

Cohen, Deborah

From: Audet.Matthew@epamail.epa.gov
Sent: Thursday, April 29, 2010 1:24 PM
To: linda.cole@navy.mil; Cohen, Deborah; iver.j.mcleod@maine.gov
Subject: Fw: Draft Legal Comments on the Draft OU2 FS
Attachments: Legal Comments on FS.doc

Linda, please accept these previously submitted draft comments as our formal comments to the Navy. Please call with any questions. - mra

----- Forwarded by Matthew Audet/R1/USEPA/US on 04/29/2010 01:22 PM

From: Matthew Audet/R1/USEPA/US
To: linda.cole@navy.mil, iver.j.mcleod@maine.gov, cohend@ttnus.com, frederick.thyng@navy.mil
Date: 03/03/2010 09:26 AM
Subject: Draft Legal Comments on the Draft OU2 FS

Per our discussion, I've attached a draft of EPA's legal comments on the OU2 Draft FS. Hopefully this will allow you to begin your review and response while I attempt to coordinate the remaining legal review.

Please contact me with any questions. - mra

(See attached file: Legal Comments on FS.doc)

Legal Comments on the Portsmouth OU2 Draft FS

- 1) *Page ES-1, 2nd Paragraph, 7th sentence:* Identify which operable unit is addressing the contamination indentified in the residential lot N of the DRMO and the capped portion of the DRMO. If not addressed by a separate OU, these areas should be incorporated into the final remedy for OU2 (even if previously subject to a removal action), if contamination above un-restricted use risk levels is left in place.
- 2) *Page ES-2. 3rd Bullet:* Regarding the last sentence, maintenance of the shoreline erosion control needs to be a component of the remedy to prevent future risks from the erosion of soil from the OU area. If the revetment is a component of the remedy then long-term monitoring of the sediment needs to be a component of the remedy to ensure that the revetment remains effective.
- 3) *Page ES-3. 2nd and 6th bullets:* There cannot be solely a LUC option. At the very least there must be long-term monitoring to ensure the remedy remains protective.
- 4) *Page ES-4. 2nd Paragraph. 2nd and 3rd Sentences:* Should state more clearly the WDA-2 would not be protective of the environment.
- 5) *Page ES-4. 2nd Paragraph. 4th and 5th Sentences:* WDA-2 will not meet ARARs.
- 6) *Page ES-4. 2nd Paragraph. 6th Sentence:* WDA-2 does not meet the threshold criterion.
- 7) *Page ES-4. 2nd Paragraph. 7th Sentence:* WDA-2 does not meet the long-term effectiveness and permanence criterion.
- 8) *Page ES-4. Table:* There are five-year review costs for WDA-1 that should be included. Also spell out what “NPW” means.
- 9) *Page ES-4 – 5:* In the DRMO section all of the comments regarding WDA-2, above also pertain the DRMO-2. Also there are five-year review costs for DRMO-1 that should be included.
- 10) *Page ES-6:* The analysis for the Shoreline stabilization needs to meet all of the NCP criteria if the revetment serves as a component of the remedy to prevent release of contaminants into the adjoining river and its sediments. The SL-1 alternative does not meet any of the criteria because maintenance and monitoring of the revetment would not be a component of the remedy.
- 11) *Page 1-2, 1st Paragraph:* See comment 2. If the residential area is part of OU2, then the proposed removal action needs to be incorporated into the final OU2 ROD, either with a determination that the area is cleaned up to unrestricted use

- standards (in which case the ROD would include a No Further Action determination), or if restrictions will still be required because risks are still present (either for soil or groundwater) the FS needs to include an NCP analysis of remedial alternatives to address the remaining risk). The removal action should be described in more detail in this document.
- 12) *Page 1-4, 5th Paragraph, 4th Sentence*: Was the former DRMO area capped as part of a CERCLA response action - if so describe in more detail.
 - 13) *Page 1-7, 4th Paragraph*: Since the landfill/incinerator operations were closed pre-RCRA, any hazardous waste ARARs cited for alternatives addressing the landfill waste would be “Relevant and Appropriate.”
 - 14) *Page 1-11, 1st Paragraph, 1st Sentence*: Long-term monitoring of the sediment will be required to assess the protectiveness of the shoreline revetment (assuming waste is left in place and the revetment is a component of the remedy).
 - 15) *Page 1-13, last Paragraph, 4th and 5th Sentences*: Is the River critical habitat for any Federal or State endangered, threatened or protected species (for instance – the federally endangered short-nosed sturgeon which does live in the River).
 - 16) *Page 1-16, last Sentence and Page 1-17, 1st Paragraph*: See comment 21. For CERCLA remediation purposes, it doesn’t matter what the source of the lead is if it is posing a risk.
 - 17) *Page 1-17, 4th Paragraph, last Sentence*: Long-term monitoring of sediment will be required for contamination being left in place.
 - 18) *Page 1-18, 2nd Paragraph*: Were risks calculated for a future residential use scenario? The outer bounds of the remedial area (within the OU) is defined by where there are no risks to unrestricted use.
 - 19) *Page 1-19, 1st Paragraph, 3rd Sentence*: There is potential future risk to sediment if wastes are left in place and current erosion control measures fail, so the erosion controls along the shoreline need to be monitored and maintained as a component of the remedy.
 - 20) *Page 1-19, § 1.6.5*: This section needs to be modified base on EPA’s previous comments.
 - 21) *Page 1-20, 4th bullet*: If contamination is left in place, maintenance and monitoring of the erosion control structures needs to be a component of the remedy to prevent potential future risks of release.

