



Cal/EPA

Department of
Toxic Substances
Control

700 Heinz Avenue
Suite 200
Berkeley, CA
94710-2737

Engineer Field Activity, West
Attn Mr. Richard Powell [1832]
900 Commodore Drive
San Bruno California, 94066-5006

Dear Mr. Powell:

**PARCEL D APPLICABLE OR RELEVANT AND APPROPRIATE
REQUIREMENTS (ARARs) HUNTERS POINT ANNEX**

The Department of Toxic Substances Control is forwarding the enclosed ARARs from the Department of Fish and Game. The ARARs should be incorporated in the Parcel D and other parcels, if appropriate, remedial actions.

Should you have any questions regarding this letter, please call me at (510) 540-3821.

Sincerely,

Cyrus Shabahari
Project Manager
Office of Military Facilities

Enclosure

cc: US EPA, Region IX
Attn: Claire Trombadore
Mail Code H-9-2
75 Hawthorne Street
San Francisco, California 94105

N00217.003409
HUNTERS POINT
SSIC NO. 5090.3

November 12, 1996



Pete Wilson
Governor

James M. Strock
Secretary for
Environmental
Protection

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Memorandum

Mr. Cyrus Shabahari
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710-2737

Date : October 10, 1996

From : Department of Fish and Game

Subject : **Applicable or Relevant and Appropriate Requirements (ARARs) for Hunters Point Annex San Francisco, California (5920/60120/NTX403)**

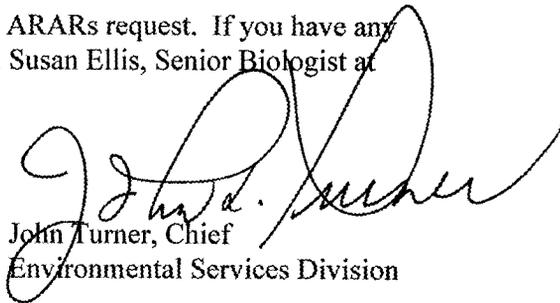
This memorandum is in response to your letter of September 6, 1996 to Dr. Michael Martin, Staff Toxicologist, Department of Fish and Game, Monterey, requesting potential State location specific ARARs for Parcel D. The Department of Fish and Game (DFG) appreciates this opportunity to provide State laws and regulations to guide the planned cleanup at Hunters Point Annex.

As the State lead agency for toxic cleanup, you are making an inquiry to DFG for purposes of coordination and to request that DFG define appropriate State cleanup requirements under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as a portion of the RI/FS process. This letter will also serve to advise you of the DFG's continuing interest in coordinating any natural resource issues, as one of the designated State natural resource trustees, which may be necessary should release(s) of any hazardous materials at the subject site affect State natural resources, pursuant to CERCLA.

We have not had the opportunity to do a site inspection of Parcel D which includes portion of San Francisco Bay and an industrial complex with a groundwater aquifer which flows into the Bay.

Listed on the enclosed table is a complete list of Fish and Game Code sections that are possible State location-specific ARARs or TBCs (to be considered). The specific citation and explanation for each listed ARAR and TBC are included.

Thank you for the opportunity to comment upon the ARARs request. If you have any questions or need additional information, please contact Ms. Susan Ellis, Senior Biologist at (916) 489-7833.


John Turner, Chief
Environmental Services Division

Enclosure: Four pages

cc: Department of Fish and Game
Sacramento
Jennifer Decker
Legal Affairs Office

LOCATION SPECIFIC ARARs AND TBCs, HUNTERS POINT ANNEX, PARCEL D

LOCATION	STANDARD	SPECIFIC CITATION	ARAR/TBC EXPLANATION
Wildlife species/habitats	Action must be taken for the general protection and conservation of fish and wildlife resources.	Fish & Game Code Section 1600	This code section declares the protection and conservation of fish and wildlife to be an important public interest. This section is a general statement of policy that does not impose a substantive requirement. This section should be included as a TBC.
Streambed	The Department must propose reasonable modifications to public construction projects that would alter the bed, channel or bank of any river, stream or lake and may substantially adversely affect an existing fish or wildlife resource.	Fish and Game Code Section 1601	This section requires notification to and action by the Department. It also imposes a substantive requirement to the extent it requires streambed alteration to not substantially adversely affect an existing fish or wildlife resource. The section is relevant to the extent the operations impact the beds, channel or bank of the San Francisco Bay. Section 1601 complements the operation of federal ARAR 40CFR Section 231.1, which authorizes the USEPA Administrator to prohibit activity whenever he determines that the discharge of dredge or fill material may have an "unacceptable adverse affect" on fish and wildlife. Section 1601 also complements the operation of federal ARAR 16 USC Section 662, which requires the determination of possible damage to wildlife resources and the means and measures that should be adopted to prevent the loss of or damage to such resources caused by proposed streambed alterations. This section should be included as an ARAR.
Streambed	Any streambed may not be altered without first notifying the Department	Fish and Game Code Section 1603	This section requires notification to and action by the Department. It also imposes a substantive requirement to the extent it requires streambed alteration to not substantially adversely affect an existing fish or wildlife resource. This section should be included as an ARAR.

