

4/6/07-01222



CH2M HILL
5700 Cleveland Street
Suite 101
Virginia Beach, VA 23462
Tel 757.671.8311
Fax 757.497.6886

April 6, 2007

Mr. Paul E. Herman, P.E.
Remedial Project Manager
Virginia Department of Environmental Quality
629 East Main Street, 4th Floor
Richmond, VA 23219

Subject: Response to ARAR comment 10 in accordance with email correspondence on December 18, 2006 regarding the *Draft Record of Decision for Site 11, School of Music Plating Shop* at Naval Amphibious Base Little Creek, Virginia Beach, Virginia

Dear Mr. Herman:

On behalf of the Navy, CH2M HILL has prepared the following response to Comment 10 received from VDEQ on the *Draft Record of Decision for Site 11, School of Music Plating Shop* at Naval Amphibious Base Little Creek, Virginia Beach, Virginia:

Comment: Table 2-13: Please correct the spelling of "relevant" in the title. The "Prerequisite" description for "Groundwater management area" is incomplete. Please finish the description. For "Media - Groundwater", Please note that all groundwater in Virginia has the future potential for drinking water and that the MCL would be the cleanup standard. Therefore, the Waterworks regulations would be Applicable. For "Media - Waste/Soil/Water", if the IDW is hazardous waste, the Virginia Hazardous Waste Management Regulations would be Applicable. The same is true for the TSD and/or transportation of hazardous waste IDW. Please change "Relevant and Appropriate" to "Applicable".

Response: The title was changed from "relevent" to "relevant". The Prerequisite description was completed with the statement, "Area comprises an area east of Interstate 95 and south of the Mattaponi and York Rivers. The Eastern Shore Ground Water Management Area includes Accomack and Northampton counties."

The ARARs table for Site 11, under "Virginia Chemical-Specific ARARs," includes the following: "Environmental Health Services [VA Code Ann. secs. 32.1-163 to 248.2]."

The ARARs table for Site 11, under "Virginia Chemical-Specific ARARs," includes the following: "Environmental Health Services [VA Code Ann. secs. 32.1-163 to 248.2]." The fourteen articles in Chapter 6 are:

- 1. Sewage Disposal (secs. 163-166)
 - 1.1. State Health Department Sewage Handling and Disposal Appeal Review Board (secs. 166.1-166.10)
- 2. Public Water Supplies (secs. 167-176)
 - 2.1. Private Well Construction (secs. 176.1-176.7)
- 3. Solid and Hazardous Waste Management (secs. 177 and 186)(repealed)

4. Mosquito Control (secs. 187-197)
5. Public Gathering Places (secs. 198-202)
6. Migrant Labor Camps (secs. 203-211)
7. Bedding and Upholstered Furniture (secs. 212-226)
8. Radiation Control (secs. 227-238)
- 8.1. Mid-Atlantic Interstate Low-Level Radioactive Waste Compact (secs. 238.1-238.5)(repealed)
- 8.2. Southeast Interstate Low-Level Radioactive Waste Management Compact (secs. 238.6-238.10)(repealed)
9. Toxic Substances Information (secs. 239-245)
10. Miscellaneous Provisions (secs. 246-248.2)

Of these articles only Article 2 and the "Waterworks Regulations, 12 VAC 5-590-10 to 1280" that is cited in the ARARs table under "Citation" could be pertinent. Article 2 applies to water supplies associated with waterworks. A waterworks is a system that serves piped water for drinking or domestic use and includes all structures, equipment, and appurtenances used in the storage, collection, purification, treatment and distribution of pure water (Va. Code Ann. sec. 32.1-167.8). Regulations that may be promulgated under the authority of Article 2 include criteria and standards for the quality of water which may be taken into a waterworks (Va. Code Ann. sec. 32.1-170).

12 VAC 5-590-30 of the Waterworks Regulations states that the Regulations' purposes include ensuring that "all water destined for public consumption be pure water." This language appears in the ARARs table under "Requirement." A regulation (12 VAC 5-590-30) cannot expand the definition of "water supply" in statute (Va. Code Ann. sec. 32.1-167.7). See also 12 VAC 5-590-10. That is, the only water regulated by Article 2 of Chapter 6 of Title 32.1 of the Virginia Code is water that is being "taken into a waterworks." Article 2 does not, and therefore the Waterworks Regulations cannot, pertain to all surface water and ground water. Va. Code Ann. sec. 32.1-169 makes clear that the authority of the State Board of Health extends only to drinking water furnished to the public by a waterworks.

