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Protection



## Department of Toxic Substances Control

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Arnold Schwarzenegger  
Governor

April 1, 2010

Mr. Keith Forman  
Department of the Navy  
1455 Frazee Road Suite 900  
San Diego, CA 92108-4310

### **COMMENTS TO DRAFT FINAL RADIOLOGICAL ADDENDUM TO THE REMEDIAL INVESTIGATION / FEASIBILITY STUDY REPORT FOR PARCEL E-2, HUNTERS POINT SHIPYARD, SAN FRANCISCO, CALIFORNIA**

Dear Mr. Forman:

Thank you for the opportunity to review the Draft Final Radiological Addendum to the Remedial Investigation / Feasibility Study Report for Parcel E-2 at Hunters Point Shipyard, San Francisco, California dated March 2, 2010 (Parcel E-2 Radiological Addendum). The Parcel E-2 Radiological Addendum summarizes the available data for radionuclides, quantifies the potential risk to future site users, and develops and evaluates remedial alternatives for potential radionuclides of concern at Parcel E-2. Parcel E-2 consists of 47.4 acres of shoreline and lowland coast along the southwestern portion of Hunters Point Shipyard (HPS).

Comments from the California Department of Public Health – Environmental Management Branch (CDPH-EMB) and the California Department of Fish and Game (DFG) are presented as enclosures to this letter. The Department of Toxic Substances Control's (DTSC) comments are presented below.

#### Specific Comments:

- (1) Signature page. Hazardous substance characterization and remediation work shall be performed under the direction and supervision of a qualified professional engineer or geologist in the State of California, with expertise in hazardous substance site cleanups in accordance with the California Business and Professions Code sections 6735, 7835, and 7835.1, and other applicable law. Therefore, the final Parcel E-2 Radiological Addendum must be reviewed and approved with signature and stamped by a professional engineer or geologist.

- (2) Executive Summary, Section ES.1 - Radionuclides in Soil, bullet two. The text states that the release criterion for Radium-226 (Ra-226) is 1.82 picocuries per gram of soil (pCi/g). However, in other Hunters Point Shipyard (HPS) documents, the Ra-226 release criterion has been established at 1.0 pCi/g above background, which has been identified as 1.485 pCi/g. Please verify the accuracy of the 1.82 pCi/g release criterion for Ra-226. The same comment applies to Section 8.2, second bullet item.
- (3) Section 2.2.1 - Landfill Area. A figure that presents a visual presentation of the interim landfill cap construction specifications should be added to the Parcel E-2 Radiological Addendum.
- (4) Sections 2.2.1, 2.2.2, 2.2.3, and 2.2.4. Please specify if any radiologically-impacted materials have been observed / detected to date in the completed investigations for each area (or sub-areas described in Sections 2.3.1 through 2.3.8). This information will clarify if each area is a location where known radiological contamination exists or the available historic information indicates that radiological contamination may be present.
- (5) Sections 2.3.3 - IR Site 02, and 2.3.5 - Parcel E-2 Shoreline. It may be useful to state that the Navy is planning a time-critical removal action in portions of these areas (specify which portions for each area) that will be removing potentially-impacted radiological materials currently scheduled for implementation in 2010.
- (6) Section 3.1.6 - Phase V Radiological Investigation (2002 to 2003). The phase V investigation results are presented for the first time in this Parcel E-2 Radiological Addendum.
  - (a) Please reference that the results of the surface soil gamma scans are presented in Table A-2 of Appendix A.
  - (b) Please provide the complete laboratory reports in an additional Appendix of the Parcel E-2 Radiological Addendum.
  - (c) Please identify those locations where sample results identified residual radioactivity exceeding the release criteria for Cesium-137 (Cs-137) and/or Ra-226 in a figure.
  - (d) The text states that based on the results of the Phase V investigation, "additional characterization (and remediation) throughout the radiologically-impacted portions of Parcel E-2" is recommended. The extent of radioactive contamination in subsurface soil has not been defined. This would suggest that the remedial investigation portion of the CERCLA process is not complete. Please clarify.

