DEPARTMENT OF THE NAVY
OFFICE OF THE GENERAL COUNSEL
NAVY LITIGATION OFFICE
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April 3, 2014

Ms. Allyn L. Stern
Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

Re: Gorst Creek Landfill, Port Orchard, Washington

Dear Ms. Stern:

On behalf of the United States Department of Navy (Navy), I am writing in response to the Environmental Protection Agency's (EPA) letter of March 7, 2014 regarding the Gorst Creek Landfill (Site) in Port Orchard, Kitsap County, Washington. Your letter states that the EPA "believes the Navy shares liability at the site." After reviewing all documentation provided by the EPA and conducting its own inquiry, the Navy continues to respectfully disagree with your determination.

It appears that the Puget Sound Naval Shipyard (PSNS) may have contracted for the disposal of refuse at the Site for a one-year period from 1969-1970, although the actual contract has not been located. The records related to this matter demonstrate that the Navy neither owned nor operated the Site and that the Navy's potential involvement at the Site does not give rise to liability as an arranger under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Pursuant to Section 107(a)(3), an arranger is "any person who by contract, agreement, or otherwise arranged for disposal or treatment. . . of hazardous substances of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances."

Your letter appears to equate disposal of any refuse with liability under CERCLA, which is unsupported by either the statute or relevant case law. To be liable, the EPA must provide a nexus between items disposed of by the Navy and the contamination at issue. Not only is there no evidence that the Navy contracted for disposal of a hazardous substance under CERCLA, but none of the identified contaminants have been linked to the Navy's limited activity at the Site.

Because there is no evidence connecting the Navy's activities to any contamination at the Site, the Navy does not consider itself a PRP and does not intend "to conduct or

contribute to the proposed action". If you have additional information regarding the Navy's involvement with the Site, I look forward to reviewing it. In the meantime, should you have any questions, please do not hesitate to contact me either by phone, 202-685-6947, or by email, page.turney@navy.mil.

Sincerely,

J. Page Turney

J. Page Turney
Senior Litigation Attorney

cc:

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