- 22) *Page 1-20, 5th bullet*: Were residential risk levels exceeded elsewhere within the OU, other than in the portion of the DRMO Impact Area? If so, identify these areas in this bullet.
- 23) *Page 2-1, 3rd Paragraph*: Change “facility-citing” to “facility-siting.”
- 24) *Page 2-3, 2nd Paragraph*: Remove the paragraph. There are no potential ARARs.
- 25) *Page 2-4, 2nd Paragraph*: Remove the paragraph - screening level guidance is not a TBC.
- 26) *Page 2-4, 3rd Paragraph*: Remove the paragraph - federal risk assessment procedures, rather than State standards pertain to CERCLA cleanups.
- 27) *Page 2-4*: Add paragraphs on the additional Chemical-specific ARARs and TBCs added to the revised Chapter 2 ARARs Tables.
- 28) *Page 2-4, 4th Paragraph*: Replace the text with: “Published Remedial Action Guideline (RAGs) that are more stringent than federal standards were used to establish cleanup standards.”
- 29) *Page 2-5, 1st Paragraph*: Remove the paragraph since the requirements of the Executive Order have been removed from 40 C.F.R. Part 6. Compliance with the Executive Order is now a matter to be addressed under the Protectiveness criterion, rather than the ARARs criterion.
- 30) *Page 2-5, 2nd Paragraph*: Change “16 United States Code (USC) 1451 et seq.” to “16 United States Code (U.S.C.) § 1451 *et seq.*”
- 31) *Page 2-5, 3rd Paragraph*: Change “33 USC 403; 33 CFR 320-323” to “33 U.S.C. § 403; 33 C.F.R. Parts 320-323.”
- 32) *Page 2-5, 4th Paragraph*: Remove the paragraph since the requirements of the Executive Order have been removed from 40 C.F.R. Part 6. Compliance with the Executive Order is now a matter to be addressed under the Protectiveness criterion, rather than the ARARs criterion.
- 33) *Page 2-6, 2nd Paragraph*: Change the citation to: “Clean Water Act, Sec 404; Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material (33 U.S.C. § 1344; 40 C.F.R. Part 230, 231 and 33 C.F.R. Parts 320-323)”
- 34) *Page 2-6, 3rd Paragraph*: Change the citation to: “National Historic Preservation Act of 1966; Protection of Historic Properties ((16 U.S.C.- § 470 *et seq.*; 36 C.F.R. Part 800).” Change the second sentence (to be consistent with the 4th paragraph of Page 1-11) to: “Prehistoric and historic archaeological resource

sensitivities for the DRMO Impact Area (particularly near Quarters S and N) are moderate and high, respectively. The rest of OU2 has low or moderate sensitivity for prehistoric and historic archaeological resources.”

- 35) *Page 2-6, 4th Paragraph:* Change the citation to the Fish and Wildlife Coordination Act to: “(16 U.S.C. § 661 *et seq.*)” and remove the citation to the Wetlands Executive Order because it no longer is included in a promulgated regulation. Change the text to: “Requires Federal agencies involved in actions that will result in the control of structural modification of any stream or body of water for any purpose, to take action to protect the fish and wildlife resources that may be affected by the action. The Navy must consult with appropriate federal and state resource agencies to ascertain the means and measures necessary to mitigate, prevent, and compensate for project-related losses of fish and wildlife resources and to enhance the resources. Since remedial action may involve work (including O&M of the revetment) within the floodplain of the Pisquataqua River and long-term monitoring will be conducted to ensure that any wastes left in place to not impact fish and wildlife resources in the River these standard are applicable.
- 36) *Page 2-6, Bottom:* Add paragraphs on the additional Location-specific ARARs and TBCs added to the revised Chapter 2 ARARs Tables.
- 37) *Page 2-7, 2nd Paragraph:* Change the citation to “16 U.S.C. Chapter 35; 50 C.F.R. Parts 200 and 402.” Remove the fourth sentence and note that the Federally listed short-nosed sturgeon does utilize the Piscataqua River. So any remedial action that may effect water quality in the River should address requirements under this standard. Regarding the fifth sentence note that the bald eagle has been delisted from both the federal and state endangered and threatened species lists. Remove the last sentence of the paragraph since promulgated standards cannot be TBCs.
- 38) *Page 2-8, 3rd Paragraph:* Add a new second sentence: “Jurisdiction under the Rules extends 75 feet landwards of the outer edge of a protected resource area.”
- 39) *Page 2-8, 5th Paragraph:* Paragraph not needed if there are no state-listed species on the Site or utilizing the river adjacent to the site. Although mentioned in the paragraph there is no other mention of nesting bald eagles (note that these have been delisted) or roseate terns in the area.
- 40) *Page 2-8, 6th Paragraph:* Remove the paragraph if not Significant Wildlife Habitat.
- 41) *Page 2-9, § 2.1.3:* Add paragraphs on any additional Action-specific ARARs and TBCs added to the revised Chapter 2 ARARs Tables.