- (7) Section 3.2.1 - Metal Slag Area (2005 to 2007).
  - (a) Please explain the technical basis for the following statement with respect to post-excavation soil samples: "None of the samples that failed to meet the specified radiological remedial objectives indicated widespread radiological contamination is present at the Metal Slag Area."
  - (b) Please add a sentence stating what the specified radiological remedial objectives were for Cs-137, Ra-226, and Strontium-90 (Sr-90) for the Metal Slag Area removal activities.
- (8) Section 3.2.2 - PCB Hot Spot Area (2005 to 2007). Please add a sentence stating what the specified radiological remedial objectives were for Cs-137, Ra-226, and Sr-90 for the PCB Hot Spot Area removal.
- (9) Section 4.3 - Radionuclides Detected in Surface Soil. Please specify if the release criterion to which the 95 UCL activities for each ROC are compared are for residential (unrestricted) use criterion. If not, this comparison of the 95 UCL activities for each ROC should be made and described in the text. The same comment applies to Section 8.2, bullet items.
- (10) Section 5. - Nature and Extent of Radionuclides in Groundwater. Please specify which standards are being applied when references are made to "drinking water standards" (e.g. 2006 California Maximum Contaminant Levels). The same comment also applies to portions of the text presented in Section 8.3.
- (11) Section 8.4 - Remedial Investigation Conclusions. Paragraph two. The RESRAD incremental risk estimates for radionuclides should also be presented for residential (unrestricted) use.
- (12) Section 12.1 – Radiological-Specific Tasks Common to Alternatives 2, 3, and 4. While the text states that remaining sections of sanitary sewer, storm drain, and septic sewer lines that extend into the IR-01/21 site boundary would not be removed, consideration should be given for their removal due to the potential for these lines to serve as conduits / preferential flow paths for potentially-impacted soils and groundwater that may remain at IR-01/21. In addition, please clarify if the information presented in Figure 3 regarding the extent of impacted storm drain and sanitary sewer lines (and specifically their end-points within IR-01/21) are in fact the end of each line or if the mapped routes and end-points within IR-01/21 represent the limits of where the currently available information exists.
- (13) Section 12.3 – Alternative 2: Excavate and Dispose of Solid Waste, Soil, and Sediment (Including Monitoring and Institutional Controls). If all contaminated solid waste, debris, and soil are removed and confirmation samples / final status

surveys verify all contaminants have been remediated to unrestricted residential reuse cleanup goals, ongoing monitoring, institutional controls, and engineered cover(s) may not be necessary. Please clarify. The same comment applies to Section 13.2.

- (14) Section 13. – Detailed Analysis of Remedial Alternatives.
- (a) Potential impacts related to carbon emissions (trucks) and global climate change (potential sea-level rise) should also be included and considered as a component of the remedial alternatives evaluation.
  - (b) The costs associated with implementation of the radiological-specific tasks are identical for Alternatives 2, 3, and 4 (\$5,515,000). The estimated costs for implementation of each alternative should be presented as the total estimated costs. Therefore, a sentence in each Cost section (Sections 13.2.7, 13.3.7, and 13.4.7) should be added that presents the total estimated costs for implementation of each alternative.
- (15) Section 14.7 – Cost. The table presented in the text lists the costs for the alternatives considered in the Draft Final RI/FS Report. However, as stated in comment 14 above, the estimated costs for implementation of each alternative should be presented as the total estimated costs. Therefore, the estimated costs for Alternatives 2, 3, and 4 should either be updated in the table or a footnote should be added to indicate that implementation of the radiological-specific tasks for Alternatives 2, 3, and 4 is estimated at an additional \$5,515,000 to the estimated costs presented. This is consistent with the information presented in Table 9 – Comparative Analysis of Remedial Alternatives.
- (16) Table 6 - Combined Risk for Parcel E-2 Study Areas. The incremental and total risks calculated for the unrestricted residential scenario should also be presented in the table.

