

the State will solicit the BAAQMD's applicable or relevant and appropriate requirements for the Navy's clean-up efforts at NAS Moffett.

13. Some commenters suggested that the FFA include a provision in which the Navy agrees to undertake appropriate interim clean-up measures during the development of the Feasibility Study and the Proposed Plan.

In response to these comments, the Navy has agreed to amend the FFA to include a schedule for undertaking certain removal actions. Schedules for these removal actions have been incorporated into the FFA as Attachments 4 and 5.

14. Some commenters stressed that the FFA should require the Navy to clean up NAS Moffett consistent with what would be required of a private party. Specifically, these commenters sought assurances in the FFA that the Navy will proceed with the remedial actions at NAS Moffett according to time schedules and substantive requirements that are consistent with those required of private parties.

The Navy must proceed with all response actions at NAS Moffett in a manner consistent with the requirements placed on private parties. Section 120(a)(1) of CERCLA provides that each federal

department or agency shall be subject to, and comply with, CERCLA in the same manner and to the same extent, both procedurally and substantively, as any non-governmental entity. The Navy agrees to perform all response actions at NAS Moffett consistent with CERCLA and the NCP. Therefore, the standards placed on the Navy are the same as would be required of any private party performing a CERCLA response action.

The FFA, as amended in response to public comments, requires the Navy to investigate the release or threatened release of hazardous substances at NAS Moffett and to perform any appropriate response action in a time frame that is consistent with any that would be required of a private party clean-up. The schedules attached to the FFA reflect the reality that the Navy is addressing a large, complex contamination situation at NAS Moffett. The clean-up of the entire base is governed by the FFA. The base actually consists of nineteen disparate areas of contamination, making "base-wide" remediation a formidable task. In response to the public comments, the Parties have amended the FFA to include expedited schedules for the performance of the RI/FS activities and specified certain removal actions to be undertaken at NAS Moffett. In addition, the Parties have incorporated enforceable deadlines into the Attachments.

15. A commenter proposed that the Parties amend the FFA to clarify that: (1) the FFA does not, in and of itself, limit the rights of

the PRPs at the MEW Superfund site to seek judicial review under a consent decree with respect to any issue arising under such decree relating to actions taken by EPA or the Navy pursuant to the FFA; and (2) the FFA does not alter the rights of non-Parties to the FFA to bring an action against the Navy to seek reimbursement for response costs incurred with respect to releases originating at NAS Moffett.

The Navy, EPA and the State of California are parties to the FFA. None of the Parties to the FFA has the legal ability to restrict or expand the jurisdiction of a court with regard to the legal rights, if any, of non-Parties to the FFA.

16. One commenter suggested that the Parties amend the FFA to establish a fixed and enforceable deadline for completion of the final RI/FS, consistent with Section 120(e)(1) of CERCLA, which requires the Administrator of EPA and the State to publish a timetable and deadlines for expeditious completion of such investigation and study.

The duty to publish the timetable and deadlines, pursuant to Section 120(e)(1) of CERCLA, exists independent of the FFA. Therefore, EPA and the State will publish the enforceable schedule for completion of each RI/FS for NAS Moffett. In response to the public comments, the Parties have amended the FFA to establish fixed

and enforceable deadlines for submittal of draft final primary documents. Such documents will become final during the time periods allowed in the consultation section of the FFA.

17. A commenter questioned whether the FFA's estimated schedule for implementation of remedial action complied with Section 120(e)(2) of CERCLA which requires the Navy to commence substantial continuous physical on-site remedial action within fifteen months after completion of the RI/FS.

Section 120(e)(2) of CERCLA requires the Navy to commence substantial continuous physical on-site remedial action within fifteen months after completion of the RI/FS for NAS Moffett. Attachment 3 to the proposed FFA listed estimated dates by which the Navy was to begin remedial construction. These dates were target dates. The enforceable deadlines for initiation of remedial action were to be established pursuant to Section 7.3 of the proposed FFA. That section required the Navy to submit a proposed schedule for the implementation of the selected remedial actions at the site at the time the Navy submits the draft ROD to the regulatory agencies for review. The final schedule for implementation of the remedial actions, therefore, might have differed from the estimated dates specified in Attachment 3 to the proposed FFA.

To avoid any potential conflict between the estimated dates and the enforceable deadlines for the initiation of remedial action, and to remove any ambiguity concerning Section 120(e)(2) of CERCLA, the Parties have amended the FFA by: (1) deleting the estimated dates for the initiation of remedial construction; and (2) requiring the Navy to submit the proposed schedule for implementation of remedial action at the time it submits the draft Proposed Plan to the regulatory agencies. By providing for the submittal at the time of the draft Proposed Plan rather than the draft ROD, the amended FFA allows the schedule to be offered for public review and comment along with the Proposed Plan for remedial actions at NAS Moffett.

