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1813CG/L3159

03 FEB 1993

Ms. Roberta Blank  
U.S. Environmental Protection Agency, Region IX  
(Mail Stop H-9-2)  
75 Hawthorne Street  
San Francisco, CA 94105

Subj: CERCLA Exclusion of Petroleum Related Contamination From Operable Units 2 and 3  
Soils at Naval Air Station, Moffett Field, CA

Dear Ms. Blank:

As discussed during the meeting held on December 15, 1992, the Navy recommends that soils contaminated with petroleum and petroleum-related constituents within operable units (OUs) 2 and 3 be excluded from the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) response action being implemented at Naval Air Station, Moffett Field, CA (NAS Moffett Field). OU2 consists of the unsaturated soils beneath Sites 3 through 19 (except Sites 12 and 15). OU3 consists of unsaturated soils at Sites 12 and 15.

CERCLA's "hazardous substance" definition excludes "petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance." CERCLA 101 (14).

On July 31, 1987, the U.S. Environmental Protection Agency's (EPA) General Counsel issued a comprehensive interpretation of the petroleum exclusion. This interpretation concluded a comprehensive review of the language and legislative history of CERCLA, including prior agency pronouncements, and set forth a three-part definition of petroleum. First, the General Counsel stated that to give meaning to the petroleum exclusion, the term "petroleum" must be read to include all hazardous substances such as benzene that are "indigenous" to petroleum substances. Second, the term "petroleum" must also be read to include hazardous substances that are "normally mixed with or added to crude oil or crude oil fractions during the refining process." Third, the term "petroleum" does not include hazardous substances "which are added to petroleum or which increase in concentration solely as a result of contamination of petroleum during use." Under this interpretation, the General Counsel said that EPA only has authority to deal with releases of the added substance, but may not respond to releases of the petroleum itself (unless the added substance is inseparably mixed with the petroleum). Elsewhere in the interpretation, the General Counsel indicated that "spills or releases of gasoline remain excluded from CERCLA under the petroleum exclusion," as do "spills of crude or refined petroleum."

Based on the above interpretation, the Navy recommends removing all sites containing identifiable and separate petroleum contamination from the CERCLA action. Areas that meet this definition are recommended for exclusion. These sites include portions of OU2 [Sites 9 (near Building 31) and 19 (Tank 53)], and OU3 [Sites 12 (Firefighting Training Area) and 15 (Sumps and Oil/Water Separators)]. Sites where petroleum constituents are inseparably mixed with non petroleum-related hazardous substances will not be removed from the CERCLA process.

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Although sites containing petroleum related contamination will be excluded from CERCLA, they will be regulated through provisions of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. § 6901, Section 9001, Subtitle I - Regulation of Underground Storage Tanks). Administration of RCRA Subtitle I is by the California Regional Water Quality Control Board (RWQCB). The RWQCB will be contacted to discuss the appropriate requirements for the sites identified above.

If you have any questions or comments concerning the above, please call Mr. Stephen Chao at (415) 244-2563.

Sincerely,

original signed by:

Gilbert A. Rivera  
Head, Installation Restoration Section "B"

Copy to:

Regional Water Quality Control Board, (Attn: Elizabeth Adams) / 5 8 0  
Department of Toxic Substances Control, (Attn: Cyrus Shabahari)  
PRC Environmental Management, (Attn: Josh Marvil)  
JMM James M. Montgomery, Inc., (Attn: Joe LeClaire)  
IT Corporation, (Attn: Keith Bradley)

Blind copy to:

NAS Moffett Field, (Code 189, LT Openshaw)  
09CMN, 181, 1813, 1813SC, 1813CG  
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