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Ser 612.4/L8143  
May 15, 1998

Mr. Daniel E. Murphy  
Chief, Berkeley Unit  
Office of Military Facilities  
Department of Toxic Substances Control  
700 Heinz Avenue  
Building F, Suite 200  
Berkeley, CA 94710

Subj: APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS (ARARs) FOR  
DISCHARGE OF GROUNDWATER TO SAN FRANCISCO BAY FOR REMOVAL ACTIONS  
AT SITES 1, 2, 5 AND 10, AT ALAMEDA POINT, ALAMEDA, CALIFORNIA

Dear Mr. Murphy:

I am in receipt of your letter of 12 May 1998 concerning the Navy's contemplated discharge of groundwater at Installation Restoration (IR) Sites 1, 2, 5 and 10 as part of a proposed CERCLA removal of radiological material at Alameda Point (copy attached). In that letter and in related communications, you have advised that in order for the Department of Toxic Substances Control (DTSC) to concur with the Navy's proposed removal action, the Navy must (1) meet all administrative and substantive requirements of the San Francisco Bay Regional Water Quality Control Board (RWQCB) for de-watering discharges to the Bay, including, if necessary, securing from the RWQCB a National Pollution Discharge Elimination System (NPDES) Permit; and (2) request specific applicable or relevant and appropriate requirements (ARARs) directly from the RWQCB.

This letter is to advise that these additional steps at this late date would unnecessarily delay the implementation of the Navy's proposed response action. In addition, it is the Navy's view that the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requires the proposed removal action to comply with substantive, not administrative, ARARs of the RWQCB, and that, as evidenced by its draft Technical Work Document/Interim Remedial Action Plan (draft TWD/RAP), the Navy's proposed action will fully comply with all substantive requirements of the RWQCB.

Section 121(d)(2) of CERCLA provides that remedial actions must meet "a level or standard of control" which attains ARARs. Since only substantive standards set levels or standards of control, the National Contingency Plan (NCP) provides that CERCLA response actions are subject only to substantive, not administrative, requirements. Additionally, Congress has expressly provided in sections 121(d)(2) and (d)(4) of CERCLA that ARARs are to be applied to actions conducted onsite, and in section 121(e)(1) that for such on-site response actions, "[n]o Federal, State, or local permits shall be required..." As EPA explained in the Preamble to the NCP:

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These subsections reflect Congress' judgment that CERCLA actions should not be delayed by time-consuming and duplicative administrative requirements such as permitting, although the remedies should achieve the substantive standards of applicable or relevant and appropriate laws. Indeed, CERCLA has its own comparable procedures for remedy selection and state and community involvement. EPA's approach is wholly consistent with the overall goal of the Superfund program, to achieve expeditious cleanups, and reflects an understanding of the uniqueness of the CERCLA program, which directly impacts more than one medium (and thus overlaps with a number of other regulatory and statutory programs). Accordingly, it would be inappropriate to formally subject CERCLA response actions to the multitude of administrative requirements of other federal and state offices and agencies.

(NCP at 55 Fed. Reg. 8666, 8756).

As you are aware, the Navy is considering an on-site discharge of groundwater from de-watering operations as part of its proposed removal action at Alameda Point. Since this aspect of the removal action will be conducted entirely on-site, it is unnecessary for the Navy to obtain a permit or comply with other administrative requirements of the RWQCB. See DTSC Office of Legal Counsel memorandum dated January 31, 1995, Subj: Applicable Law and Lead Agency on Federal Facilities at 4-5. Indeed, to initiate an administrative permitting process at this late date would delay and possibly undermine the Navy's effort to complete this removal action during the current dry season in northern California.

Nevertheless, as the Navy has maintained throughout its collaboration with DTSC in preparation for this removal action, it will fully meet all substantive ARARs related to the discharge of water from the de-watering activities. The Navy has identified those requirements in its final draft TWD/RAP which has been provided to DTSC.

