DEPARTMENT OF THE ARMY
HAMPTON FIELD OFFICE, ARMY BASE REALIGNMENT AND CLOSURE
102 MCNAIR DRIVE
FORT MONROE VIRGINIA 23651

REPLY TO
ATTENTION OF
DAIM-B0-H

January 9, 2003

MEMORANDUM FOR Deputy Assistant Secretary of the Army for Environment, Safety, and Occupation Health, 110 Army Pentagon, Washington, DC 20310-0110

SUBJECT: Finding of Suitability to Transfer at Former Fort Ord – Brostrom Park

1. Enclosed for your records: Finding of Suitability to Transfer 52 acres (land only) at the Former Fort Ord. The document received TRADOC legal and BRAC environmental review. It is signed by the Director of the Hampton -BRAC Field Office.

2. Hampton – BRAC field office point of contact is Ms. Robin Mills, DSN 680 – 3846 or commercial (757) 788 – 3846.

JAN 0 9 2003

Thomas E. Lederle
THOMAS E. LEDERLE
Director, Base Realignment and Closure
Hampton Field Office

CF: (w/encls)
HQDA (DAIM-ED-R/DAIM-BO)
USACE (CERE-C)
CDR, USAEC (SFIM-AEC-ERO)
CDR, DLIFLC & POM (ATZP-EP)

FINDING OF SUITABILITY TO TRANSFER (FOST)

BROSTROM PARK
FORMER FORT ORD, CALIFORNIA

January 2003

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FINDING OF SUITABILITY TO TRANSFER
BROSTROM PARK
FORMER FORT ORD, CALIFORNIA

January 2003

1.0 PURPOSE

The purpose of this Finding of Suitability to Transfer (FOST) is to document the environmental suitability of property at the former Fort Ord (FFO), California for transfer to Roeder Incorporated (RINC) Diversified for development, consistent with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 120(h) and Department of Defense (DOD) and policy. In addition, the FOST identifies use restrictions, as specified in the Environmental Protection Provisions, necessary to protect human health or the environment (Attachment 1).

2.0 PROPERTY DESCRIPTION

The property to be transferred (Parcel L27) consists of approximately 52 acres of land only (Plate 1). There are no improvements or personal property associated with this transfer. The property contains a mobile home park that is not owned or maintained by the Army. The property is currently leased to RINC Diversified. All investigations and compliance requirements with reference to 52 acres and all the improvements are the responsibility of RINC Diversified, the recipient.

3.0 ENVIRONMENTAL CONDITION OF PROPERTY

A determination of the Environmental Condition of the property was made by the United States Army by reviewing existing environmental documents and making an associated visual site inspection. The site inspection was conducted in May 2002. The documents reviewed included:

- Asbestos Survey Report, Fort Ord Installation (April 26, 1993),
- Final Community Environmental Response Facilitation Act (CERFA) Report (April 1994),
- U.S. Environmental Protection Agency Region IX (EPA) concurrence to the CERFA Report (19 April 1994),
- Final Environmental Impact Statement Fort Ord Disposal and Reuse (June 1993),
- Supplemental Environmental Impact Statement Fort Ord Disposal and Reuse (June 1996),
- Industrial Radiation Survey, Facility Close Out and Termination Survey, Fort Ord, California (10 January 1994 – 15 April 1994),
- Site Characterization, Site 37 – Trailer Park Maintenance Shop, Fort Ord, California (March 18, 1994),

- Basewide Remedial Investigation/Feasibility Study (RI/FS), Fort Ord, CA, (October 18, 1995),
- Archive Search Reports (December 1993, November 1994, and December 1997),
- Underground and Aboveground Storage Tank Management Plan Update, Former Fort Ord and Presidio of Monterey, Monterey County, California (March 13, 1998),
- Ordnance and Explosives (OE) RI/FS Literature Review Report, Former Fort Ord, California (January 2000),
- Track 0 Record of Decision, Ordnance and Explosives Remedial Investigation/ Feasibility Study, Former Fort Ord, California (July 2002),
- Superfund Proposed Plan: No Action is Proposed for Selected Areas at Fort Ord, California (February 1, 2000),
- Draft Annual Report of Quarterly Monitoring, October 2000 through September 2001, Former Fort Ord, California (February 2002)
- Draft Final Field Investigation and Data Review Solid Waste Management Units, Fort Ord, California (July 29, 2002)
- Version 1 (Draft) Finding of Suitability to Transfer (FOST) Track 0 Parcels, Former Fort Ord, California (August 22, 2002).

3.1 Environmental Condition of Property (ECP) Categories

On the basis of the environmental condition of property (ECP), Parcel L27 was assigned DOD ECP Category 3; areas where release, disposal, and/or migration of hazardous substances has occurred, but at concentrations that do not require a removal or remedial response. A summary of the ECP Category for the property is provided in Table 1 – Description of property.

3.1.1 CERFA Investigation

The final CERFA report identifies the property as being predominantly within CERFA Disqualified Parcel 49 and CERFA Qualified Parcel 135. Parcel 49 was disqualified because of the former storage of hazardous materials at the trailer park maintenance shop. CERFA Parcel 135 was qualified because of the potential presence of asbestos containing materials (ACM), based strictly on the construction date of Brostrom Park. The final CERFA Report was accepted by both Region IX (concurrence received 19 April 1994) and by the State of California EPA Department of Toxic Substance Control (DTSC) (concurrence received 4 May 1994).

3.2 Storage, Release, or Disposal of Hazardous Substances

Based on a review of existing records and available information, there is no evidence that hazardous substances were stored, released, or disposed on the property in excess of the reportable quantities listed in 40 Code of Federal Regulation (CFR) Part 373. Accordingly, there is no need for any notification of hazardous substance storage, release, or disposal.

3.2.1 Solid Waste Management Unit s (SWMUs)

No solid waste management units have been located on the property.

3.2.2 Installation Restoration Program (IRP)

IRP Site 37 (Trailer Park Maintenance Shop) lies on the property. The Maintenance Shop formerly included a waste oil drum storage area and an aboveground gasoline storage tank. This site was investigated under the Fort Ord Basewide Remedial Investigation/Feasibility Study (RI/FS) program. The purpose of the investigation was to assess potential source areas of contamination. Soil borings were drilled and soil samples collected in the waste oil drum storage area, in the location of the above-ground storage tank and at a near by storm drain inlet. Copper, nickel and zinc were detected at concentrations below the preliminary remediation goals (PRGs). Arsenic was detected at concentrations above the PRG, but below the background threshold value. Total chromium was detected below the PRG and background threshold values. Oil and grease and total petroleum hydrocarbon (TPH) as diesel were detected below the TPH PRG of 500 milligrams per kilogram. A screening risk evaluation (SRE) conducted for the site, utilizing the detected chemicals of concern, indicated that the risk to human health and the environment at IRP Site 37 was acceptably low and no further action was recommended. Based on the results of the site characterization activities (including soil sampling and the SRE), the site was categorized as a no action site. A no action site is a site where all removal or remedial actions necessary to protect human health and the environment have been taken and the property is transferable under CERCLA. The No Action Record of Decision (NoAROD) for all no action sites, including the Maintenance Shop, was signed by the regulatory agencies in the spring of 1995. Documentation that site-specific no action criteria were met is provided through the Approval Memoranda process. This process is referred to as the "plug-in" process, because the Approval Memoranda plug into the NoAROD. The No Action Approval Memorandum for IRP Site 37 was approved by the U.S. Environmental Protection Agency (EPA) on August 2, 1995 and by the Department of Toxic Substance Control (DTSC) on August 18, 1995.

3.2.3 Groundwater Contamination

There is no contaminated groundwater plume associated within the property.

3.3 Petroleum and Petroleum Products

With the exception of petroleum product storage in an above-ground storage tank, there is no evidence indicating that any petroleum or petroleum products, in excess of 55 gallons at one time, were stored, released or disposed on the property.

3.3.1 Underground and Aboveground Storage Tanks (UST/AST)

There is one AST (500 gallon diesel) on the property. The storage tank is owned and maintained by the lessee. No releases have been reported from this AST.

No petroleum products are or have been stored in USTs on the property.

3.4 Polychlorinated Biphenyls (PCB)

There are no PCB-containing transformers located on the property. Parcel L27 is owned by the Army and Leased to RINC Diversified, the recipient. The buildings on the property are not constructed, owned or maintained by the Army and no surveys for PCBs by the Army have been conducted within the buildings on the property.

3.5 Asbestos

Parcel L27 is owned by the Army and leased to RINC Diversified, the recipient. The mobile homes present on Parcel L27 were constructed by and are presently owned and maintained by the lessee. Therefore any and all investigations performed to determine if asbestos containing materials (ACM) are present in the units are the responsibility of the RINC Diversified including any potential remediation of asbestos.

3.6 Lead-Based Paint (LBP)

Parcel L27 is owned by the Army and leased to RINC Diversity, the recipient. The Army did not construct and does not own or maintain any of the buildings on the property. Therefore any and all investigations and surveys for LBP is the responsibility of the RINC Diversified, the recipient. Since the buildings were constructed after 1978, it is assumed that the buildings on the property do not contain lead-based paint.

3.7 Radiological Materials

There is no evidence that the Army used or stored radioactive materials on the property.

3.8 Radon

Based on a 1990 survey of the buildings at the former Fort Ord, no radon levels above the EPA's radon reduction level of 4 picocuries per liter (pCi/L) were detected. Since the Army did not construct, own or maintain any buildings on the property, the Army has not performed surveys for radon on this parcel.

3.9 Ordnance and Explosives (OE)

Based on a review of existing records and available information including the Archives Search Report (ASR), ASR Supplement No. 1 and the draft Revised ASR (December 1993, November 1994 and December 1997, respectively), Site 39 Data Summary Work Plan (February 1994), OE contractor after-action reports, the Draft Final Literature Review Report (January 2000), Track 0 Record of Decision (July 2002), working maps, Fort Ord Training Facilities Maps, and associated interviews from various ordnance-related community relations activities, none of Parcel L27 is known to contain OE. However, because OE were used throughout the history of Fort Ord, the potential for OE to be present on the parcel exists. The deed will contain a notice for the potential for the presence of ordnance and explosive provided in the Environmental Protection Provisions (Attachment 1).

3.10 Other Conditions

Clean Air Act General Conformity Rule requirements for this lease were satisfied by a Record of Non-Applicability based upon an exemption for property transfers or leases where the proposed action will be a transfer of ownership, interest and title in the land, facilities, and associated real and personal property as soon as it meets the requirements under CERCLA.

