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ENTERED

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JOHN D'ANTONIO, Jr.
SECRETARY

DRAFT

MEMORANDUM

TO: James Bearzi
Marcy Leavitt

THRU: John E. Kieling
David Cobrain

FROM: Glenn von Gonten

SUBJECT: FORT BLISS

DATE: November 1, 2002

On October 22, 2002 Fort Bliss submitted a "Request for Decision" regarding their pending No Further Action Petition (NFA) (see Attachment). In February 2002 HWB and GWQB jointly issued a Notice of Deficiency to Fort Bliss addressing their failure to submit NOIs for their four WWTP lagoons. Fort Bliss responded to our NOD On March 15, 2002; to date, NMED has not responded to Fort Bliss's response letter. WWMD staff met with Greg Lewis on May 29, 2002 to discuss this issue, but no final decision was made at that time.

On October 31, 2002 the federal General Accounting Office (GAO) contacted me to ask if we had any pending issues with Fort Bliss. I very briefly discussed our issues with GAO. GAO is scheduled to conduct an inspection of Fort Bliss beginning November 4, 2002 and asked that we contact them with any additional concerns.

NMED has several options available at this time. These options are not necessarily exclusive and have not been reviewed by OGC.

Option 1. GWQB could issue a NOV to Fort Bliss for failure to submit the required NOIs, followed by an order if Fort Bliss still fails to comply. Please note that the Assistant Secretary of the Army (Installations and Environment) has established a zero NOV goal for the Army and requires all installations to inform his office within 24 hours of receiving notice of any environmental enforcement actions. One major downside to this option is that if we take enforcement action against Fort Bliss and lose, then the other federal facilities, such as DOE, BLM, etc., might not be required to obtain DPs from GWQB.

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Option 2. HWB can approve NFAs for four of the six sites, but not the two WWTP lagoons or we can deny the entire NFA petition.

Option 3. HWB can hold the NFA petition until GWQB resolves their issues with Fort Bliss.

Option 4. HWB can deny the NFA petition for the two WWTP lagoons and require Fort Bliss to implement a long-term monitoring program (LTM) pursuant to our HSWA authority.

Option 5. HWB can deny the NFA petition for the two WWTP lagoons and declare all four WWTP lagoons to be "open dumps." Fort Bliss would then be required to close the lagoons and to conduct a detailed RFI for all four lagoons.

Option 6. Certain EPA sources have suggested that HWB should attempt to directly tie the GWQB requirement to obtain DPs to Fort Bliss' HSWA requirements. This approach, if successful, would negate Fort Bliss' sovereign immunity claim. Our argument would be that we are requiring Fort Bliss to conduct LTM at the lagoons because the lagoons are active units and that DPs are required under RCRA.