LOCATION SPECIFIC ARARs AND TBCs, HUNTERS POINT ANNEX, PARCEL D

LOCATION	STANDARD	SPECIFIC CITATION	ARAR/TBC EXPLANATION
Aquatic and wildlife species/habitats	Action may be taken to collect damages for the taking of birds, mammals, fish, reptiles or amphibia	Fish and Game Code Section 2014	This code section declares that it is the policy of the state to conserve its natural resources. It allows the state to recover damages in a civil action against any person or local agency which unlawfully or negligently takes or destroys a bird, mammal, fish, reptile or amphibian protected by the laws of the state. This section should be included as an ARAR.
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 & Game Code Section 2080	This section prohibits the taking, importation or sale of any species, or any part thereof, of an endangered species or a threatened species. The endangered peregrine falcon has been observed over HPA and the Department has the authority to protect this and other threatened and endangered species and their habitat. This section should be included as an ARAR.
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 & Game Code Sections 2090-2096	These code sections comprise Article 4 of Chapter 1.5 of the California Endangered Species Act. These sections make provisions concerning Department coordination and consultation with state and federal agencies and with project applicants. These sections do not impose substantive requirements. These sections should be included as TBCs.

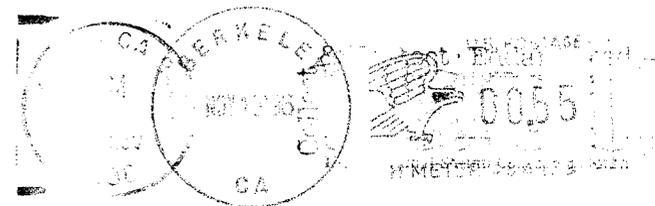
LOCATION SPECIFIC ARARs AND TBCs, HUNTERS POINT ANNEX, PARCEL D

LOCATION	STANDARD	SPECIFIC CITATION	ARAR/TBC EXPLANATION
Wildlife species	Action must be taken to prohibit the taking of birds and mammals, including taking by poison.	Fish & Game Code Section 3005	This code section prohibits the taking of birds and mammals, including taking by poison. "Taking" is defined by Fish and Game Code section 86 to include killing. "Poison" is not defined in the code but contaminants of concern (heavy metals, herbicides and pesticides) are all poisons by definition. Federal law recognizes that poison may effect an incidental taking. (Defenders of Wildlife v. Administrator, Environmental Protection Agency (1989) 882 F.2d 1295.) This code section imposes a substantive, promulgated environmental protection requirement. This section should be included as an ARAR.
Aquatic and Wildlife specis/habitats	Action may be taken if toxic materials area placed where they can enter waters of the State. There can be no releases that would have a deleterious effect on species or habitat.	Fish & Game Code sections 5650(a), (b) & (f)	These code sections prohibit the deposition into State waters of inter alia, petroleum products [Section 5650(a)], factory refuse [Section 5650(b)], and any substance deleterious to fish, plants or birds [Section 5650(f)]. These are substantive promulgated environmental protection requirements. These requirements impose strict criminal liability on violators. [People v Chevron Chemical Company (1983) 143 Cal.App.3d 50.]. This imposition of strict criminal liability imposes a standard that is more stringent than Federal law. The extent to which each subdivision of Section 5650 is relevant and appropriate depends on site specific conditions or details. There is also a scientific/technical reason for inclusion of Section 5650 as a potential location specific ARAR. State and Federal water quality control standares are generally developed utilizing data, information and guidance from numerous sources. Federal water quality criteria may allow higher concentrations of chemicals for limited periods, which can result in conditions which are deleterious to State fish, plants or birds.

LOCATION SPECIFIC ARARs AND TBCs, HUNTERS POINT ANNEX, PARCEL D

LOCATION	STANDARD	SPECIFIC CITATION	ARAR/TBC EXPLANATION
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 which 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 a wetland. This policy is not a regulatory program and should be included as a TBC.

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL
REGION 2
700 HEINZ AVE., SUITE 200
BERKELEY, CA 94710-2737



ENGINEER FIELD ACTIVITY, WEST
ATTN: MR. RICHARD POWELL (1832)
900 COMMODORE DRIVE
SAN BRUNO, CA 94066-5006

