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May 30, 2008

Department of the Army
Fort Ord Base Realignment and Closure (BRAC) Office
Attn: Ms. Gail Youngblood
BRAC Environmental coordinator
P.O. Box 5008
Monterey, California 93944-5008

Subject: Fort Ord Proposed Site 39 Remedial Action Workplan and Proposed Waste Disposal on Fort Ord Closed Disposal Site, Operable Unit 2 (OU2), SWIS No. 27-AA-0015.

Dear Ms. Youngblood

Thank you for providing the opportunity to review the document for a proposed remediation of the Fort Ord Site 39 weapons firing range area. Staff of the California Integrated Waste Management Board (CIWMB), Closure and Technical Support Section has reviewed the proposed project document and has the following comments.

- The existing Operable Unit 2 (OU2) has been regulated by the California Integrated Waste management Board as a Closed Landfill. According to the Army, the landfill ceased receiving waste on or about January 31, 1987.
- A final Closure Plan for OU 2 was submitted by Fort Ord Base Realignment and Closure (BRAC) Office and approved by the Regional Water Quality Control Board, the Monterey County Local Enforcement Agency (LEA) and the CIWMB in 1996. OU 2 was permitted and closed in the current 150 acre area.
- Closure activities were commenced pursuant to approval of the Closure Plan and closure was completed December 2002 upon closure of areas B through F. Individual units were closed according to the appropriate regulations. A Closure Certification Report was submitted on April 25, 2003 and accepted as final certification of closure by CIWMB on April 25, 2003. At that time, the site was considered in post closure maintenance phase.
- The OU 2 site was presented by BRAC and has been monitored and regulated by the LEA and the CIWMB as a closed landfill since the closure certification in 2003.

BRAC proposes the removal of lead-contaminated soils at Site 39, a former firing range. The soils are proposed to be placed under the final cap of the existing closed OU 2 disposal site. To comply with California Code of Regulations, Title 27 CCR, the FML barrier layer currently in place on the cap will have to be removed, the contaminated soils

placed on the exposed foundation layer with the FML being replaced, and the final cover and vegetation layer re-installed on top.

As recognized by the Regulatory Agencies, the remediation activities entailing the removal of the contaminated soils are exempt under CERCLA as part of the remediation activities and cleanup operation of Fort Ord. However, pursuant to 27 CCR, the contaminated soil is considered waste and its placement at any other location will constitute waste disposal, including placement at the closed OU 2 disposal site. To enable disposal at this site, it appears that the landfill permit would need to be renewed. The site would then be regulated as an operating landfill and BRAC and any future landfill owner would have to meet the requirements for landfills that operated after January 1, 1988, including the development of financial assurances for closure and postclosure maintenance.

Alternatively, BRAC could demonstrate that under the unique requirements of CERCLA the disposal of waste from OU 39 to the landfill would be a permit-exempt activity. Furthermore, if BRAC could also demonstrate that the disposal is considered part of or an enhanced closure activity for the landfill and not waste disposal, BRAC and future owners may not be subject to financial assurance requirements.

During the teleconference of May 20, 2008, there were two other scenarios presented by the BRAC Office. One scenario proposed the landfill had never been closed and was still "operating". This concept presents serious complications in the status and regulatory activities of the OU2, including potential violations of 27CCR, Sections 21110(a), Implementation of Closure, and 27CCR, Section 21110(b)(1), inactive status over 12 months. Furthermore, under this scenario, financial assurance should have been provided.

A second scenario was presented in which the entire Fort Ord site is considered a waste site. The current permit is for 150 acres encompassing just Unit OU2. Under this scenario, it could make the entire Fort Ord site a disposal site constituting approximately 20,000 acres. This circumstance would also present serious complications of potential violations of the various regulations including postclosure land use issues.

An agreement as to the current closure status of this site should be reached among all the agencies prior to any further actions on this proposed project.

Should you have any questions or comments concerning the above matter, please contact Michael Wochnick at (916) 341-6318 or Jacques Graber at (916) 341-6353.

Sincerely,



William R. Orr, C.E.G., Division Chief
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cc:

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