4.0 REMEDIATION

There are no environmental remediation orders or agreements applicable to the property. The Fort Ord Federal Facility Agreement (FFA), to which the State of California and EPA Region IX were signatories, is applicable throughout the installation. This FFA was negotiated and signed in 1990. The FFA requires RCRA/CERCLA integration to ensure a consistent approach to cleanup.

5.0 REGULATORY COORDINATION AND COMMENTS

The U.S. Environmental Protection Agency Region IX (EPA) and the California EPA Department of Toxic Substances Control (DTSC) were notified of the initiation of this FOST. Parcel L27 was included in the Track 0 FOST. The 30-day comment period for the Track 0 FOST was from August 28 to September 30, 2002. No public comments were received on the Track 0 FOST. In a letter dated November 12, 2002, the EPA concurred with the Army's determination that all remedial action necessary to protect human health and the environment, with respect to any hazardous substances remaining on Parcel L27, has been taken. In a letter dated November 8, 2002, the DTSC indicated its non-concurrence with the Brostrom Park FOST based on an interpretation of the requirements for terminating a Resource Conservation and Recovery Act (RCRA) corrective action. The DTSC letter of non-concurrence is attached as an unresolved comment (Attachment 2). On December 9, 2002, the Army issued a response letter to the DTSC stating that the Federal Facility Agreement (FFA) includes provisions that RCRA corrective action will be integrated with the CERCLA clean-up process and therefore no further action is required. The Army's response is also attached (Attachment 2).

6.0 NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE AND CONSISTENCY WITH LOCAL REUSE PLAN

The environmental impacts associated with the proposed transfer of the property have been analyzed in accordance with the National Environmental Policy Act (NEPA). The results of this analysis have been documented in the "Final Environmental Impact Statement Fort Ord Disposal and Reuse," June 1993, associated Record of Decision, December 1993 and "Supplemental Environmental Impact Statement Fort Ord Disposal and Reuse," June 1996. Any encumbrance or condition identified in such analysis as necessary to protect human health, or the environment has been incorporated into the FOST. In addition, the proposed use of the property is consistent with the intended reuse of the property set forth in the Fort Ord Reuse Plan.

7.0 ENVIRONMENTAL PROTECTION PROVISIONS

On the basis of the above results from the EBS and other environmental studies and in consideration of the intended use of the property, certain terms and conditions are required for

the proposed transfer. The terms and conditions are set forth in the attached Environmental Protection Provisions (Attachment 1) and will be included in the deed.

8.0 FINDING OF SUITABILITY TO TRANSFER

Based on the above information, I have concluded that all DOD requirements to reach a finding of suitability to transfer have been met, subject to the terms and conditions set forth in the attached Environmental Protection Provisions (Attachment 1). All removal or remedial actions necessary to protect human health and the environment have been taken and the property is transferable under CERCLA Section (§) 120(h) (3). In addition to the Environmental Protection Provisions, the deed/easement for this transaction will also contain:

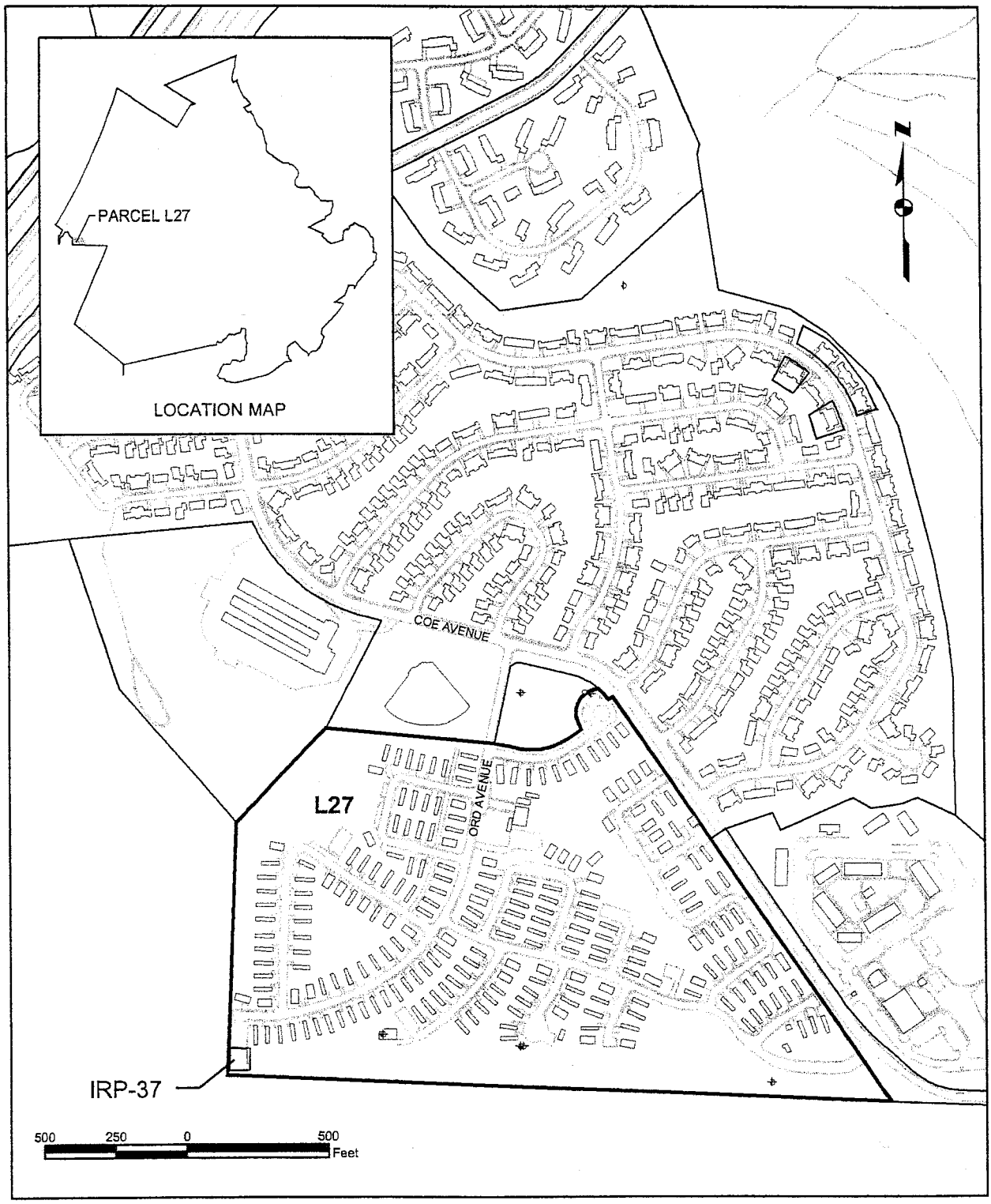
- The covenant under CERCLA § 120 (h)(3)(A)(ii)(I) warranting that all remedial action under CERCLA necessary to protect human health and the environment with respect to hazardous substances remaining on the property has been taken before the date of transfer.
- The covenant under CERCLA § 120(h)(3)(A)(ii)(II) warranting that any remedial action under CERCLA found to be necessary after the date of transfer with respect to such hazardous substances remaining on the property shall be conducted by the United States.
- The clause as required by CERCLA § 120(h)(3)(A)(iii) granting the United States access to the property in any case in which remedial action or corrective action is found to be necessary after the date of transfer.

JAN 0 9 2003

Thomas E Lederle

THOMAS E. LEDERLE
Director, Base Realignment and Closure
Hampton Field Office

Figure(s)/Plate(s)



L27.mxd - 11/5/02

Harding ESE
A MACTEC COMPANY

Location Map - Brostrom Park Parcel L27
Brostrom FOST
Former Fort Ord
Monterey, California

PLATE
1

DRAWN	JOB NUMBER	APPROVED	DATE	REVISED DATE
TJH	52703 00132		10/01	

Tables

Table 1 – Description of Property

Property Description	Parcel Designation	Condition Category*	Remedial Action
52 acres. Property is developed and includes a mobile home park owned by RINC Diversity, the recipient; these improvements were not constructed or maintained by the Army.	Parcel L27 (Previously identified as Parcels 49 & 135 in the CERFA Report of 1994)	3	IRP Site 37. No remedial action required. Soil samples were collected within the maintenance area. Site-related chemicals (hydrocarbons and metals) were detected, but at concentrations that did not require a remedial response. A screening risk evaluation (SRE) was conducted for the site utilizing the detected chemicals of concern. The results of the SRE indicated that the risk to human health and the environment at this site was acceptably low and no further action was recommended. A no action site is a site where all removal or remedial actions necessary to protect human health and the environment have been taken and the property is transferable under CERCLA.

*Environmental Condition of Property Categories

Category 3: Areas where release, disposal, and/or migration of hazardous substances has occurred, but at concentrations that do not require a removal or remedial response.

ATTACHMENT 1

ENVIRONMENTAL PROTECTION PROVISIONS

ENVIRONMENTAL PROTECTION PROVISIONS

The following conditions, restrictions, and notification will be placed in the deed to ensure protection of human health and the environment and to preclude any interference with ongoing or completed remediation activities at the Former Fort Ord.

1. The person or entity to whom the property is transferred shall neither transfer the property, lease the property, nor grant any interest, privilege, or license whatsoever in connection with the property without the inclusion of the environmental protection provisions contained herein, and shall require the inclusion of such environmental protection provisions in all further deeds, transfers, leases, or grant of any interest, privilege, or license.

2. The United States acknowledges that former Fort Ord has been identified as a National Priority List (NPL) Site under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) of 1980, as amended. The grantee acknowledges that the United States has provided it with a copy of the Fort Ord Federal Facility Agreement (FFA) entered into by the United States Environmental Protection Agency (EPA) Region IX, the State of California, and the Department of the Army, effective on February 1990, and will provide the grantee with a copy of any amendments thereto. The person or entity to whom the property is transferred agrees that should any conflict arise between the terms of the FFA as they presently exist or may be amended, and the provisions of this property transfer, the terms of the FFA will take precedence. The person or entity to whom the property is transferred further agrees that notwithstanding any other provisions of the property transfer, the United States assumes no liability to the person or entity to whom the property is transferred, should implementation of the FFA interfere with their use of the property. The person or entity to whom the property is transferred, or any subsequent transferee, shall have no claim on account of any such interference against the United States or any officer, agent, employee or contractor thereof.