18. One commenter expressed concern that the FFA contained no fixed and enforceable schedule for the completion of the remedial actions at NAS Moffett. The commenter cited Section 120(b)(4) of CERCLA as requiring such a schedule.

Section 120(e)(4) of CERCLA requires "interagency agreements" entered into pursuant to Section 120(e)(2) of CERCLA, to include, among other provisions, a schedule for the completion of each remedial action reviewed in that interagency agreement. The interagency agreement to which Section 120(e)(2) of CERCLA refers, however, is the agreement required by CERCLA after completion of each RI/FS for the site. The Parties are entering into the FFA for NAS Moffett before completion of each RI/FS. Therefore, CERCLA does

not require that the elements specified in Section 120(e)(4) of CERCLA for interagency agreements, which are entered into post-RI/FS, to be included in the FFA at this time. As stated above, upon completion of the RI/FS, and according to Attachment 3 to the FFA, the Navy will publish a Proposed Plan that will include a schedule for remedial actions to be implemented at the site. Once final, the schedule for completion of the remedial action at NAS Moffett will be incorporated in and made an enforceable part of the FFA.

19. Two commenters stated that the FFA's document review and dispute resolution provisions were too lengthy.

The schedules attached to the FFA reflect the reality that the Navy is addressing a large, complex contamination situation at NAS Moffett. The Parties agreed to document review periods based on actual past experiences which required review of complex engineering reports and technical documents. The Parties will consult as quickly as possible. Further, the initiation of the dispute resolution process does not automatically stop all remedial activity at NAS Moffett. See, Section 10 (Resolution of Disputes) of the FFA. The dispute resolution process is designed to avoid even more lengthy administrative or judicial proceedings that might be necessary in the absence of an FFA.

20. A commenter stated that the definition of NAS Moffett should be more clearly delineated. The commenter questioned whether, for example, NAS Moffett includes any facilities presently or formerly operated by NASA.

NAS Moffett is defined as the current boundaries of the Naval Air Station Moffett Field, California. NAS Moffett does not include any facilities presently or formerly operated by NASA.

21. A commenter noted that Section 8.2 of the FFA dealing with additional work provides that no further corrective action will be required. The commenter suggested that this language was overbroad and should be deleted.

Under Section 8.1 of the FFA, the Navy agrees to integrate the corrective action requirements of the Resource Conservation and Recovery Act (RCRA) with the CERCLA remedial actions taken at NAS Moffett. As a result of this integration, the Parties intend that the CERCLA remedial actions will satisfy the RCRA corrective action requirements for a RCRA permit (and for interim status facilities). In addition, Section 8.2 of the FFA provides that the Parties agree that RCRA is an ARAR for the CERCLA remedial actions taken at NAS Moffett. Therefore, the Navy will comply with all applicable and relevant and appropriate RCRA requirements during implementation and upon completion of the CERCLA remedial actions at NAS Moffett.

22. Two commenters suggested that the Parties should amend Section 9.10.4 of the FFA to provide for a procedure by which the regulatory agencies may order additional work without requiring the amendment of a report or the Navy's consent. These commenters expressed concern that modification of a previously finalized report would be inappropriate for addressing new work required, for example, by the discovery of a new source. These commenters also requested clarification that EPA has the right to require further investigations.

Section 120 of CERCLA requires that federal departments or agencies that own or operate facilities that are on the National Priorities List enter into interagency agreements with EPA for the clean-up of those facilities. The FFA will provide an efficient mechanism to address the issues of newly discovered sources of contamination and the need for further investigations. The Parties have concluded that the procedures provided in the FFA adequately address the regulators' ability to require the Navy to perform additional investigation and response activities. By setting forth a specific list of primary and secondary documents, the FFA provides a comprehensive framework for the documents supporting the CERCLA remedial actions at NAS Moffett. The RI/FS reports, for example, are intended to cover all releases of hazardous substances to be addressed under CERCLA.

Should the Navy discover an additional source of contamination, the RI/FS could be modified to investigate and analyze potential remedial actions for that source. Section 9.10.2 of the FFA provides for a modification under such a circumstance. Further, in the event the Parties do not reach consensus on the need for a modification, any Party may raise the issue through the dispute resolution process provided in Section 10 of the FFA. The Administrator of EPA could ultimately resolve any dispute so elevated in accordance with the prerequisites for such a modification as provided for in Section 9.10.3 of the FFA.

