N00296.003031
MOFFETT FIELD
SSIC NO. 5090.3

Cal/EPA

Department of
Toxic Substances
Control

700 Heinz Avenue
Suite 200
Berkeley, CA
94710-2737

April 25, 1997

Pete Wilson
Governor

James M. Strock
Secretary for
Environmental
Protection

Commander
Department of the Navy
Engineering Field Activity, West
Naval Facilities Engineering Command
Attn: Mr. Stephen Chao, Project Manager
900 Commodore Drive, Bldg. 210
San Bruno, California 94066-2402

Dear Mr. Chao:

REVISED DRAFT OPERABLE UNIT-1 RECORD OF DECISION, MOFFETT FEDERAL AIRFIELD, MARCH 28, 1997

The Department of Toxic Substances Control (DTSC), the San Francisco Regional Water Quality Control Board (RWQCB) and the California Integrated Waste Management Board (CIWMB) have reviewed the subject document and prepared the following comments. The California Department of Fish and Game (DFG) has provided an Applicable or Relevant and Appropriate Requirements (ARARs) table for your consideration as well. If you have any questions regarding these comments and ARAR table, please call me at 510-540-3830 to ensure a coordinated approach for all regulatory comments.

Sincerely,

C. Joseph Chou
Remedial Project Manager
Base Closure Unit
Office of Military Facilities

Enclosures

cc: Mr. Michael Rochette
Regional Water Quality Control Board
2101 Webster Street, Suite 500
Oakland, California 94612

Mr. Michael D. Gill
U.S. Environmental Protection Agency
Region IX, Mail Stop H-9-2
75 Hawthorne St.
San Francisco, California 94105

A
Printed on
3031

Mr. Glenn Young
California Integrated Waste Management Board
8800 Cal Center Drive
Sacramento, California 95826
Ms. Patricia Velez
California Department of Fish and Game
20 Lower Ragsdale Drive, Suite 100
Monterey, California 93940

Ms. Patricia Velez
California Department of Fish and Game
20 Lower Ragsdale Drive, Suite 100
Monterey, California 93940

Ms. Sandy Olliges
Assistant Chief
Safety, Health and Environmental Services
National Aeronautics and Space Administration
Ames Research Center
Moffett Field, CA 94035-1000

Mr. Peter Strauss
MHB Technical Associates
1723 Hamilton Avenue, Suite K
San Jose CA 95125

Mr. James G. McClure, Ph.D.
Moffett Field RAB, THE Committee
c/o Harding Lawson Associates
P.O. Box 6107
Novato, California 94948

GENERAL COMMENTS

1. As we have pointed out in our letter dated November 20, 1996 that the State agreed to consolidate remediation waste from Site 2 into Site 1. The State also agreed with the designation of Site 1 as a corrective action management unit (CAMU), provided the Navy meets the provisions of Title 22 California Code of Regulations (CCR), Division 4.5, Chapter 14, Article 15.5, Section 66264.552. We have reviewed the revised consolidation alternative in the subject document. In general, the Navy has well explained the consolidation approach, clearly defined that wastes placed at Site 1(CAMU) must be remediation waste from Site 2, and effectively described the seven criteria to evaluate the appropriateness of a CAMU. However, it is also important to recognize that based on field investigation only deminimus amount of hazardous wastes are expected to be found in Sites 1 and 2 during excavation and construction process. It does not preclude the possibility of changing remedy, if unexpected hazardous wastes is discovered at both sites.

SPECIFIC COMMENTS

1. <u>Page 2, 1st Paragraph; Section 1.0</u>

The designating of Site 1 landfill as a corrective action management unit (CAMU) should be in accordance with provisions of Title 22 California Code of Regulations (CCR), Division 4.5, Chapter 14, Article 15.5, Section 66264.552.

2. <u>Page 17, 5th Paragraph; Section 2.5.2.1</u>

Please clarify the end of disposal activities. To our understanding, debris (possible disposal activities) were identified next to Zook Road area by aerial photographs taken in 1965. In addition to the "small arms range", an old pistol range was at the southeast corner of Site 2.

3. <u>Page 18, 2nd Paragraph.; Section 2.5.2.1</u>

Please confirm the operating time of Site 2. It seems that we don't have enough information from aerial photograph to support that Site 2 disposal activities ceased in 1952.