- 42) *Page 2-9, 4th Paragraph:* Discuss that RCRA is a delegated program in ME. The ARARs text can provide a general description of RCRA and leave the specific citation of applicable standards to the Maine Hazardous Waste Rule section.
- 43) *Page 2-9, 5th Paragraph:* In third sentence remove “potentially” before “applicable.”
- 44) *Pages 2-9 and 2-10, last 2 bullets on 2-9 and first 2 on 2-10:* Cite the Maine Hazardous Waste Rules rather than these RCRA citations.
- 45) *Page 2-10, 4th Paragraph:* Remove this paragraph since LDR standards are not ARARs for CERCLA sites. ARARs do not apply to off-site disposal.
- 46) *Page 2-10, last Paragraph:* Remove this paragraph since CAMU standards are not required to keep capped waste in place within an OU.
- 47) *Page 2-11, 4th Paragraph:* This section should discuss TSCA and its regulations (in particular 40 C.F.R. 761.61(c), which are the risk-based standards for PCB remediation waste) rather than the policy. TSCA can regulate PCBs less than 50 ppm that poses a risk to human health or the environment (waste over 50 ppm needs to be disposed of in a TSCA-compliant disposal facility).
- 48) *Page 2-11, 6th Paragraph:* Remove the paragraph since NAAQs are not ARARs, rather federal NESHAPs if applicable would be the federal air ARARs cited.
- 49) *Page 2-11, last Paragraph:* Cite the specific sections of the State Hazardous Waste Regulations, rather than citing the specific RCRA regulations, since ME is a delegated state and the State regulations are the enforceable standards.
- 50) *Page 2-12, 1st Paragraph:* Add a new last sentence: These standards would be “Relevant and Appropriate” for any waste left in place (that exceed characteristic hazardous waste thresholds) that was disposed of prior to 1980.
- 51) *Page 2-13, 3rd Paragraph:* Remove the paragraph since the Uniform Environmental Covenants is administrative and is not an ARAR (there can be text elsewhere in the document that states that if the property is ever transferred from the Navy a deed will be created that incorporates the institutional control restrictions that may be required and that the deed will comply with state recording standards.)
- 52) *Page 2-16, 2nd Paragraph:* Regarding the third sentence; while the removal action may not be included as a component of the remedy in the ROD, if any contamination is left after the removal that poses a risk to unrestricted use, long-term monitoring and institutional controls for the area will need to be included as part of the remedial action within the ROD.

53) Page 2-16, 3rd Paragraph: Regarding the fifth sentence, the interim cap may not be sufficient to meet ARARs under the ROD.

54) Page 2-17, 4th Paragraph: Change “1,6000” to “1,600.”

55) Table 2-1: Use the following Table for the Chemical-specific ARARs (which are consistent with other EPA sites in ME):

Regulatory Authority	Requirement	Status	Requirement Synopsis	Action to be Taken to Attain Requirement
Federal Criteria, Advisories and Guidance	U.S. Environmental Protection Agency (USEPA) Risk Reference Doses (RfDs)	To Be Considered	RfDs are estimates of daily exposure levels that are unlikely to cause significant adverse non-carcinogenic health effects over a lifetime.	Alternatives will be developed that will address non-carcinogenic risks within the OU.
Federal Criteria, Advisories and Guidance	Guidelines for Carcinogen Risk Assessment EPA/630/P-03/001F (March 2005)	To Be Considered	Guidance for assessing cancer risk.	Alternatives will be developed that will address carcinogenic risks within the OU.
Federal Criteria, Advisories and Guidance	Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens EPA/630/R-03/003F (March 2005)	To Be Considered	Guidance of assessing cancer risks to children.	Alternatives will be developed that will address carcinogenic risks to children within the OU.
Federal Criteria, Advisories and Guidance	USEPA Carcinogen Assessment Group, Cancer Slope Factors (CSFs)	To Be Considered	CSFs are used to compute the incremental cancer risk from exposure to site contaminants and represent the most up-to-date information on cancer risk from USEPA's Carcinogen Assessment Group.	Alternatives will be developed that will address carcinogenic risks within the OU.
Federal Criteria, Advisories and Guidance	Recommendations of the Technical Review Workgroup for Lead for an Approach to Assessing Risks Associated with Adult Exposure to Lead in Soil	To Be Considered	EPA guidance for evaluating the risks posed by lead in soil.	Alternatives will be developed that will meet this standard by addressing lead-impacted soil exceeding adult risk levels in the OU.
State	Maine Solid Waste Rules, Lead Management Regulations (06-096 C.M.R. Chapter 424]	Relevant and Appropriate	Regulations establish lead safe standards for soil containing lead – if lead in soil exceeds 375 parts per million (ppm) in bare soil in potential	Alternatives will be developed that will meet the “Lead Safe” standard by addressing lead-impacted soil in a manner that will either