ATTACHMENT THREE

COMMENT LETTERS

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Congress of the United States

House of Representatives

October 6, 1989

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AND TECHNOLOGY
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CO-CHAIRMAN,
TASK FORCE ON TOXICS

HOUSE COMPETITIVENESS CAUCUS

ENVIRONMENTAL AND
ENERGY STUDY CONFERENCE

CONGRESSIONAL HUMAN RIGHTS CAUCUS

ARMS CONTROL AND
FOREIGN POLICY CAUCUS

CONGRESSIONAL CAUCUS FOR
WOMEN'S ISSUES

Mr. Michael Cain
Environmental Division Director
Public Affairs Office
Navai Air Station
Moffett Field, California 94035

Dear Mr. Cain:

I am writing to comment on the August 8, 1989 Interagency Agreement between the Department of the Navy, the U.S. Environmental Protection Agency, and the State of California.

First of all, let me commend the Navy and the other parties for entering into the agreement. I believe that the agreement establishes an excellent precedent for cooperation between various state and federal agencies. It also provides a good starting framework for providing a rapid cleanup of the Moffett sites to the satisfaction of all parties involved.

At the same time, I believe that certain elements of the agreement must be strengthened. In particular, I am concerned about the cleanup schedule as specified in the original agreement; its 1995 cleanup start is too much of a delay, and it does not provide for a proper coordination of regional cleanup schedules.

1. 1995 Cleanup Start: Actual cleanup must begin as soon as technically possible, but the current agreement allows numerous opportunities to further extend the 1995 target date. These loopholes should be closed and the policy reversed: opportunities should be included to move up the target date.

2. Coordinated Regional Cleanup: The federal agencies at Moffett Field should commit themselves to a schedule that coordinates with the schedule of other Superfund sites in the area, particularly the Middlefield-Ellis-Whisman (MEW) site. Technical data submitted by the new companies and independent scientists indicates that the Moffett and MEW plumes are co-mingled, thus making individual liabilities difficult to determine. Cleaning up the MEW site ahead of the Moffett sites, as presently proposed, may result in the migration of Moffett plumes into unaffected areas. This will compromise the effectiveness of any final remedial action by MEW or the Navy.

Mr. Michael Cain -- Page 2

The interagency agreement must address these technical realities, providing for immediate identification and control of Moffett's chemical residue sources, and for coordination of regional cleanup schedules.

It is essential that the above concerns and suggested improvements be incorporated into the final Interagency Agreement. As part of the public record, I would also like to submit a recent communication from the Navy to my office on this matter.

Thank you for the opportunity to comment on the Interagency Agreement and for your consideration of these views. Again, let me state the Interagency Agreement, if improved, should provide an excellent precedent for cleaning up contaminated federal sites across the country.

Best regards,



Congressman Tom Campbell

TC:jhs

Enclosure

cc: Alex Cunningham, Toxic Substance Div./State of CA
Frank Swofford, U.S. Department of the Navy
Daniel McGovern, Environmental Protection Agency
Steven Ritchie, Regional Water Quality Control Board
Ted Smith, Silicon Valley Toxics Coalition
Stephen Quigley, Moffett Air Station
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September 5, 1989

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*MEMBER CALIFORNIA AND DISTRICT OF COLUMBIA BARS
**MEMBER DISTRICT OF COLUMBIA BAR ONLY

Public Affairs Office
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Naval Air Station
Moffett Field, CA 94035

Re: Comments on Naval Air Station Moffett Field
Federal Facility Agreement

Dear Sirs:

Enclosed are the comments of Fairchild Semiconductor Corporation regarding the proposed August 8th, 1989 NAS Moffett Field Federal Facility Agreement.

Sincerely,

TUTTLE & TAYLOR

By *Ronald C. Hausmann*
Ronald C. Hausmann

RCH/fl
Enclosure

cc: ✓ Terry Wilson - EPA - w/encl.
Jill Singleton - DOHS - w/encl.
Jim Thompson - RWQCB - w/encl.

Schlumberger

Schlumberger Technology Corporation

September 5, 1989

VIA FEDERAL EXPRESS

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Captain S. T. Quigley, Jr.
Commanding Officer
Naval Air Station
Moffett Field, CA 94035-5000

Re: Comments on Naval Air Station Moffett Field
Federal Facility Agreement

Ladies and Gentlemen:

This letter submits Fairchild Semiconductor Corporation's ("Fairchild's") comments on the Federal Facilities Agreement (the "Agreement"), for Naval Air Station Moffett Field ("Moffett Field"), executed on August 8, 1989, by the Department of the Navy (the "Navy"), the Environmental Protection Agency ("EPA"), the California Department of Health Services ("DOHS") and the California Regional Water Quality Control Board - San Francisco Bay Region (the "RWQCB"). The Navy, EPA, DOHS and the RWQCB shall sometimes be referred to collectively in these comments as the "Parties".