4. <u>Page 34, 4th Paragraph; Section 2.7.2</u>

Please delete the third sentence of this paragraph which starts with "By designating Site 1..."

5. Page 58, Table 1

The State appreciates Navy's efforts to include part of Title 22 closure requirements as applicable or relevant and appropriate requirements (ARARs) in the subject document. Furthermore, the following sections should be considered in the ARAR Table as well: 22 CCR, Division 4.5, Chapter 11, Article 4 to 5 and 22 CCR, Division 4.5, Chapter 18, Article 1 to 5.

6. Page 58, Table 1

Liquid and containerized waste encountered from both Site 1 and Site 2 should be tested or be disposed off site at class I landfill.

7. Page 58, Table 1

In 22 CCR, Division 4.5, Chapter 12, only Article 1 is applicable.

8. Page 62, 3rd Paragraph; Section 2.11.2.3

Title 22 closure requirements are ARARs for OU1 ROD as listed in Table 1. They are applicable only if wastes from Sites 1 and 2 are classified as hazardous.

9. Page 64, 3rd Paragraph; Section 2.11.2.3

Liquid and containerized waste encountered from both Site 1 and Site 2 should be tested or be disposed off site at class I landfill.

10. Page 64, 3rd Paragraph; Section 2.11.2.3

Please delete the last two sentences of this paragraph.

11. Page 25, 3rd Paragraph; Section 2.6.2

The second part of the last sentence should be restored in the subject document. It seems that the Navy is only complying with the U.S. Army Corps of Engineers (COE) wetland delineation criteria, not the delineation method provided by the California Department of Fish Game (DFG). However, DFG's concern on the acreage and habitat value of the affected wetland still maintain valid and should be addressed in the ROD.

12. Page 99, 2nd Paragraph; Section 3.2.2

Please explain why the statement "wetland replacement will be a component of the remedial action" was removed.

Prepared By: Michael Bessette Rochette Phone No.: (510) 286-1028
Date: April 22, 1997 File No.: 2189.8009 (MBR)
Subject: **Revised Draft OU1 Record of Decision dated March 28, 1997**

General Comments:

1) The San Francisco Bay Regional Water Quality Control Board (RWQCB) is providing the Navy with this comment to document the RWQCB's agreement of the CAMU designation of the Site 1 landfill within Operable Unit 1 (OU1). While CAMU designation of the Site 1 landfill affects the Resource Conservation and Recovery Act (RCRA) requirements, the designation does not affect Title 23 requirements. Title 23 CCR Chapter 15, Article 2, requires waste to be classified as hazardous, designated, non-hazardous, or inert and then disposed appropriately per the classification. Information collected during OU1 design activities indicates that materials in-place at the Site 2 landfill are expected to be non-hazardous municipal solid waste. After discussions with USEPA, DTSC, CIWMB, and the Navy, the RWQCB agrees to use visual screening as the method to segregate excavated material acceptable for consolidation at the Site 1 landfill from those material requiring off-site disposal at a Class 1 Landfill. No liquid waste or containers containing free liquid shall be consolidated into the Site 1 landfill. Additionally, it is agreed that the Site 1 landfill consolidation project shall only allow solid waste materials excavated from the Site 2 landfill for consolidation. Include Title 23 CCR Chapter 15, Article 2, as an ARAR in the text and ARAR Table 1.

2) Visual screening shall be performed to segregate those excavated materials with liquid waste or containers containing free liquid from those materials which do not contain liquid waste or containers containing free liquid. Material containing liquid waste or containers containing free liquid shall be taken off-site and disposed in a Class 1 Landfill.

3) The final vertical and horizontal extent of the excavation shall be delineated by soil sample collection and analytical laboratory analysis (on-site analysis suggested) prior to backfilling the open excavation. Analysis shall be performed to confirm the removal of materials with contaminant concentrations above background levels. The soil sample locations and final extent of the excavation shall be mutually agreed upon by the regulatory agencies and the Navy.

4) While the Navy and the RWQCB have agreed to a minimum groundwater monitoring period of three years at Site 2, substantive requirements of Title 23 CCR, Chapter 15, Article 5 are applicable to the groundwater monitoring for Site 2. Please revise text and ARAR Table 1.

