue and ensure implementation of a remedy that is at least as protective of public health, welfare and the environment as a cost-effective remedy as that term is defined in the National Contingency Plan;
- E. Keep the other agencies informed of its activities, through SMS updates and staff consultations as needed.

## VII. INFORMATION EXCHANGE AND DISPUTE RESOLUTION

The Regional Board, DOHS, and EPA will hold quarterly meetings at the management level to discuss the status of the South Bay ground water contamination problem. Cleanup strategies will be evaluated in light of progress and possible new directions.

The SMS reports will trigger notification of milestone exceedances and the Regional Board, DOHS and EPA will keep each other up-to-date on the status of enforcement actions against noncomplying PRPs. The agencies will provide verbal notice and copies of final enforcement orders to each other.

The agencies will conduct enforcement meetings to discuss specific cases and, if necessary, to resolve disputes regarding the interpretation of regulations, program goals or site cleanup progress. These meetings will begin at the participating agencies' staff level and proceed up through management as deemed necessary by the participants.

VIII. MODIFICATION, EXECUTION, and TERMINATION of ENFORCEMENT AGREEMENT

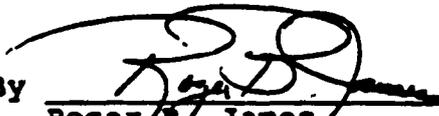
This Enforcement Agreement takes effect upon execution by the Regional Board, DOHS, and EPA and remains in effect until terminated by mutual agreement among the agencies. Modifications to the Agreement may be made at any time under mutual consent of the agencies. The Agreement will be reviewed on an annual basis at the Executive Officer/Division Director level.

STATE OF CALIFORNIA  
CALIFORNIA DEPARTMENT OF HEALTH SERVICES

By   
Richard Wilcoxon  
Chief  
Toxic Substances Control Division

DATE October 29, 1985

STATE OF CALIFORNIA  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

By   
Roger E. James  
Executive Officer

DATE October 4, 1985

U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

By   
Harry Seraydarian  
Director  
Toxics & Waste Management Division

DATE August 9, 1985