January 16, 2009

Wayne Nastri
Regional Administrator
EPA Region 9
75 Hawthorne Street ORA-1
San Francisco, CA 94105

SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION INVOLVEMENT WITH THE NAVY'S REMEDIATION OF THE HUNTERS POINT SHIPYARD SITE IN CALIFORNIA

Dear Mr. Nastri:

The U.S. Nuclear Regulatory Commission (NRC) staff has initiated consultations with the staff from the U.S. Environmental Protection Agency (EPA) Region 9 and the Navy regarding the ongoing Navy remediation of the Hunters Point Shipyard (HPS) site under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and EPA oversight. NRC's interest in this site stems from the results of the Navy's Historical Radiological Assessment (HRA) in 2004, which provided new information and assumed the presence of material from the U.S. Atomic Energy Commission (AEC) licenses previously terminated in 1970. The HRA also indicated that this material was likely commingled with and indistinguishable from atomic weapons testing material because the Navy's Radiological Defense Laboratory used both types of material in its research. The atomic weapons material is outside AEC-NRC jurisdiction, pursuant to Section 91b of the Atomic Energy Act. As a result of the HRA information, the Navy asked NRC to clarify the potential for NRC involvement with the remediation of the HPS site. The Navy also asked about NRC's new jurisdiction for radium-226 stemming from the Energy Policy Act of 2005.

In response to the Navy's request, NRC is assuming that AEC-licensed material could be present and that NRC has jurisdiction over this material. Regarding NRC's new jurisdiction for radium-226, the Statements of Consideration for NRC's recently-established Naturally Occurring and Accelerator Produced Radioactive Materials rule states that radium-226, still in control of the military and that was used for military operations, remains outside of NRC's Jurisdiction. The HPS is expected to pass from military ownership to local ownership pursuant to the Federal Base Realignment and Closure real property disposal process. Conceivably, at that time, any residual radium-226 remaining on the property would no longer be under military control and therefore, would become subject to NRC's authority. However, understanding the Navy's intention to investigate radiologically-impacted sites and reduce risk to an acceptable level under the CERCLA process and with EPA oversight, the staff believes that no further NRC action would then be required to ensure the protection of public health and safety.

Given these circumstances, NRC has decided that the most effective and efficient approach for its involvement is to rely on the ongoing Navy remediation under the CERCLA process and EPA regulatory oversight for the AEC-license material assumed to be present. However, NRC would maintain a limited involvement to stay informed about the remediation effort. NRC believes it can reasonably rely on the CERCLA process and EPA oversight, because this process should result in a level of protection of public health and safety and the environment that is generally equivalent to what would be provided if the NRC's decommissioning process was used. NRC considers this is a reasonable approach, because the AEC-licensed materials are inextricably

commingled with the atomic weapons testing material over which the NRC has no jurisdiction and because over-laying NRC requirements and oversight on the CERCLA process already underway provides no clear public health and safety benefit.

Under this approach, NRC would not exercise its regulatory authority and not require compliance with its decommissioning regulations. NRC would stay informed about the remediation, so that it could respond to stakeholder questions. However, NRC would not conduct any formal regulatory reviews or participate in the ongoing CERCLA reviews of the Navy's remediation. NRC would primarily stay informed about the HPS remediation by: 1) reading selected decision-making documents and results of work distributed by the Navy and available in the Administrative Record, and 2) conducting an annual site visit and meetings with EPA, Navy, and stakeholders. In addition, NRC would retain the ability to access the site and remediation documents, upon request. NRC would also reserve the option of commenting to EPA if necessary to justify our continued reliance on the CERCLA process. Finally, NRC would continue its ongoing oversight of the Navy contractors' remediation activities. These Navy contractors already have specific NRC licenses. As a result, NRC inspects these activities as part of its routine materials inspection program.

Additional information about NRC's limited involvement approach is provided in the Commission paper and Commission's direction to the staff on this subject, which can be accessed at: ML080910378 and ML081780111 on NRC's Agencywide Documents Access and Management System. I believe this is a balanced approach that allows remediation to proceed under CERCLA, avoids dual NRC-EPA regulation, and allows NRC to be in a position to respond to stakeholder questions in a timely and effective manner.

I request that you formally reply that EPA is in agreement with NRC's approach. I appreciate the assistance your staff has given to us, and if you have any questions regarding NRC's approach, please call me at (301) 415-7197.

Sincerely,

/RA/

Charles L. Miller, Director
Office of Federal and State Materials
and Environmental Management Programs

cc: See enclosed list

cc: Captain Lino L. Fragoso, Navy
Laurie Lowman, Navy
Mark Ripperda, EPA
Robert L. Carr, EPA
Gary Butner, California DPH
Robin Hook, California DPH
Tom Lanphar, California DTSC
Joe Smith, California DTSC
Amy Brownell, City of San Francisco

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