



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

April 5, 2001

Mr. Richard Mach
Department of the Navy
Naval Facilities Engineering Command
Southwest Division
BRAC Office
1220 Pacific Highway
San Diego, CA 92132-5190

RE: EPA Review and Comment on the Draft Final, Revision 1, Land Use Control
Implementation Plan (LUCIP), Parcel B, Hunters Point Shipyard dated March 6, 2001

Dear Mr. Mach:

EPA has completed its review of the above referenced document. This version of the LUCIP is much improved and the majority of EPA's concerns have been addressed. However, there are still a few additional revisions required before EPA can concur on the Draft Final, Revision 1, LUCIP for Parcel B. These comments are provided in an attachment to this letter.

If you have any questions, please contact me at (415)744-2409 or have Mr. Nick Bollo contact Mr. Robert Carr, Assistant Regional Counsel, at (415)744-2240.

Sincerely,

A handwritten signature in cursive script, appearing to read "Claire", followed by a long horizontal line extending to the right.

Claire Trombadore
Remedial Project Manager

cc: Bob Carr, EPA
Karen Goldberg, EPA
Richard Serardarian, EPA
Nick Bollo, Navy
Chein Kao, DTSC
Rich Sherwood, DTSC
Brad Job, RWQCB
Rona Sandler, City of SF
Elaine Warren, City of SF
Amy Brownell, City of SF
John Chester, City of SF

**ATTACHMENT
EPA REVIEW AND COMMENT
DRAFT FINAL REVISION 1
LAND USE CONTROL IMPLEMENTATION PLAN (LUCIP)
PARCEL B, HUNTERS POINT SHIPYARD**

General Comments

1. As the entity responsible for implementing a remedy which is protective of human health and the environment, the Navy is, and must remain, responsible for monitoring and enforcing the selected restrictions. Including the restrictions in the Quitclaim Deed is the first step but the transfer of title does not diminish the Navy's responsibility. While EPA has no objection to the City monitoring compliance with the use restrictions, they are not a party to the FFA and EPA cannot compel them to do so. The Navy remains responsible for enforcement of use restrictions. Providing the State with an enforcement vehicle in the form of a Land Use Covenant also does not relieve the Navy's obligation/responsibility. The Navy's ongoing responsibility requires periodic reporting and a commitment to address any breaches in a timely manner. As a result, EPA expects the Navy to commit in the LUCIP to annual reporting to the regulators on the status of use restrictions. While the Navy may negotiate with the City to provide these annual reports, EPA has no knowledge that such an agreement is in place currently and therefore, EPA continues to request that the Navy provide these reports. As we have noted in earlier discussions, after the first 5 years of annual reporting, EPA is willing to consider reducing the frequency of submittal of these status reports to once every 5 years. The language regarding annual reporting in the LUCIP is discussed in further detail under Specific Comment 8 below.

Specific Comments

1. Section 1.0.

Item (2). Replace the text beginning with the word "support" with "assure protectiveness of the remedial action selected in the Parcel B ROD"
2. Section 3.0

Second paragraph The first sentence does not connect with the balance of the paragraph. The sentence should refer to the fact that a distinction was made between soils at depths greater than 10 feet bgs and soils between the surface and 10 feet bgs.
3. Section 6.1

Last sentence is missing a phrase. Insert "notice requirements" after the word "these"
4. Section 6.1.1 Groundwater Deed Restriction

The Groundwater deed Restriction must be revised to include the original restriction language from page 71 of the Parcel B ROD - "prohibiting all use and consumption of Parcel B groundwater in the shallow water bearing zone(s) to 90 feet below ground surface." This language should be inserted as follows:

The Grantee, its successors or assigns, are prohibited from all use and consumption of Parcel B groundwater in the shallow water bearing zone(s) to 90 feet below ground surface and shall not discharge, nor allow to be discharged, groundwater withdrawn from Parcel B unless its....laws.

5. Section 6.1.1 Soils Deed Restriction

Soils Deed Restriction must be revised to make it clear that excavation below 10 feet is prohibited unless soils disturbed are managed in accordance with the Soils Management Plan. This could be accomplished by rewriting the soil deed restriction on page 4 as follows:

The Grantee, its successors or assigns, are restricted from excavating soils from below ten (10) feet below ground surface or from mixing these soils with soils present in the surface to ten (10) feet bgs zone unless the excavated soil is managed in accordance with a Soil Management Plan approved by USEPA, DTSC, the RWQCB, and the Navy.

6. Section 6.1.1 Groundwater Deed Restriction and Section 6.1.2 Proposed Notifications

It should be noted that based on the review of the Navy's latest storm water infiltration study document of February 28, 2001 and EPA consultation with representatives of the RWQCB, the storm drains on Parcel B will not be lined. Therefore, the Navy may want to consider deleting the portions of the LUCIP referencing the lining of storm drains.

7. Section 6.2

Caption is incorrect since these requirements are not , for the most part, land use restrictions Substitute "Deed Provisions"

Last sentence should note that in accordance with the FFA, regulatory agencies will also be afforded access.

8. Section 7

The first sentence needs to be replaced with the following: After the transfer, the Navy remains responsible for the monitoring and enforcement of the selected restrictions. It is however expected that monitoring activities will be conducted in cooperation with the City as part of its administration of the Groundwater and Soils Management Plans. The

Navy shall provide an annual report to the regulators describing the status of land use restrictions including a description of any violations of the restrictions and actions taken to address such violations. If the regulators become aware of any violations which have not been addressed to the satisfaction of the regulators, the Navy shall address such violations within 30 days of notice by the regulators.

The paragraphs following should be revised to be consistent with the above language.

The discussion of the State Land Use Covenant should make it clear that the restrictions to be contained in the Land Use Covenant are identical to the restrictions set forth in the quitclaim deed. The sentence suggesting that the Navy has only a secondary enforcement role should be deleted.