5) Incorporate text to document that, prior to any disturbance of the wetlands, the Navy is required to obtain a water quality certification or a waiver of certification from the RWQCB as part of the nationwide permit 38 through the Army Corps of Engineers. While water quality certification is, in part, procedural, the state has the authority under the Clean Water Act, Sections 404 an 401 and state regulations in Title 23 CCR Chapter 17, Section 3830, et seq. to impose substantive requirements which include mitigation for significant impacts on the environment. Mitigation requirements will be based on the actual loss of wetland acreage, determined following the delineation of jurisdictional wetlands, and an assessment of the lost wetland's value. Additionally, specify which wetlands delineation manual will be followed and the rational for its selection.

6) Active revegetation should be included as part of the selected remedy for Sites 1 and 2. Since natural habitat recovery rate would take an estimated 5 years, and active revegetation would enhance the rate recovery rate, while also preventing erosion, it is appropriate as part of the remedy

7) Incorporate the Stormwater Pollution Prevention Plan or Federal Stormwater Requirements as ARARs in the text and ARARs Table 1 since consolidation and construction activities at Sites 1 and 2 will impact stormwater quality if performed during the wet season.

Prepared By: Michael Bessette Rochette Phone No.: (510) 286-1028
Date: April 22, 1997 File No.: 2189.8009 (MBR)
Subject: **Revised Draft OU1 Record of Decision dated March 28, 1997**

Specific Comments:

1) **Page 2, Sec 1, Items 2, 3, and 7:** Include the applicable sections of Title 23 CCR, Chapter 15.

2) **Page 3, Sec 1, Para. 1:** Include the text similar to that on page 64 discussing future groundwater remediation and leachate disposal.

3) **Page 3, Sec 1, Para. 2:** Describe the Master Plan.

4) **Page 25, Sec 2.6.2:** Incorporate text to reflect the understanding that, prior to any disturbance of the wetlands, Navy is required to met the substantive requirements of a water quality certification or a waiver of certification from the RWQCB as part of the nationwide permit 38. See General Comment 5.

5) **Page 27, Sec. 2.7.1.2.3:** Specify that as a substantive requirement under Title 23 CCR, Chapter 15, Article 5, the monitoring and response plan will be in an appropriate remedial design document. Include in the ARAR Table 1.

6) **Page 29, Sec. 2.7.1.2.3, Para. 2:** Include text similar to that on page 64 detailing leachate disposal.

7) **Page 31, Sec. 2.7.1.2.4, Para. 1:** State the tonnage trigger for Bay Area Air Quality Management District, Regulation 8, Rule 34 which requires collection of landfill gas through a gas collection system approved by the Air Pollution Control Officer.

8) **Page 34, Sec. 2.7.2, Para. 2:** Delete the sentences "These well locations...Figure 3." and "Post excavation...been removed." While it appears appropriate to begin the excavation at W2-10 and W2-8 and direct the excavation through visual screening, soil sampling and analytical laboratory analysis is required prior to completion of excavation and the beginning of backfilling. See General Comments 2 and 3.

9) **Page 34, Sec. 2.7.2, Para. 3:** Delete the sentence "By designation...or hazardous." See General Comment 1 and reference Chapter 15 requirements.

10) **Page 35, Sec. 2.7.2.:** Specify that groundwater at Site 2 will be monitored in accordance with applicable Title 23 CCR, Chapter 15, Article 5 requirements and that the Navy has agreed to monitor groundwater quality for a minimum of three years.

11) **Page 44, Sec. 2.8.3.2.3:** Revise to include active revegetation as part of the remedy.

12) **Page 51, Sec. 2.10, Sntc. 4:** Provide text describing that on of the institutional controls will be in the form of a deed restriction presently held by NASA.

13) **Page 52, Sec. 2.10:** Incorporate active revegetation and describe the Master Plan.

14) **Page 55, Sec. 2.11.2.1, Para. 2:** See General Comments 1 and 4 and revise text and Table 1.

15) **Page 58, Table 1:** Include the San Francisco Bay Basin, Water Quality Plan, June 1995; The actions selected are to close landfills and to require continued monitoring and collection of leachate, if generated. The Basin Plan's water quality objectives and beneficial use designations are necessary for determining the water quality protection standard as required by Chapter 15 and for otherwise evaluating protection of water quality.

