

MEMORANDUM

DATE: March 18, 1997

TO: Jim Trolan

FROM: Scott Seery *SS*

SUBJ: National Airmotive Corporation, Oakland Airport (NAC) -
Settlement subaccount of the "Alameda County Hazardous
Materials Training and Resource Trust Account"

This memo is written to check on the status of monies deposited into a subaccount of the "Alameda County Hazardous Materials Training and Resource Trust Account" ("Account") and earmarked for a particular future purpose. Following is a summary of the facts relating to this issue.

Alameda County filed suit in 1994 against National Airmotive Corporation (NAC) for alleged hazardous waste and other violations. Settlement of the case was reached in October 1994. One stipulation of the settlement (Sec. (5)(I) of the *Stipulation for Consent Judgment*) entitles NAC to a "credit" of up to \$125,000 towards payments paid to the Treasurer of Alameda County for costs incurred by NAC in achieving regulatory compliance and pursuing environmental cleanup. Work is expected to be completed by June 1998.

As of June 1996, NAC spent or contracted to spend \$104,294.22 for which it is entitled to credit under the stipulation, leaving a "credit" balance of \$20,705.78. A check for this unused credit was deposited into a subaccount of the Account. I understand that this subaccount is designated as the "NAC Oakland Airport Remediation Sub-Account."

As there is no certainty that I will still be the project coordinator for this case when the project is completed in 1998, I wanted to verify that this subaccount and these monies are still accounted for.

Attached are documents which discuss these issues in more detail. Please contact me when you know the status of this account.

c: GC
TP
MLT
Larry Blazer

GIBSON, DUNN & CRUTCHER LLP

JAS. A. GIBSON, 1852-1922
W. E. DUNN, 1861-1925
ALBERT CRUTCHER, 1860-1931

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Gilbert A. Jensen
Sr. Deputy District Attorney
District Attorney's Office
7677 Oakport Street, Suite 400
Oakland, Calif. 94621

Re: People v. National Airmotive Corporation
Alameda County Sup. Court, Case No. H-179506-2

Dear Mr. Jensen:

1. INTRODUCTION

This letter is written pursuant to Section (5)(I) of the Stipulation for Consent Judgment ("Stipulation") entered in the above-referenced matter on or about October 21, 1994. The following, including the attachments hereto, is an accounting for amounts spent or presently contracted by National Airmotive Corporation ("NAC") in connection with its performance of work required to comply with paragraphs (5)(C), (5)(D), and (5)(F) of the Stipulation.¹ NAC is entitled to a credit for these expenditures of up to \$125,000 towards the

¹ You should also be aware that NAC has spent substantial additional amounts in performance of work to comply with other sections of the Stipulation (e.g., Section (5)(G) relating to development and presentation of a training curriculum). However, according to the terms of the Stipulation, those amounts have not been included in determining the amount of Section (5)(I) credit available.

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Gilbert A. Jensen, Esq.
June 10, 1996
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\$125,000 "additional costs" to be paid to the Treasurer of Alameda County.

In addition, pursuant to discussions between the parties, this letter also sets forth the parties' understanding regarding handling of the currently unused credit amount of \$20,705.78 pending anticipated completion of the on-going monitoring activities at the Test Cell Facility.

2. ACCOUNTING FOR AMOUNTS SPENT/CONTRACTED

Attached as Exhibit A hereto is a spreadsheet detailing the amounts already spent or currently contracted by NAC in connection with work performed on: (1) the investigation and monitoring of the Jet-A fuel spill effects at the Test Cell Facility (Stipulation §(5)(C)); (2) the investigation and monitoring of the oil-containing water discharges at the Test Cell Facility (Stipulation §(5)(D)); and, (3) the Environmental Compliance Audit (Stipulation §(5)(F)). Attached as numbered exhibits to Exhibit A are invoices detailing the amounts reflected on the spreadsheet.

As indicated in Exhibit A, NAC has, to date, spent or contracted to spend \$104,294.22, for which it is entitled to credit under the Stipulation.

The amount of the credit remaining unused at this time is \$20,705.78.

3. REMAINING CREDIT - TRUST FUND

On February 21, 1996, the Alameda County Department of Environmental Health ("the County") outlined in a letter its requirements for a monitoring program "to complete the Jet-A fuel release and 'gray water' investigations at the Test Cell Facility." A copy of that letter is attached as Exhibit B hereto. Pursuant to that letter, NAC submitted a proposal for such a program, which has been approved by the County. A copy of that proposal is attached as Exhibit C.

NAC has already contracted for and commenced the monitoring described in Exhibit C. In the event no further work is required as a result of findings made during the course of the monitoring, that work is scheduled to be completed by in or about June, 1998, with no additional expenditures involved beyond the current contract amount (which is already included in the accounting set forth in Exhibit A).