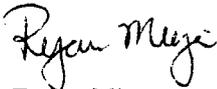
Editorial Comments:

- (17) Section 4.3 - Radionuclides Detected in Surface Soil. Paragraph three, first sentence. The text states that Radium-226 was reported in 1,118 of the 1,116 samples analyzed. Please correct accordingly.
- (18) Table 3 - Parcel E-2 Area Assessment and Classification. “Contamination Potential” column. The Septic Drain Fields have both “Known - Restricted Access” as well as “Likely” selected, while Storm Drains have no category selected. Please clarify / correct as needed.

Mr. Forman  
April 1, 2010  
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If you have any questions regarding these comments, please call me at (510) 540-3775.

Sincerely,



Ryan Miya  
Senior Hazardous Substances Scientist  
Brownfields and Environmental Restoration  
Program - Berkeley

Enclosures

E-mail distribution:

Mr. Mark Ripperda, U.S. Environmental Protection Agency Region IX  
Mr. Ross Steenson, Regional Water Quality Control Board, San Francisco Bay  
Region  
Ms. Amy Brownell, City of San Francisco  
Ms. Karla Brasaemle, Tech Law, Inc.  
Ms. Melanie Kito, Department of the Navy  
Mr. James Whitcomb, Department of the Navy  
Mr. Chris Yantos, Department of the Navy  
Ms. Lara Urizar, Department of the Navy  
Ms. Tracy Jue, California Department of Public Health  
Mr. Larry Morgan, California Department of Public Health  
Mr. Charlie Huang, California Department of Fish and Game  
Ms. Grace Kato, California State Lands Commission  
Mr. Steve Musillami, California State Parks  
Mr. Alfred Worcester, P.G., C.E.G., CalRecycle – Department of Resources  
Recycling and Recovery  
Ms. Kristine Enea, Community resident  
Mr. Leon Muhammad, Community resident  
Dr. Ray Tompkins, Community resident  
Ms. Diane Wesley Smith, Community resident  
Ms. Marie Harrison, Greenaction

# Memorandum

**Date:** March 30, 2010

**To:** Ryan Miya, Ph.D., Remedial Project Manager  
Department of Toxic Substances Control  
700 Heinz Avenue, Suite 200  
Berkeley, CA 94710

**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, CA 95811



**Subject:** Comments on the Draft Final Radiological Addendum to the Remedial Investigation/Feasibility Study Report for Parcel E-2, Hunters Point Shipyard, San Francisco, California

The California Department of Fish and Game, Office of Spill Prevention and Response (DFG-OSPR) has completed its review of the Draft Final Radiological Addendum to the Remedial Investigation/Feasibility Study Report for Parcel E-2, received on March 4, 2010. DFG-OSPR's review focused on the ecological risk assessment and biological resource related sections of the document.

## Background

Hunters Point Shipyard (HPS), located in southeast San Francisco on a peninsula that extends east into San Francisco Bay, was identified for closure during the Base Realignment and Closure process in 1991. The shipyard is approximately 928 acres in size, 496 acres of which are on land (Tetra Tech, 2004). HPS is bounded on the north and east by San Francisco Bay and on the south and west by the Hunters Point district of San Francisco, which consists of public and private housing and commercial & industrial buildings. The north and east shores of HPS are developed for ship repair with dry docks and berths; there are no shipping facilities on the southwest shore. On the 496 acres of land, there are 3.13 acres of shoreline tidal wetlands and 1.28 acres of seasonal freshwater wetlands.

HPS was operated as a commercial dry dock facility from 1869 until 1939. In 1940, the Navy obtained ownership of the shipyard for shipbuilding, repair, and maintenance activities. Activities shifted from ship repair to submarine servicing and testing after World War II. HPS was deactivated in 1974 and remained relatively unused until 1976. Between 1976 and 1986, the Navy leased most of the property to a privately owned ship repair firm. In 1987, the Navy again occupied the shipyard and began a program to investigate and clean up contamination resulting from past activities (Barajas and Associates, 2008).