Regulatory Authority	Requirement	Status	Requirement Synopsis	Action to be Taken to Attain Requirement
			play areas or 1000 ppm in other than play areas, the soil in these areas shall be considered a lead hazard.	permit unrestricted residential use or will restrict use to prevent residential exposure.
State Criteria, Advisories and Guidance	Maine Voluntary Response Action Program, Remedial Action Guidelines for Hazardous Substances in Soil (May 20, 1997)	To Be Considered	These guidelines provide specific chemical concentrations determined by the ME DEP to be protective of human health under various direct exposure scenarios and protective of groundwater. Includes standards for copper that do not have Federal standards.	Alternatives will be developed to meet these standards by addressing risks posed by soil contaminants to human health and the environment.

Notes:

ARAR=Applicable or Relevant and Appropriate Requirement

C.F.R. = Code of Federal Regulations

C.M.R. = Code of Maine Regulations

ppm = parts per million

CSF = Cancer Slope Factor

RfD = Risk Reference Dose

ME DEP = Maine Department of Environmental Protection

USEPA = U.S. Environmental Protection Agency

If there is non-saline groundwater within the OU then the following groundwater chemical-specific ARARs should be added:

Federal	Safe Drinking Water Act (42 U.S.C. §300f <i>et seq.</i>); National primary drinking water regulations (40 C.F.R. Part 141, Subpart B and G)	Relevant and Appropriate	Establishes maximum contaminant levels (MCLs) for common organic and inorganic contaminants applicable to public drinking water supplies. Used as relevant and appropriate cleanup standards for aquifers and surface water bodies that are potential drinking water sources.	In areas with non-saline groundwater all alternatives will be developed that will meet these drinking water standards.
Federal	Safe Drinking Water Act (42 U.S.C. §300f <i>et seq.</i>); National primary drinking water regulations (40 C.F.R. 141, Subpart F)	Relevant and Appropriate	Establishes maximum contaminant level goals (MCLGs) for public water supplies. MCLGs are health goals for drinking water sources. These unenforceable health goals are available for a number of organic and inorganic compounds.	In areas with non-saline groundwater all alternatives will be developed that will meet these drinking water standards.

Federal	Health Advisories (Office of Drinking Water)	To Be Considered	Health Advisories are estimates of risk due to consumption of contaminated drinking water; they consider non-carcinogenic effects only. To be considered for contaminants in groundwater that may be used for drinking water where the standard is more conservative than either Federal or State statutory or regulatory standards. The Health Advisory standard for manganese is 0.3 mg/L.	In areas with non-saline groundwater all alternatives will be developed that will meet these drinking water standards.
State	Maine Drinking Water Rules (10-144A CMR Chapters 231, 232 and 233)	Relevant and Appropriate	All non-saline groundwater in Maine needs to meet these standards. Maine's Primary Drinking Water Standards are equivalent to Federal MCLs.	In areas with non-saline groundwater all alternatives will be developed that will meet these drinking water standards.

2) *Table 2:* Use the following Table for the Location-specific ARARs (which are consistent with other EPA sites in ME):

Regulatory Authority	Requirement	Status	Requirement Synopsis	Action to be Taken to Attain Requirement
Federal	Rivers and Harbors Act of 1899 (33 U.S.C. § 403 <i>et seq.</i> ; 33 C.F.R. Parts 320-323)	Relevant and Appropriate	Section 10 of the Rivers and Harbors Act prohibits unauthorized obstruction or alteration of navigable waters. No activity that impacts waters of the United States shall be permitted if a practicable alternative that has less adverse impact exists. If there is no other practicable alternative, the impacts must be mitigated.	Remedial alternatives will be designed such that navigable waters would not be obstructed or altered in order to meet the substantive environmental requirements under these standards.
Federal	Clean Water Act, Sec 404 (33 U.S.C. § 1344); Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material (40 C.F.R. Part 230, 231 and 33 C.F.R. Parts 320-323)	Applicable	These regulations outline the requirements for the discharge of dredged or fill materials into surface waters including Federal jurisdictional wetlands. No activity that impacts waters of the United States shall be permitted if a practicable alternative that has less adverse impact exists. If there is no other practicable alternative,	Alternatives will be developed that will seek to avoid or minimize the destruction of Federal jurisdictional wetlands and aquatic habitats. Compensatory habitat mitigation may be performed, if required.