Additionally, the Navy has made diligent efforts to solicit State involvement and input into the ARAR identification process, as required by EPA policy and the NCP. Under present agreements with California EPA and in accordance with the Secretary of California EPA's memorandum of September 20, 1993, DTSC is the designated lead state agency for CERCLA response actions at Alameda Point. Accordingly, the Navy, in accordance with EPA's Guidance on the Consideration of ARARs During Removal Actions, EPA/540/P-91/011 (August 1991), requested DTSC to identify State ARARs as soon as practicable (in October 1997), after it began to consider taking this removal action. Subsequently, the Navy identified potential federal and State ARARs related to the discharge of water from de-watering operations in multiple drafts of the TWD/RAP (beginning in November 1997), and DTSC provided written comments on potential ARARs on each occasion. Further, the State will be given an additional opportunity to comment upon the Navy's proposed ARARs during the up-coming public comment period on the proposed action. In short, the Navy has provided, and in fact the State has exercised, substantial opportunities to identify State ARARs.

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In light of the Navy's careful adherence to the CERCLA's procedures for remedy selection and State involvement, and DTSC's responsibilities to obtain substantive requirements from support State agencies in a timely manner, the Navy believes that it has fully discharged its responsibilities to obtain State ARARs related to the discharge of water from de-watering operations. Thus, it would be inappropriate, and indeed would frustrate the expeditious completion of this proposed removal action, for the Navy to apply to the RWQCB for its view of State ARARs on such discharges at this late date.

Please direct any questions you might have concerning this matter to George Kikugawa, at (650) 244-2549.

Sincerely,

**ORIGINAL SIGNED BY**

HENRY C. GEE  
BRAC Environmental Programs Manager  
By direction

Encl:

Department of Toxic Substances Control letter to the US Navy, REQUIREMENTS FOR DISCHARGE  
OF GROUNDWATER TO SAN FRANCISCO BAY - ALAMEDA POINT, dated May 12, 1998

Copies to:

U.S. Environmental Protection Agency (Attn: Mr. Tom Huetteman)  
California Regional Water Quality Control Board (Attn: Mr. Richard McMurtry)  
Alameda Point, BRAC Environmental Coordinator (Attn: Mr. Steve Edde)  
Radiological Affairs Support Office (Attn: LCDR Lino Fragoso)  
TTEMI, San Francisco Office (Attn: Mr. Bill Westerfield/Ed Ho)

Blind copies to:

60E(HG), 612.1(AK), 612.4(GK), 703.35(CG), 02C(RG)  
Administrative Records (Three (3) copies)  
Chron, RF  
File: Alameda



EPA

May 12, 1998

Department of  
Toxic Substances  
Control

700 Heinz Avenue,  
Bldg. F, Suite 200  
Berkeley, CA  
94710

Commanding Officer  
Engineering Field Activity, West  
Naval Facilities Engineering Command  
Attn: Mr. George Kikugawa, Code 1831.2  
900 Commodore Drive  
San Bruno, CA 94066-2402

Pete Wilson  
Governor

Peter M. Rooney  
Secretary for  
Environmental  
Protection

**REQUIREMENTS FOR DISCHARGE OF GROUNDWATER TO SAN  
FRANCISCO BAY - ALAMEDA POINT**

Dear Mr. Kikugawa:

The purpose of this letter is to advise you of certain requirements that the Navy must meet prior to commencing work on the radiological remedial activity at IR Sites 1, 2, 5, and 10, at Alameda Point (former Alameda Naval Air Station). In several recent conversations with representatives of or contractors for the Navy, the Department of Toxic Substances Control (DTSC) has become aware of inconsistencies between the proposed management of water generated in cleanup excavation trenches and the actual requirements for water discharge management as we understand them.

Specifically, in order for DTSC to concur with or otherwise approve the proposed remedial activity, the Navy must meet all administrative and substantive requirements of the San Francisco Bay Regional Water Quality Control Board for trench dewatering discharges to the San Francisco Bay. This may involve securing a National Pollution Discharge Elimination System permit, or a specific written determination on the part of the Regional Board that such a permit is not necessary. Even if a permit is determined to be unnecessary, the Navy will still need to secure specific requirements and limitations on such discharges from the Regional Board, and incorporate them into your project plan.

I have sent a letter to the Regional Board, requesting that they expedite their evaluation of their requirements applicable to this project. They have

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Mr. George Kikugawa

May 11, 1998

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been advised of your schedule, and of the types of contaminants that are present in the soil from which the water will be derived. However, it is also your responsibility to send a request for the Regional Board's requirements directly to them.

If you have any questions, please contact Ms. Mary Rose Cassa at (510)540-3814.

Sincerely,

A handwritten signature in black ink, appearing to read "D E Murphy". The signature is written in a cursive, somewhat stylized font.

Daniel E. Murphy, P.E.  
Chief, Berkeley Unit  
Office of Military Facilities