



California Department of Public Health MEMORANDUM

DATE: June 10, 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 Radiological Addendum to the Remedial Investigation/Feasibility Study Report for Parcel E-2 San Francisco, CA 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 revised the comments that were previously sent March 29, 2010 to include a comment at the bottom of comment 4 stating "It remains CDPH-EMB's preference that the end result of federal property transferred to a non-federal entity will be for unrestricted use. It is our understanding that concentrations of radioactive material left in place at levels inappropriate for unrestricted use will require a license or license exemption."

Attached are CDPH-EMB comments with respect to radiological issues regarding the Draft Radiological Addendum to the Remedial Investigation/Feasibility Study Report for Parcel E-2.

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

Department of Public Health Review

Activity: Review Draft Radiological Addendum to the Remedial Investigation/Feasibility Study Report for Parcel E-2 San Francisco, CA Dated March 2010.

June 10, 2010

Page 1 of 3

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 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

Department of Public Health Review

Activity: Review Draft Radiological Addendum to the Remedial Investigation/Feasibility Study Report for Parcel E-2 San Francisco, CA Dated March 2010.

June 10, 2010

Page 2 of 3

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.

Department of Public Health Review

Activity: Review Draft Radiological Addendum to the Remedial Investigation/Feasibility Study Report for Parcel E-2 San Francisco, CA Dated March 2010.

June 10, 2010

Page 3 of 3

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).

It remains CDPH-EMB's preference that the end result of federal property transferred to a non-federal entity will be for unrestricted use. It is our understanding that concentrations of radioactive material left in place at levels inappropriate for unrestricted use will require a license or license exemption

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.