3. The Government, the EPA, and the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC), and their officers, agents, employees, contractors, and subcontractors will have the right, upon reasonable notice to the grantee, to enter upon the transferred premises in any case in which a response or corrective action is found to be necessary, after the date of transfer of the property, or such access is necessary to carry out a response action or corrective action on adjoining property, including, without limitation, the following purpose:

   (a) To conduct investigations and surveys, including where necessary, drilling, soil and water sampling, test-pitting, and other activities related to the Fort Ord Installation Restoration Program (IRP), Ordnance and Explosives (OE) program, or FFA;

   (b) To inspect field activities of the Army and its contractors and subcontractors with regards to implementing the Fort Ord IRP, OE program, or FFA;

(c) To conduct any test or survey related to the implementation of the IRP by the EPA or the DTSC relating to the implementation of the FFA or environmental conditions at Fort Ord or to verify any data submitted to the EPA or the DTSC by the Government relating to such conditions;

(d) To construct, operate, maintain or undertake any other investigation, corrective measure, response, or remedial action as required or necessary under any Fort Ord FFA, Record of Decision (ROD), IRP or OE program requirement, including, but not limited to monitoring wells, pumping wells, and treatment facilities.

4. The Army shall not incur liability for additional response action or corrective action found to be necessary after the date of transfer in any case in which the person or entity to whom the property is transferred, or other non-Army entities, is identified as the party responsible for contamination of the property.

5. The Department of the Army has undertaken careful environmental study of the property and concluded, to which the grantee agrees, that the property is suitable for unrestricted use. In order to protect human health and the environment and further the common environmental objectives and land use plans of the United States, State of California and grantee, the covenants and restrictions shall be included to assure the use of the property is consistent with the environmental condition of the property. The restrictions and covenants benefit the lands retained by the grantor and the public welfare generally and are consistent with state and federal environmental statutes.

6. NOTICE OF THE POTENTIAL FOR THE PRESENCE OF ORDNANCE AND EXPLOSIVES

Ordnance and explosives (OE) investigations indicate that it is not likely that OE are located within the property. However, there is a potential for OE to be present because OE were used throughout the history of Fort Ord. In the event the grantee, its successors, and assigns, should discover any ordnance on the property, they shall not attempt to remove or destroy it, but shall immediately complete Section A of the Ordnance and Explosives Incident Reporting Form, fax the form to the Presidio of Monterey Police Department at (831) 242-7740 (telephone number as of the date of transfer) and notify the Presidio of Monterey Police Department via telephone at (831) 242-7851 (telephone number as of the date of transfer) and competent grantor or grantor-designated explosive ordnance personnel will promptly be dispatched to dispose of such ordnance at no expense to the grantee. The grantee hereby acknowledges receipt of the "Ordnance and Explosives Safety Alert" pamphlet and the Ordnance and Explosives Incident Reporting Form.

In addition, the Army offers OE familiarization training to anyone conducting ground disturbance activities (digging holes, excavating trenches, repairing underground utilities, etc.) at the former Ford Ord. The OE Safety Specialist conducts a thirty-minute training session. This training session includes a lecture on what OE might be found, the procedure to follow if something is found and "Safety Alert" brochures are also distributed. To

schedule this training, please contact the Directorate of Environmental and Natural Resources at (831) 242-7919 (telephone number as of date of transfer).

The grantor reserves the right to conduct any remedial action and/or investigation that the Army is responsible for, as required or necessary as a result of the ongoing OE Remedial Investigation/Feasibility Study.

ATTACHMENT 2

UNRESOLVED COMMENTS AND RESPONSE TO COMMENTS

OTH-208

Department of Toxic Substances Co

Edwin F. Lowry, Director
8800 Cal Center Drive
Sacramento, California 95826-3200

Winston H. Hickox
Agency Secretary
California Environmental
Protection Agency

Gray Davis
Governor

November 8, 2002

Mr. James M. Willison
Director, Environmental and Natural
Resources Management
Department of the Army
Presidio of Monterey, California 93944-5006

NON-CONCURRENCE ON THE BROSTROM FINDING OF SUITABILITY FOR TRANSFER

Dear Mr. Willison:

The Department of Toxic Substances Control (DTSC) understands that the Department of the Army (Army) intends to issue a final Finding of Suitability to Transfer (FOST) on the Brostrom property very soon. DTSC understands that the U.S. Environmental Protection Agency (USEPA) is ready to concur with this FOST. The draft FOST was issued on October 22, 2002. DTSC does not concur with this FOST.

DTSC does not have any remaining technical concerns with this transfer. However, as we have discussed over the past several months, for any transfer of land at Fort Ord, the Army must revise its Part A application in order to define the new boundaries of the facility and terminate corrective action for the property being transferred. For interim status requirements, please refer to California Code of Regulations title 22, sections 66270.70(a), 66270.10(g)(1)(B), and 66270.72. For termination of corrective action, DTSC is using guidance provided by U.S. EPA in the February 27, 2002, Federal Register notice entitled, "Announcement of Availability and Request for Comment on Completion of Corrective Action Activities at RCRA Facilities' Guidance." Copies of the California Code of Regulations sections and the Federal Register notice are enclosed.

Failure by the Army to perform these tasks prior to property transfer may result in the following:

1. Possible penalties imposed upon the Army for failure to update the Part A application for changes during interim status.

2. Transfer of any and all applicable State and federal Resource Conservation and Recovery Act (RCRA) liabilities and responsibilities to the new property owner. The new owner, Mr. Ray Roeder, is notified of this action by copy of this letter.

Please include this letter as an unresolved comment and attach it to the final FOST.

DTSC remains willing to work with you and the future owner of the property to resolve this issue. If you would like to discuss this issue further, please call me at (916) 255-3676.

Sincerely,

Daniel T. Ward

Daniel T. Ward
Chief, Base Closure Unit
Office of Military Facilities

Enclosures

cc: Mr. Ray Roeder
5100 Coe Avenue
Seaside, California 93955

Mr. Rich Seraydarian
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, California 94105

Mr. Mohinder Sandhu
Standardized Permits and Corrective Action Branch
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826

Ms. Nancy Long
Office of Legal Counsel
Department of Toxic Substances Control
1001 "I" Street
Sacramento, California 95814

§ 66270.69. Standardized Permit.

(a) Notwithstanding any other provisions of this division, offsite treatment or storage activities, other than those specified in paragraphs (1) through (3) of this section, that do not require a permit under the federal act may be eligible for a standardized permit pursuant to section 25201.6 of the Health and Safety Code. The following are not eligible for a standardized permit:

(1) used oil recycling activities as defined in Health and Safety Code section 25250.1;

(2) recycling or reclamation of federally regulated solvents identified by EPA hazardous waste numbers F001, F002, F003, F004 and F005 pursuant to 40 CFR section 261.31.

(3) units that are not authorized to operate pursuant to Title 22, California Code of Regulations, Division 4.5, Chapter 14 or Chapter 15 that engage in incineration, thermal destruction or land disposal activities.

(b) Each hazardous waste treatment or storage facility conducting activities pursuant to a standardized permit shall be designated as a Series A, Series B or Series C standardized permit facility as defined in Health and Safety Code section 25201.6.

(c) A facility that performs activities that meet the criteria for more than one of the standardized permit series shall be classified as the highest of the applicable series.

NOTE: Authority cited: Sections 25150, 25201.6, 58004 and 58012, Health and Safety Code. Reference: Sections 25150, 25201.6 and 25250.1, Health and Safety Code.

HISTORY

1. Renumbering of former section 66270.66 to new section 66270.69 and amendment of NOTE filed 7-1-96; operative 7-31-96 (Register 96, No. 27).
2. Change without regulatory effect repealing subsection (d) filed 4-4-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 14).

Article 7. Interim Status

§ 66270.70. Qualifying for Interim Status.

(a) Any person who owns or operates an "existing HWM facility" or a facility in existence on the effective date of statutory or regulatory amendments under the Act that render the facility subject to the requirement to have a permit shall have interim status and shall be treated as having been issued a permit to the extent the owner or operator has:

(1) complied with the requirements of Health and Safety Code section 25153.6 pertaining to notification of hazardous waste activity. Existing facilities not required to file a notification under Health and Safety Code section 25153.6 shall qualify for interim status by meeting subsection (a)(2) of this section;

(2) complied with the requirements of section 66270.10 governing a submission of Part A applications.

(b) When the Department determines on examination or reexamination of a Part A application that it fails to meet the standards of these regulations, it shall notify the owner or operator in writing that the application is deficient, and specify the grounds for the Department's belief that the application is deficient. The Department may also notify the owner or operator that the owner or operator is therefore not entitled to interim status. The owner or operator will then be subject to enforcement for operating without a permit.

(c) Subsection (a) of this section shall not apply to any facility which has been previously denied a permit or if authority to operate the facility has been previously terminated.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159 and 25159.5, Health and Safety Code; 40 CFR Section 270.70.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§ 66270.71. Operation During Interim Status.

(a) During the interim status period the facility shall not:

(1) transfer, treat, store, or dispose of hazardous waste not specified in Part A of the permit application;

(2) employ processes not specified in Part A of the permit application; or

(3) exceed the design capacities specified in Part A of the. permit application.

(b) Interim status standards. During interim status, owners or operators shall comply with the interim status standards in chapter 15 of this division.

NOTE: Authority cited: Sections 208, 25150 and 25159, Health and Safety Code. Reference: Sections 25159, 25159.5 and 25200.5, Health and Safety Code; 40 CFR Section 270.71.

HISTORY

1. New section filed 5-24-91; operative 7-1-91 (Register 91, No. 22).

§ 66270.72. Changes During Interim Status.

