



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 9**  
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Re: EPA Statement of Position for Vapor Intrusion Remedy  
Naval Air Station Moffett Field Superfund Site

Dear Members of the Dispute Resolution Committee:

This letter invokes formal dispute regarding remediation of the vapor intrusion pathway at the Naval Air Station Moffett Field Superfund Site ("Moffett Field") and sets forth the Statement of Position for the dispute of the U.S. Environmental Protection Agency ("EPA"). EPA invokes this dispute pursuant to Section 10 of the 1990 Federal Facility Agreement, as amended ("FFA"), among the U.S. Department of the Navy ("Navy"), EPA, and the State of California ("State"). Moffett Field was listed on the National Priorities List ("NPL") on July 27, 1987, CERCLIS ID CA2170090078.

EPA is invoking formal dispute to establish the Navy's responsibility under the FFA to address the indoor air exposure pathway into buildings overlying contamination impacted by Navy sources. The Navy is a responsible party for the sources to the indoor air exposure pathway on Moffett Field. In an August 2010 amendment ("ROD Amendment") to EPA's June 9, 1989 Record of Decision ("1989 ROD"), EPA selected a remedy to address the subsurface to indoor air exposure pathway – also known as the vapor intrusion pathway - at the Middlefield-Ellis-Whisman ("MEW") Superfund Study Area ("MEW Study Area"), Mountain View and Moffett Field, California. Following a 1992 dispute raising issues almost identical to those raised here, in a 1993 Amendment to the FFA, the Navy adopted, and committed to addressing Navy sources of contamination within, the MEW Study Area in accordance with the 1989 ROD. EPA is looking to the responsible parties for the subsurface contamination - the Navy and the MEW Companies - to address the indoor air exposure pathway by implementing the vapor intrusion remedy selected in the ROD Amendment. It is EPA's position that the Navy's commitment to addressing its sources of contamination includes addressing all exposure pathways from these sources.

## **Procedural Status**

This Statement of Position is being submitted to the Dispute Resolution Committee (“DRC”) as provided for in Paragraph 10.3 of the FFA. Section 10 of the FFA provides for invocation of the FFA Dispute Resolution procedures within 30 days after “any action which leads to or generates a dispute.” In a letter to EPA dated October 20, 2010, and received on October 22, the Navy stated that it would neither address the indoor air exposure pathway nor adopt the ROD Amendment under the FFA. EPA is disputing the Navy’s position as stated in this letter.

The FFA directs the Parties to pursue informal dispute resolution prior to pursuing a formal dispute. FFA 10.2 and 4. To that end, there has been significant discussion of implementation of the vapor intrusion remedy among the Moffett Field remedial project managers, managers, and attorneys. Most recently, the vapor intrusion remedy has been discussed among the parties on July 7, 2010, September 24, 2010, in an October 5, 2010 conference call, October 27, 2010, and in a November 4, 2010 conference call. Because informal dispute resolution has not resolved the conflict, EPA submits this Statement of Position to the DRC. During the timeperiod for informal dispute on this issue, on November 4, 2010, John Chesnutt of EPA and Lawrence Lansdale of the Navy agreed that the 30-day timeframe to conduct informal dispute would begin on the date of their conversation. This agreement was confirmed in an email to Navy counsel, Marvin Norman, on November 18. Pursuant to that agreement, any dispute must be raised to the DRC by December 4, 2010. FFA 10.3.

As the current owner and operator of the majority of Moffett Field, NASA has conducted indoor air sampling in many buildings to determine whether those buildings have the potential for vapor intrusion from subsurface contaminant sources. In its October 20 letter, the Navy has deferred to NASA to conduct the required sampling and any necessary response actions to address the vapor intrusion pathway at Moffett Field. However, in a letter sent to EPA Region 9 Administrator, Jared Blumenfeld, on November 18, 2010, NASA stated that “the Navy is responsible for sampling and addressing vapor intrusion impacts to all buildings of the former Naval Air Station Moffett Field located over the Regional Groundwater Plume.” Although NASA is not a signatory to the FFA, EPA is including NASA as a recipient of this dispute statement for information purposes.

