



**DEPARTMENT OF THE NAVY**  
**NAVAL FACILITIES ENGINEERING SYSTEMS COMMAND**  
**BASE REALIGNMENT AND CLOSURE**  
**PROGRAM MANAGEMENT OFFICE**  
33000 NIXIE WAY, BLDG 50 Suite 207  
SAN DIEGO, CA 92147

5090  
Ser BPMO/003  
February 5, 2025

Katherine M. Butler, MPH  
Director  
California Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812-0806

Dear Ms. Butler:

**SUBJECT: RADIOLOGICAL CLEANUP UNCERTAINTIES REGARDING STATE OF CALIFORNIA CONCURRENCE AT DEPARTMENT OF THE NAVY (DON) BASE REALIGNMENT AND CLOSURE (BRAC) INSTALLATIONS**

On behalf of the DON BRAC Program Management Office, I am writing to express my concerns with the regulatory uncertainties adversely affecting DON radiological cleanup actions at BRAC installations located in the State of California. While the BRAC team appreciates the ongoing collaboration with the State of California's regulatory agencies over the past two decades in addressing radiological cleanup at BRAC installations, the State's evolving regulatory position has created uncertainties for the DON as well as for future property recipients, particularly concerning licensing, material handling, and disposal requirements. This uncertainty has made it difficult, if not impossible, for the DON to transfer surplus BRAC property and return it to productive reuse for the benefit of local communities within California. Our intended property recipients are additionally growing frustrated with the uncertainties and delays they are experiencing on their housing, mixed use, and open space projects. Most recently, the City & County of San Francisco shared these concerns with your department (Enclosed).

The DON is required by federal law to cleanup contamination in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). With regard to radiological contamination, the State of California is the only NRC Agreement State<sup>1</sup> that lacks a specific numerical cleanup requirement<sup>2</sup>. The lack of a specific numerical cleanup requirement leads to lack of clarity and agreement on a path forward between the DON and the State to achieve cleanup of radiological constituents. It appears the State is unwilling to apply an appropriate framework to regulate federal CERCLA radiological cleanup actions that are protective of human health and the environment. Rather the State continues to attempt to apply non-applicable State regulations that impose an undue burden on future transferees and effectively prevent the DON from disposing surplus BRAC property as directed by Congress and federal law and regulation.

The DON and State previously agreed to a process where concurrence on unrestricted reuse had been through the State's issuance of Radiological Unrestricted Release Recommendation

(RURR) letters to provide assurances to future property owners that the radiological remediation is complete and in compliance with the intent of California's Radiation Control Law and implementing regulations. The DON agreed to this construct even though the DON rejects California's Radiation Control Law (e.g., 17 CCR 30256(k)) as an "Applicable" or "Relevant and Appropriate" Requirement (ARAR). Similarly, the DON and the State previously agreed on the use of CERCLA Land Use Controls (LUCs) for restricted releases of former BRAC property. These prior assurances enabled full use and redevelopment of the property without the need for further State imposed cleanup requirements or licensing actions.

However, the process to secure a RURR letter and the State's position on restricted release have evolved significantly. Whereas the DON historically focused on meeting the established CERCLA Remedial Goal (RG), the State has recently required extensive documentation that confirms all soil and building materials are comparable to background levels in order to achieve the State's subjective concept of "Reasonable Effort" versus NRC's definition<sup>3</sup>. Regarding restricted release, the State most recently communicated that there is no mechanism for restricted release under state law. This position, the State's lack of a specific numerical cleanup requirement and its unilateral application of 17 CCR 30356(k) has the following critical implications:

1. Unnecessary costs and impacts incurred for disposal outside of California when materials should be suitable for recycling or disposal within California;
2. Unclear path to closure for an unrestricted reuse site or to a remedy that allows for LUCs in accordance with CERCLA;
3. Property transfer delays caused by installation agreement signatories re-evaluating RGs after the decision document has already been signed;
4. Property transfer delays and unnecessary costs for any site potentially impacted by radiological constituents resulting from inconsistent application of cleanup criteria and request to cleanup to background below CERCLA RGs;
5. Property transfer delays caused by State's inconsistent position regarding ability to transfer property with LUCs;
6. Property transfer delays caused by State's inconsistent application of regulations and threats to impose undue burden and license requirements on future property transferees.