(a) Except as provided in subsection (b) of this section, the owner or operator of an interim status facility may make the following changes at a facility:

(1) transfer, treatment, storage, or disposal of new hazardous wastes not previously identified in Part A of the permit application (and, in the case of newly listed or identified wastes, addition of the units being used to transfer, treat, store or dispose of the hazardous wastes on the effective date of the listing or identification) if the owner or operator submits and receives Department approval of a revised Part A permit application prior to such transfer, treatment, storage or disposal;

(2) increases in the design capacity of processes used at the facility if the owner or operator submits a revised Part A permit application prior to such a change (along with a justification explaining the need for the change) and the Department approves the change because:

(A) there is a lack of available transfer, treatment, storage, or disposal capacity at other hazardous waste management facilities, or

(B) the change is necessary to comply with a Federal, State, or local requirement;

(3) changes in the processes for the transfer, treatment, storage, or disposal of hazardous waste or addition of processes if the owner or operator submits a revised Part A permit application prior to such a change (along with a justification explaining the need for the change) and the Department approves the change because:

(A) the change is necessary to prevent a threat to human health and the environment because of an emergency situation, or

(B) the change is necessary to comply with a Federal, State, or local requirement;

(4) changes in the ownership or operational control of a facility if the new owner or operator submits a revised Part A permit application no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of chapter 15, article 8 (Financial Requirements) of this division, until the new owner or operator has demonstrated to the Department compliance with the requirements of that article. The new owner or operator shall demonstrate compliance with article 8 requirements within six months of the date of the change in the ownership or operational control of the facility. Upon demonstration to the Department by the new owner or operator of compliance with article 8, the Department shall notify the old owner or operator in writing that it no longer needs to comply with article 8 as of the date of demonstration. All other interim status duties are transferred effective immediately upon the date of the change in ownership or operational control of the facility;

(5) changes made in accordance with an interim status corrective action order issued by the USEPA under 42 U.S.C. section 6928(h) or other Federal authority, by the Department under article 8, commencing with section 25180, of chapter 6.5 of division 20 of the Health and Safety Code, or by a court in a judicial action brought by the USEPA or by the Department. Changes under this subsection are limited to the transfer, treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility.

(6) Addition of newly regulated units for the treatment, storage, or disposal of hazardous waste if the owner or operator submits a revised Part A permit application on or before the date on which the unit becomes subject to the new requirements.

[The next page is 758.301.]

(b) Except as specifically allowed under this subsection, changes listed under subsection (a) of this section shall not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds 50 percent of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

(1) changes made solely for the purposes of complying with the requirements of section 66265.193 for tanks and ancillary equipment;

(2) if necessary to comply with Federal, State, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of 42 U.S.C. section 6924(o);

(3) changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been transferred, treated, stored, or disposed of at the facility prior to the effective date of the rule establishing the new listing or identification;

(4) changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan;

(5) changes necessary to comply with an interim status corrective action order issued by the USEPA under 42 U.S.C. section 6928(h) or other Federal authority, by the Department under article 8, commencing with section 25180, of chapter 6.5 of division 20 of the Health and Safety Code, or by a court in a judicial proceeding brought by the USEPA or the Department, provided that such changes are limited to transfer, treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility;

(6) changes to transfer, treat or store, in tanks, containers, or containment buildings, hazardous wastes subject to land disposal restrictions imposed by chapter 18 of this division or 42 U.S.C. section 6924, provided that such changes are made solely for the purpose of complying with chapter 18 of this division or 42 U.S.C. section 6924.

(7) Addition of newly regulated units under subsection (a)(6) of this section.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 25179.6, 58004 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5 and 58012, Health and Safety Code; 40 CFR Section 270.72.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Amendment of subsection (b)(6) and NOTE filed 10–24–94 as an emergency; operative 10–24–94 (Register 94, No. 43). A Certificate of Compliance must be transmitted to OAL by 2–20–95 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (b)(6) and NOTE refiled 2–21–95 as an emergency; operative 2–21–95 (Register 95, No. 8). A Certificate of Compliance must be transmitted to OAL by 6–21–95 or emergency language will be repealed by operation of law on the following day.
4. Amendment of subsection (b)(6) and NOTE refiled 6–19–95 as an emergency; operative 6–19–95 (Register 95, No. 25). A Certificate of Compliance must be transmitted to OAL by 10–17–95 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsection (b)(6) and NOTE refiled 10–16–95 as an emergency; operative 10–16–95 (Register 95, No. 42). A Certificate of Compliance must be transmitted to OAL by 2–13–96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 10–24–94 order transmitted to OAL 12–15–95 and filed 1–31–96 (Register 96, No. 5).
7. New subsections (a)(6) and (b)(7) and amendment of NOTE filed 7–1–96; operative 7–31–96 (Register 96, No. 27).

§ 66270.73. Termination of Interim Status.

Interim status terminates when:

(a) final administrative disposition of a permit application is made; or

(b) interim status

is terminated as provided in section 66270.10(e)(3);

(c) for owners or operators of each land disposal facility which has been granted interim status prior to November 8, 1984, on November 8, 1985, unless one of the following applies:

(1) part A of the facility's permit application specifies that only non–RCRA hazardous waste will be disposed of at the facility; or

(2) the owner or operator of the facility does both of the following:

(A) submits a Part B application for a permit for such facility prior to that date; and

(B) certifies that such facility is in compliance with all applicable ground–water monitoring and financial responsibility requirements;

(d) for owners or operators of each land disposal facility which is in existence on the effective date of statutory or regulatory amendments under the Health and Safety Code that render the facility subject to the requirement to have a permit and which is granted interim status, twelve months after the date on which the facility first becomes subject to such permit requirement unless one of the following applies:

(1) part A of the facility's permit application specifies that only non–RCRA hazardous waste will be disposed of at the facility; or

(2) the owner or operator of the facility does both of the following:

(A) submits a Part B application for a permit for such facility before the date 12 months after the date on which the facility first becomes subject to such permit requirement; and

(B) certifies that such facility is in compliance with all applicable ground water monitoring and financial responsibility requirements;

(e) for owners or operators of any land disposal unit that is granted authority to operate under section 66270.72(a)(1), (2) or (3), on the date 12 months after the effective date of such requirement, unless one of the following applies:

(1) Part A of the facility's permit application specifies that only non–RCRA hazardous waste will be disposed of at the facility; or

(2) the owner or operator certifies that such unit is in compliance with all applicable ground water monitoring and financial responsibility requirements;

(f) for owners or operators of each incinerator facility which has achieved interim status prior to November 8, 1984, interim status terminates on November 8, 1989, unless one of the following applies:

(1) Part A of the facility's permit application specifies that only non–RCRA hazardous waste will be incinerated at the facility; or

(2) the owner or operator of the facility submits a Part B application for a permit for an incinerator facility by November 8, 1986;

(g) for owners or operators of any facility (other than a land disposal or an incinerator facility) which has achieved interim status prior to November 8, 1984, interim status terminates on November 8, 1992, unless one of the following applies:

(1) Part A of the facility's permit application specifies that only non–RCRA hazardous wastes will be transferred, treated, or stored at the facility; or

(2) the owner or operator of the facility submits a Part B application for a permit for the facility by November 8, 1988.

NOTE: Authority cited: Sections 25150, 25159, 25159.5, 58004 and 58012, Health and Safety Code. Reference: Sections 25159, 25159.5, 25200.5 and 25200.7, Health and Safety Code and 40 CFR Section 270.73.

HISTORY

1. New section filed 5–24–91; operative 7–1–91 (Register 91, No. 22).
2. Editorial correction restoring appropriate hierarchical structure (Register 93, No. 20).
3. Amendment of subsections (f) and (g) and NOTE filed 7–1–96; operative 7–31–96 (Register 96, No. 27).

Appendix I

Classification of Permit Modifications

Modifications	*Class*
A. General Permit Provisions	
1. Administrative and informational changes.	1
2. Correction of typographical errors.	1
3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls).	1
4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:	
a. To provide for more frequent monitoring, reporting, sampling, or maintenance.	1
b. Other changes.	2

Federal Register

Wednesday,
February 27, 2002

Part VIII

Environmental Protection Agency

Announcement of Availability and Request for Comment on "Completion of Corrective Action Activities at RCRA Facilities" Guidance; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7150–4]

Announcement of Availability and Request for Comment on "Completion of Corrective Action Activities at RCRA Facilities" Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide the "Completion of Corrective Action Activities at RCRA Facilities" draft guidance memorandum for public comment. By inviting comment, the Agency hopes to involve the States, the regulated community, members of the public, and other stakeholders in the development of this guidance.

DATES: Comments may be submitted until April 29, 2002.

ADDRESSES: Commenters should send an original and two copies of their comments, referencing docket number F–2002–CC2A–FFFFF. If using regular U.S. Postal Service mail to: RCRA Docket Information Center, U.S. Environmental Protection Agency Headquarters (EPA HQ), Office of Solid Waste, Ariel Rios Building (5305G), 1200 Pennsylvania Avenue NW, Washington, DC 20460–0002. If using special delivery such as overnight express service send to: RCRA Docket Information Center (RIC), Crystal Gateway I, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Hand deliveries of comments should be made to the Arlington, VA address above. Comments also may be submitted electronically through the internet to: *rcra-docket@epa.gov*. Comments in electronic format must also reference the docket number F–2002–CC2A–FFFFF. Electronic comments should be submitted as an ASCII file and should avoid the use of special characters and any form of encryption.

Confidential business information (CBI) should not be submitted electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste, U.S. EPA, Ariel Rios Building (5303W), 1200 Pennsylvania Avenue NW, Washington DC 20460–0002.

Any public comment received by the Agency and supporting materials will be available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, you should make an appointment by calling 703–603–9230. A maximum of 100 pages may be copied from any regulatory docket at no charge. Additional copies cost $0.15 per page. The index and some supporting materials are available electronically. *See* the **SUPPLEMENTARY INFORMATION** section of this **Federal Register** notice for information on accessing the index and these supporting materials.

The Agency is posting this document on the Corrective Action website: *http://www.epa.gov/correctiveaction*. If you would like to receive a hard copy, please call the RCRA Hotline at 800–424–0346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323.

For more detailed information on specific aspects of the draft guidance document, contact Barbara Foster, Office of Solid Waste 5303W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (703–308–7057), (*foster.barbara@epa.gov*).

SUPPLEMENTARY INFORMATION: The draft guidance document, which is published below, also will be available on the Internet at: *http://www.epa.gov/correctiveaction*. When issued in final form, this guidance will be issued as a memorandum from EPA headquarters to the Regional offices, and it is published below in that format for comment.

EPA developed this memorandum to identify two situations during the RCRA corrective action process where the Agency believes it generally is appropriate to make completion determinations, and to provide guidance to EPA and State regulators in making those determinations. By recognizing completion of corrective action activities, the agency can inform the owner or operator that RCRA corrective action activities are complete at the facility. This information can, among other things, promote transfer of ownership of the property and, in some cases, can help return previously used commercial and industrial properties, or "brownfields," to productive use.

On October 2, 2001, EPA published a notice in the **Federal Register** requesting comment on a draft guidance document entitled "Recognizing Completion of Corrective Action Activities at RCRA Facilities" (*see* 66 FR 50195). Comments received by the Agency on that draft guidance largely supported the content, but expressed concern that the Agency needed to expand the scope of the guidance, for example, to address when and under what circumstances such decisions should be made. The draft memorandum published below addresses these comments by combining the content of the October 2 draft guidance with new guidance concerning additional issues related to completion of corrective action. It is important to note, however, that this draft guidance does not address all issues suggested by commenters. For example, this guidance does not include detailed discussion of institutional controls or financial assurance. The Agency will continue to look at these and other issues surrounding completion of corrective action.

