



AR_N00236_003291
ALAMEDA POINT
SSIC NO. 5090.3.A



Linda S. Adams
Secretary for
Environmental
Protection

Department of Toxic Substances Control

Maureen F. Gorsen, Director
8800 Cal Center Drive
Sacramento, California 95826-3200



Arnold Schwarzenegger
Governor

May 7, 2007

Mr. Thomas L. Macchiarella
Code BPMOW.TLM
Department of the Navy
Base Realignment and Closure Program Management Office West
1455 Frazee Road, Suite 900
San Diego, California 92108-4310

RESPONSE TO REQUEST FOR IDENTIFICATION OF STATE "APPLICABLE" OR "RELEVANT AND APPROPRIATE" REQUIREMENTS (ARARS) FOR INSTALLATION RESTORATION SITE 32 AT ALAMEDA POINT, ALAMEDA CALIFORNIA

Dear Mr. Macchiarella:

In a letter dated March 28, 2007, the U.S. Navy requested that the Department of Toxic Substances Control (DTSC) identify potential State chemical-specific, action specific, and location specific ARARs for Installation Restoration Site 32. Previously, in a letter dated September 12, 1996, the Navy formally requested state ARARs for the Remedial Investigation and Feasibility Study of the Naval Air Station Alameda. DTSC responded in a letter dated November 13, 1996 with a list of California laws, regulations and policies for potential application at the Naval Air Station Alameda (now Alameda Point).

The list of California laws, regulations, and policies previously provided to the Navy on November 13, 1996 is appropriate for use by the Navy in consideration of ARAR selection. Regulations promulgated subsequent to 1996, such as those found at California Code of Regulations, Title 22, Section 67391.1 (Land Use Covenants) should also be included. In addition, the Department of Health Services and the Department of Fish and Game have requested consideration of ARARs as listed in the attached letters.

We look forward to working closely with the Navy during the Feasibility Study process to ensure timely and complete ARAR identification.

Mr. Thomas L. Macchiarella
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If you have any questions or comments, please call me at (916) 255-6403.

Sincerely,



for Susan Goss, P.G.
Project Manager
Northern California Operations
Office of Military Facilities

Attachments

cc: Ms. Frances Fadullon
Code BPMOW.FF
Department of the Navy
Base Realignment and Closure Program Management Office West
1455 Frazee Road, Suite 900
San Diego, California 92108-4310

Ms. Anna-Marie Cook
United States Environmental Protection Agency
Region IX
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San Francisco, California 94105

Mr. Robert Wilson
Department of Health Services
Environmental Management Branch
Post Office Box 997413
1616 Capitol Avenue, MS 7405
Sacramento, California 95899-7413

Mr. Charlie Huang, Ph.D.
Staff Toxicologist
Department of Fish and Game
Office of Spill Prevention and Response
1700 K Street, Suite 250
Sacramento, California 95814

Mr. Erich Simon
Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California 94612

Mr. Thomas L. Macchiarella
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Bcc: Ms. Isabella Alasti
Department of Toxic Substances Control
Office of Legal Counsel
1001 "I" Street
Post Office Box 806
Sacramento, California 95812-0806

Ms. Dot Lofstrom
Department of Toxic Substances Control
Office of Military Facilities
8800 Cal Center Drive
Sacramento, California 95826

Memorandum

Date: April 24, 2007

To: Ms. Susan Goss
Remedial Project Manager
Office of Military Facilities
Department of Toxic Substances and Control (DTSC)
8800 Cal Center Drive
Sacramento, California 95826-3200

From: Department of Health Services
Environmental Management Branch
P.O. Box 997413, MS 7405
1616 Capitol Avenue
Sacramento, California 95899-7413

Subject: Request for Applicable or Relevant and Appropriate Requirements (ARARs) for Installation Restoration (IR) Site 32, Northwestern Ordnance Storage Area at Alameda Point (Former Alameda Point Naval Air Station), Alameda, California.

This is in response to your request, dated March 28, 2007, for Applicable or Relevant and Appropriate Requirements (ARARs) for the Former Alameda Air Station at Alameda Point.

As an Agreement State with the Nuclear Regulatory Commission (NRC), California licenses and monitors compliance of byproduct materials use as defined by the Atomic Energy Act of 1954. In addition, the California Department of Health Services (CDHS) controls the uses of naturally occurring radioactive materials (e.g. radium-226). CDHS regulatory authority does not include the licensing and compliance monitoring of facilities under exclusive federal jurisdiction. This is the NRC's responsibility. CDHS becomes involved when a federal facility (e.g. a military base) is going to close and revert to State control. We are currently providing radiological consultation for closing military bases in California in preparation for the bases being transferred into State, local or private ownership.