2694 Orchard Parkway, San Jose, CA 95134

Fairchild applauds the Navy's decision to proceed with a Remedial Investigation ("RI") and Feasibility Study ("FS") at Moffett Field. At the same time, however, Fairchild contends the Agreement must be modified to address the environmental problems present at Moffett Field in a much more timely manner. In particular, Fairchild contends the federal government must commit to remediate Moffett Field on a schedule coordinated with the remedial program for the industrial area south of Highway 101. We are dismayed that the involved governmental agencies have concluded by the terms of the proposed agreement that the remediation of this federal facility does not need to proceed at the same pace as privately financed remedial programs in the Bay Area.

The federal government's failure to commit to a schedule coordinated with, or equally as fast as, the schedules private companies have followed and propose to continue following is troubling, given the magnitude of the environmental problems identified at Moffett Field. In short, Fairchild expects the federal government to match the remedial efforts being made by private companies in the area.

The data indicate that substantial chemical releases at Moffett Field have occurred during a lengthy period of time. According to the March 30, 1988 work plan prepared by IT Corporation for the Navy (the "Work Plan"), a long list of chemicals was released into the environment from Moffett Field operations over a 50-year period. These chemicals include polychlorinated biphenyls (PCBs), trichloroethylene (TCE), trichloroethane (TCA), tetrachloroethene (PCE), methyl ethyl ketone (MEK), toluene, freon 113, ethylene glycol, asbestos and a variety of fuels, paint thinners and solvents.

The volume of hazardous substances disposed of by the Navy at Moffett is staggering. For example, as the Work Plan describes, 150,000 to 750,000 gallons of hazardous substances were disposed of over a 30-year period into storm drains that emptied into a ditch at Moffett Field and eventually into San Francisco Bay (Work Plan, p. 2-39). Moreover, Navy personnel reportedly dumped 120,000 to 600,000 gallons of hazardous materials off the runway apron near hangars 2 and 3 and another 120,000 to 600,000 gallons of hazardous materials onto unpaved areas near the hangars themselves (Work Plan, p. 2-40). Another 75,000 to 150,000 gallons of hazardous materials were reportedly disposed of at the "runway" landfill (Work Plan, p. 2-38).

In addition to these and other areas in which hazardous

chemicals were disposed of, the Navy has identified 68 underground tanks and sumps at Moffett Field. A limited investigation of 31 tanks in 1987 showed that 12 tanks were leaking fuel or other hazardous materials into the soil. See Section 6.5 of the Agreement. Data that the Navy only recently made available confirm that many of the Navy's chemical releases have occurred in the area west of the runways, where they have merged in part with the plume emanating from the Middlefield-Ellis-Whisman area south of Highway 101.

Based on this evidence, Fairchild contends the federal government must proceed more quickly than is now required by the Agreement. In addition, the Navy should be required to coordinate its activities with remedial actions to be conducted by Fairchild and those private companies at Moffett Field. Fairchild and the other private companies are prepared to commence remediation of chemical residues underlying Moffett Field that were released from their facilities within a year. As discussed below, however, any attempt by these companies to commence remediation without the Navy's cooperation will risk spreading Moffett's contamination in the shallow aquifers, which will make it more difficult, more time consuming and more expensive to remediate the Moffett area. The Agreement also will make it more difficult for the Navy to identify its own sources of chemical residues, and will jeopardize the Navy's ability to implement appropriate source remedial controls.

Fairchild's specific comments and proposals are set forth below.

A. Coordination with MEW PRPs. Section 7.7 of the Agreement recognizes that chemical plumes originating in the Middlefield-Ellis-Whisman Study Area (the "MEW Area") south of Highway 101 have merged with chemical releases resulting from Navy operations. This section goes on to indicate that these releases "may be addressed" by a separate agreement between the regulatory agencies and the potentially responsible parties in the MEW Area (the "MEW PRPs"), a group that includes Fairchild. Except for this provision, and two vague references to the MEW Area in the Management Plan Outline (Attachment 2), the Agreement contains no reference to coordination of the investigations and remedial activities to be conducted by the Navy with those of the companies. Fairchild contends that the discretionary nature of Section 7.7 must be changed to mandate that the Navy coordinate its activities with the actions of the private party MEW PRPs.

Both the existing and the proposed version of the

National Contingency Plan require federal agencies to coordinate response actions with private parties. 40 CFR §300.22(b); § 300.105(a)(3) (proposed). The Agreement should, therefore, be modified to include provisions that require (1) coordination of the Navy's remedial investigation with remedial activities undertaken by the MEW PRPs, (2) joint remedial design/remedial action by the Navy and the MEW PRPs to address merged plumes, (3) cost allocation and dispute resolution between the Navy and the MEW PRPs, (4) access by the MEW PRPs to Moffett Field, (5) determination of ARARs, remediation technology and remediation goals that are consistent with EPA's Record of Decision for the MEW Area and (6) coordination of termination rights and obligations. In addition, Section 34.2 of the Agreement, which addresses judicial review of actions taken under the Agreement, should be modified to clarify that it does not apply to the exercise of the rights of the MEW PRPs to seek judicial review under a consent decree for the MEW Area if an issue arises under that decree that relates to actions taken by EPA or the Navy under the Agreement.