Regulatory Authority	Requirement	Status	Requirement Synopsis	Action to be Taken to Attain Requirement
			the impacts must be mitigated.	
Federal	Fish and Wildlife Coordination Act (16 USC 661 <i>et seq.</i>)	Applicable	Requires Federal agencies involved in actions that will result in the control of structural modification of any stream or body of water for any purpose, to take action to protect the fish and wildlife resources that may be affected by the action. The Navy must consult with appropriate Federal and State resource agencies to ascertain the means and measures necessary to mitigate, prevent, and compensate for project-related losses of fish and wildlife resources and to enhance the resources.	Measures to mitigate or compensate adverse project-related impacts to fish and wildlife resources will be taken, if determined necessary. The appropriate Federal and State resource agencies will be consulted.
Federal	Endangered Species Act of 1973 (16 U.S.C. Chapter 35)	Applicable	Provides for consideration of impacts to endangered and threatened species and their habitats. Requires federal agencies to ensure that any actions carried out by the agency are not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat. The short-nosed sturgeon (<i>Acipenser brevirostrum</i>), a federally-listed, endangered species, occurs in the Piscataqua River.	Any remedial action that may affect the Piscataqua River will address potential substantive requirements under these standards to protect the endangered sturgeon.
Federal	Coastal Zone Management Act (16 U.S.C. § 1451 <i>et seq.</i>)	Applicable	Require activities in the designated coastal zone be conducted in a manner consistent with coastal zone management plans.	If remedial actions at OU2 potentially impact coastal zone resources, the substantive, environmental requirements under these standards will be met.

Regulatory Authority	Requirement	Status	Requirement Synopsis	Action to be Taken to Attain Requirement
Federal	National Historic Preservation Act of 1966 (16 U.S.C. § 470 <i>et seq.</i>); Protection of Historic Properties (36 C.F.R. Part 800)	Applicable	Section 106 of the NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment.	Features with potential historical/cultural significance will be evaluated during the remedial design phase. Should any alternative impact historical properties/structures protected by these standards activities will be coordinated with the Advisory Council on Historic Preservation.
State	Maine Natural Resources Protection Act (NRPA) (38 M.R.S.A. §§ 480-A to 480-Z)	Applicable	The NRPA regulates activities affecting protected natural resources: coastal sand dune systems, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, great ponds and rivers, streams or brooks.	Remedial activities affecting regulated natural resources, particularly the alteration of coastal wetlands/waterways, will meet substantive environmental standards under the Act.

Regulatory Authority	Requirement	Status	Requirement Synopsis	Action to be Taken to Attain Requirement
State	Maine NRPA, Wetlands Protection Rule (06-096 C.M.R., Chapter 310)	Applicable	The regulations prohibit activities which would have an unreasonable impact on wetlands (or within 75 feet of the outer boundary of the wetland) or cause a loss in wetland area, functions, and values. Under the Rules, "Wetlands of Special Significance" are defined as all coastal wetlands and great ponds as well as certain freshwater wetlands which include (a) Significant wildlife habitat, as defined by 38 M.R.S.A. § 480-B(10); (b) A freshwater wetland area located within 250 feet of a coastal wetland; (c) Wetlands subject to flooding during a 100-year flood event; (e) A freshwater wetland area located within 25 feet of a river, stream, or brook. If there is no practicable alternative, there must be minimal alteration of the wetland and compensation (off-setting) may be required.	Function and value assessments will be performed, if necessary, for existing coastal wetland/habitat, particularly any "Wetlands of Special Significance." The impacts associated with the remedial alternatives that are unavoidable will be minimized to reduce adverse effects on wetlands and mitigation measures may be taken, if necessary.
State	Maine NRPA, Permit-by-Rule Standards (06-096 C.M.R., Chapter 305)	Applicable	This rule prescribes standards for specific activities that may take place in or adjacent to wetlands and water bodies. The standards are designed to ensure that the disturbed soil material is stabilized to prevent erosion and siltation of the water.	Response actions will be performed to minimize impacts to coastal wetlands or waterways.