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It is possible, however, that the monitoring program, or other presently contemplated work at the Test Cell Facility (specifically, work related to removal or replacement of the underground fuel tanks) to be completed by the end of 1998, may reveal residual effects from the Jet-A fuel spill or the "gray water" discharge with respect to which the County may require NAC to conduct additional investigation, prolonged or additional monitoring, or remediation work. In that event, the parties have agreed that NAC shall be entitled to use some or all of the remaining credit amount of \$20,705.78 for expenditures for such additional investigation, prolonged or additional monitoring, or remediation work.

Accordingly, the parties agree to the following with respect to the remaining credit amount of \$20,705.78:

(1) On or before June 24, 1996, NAC shall deliver to the District Attorneys' Office a check in the amount of \$20,705.78, made payable to "Alameda County Hazardous Materials Training and Resource Trust Account." This check shall then be deposited forthwith in a sub-account of the Alameda County Hazardous Materials Training and Resource Trust Account, which shall be designated as the "NAC Oakland Airport Remediation Sub-Account" ("Sub-Account").

(2) In the event that, on or before December 31, 1998, NAC is required to incur and pay expenses, not already provided for in the Envirometrix Proposal, dated March 1, 1996, and attached as exhibit 13 to Exhibit A hereto, in connection with work performed to comply with Stipulation Sections (5)(C) or (5)(D), NAC shall be entitled to reimbursement of such expenditures from the Sub-Account up to the amount of the funds remaining in the Sub-Account at the time reimbursement is sought according to the procedures set forth below.

(3) To obtain reimbursement from the Sub-Account, NAC shall submit to the Alameda County District Attorneys' Office (Attention: Gilbert Jensen, or such other person as Mr. Jensen may designate) a description of the work performed and copies of all related invoices paid by NAC for which reimbursement from the Sub-Account is sought.

(4) Within thirty (30) days of NAC's submission of a request for reimbursement, the District Attorneys' Office shall: (1) deliver to NAC a check, drawn on the Sub-Account, for the amount sought or for such portion of that amount as the County does not dispute (not to exceed the balance

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remaining in the Sub-Account), and/or (2) in the event that the County disputes all or any portion of the amount sought, deliver to NAC a statement, in writing, setting forth the specific grounds upon which the County disputes that such amount should be paid.

(5) In the event of any dispute, following the County's submission of its detailed statement and pursuant to Sections (5)(I) and (7) of the Stipulation and Consent Order thereon, either party may submit the matter to the Court by noticed motion for determination of the proper amount to be paid from the Sub-Account, if any. Any such motions shall be noticed for hearing no later than November 30, 1998.

(6) If, at any time on or before December 31, 1998, as a result of reimbursements paid to NAC, the balance of the Sub-Account shall decrease to zero, the Sub-Account shall be closed, and the provisions of Section (5)(I) of the Stipulation shall be deemed fulfilled. In any event, on January 1, 1999, or the first business day thereafter, any and all funds remaining in the Sub-Account shall be paid over to the Treasurer of Alameda County, the Sub-Account shall be closed, and the provisions of Section (5)(I) of the Stipulation shall be deemed fulfilled.

By their signatures below, the undersigned, on behalf of the respective parties, agree to the foregoing accounting and to the terms for handling and disbursement of the remaining credit amount.

JOHN J. MEEHAN
GILBERT A. JENSEN
OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF ALAMEDA

WILLIAM D. CONNELL
GIBSON, DUNN & CRUTCHER LLP

By: _____
Gilbert A. Jensen

By: _____
William D. Connell

Attachments

cc: Scott O. Seery, CHMM (with attachments)
National Airmotive Corporation (with attachments)

COMPLIANCE AUDIT – EMCON ASSOCIATES				
Consent Order, Section 5(F)				
INVOICE DATE	AMOUNT	TOTAL		EXH. NO.
6/30/94	\$1,159.98	\$1,159.98		1
12/30/94	\$572.90	\$1,732.88		2
1/30/95	\$9,914.19	\$11,647.07		3
2/28/95	\$8,761.27	\$20,408.34		4
5/25/95	\$190.96	\$20,599.30		5
	TOTAL	\$20,599.30		

TEST CELL -- SOIL AND GROUNDWATER CHARACTERIZATION – EMCON				
Consent Order, Sections 5(C) and 5(D)				
INVOICE DATE	AMOUNT	TOTAL		EXH. NO.
3/31/95	\$1,378.66	\$1,378.66		6
4/20/95	\$1,504.83	\$2,883.49		7
5/25/95	\$5,175.87	\$8,059.36		7A
6/22/95	\$6,251.90	\$14,311.26		8
10/18/95	\$276.43	\$14,587.69		9
11/20/95	\$1,373.18	\$15,960.87		10
1/22/96	\$21,316.59	\$37,277.46		11
2/23/96	\$757.46	\$38,034.92		12
	TOTAL	\$38,034.92		