In addition to the legal requirements for coordinated and expeditious remedial actions, there are very significant technical and practical reasons to accelerate the investigation and control of Navy sources of chemical residues in the area of the merged plumes. Without knowing more about the Navy's sources than its investigations have revealed so far, there is a very high likelihood that any attempt at area-wide groundwater remediation will be counter-productive. This is because area-wide groundwater pumping and treatment will cause chemicals to migrate in and possibly between the shallow aquifer zones from areas of relatively high chemical concentration to clean areas or areas with relatively low concentrations. This in turn will create even larger areas with chemical residues, which will be more difficult, time-consuming, and expensive to remediate.

In short, effective remediation of the Moffett area requires immediate identification and control of the Navy's sources of chemical residues. This is the central technical basis of the MEW regional remedial program proposed in the MEW Feasibility Study approved by EPA in 1988. This approach must be employed in a coordinated fashion at Moffett Field because Moffett's underground contaminants are already commingled with the MEW plume and because Moffett and the MEW sites are physically contiguous.

Fairchild proposes that the most efficient way to handle this coordination is to identify areas in which the chemical plumes may have merged so that appropriate interim remedial source control

measures may be initiated. For areas where the Moffett sources have already been identified, interim remedial measures can be constructed immediately; for areas where further source investigation must be performed before remedial measures can be designed, the investigations must be completed on a priority basis. This approach will allow the earliest possible installation of a groundwater extraction system to begin remediation of the regional plume. Fairchild is willing to bear its fair share for these remedial actions.

Moreover, to help in the coordination of activities, Fairchild is willing to become a party to the Agreement with EPA and the Navy. Alternatively, Fairchild is willing to enter into a separate agreement with the Navy, the regulatory agencies, and other potentially responsible parties. In either case, Fairchild believes remediation can and should be commenced within nine months rather than waiting until July 1995 as the proposed Agreement contemplates.

B. Scheduling Concerns.

1. RI/FS. Attachment 3 to the Agreement requires the Navy to submit a draft RI report for Phases I and II of its investigation by July 1, 1991, or within 180 days of the last Phase II sample. The Agreement indicates that this date may be extended "based on field conditions". The deadline for completion of a draft FS is 180 days after the initial screening of remedial alternatives becomes final, with a non-enforceable "target" date of June 1, 1992.

Section 120(e)(1) of CERCLA requires EPA and state regulatory agencies to require "expeditious completion" of the RI/FS. The need for prompt completion is heightened here because of the potential effect of the investigation on the remedial activities to be conducted by the private party MEW PRPs. Nevertheless, the Parties have agreed to a schedule allowing the Navy to submit a draft of the RI almost three years after submission of the Navy's work plan and setting no enforceable deadlines for completion of the RI/FS. The leisurely pace contemplated by the Agreement does not comply with the requirement for expeditious completion mandated by Section 120(e)(1). Fairchild contends that the Agreement should be amended to establish a fixed and enforceable deadline for completion of the final RI/FS.

2. Commencement of Remedial Action. Section

120(e)(2) of CERCLA requires the Navy to commence "substantial continuous physical on-site remedial action" within 15 months after completion of the RI/FS. In contrast, the Agreement provides for "initiation of remedial construction" within 15 months after signature of the ROD, which, in turn, will be at least 11 months after the FS becomes final. The Agreement sets no deadline for the completion of construction and commencement of actual remediation. This schedule directly contravenes Section 120(e)(2).

3. Other Reports. The schedule set forth in Attachment 3 lists a number of significant additional reports to be submitted by the Navy. With the exception of the draft RI, however, the schedule does not establish a fixed and enforceable deadline for any of these reports. The Agreement provides for establishment of deadlines for some reports "per consultation section". The footnote interpreting this reference indicates that these deadlines will be established pursuant to Section 9 of the Agreement. (Fairchild assumes this reference means that the outside deadline will be the last date on which dispute resolution may be invoked following submission of a final draft incorporating all comments or 35 days after a final decision if dispute resolution has been invoked.) For other documents (the draft RD and the O & M Plan), the attachment simply indicates that the deadline is "to be determined".

Section 120(e)(4) of CERCLA requires each interagency agreement to contain a schedule for completion of remedial actions. Fairchild believes that, at the very least, the Agreement should establish fixed and enforceable deadlines for each "primary" document. Fairchild recognizes that unforeseen events could require extensions but believes that Section 27 of the Agreement provides a more than adequate procedure for handling these contingencies. Similarly, the fact that other provisions of the Agreement (such as the dispute resolution provisions) may result in extensions should not prevent the Parties from establishing specific deadlines that are enforceable unless extended in accordance with the terms of these other provisions.