In the "Prerequisite" column, the ARARs table states: "All groundwater in Virginia has the potential for drinking water, therefore, the MCL is considered to be the cleanup standard." Neither Article 2 nor the Waterworks Regulations give the State Board of Health power to clean up ground water on the theory that at a later date a groundwater source could become a "water supply" to a "waterworks." Site 11 is not now and is not reasonably likely to become a water supply for a waterworks. For this reason and others explained above, the Waterworks Regulations are not applicable for purposes of CERCLA.

The chemical specific and action specific ARARs associated with the Virginia Waste Management Act [VA Code Ann. §§ 10.1-1400 to 1457 (2004)].

9 VAC 20-60-261 which specifically addresses characterization of the IDW is applicable. The remaining sections of the regulation are determined to be relevant and appropriate. 9 VAC 20-60-261 will be referenced as a separate ARAR in Table 2-13 and will be determined as Applicable. The determination of Hazardous waste vs non-hazardous waste is based upon characterization results the citations referencing hazardous and solid waste disposal are determined as relevant and appropriate in Table 2-13.

Table 2-13 has been revised to remove the Environmental Health Services ARAR as it is not applicable to Site 11, separate 9 VAC 20-60-261 into a separate ARAR with an applicable determination. The ARAR associated with Solid Waste Management Regulations, 9 VAC 20-60-262,263 and Hazardous Waste Management Regulations, 9 VAC20-80-240 (c) are relevant and Appropriate pending the results of IDW characterization.

If you have any questions concerning this response, please feel free to call me at (757) 671-8311 x439.

Sincerely,


Jamie Butler,
Project Manager

cc: Mr. Jeff Boylan/USEPA
Mr. Scott Park/NAVFAC Mid Atlantic

Table 2-13
Virginia, Applicable, Relevant, and Appropriate Requirements
Site 11 Record of Decision
NAB Little Creek
Virginia Beach, Virginia

Virginia Location-Specific					
Location	Requirement	Prerequisite	Citation	ARAR Determination	Comment
Chesapeake Bay Preservation Act [VA Code Ann. §§ 10.1-2100 to 2116]					
Chesapeake Bay and its tributaries	Criteria that provide for the protection of water quality of the Chesapeake Bay and its tributaries, that will also accommodate economic development in Tidewater Virginia. Under these requirements, certain locally designated tidal and nontidal wetlands.	Location is within a Chesapeake Bay Preservation Area.	<i>Chesapeake Bay Preservation Area Designation and Management Regulations</i> 9 VAC 10-26-10 to 260	Relevant and Appropriate	Site 11 is located within the Chesapeake Bay watershed. However, there are no surface waters within or influenced by Site 11 and the remedy will not involve or effect tributaries of the Chesapeake Bay.
Groundwater Management Act of 1992 [VA Code Ann. §§ 62.1-254 to 62.1-270]					
Groundwater management area	Regulates groundwater withdrawals in Ground Water Management Areas. Any person or entity wishing to withdraw 300,000 gallons per month or more in a declared management area must obtain a permit.	Location is in a Groundwater Management Area. Currently (June 2005), there are two Ground Water Management Areas in the state. The Eastern Virginia Ground Water Management Area comprises an area east of Interstate 95 and south of the Mattaponi and York Rivers. The Eastern Shore Ground Water Management Area includes Accomack and Northampton counties.	<i>Groundwater Management Act of 1992</i> , VA Code Ann. §§ 62.1-254 to 62.1-270	Relevant and Appropriate	Site 11 is located within the groundwater management area. This ARAR is not applicable because groundwater withdrawal of greater than 300,000 gallons per month will not take place during the remedial action timeframe.

Virginia Chemical-Specific ARARs					
Media	Requirement	Prerequisite	Citation	ARAR Determination	Comment
State Water Control Law [VA Code Ann. §§ 62.1-44.2 to 62.1-44.34-28 (2003)]					
Groundwater	Establishes groundwater quality standards to protect the public health or welfare and enhance the quality of water.	Standards are used when no MCL is available.	<i>Groundwater Quality Standards</i> , 9 VAC 25-260	Applicable	This remedial action is being implemented with a target goal of achieving MCLs/PRGs. The aquifer is not currently, nor reasonably anticipated in the future to be used as a potable water supply.
Virginia Waste Management Act [VA Code Ann. §§ 10.1-1400 to 1457 (2004)]					
Waste/Soil/Water	Wastes to be managed must be sampled for TCLP analyses to determine the appropriate waste characterization. TCLP regulatory levels and definition of RCRA hazardous waste.	Management of wastes.	<i>Hazardous Waste Regulations</i> , 9 VAC 20-6C-261.3	Applicable	This remedy will generate soil and water IDW which will be characterized for off site disposal. Based on site history, it is not anticipated that IDW will be characterized as hazardous waste.
Waste/Soil/Water	Hazardous wastes shall not be disposed or managed in solid waste disposal facilities.	Management of solid waste.	<i>Solid Waste Management Regulations</i> , 9 VAC20-80-240 (c)	Relevant and Appropriate	This remedy will generate soil and water IDW which will be characterized for off site disposal.