Regulatory Authority	Requirement	Status	Requirement Synopsis	Action to be Taken to Attain Requirement
State	Maine Mandatory Shoreland Zoning Act (38 M.R.S.A. §§ 435-449; 06-096 CMR Chapter 1000)	Relevant and Appropriate	To protect and conserve shoreland areas by controlling activities within 250 feet of high water mark, as defined in State law.	Measures will be taken during selection, design, and implementation of remedial actions to comply with the substantive environmental requirements under the Act.
State	Submerged and Intertidal Lands Act (12 M.R.S.A. §§ 1861-1867)	Applicable	The statute establishes the State's ownership and management of submerged, intertidal, and filled tidal land throughout the State.	The substantive environmental requirements of this standard will be achieved for any remedial action that effect State submerged and intertidal lands.
State	Coastal Management Policy Act (38 M.R.S.A. § 1801 <i>et seq.</i>)	Applicable	Provide for the regulation, conservation, beneficial use, and management of coastal resources.	The substantive environmental requirements of this standard will be achieved, including consultation with relevant State agencies.
State	Maine Site Location of Development Law and Regulations (38 M.R.S.A. §§ 481-490. Also 06-096 C.M.R. Chapters 374 and 375)	Applicable	Regulations apply to control activities at certain developments so that there are minimal adverse impacts to natural resources, including erosion and sedimentation control, noise control, historic protection, and air quality control.	Remedial alternatives will comply with applicable environmental requirements. Storm water management and erosion and sedimentation controls will be designed and implemented so that adverse effects on natural resources are minimized.
State	Additional Standards Applicable to Waste Facilities Located in a Flood Plain (06-096 C.M.R. 854(16)).	Relevant and Appropriate for contaminated media exceeding characteristic waste thresholds left in place that was generated prior to 1980.	Any facility located or to be located within 300 feet of a 100 year flood zone must be constructed, operated, and maintained to prevent wash-out of any hazardous waste by a 100 year flood or have procedures in place that which will cause the waste to be removed to a location where the waste will not be vulnerable to flood waters and to a location which is authorized to manage hazardous waste safely before flood water can reach the facility.	Waste left in place or managed within 300 feet of the 100 year flood zone will be managed in compliance with these standards.

Notes:

- ARAR = Applicable or Relevant and Appropriate Requirement
- C.F.R. = Code of Federal Regulations
- C.M.R. = Code of Maine Regulations
- ME DEP = Maine Department of Environmental Protection
- MNA = Monitored Natural Attenuation
- M.R.S.A. = Maine Revised Statutes Annotated
- U.S.C. = United States Code
- USEPA = U.S. Environmental Protection Agency

3) *Table 2:* Use the following Table for the Action-specific ARARs (which are consistent with other EPA sites in ME):

Regulatory Authority	Requirement	Status	Requirement Synopsis	Actions to be Taken to Attain Requirement
Federal	Clean Water Act Section 402 National Pollutant Discharge Elimination System (NPDES) (40 C.F.R. 122-125 and 131)	Applicable	This act and regulations establish discharge limitations, monitoring requirements, and best management practices. Point-source discharges of effluent to surface water must comply with NPDES requirements (é.g., Federal and State water quality criteria).	Any alternative that include on-site discharges to surface waters as part of the remedial action, shall meet these substantive discharge standards. These discharge limitations shall also be used to develop monitoring standards for surface waters.
Federal	Toxic Substances Control Act (TSCA); PCB Remediation Waste (40 C.F.R.761.61(c))	Applicable	This section of the TSCA regulations provides risk-based cleanup and disposal options for PCB remediation waste based on the risks posed by the concentrations at which the PCBs are found. Written approval for the proposed risk-based cleanup must be obtained from the Director, Office of Site Remediation and Restoration, U.S. Environmental Protection Agency (USEPA) Region 1.	The risk-based remediation of PCB contaminated soil will be performed in a manner to comply with TSCA. The ROD will include a finding by the Director, Office of Site Remediation and Restoration, EPA Region 1, that the PCB cleanup level selected will not pose an unreasonable risk to human health or the environment.

Regulatory Authority	Requirement	Status	Requirement Synopsis	Actions to be Taken to Attain Requirement
Federal	Resource Conservation and Recovery Act (RCRA)(42 U.S.C. §6901 <i>et seq.</i>), Subtitle C- Hazardous Waste Identification and Listing Regulations; Generator and Handler Requirements (40 C.F.R. Parts 260-262)	Relevant and Appropriate for contaminated media exceeding characteristic waste thresholds left in place that was generated prior to 1980.	Federal standards used to identify, manage, and dispose of hazardous waste. Maine has been delegated the authority to administer these RCRA standards through its State hazardous waste management regulations. These provisions have been adopted by the State.	Wastes generated as part of remedial activities will be characterized as hazardous or non-hazardous. Testing will also be done to determine the extent of any hazardous waste that is to be managed in place. If determined to be hazardous waste, then they will be managed in accordance with these standards.
Federal	Clean Water Act (33 U.S.C. § 1251 <i>et seq.</i>); National Recommended Water Quality Criteria ("NRWQC") (40 C.F.R. § 122.44)	Relevant and Appropriate	Used to establish water quality standards for the protection of aquatic life.	Standards to be used for monitoring water quality during remedial activities adjacent to the river and long-term water quality monitoring for any contaminated media left within the coastal flood zone of the river (including under and behind the revetment).
Federal Criteria, Advisories and Guidance	EPA's Polychlorinated Biphenyl (PCB) Site Revitalization Guidance Under the Toxic Substances Control Act (November 2005)	To Be Considered	Provides information on characterizing, cleaning up, containing, and disposing of PCB waste (e.g., soil and other debris generated as a result of any PCB spill cleanup) and guidance in complying with the PCB regulations at 40 C.F.R. Part 761.	The remediation of PCB contaminated soil will be performed in a manner to comply with TSCA.
Federal Criteria, Advisories and Guidance	USEPA OSWER Publication 9345.3-03 FS, January 1992	To Be Considered	Management of Investigation-Derived Waste (IDW) must ensure protection of human health and the environment.	IDW will be managed in a manner to protect human health and the environment.