4. Other Provisions Affecting Schedule.

a. Document Review and Revision Time.

Section 9.7.2 of the Agreement requires the regulatory agencies to provide comments on draft documents within 60 days, with the right to extend this deadline for 30 days. Under Sections 9.7.5 and 9.7.6 the Navy then has an additional 60 days to incorporate comments, with a unilateral right to extend the period for an additional 30 days. The document does not become final until an additional 30 days after these periods. As a result, seven months pass between the submission of a draft and the finalization of the draft. This period may be further extended under Section 27 of the Agreement for "good cause", a term defined to mean whatever the Parties agree it means.

These lengthy comment and redraft periods interject an unreasonable amount of delay into the investigation and remediation process. Fairchild proposes that the regulatory agencies provide comments within 30 days and that the Navy incorporate comments within 30 days thereafter. Any unilateral extension should be limited to 20 days. These time frames are consistent with periods agreed to by the agencies and the United States Army in the federal facilities agreement for the Sacramento Army Depot and in similar agreements with civilian PRPs. Additional extensions under Section 27 should be limited to 15 days unless a force majeure event occurs.

b. Dispute resolution. The dispute resolution procedures set forth in the Agreement introduce further potential sources for delay into the investigation and remediation process.

First, Section 10.3 gives any Party 30 days to submit a dispute to the Dispute Resolution Committee. In the interim, the Agreement calls for the Parties to attempt to resolve the dispute on an informal basis. Fairchild believes the period for informal dispute resolution should be reduced to 14 days, which is consistent with the period proposed by EPA under the consent decree currently being negotiated for the MEW Area.

In addition, Sections 10.10 and 27.2 provide for automatic extensions of deadlines for work affected by a dispute. Fairchild believes such an extension should be granted only if the Navy prevails in dispute resolution or if the narrow conditions of Section 10.11 (relating to work stoppages ordered by a member of the Dispute Resolution Committee) are met. Sections 10.11 and 10.12

should, in turn, require the Dispute Resolution Committee to reach a resolution of any dispute regarding work stoppage within no more than 7 days.

Finally, Section 10.13 gives the Navy 35 days to implement the decision resulting from dispute resolution. The Navy should be required to implement these decisions within a shorter period, especially if the Navy is not the prevailing party or the decision can be implemented within a shorter period.

C. Other Comments.

1. Definition of Moffett Field (Section 1.9). NAS Moffett Field ("NASMF") should be defined more precisely. Does NASMF, for example, include any facilities now or formerly operated by the National Aeronautics and Space Administration?

2. EPA's Right to Require Additional Work (Sections 8.2 and 9.10.4). Some provisions of the Agreement relating to EPA's right to require further work are unduly restrictive. Section 8.2 provides that the Navy's performance under the Agreement will be "deemed . . . protective of human health and the environment" and that "no further corrective action" under RCRA will be required. This Section seems overbroad given the preliminary stage of the Navy's investigations and should be deleted.

Section 9.10.4 of the Agreement authorizes EPA, DOHS or the RWQCB to require further work through modification of a report or amendment of the Agreement. There may, however, be some cases in which modification of a report issued several months or years previously is not an appropriate method for dealing with new work required because of, for example, the discovery of a new source. On the other hand, Section 24 requires the concurrence of all Parties prior to any amendment of the Agreement. Section 9.10.4 should be amended to provide for a procedure by which the agencies may order additional work without requiring the amendment of a report or the Navy's consent.

On a related issue, the Parties need to clarify the circumstances under which EPA can order a Phase III investigation. The only reference to a Phase III is footnote 9 to Attachment 3, which indicates that "[i]f it is determined that further investigative work is required, Phase III tasks will be initiated." The Agreement should be clarified to ensure that EPA has the right to require this investigation if potential releases not covered by

Phase II are discovered, as well as the right to require the expeditious investigation and remediation required by Section 120(e) of CERCLA. (As currently contemplated, the Phase III RI/FS would not be complete until 1996 and construction of a remedial system would not begin until July 1998.)

3. Covenant Not to Sue (Section 25). A provision should be added to this Section clarifying that nothing in this Agreement affects the rights of any third party to bring an action against the Navy seeking reimbursement for response costs incurred by such third party with respect to releases originating at Moffett Field.

D. Conclusion

Fairchild and other MEW companies have requested on numerous occasions that the Navy and EPA accelerate the pace of investigations at Moffett Field and coordinate the RI/FS and RD/RA processes with the MEW PRPs. In support of these requests, Fairchild has presented ample evidence showing the problems created by the go-slow approach adopted by the Agreement. In spite of these requests, the regulatory agencies and the Navy appear determined to proceed with an agreement whose only effect will be to further institutionalize the ongoing delays in investigating and cleaning up Moffett Field. Because of the delays, the Agreement threatens to make cleanup of areas north of 101 more expensive and time consuming unless Navy agrees to implement a program of immediate source control and investigation.