Action-Specific ARARs					
Action	Requirement	Prerequisite	Citation	ARAR Determination	Comment
Virginia Waste Management Act [VA Code Ann. §§ 10.1-1400 to 1457 (2004)]					
Handling, storage, treatment, disposal, and/or transportation of hazardous waste IDW	Provides for the control of all hazardous wastes that are generated within, or transported to, the Commonwealth for the purposes of storage, treatment, or disposal or for the purposes of resource conservation or recovery. Any disposal facility must be properly permitted and in compliance with all operational and monitoring requirements of the permit and regulations.	Management of wastes that meet the definition of hazardous waste.	<i>Hazardous Waste Regulations</i> , 9 VAC 20-6C-261.3	Applicable	This remedy will generate soil and water IDW which will be characterized for off site disposal.
Handling, storage, treatment, disposal, and/or transportation of hazardous waste IDW	Provides for the control of all hazardous wastes that are generated within, or transported to, the Commonwealth for the purposes of storage, treatment, or disposal or for the purposes of resource conservation or recovery. Any disposal facility must be properly permitted and in compliance with all operational and monitoring requirements of the permit and regulations.	Management of wastes that meet the definition of hazardous waste.	<i>Hazardous Waste Regulations</i> , 9 VAC 20-6C-262,263 <i>Regulations Governing the Transportation of Hazardous Materials</i> , 9 VAC 20-110-10 to 130	Relevant and Appropriate	This remedy will generate soil and water IDW which will be characterized for off site disposal. Based on site history, it is not anticipated that IDW will be characterized as hazardous waste. If characterization results indicate this material is hazardous, it will be disposed of accordingly.

Table 2-13
Virginia, Applicable, Relevant, and Appropriate Requirements
Site 11 Record of Decision
NAB Little Creek
Virginia Beach, Virginia

Action-Specific ARARs					
Action	Requirement	Prerequisite	Citation	ARAR Determination	Comment
Handling, storage, treatment, disposal and/or transportation of solid waste IDW	Establishes standards and procedures pertaining to the management of solid wastes, and siting, design, construction, operation, maintenance, closure, and post-closure care of solid waste management facilities in this Commonwealth in order to protect the public health, public safety, the environment, and natural resources. Provides the means for identification of open dumping of solid waste and provides the means for prevention or elimination of open dumping of solid waste to protect the public health and safety and enhance the environment. Sets forth the requirements for undertaking corrective actions at solid waste management facilities. Any disposal facility must be properly permitted and in compliance with all operational and monitoring requirements of the permit and regulations.	Management of wastes that meet the definition of solid waste	<i>Solid Waste Management Regulations</i> , 9 VAC 20-80-14J to 170	Relevant and Appropriate	This remedy will generate soil and water IDW which will be characterized for off site disposal. Based on site history, it is not anticipated that IDW will be characterized as hazardous waste. If characterization results indicate this material is hazardous, it will be disposed of accordingly.

Acronyms and Abbreviations

ARAR	Applicable or relevant and appropriate requirement
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
IDW	Investigation Derived Waste
MCL	Maximum Contaminant Level
MCLG	Maximum Contaminant Level Goal
PMCL	Primary Maximum Contaminant Level
VAC	Virginia Administrative Code
RCRA	Resource Conservation and Recovery Act

References

- Commonwealth of Virginia, 2004. Preliminary Identification, Applicable or Relevant and Appropriate Requirements.
- USEPA, 1998. *CERCLA Compliance with Other Laws Manual: Interim Final*. Office of Emergency and Remedial Response. EPA/540/G-89/006
- USEPA, 1998. *CERCLA Compliance with Other Laws Manual: Part II. Clean Air Act and Other Environmental Statutes*. Office of Emergency and Remedial Response.
- USEPA, 1998. RCRA, Superfund & EPCRA Hotline Training Manual. Introduction to Applicable or Relevant and Appropriate Requirements. EPA540-R-58-020