Regulatory Authority	Requirement	Status	Requirement Synopsis	Actions to be Taken to Attain Requirement
State	Maine Hazardous Waste Rules for Identification and Listing of Hazardous Wastes (38 M.R.S.A. § 1301 <i>et seq.</i> ; 06-096 C.M.R. 850)	Applicable	These standards establish requirements for determining whether wastes are hazardous based on either characteristics or listing.	Wastes generated as part of remedial activities will be characterized as hazardous or non-hazardous. Testing will also be done to determine the extent of any hazardous waste that is to be managed in place. If determined to be hazardous waste, then the waste will be managed in accordance with these standards.
State	Maine Hazardous Waste Management Rules - Requirements for Generators (38 M.R.S.A. § 1301 <i>et seq.</i> ; 06-096 CMR 851)	Applicable	These regulations contain requirements for generators of hazardous waste.	Wastes generated by the Navy within the OU since 1980, if characterized as hazardous, will be managed in accordance with these standards.
State	Maine Hazardous Waste Management Rules – Standards for Hazardous Waste Facilities (38 M.R.S.A. § 1301 <i>et seq.</i> ; 06-096 CMR 854)	Relevant and Appropriate for contaminated media exceeding characteristic waste thresholds left in place that was generated prior to 1980.	This rule specifies the standards applicable to the establishment, construction, alteration and operation of waste facilities for hazardous waste in Maine, including monitoring, closure, and post-closure. Regulated facilities include hazardous waste landfills (8), waste piles (11), tanks (12), and miscellaneous units (15).	These standards are applicable to any hazardous waste left in place that was disposed of after 1980 and also to hazardous waste generated as part of the remedial action. Contaminated media left in place that was disposed of prior to 1980, but which exceed characteristic hazardous waste thresholds will be subject to relevant and appropriate standards identified from the rules, including long-term monitoring, institutional control, closure, and post-closure standards.
State	Maine Solid Waste Management Rules (06-096 C.M.R. Chapter 400-411)	Applicable	Provides standard for generation, treatment, storage, and disposal of solid and special wastes. Also provides closure and post-closure standards.	Solid wastes generated or left in place would be managed in accordance with these standards.

Regulatory Authority	Requirement	Status	Requirement Synopsis	Actions to be Taken to Attain Requirement
State	Maine Waste Discharge Licenses (38 M.R.S.A. § 413 <i>et seq.</i>) and Waste Discharge Permitting Program (06-096 C.M.R. Chapter 520-529)	Applicable	These standards regulate the discharge of pollutants from point sources.	All substantive requirements of these standards will be met with respect to any point source discharge to surface water. Appropriate controls and best management practices will be implemented.
State	Maine Water Classification Program (38 M.R.S.A., Section 464-470)	Applicable	<p>This program sets forth standards for the classification of Maine's water. Activities in a water body cannot lower water quality below the designated classification. The Piscataqua River adjacent to the Site is designated Class SB.</p> <p>Designated uses for Class SB waters include recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as habitat for fish and other estuarine and marine life.</p>	Site activities will be designed and implemented in a manner that does not degrade the chemical, physical, or biological integrity of the Piscataqua River. Water quality will be monitored during remedial operations. Long-term water quality monitoring of wastes left in place in the floodway of the river will also be conducted.
State	Maine Surface Water Toxics Program (38 M.R.S.A. §. 420; 06-096 C.M.R. Chapter 530)	Applicable	These rules set forth the State water quality criteria for toxic water pollutants and procedures necessary to control levels of toxic pollutants in surface waters.	Site activities will be designed and implemented in a manner that does not degrade the chemical, physical, or biological integrity of the Piscataqua River. Water quality will be monitored during remedial operations. Long-term water quality monitoring of wastes left in place in the floodway of the river will also be conducted.