In this **Federal Register** notice, the Agency again solicits comment on issues related to completion of corrective action. The Agency requests comment on the guidance in general and, in addition, requests comment on specific issues. The specific issues on which the Agency solicits comment are identified in footnotes throughout the guidance document, and are as follows:

1. Terminology the Agency might use to describe the Completion of Corrective Action Determinations (*see* footnote 12 and related discussion).

2. Mechanisms, other than permits and orders, that might be used to implement institutional controls following a Corrective Action Complete with Controls decision and under what circumstances those mechanisms would provide enough certainty with respect to continued compliance with required controls to justify elimination of the permit or order (*see* footnote 13 and related discussion).

3. Situations where a permit or order could be eliminated because no additional action is required on the part of the regulatory agency or facility owner or operator to implement the remaining controls (*see* footnote 14 and related discussion).

The official record for this notice will be kept in paper form. Accordingly, we will transfer all comment and input received electronically into paper form and place them in the official record, which also will include all comments submitted directly in writing. The official record is the paper record maintained at the RCRA Information Center. EPA will review and consider all comments.

Dated: February 12, 2002.

Elizabeth Cotsworth,

Director, Office of Solid Waste.

Memorandum

Subject: Guidance on Completion of Corrective Action Activities at RCRA Facilities

From: OSWER; OECA

To: RCRA Division Directors, Regions I–X; Enforcement Division Directors, Regions I–X; Regional Counsel

Introduction

This memorandum provides guidance to the Regions and authorized States on acknowledging completion of corrective action activities at RCRA treatment, storage, and disposal facilities. It describes two types of completion determinations—"Corrective Action Complete" and "Corrective Action Complete with Controls." It provides guidance on when each type of completion determination should be made. It also discusses completion determinations for less than an entire facility. Finally, it provides guidance on the procedures EPA and the authorized States should follow when making completion determinations.[1]

Background

EPA recognizes the importance of an official acknowledgment that corrective action activities have been completed. An official completion determination, made through appropriate procedures, benefits the owner or operator of a facility, the regulatory agency implementing the corrective action program, and the public. Official recognition that corrective action activities are complete can, among other things, promote transfer of ownership of the property and, in some cases, can help return previously used commercial and industrial properties, or "brownfields," to productive use. Further, once the regulatory agency implementing corrective action makes a determination that corrective action activities are complete, it can modify its workload universes, and focus agency resources on other facilities. Finally, because completion determinations should be made through a process that provides adequate public involvement, the process of making a formal completion determination assures the public an opportunity to review and comment on the cleanup activities, and to pursue available administrative and judicial challenges to the agency's decision.[2]

Under 40 CFR section 264.101, owners and operators seeking a permit for the treatment, storage or disposal of hazardous waste must conduct corrective action "as necessary to protect human health and the environment."[3] The ultimate goal of corrective action is to satisfy the "protection of human health and the environment" standard. Thus, a determination by EPA that corrective action activities are complete is, in effect, an announcement that "protection of human health and the environment" has been achieved.[4]

With experience, the Agency has discovered that the universe of facilities subject to corrective action requirements includes facilities that vary widely in complexity, extent of contamination, and level of risk presented at the site. To address this wide variation among corrective action facilities, the Agency has developed multiple approaches to achieving "protection of human health and the environment."

When conducting corrective action, however, one of the key distinctions among remedies is the extent to which they rely upon controls (engineering and/or institutional[5]) to ensure that they remain protective. In some cases, the Agency selects a remedy that requires treatment and/or removal of waste and all contaminated media to levels that return the facility to unrestricted use.[6] At these facilities, no additional oversight or activity is required following cleanup. When implementation of the remedy is completed successfully, protection of human health and the environment is achieved.

In other cases, the Agency selects a remedy that allows contamination to remain on site, but imposes ongoing obligations concerning, for example, operation and maintenance of physical waste controls (*e.g.*, a cap), and compliance with institutional controls (e.g., an industrial land use restriction). Thus, in these situations, the goal of "protection of human health and the environment" often is achieved by imposing a remedy that allows some contamination to remain in place, but requires controls (engineering and/or institutional) at the facility to limit exposure and subsequent release of contamination that remains following cleanup. At such facilities, successful implementation of the remedy alone is not enough to ensure protection of human health and the environment. Following remediation, maintenance of controls and continued corrective action related activities (such as monitoring) at such facilities are fundamental elements of meeting the standard of "protection of human health and the environment."[7]

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[1] This document provides guidance to EPA Regional and State corrective action authorities, as well as to facility owner or operators and the general public on how EPA intends to exercise its discretion in implementing the statutory and regulatory provisions that concern RCRA corrective action.

The RCRA statutory provisions and EPA regulations described in this document contain legally binding requirements. This document does not substitute for those provisions or regulations, nor is it a regulation itself. Thus, it does not impose legally-binding requirements on EPA, States, or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA and State decisionmakers retain the discretion to adopt approaches on a case-by-case basis that differ from this guidance where appropriate. Any decisions regarding a particular facility will be made based on the applicable statutes and regulations. Therefore, interested parties are free to raise questions and objections about the substance of this guidance, appropriateness of the application of this guidance to a particular situation. EPA will, and States should, consider whether or not the recommendations or interpretations in the guidance are appropriate in that situation. EPA welcomes public comment on this document at any time, and will consider those comments in any future revision of this guidance document.

[2] The Agency anticipates that at facilities where meaningful public involvement begins early in the corrective action process, challenges are less likely at the end of the process.

[3] Likewise, section 3008(h) establishes a standard of "protection of human health and the environment" for corrective action imposed through orders. The policies established in this guidance are equally applicable to facilities that address facility-wide corrective action through a section 3008(h) order, rather than a permit.

[4] Note that for facilities that continue to require a permit for the treatment, storage, or disposal of hazardous waste, a completion determination in no way affects the ongoing requirement to conduct corrective action for any future releases at the facility.

[5] EPA has defined institutional controls as "non-engineered instruments such as administrative and/or legal controls that minimize the potential for human exposure to contamination by limiting land or resource use." They are almost always used in conjunction with, or as a supplement to, other measures such as waste treatment or containment. There are four general categories of institutional controls: governmental controls; proprietary controls; enforcement tools; and informational devices. (See Fact Sheet entitled "Institutional Controls: A Site Managers Guide to Identifying, Evaluating, and Selecting Institutional Controls at Superfund and RCRA Corrective Action Cleanups," September, 2000, OSWER Directive 9355.0–74FS–P).

[6] "Unrestricted use" refers to a walk-away situation, where no further activity or controls are necessary to protect human health and the environment at the site. Generally, a cleanup of soil to residential standards and of groundwater to drinking water standards would be an example of an unrestricted use scenario. By comparison, a cleanup of soil to industrial soil levels and/or groundwater to levels in excess of drinking water standards usually would not be an unrestricted use scenario. Under both scenarios, the Agency does not anticipate having to impose additional corrective action requirements because the remedy is protective of human health and the environment. The difference is that, under the second scenario, protection of human health and the environment is dependent on the maintenance of the remedy, including institutional controls.

[7] It should be noted that, at these facilities, cleanup to unrestricted use levels and a Corrective

Continued

An example of a situation where the Agency typically chooses a remedy that relies on controls is a facility for which the reasonably foreseeable use is industrial.[8] At those facilities, the Agency may offer the facility the option to achieve protection of human health and the environment by selecting a remedy that allows higher levels of contamination to remain at the site, but requires the use of other controls to prevent unanticipated exposure. As described above, protection of human health and the environment at the facility typically is dependent on maintenance of controls.

Types of Completion Determinations

As was discussed above, a determination by EPA that corrective action activities are complete is a statement by the Agency that protection of human health and the environment has been achieved at a facility. As also was discussed above, the Agency takes different approaches to achieving protection of human health and the environment at facilities, depending on the site-specific circumstances. Completion determinations benefit the owner or operator, the community, and the regulatory agency. Therefore, EPA recommends that regulators implementing the corrective action program make completion determinations where corrective action activities have resulted in protection of human health and the environment at a facility. EPA plans to recognize two types of completion determinations, when properly made by the Agency or an authorized State, using appropriate procedures—Corrective Action Complete, and Corrective Action Complete with Controls. These two types of completion determinations, and recommended procedures for making them, are described below.

1. Corrective Action Complete Determination

EPA or the authorized State should make a determination that Corrective Action is Complete where the facility owner or operator has satisfied all obligations under sections 3004(u) and (v).[9] This determination generally indicates that either there was no need for corrective action at the facility or, where corrective action was necessary, the remedy has been implemented successfully,[10] and no further activity or controls are necessary to protect human health and the environment.

In a situation where EPA or the authorized State makes a determination that Corrective Action is Complete, no additional activity is required on the part of the regulatory agency or the owner or operator to maintain protection of human health and the environment. No controls are necessary at the facility to maintain protection of human health and the environment. Thus, the corrective action requirements can be eliminated. The facility should be eligible for release from financial assurance, as no funds should be needed in the future for corrective action-related activities. In addition, when there no longer are RCRA-regulated activities at the facility, the regulatory agency should have no concerns associated with transfer of the property, nor any reason to want to be informed of, or take an action regarding, that transfer.[11]

2. Corrective Action Complete with Controls Determination[12]

EPA or the authorized State should make a Corrective Action Complete with Controls determination at a facility where: (1) A full set of corrective measures has been defined; (2) the facility has completed construction and installation of all required remedial actions; (3) site-specific media cleanup objectives have been met, which reflect current and reasonably expected future land use and maximum beneficial groundwater use, and (4) all that remains is performance of required operation and maintenance and monitoring actions, and/or compliance with and implementation of any institutional controls. A Corrective Action Complete with Controls determination provides the owner or operator with recognition that protection of human health has been achieved, and will continue as long as the required operation and maintenance actions are performed, and the institutional controls are maintained. A Corrective Action Complete with Controls determination provides an owner or operator with recognition of the significant progress made at the facility, and of the resulting reduction in risk.

EPA or the authorized State generally should maintain a permit or order at the facility following a Corrective Action Complete with Controls determination. Continuation of the permit or order assures periodic review by the regulatory agency, compliance with any operation and maintenance requirements and institutional controls, and notification to the regulatory agency of transfers of the facility (which will allow opportunity for the agency to assure compliance with corrective action requirements will continue at the site).[13] At facilities where long-term

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Action Complete determination (*see* discussion below) ultimately could be achieved if the owner or operator conducted additional cleanup and returned the facility to unrestricted use, or if the facility otherwise reached that state (e.g., through natural attenuation). At that time, the Agency could discontinue the requirement for controls.

