

July 15, 2014

Gonzalo Perez, Branch Chief  
Radiological Health Branch  
Division of Food, Drug, and Radiation Safety  
California Department of Health Services  
P.O. Box 997414 MS-7610  
Sacramento, CA 95899-7414

Dear Mr. Perez:

I am writing to you with regard to a request from Chicago Bridge & Iron Federal Services, LLC (CB&I), formerly known as Shaw Environmental & Infrastructure, Inc., for the U.S. Nuclear Regulatory Commission (NRC) to provide CB&I with a determination of regulatory jurisdiction for the activities CB&I was undertaking on behalf of the U.S. Department of the Navy (Navy) at the Hunters Point Naval Shipyard in San Francisco, CA (Agencywide Documents Access and Management System (ADAMS) Accession No. ML120580662). Specifically, CB&I questioned whether its service provider activities were subject to NRC or State of California regulatory jurisdiction. NRC was recently notified that CB&I would no longer be performing service provider activities at Hunters Point Naval Shipyard.

By letter dated January 30, 2012, the Navy informed CB&I that work they were performing in areas of the shipyard fell into either partial or proprietorial jurisdiction. Based on the contract CB&I had with the Navy and a separate Memorandum of Understanding between CB&I and the Navy, it appeared that CB&I was not considered an employee of the Navy and was required to independently comply with applicable NRC or Agreement State requirements. Based upon the information provided by CB&I with respect to its contract status with the Navy and the varied legislative jurisdictional nature of the Hunters Point Naval Shipyard, as indicated by the Navy, the NRC staff has concluded that CB&I would have been required to have both an NRC and a California Agreement State license to conduct radioactive material decommissioning activities at the Hunters Point Naval Shipyard. The NRC staff has evaluated what would have been the licensing status of CB&I by walking through a series of questions developed for another Federal government installation. The process used by the NRC staff with respect to this type of jurisdictional determination is detailed in SA-500, "Jurisdictional Determination," (ADAMS Accession No. ML110600350) and FSME-14-049 (ADAMS Accession No. ML14086A475), an All Agreement States letter that provides additional clarification to SA-500.

According to the information provided by the Navy (Enclosure 1), a portion of the site (generally Northeast of the approximate boundary line) is partial jurisdiction. Partial legislative jurisdiction applies in those "instances where the Federal Government has been granted some of the state's authority for exercise by the United States over an area in a state, but where the state has reserved to itself the right to exercise, by itself or concurrently with the United States, other authority constituting more than merely the right to serve civil or criminal process in the area ..."<sup>1</sup>

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<sup>1</sup> Naval Facilities Engineering Command (NAVFAC) Real Estate Procedural Manual, Chapter 26, pg. 26-2 – 26-3.

Based on the Navy's guidance, in an area of partial jurisdiction, "[a]dministration of the Federal area is the same as if it were under exclusive federal jurisdiction for those state powers granted to the Federal Government without reservation."<sup>2</sup> At the Hunters Point Naval Shipyard, it appears that the health and safety legislative and regulatory responsibilities have been granted to the Federal government. The NRC staff reaches this conclusion based on the fact that the Navy provides fire and police services to this area through contracts the Navy has with the adjoining local jurisdictions. Therefore, the staff concludes that this portion of the site would be treated as exclusive federal jurisdiction for administration of the Atomic Energy Act of 1954, as amended (AEA), and the regulatory responsibility for ensuring that radioactive materials are used in a manner that is protective of the public's health and safety would vest in the NRC. Accordingly, work performed by CB&I, or other private service providers, on this portion of the site would be subject to a service provider license issued by NRC.

The rest of the site (generally Southwest of the approximate boundary line) is proprietary jurisdiction. With respect to this area, the Navy's guidance states that proprietary jurisdiction applies in those instances where the State retains civil and criminal legislative jurisdiction over the Federal area.<sup>3</sup> Accordingly, where the Navy has proprietary jurisdiction, an Agreement State would have regulatory jurisdiction over the use of radiological material in that jurisdictional area by private entities as provided for in its agreement with the NRC. At Hunters Point Naval Shipyard, work performed by CB&I or other service providers not considered to be Federal employees on the proprietary portion of the site would be subject to the State of California's regulatory authority under the NRC's Agreement State program.

In recent discussions with the Navy on this topic, the Navy provided an additional map which delineates the partial and proprietary jurisdiction portions of the Hunters Point Naval Shipyard site. This map is provided as Enclosure 2. Specific questions on whether or not an area is partial or proprietary jurisdiction should be clarified with the Navy.

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<sup>2</sup> *Id.* at 26-4.

<sup>3</sup> *Id.* at 26-4.

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The NRC is prepared to work with the State of California with respect to developing a transition plan to address contractors performing remediation activities at the Hunters Point Naval Shipyard. Should you have any additional questions, or need further assistance in this matter, please contact Mr. Duncan White on (301) 415-2598 or email [duncan.white@nrc.gov](mailto:duncan.white@nrc.gov).

Sincerely,

**/RA/**

Susan Abraham, Acting Deputy Director  
Division of Materials Safety and State Agreements  
Office of Federal and State Materials  
and Environmental Management Programs

Enclosures:

1. Hunters Point Naval Shipyard  
Site Map (ML14080A167)
2. Alternate Hunters Point Naval  
Shipyard Site Map (ML14094A151)

The NRC is prepared to work with the State of California with respect to developing a transition plan where contractors performing remediation activities at the Hunters Point Naval Shipyard can be brought into compliance in an orderly fashion. Should you have any additional questions, or need further assistance in this matter, please contact Mr. Duncan White on (301) 415-2598 or email [duncan.white@nrc.gov](mailto:duncan.white@nrc.gov).

Sincerely,

**/RA/**

Susan Abraham, Acting Deputy Director  
 Division of Materials Safety and State Agreements  
 Office of Federal and State Materials  
 and Environmental Management Programs

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**ML14080A160**

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