HPS is divided into six parcels (A through F). Parcel E currently occupies approximately 138 acres of shoreline and lowland coast along the southwestern part of HPS and contains ruderal habitat, freshwater wetlands, saline emergent wetlands, and intertidal habitat.

Parcel E was used to store construction and industrial materials and as a landfill for industrial waste, municipal waste, and construction debris (Barajas and Associates, 2008). In 2004, the Navy subdivided Parcel E, creating Parcel E-2. Parcel E-2 consists of approximately 47.4 acres, which includes the 22-acre landfill. An "interim" cap covers approximately 14.5 acres of the landfill.

Multiple radiological investigations have been conducted at Parcel E-2, beginning in 1988. The investigations included basewide investigations (such as the site reconnaissance), investigations performed throughout Parcel E (which was later subdivided into Parcels E and E-2), and focused investigations within Parcel E-2. In addition, the Navy performed several interim removal actions at Parcel E-2 that have involved excavation and off-site disposal of low-level radioactive waste. Future remedial actions will also temporarily impact approximately 1.89 acres of tidal wetlands in Parcel E-2 and 1.07 acres of seasonal freshwater wetlands in Parcel E-2.

The Department of Fish and Game (DFG) is the State's Trustee for fish and wildlife resources pursuant to Fish and Game Code Section 711.7. The Agency is also designated to act on behalf of the public as a Trustee for natural resources pursuant to Comprehensive Environmental Response, Compensation, and Liability Act CERCLA Section 107 (f)(2)(B).

The DFG-OSPR commented on various HPS documents, including a February 27, 2007 memorandum (Gray, 2007) commenting on the Draft Wetlands Mitigation, Monitoring Plan for the Metal Debris Reef and Metal Slag Areas at Parcels E and E-2, and a July 9, 2007, memorandum commenting on the Draft Parcel E-2 Remedial Investigation/Feasibility Study (Gray and Huang, 2007).

### **General Comments**

1. DFG-OSPR appreciates the opportunity to provide guidance on the planned cleanup at HPS. This memo will serve to inform the Navy of our continuing interest in coordinating any natural resource issues as one of the designated State natural resource trustees. This may be necessary should release(s) of any hazardous materials at the subject site affect State natural resources.
2. DFG-OSPR concurs with the comments on the Draft Radiological Addendum provided by Dr. James Polisini of the Department of Toxic Substances Control (DTSC) in November, 2007. DFG-OSPR offers the following comments in addition to those expressed by DTSC.

### **Specific Comments**

1. Executive Summary, Page ES-6: When wetland habitat is restored or created as mitigation for impacts to existing wetlands, DFG-OSPR reiterates that DFG supports the use of the U.S. Fish and Wildlife Service (USFWS) definition of wetlands in its wetland policy (<http://www.fgc.ca.gov/policy/p4misc.asp>) for wetland identification and determination of actual wetland acreage and habitat values. The USFWS definition (USFWS, 1979) relies on the presence of wetland vegetation, hydric soils,

and wetland hydrology (e.g., saturation or inundation for an extended period of time), and requires the presence of at least one of these criteria (rather than all three) in order to classify an area as a wetland. Therefore, the USFWS criteria for wetland characterization is more stringent than the U.S. Army Corps of Engineers (USACE) criteria and may result in a different delineation than the USACE. If wetlands are impacted during construction of the containment systems, the wetland habitat destroyed or lost would warrant mitigation (Please see Specific Comment 2). The acreage of impacted wetlands that would require mitigation should be determined based on the USFWS definition of wetlands.