Because the source of the vapor intrusion indoor air contamination is from the Navy’s shallow subsurface contamination and a remedy has already been selected for this exposure pathway, EPA invokes this dispute to establish the Navy’s responsibility under the FFA to address the vapor intrusion pathway from its contamination.

## **Dispute**

### **A. Introduction**

In the FFA, the Navy committed to adopt the 1989 ROD to allow for effective implementation of the groundwater remedy and “to maintain a consistent and coordinated

approach to remediation within the MEW ROD Regional Study Area.” FFA 7.8. The Navy has been implementing the groundwater remedy for its sources to the MEW Regional Study Area for over a decade, in accordance with the 1989 ROD. However, because the groundwater remedy in the 1989 ROD was not designed to address the vapor intrusion pathway and indoor air sampling data indicate a complete vapor intrusion pathway into buildings overlying subsurface contamination in the Moffett Field Area, the groundwater remedy is not fully protective of human health. Incorporating a remedy to address the vapor intrusion pathway by amending the groundwater remedy is necessary to prevent human exposure in overlying buildings to subsurface contamination until those sources are remediated and no longer poses a vapor intrusion risk.

Through a Supplemental Remedial Investigation and Feasibility Study (“RI/FS”) for the vapor intrusion pathway, and issuance of the ROD Amendment, EPA has selected a remedy that will ensure protection of occupants in buildings overlying the shallow subsurface contamination. This remedy is applicable to all properties overlying the shallow groundwater contamination within the MEW Study Area, including both south of U.S. Highway 101 (the “MEW Area”) and north of U.S. Highway 101 (the “Moffett Field Area”), referred to collectively as the Vapor Intrusion Study Area. A separate investigation of the vapor intrusion pathway by the Navy within the Moffett Field Area is not warranted. If the Navy sought to conduct its own RI/FS of the vapor intrusion pathway in the Moffett Field Area from its own sources, this would only serve to delay the implementation of the full remedy necessary for protectiveness. Importantly, any other vapor intrusion remedy selected for an area within the Vapor Intrusion Study Area would be duplicative of work already performed and would risk inconsistent remedies for the same locations.

The Navy defers to NASA, the current property owner at Moffett Field, to conduct sampling for vapor intrusion and to implement the remedy. However, NASA has indicated that it is not interested in implementing this remedy for the Navy’s contamination. Thus EPA generally would not look to NASA in the first instance to conduct the work to address an exposure pathway from the Navy’s contamination.

The vapor intrusion investigation in the MEW Study Area has shown that there is potential for vapor intrusion in buildings in the Moffett Field Area that overlie the MEW Regional Groundwater contamination. Indoor air impacts from vapor intrusion have been found in some of those buildings, many of which are occupied. Adoption of the ROD Amendment by the Navy and the Navy’s prompt implementation of the vapor intrusion remedy are both vital to ensuring protection of human health.

**B. The FFA Requires a Consistent and Coordinated Approach to Remediation of Contamination in the MEW Study Area**

In the 1993 FFA Amendment, the Navy adopted the 1989 ROD “to eliminate any impediment to the effective implementation” of the MEW Regional Groundwater Remediation Program and “to maintain a consistent and coordinated approach to remediation within the MEW ROD Regional Study Area.” FFA sections 5.2.10 and 7.8.1. Pursuant to the FFA Amendment,

the Navy has implemented remedial actions for Navy source areas and groundwater resources impacted by their source areas as provided in the 1989 ROD. The indoor air vapor intrusion pathway is an exposure pathway from these same subsurface contaminant sources and thus implementation of the vapor intrusion remedy should also be conducted in a “consistent and coordinated” manner to ensure the protection of building occupants.

Just as with the groundwater remedy, the Navy is not the sole party conducting remediation in the Moffett Field Area. There is a role for the MEW Responsible Parties to implement the remedy in the area overlying the commingled contamination. In order to coordinate with those parties, and not expend resources on redundant analysis, the Navy should adopt the ROD Amendment that already addresses the vapor intrusion pathway from its contamination.