Fairchild requests that the Agreement be modified (1) to require an expeditious completion of an RI/FS and commencement of remedial action in accordance with established and enforceable deadlines complying with Section 120 of CERCLA, (2) to require the Navy to negotiate and enter into a comprehensive settlement with the MEW PRPs within 30 days and (3) to make the other changes described in Part C above.

Sincerely,
Schlumberger Technology Corporation

C. R. Bostic

C. R. Bostic

cc: See Attached List

Stehle, Cunningham, Quigley, McGovern, & Ritchie
September 5, 1989
Page 10

cc: Via Hand Delivery:

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04 OCT 1989

RA/DRA _____
Action _____
CC: <u>ATO + HWMD</u>
File: _____

RAYTHEON

October 4, 1989

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Captain S.T. Quigley, Jr.
 Commanding Officer
 Naval Air Station
 Moffett Field, CA 94035-5000

Re: Comments on Naval Air Station Moffett Field
 Federal Facility Agreement

Gentlemen and Ms. Stehle:

I am writing to submit comments on behalf of Raytheon Company regarding the proposed Federal Facilities Agreement for Naval Air Station Moffett Field entered into on August 8, 1989 by the Department of the Navy, the U.S. Environmental Protection Agency, the California Department of Health Services and the California Regional Water Quality Control Board - San Francisco Bay Region.

Raytheon recognizes the efforts made by all parties to the Agreement to investigate the environmental problems on Moffett Field and subsequently to remediate chemicals in the soils and groundwater there. We are concerned, however, that without coordination with the remedial activities that are now underway in the Middlefield-Ellis-Whisman (MEW) Area south of U.S. Highway 101 and those that are anticipated to begin in the area north of U.S. Highway 101 in the area of the merged Moffett-MEW plume, the Navy's current schedules for investigation and remediation on Moffett Field may

prevent the regional clean-up on Moffett from going forward in an environmentally sound manner and may instead risk the spreading of chemicals into clean and relatively low concentration areas within Moffett Field.

The Environmental Protection Agency has requested that Raytheon Company, Fairchild Semiconductor Corporation and Intel Corporation (the "Companies"), among others, begin remediation of the merged plume on Moffett Field as expeditiously as possible. Although Raytheon does not believe that the chemicals in the merged plume pose a serious or immediate threat to either human health or the environment, we are endeavoring to comply with EPA's request for an expeditious clean-up. To this end, Raytheon, in conjunction with the other Companies, is prepared to begin a regionwide remediation, including those chemical residues within the merged Moffett-MEW plume within a year. In order to accomplish efficient and effective remediation of the Moffett Field area, however, there must be substantial coordination between the Navy and the Companies. Such coordination must be based on acceleration of the Navy's current schedule for investigation and control of Navy sources of chemical residues in the area of the merged plume.

Under the proposed Federal Facilities Agreement, the Navy is not scheduled to begin remediation on Moffett Field until July 1995, nearly five years after the Companies plan to begin remediation. Such a lag is neither technically nor practically desirable. At this time, there is very little data regarding the sources of chemicals in the area of Moffett Field where the plumes have merged. If area-wide pumping and treatment on Moffett Field were to begin without further information regarding the Navy sources, such attempts at remediation would cause chemicals to migrate within and possibly between the shallow aquifer zones across the Moffett area from areas of relatively high chemical concentrations to clean areas or areas of relatively low chemical concentrations. Such a "spreading" of chemical residues will create a much larger area of contamination and will increase the time, difficulty, and expense of overall remediation. In addition, regional remediation before identification and control of Navy sources will make it more difficult for the Navy to later identify its own sources of chemical residues and to implement appropriate source controls.

Therefore, before any area wide remediation is to begin on Moffett Field, the Navy must identify and control Navy sources of chemical residues on a schedule coordinated with regional MEW remedial activities. To accomplish this end, Raytheon proposes an amendment to section 7.7 of the proposed Federal Facilities Agreement. Section 7.7, in its present form, recognizes that chemical plumes originating in the MEW area south of U.S. Highway 101 have merged with chemical releases resulting from Navy operations and indicates that these releases "may be addressed" by a separate agreement between the regulatory agencies and the potentially responsible parties in the MEW Area (the "MEW PRPs"), a group that includes Raytheon. Section 7 should be amended to provide that the Navy "shall" enter into an agreement with the regulatory agencies and the MEW PRPs to accomplish remediation of the merged plume on a coordinated basis.