[8] *See* Land Use in the CERCLA Remedy Selection Process, May 25, 1995, OSWER Directive 9355.7–04 for discussion of reasonably foreseeable land use.

[9] Or the owner or operator has completed facility-wide corrective action, as necessary to protect human health and the environment, imposed through a section 3008(h) order.

[10] See (61 FR 19432, at 19453, May 1, 1996), and (55 FR 30798, at 30837, July 27, 1990) for guidance regarding completion of remedy.

[11] In September, 2001, EPA issued a guidance entitled *Handbook of Groundwater Protection and Cleanup Policies for RCRA Corrective Action* (The Groundwater Handbook). Unlike this draft Completion Guidance, which discusses completion of corrective action for all media, the Groundwater Handbook discusses completion of corrective action for groundwater remedies. It recognizes three "phases" of completion for groundwater remedies: (1) Implementing the final remedy, (2) achieving final cleanup goals, and (3) fulfilling all cleanup obligations associated with the contaminated groundwater, including long-term monitoring.

This draft Completion Guidance is not intended to modify the Agency's guidance in the Groundwater Handbook on completion for groundwater remedies—rather, it goes beyond the scope of that guidance in that it addresses additional subjects and adds detail. Under this draft Completion Guidance, a Corrective Action Complete determination would be appropriate when: (1) the third phase of completion of the groundwater remedy has been achieved (as described in the Groundwater Handbook), and no controls are necessary to protect human health and the environment, and (2) the land has been returned to unrestricted use. A description of achieving final cleanup goals can be found in the September 2001 Groundwater Handbook (*See id.*, Section 15).

[12] EPA seeks to use terminology that is precise, clear in meaning and, to the extent possible, consistent with Superfund. EPA welcomes commenters' suggestions on terminology that may be more accurate and/or less cumbersome than "Corrective Action Complete with Controls" to describe this determination.

[13] In the September 2000 Fact Sheet on Institutional Controls (*id.*), EPA identified an array of institutional controls that regulators can use to ensure continued protection of human health and the environment at RCRA corrective action facilities. These include governmental controls, proprietary controls, enforcement and permit tools with institutional control components, and informational devices.

The September 2000 Fact Sheet discusses that, under RCRA, institutional controls typically are imposed through permit conditions, or through orders issued under section 3008(h). The Fact Sheet cautions the regulator that those mechanisms might have shortcomings, and suggests that the regulator conduct a thorough evaluation to ensure its ability to enforce the institutional control through the permit or order mechanism.

The Agency solicits comment on mechanisms, other than permits and orders, in particular, those that are enforceable by EPA and the authorized States, that might be used to implement institutional controls following a Corrective Action Complete with Controls determination. The Agency further solicits comment on whether and under what circumstances such mechanisms (and any other mechanisms that might be used to implement other types of controls, such as operation and maintenance, in the absence of a permit or order)

institutional controls are necessary to ensure continued protection of human health and the environment, the regulator should explore options in addition to a permit or order to maintain the institutional controls. In addition, where necessary, financial assurance should be maintained at facilities following a Corrective Action Complete with Controls determination.

The Agency believes that a situation can arise where the Agency can support elimination of the permit or order at a facility that has not been returned to unrestricted use. This situation would occur at a facility where, following completion of the remedy, controls (engineering and/or institutional) are necessary to assure continued protection of human health and the environment, but those controls do not require action on the part of the regulatory agency or the facility owner or operator. EPA continues to consider permit or order termination in such situations, on a case-by-case basis, as they arise.[14]

It should be noted that, at some point, many facilities that obtain a Corrective Action Complete with Controls determination will be eligible to obtain a Corrective Action Complete determination. For example, the owner or operator at a facility cleaned up to industrial levels could conduct additional cleanup to unrestricted use levels (i.e., a point where monitoring and/or restrictions on use no longer are necessary). At that point it would be appropriate to eliminate the permit or order, and release the facility from financial assurance, so long as there are no additional RCRA activities at the facility subject to permit requirements.

Completion Determinations for a Portion of a Facility

Regulators implementing the corrective action program often develop a number of distinct and separate remedies to address different areas of a facility or different media. This approach may be necessary because a facility may include areas and media that present a range of environmental risks. For example, an industrial facility may include areas that may never have been used for industrial purposes or have never been otherwise contaminated. Alternatively, a facility may have contaminated groundwater undergoing corrective action years after the source of contamination has been removed, and the soil cleaned up to unrestricted use levels.

To ensure that a range of appropriate cleanup and land use options are available to the facility owner or operator, the Agency, where appropriate, on a facility-specific basis, will consider the option to subdivide a facility for purposes of corrective action. In these situations, the Agency will select a cleanup approach based on unrestricted use at parts of the facility, while cleanup at other parts of the facility will be based on the restricted use assumptions and will rely on institutional and/or engineering controls to maintain the protectiveness of the corrective action.

Under this approach, a Corrective Action Complete determination could be made for the portion of a facility returned to unrestricted use. A Corrective Action Complete with Controls determination could be made for the remaining portion of the facility, and the controls generally implemented under a permit or order.

In some situations, following a Corrective Action Complete determination for a portion of a facility, the owner will sell the portion that no longer is subject to corrective action. In these situations, the regulator making the determination should consider the long-term plan for the facility, and the effect of the Corrective Action Complete determination on financial assurance. The regulator should take steps to ensure adequate financial assurance is available to address corrective action obligations at the remainder of the facility.

Procedures for Acknowledging Completion Determinations

EPA will recognize completion determinations made by the appropriate authority (EPA or the authorized State implementing the corrective action program), and made through proper procedures. By following appropriate procedures, the authorized agency can make a sound, well informed completion determination. The proper procedures for acknowledging a completion determination will depend on the status of the facility (permitted or non-permitted), and on whether the determination applies to part of the facility or to the entire facility. The following section describes procedures that the Agency believes generally are appropriate for completion determinations.[15]

1. Corrective Action Complete Determinations for Entire Facility

The regulations in 40 CFR that govern the RCRA program do not provide explicit procedures for recognizing completion of corrective action activities, so regulators have considerable flexibility in developing procedures for making completion determinations. The regulatory agency implementing the corrective action program in that State (i.e., the authorized State program or, in unauthorized States, EPA) should ensure that a completion determination has been made through appropriate procedures. Providing meaningful opportunities for public participation in the decisionmaking process should be a crucial component of a completion determination procedure. The Agency believes that the following, generally, are appropriate procedures for making Completion of Corrective Action determinations.[16]

At permitted facilities, the agency (EPA or the authorized States) should modify the permit to reflect the agency's determination that corrective action is complete. The current regulations in 40 CFR section 270.42 provide procedural requirements for facility requested permit modifications. In most cases, completion of corrective action will be a Class 3 permit modification, and the agency should follow those procedures (or authorized State equivalent), including the procedures for public involvement.[17] In cases where no other permit conditions remain, the permit could be modified not only to reflect the

generally would provide enough certainty, with respect to continued compliance with required controls, to justify elimination of the permit or order.

[14] The Agency solicits comment on this issue, and particularly solicits examples of where there is no need for further action on the part of the Agency or owner/operator to assure that remaining corrective action requirements are satisfied.

[15] EPA notes that, whether at a permitted or non-permitted facility and regardless of the completion determination procedure used, if EPA or the authorized State discovers unreported or misrepresented releases subsequent to the completion determination, then EPA and the authorized State may conclude that additional cleanup is needed. And, of course, if EPA subsequently discovers a situation that may present an imminent and substantial endangerment to human health or the environment, EPA may elect to use its RCRA section 7003 imminent and substantial endangerment authority, or other applicable authorities, to require additional work at the facility.

[16] Of course, if a facility's permit provides otherwise, these procedures would not be appropriate at that facility.

[17] It should be noted that the Agency suggests Class 3 permit modification procedures as a general rule for completion determinations. However, Class 3 procedures might not be necessary or appropriate in all circumstances. For example, where the regulatory agency has made extensive efforts throughout the corrective action process to involve the public and has received little or no interest, and the environmental problems at the facility were limited, more tailored public participation may be appropriate.

completion determination, but also to change the expiration date of the permit to allow earlier permit expiration (see 40 CFR section 270.42 (Appendix I(A)(6)).

At non-permitted facilities where facility-wide corrective action is complete, and all other RCRA obligations at the facility have been satisfied, EPA or the authorized State may acknowledge completion of corrective action by terminating interim status through final administrative disposition of the facility's permit application (*see* 40 CFR section 270.73(a)). To do so, the permitting authority at the facility (EPA or the authorized State or both, depending on the authorization status of the State) should process a final decision following the procedures for permit denial in 40 CFR part 124, or authorized equivalent.[18]

EPA recognizes that referring to this decision as a "permit denial" may be confusing to the public and problematic to the facility when the facility is in compliance, is not seeking a permit, and does not have an active permit "application." Therefore, regulatory agencies may choose to use alternate terminology (e.g., a "no permit necessary determination") to refer to this decision, though it is issued through the permit denial process or authorized equivalent. Regardless of the terminology used, the basis for the decision should be stated clearly, generally that: (1) There are no ongoing treatment, storage, or disposal activities that require a permit; (2) all closure and post-closure requirements applicable at the regulated units have been fulfilled; and (3) all corrective action obligations, including long-term monitoring, have been met.

EPA and the authorized States may develop procedures for recognizing completion of corrective action at non-permitted facilities other than the permit decision process described above. For example, a regulatory agency may have procedures for issuing a notice informing the facility and the public that the facility has met its corrective action obligations, rather than issuing a final permit decision. EPA believes the alternative procedures should provide procedural protections equivalent to, although not necessarily identical to, those required by EPA's 40 CFR part 124 requirements (or the authorized State equivalent). Owners and operators should be aware that informal communications regarding the current status of cleanup activities at the site are not the same as completion determinations.[19]

2. Corrective Action Complete With Controls Determinations

To recognize a determination that Corrective Action with Controls is complete, the procedures that regulatory agencies should follow should be determined by the regulatory status of the facility. For permitted facilities, the regulatory agency should modify the permit to reflect the decision, following the procedures in 40 CFR section 270.42. For non-permitted facilities, the agency should follow alternate procedures (*e.g.*, issue a notice with an opportunity to comment) that provide procedural protections equivalent to, although not necessarily identical to, those required by part 124 requirements (or the authorized State equivalent). Interim status should not be terminated at a RCRA facility where corrective action requirements remain. If corrective action was implemented through an order, the regulator should not eliminate the order until the facility meets all corrective action obligations required under the order.