16) **Page 58, Table 1:** Include Chapter 15, Article 5 groundwater monitoring requirements and stormwater requirements as ARARs for Site 2.

17) **Page 61, Sec. 2.11.2.2:** Include wetland mitigation requirements.

18) **Page 63, Sec. 2.11.2.3, Para. 1:** Delete the last sentence.

19) **Page 63, Sec. 2.11.2.3, Para. 2:** See Specific Comment 1 and add that Chapter 15 requires the waste to be classified and disposed accordingly.

Prepared By: Michael Bessette Rochette Phone No.: (510) 286-1028
Date: April 22, 1997 File No.: 2189.8009 (MBR)
Subject: **Revised Draft OU1 Record of Decision dated March 28, 1997**

20) **Page 63, Sec. 2.11.2.3, Para. 3, last Sntc.:** Identify the that documents required under Title 23 CCR, Chapter 15, Article 9, Section 2596 and 2597 will be in an appropriate remedial design document.

21) **Page 63, Sec. 2.11.2.3, Para. 4:** Title 23 CCR, Chapter 15, Article 5 is an ARAR for both Sites 1 and 2 for groundwater monitoring.

22) **Page 64, Sec. 2.11.2.3, Para. 3:** See General Comment 1 and revise.

23) **Page 65, Sec. 2.11.2.4.1, Para. 2:** See General Comment 1 and revise.

24) **Pages 68-71, Sec. 2.11.4.3:** See General Comment 1 and add the Title 23 CCR Chapter 15, requirements for each specific CAMU requirement.

Cal/EPA

California
Environmental
Protection
Agency

*Integrated
Waste
Management
Board*

*8800 Cal Center Drive
Sacramento, CA 95826
(916) 255-2200*

Pete Wilson
Governor

James M. Strock
*Secretary for
Environmental
Protection*

April 23, 1997

Mr. Joseph Chou
Remedial Project Manager
700 Heinz Avenue, Suite 200
Berkeley, CA 94710-2737

Subject: Moffett Federal Airfield California, Operable Unit 1, Record of Decision (ROD)

Dear Mr. Chou:

The California Integrated Waste Management Board (IWMB) Closure & Remediation Branch received the draft ROD on April 1, 1997. IWMB staff appreciate the opportunity to provide you with input during the closure process of the Moffett Field landfills (Sites 1 and 2). IWMB staff concurs with the selection of the consolidation alternative.

IWMB staff have some concerns with the Table 1 ARARs presented in the ROD.

1. 14 CCR Section 17766, Emergency Response Plan, should be applicable to Site 1, due to the presence of methane and potential for explosive conditions (cap venting systems), and proximity to population receptors (golf course). An emergency response plan containing notification procedures and organizational responsibilities should be prepared and maintained for the site during the postclosure period.

2. 14 CCR Section 17774, Construction Quality Assurance, is appropriately designated as applicable. A multilayer prescriptive cap with a barrier layer is being proposed for Site 1. However, the substance of the CQA reports and documentation for final cover construction must also be included (17774(c)) to provide evidence that the prescriptive cap was constructed according to plans and specifications. The Closure Certification Report for Site 1 will be incomplete without appropriate CQA documentation for the cover.

3. Please address what regulations will apply to the management of free liquids (leachate) from dewatering operations performed during the excavation of Site 2.

Recycled Paper

4. 14 CCR Section 17783, Gas Monitoring and Control Requirements, should be applicable in its entirety. Since Site 1 has generated 31% methane gas at its boundary and a prescriptive cover may effect subsurface gas migration, monitoring and control requirements should be adhered to. The gas control trigger level of 1.25% concentration levels of methane within structures provides a standard for structures on or within 1000 feet of the landfill. It also includes any structures that may be proposed in the postclosure period of the site.

5. 14 CCR Section 17680, Stockpiling is applicable to excavation activities occuring at Site 2.

6. 14 CCR Section 17709, Contact with Water, is applicable to management of wastes during excavation, hauling and placing activities at both Site 1 & Site 2.

7. 14 CCR Section 17796(b), Postclosure Land Use, is applicable to ensure that any postclosure construction improvements at Site 1 be submitted for review and comment concerning possible construction problems and hazards to health and safety. This requirement needs to be tied to any land transfer conducted involving Site 1.

If you have any questions or concerns regarding these comments please call me at (916) 255-3830.

