MCM CONSTRUCTION, INC.
GENERAL ENGINEERING CONTRACTORS
SACRAMENTO, CA

Main Office
P.O. BOX 620 / 6413 32nd Street / North Highlands / CA 95660
(916) 334-1221 Estimating / Engineering Fax (916) 334-0562
Accounting Fax (916) 334-8355
Oakland Touchdown – Site Office
450 Burma Road / Oakland CA 94607

21-Mar-2008 MCM-LTR-000339

Mr. Ben Ghafghazi
Resident Engineer
California Department of Transportation
333 Burma Road,
Oakland, CA 94607, USA

PROJECT: **Oakland Touchdown**
Caltrans Contract No. 04-0120L4
MCM Job No. 307

SUBJECT: **Board of Equalization, Land Fill Disposal Fees - NOPC 5**

Gentlemen:

Please accept this letter as a Notice of Potential Claim #5 submitted in accordance with Section 9-1.04 of the Standard Specifications, due to your failure to write a contract change order for BOE landfill disposal fees. The total charges to date are $5,866,91.

We reviewed your letter dated March 5, 2008, stating that the lead in the soil is the result of years of painting operations on the steel structure using red lead based paint and sand blasting the coats of paint and not aerially deposited lead.

Specification 5-1.29, "Hazardous Material, General," does not alert the contractor that the lead contaminated material was deposited by any other source other than aerially from the lead in gasoline used by cars in years past. The specification for Aerially Deposited Lead is not used in these Special Provisions; however when we reviewed that clause in another Caltrans project, aforementioned section did not state that this material was BOE exempt.

Contaminants were discovered through testing within project limits, however the test results reported in "Material Information Handout" do not distinguish aerially deposited lead from any other lead contamination source. Nor do the results of the Site Investigation Reports show that the lead was specially caused by red lead based paint and sand blasting the coats of paint. Rather the Executive Summary in the Site Investigation Reports states that the primary scope of services was to evaluate whether impacts from contaminants of concern including lead from vehicle emissions or lead based paint removal and other metals such as diesel and gasoline exist in the soil.

The statistical evaluation of lead detected in soil samples did not conclude that the lead contamination was attributable solely to red lead based paint and sand blasting the coats of paint. Additionally, Caltrans has provided no evidence that the contamination found at the site is anything other than material with lead deposited aerially from the lead containing fuels used by cars in years past.

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Since the contamination has not been shown to be from any source other than aerially deposited lead the exemption should be allowed or the State should issue a Contract Change to pay these fees.

If you have any questions or require any further information, please feel free to call at any time.

Very truly yours,
MCM CONSTRUCTION, INC.

Greg Allen
Project Manager/Superintendent

Enclosures

CC:JC, HDM, RM, EPuchi,BB

File: Job 307

7.0, 14.5