As was discussed above, at facilities (permitted or non-permitted) where a Corrective Action Complete with Controls determination is made, and long-term institutional controls are necessary to continued protection of human health and the environment, the regulator should explore options in addition to a permit or order to maintain the institutional control.

It should be noted that a facility for which a Corrective Action Complete with Controls determination has been made might later be returned to unrestricted use (*e.g.*, the owner or operator conducts additional cleanup). At that point, the regulatory agency should acknowledge the Corrective Action Complete determination through appropriate procedures.

3. Corrective Action Complete Determinations for Less Than the Entire Facility

As was discussed above, EPA or the authorized State could make a Corrective Action Complete determination for a portion of a facility and a Corrective Action Complete with Controls determination at the remaining portion. Where the regulatory agency determines that a Corrective Action Complete decision is appropriate for a portion of the facility, it should acknowledge that decision using procedures that will not affect portions of the facility where corrective action requirements remain.

For example, at a permitted facility, the agency should acknowledge Corrective Action Completion for a portion of the facility by modifying the permit following the procedures in 40 CFR 270.42. The agency should not eliminate the permit, however, because corrective action responsibilities (and possibly other RCRA responsibilities) remain at the facility.

At non-permitted facilities, the Agency or authorized State should utilize alternate procedures as described above (e.g., issue a notice) to acknowledge the Corrective Action Completion determination for a portion of the facility. Those procedures should provide procedural protections equivalent to, although not necessarily identical to, those required by Part 124 requirements (or the authorized State equivalent). However, interim status generally should not be terminated at a facility where RCRA obligations remain. If the corrective action was implemented through an order, the regulator should not eliminate the order or terminate interim status until the facility satisfies all corrective action obligations.

FOR FURTHER INFORMATION CONTACT: For further information on completion of corrective action, please contact Barbara Foster at 703–308–7057 or Jim McCleary at 202–564–6289.

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[18] Under EPA permit denial procedures in 40 CFR Part 124, EPA must issue, based on the administrative record, a notice of intent to deny the facility permit (*see* 40 CFR section 124.6(b) and 124.9). The notice must be publicly distributed, accompanied by a statement of basis or fact sheet, and there must be an opportunity for public comment, including an opportunity for a public hearing, on EPA's proposed permit denial (*see* 40 CFR sections 124.7, 124.8, 124.10, 124.11, and 124.12). In making a final permit determination, EPA must respond to any public comments (*see* section 124.17). Under 40 CFR section 124.19, final decisions are subject to appeal.

[19] An alternative approach should be used to acknowledge completion of corrective action determinations that apply to less than an entire facility (*see* discussion below). An alternative approach could also acknowledge completion of corrective action at a facility with ongoing RCRA activities. For example, a facility may be conducting post-closure care at a regulated unit under an alternate non-permit authority, as allowed under the October 22, 1998 Post-Closure rule (*see* 63 FR 56710), yet may have completed corrective action at its solid waste management units. In this case, interim status generally should not be terminated because all RCRA obligations have not been met, but it may be appropriate to issue a notice (as described above) recognizing completion of the corrective action obligations to bring finality to that process.

ARMY'S RESPONSE TO COMMENTS

DEPARTMENT OF THE ARMY
Defense Language Institute Foreign Language Center and Presidio of Monterey
Directorate of Environmental and Natural Resources Management
Bldg 4463 Gigling Rd – P.O. Box 5004
Monterey, California 93944-5004

DEC 10 2002

REPLY TO
ATTENTION OF

Directorate of Environmental and Natural
Resources Management

Mr. Daniel T. Ward
Chief, Base Closure Unit
Office of Military Facilities
California Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826-3200

Dear Mr. Ward:

This letter responds to your letter of November 8, 2002, in which you indicated that the State of California "does not have any remaining technical concerns" with the Brostrom Park transfer. We appreciate your review, input, and conclusion that no further technical or substantive concerns remain. Brostrom Park's new owner is anxious to finalize his acquisition of the property and avoid additional costs that would be incurred by further delay.

You further stated, however, that you do not concur with the Finding of Suitability to Transfer and asked that your letter be included as an unresolved comment. Your non-concurrence is based on a failure of Fort Ord to amend its RCRA Part A application to carve out the Brostrom Park parcel from the facility. I am concerned that the rationale put forth for your non-concurrence is based on an administrative requirement that has not been imposed for previous transfers of uncontaminated former Fort Ord properties; is inconsistent with CERCLA; is not required by the cited state regulations or EPA guidance; and is at odds with the Fort Ord Federal Facility Agreement.

What makes this situation even more puzzling is the fact that the Brostrom Park property is not now nor ever was contaminated by the Army, a fact with which the Army, state and federal regulators, and the prospective owner all agree. This site was never identified as the source of a release of a hazardous waste nor an area of concern under RCRA. Your insistence that the Army transfer "any and all RCRA liabilities and responsibilities" is also at odds with the facts and unnecessarily casts doubt on the suitability of the property for transfer, financing and further development.

To date, the Army has transferred over 11,450 acres of former Fort Ord property to twenty-one federal, state, public and private transferees. Until earlier this year, the state had not indicated a need to amend the installation's long-dormant RCRA Part A application. In doing so now, the state cites former Fort Ord's interim status, state regulations and draft EPA guidance, none of which require or justify a delay in transfer. Likewise, the completion of the state's administrative task does not enhance protection of human health or the environment. Finally,

even if the State's administrative requirements were relevant to this situation, the Army has achieved the same result through conduct of a response action entirely onsite and in compliance with the requirements of CERCLA and the National Contingency Plan.

You also indicated that the state regulations and EPA draft guidance require modification of Fort Ord's Part A application in order to define the new boundaries of the "facility." The lack of such modification compels the state to nonconcur in the FOST, even though no technical issues remain. In reviewing the cited regulations, we respectfully disagree that they state such a requirement. Specifically, section 66270.72 discusses only the following changes: new hazardous wastes, increases in design capacity, changes in processes, or changes in the ownership or control of a "facility." The "facility" referred to in this section is the hazardous waste treatment, storage, or disposal (TSD) unit itself, not the areal extent to which corrective action might be applied. The fence-to-fence "facility" is purely a matter of convenience and should not be used to require a procedural modification. Section 66270.72 is therefore not applicable since the Brostrom Park parcel does not contain a TSD "facility" within the meaning of the cited section. Additionally, while section 66270.72 discusses "transfer," transfer is defined as the "loading, unloading, pumping or packaging of hazardous waste," again a reference to specific TSD facility functions. (See 22 CCR 66270.1 and 66260.10). Section 66270.10(g)(1)(B) is also inapplicable since it applies only if a Part B has not been submitted; Fort Ord submitted a Part B several years ago, but ceased further efforts to obtain TSD facility permits when the installation was identified for closure. Because a permit was never issued by the state, Fort Ord has continued in an "Interim Status." It is our understanding that although authority for "permitting" has been delegated to California and many other states, USEPA has not delegated its authority over "interim status" corrective action sites, due, in part, to the fact that USEPA has not issued regulations to implement RCRA Section 3008(h), and therefore, there is no regulatory program to be delegated. Inasmuch as EPA Region IX has concurred in the FOST and not otherwise indicated a need to redefine the facility boundary for corrective action purposes, the Army believes it has satisfied all regulatory requirements to transfer clear, unencumbered title to the prospective owner.

You also cited draft EPA guidance to support your request. Since the guidance is still in draft form, it does not serve as a legal requirement. USEPA specifically noted that the draft guidance "does not impose legally-binding requirements on EPA, States, or the regulated community." (67 Federal Register at 9175). The guidance also notes that "regulations in 40 CFR that govern the RCRA program do not provide explicit procedures for recognizing completion of corrective action activities." (67 Federal Register at 9177). Yet even so, the Army has already complied with the spirit of this draft guidance.

For example, Army has provided substantial notification and documentation of all proposed response actions as part of both the CERCLA and transfer process. Specifically, Army has met the terms of EPA's draft guidance regarding notification and documentation for completing corrective action at a portion of a facility. The guidance, and indeed "corrective action" generally, contemplate that some action was required and accomplished at a particular site. In other words, corrective action does not apply to clean sites, even though contiguous to contaminated TSD facility property.

This guidance goes on to state that for interim status units, the Agency or authorized State "should utilize alternate procedures . . . to acknowledge the Corrective Action Completion determination for a portion of the facility." (67 Federal Register at 9178). The draft guidance provides a great deal of latitude to the regulating agency in the Corrective Action Completion process, indicating that the "alternate procedures," rather than a permit modification process, should provide public notice. The major components of a Corrective Action Completion determination process are: (1) that conditions in the area are protective of human health and the environment and (2) that the public is informed and has an opportunity to participate in the process. The draft guidance states that these "procedures should provide procedural protections equivalent to, although not necessarily identical to, those required by Part 124 requirements (or the authorized State equivalent)." (67 Federal Register at 9177). 40 CFR Part 124 contains requirements for permit modification procedures and in summary, requires an administrative record, public notice through facility mailing lists and newspaper/radio that a draft permit has been prepared, a 45-day public comment period, and the opportunity for a public hearing.

The Army has met these terms by providing thorough, timely, and effective notice to, and opportunities for comment by, state and federal regulators and the public through the CERCLA and transfer documentation process. The most recent example of such notice is this Finding of Suitability to Transfer (FOST), in which USEPA has concurred and no public comments were received during the 30-day public comment period. During the entire CERCLA process, there have been many other opportunities for regulatory agencies and the public to review and comment on various documents that described and analyzed, specifically or in general, the environmental condition of the Brostrom Park parcel. These documents include:

a. Site 37 Trailer Park Maintenance Shop Site Characterization Report (March 18, 1994) (30 day public review period);

b. Fort Ord Comprehensive Environmental Response Facilitation Report (April 1994) including the U.S. Environmental Protection Agency's concurrence letter (April 19, 1994) (30 day public comment period);

c. Superfund Proposed Plan: No Action is Proposed for Selected Areas At Fort Ord, California (August 94) (60 day public comment period);

d. No Action Plug-In Record of Decision (April 1995);

e. Site 37 No Further Action Approval Memo (May, 22 1995) (30 day public comment period);

f. Superfund Proposed Plan: No Action is proposed for Selected Areas at Fort Ord (also called the Track 0 Proposed Plan) (February 2000) (60 day public comment period);

g. Record of Decision No Action Regarding Ordnance-Related Investigation (also called Track 0 ROD) (July 2002); for Track 0 Parcels August 2002) (30 day public comment period). The Brostrom Park Parcel was included in this FOST.