2. Executive Summary, Page ES-7: If in-kind, on-site wetland replacement is unlikely to be feasible after the construction of the containment systems, an alternative mitigation option would be to purchase mitigation credits in an off-site wetland mitigation bank approved by the DFG and the USFWS. A mitigation plan should be developed for all habitat losses, including loss of wetlands or other habitat types. DFG-OSPR requests that a mitigation plan be provided for DFG-OSPR to review before soil remediation actions begin.
3. Page 12-3, Section 12.2: The No Action Alternative includes no remediation and would result in ongoing harm to ecological receptors. Therefore, this alternative is not acceptable to DFG-OSPR.
4. Page 12-5, Section 12.3: It is unclear whether it would be advisable to attract birds or other wildlife to wetlands at a contaminated site. It is also unclear whether the proposed landfill cap will serve its intended purpose as a barrier between subsurface contaminants and clean backfill, or whether a demarcation layer will remain in place after the proposed placement of two to three feet of presumably clean backfill. We recommend that the Navy develop a long term monitoring plan to demonstrate control of contaminants, such as analyzing contaminant concentrations in tissue of ecological receptors and measuring species richness in wetlands.
5. Page 12-5, Section 12.3: Consideration should be given to the methods employed for revegetation of the soil cover when wetlands are restored. DFG-OSPR requests the use of plant stock from within the same watershed where the mitigation activities will occur, when feasible. Use of local species will preserve the local genetic stock and prevent hybridization of local plant populations with distant populations that may not be as well adapted to local environmental conditions.
6. Page 14-1, Section 14.3: The Navy states that Alternatives 3 and 4 would be effective in preventing exposure of radionuclides in concern in the long-term for existing contamination at the site. DFG-OSPR is concerned whenever contaminants are left in place there is a potential for ecological receptors to be exposed to these contaminants over time. It is unclear whether the mitigation the Navy proposes in the Parcel E-2 Remedial Investigation/Feasibility Study (RI/FS) regarding the design and maintenance of the landfill cap, such as the use of ultrasonic devices for burrowing animal control, will adequately protect ecological receptors without the inclusion of a biotic barrier to prevent burrowing animals from breaching the landfill cap. According to the University of California Statewide Integrated Pest Management Program, gopher burrows can be as deep as six feet, ultrasonic devices have not proven to be effective, and reinfestations of treated areas are common (Salmon and Gorenzel, 2002). Coupled with erosion from natural processes such as wind and rain, breaching of the landfill cap is a possibility.

Breaching of the geosynthetic cap and demarcation layer applied over the remaining radiological hazards throughout Parcel E-2 also is a concern. Therefore, DFG-OSPR recommends the use of a biotic barrier in the landfill and radiological hazards caps. Please explain how the Navy will ensure that the caps will not be damaged by burrowing animals, plant roots, or other natural processes, and will be maintained in perpetuity.

7. Page 14-3: DFG-OSPR concurs with Soil Alternative 2. However, DFG-OSPR is willing to consider Soil Alternatives 3 and 4. DFG-OSPR is concerned that "all of Parcel E-2 would be covered with two feet of clean imported soil underlain by a demarcation layer" (Page 12-5). Since ground squirrels may burrow to 138 cm below ground surface (Hampton, 2006), we recommend the clean imported soil cover be at least six feet in depth (DTSC, 1988, EcoNOTE-1 Depth of Burrows for Burrowing Mammals, <http://www.dtsc.ca.gov/AssessingRisk/eco2.cfm#guidance>).

## Conclusion

After reviewing the risk assessment results, DFG-OSPR concurs with Soil Alternative 2. If Alternatives 3 and 4 are selected, we recommend the clean imported soil cover at least be six feet in depth. In addition, DFG-OSPR is concerned that wetlands will be lost during construction of the containment system. The Navy is required to replace or mitigate lost wetland areas according to various Federal and State regulations and policies.

We appreciate the opportunity to review the document. We look forward to continued further cooperation with Navy staff on issues related to HPS. If you have any questions regarding this review or require further, please contact Charlie Huang, at (916) 324-9805 or via e-mail at [chuang@ospr.dfg.ca.gov](mailto:chuang@ospr.dfg.ca.gov).