Regulatory Authority	Requirement	Status	Requirement Synopsis	Actions to be Taken to Attain Requirement
State	Maine Surface Water Quality Criteria for Toxic Pollutants (06-096 C.M.R. Chapter 584)	Applicable	Except if they naturally occur, levels of toxic pollutants in surface waters must not exceed State water quality criteria.	Site activities will be designed and implemented in a manner that does not degrade the chemical, physical, or biological integrity of the Piscataqua River. Water quality will be monitored during remedial operations. Long-term water quality monitoring of wastes left in place in the floodway of the river will also be conducted.
State	Maine Erosion and Sedimentation Control (38 M.R.S.A. § 420-C)	Applicable	Activities that involve filling, displacing, or exposing soil or other earthen materials must take measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource. Erosion control measures must be in place before the activity begins. Measures must remain in place and functional until the site is permanently stabilized.	Appropriate controls will be implemented to address erosion, sedimentation, and storm water.

Regulatory Authority	Requirement	Status	Requirement Synopsis	Actions to be Taken to Attain Requirement
State	Maine Storm Water Management (38 M.R.S.A. § 420-D), Maine Storm Water Management Rules (06 096 C.M.R. Chapter 500), and Direct Watershed of Waterbodies Most at Risk from New Development and Sensitive or Threatened Regions or Watersheds (06-096 C.M.R. Chapter 502)	Applicable	Storm water quality standards for projects with 3 acres or less of impervious surface may address phosphorus, nitrates, and suspended solids, but may not directly address other dissolved or hazardous materials unless infiltration is proposed. The Storm Water Management Rules establish standards to prevent and control the release of pollutants to water bodies, wetlands, and groundwater, and reduce impacts associated with increases and changes in flow.	Where activities described in 38 M.R.S.A. 420-D occur at the Site, appropriate controls to address erosion, sedimentation, and storm water will be implemented. Erosion control measures will be in place prior to any remedial action that will disturb the ground surface.
State	Maine Air Quality Control Laws; Protection and Improvements of Air (38 M.S.R.A. 581-608-A), Chapters 101, 105, 110, 115)	Applicable	This law and its associated regulations detail the requirements, limitations, and exemptions of State air emissions, including fugitive dust and lead. The standard for particulate matter is 150 µg/m ³ (micrograms per cubic meter), 24 hour average concentration.	Dust suppression and any other air controls that may be required will be utilized as needed to comply with this standard.
State Criteria, Advisories and Guidance	Maine Department of Human Services Interim Ambient Air Guidelines, Memorandum February 23, 1993.	To Be Considered	Interim ambient air guidelines are derived from risk assessment-based criteria or from occupational exposure criteria that are protective of ambient air quality.	These guidelines will be considered during the design of remedial measure that may cause air emissions.

Notes:

- ARAR = Applicable or Relevant and Appropriate Requirement
- CERCLA = Comprehensive Environmental Response, Compensation, and Liability Act
- C.F.R. = Code of Federal Regulations
- C.M.R. = Code of Maine Regulations

IDW	=	Investigation-Derived Waste
ME DEP	=	Maine Department of Environmental Protection
M.R.S.A.	=	Maine Revised Statutes Annotated
µg/m ³	=	micrograms per cubic meter
NPDES	=	National Pollutant Discharge Elimination System
OSWER	=	Office of Solid Waste and Emergency Response
U.S.C.	=	United States Code
USEPA	=	U.S. Environmental Protection Agency

- 56) *Page 3-1, 1st dash subheading:* After “or volume” add “through treatment.”
- 57) *Page 3-2, § 3.1.1:* Add a new last sentence: “Statutorily required five-year reviews would be conducted under the no action response if contamination that poses a risk is left in place.
- 58) *Page 3-3, 5th Paragraph:* In the first sentence after “conditions,” add “ARARs requirements,”.
- 59) *Page 3-4, Soil Remediation Table:* For Containment/Remedial Technology may need to add “Groundwater Protection” and “Vapor Protection.” For Disposal/Process Option change “Off yard” to “Off-site” and remove the paragraph after the tables; also add “On-Site Landfilling,” which at least could pertain to the interim cap area.
- 60) *Page 3-4, Shoreline Stabilization Table:* For Limited Action/Remedial Technology need to add LUCs and Monitoring.
- 61) *Page 3-5, §3.3.1* – Note that for No Action there still is a requirement for statutorily required five-year reviews, so that should be discussed under Implementability and Cost.
- 62) *P. 3-5, §3.3.2* – The discussion of LUCs should include the use of Base Instructions for active facilities and the requirement to establish deed restrictions meeting State recording requirements if the property is transferred from the Navy.
- 63) *P. 3-6, 5th Paragraph* – In the second sentence insert “and monitoring” after “LUCs.”
- 64) *P. 3-11, §3.3.6* – Note that if PCBs over 50 ppm are present *in-situ* the waste would need to go to a TSCA-compliant facility.
- 65) *P. 3-12, §3.4.1* - Note that for No Action there still is a requirement for statutorily required five-year reviews, so that should be discussed under Implementability and Cost.
- 66) *P. 3-13, §3.4.2* – This section needs to include discussion of monitoring to make sure contamination is not being released through the shoreline protection structure.