We believe these actions demonstrate that the Army has complied with the spirit and intent of EPA's draft guidance, even if doing so was not otherwise required. Taken together, it is clear that the public has had ample notice and opportunity regarding this transfer, and that the implementation of "alternative procedures" contemplated by the EPA draft guidance has been more than satisfied.

Additionally, the state's request that Army comply with a RCRA-related procedural requirement contradicts the terms of the Fort Ord Federal Facility Agreement (FFA), to which the State of California was a signatory. This FFA was negotiated and signed in 1990 after USEPA placed the former Fort Ord on the National Priority List (NPL). The Fort Ord FFA requires RCRA/CERCLA integration to ensure a consistent approach to cleanup. Under the FFA, Army was authorized to conduct its cleanup in accordance with CERCLA, and all parties – including the state – have agreed that these CERCLA actions would meet any RCRA requirements. This was done to avoid confusion over regulatory terms and to streamline cleanup. The FFA's RCRA/CERCLA integration language is directly on point. (See sections 17 and 26, copies of pertinent provisions attached). Specifically, Section 17.1 states:

> The Parties intend to integrate the Army's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. § 9601 et. Seq.; to satisfy the corrective action requirements of RCRA section 3004(u) and (v), 42 U.S.C. § 6924 (u) and (v), for a RCRA permit, and RCRA section 3008(h), 42 U.S.C. § 6928 (h) for interim status facilities; and to meet or exceed all applicable or relevant and appropriate federal and State laws and regulations, to the extent required by CERCLA section 121, 42 U.S.C. § 9621.

Section 26.1 states in part:

> The provisions of this Section shall be carried out in a manner consistent with, and shall fulfill the intent of, Section 17 (Statutory Compliance – RCRA /CERCLA Integration).

The state's request to apply procedural RCRA requirements is contrary to the long-standing agreement among EPA, Army and the state. Such a unilateral change would introduce regulatory confusion and delay into the current cleanup process – an outcome that the EPA, state, and the Army had specifically sought to avoid when crafting the FFA RCRA/CERCLA integration terms.

Finally, the state's assertions regarding hazardous waste regulation are perplexing because the Brostrom Park parcel at issue was never involved in hazardous waste operations. There are no unresolved RCRA concerns associated with the Brostrom Park parcel, and the trailer park maintenance shop site that was investigated was found not to be a problem. Additionally, USEPA has concurred with the Brostrom FOST. We believe, therefore, that the Army has complied with the substantive requirements of state and federal law, that the Army's implementation of the CERCLA process at the former Fort Ord has satisfied the intent of EPA's draft guidance, and that no RCRA liabilities or responsibilities exist to be transferred to the new owner.

The Army specifically requests that your agency take the initiative to correct the record by notifying Mr. Ray Roeder that your prior correspondence was erroneous in indicating that when he acquires the parcel he will be assuming RCRA liabilities and responsibilities from the Army.

In light of the discussion above, the Army requests reconsideration of the state's position with respect to the Brostrom FOST. The Army's goal has always been to transfer and reuse property as quickly as possible while meeting all legal requirements. We believe the requirements outlined in your letter would add at least six months to any future transfer at the former Fort Ord and derail efforts to redevelop the property. The Army does not intend to delay this particular transfer, as it believes that all requirements have been met through the CERCLA process.

As you know, many parcels have already transferred and many others will be transferred in the future. We believe it is in the public interest for us to reach an agreement as to how the RCRA/CERCLA integration language in the FFA should apply in the context of remediation for ongoing property transfers at the former Fort Ord. We would also welcome an opportunity to meet with appropriate members of DTSC's CERCLA and RCRA staff to explore this issue further. I believe it would be constructive to invite representatives of USEPA Region 9 to participate as well. Please feel free to telephone me to discuss this matter further at your convenience.

Sincerely,

James E. Willison
Director, Environmental and Natural
Resources Management

Enclosures
Sections 17 and 26.1, Fort Ord
Federal Facility Agreement

CF:
John Chesnutt, USEPA
Ray Roeder, RINC
Tom Lederle, Hampton BRAC Office
Nancy Long, DTSC Counsel
Mohinder Sandu, DTSC

propriation be inadequate in any year to meet the total Army CERCLA implementation requirements, the DOD shall employ and the Army shall follow a standardized DOD prioritization process which allocates that year's appropriations in a manner which maximizes the protection of human health and the environment. A standardized DOD prioritization model shall be developed and utilized with the assistance of EPA and the states.

16. EXEMPTIONS

16.1 The obligation of the Army to comply with the provisions of this Agreement may be relieved by:

(a) A Presidential order of exemption issued pursuant to the provisions of CERCLA section 120(j)(1), 42 U.S.C. § 9620(j)(1), or RCRA section 6001, 42 U.S.C. § 6961; or

(b) The order of an appropriate court.

16.2 The State agencies reserve any statutory right they may have to challenge any Presidential Order relieving the Army of its obligations to comply with this Agreement.

17. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

17.1 The Parties intend to integrate the Army's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. §§ 9601 et seq.; to satisfy the corrective action requirements of RCRA section 3004(u) and (v), 42 U.S.C. § 6924(u) and (v), for a RCRA permit, and RCRA section 3008(h), 42 U.S.C. § 6928(h), for interim status facilities; and to meet or exceed all applicable or relevant and appropriate federal and State laws and regulations, to the extent required by CERCLA section 121, 42 U.S.C. § 9621.

17.2 Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement will be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA (i.e., no further corrective action shall be required). The Parties agree that with respect to releases of hazardous waste covered by this Agreement, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to CERCLA section 121, 42 U.S.C. § 9621.

17.3 The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties recognize that ongoing activities outside the scope of this Agreement at Fort Ord may require the issuance of permits under federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to the Army for ongoing hazardous waste management activities at the Site, the issuing party shall reference and incorporate in a permit condition any appropriate provision, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit. The Parties intend that any judicial review of any permit condition which references this Agreement shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

18. PROJECT MANAGERS

18.1 On or before the effective date of this Agreement, EPA, the Army, DHS and RWQCB shall each designate a Project Manager and an alternate (each hereinafter referred to as Project Manager), for the purpose of overseeing the implementation of this Agreement. The Project Managers shall be responsible on a daily basis for assuring proper implementation of the RI/FS and the RD/RA in accordance with the terms of the Agreement. In addition to the formal notice provisions set forth in Section 21 (Notification), to the maximum extent possible, communications among the Army, EPA, DHS and RWQCB on all documents, including reports, comments, and other correspondence concerning the activities performed pursuant to this Agreement, shall be directed through the Project Managers.

18.2 The Army, EPA, DHS and RWQCB may change their respective Project Managers. The other Parties shall be notified orally within five (5) days of the change. Written confirmation shall follow within seven (7) days of the notification.

18.3 The Project Managers shall meet to discuss progress as described in Subsection 7.5. Although the Army has ultimate responsibility for meeting its respective deadlines or schedules, the Project Managers shall assist in this effort by consolidating the review of primary and secondary documents whenever possible, and by scheduling progress meetings to review reports, evaluate the performance of environmental monitoring at the Site, review RI/FS or RD/RA progress, discuss target dates for elements of the RI/FS to be conducted in the following one hundred and eighty (180) days, resolve disputes, and adjust deadlines or schedules. At least one week prior to each scheduled progress meeting, the Army will provide to the other Parties a draft agenda and summary of the status of the work subject to this Agreement. Unless the

26. PUBLIC PARTICIPATION AND COMMUNITY RELATIONS

26.1 The Parties agree that any proposed removal actions and remedial action alternative(s) and plan(s) for remedial action at the Site arising out of this Agreement shall comply with the administrative record and public participation requirements of CERCLA sections 113(k) and 117, 42 U.S.C. §§ 9613(k) and 9617, relevant community relations provisions in the NCP, EPA guidances, and, to the extent they may apply, State statutes and regulations. DHS agrees to inform the Army of all State requirements which it believes pertain to public participation. The provisions of this Section shall be carried out in a manner consistent with, and shall fulfill the intent of, Section 17 (Statutory Compliance - RCRA/CERCLA Integration).

26.2 The Army shall develop and implement a CRP addressing the environmental activities and elements of work undertaken by the Army.

26.3 The Army shall establish and maintain an administrative record at a place, at or near the federal facility, which is freely accessible to the public, which record shall provide the documentation supporting the selection of each response action. The administrative record shall be established and maintained in accordance with relevant provisions in CERCLA, the NCP, and EPA guidances. A copy of each document placed in the administrative record, not already provided, will be provided by the Army to the other Parties. The administrative record developed by the Army shall be updated and new documents supplied to the other Parties on at least a quarterly basis. An index of documents in the administrative record will accompany each update of the administrative record.

26.4 Except in case of an emergency, any Party issuing a press release with reference to any of the work required by this Agreement shall advise the other Parties of such press release and the contents thereof, at least forty-eight (48) hours prior to issuance.

27. FIVE YEAR REVIEW

27.1 Consistent with section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and in accordance with this Agreement, if the selected remedial action results in any hazardous substances, pollutants or contaminants remaining at the Site, the Parties shall review the remedial action program at least every five (5) years after the initiation of the final remedial action to assure that human health and the environment are being protected by the remedial action being implemented.

Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

UNITED STATES DEPARTMENT OF THE ARMY

6/21/90
DATE

Lewis D. Walker
LEWIS D. WALKER
Deputy for Environmental Safety
and Occupational Health
Office of the Assistant
Secretary of the Army

FORT ORD

13 June 1990
DATE

JERRY A. WHITE
Major General, USA
Commanding

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

7.23.90
DATE

Daniel W. McGovern
DANIEL W. MCGOVERN
Regional Administrator
U.S. Environmental Protection Agency
Region 9

STATE OF CALIFORNIA
DEPARTMENT OF HEALTH SERVICES

6/27/90
DATE

HOWARD K. HATAYAMA
Regional Administrator, Region 2
Toxic Substances Control Program
California Department of Health Services

CALIFORNIA REGIONAL WATER QUALITY
CONTROL BOARD, CENTRAL COAST REGION

6/28/90
DATE

William R. Leonard
WILLIAM R. LEONARD
Executive Officer
California Regional Water Quality
Control Board, Central Coast Region