Reviewers: Michael Anderson, Ph.D., Senior Toxicologist and Tami Nakahara, Environmental Scientist

## References:

- Barajas & Associates, Inc. 2008. Final Revised Remedial Investigation Report for Parcel E, Hunters Point Shipyard, San Francisco, California. May 2.
- Hampton, N.L. 2006. Biological Data to Support Operable Unit 7-13/14 Modeling Of Plant and Animal Intrusion at Buried Waste Sites. The Idaho Cleanup Project.
- Saimon, T. P. and W. P. Gorenzel. 2002. Pest Notes: Pocket Gophers. UC ANR Publication 7433. January. Davis, CA: Integrated Pest Management Education and Publications, University of California Statewide Integrated Pest Management Program. Available online at <http://www.ipm.ucdavis.edu/PMG/PESTNOTES/pn7433.html?printpage>.
- Tetra Tech and LFR. 2000. Draft Final Ecological Risk Assessment Validation Study Report, Parcel E, Hunters Point Shipyard, San Francisco, California. Prepared for SWDIV, March 14.

cc: Mark Ripperda, Remedial Project Manager  
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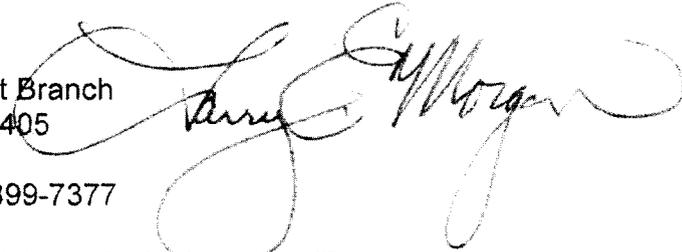
California Department of Public Health  
**MEMORANDUM**

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DATE: March 30, 2010

TO: Ryan Miya, Senior Hazardous Substances Scientist  
San Francisco Peninsula Team Leader  
Brownfields and Environmental Restoration Program - Berkeley  
Office Department of Toxic Substances Control  
700 Heinz Avenue  
Berkeley, CA 94710-2721

FROM: Larry Morgan  
Senior Health Physicist  
Environmental Management Branch  
1616 Capitol Avenue, MS-7405  
P. O. Box 997377  
Sacramento, California 95899-7377



SUBJECT: Review Draft Final Radiological Addendum To the  
Remedial Investigation/ Feasibility Study Report For  
Parcel E-2 Hunters Point Shipyard San Francisco,  
California Dated March 2010

Upon the request of the Department of Toxic Substance Control (DTSC), the California Department of Public Health (CDPH) Environmental Management Branch (EMB) has reviewed documents associated with radiological issues regarding the Draft Final Radiological Addendum Feasibility Study Report for Parcel E-2. The Navy seek's radiological restricted use for Parcel E-2 and future non-federal owners of the property may be required to apply for a license exemption from the Radiological Health Branch of the California Department of Public Health. Attached are CDPH-EMB general comments with respect to the license exemption criteria requirements for restricted use of Parcel E-2.

If you need further assistance please contact Tracy Jue of my staff at (916) 324-4804.

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### General Comments

1. The California Department of Public Health Environmental Management Branch (CDPH-EMB) would like to thank the Department of Navy and its contractor for their diligence in production of this document.
2. CDPH-EMB has determined that the Navy wishes to proceed with restricted use for Parcel E-2 due to partially excavated or capped. CDPH-EMB recommends complete removal of all radium discrete sources and contamination to allow unrestricted use of the property. CDPH-EMB does not have authority to issue a license or license exemption for any or all of Parcel E-2 based on the Navy's request for restricted release. CDPH-EMB further understands that the Navy will request that the property be released with institutional controls.
3. Based on the Navy's intent to request restricted use of the property, it is recommended that the Navy consult and apply for a license or license exemption from the Radiological Health Branch of the California Department of Public Health. Please contact

Gary Butner, Chief (916) 327-5106  
Radiologic Health Branch  
Department of Public Health  
Radiologic Health Branch  
P.O. Box 997414, MS 7610  
Sacramento, CA 95899-7414

4. Appendix C2.3 CDPH-EMB continues to assert that Title 17 California Code of Regulations Section 30256 meets the requirement for the state ARAR. CDPH believes that Title 17 of the California Code of Regulations, Section 30256 meets the criteria for a State Chemical-Specific ARAR and, therefore, should be included in the list of potential ARARs in Appendix C. Section 30256 meets the requirements for an ARAR in 40 CFR section 300.5. It is promulgated, enforceable and more stringent than the federal standards. CDPH is aware that the regulations does not provide a numerical standard; however, a state regulation need not contain a numerical standard in order to be considered substantive for purposes of the criteria for being treated as