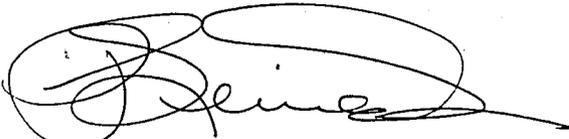
Listed below are the regulations, statutes and guidance that pertain to radioactive materials found on military bases in California.

1. Title 10, Code of Federal Regulations (CFR), Sections 20.1001-2402 and Appendices A through F, as incorporated by reference to Title 17, California Code of Regulations (CCR), Section 30253. A significant change in the regulations, as adopted by California, is that the federal term "licensee" is replaced by "user" as defined in Title 17, CCR, Section 30100.
2. Title 10, Code of Federal Regulations (CFR), Sections 20.1402, 20.1403 and 20.1404, Radiological Criteria for License Termination; Final Rule.

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3. Relevant guidance documents published by the Nuclear Regulatory Commission (NRC) (e.g. NUREG/CR - 5849).

If you have questions about CDHS' ARARs or their applications to this base, please contact me at (916) 449-5921.

A handwritten signature in black ink, appearing to read 'Penny Leinwander', with a long horizontal flourish extending to the right.

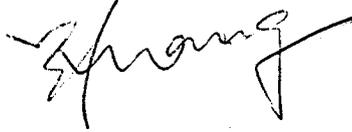
Penny Leinwander
Senior Health Physicist

Memorandum

To: Susan Goss
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

Date: May 17, 2007

From: Charlie Huang, Ph.D., Staff Toxicologist
California Department of Fish and Game
Office of Spill Prevention and Response
1700 K Street, Suite 250
Sacramento, California 95814



Subject: **Applicable or Relevant and Appropriate Requirements (ARARs) for Site 32, Alameda Point, California.**

This memo is in response to a recent letter from Mr. Thomas L. Macchiarella of the Navy, requesting potential State ARARs for the feasibility study at Site 32, Alameda Point. We received the request on April 20, 2007. The Department of Fish and Game, Office of Spill Prevention and Response (DFG-OSPR) appreciates this opportunity to provide State laws and regulations to guide the planned cleanup of Alameda Point.

It is our understanding that the Navy is making the request for ARARs for the purpose of ensuring a coordinated cleanup effort. The request for DFG-OSPR to define appropriate State cleanup requirements is made pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as a portion of the removal action process. This memo will serve to advise you of the DFG's continuing interest in coordinating any natural resource issues, as the designated natural resource trustee for the State of California. This may be necessary should release(s) of any hazardous materials at the subject site affect State natural resources.

Alameda Point was formerly Naval Air Station (NAS) Alameda. It is on Alameda Island, at the western end of the City of Alameda in Alameda County, and along the eastern side of San Francisco Bay. Similar to the shoreline of Oakland Inner Harbor, Alameda Point has been modified extensively by human activity. Industries and activities located at the base include port and aircraft repair facilities, office buildings, runways, and landfills. Major habitat types include open water areas, estuarine and intertidal emergent wetlands, non-native grassland, disturbed areas, beach, urban, ornamental landscapes, and riprap. Several special status species are known to occur near Alameda Point including green sturgeon, winter-run Chinook salmon, central California steelhead, California sea lion, harbor seal, Barrow's Goldeneye, Double-Crested Cormorant, Western Snowy Plover, White-tailed Kite, Cooper's Hawk, American Peregrine Falcon, California Least Tern and California Brown Pelican.

Site 32 is approximately 5.8 acres and consists of three environmental baseline survey subparcels (Subparcels 8A, 5E, and a portion of 5D). The majority of this area is open space covered with asphalt, gravel, weeds, and brush. An open space area in the eastern portion of the site was used for equipment, vehicle, and aircraft storage. Site 32 was identified as an installation restoration (IR) site after the evaluation of data resulting

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from previous soil and groundwater sampling. Site 32 has been designated for future recreational use.

On March 1, 2007, DFG-OSPR participated in a site visit of Site 32. It is a terrestrial habitat and we observed ground activities by avian species. Site 32 does not contain significant habitat for wildlife species because it is predominantly an urbanized area. However, there is potential risk to aquatic receptors because contaminated groundwater can migrate to the offshore surface water of the San Francisco Bay. Because contaminants of potential concern (COPCs) at the site may be carried to the Bay via contaminated groundwater, we are concerned about the potential effects of groundwater COPCs on aquatic life in surface water.

Listed on the enclosed table is a site-specific list of Fish and Game Code Sections which may apply as State ARARs or to be considered (TBCs) criteria with the date of enactment or promulgation. The specific citation for the applicable statute or regulation and an explanation for each listed ARAR and TBC are also enclosed.