Sincerely,

Glenn K. Young, P.E.
Closure & Remediation South Section
Permitting & Enforcement Division

State of California

Memorandum

To : Mr. Joseph Chou
California Environmental Protection Agency
Department of Toxic Substances Control
700 Heinz Avenue, Building F, Suite 200
Berkeley, California 94710

Date : April 25, 1997

From : Department of Fish and Game

Subject : **Applicable or Relevant and Appropriate Requirements (ARARs) for Operable Unit 1 - at Moffett Federal Airfield, California (5920/60120/NTX 405 00:02)**

This memorandum is in response to your verbal request on April 24, 1997, to the Department of Fish and Game, Monterey, requesting potential State location specific ARARs for Operable Unit 1 at Moffett Federal Airfield, California. The Department of Fish and Game (DFG) appreciates your request for providing State laws and regulations to guide the proposed removal actions at the above listed sites.

As the lead State agency for toxic cleanup, you are making an inquiry to DFG for purposes of coordination and definition of 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 DFG's interest in coordinating any natural resource issues as one of the designated State natural resource trustees, which may be necessary should the release(s) of any hazardous materials at the subject sites affect State natural resources, pursuant to CERCLA.

Based upon information obtained on Operable Unit 1, DFG staff has identified potential areas and actions that could affect State fish and wildlife resources. Listed in the enclosed table are the Fish and Game Code sections that are possible State location-specific ARARs or "to be considered" (TBCs). 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 regarding this memorandum or need additional information, please contact Ms. Patricia Velez, Senior Biologist, Military Facilities Team, California Department of Fish and Game, 20 Lower Ragsdale Drive, Suite 100, Monterey, California, 93940 or by telephone at (408) 649-2876.

Patricia Velez
Senior Biologist
Moffett Federal Airfield, Program Manager

Enclosure: 4 pages

cc: See next page.

cc: Department of Fish and Game

Mr. Don Lollock
Sacramento

Mr. Pete Phillips
Sacramento

Mr. Jonathan Clark
Sacramento

LOCATION SPECIFIC ARARs AND TBCs - MOFFETT FEDERAL AIRFIELD, OPERABLE UNIT 1

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 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 standards are generally developed, utilizing data, information , and guidance from numerous sources. Federal water quality criteria may allow higher concentrations of chemicals for limited time periods, which can result in conditions which are deleterious to State fish, plants, or birds.
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 as a wetland. This policy is not a regulatory program and should be included as a TBC.

TOTAL P

LOCATION SPECIFIC ARARs AND TBCs - MOFFETT FEDERAL AIRFIELD, OPERABLE UNIT 1

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 & 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 Napa River. Section 1601 complements the operation of federal ARAR 40 CFR 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 & Game Code section 1603	This section requires notification to and action by the Department. Section 1603 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 - MOFFETT FEDERAL AIRFIELD, OPERABLE UNIT 1

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, fishes, reptiles or amphibians.	Fish & Game Code section 2014	This code section declares that it is 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 any 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. This section should be included as an ARAR.
Rare native plants	Action must be taken to conserve native plants, there can be no releases and/or actions that would have a deleterious effect on species or habitat.	Fish & Game Code sections 2080 and 1900 *et seq.*	These code sections make provisions concerning native plant protection, including: criteria for determining endangered plant species; designation of endangered plants by the Fish and Game Commission; research by the Dept.; takings by the Dept. for scientific propagation purposes; other prohibitions on takings; exercise of enforcement authority; arrests and confiscation; carrying out of plant conservation programs by other state departments and agencies; an unauthorized public agency regulations pertaining to agriculture. Sections 1900, 1901, 1904, 1905, 1906, 1907, 1909, 1910, 1911, 1912, and 1913 are procedural and administrative in nature and do not impose any substantive requirements. Section 1908 imposes a substantive requirement for forbidding any "person" to take rare or endangered native plants. If rare or endangered plants are present, then sections 2080 and 1908 should be included as ARARs, and the other sections are TBCs.

LOCATION SPECIFIC ARARs AND TBCs - MOFFETT FEDERAL AIRFIELD, OPERABLE UNIT 1

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 & 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.
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. Bird and mammal fatalities are not impossible under the circumstances at these sites, particularly if stockpiling results in increased concentrations of contaminants. This section should be included as an ARAR.