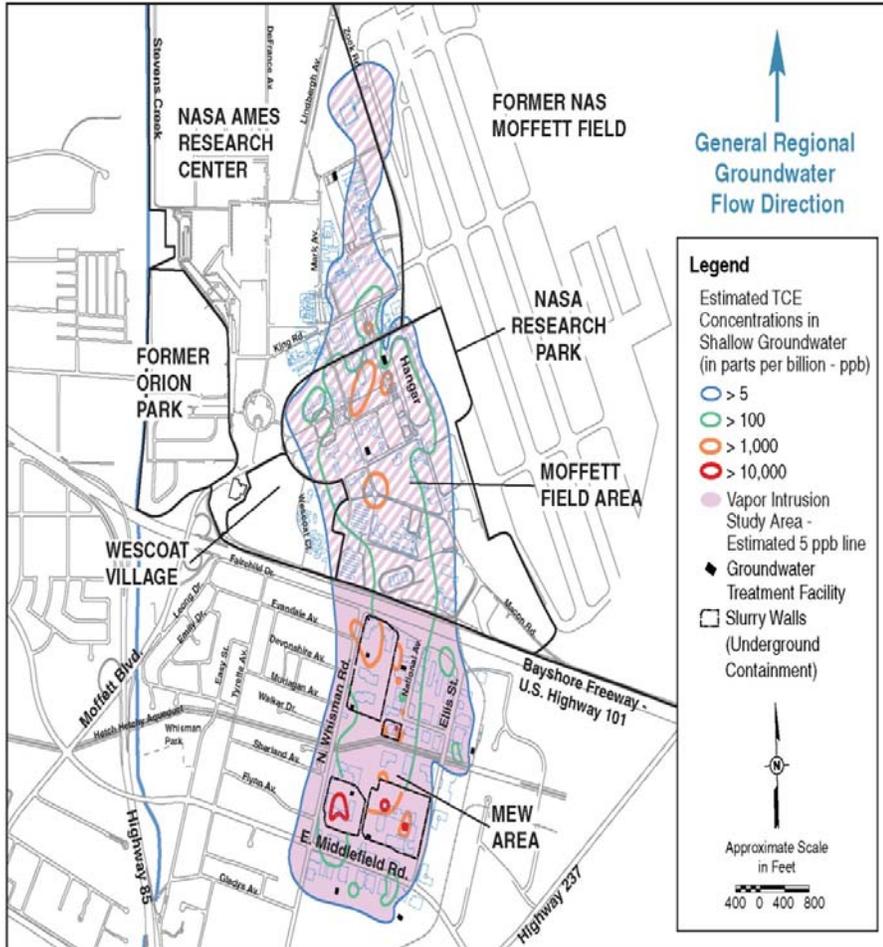
**1. Vapor intrusion is an exposure pathway from shallow subsurface contamination, including a commingled groundwater plume**

**a. History**

The Navy owned and operated Naval Air Station Moffett Field from 1933 until 1994. In 1994, the Navy transferred the majority of Moffett Field to NASA and transferred the two military housing areas to the U.S. Air Force (now owned by the U.S. Army). Historical operations at Moffett Field have involved extensive use and storage of solvents and other hazardous substances. During these Navy operations, spills, leaks from underground storage tanks, and other contaminant releases caused extensive soil and groundwater contamination. This contamination on Moffett Field is part of a larger, regional Superfund Study Area, the MEW Study Area. The MEW Study Area encompasses four NPL Sites and includes groundwater contamination emanating from source areas located south of Moffett Field in the MEW Area that moved northward and commingled with contamination from Navy source areas at Moffett Field. (See Figure 1, Map of Estimated Extent of MEW Study Area Shallow Groundwater Contamination, on next page).