The DFG-OSPR appreciates the opportunity to provide our ARARs. If you have any questions or need further information, please contact me at (916) 324-9805 or by e-mail at chuang@ospr.dfg.ca.gov.

Reviewer: Regina Donohoe, Ph.D., Staff Toxicologist
Wendy Johnson, Staff Counsel

Enclosure

cc: Wendy Johnson, Staff Counsel
Department of Fish and Game
Office of Spill Prevention and Response
1700 K Street, Suite 250
Sacramento, California 95814

Timothy Stevens
Regional Water Quality Specialist
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P.O. Box 47
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Becky Ota
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Belmont, California 94002

CALIFORNIA DEPARTMENT OF FISH AND GAME
LOCATION AND ACTION SPECIFIC ARARs AND TBCs
For Site 32, Alameda Point

LOCATION	STANDARD	SPECIFIC CITATION	ARAR/TBC EXPLANATION
Aquatic habitat/species	Action must be taken if toxic materials are placed where they can enter waters of the State. There can be no release that would have a deleterious effect on species or habitat.	Fish and Game Code section 5650 (a), (b) & (f)	This code section prohibits depositing or placing where it can pass into waters of the state any petroleum products (Section 5650(a)(1)), factory refuse (section 5650(a)(4)), sawdust, shavings, slabs or edgings (section 5650(a)(3)), and any substance deleterious to fish, plant life or bird life (section 5650(a)(6)). These are substantive, promulgated environmental protection requirements. These requirements impose strict criminal liability on violators. (<i>People v. Chevron Chemical Company (1983) 143 Cal. App. 3d 50</i>). This imposition of strict criminal liability imposes a standard that is more stringent than federal law. This section is relevant and appropriate because contaminated groundwater may migrate to offshore surface water. This could result in a discharge which deleterious to fish, plant life or bird life.
Wildlife species	Action must be taken to prohibit the taking of birds and mammals, including the taking by poison	Fish and Game Code section 3005 (Stats. 1957, c. 456, p. 1353 section 3005)	This code section prohibits the taking of birds and mammals, including taking by poison. "Take" is defined by Fish and Game Code section 86 to include killing. "Poison" is not defined in the code. Although there is no state authority on this point, federal law recognizes that poison, such as Strychnine, may effect incidental taking. (<i>Defenders of Wildlife v. Administrator, Environmental Protection Agency (1989) 882. F. 2d. 1295</i>). This code section imposes a substantive, promulgated environmental protection requirement. The section is applicable and relevant because many wildlife species such as striped skunk, raccoon, and other species have been observed at nearby Site 2 and can be expected at Site 32. The radium-impacted waste at Site 32 can be considered a "poison" and many animals are therefore subject to take at that site.

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LOCATION AND ACTION SPECIFIC ARARs AND TBCs
For Site 32, Alameda Point

LOCATION	STANDARD	SPECIFIC CITATION	ARAR/TBC EXPLANATION
Endangered species	Action must be taken to conserve endangered species, there can be no releases and/or actions that would have a deleterious effect on species or habitat.	Fish and Game Code section 2080 (Added by Stats. 1984, c. 1240, section 2).	<p>This section prohibits the take, possession, purchase or sell within the state, any species (including rare native plant species), or any product thereof, that the commission determines to be an endangered or threatened species, or the attempt of any of these acts. This section is applicable and relevant to the extent that there are endangered or threatened species in the area which have the potential of being affected if actions are not taken to conserve the species. This section prohibits releases and/or actions that would have a deleterious effect on species or their habitat. This section and applicable Title 14 regulations should be considered as ARARs.</p> <p>This section is applicable and relevant because the California Least Tern is expected to be found at Site 32.</p>
Fully protected bird species/habitat	Action must be taken to prevent the taking of fully protected birds	Fish and Game Code section 3511 (Added by Stats. 1970, c. 1036, p. 1848 section 4)	<p>This section provides that it is unlawful to take or possess any of the following fully protected birds:</p> <ul style="list-style-type: none"> (a). American Peregrine Falcon (b). Brown Pelican (c). California Black Rail (d). California Clapper Rail (e). California Condor (f). California Least Tern (g). Golden Eagle (h). Greater Sandhill Crane (i). Light-footed Clapper Rail (j). Southern Bald Eagle

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LOCATION AND ACTION SPECIFIC ARARs AND TBCs
For Site 32, Alameda Point

