

## **RESPONSES TO COMMENTS ON THE DRAFT ACTION MEMORANDUM FOR A NON-TIME CRITICAL REMOVAL ACTION AT THE INSTALLATION RESTORATION SITE 17 AND BUILDING 503 AREA, MARE ISLAND NAVAL SHIPYARD, VALLEJO, CALIFORNIA, AUGUST 31, 2009**

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This document presents the Department of the Navy's (Navy) responses to regulatory comments from Allen Tsao and Tami Nakahara from the California Department of Fish and Game (CDFG), Office of Spill Prevention and Response on the "Draft Action Memorandum for a Non-Time Critical Removal Action (NTCRA) at the Installation Restoration (IR) Site 17 and Building 503 Area, Mare Island Naval Shipyard, Vallejo, California," dated 5/18/09. In addition, in an email provided by Paisha Jorgensen dated 6/1/09, he stated the San Francisco Bay Regional Water Quality Control Board does not have comments on the Draft Action Memorandum.

The comments addressed below were sent by Mr. Tsao and Ms. Nakahara on 6/5/09. The comments and responses are provided below.

### **RESPONSES TO DFG-OSPR SPECIFIC COMMENTS**

- 1. Comment:** Page ES-3, Section 3.0, Threats to Public Health or Welfare or the Environment and Statutory and Regulatory Authorities. The text states, "The result of the site-specific screening-level ecological risk assessment for the IR17 and Building 503 Area indicate the site does not pose an unacceptable risk to ecological receptors on the property subject to this NTCRA."

The regulators and the natural resource trustees did not accept the onshore Ecological Risk Assessment (ERA) and the Navy did not finalize it; therefore, the conclusion that contamination poses no unacceptable ecological risk based on that ERA should be removed.

**Response:** As a point of clarification, the Onshore Ecological Risk Assessment (ERA) was issued Final in July 2002. After that time the Navy and regulators agreed that a site-specific ERA would be submitted as part of the Remedial Investigation (RI) reports for each site and information in the Onshore ERA may be used as part of any site-specific ERAs. This agreement was documented in a 3/8/04 memorandum from Mr. Gribble (DTSC) to Mr. Dunaway (Navy).

The Onshore ERA was cited and incorporated by reference into the IR 17 and Building 503 Area RI report. The IR 17 and Building 503 Area RI report was accepted by the regulatory agencies, was published as final, and incorporated into the administrative record on 1/27/06. As such, it is a legitimate source to cite for potential effects on ecological resources in the Action Memorandum (AM). However, the fate and transport analysis will be updated, as appropriate, based on the data collected during the wetland investigation. No changes to the AM are proposed.

2. Comment: Page 7, Section 2.1.3.2, Sensitive Ecosystem. The text states, “A small part of the adjacent, non-tidal wetland is included within the boundary of the IR17 and Building 503 Area in the southern portion of the site; however, the wetland area is not included within the project boundary covered by this NTCRA.”

During a site visit in 2008, DFG-OSPR staff identified pickleweed vegetation (*Sarcocornia pacifica*), a wetland species, in the former south tank farm. Thus, we disagree with the Navy that none of the wetland area is included within the project boundary covered by this NTCRA. This concern was previously communicated to the Navy via mail (Nakahara and Tsao, 2009) that “This grassland vegetation is contiguous with the non-tidal wetland and contains non-tidal wetland areas composed of pickleweed and other wetland species.” DFG-OSPR requests that the Navy include DFG’s applicable or relevant and appropriate requirements (ARARs) and the avoidance and minimization measures we previously submitted for the wetland area (Tsao and Nakahara, 2008) in this Action Memorandum because the area under dispute can serve as a habitat for wetland species such as the salt-marsh harvest mouse.

Response: The Navy does not agree that the occurrence of pickleweed (*Sarcocornia pacifica*) is sufficient to classify the area of the former tank farm as a wetland. There is also no evidence that salt marsh harvest mouse is present in the area proposed for excavation. However, the Navy acknowledges that the NTCRA will occur adjacent to potentially occupied salt marsh harvest mouse habitat and the Navy has agreed to include avoidance and minimization measures in the NTCRA work plan. Section 5.1.1 of the AM will be revised to acknowledge that avoidance and minimization measures will be included in the work plan.

The Navy has evaluated CDFG’s proposed ARARs. See the Response to Comment #5 for additional details.

3. Comment: Page 11, Section 3.2, Threats to the Environment. The text states, “A fate and transport analysis concluded that no significant contamination migration pathways exist from the upland area to surface sediment and water in the wetland areas near the proposed [sic] for this removal action [emphasis added].”

We concur with Dr. Polisini, Department of Toxic Substances Control Human and Ecological Risk Division that because groundwater levels in the IR17 and B503 Area fluctuate 0.11 feet to 3.35 feet over the annual hydrological cycle, the groundwater annual fluctuation and the subsequent potential exposure from groundwater contaminants to ecological receptors must be included in the IR17/B503 Area ecological evaluation when performed at a later date (Polisini, 2009).

We recommend the Navy's statement regarding the significance of migration pathways to ecological receptors be removed because it is premature to draw conclusions about the significance of migration pathways (especially groundwater) until an evaluation of the wetland area is conducted.