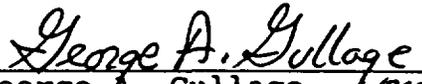
Both the existing and the proposed versions of the National Contingency Plan require federal agencies to coordinate response actions with private parties. 40 CFR § 300.22(b) (existing NCP); § 300.105(a)(3) (proposed NCP). The Federal Facilities Agreement should, therefore, be modified to include provisions that require (1) coordination of the Navy's remedial investigation with remedial activities undertaken by the MEW PRPs, (2) joint remedial design/remedial action by the Navy and the MEW PRPs to address merged plumes, (3) cost allocation and dispute resolution between the Navy and the MEW PRPs, (4) access by the MEW PRPs to Moffett Field, (5) determination of ARARs, remediation technologies and remediation goals that are consistent with EPA's Record of Decision for the MEW Area, and (6) coordination of termination rights and obligations. In addition, Section 34.2 of the Agreement, which addresses judicial review of actions taken under the Agreement, should be modified to clarify that it does not apply to the exercise of the rights of the MEW PRPs to seek judicial review under any consent decree for the MEW Area if an issue arises under that decree (assuming one is executed) that relates to actions taken by EPA or the Navy under the Agreement.

Finally, a provision should be added to section 25 (covenant not to sue) clarifying that nothing in the Agreement affects the rights of any third party to bring an action against the Navy seeking reimbursement for response

costs incurred by such third party with respect to releases originating at Moffett Field.

In addition to the objections previously expressed regarding the lack of coordination between the Navy's investigative and remedial activities and those of the private PRPs, Raytheon is concerned that the scheduled deadlines and anticipated extensions established for submission of the Navy RI/FS, commencement of remedial actions, dispute resolution and document review and revision time may extend the initiation of remedial measures, and contribute to further delays regarding implementation of remediation on a regional scale. To the extent that these deadlines and extensions cause or contribute to such delay, they should be shortened appropriately to provide for a coordinated remedial effort.

Sincerely,


George A. Gullage (gca)
Raytheon Company

cc: J. Asami
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CITY OF SUNNYVALE

The Heart of Silicon Valley

456 WEST OLIVE AVENUE SUNNYVALE, CALIFORNIA 94086 (408) 730-7470

Lawrence E. Stone
Mayor

October 6, 1989

Brian O'Toole
Vice Mayor

Pat Castillo
Councilmember

Public Affairs Office
Building 23
Naval Air Station
Moffett Field, CA 94035

Mark Hanlon
Councilmember

Re: Comment on Interagency Agreement

Richard Napier
Councilmember

This letter is in response to the notice circulated by your office indicating the opportunity for public comment on the interagency agreement for "Superfund" environmental cleanup activities at the Naval Air Station at Moffett Field.

Robin N. Parker
Councilmember

Barbara Waldman
Councilmember

Sunnyvale City staff has reviewed the agreement between the Navy, the Environmental Protection Agency, and the State of California. We believe that the Naval Air Station at Moffett Field is making a praiseworthy effort to address the concerns of the local communities with regard to the 12 identified contamination sites on the base. We recognize, however, that the work undertaken by the Navy to identify the contamination began much later than the work conducted by companies that are sources of contamination and contributing to a common plume.

It is also acknowledged that the Navy is faced with more regulations regarding cleanup than its counterparts in the private sector, because it must also comply with Federal regulations that apply only to Federal facilities. The net effect of these two factors puts Moffett Field in an unenviable position, complicating their cleanup alternatives. The report review process and dispute resolution procedure will be more complex than for the private sector and may well tend to delay cleanup progress.

Although it is unrealistic to expect that Moffett Field can accelerate their plume definition phase to a point where work can occur simultaneously with companies that have been working on their remediation phases for several years, we encourage and would strongly support cooperative and coordinated efforts with Fairchild, Intel, and Raytheon in their more advanced cleanup efforts. We also encourage the Department of Health Services, the Regional Water Quality Control Board, and the Environmental Protection Agency to exercise diligent

oversight of these coordinated cleanup efforts to ensure minimal delay in on-going cleanup efforts, efficient use of private and governmental resources, and maximum protection of the environment.

Of particular concern to the City of Sunnyvale is the definition of the plume which may be of impact to the City or to companies within the City of Sunnyvale. Also, as remediation begins, the treatment and discharge of effluent to storm sewers, or to the Bay must be sufficiently monitored so as not to be comingled or impact the treatment efforts of our own water pollution control plant. Of vital importance is the protection of the waters of the Bay.

In conclusion, we urge that all involved parties work together to bring about a rational solution to these very complex issues. Cooperation and mutual understanding are key to ensuring that a solution based on the concerns of the affected communities will be achieved with scientifically accurate information.

Sincerely,



Lawrence E. Stone
Mayor