LOCATION	STANDARD	SPECIFIC CITATION	ARAR/TBC EXPLANATION
			<p>(k). Trumpeter Swan (l). White-tailed Kite (m). Yuma Clapper Rail</p> <p>This should be considered <i>Applicable and Relevant</i> because the American Peregrine Falcon, the Brown Pelican, the California Least Tern and the White-Tailed Kite occur at Alameda Point and the proposed work activities at Site 32 may result in take of these species.</p>
Wetlands	Actions must be taken to assure that there is "no net loss" of wetlands acreage or habitat value. Action must be taken to preserve, protect, restore and enhance California's wetland acreage and habitat values.	Fish and Game Commission Wetlands Policy (adopted 1987) included in Fish and Game Code Addenda	This policy seeks to provide for the protection, preservation, restoration, enhancement and expansion of wetland habitat in California. Further, it opposes any development or conversion of wetland that would result in a reduction of wetland acreage or habitat value. It adopts the USFWS definition of a wetland which utilizes hydric soils, saturation or inundation, and vegetable criteria, and requires the presence of at least one of these criteria (rather than all three) in order to classify an area as a wetland. This policy is not a regulatory program and should be included as a TBC. This section is applicable and relevant in that wetlands may occur on Site 32 and the removal action may result in impacts to such wetlands.
Birds	Action must be taken to avoid the take or destruction of the nest	Fish and Game Code section 3503	This section prohibits the take, possession, or needless destruction of the nest or eggs of any bird, except as otherwise provided by this code or any regulation made pursuant thereto. This section is relevant and applicable at Site 32 because Western Meadowlark, Killdeer, California Least Tern, Brewer's

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CALIFORNIA DEPARTMENT OF FISH AND GAME
LOCATION AND ACTION SPECIFIC ARARs AND TBCs
For Site 32, Alameda Point

LOCATION	STANDARD	SPECIFIC CITATION	ARAR/TBC EXPLANATION
	or eggs of any bird		Blackbird, and many other bird species are very likely to be found at Site 32. The Killdeer is a ground nesting species and the eggs, nests, and nestlings of this species are especially vulnerable to disturbances.
Birds of prey	Action must be taken to prevent the take, possession, or destruction of any birds-of prey or their eggs	Fish and Game Code section 3503.5 (Added by Stats. 1985, c. 1334, section 6)	This section prohibits the take, possession, or destruction of any birds in the orders of Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto. This section will be applicable and relevant to the extent that such species or their eggs are located on or near the site. This section is relevant and applicable at Site 32 because Burrowing Owls, American Kestrels, Northern Harriers, or others of prey are likely found at Site 32, even if on a seasonal basis. Eggs, nests, and nestlings of Burrowing Owls and Northern Harriers are especially vulnerable since these species nest on the ground.
Nongame birds	Actions must be taken to prevent the take of nongame birds.	Fish and Game Code section 3800 (Added by Stats. 1971, c. 1470, p. 2906, section 13)	This section prohibits the take of nongame birds, except in accordance with regulations of the commission, or when related to mining operations with a mitigation plan approved by the department. This section further provides requirements concerning mitigation plans related to mining. This section is applicable and relevant to the extent that nongame birds or their eggs are located on or near the site. This section is relevant and applicable because Western Meadowlark, Killdeer, California Least Tern, Brewer's Blackbird, and many other bird species are very likely found at Site 32.

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CALIFORNIA DEPARTMENT OF FISH AND GAME
LOCATION AND ACTION SPECIFIC ARARs AND TBCs
For Site 32, Alameda Point

LOCATION	STANDARD	SPECIFIC CITATION	ARAR/TBC EXPLANATION
Nongame mammals	Action must be taken to avoid the take or possession of nongame mammals	Fish and Game Code section 4150 (Added by Stats. 1971, c. 1470, p. 2907, section 21)	Nongame mammals are those occurring naturally in California which are not game mammals, fully protected mammals, or fur-bearing mammals. These mammals, or their parts, may not be taken or possessed except as provided in this code or in accordance with regulations adopted by the commission. Nongame mammals likely to be present at Site 32 include raccoon, striped skunk, ground squirrel, and other species.
Tidal invertebrates	Action must be taken to avoid the take or possession of mollusks, crustaceans, or other invertebrates	Fish and Game Code section 8500(Added by Stats. 1972, c. 1248, p. 2436. Section 2, eff. Dec. 13, 1972)	It is unlawful to possess or take, unless otherwise expressly permitted in this chapter, mollusks, crustaceans, or other invertebrates, unless a valid tidal invertebrate permit has been issued. The taking, possessing, or landing of such invertebrates pursuant to this section shall be subject to regulations adopted by the commission. This section is applicable and relevant in that the northern boundary of Site 32 includes a portion of the Oakland Inner Harbor, where tidal invertebrates may be found. It is conceivable that the proposed removal action will result in take of tidal invertebrates.