EPA selected a remedy to address the contaminated soils and groundwater in the MEW Study Area in a 1989 ROD. Notably, because of EPA’s then-current understanding of the subsurface to indoor air pathway, the 1989 ROD did not include remedial action for the vapor intrusion pathway from the subsurface contamination.

In 1990, the Navy, EPA, and the State entered into the FFA for Moffett Field to, among other things, “ensure that the environmental impacts associated with past and present activities at the Site are thoroughly investigated and appropriate remedial action taken as necessary to protect the public health, welfare and the environment.” FFA 5.1.1. The FFA requires the Navy to perform RI/FSSs, issue RODs, and conduct remediation from sources at Moffett Field, including investigation and remediation of source areas of contamination that overlap with contamination from MEW sources. Following entry into the FFA, in 1992 the Navy submitted a separate RI/FS for its groundwater contamination sources within the MEW Study Area.



**Figure 1. Map of Estimated Extent of MEW Study Area Shallow Groundwater Contamination**

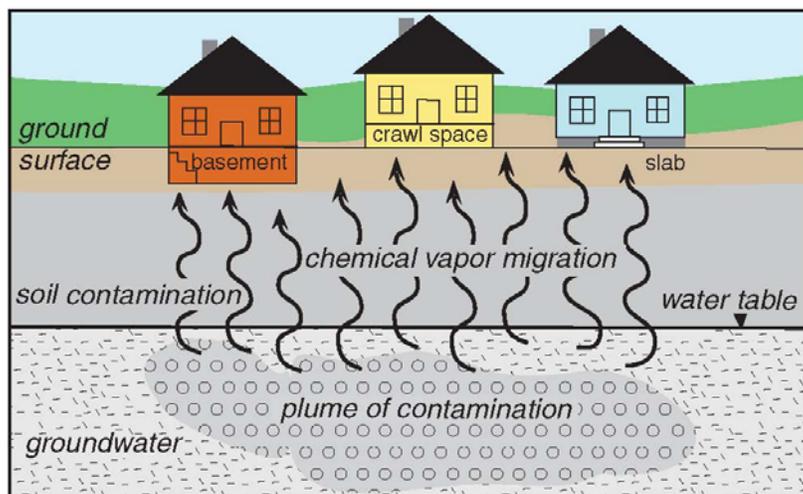
EPA disputed the Navy’s use of a separate RI/FS on September 17, 1992, successfully arguing that a separate RI/FS was unnecessary to support a remedial action given the existence of the 1989 ROD that already addressed the same contamination. The 1992 dispute also raised concerns that separate evaluations could lead to selection of a remedial action contrary to the existing 1989 ROD. In 1993, EPA, the Navy, and the State amended the FFA wherein the Navy agreed to adopt the 1989 ROD with respect to Navy source areas of contamination within the MEW Study Area and complete remediation of those sources in accordance therewith.<sup>1</sup>

<sup>1</sup> At that time, Moffett Field was in the process of being transferred to NASA and the Air Force. Due to this impending change, the 1993 amendment to the FFA also included standard FFA base closure language assuring the public that the Navy’s FFA obligations would continue despite the base’s closure.

Since that time, the Navy has been implementing the groundwater remedy selected in the 1989 ROD in coordination with the other MEW Responsible Parties. The Navy primarily implements the 1989 ROD with regard to an area called the West-Side Aquifers Treatment System (“WATS”) Area while NASA and the other MEW Responsible Parties conduct remediation throughout the remainder of the regional groundwater plume on Moffett Field. The parties have been conducting groundwater cleanup under the 1989 ROD for over a decade, though cleanup is expected to continue for many decades until concentrations of Site contaminants of concern meet cleanup standards.<sup>2</sup>

### b. Vapor Intrusion Risk

Since the selection of the groundwater and soil remedy in the 1989 ROD, EPA’s understanding of the fate and transport of chemicals from the subsurface into overlying structures has evolved. Under certain conditions, volatile chemicals, such as trichloroethene (“TCE”) and tetrachloroethene (“PCE”), in the subsurface soils or groundwater can migrate upward through subsurface soils and enter overlying buildings.<sup>3</sup> These contaminants can then collect inside the buildings and impact indoor air quality (See Figure 2, Schematic of Vapor Intrusion Pathway).