TEST CELL -- GROUNDWATER MONITORING – ENVIROMETRIX				
Consent Order, Sections 5(C) and 5(D)				
INVOICE DATE	AMOUNT	TOTAL		EXH. NO.
3/1/96	\$42,060.00	\$42,060.00		13

TEST CELL INVESTIGATION -- COUNTY OVERSIGHT FEES				
Consent Order, Sections 5(C) and 5(D)				
PAYMENT DATE	AMOUNT	TOTAL		EXH. NO.
1/18/95	\$2,500.00	\$2,500.00		14
2/21/96	\$1,100.00	\$3,600.00		15
	TOTAL	\$3,600.00		

TOTAL CREDIT SPENT/COMMITTED \$104,294.22

TOTAL CREDIT ALLOWED (Sec. 5(I)) \$125,000.00

TRUST FUND AMOUNT \$20,705.78

ALAMEDA COUNTY
HEALTH CARE SERVICES



AGENCY
DAVID J. KEARS, Agency Director

RAFAT A. SHAHID, DIRECTOR

February 21, 1996

DEPARTMENT OF ENVIRONMENTAL HEALTH
1131 Harbor Bay Parkway
Alameda, CA 94502-6577
(510) 567-6700

Mr. Roger Bastien
National Airmotive Corporation
7200 Lockheed Street
Oakland, CA 94521-4504

RE: ENVIRONMENTAL INVESTIGATIONS - NATIONAL AIRMOTIVE
CORPORATION (NAC) TEST SITE, EARHART ROAD, OAKLAND AIRPORT

Dear Mr. Bastien:

This letter is intended to summarize particular facts and final actions agreed upon during our meeting today attended by yourself and Mr. Cliff Maupin of NAC, Mr. William Connell of the law firm of Gibson, Dunn & Crutcher, NAC's legal representative on this matter, and Mr. Gil Jensen, Alameda County District Attorney's Office. Our meeting convened following this office's receipt and my review of the January 16, 1996 EMCON report entitled "Soil and Groundwater Investigation, National Airmotive Corporation Facility, Oakland, California" in order to discuss what final actions may be needed to complete the Jet-A fuel release and "gray water" investigations at the subject NAC site.

We understand that it is NAC's intent to upgrade the underground storage tank (UST) complex where appropriate in order to comply with UST standards that will take affect December 1998. We also understand that EMCON has recommended that NAC monitor for the presence of free-phase product in the UST pit at that time, and to remove such product if observed. This action is acceptable to this office.

In order to ensure the jet fuel plume is stable and not migrating towards the tidal marsh immediately east of the test site, and to move this case towards final closure, we request that three (3) monitoring wells (aka "guardian" wells) be installed in the general locations we discussed today. I have enclosed an annotated site map on which these generalized well locations are illustrated.

Ground water samples shall be collected from each well on an annual basis for two years after installation, for a total of three (3) sampling events (initial, 1st annual, and 2nd annual). Should concentrations of targeted jet fuel constituents in sampled water suggest that the plume is stable and not discharging into the tidal marsh, or plume constituents are below levels of concern based on toxicity values for estuarine organisms, no further action will be required.

EXHIBIT B

Mr. Roger Bastien
RE: National Airmotive Corp. Test Site
February 21, 1996
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Please have your consultant submit a brief work plan for the installation of the noted monitoring wells which incorporates, among others, the following elements:

- 1) Target compounds for analysis of sampled ground water shall be TPH characterized as jet fuel (TPH-Jf), and BTEX. Should "hits" for TPH be identified in any samples, also analyze for SVOC.
- 2) Soil samples need not be collected for chemical analysis, although you may choose to collect such samples for routine lithologic determination.
- 3) Water elevation and flow direction/gradient shall be determined from well gauging during the initial and subsequent sampling events.
- 4) Subsequent annual sampling events shall occur during the 1st quarter of each sample year.

As we additionally discussed, the current account established in January 1995 to offset costs incurred by this agency during its oversight of your case is presently in arrears. Please remit an additional draft, made payable to Alameda County, in the amount of \$1100. I anticipate that this additional deposit should be sufficient to make up the current deficit and fund the project to closure.

Thank you for your attention to these issues. Please call me at 510/567-6793 should you have any questions or comments.

Sincerely,



Scott O. Seery CHMM
Senior Hazardous Materials Specialist

enclosure

cc: Jun Makishima, Acting Director
Gil Jensen, Alameda County District Attorney's Office
William Connell, Esq., Gibson, Dunn & Crutcher
One Montgomery St., Telesis Tower
San Francisco, CA 94104-4505