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Arizona, California, Hawaii
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ENVIRONMENTAL PROTECTION AGENCY

MAY 26 1992

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MEMORANDUM

SUBJECT: Federal Facility NPL Boundary Issues

FROM: Daniel McGovern, Regional Administrator Dan McGovern

TO: Don R. Clay, Assistant Administrator,
Office of Solid Waste and Emergency Response

Ray Ludwiszewski, Acting General Counsel

Herbert H. Tate, Jr., Assistant Administrator,
Office of Enforcement

I am writing to you as a follow-up to my January 28, 1992 memo on Federal Facility Base Closure Issues. Since that date there have been some important developments on these issues which Region 9 believes will facilitate resolution of some of the issues in my January 28 memo.

On February 18, 1992, EPA issued an interpretation of CERCLA Section 120(h)(3) with which Region 9 strongly concurs.

Additionally, on February 27, 1992, Deputy Assistant Administrator Thomas McCall transmitted draft procedures, describing a "Transferable Parcel Assessment Document" (TPAD) to the Department of Defense (DOD). Region 9 supports these draft procedures, and believes the TPAD is a constructive approach to handle the difficult issues involved in the transfer of property in an environmentally sound manner. Notwithstanding these developments, several outstanding issues remain.

In my January 28, 1992 memo, I raised some issues on National Priority List (NPL) definition for federal facilities. To reiterate, both DOD and the State of California have expressed interest in changing the way Federal Facilities are listed on the NPL. DOD has asserted that these clean parcels are "tied up" as part of the NPL site, impacting market value of the land. While we do not necessarily concur with DOD's portrayal of the situation, we do believe that EPA could sponsor an improved approach to handling portions of military bases that have been demonstated to be clean. We are seeking your support for a proposal for better definition of military bases when they are initially listed, and for clarifying the NPL status of property on already listed closing military

bases

INITIAL NPL LISTING

Federal Facilities are listed on the NPL based on a Preliminary Assessment/Site Inspection (PA/SI) prepared by the federal agency owning the property. When releases on a given facility result in NPL listing, EPA lists the name of the facility (e.g. George AFB) on the NPL. We consider the entire facility to be part of the NPL site. DOD has indicated that they do not believe clean portions of bases should be listed on the NPL. DOD does not currently prepare PA/SI's that include adequate documentation for EPA to conclude that a given portion of a facility is uncontaminated.

Region 9 staff have proposed to DOD that DOD could provide documentation to support their conclusion that parts of bases are uncontaminated. The documentation requirements of the TPAD procedures could be used by DOD to make these conclusions. If EPA concurs with DOD's PA/SI conclusions that a given piece of property is uncontaminated, EPA could explicitly exclude the uncontaminated property from the NPL site when the facility is added to the NPL.

A specific offer will be made by Region 9 to the Navy regarding the PA/SI for Tustin Marine Corps Air Station. We will provide a list of the type of documentation we would like to see in order to demonstrate that a part of the base is clean. If the Navy chooses to provide this information, and EPA concurs with the Navy's conclusions, EPA could explicitly exclude that property from the NPL if releases at Tustin lead to listing of the rest of the facility on the NPL.

Region 9 would like your support on this proposal, and would appreciate EPA-HQ officially making this offer to DOD.

DEFINING THE EXTENT OF THE NPL SITE AT CLOSING MILITARY BASES

Region 9 understands that EPA's policy is not to do parcel-by-parcel deletion of property from the NPL; instead, the entire site is deleted when cleanup is completed. As you know, DOD has expressed unhappiness with this policy, believing that NPL listing impedes property transfer. While we do not necessarily agree, given the importance of base reuse, we believe it is prudent to try to develop alternative approaches to address DOD's concerns. Thus, we are seeking a way to clarify the NPL site boundaries for closing military bases already listed on the NPL if we concur with DOD that some part of the base is "clean". It is important to note that when referring to "clean" property, Region 9 is referring only to property that was never contaminated, not property that was at one time contaminated, but has been cleaned up.

When a consensus is reached that a given property on a closing NPL base is uncontaminated, Region 9 would like to go on the record that the clean property is not, nor has been, part of the NPL site.

We believe we could do this by concurring with DOD's conclusions in the TPAD (or other agreed-upon approach for documenting that property is clean). If DOD is unwilling to agree to a meaningful role for EPA's review of this documentation, we clearly would not be able to make any conclusions about the NPL site boundaries.

While we think the overall policy of facilitating base reuse justifies our recommended approach, we are aware that there are some significant downside risks. As you know, section 120(a)(1) requires us to treat federal facilities in the same manner as private party sites. Nevertheless, we are not planning to review documentation concerning clean areas on private sites for the purpose of concluding that such areas are not part of the NPL site.

Should private parties challenge our recommended approach as discriminatory, we believe a credible argument can be made that offering to confirm non-NPL status is closely linked to the TPAD process and other tools that are being used to implement section 120(h), a provision unique to federal agencies. Indeed, it is mainly because no significant resources would be necessary, beyond those involved in the review of the TPAD, that we are able to conclude that this approach is feasible.

Region 9 is seeking your written support for this approach

I would appreciate your timely response on whether you can concur with the approaches we have laid out in this memo. If your staff would like background information on these issues, they may call John Kemmerer in the Hazardous Waste Management Division, at FTS 484-2411, or Mark Klaiman in the Office of Regional Counsel at FTS 484-1374.

cc: Gordon Davidson, OFFE
Bruce Diamond, OWPE
Earl Salo, OGC
Bob Carr, OFFE