**Figure 2. Schematic of Vapor Intrusion Pathway**

Groundwater contamination in the Moffett Field Area is 5 to 10 feet below ground surface, and maximum groundwater concentrations of TCE and PCE are 3,600 micrograms per liter (“ $\mu\text{g/L}$ ”) and 1,300  $\mu\text{g/L}$ , respectively. Based on the presence of high concentrations in

<sup>2</sup> EPA and the parties are conducting optimization efforts for the groundwater remedy and evaluating alternative groundwater cleanup technologies to expedite cleanup as part of a separate Supplemental Site-wide Groundwater Feasibility Study for the MEW Study Area.

<sup>3</sup> In November 2002, EPA’s Office of Solid Waste and Emergency Response (OSWER) released an external review draft “Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils (Subsurface Vapor Intrusion Guidance)” that focuses specifically on this pathway.

shallow groundwater, in October 2002 EPA determined that there is the potential for vapor intrusion that may pose a potential health risk to occupants of existing and future buildings overlying the groundwater plume. Over 100 buildings currently overlie the MEW regional groundwater plume on Moffett Field, including military housing, educational facilities, research and development, and office space.

Through initial sampling in 2003 and 2004 in both residential and commercial buildings in the MEW Study Area, EPA confirmed the presence of the subsurface vapor intrusion pathway into a number of buildings. None of these samples indicate any immediate or short-term health threat to building occupants; however EPA continued to investigate whether the chemicals measured in indoor air pose an unacceptable risk of chronic health effects due to long-term exposure. EPA set site-specific indoor air cleanup levels for TCE of 1  $\mu\text{g}/\text{m}^3$  in air for residential buildings and 5  $\mu\text{g}/\text{m}^3$  in air for non-residential buildings. For PCE, the indoor air cleanup levels are 0.4  $\mu\text{g}/\text{m}^3$  in air for residential buildings and 2  $\mu\text{g}/\text{m}^3$  in air for non-residential buildings. Sampling in several buildings in the MEW Study Area showed indoor air contamination concentrations above these cleanup levels. The maximum TCE and PCE indoor air concentrations found to date in existing commercial buildings in the Moffett Field Area are 176 micrograms per cubic meter (" $\mu\text{g}/\text{m}^3$ ") and 35  $\mu\text{g}/\text{m}^3$ , respectively. Following several years of investigation and evaluation, in July 2009, EPA issued the Proposed Plan for the Vapor Intrusion Pathway remedy.

EPA's 2009 Second Five-Year Review for the MEW Study Area determined that the remedy in the 1989 ROD was "not protective because it does not adequately address potential health risks from long-term exposure to TCE and other VOCs [volatile organic compounds] through the vapor intrusion pathway."<sup>4</sup> Five-Year Review at 9-1. The Five-Year Review acknowledged the work already underway to evaluate the pathway, and, where necessary, interim actions had already been taken. However, in order to be protective, a remedy addressing the vapor intrusion pathway had to be selected, buildings within the Vapor Intrusion Study Area had to be sampled and evaluated, and remedial action had to be taken. *Id.*

### **c. The Vapor Intrusion ROD Amendment**

In August 2010, EPA issued the vapor intrusion ROD Amendment to the 1989 ROD. The objective of the vapor intrusion remedy is to protect the health of current and future occupants, including workers and residents, of buildings overlying the shallow subsurface VOC contamination by preventing indoor air contaminant levels from exceeding these cleanup levels.