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an ARAR. CDPH asserts that Section 30256 is substantive, at least in part. For example, subdivision (k) is as follows:

“(k) Specific licenses shall be terminated by written notice to the licensee when the Department determines that: (1) Radioactive material has been properly disposed; (2) Reasonable effort has been made to eliminate residual radioactive contamination, if present; and (3) A radiation survey has been performed which demonstrates that the premises are suitable for unrestricted use; or other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release for unrestricted use.”

Section 30256 is applicable because it contains the requirements that must be met at a site that is being decommissioned, and establishes the standard for clean up of radioactive contamination. The regulation is applicable to a facility such as this site. Furthermore, CDPH's Radiologic Health Branch (CDPH-RHB) will enforce all relevant state laws and regulations at the site once it is transferred to an entity subject to California jurisdiction.

Even if the Navy concludes that Section 30256 is not applicable, this section should be considered an ARAR because it meets the criteria of “relevant and appropriate”. “Relevant and appropriate requirements mean those cleanup standards address problems or situations sufficiently similar to those encountered at the CERCLA site and that their use is well suited to the particular site” (55 FR 8817). The purpose of the requirement and the purpose of the CERCLA action are very similar. The title of the regulation is “Vacating installations: Records and Notices” and it describes in subdivision (k) when a license may be terminated. Clean up of a site pursuant to CERCLA is very similar to a license termination because in both cases it is contemplated that an entity will be permitted to possess property which was formerly contaminated by radiologic materials and will not be required to apply for a license. Indeed, CDPH-EMB believes that once the site is transferred to ownership within the state's jurisdiction CDPH-RHB will require either a license or an exemption from licensing if radioactive contamination is present. The threshold for determining whether a license or exemption is required is the same regardless of whether the entity is terminating the license as described in the regulation, or taking possession of a site that has been contaminated, as in the case of future transfer to an entity regulated by CDPH-RHB.

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In addition, Section 30256 is more stringent than the current proposed federal requirements because 30256(k) (2) requires "reasonable effort to eliminate residual radioactive contamination". Section 30256 does not require reduction of radiological exposure to levels found acceptable to federal standards, in fact, Section 30256 exceeds the federal standards by requiring a reasonable effort to eliminate residual radioactive contamination.

CDPH has been ordered to use 17 CCR 30256 by a California judge who held that "the standard in California for decommissioning and termination of licenses for radioactive sites is found in 17 CCR Section 30256..." (Committee to Bridge the Gap v. Bonta et.al., Sacramento County Superior Court, Case No. 01CS01445, "Order Requiring Supplemental Return to Amended Peremptory Writ", August 17, 2002).

5. Appendix C2.3: CDPH-EMB believes that the following statement in Appendix C contains an inaccurate conclusion: "Although general goals can be considered state ARAR's if they are directive in intent and enforceable (see NCP preamble at 55 Fed. Reg. 8746, March 8, 1990), the CDPH has stated that California laws concerning possession of radioactive materials do not apply to property that remains in the possession of the federal government. Therefore, these laws are not enforceable as required by CERCLA and the NCP. "As CDPH-EMB and CDPH-RHB have repeatedly stated, once a property is transferred from federal ownership to private or state or local ownership, the property is subject to regulation by CDPH. Thus, the Radiation Control Act and other laws regulating radioactive materials in California, as well as regulations promulgated pursuant to those laws, including but not limited to Title 17 CCR section 30256 apply to the site that has been transferred and are enforceable by CDPH-RMB. CDPH-EMB requests that the Navy delete the following sentence: "Therefore, these laws are not enforceable as required by CERCLA and the NCP." The text must be rewritten to make clear that CDPH has regulatory authority over a site once it is transferred out of federal ownership.