The DON will continue to remediate residual radiological contamination to meet the RGs or Remedial Action Objectives (RAO) pursuant to the CERCLA decision documents prior to determining BRAC property is suitable for transfer. Until agreement is otherwise reached, due to the regulatory uncertainty and the DON's need for a reasonable measure of predictability and stability in implementing its cleanups under federal law, the DON will dispose of the materials of issue outside of California.

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Finally, in the absence of a defined numerical cleanup standard from the State, the DON respectfully requests that the State provide formal concurrence that the satisfaction of a CERCLA RG or RAO is protective of human health and the environment and therefore, it is 1. adequate to support the State's regulatory concurrence with the DON's finding that all necessary remedial action has been taken in accordance with CERCLA 120(h)(3), and 2. renders unnecessary any additional requirement for a property transferee to carry a California radiological material license for both unrestricted and restricted release remedies. The State's concurrence will offer future property owners some assurance that they will not be subject to redundant regulation. Thank you for your continued cooperation in resolving these matters.

Sincerely,

GREGORY C. PRESTON  
Director

<sup>1</sup>. States who have entered into an agreement with the U.S. Nuclear Regulatory Commission (NRC) to exercise authority over non-federal or non-tribal agencies or entities to license and inspect byproduct, source, or special nuclear materials used or processed within the state.

<sup>2</sup>. The State of California Executive Order D-62-02 which ordered the Department to adopt standards for decommissioning of radiological materials, assess the public health and environmental safety risks associated with the disposal of decommissioned materials, and comply with all applicable laws, including the California Environmental Quality Act., 30 September 2002.

<sup>3</sup>. NRC's regulation noted in 10 CFR 30.36, states "Reasonable effort has been made ... which demonstrates that the premises are suitable for release in accordance with criteria for decommissioning in 10 CFR part 20, subpart E..." (e.g. 25 mrem per year).

Enclosure: CCoSF Request for DTSC Assistance 12-20-24

Copy to: (next page)

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Copy to:

The Honorable Gavin Newsom,  
Governor of California  
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Sacramento, CA 95814

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Division of Radiation Safety and  
Environmental Management  
MS 7601  
PO Box 997377  
Sacramento, CA 95899-7377

Eric Oppenheimer  
Executive Director  
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P.O. Box 100  
Sacramento, CA 95812-0100

Cheree D. Peterson  
Deputy Regional Administrator – Region 9  
Environmental Protection Agency  
75 Hathorne Street  
San Francisco, CA 94105

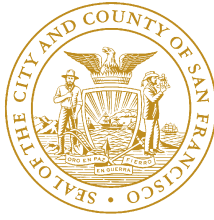
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December 20, 2024

Katherine Butler, Director  
Department of Toxic Substances Control  
[Katherine.Butler@dtsc.ca.gov](mailto:Katherine.Butler@dtsc.ca.gov)

Dear Ms. Butler:

Thank you again for taking the time to meet with us on November 19<sup>th</sup>. We greatly appreciate the Department of Toxic Substances Control's ("DTSC") efforts in overseeing the environmental cleanup and transfer process for the former Naval Station on Treasure Island.

Since we last met, the United States Navy formally notified the City and County of San Francisco ("City") that it is **pausing all environmental cleanup and remediation efforts at Installation Restoration Site 12 ("Site 12") on Treasure Island**. This decision is due to the California Department of Public Health's ("CDPH") continued inability to provide actionable guidance on achievable remediation standards necessary for transferring the site to the City. The Navy indicated it would be sending a formal letter to DTSC to that effect shortly.

We therefore write to **request your urgent assistance in facilitating a constructive communication between CDPH and the Navy** to establish a framework for achieving remediation and transfer standards that balance environmental safety with practical feasibility towards our shared goal of protecting the environment and community on Treasure Island.