The ROD Amendment describes the vapor intrusion remedy selected for buildings in the Vapor Intrusion Study Area requiring response action. The engineered remedy is the installation

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<sup>4</sup> Similarly, in EPA's July 7, 2010 comments on the Navy's 2010 Five-Year Review of Installation Restoration Sites 1, 22, 26 and 28 at Former NAS Moffett Field, EPA explained that, despite implementation of the 1989 ROD groundwater remedy, that remedy was not considered protective because it did not address potential health risks from long-term exposure to VOCs through the vapor intrusion pathway.

of an appropriate sub-slab/sub-membrane ventilation system.<sup>5</sup> The vapor intrusion remedy also requires institutional controls (“ICs”) to ensure the implementation of the remedy in the future. For the Moffett Field Area, the ICs incorporate existing base management documents as well as the Moffett Field Master Plan that are already in place.<sup>6</sup>

**d. The vapor intrusion exposure pathway from the commingled sources of contamination should be addressed with a single remedy**

When determining whether contiguous contamination should be treated as a single site, EPA looks, among other things, at whether the contamination is co-located, the cost-effectiveness of an aggregated response, and public acceptance. CERCLA 104(d)(4);<sup>7</sup> *Selecting a Combined Response Action Approach for Noncontiguous CERCLA Facilities to Expedite Cleanups*, OSWER Directive 9355.3-14F3 (April 1992). The contamination from Navy source areas in the Moffett Field Area is commingled and not separable from the contamination from sources south of U.S. Highway 101 in the MEW Area. Treating commingled contamination sites as a single site can provide a more timely and more cost-effective remedy. OSWER Directive 9355.3-14F3. Here, EPA has already assessed the risk and selected a single vapor intrusion remedy for the entire MEW Study Area. Treating this commingled contamination in a coordinated manner is essential because of the multiple parties addressing the same exposure pathway in the same locations. Additionally, any separate treatment of the vapor intrusion pathway in the Moffett Field Area by the Navy would be, at best, redundant, and could risk selection of an inconsistent remedy for the same area.

Particularly because of the potential current and ongoing exposure pathway with vapor intrusion, the public has been involved during the vapor intrusion remedy development. The public would likely not accept or understand the need to conduct another lengthy investigation process that would likely result in the same remedy selected in the ROD Amendment.

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<sup>5</sup> A building’s indoor air ventilation system may be used where the property owner agrees to and provides assurance for the necessary use, operation, and monitoring of that building’s indoor air ventilation system in a manner consistent with the remedy for that building.

<sup>6</sup> Specifically, NASA’s March 2005 *Environmental Issues Management Plan* (EIMP) includes measures to be implemented in future development at Moffett Field in the NASA Research Park area to address the vapor intrusion pathway. For those portions of the Moffett Field Area that are outside the NASA Research Park area, NASA has been working with EPA to incorporate sampling, operations, maintenance, and monitoring requirements into the appropriate Master Plan planning documents. Additionally, similar requirements to those in the EIMP should be adopted for new construction within the Moffett Field Area to ensure ongoing implementation and monitoring of the remedy.

<sup>7</sup> CERCLA 104(d)(4): “Where two or more noncontiguous facilities are reasonably related on the basis of geography, or on the basis of the threat, or potential threat to the public health or welfare or the environment, the President may, in his discretion, treat these related facilities as one for purposes of this section.”

**C. The ROD Amendment has already evaluated potential exposure and response actions to address the vapor intrusion pathway throughout the Vapor Intrusion Study Area including the Moffett Field Area**

**1. Vapor Intrusion Supplemental RI/FS and ROD Amendment Process**

Because the primary source to vapor intrusion is commingled shallow groundwater contamination, EPA approached evaluation of the vapor intrusion pathway in the MEW Study Area in a single process, producing one Supplemental RI, Supplemental FS, and ROD Amendment. EPA's ROD Amendment thoroughly evaluated remedial alternatives to address the vapor intrusion pathway within the MEW Study Area. The Navy was included throughout the RI/FS, Proposed Plan, and remedy development process. In 2002 and 2003, the Navy collected some of the initial indoor air sampling data at the former Wescoat Housing Area on Moffett Field, which indicated the vapor intrusion pathway was complete in locations in that area. Although the Navy subsequently chose not to actively participate in the Supplemental RI/FS process, Moffett Field-specific indoor air and building data were incorporated into the RI and FS evaluation.