**Response:** As noted in a 6/15/09 email from Janet Naito (DTSC), Dr. Polisini's 4/24/09 memorandum provides comments for the ecological evaluation of the non-tidal wetlands. As such the Navy will consider and address Dr. Polisini's comments during the evaluation of the non-tidal wetlands included within the boundary of the IR17 and Building 503 Area.

Data collected to date support the conclusion of the fate and transport analysis that there is no evidence of significant migration of contamination from the upland area to the wetland. However, the fate and transport analysis will be updated, as appropriate, based on the data collected during the wetland investigation.

**4. Comment:** Page 25, Section 9.0, Recommendation and Approval. To clarify that a subsequent ecological evaluation will be conducted in a portion of the non-tidal wetland area not included in this NTCRA, we recommend that the following sentence be inserted directly above the last paragraph as a stand-alone paragraph:

*The non-tidal wetland excluded from this NTCRA will be evaluated in a separate investigation.*

**Response:** The referenced section of the AM recommends and approves the chosen removal alternative for the NTCRA and therefore it is not an appropriate location to include a recommendation for investigation of an area excluded from the NTCRA.

Sections 2.1.3.2, 2.1.3.3, 2.1.4, and 3.2 of the AM all state that the portion of the non-tidal wetlands included within the boundary of the IR17 and Building 503 area and excluded from this NTCRA, will be evaluated further in a separate investigation. There is no need to include the referenced paragraph.

**5. Comment:** Appendix F, Table F-4: State Location-Specific Applicable or Relevant and Appropriate Requirements. Per an email from the Navy, dated February 17, 2009 (Lear, 2009), "the information submitted by DFG with their comments will be evaluated for inclusion as ARARs for this project and the Final ARARs will be documented in the Action Memorandum [emphasis added]." The ARARs submitted by DFG-OSPR are relevant and appropriate for the non-time critical removal action at IR 17 and B503 Area for the reasons given in the table. None

of the ARARs were addressed in the Action Memorandum except for Waters of the State (California Fish and Game Code Section 5650).

**California Fish and Game Code Section 5650:** We do not disagree that the section is not applicable; however, the section is relevant and appropriate. Furthermore, we disagree on the Navy's assertion that the United States has not waived sovereign immunity for state requirements in light of applicable statutory authority and case law<sup>1</sup>.

**Response:** The Navy evaluated the ARARs submitted by CDFG in February of 2009. This evaluation did not change from that presented in the EECA/IRAP (see Appendix A, Table A-4 of the EECA/IRAP). As a result the ARARs evaluation table was not reissued. As indicated in the referenced email, the Final ARARs are documented in the AM. The Navy determined that the only potential CDFG ARAR for this site was California Fish and Game Code Section 5650(a)(b) and (f). The Navy agrees that this section is relevant and appropriate.

However, DFG-OSPR counsel and Navy counsel are currently working together to resolve ARARs issues relating to CDFG codes and regulations, including some of the sections at issue here. It is anticipated that the parties will achieve a resolution of the ARARs issue in the near future that can be applied across Navy installations.

As noted in Response to Comment #2, the Navy acknowledges that the NTCRA will occur adjacent to potentially occupied salt marsh harvest mouse habitat and the Navy has agreed to include avoidance and minimization measures in the NTCRA work plan. Section 5.1.1 of the AM will be revised to acknowledge that avoidance and minimization measures will be included in the work plan.

## REFERENCES

Lear, Janet. 2009. Email from Janet Lear, Remedial Project Manager, to Chip Gribble, Remedial Project Manager, Department of Toxic Substances Control, Tami Nakahara, Environmental Scientist, DFG-OSPR, and Allen Tsao, Associate Toxicologist, DFG-OSPR. Copied to Elizabeth Barr, Remedial Project Manager, Department of the Navy. RE: IR 17 and DFG comments on the RTCs. February 17, 2009. Department of the Navy, San Diego, CA.

Nakahara, T. and C.L. Tsao. 2009. Email to Michael Bloom, BRAC Environmental Coordinator and Janet Lear, Lead Remedial Project Manager, Department of the Navy. Copied to Chip Gribble, Remedial Project Manager, Department of Toxic Substances Control. RE: January 14<sup>th</sup> Meeting Minutes: EECA RTCs. February 11<sup>th</sup>, 2009. California Department of Fish and Game, Sacramento, CA.

<sup>1</sup> CERCLA section 120(a)(1), codified at 42 U.S.C. section 9620 and United States of America and State of California v. Shell Oil Company, 294 F. 3d 1045 (9<sup>th</sup> Cir. 2002).

Polisini, J. M. 2009. Memorandum to Chip Gribble, Remedial Project Manger, Department of Toxic Substances Control. RE: Draft Final Engineering Evaluation and Cost Analysis/Interim Remedial Action Plan for Installation Restoration Site 17 and Building 503 Area at Mare Island Naval Shipyard. Chatsworth, CA. April 24.

Tsao, C.L. and T. Nakahara. 2008. Email to Charles Gribble, Remedial Project Manager, DTSC. RE: Review of Draft Sampling and Analysis Plan (Field Sampling Plan/Quality Assurance Project Plan) for Additional Soil, Groundwater, and Soil Gas Sampling Investigation at Installation Restoration Site 17 and Building 503 Area, Former Mare Island Naval Shipyard, Vallejo, California. September 24, 2008. California Department of Fish and Game, Sacramento, CA.

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