The FFA provides for the Navy to develop, implement and report on RI/FSs for source areas at Moffett Field (FFA 1.17 and 1.18) "to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site," and "to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Site in accordance with CERCLA." FFA 5.2.2. Because the Navy contamination is commingled within the Moffett Field Area, the remedy selected already applies to all of the buildings overlying Navy contamination. At this point, for the Navy to conduct its own RI/FS and remedy selection would only serve to distract from implementation of the remedy, take significant time and resources, and significantly delay a determination of protectiveness for the MEW Study Area.

During the remedy development process, the Navy was informed of, and attended many, meetings, received the draft and final Supplemental RI/FS and Proposed Plan for review and comment, all of which clearly indicated that the vapor intrusion remedy applied to the Moffett Field Area as well as other areas in the MEW Study Area. The Navy did not submit formal comments on any of the remedy selection documents. Instead, as it did in its October 20 letter, the Navy has deferred to NASA's work with regard to investigation and evaluation of the vapor intrusion pathway; all of which has been in support of the ROD Amendment.

If the Navy wanted to assert that it should conduct its own RI/FS of the vapor intrusion pathway, it should have indicated as such during the RI/FS and Proposed Plan process. By deferring to NASA, and not objecting to EPA's performance of an RI/FS for the areas impacted by Navy sources, the Navy implicitly agreed that EPA, and not the Navy, should select the vapor intrusion remedy for the Moffett Field Area. Because the Navy did not object to EPA's conduct of the RI/FS, it should be estopped from raising this argument at this stage in the process.

NASA, the primary Moffett Field property owner and operator, participated in the Supplemental RI/FS process. Accordingly, the vapor intrusion remedy incorporates significant facility-specific information from the Moffett Field Area. As was found during the Supplemental RI/FS process, each building impacted by the subsurface contamination is unique, but the response actions considered are equally applicable to all buildings throughout the Vapor Intrusion Study Area. The remedy requires indoor air sampling at each building and then utilizes a tiering system to determine the appropriate response action for that building.

Although generally the FFA provides for the Navy to conduct RI/FSs for its sources of contamination, here the risk has already been evaluated and conducting a separate remedial selection process not only could delay implementation of the remedy, it risks selection of inconsistent remedies and bottlenecks in remedy implementation at Moffett Field. Any impediment to remedy implementation is particularly problematic because potential current exposure to MEW Study Area contamination via the vapor intrusion pathway continues unabated until EPA's selected remedy is implemented.

**2. Adoption of the ROD Amendment would provide a consistent and timely remedy for building occupants throughout the Vapor Intrusion Study Area**

The ROD Amendment provides protection from exposure to contamination throughout the MEW Study Area in a consistent manner: preventing the accumulation of Site contaminants indoors at levels above the selected cleanup levels. The Supplemental FS evaluated a range of alternatives and the ROD Amendment selected a remedy that suits the range of residential and non-residential/commercial buildings in the Vapor Intrusion Study Area. The Navy has expressed concern to EPA informally that the ROD Amendment did not explore the alternative of evacuating building occupants over the subsurface contamination thereby removing possible receptors to the vapor intrusion exposure pathway. This option was not considered in the ROD Amendment, because the Supplemental FS clearly showed the effectiveness of the engineering remedy to sufficiently lower indoor air contamination levels in both residences and commercial buildings in the MEW Study Area to meet the cleanup criteria.

Generally, a remedy must address exposure for an impacted area's "reasonably foreseeable property use." EPA, *Land Use in the CERCLA Remedy Selection Process*, OSWER Directive 9355.7-04 (May 1995). This guidance provides that remedial action objectives should reflect a range of reasonably likely anticipated future land uses where the future use of the land is "highly uncertain." Where future land use is "relatively certain," however, this is the land use that should be reflected in the site's remedial action objectives. Here, the Moffett Field Area has included residential and non-residential, office buildings for many decades, long before the property was transferred to NASA. Therefore, the remedial alternatives considered were tailored to those existing and reasonably anticipated future uses. Any separate evaluation by the Navy would be required to consider those same uses.

A coordinated approach is especially necessary here to ensure that the remedy is implemented in a timely manner. No one is currently drinking the groundwater in the MEW Study Area, thus vapor intrusion - migration of volatile chemicals from subsurface sources into

overlying buildings - is the single actual, current exposure pathway from contaminated groundwater at the Site. In order to be protective, this current exposure pathway to contaminants must be identified and remediated where necessary. In the ROD Amendment, EPA selected a sampling tiering system to determine and select the appropriate response action. Without the participation of all of the Responsible Parties to implement the appropriate vapor intrusion remedy in a timely manner, there is a risk that remedy implementation by all parties will be slowed.

### **3. NASA's Role in Remedy Implementation**

Throughout this process, the Navy has indicated that it considers NASA, as the current property owner, to be the appropriate party to sample buildings and implement the vapor intrusion remedy in the Moffett Field Area. EPA has appreciated the work that NASA has done thus far to help evaluate the vapor intrusion pathway and to take interim actions to reduce vapor intrusion risk in selected buildings. Additionally, as the property owner and operator, NASA will necessarily play an ongoing role in remedy implementation, including cooperation with any sampling and remedy operation, providing reasonable access, and implementing ICs. However, EPA expects the Navy, as the party responsible for causing the subsurface contamination to implement the remedy and ensure its protectiveness. This is entirely consistent with EPA's approach throughout the MEW Study Area; nowhere else in the MEW Study Area is EPA expecting the property owners to implement the vapor intrusion remedy in the first instance.

The Navy committed under the FFA to take appropriate remedial action to ensure that the environmental impacts associated with past and present activities at Moffett Field are protective of the public health, welfare, and the environment.<sup>8</sup> In this case, because it is the Navy's contamination that is commingled with other sources to the MEW Regional Groundwater contamination and is the source of the vapor intrusion, EPA is looking to the Navy under the FFA to implement the vapor intrusion remedy selected in the ROD Amendment in the Moffett Field Area.

### **D. Current Work for the Vapor Intrusion Pathway**

The ROD Amendment was issued in August 2010, and EPA is now looking to the Responsible Parties to implement that remedy. Currently, indoor air sampling must be conducted throughout the Vapor Intrusion Study Area to complete the building-specific evaluation of the vapor intrusion pathway. Concurrently, EPA will be working with the Responsible Parties to adopt a Scope of Work for implementation of the remedy. EPA is concerned that, without a commitment and schedule from the Navy, that its timetable to conduct

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<sup>8</sup> This is consistent with – though not as broad as – the Navy's agreement in a Memorandum of Agreement (“MOA”) with NASA to continue to address historic contaminant sources following the transfer of the property to NASA. As part of the transfer of Moffett Field from the Navy to NASA, the parties entered into a Memorandum of Agreement (MOA), dated December 22, 1992. Pursuant to this MOA, the Navy is committed to addressing existing contamination on Moffett Field at the time of the property transfer regardless of source while NASA's obligations extend to ongoing environmental compliance.

this work will be inconsistent with the other parties. This lack of coordination could cause unwarranted delay in remedy implementation and potential continued human exposure to contamination.

**E. Conclusion**

In light of the foregoing, EPA is requesting a determination by the DRC that the FFA requires a consistent and coordinated approach to contamination from Navy sources within the MEW Study Area, and, accordingly, compels adoption of the EPA 2010 ROD Amendment for the vapor intrusion pathway and a schedule to implement the vapor intrusion remedy.

The FFA's schedule for Dispute Resolution requires the group to attempt to unanimously resolve the dispute within twenty-one (21) days of the date of this Position Statement. FFA 10.5. In order to facilitate such a resolution, EPA will be contacting you to schedule a meeting to discuss this.

Thank you for your consideration.

Sincerely,



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Acting Assistant Director  
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EPA Region 9 Superfund Division

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