### Background and History

As we explained during our meeting with you earlier last month, since 2014 the Navy has undertaken substantial environmental cleanup efforts to facilitate the phased transfer of land under its Economic Development Conveyance Memorandum of Agreement ("EDCMOA") with the City. With the execution of the EDCMOA, the Navy also issued a Historical Radiological Assessment Supplemental Technical Memorandum ("HRASTM") to inform the EDCMOA Performance Benchmarks, and to address CDPH's expressed concerns about not having sufficiently comprehensive history of radiological operations by the Navy to fully understand the radiological materials and radioactive waste that may remain on the Island in relation to the Navy's proposed action protocols for remediation.

Although nearly 70% of Treasure Island's sites have successfully undergone cleanup and transfer through coordinated efforts, the land conveyance for Site 12, as scheduled under the EDCMOA, is now approximately six years overdue and currently stalled.<sup>1</sup> This delay is not due to new environmental discoveries, but rather the lack of specific, actionable guidance from CDPH on achievable remediation standards despite the detailed information provided through the HRASTM and subsequent analyses.

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<sup>1</sup> Site 12, which constitutes a significant portion of the former naval station, is primarily designated for use as parks and open spaces (not as housing or structures intended for regular use).

### Request for DTSC Assistance

#### 1) Reevaluation/Reconsideration of CDPH's New Standard

Following our meeting with you, TIDA Director Bob Beck emailed you on November 20<sup>th</sup> with the letter from DTSC Project Manager Peyton Ward responding to the Navy's request for Applicable or Relevant and Appropriate Requirements (ARARs), which included a memorandum from CDPH stating that transfer without an "unrestricted release" standard would not be permitted (see the attached email from Director Beck; and the CDPH memorandum in the attached DTSC response at page 82).

If upheld, this would overturn two decades of precedent for what the State of California expects for cleanup (ARARs) for Navy lands to be transferred; and would require a level of remediation that is economically and practically unfeasible, potentially precluding the transfer of not only Site 12 but other federal lands across California. Additionally, this memorandum's implications have halted the Navy's work on the Feasibility Study Addendum #2, further stalling progress.

We hope to hear back from you on this matter soon and that you agree that it would be imprudent to overturn well-established precedence by instituting a new "unrestricted release" standard.

#### 2) Intervention/Assistance with CDPH to Establish for the Navy a Framework for Achieving Remediation and Transfer Standards

Finally, the City and the Navy are requesting DTSC's assistance in mediating discussions with CDPH to develop achievable criteria for the transfer of Site 12. A collaborative approach is essential to align remediation requirements with the intended use of the land and to prevent further delays in the redevelopment of Treasure Island. The current ambiguity surrounding standards has left critical housing and park development projects in limbo, jeopardizing the timeline for delivering 8,000 new homes and the largest expansion of San Francisco's park network since the creation of Golden Gate Park.

It is our understanding that the Navy, DTSC and CDPH have instituted a framework for escalating and, hopefully, resolving issues relating to the radiological clean up at the Hunters Point Shipyard. We understand that the radiological issues at Site 12 differ from those at Hunters Point, where an escalation framework is already in place. While duplicating that framework may not be feasible, we hope you agree that expanding its scope to include Treasure Island could provide much-needed structure to these discussions.

We firmly believe that regular updates and clear action steps from DTSC, CDPH and the Navy would be instrumental in advancing our shared goals.

In areas where achieving an unrestricted release may be impractical, we ask that the DTSC provide a pathway for transfer and reuse with appropriate controls commensurate with environmental conditions. Such a framework would ensure that redevelopment efforts continue while maintaining protections for human health and the environment.

## Conclusion

Thank you again for your attention and time in this matter and any assistance you can provide in supporting and overseeing the cleanup, transfer and post-transfer monitoring of the lands of the former Naval Station Treasure Island.

In summation, we respectfully request your urgent assistance in mediating the discussions between CDPH and the Navy to establish clear, practical standards that will advance our common interest in cleaning up the former naval station while ensuring the protection of human health and the environment. We trust DTSC's expertise to determine the most effective approach for resolving these challenges and advancing the timely redevelopment of Treasure Island, and look forward to working with you further towards are mutually shared goals.

You may contact me directly at [Jennifer.Johnston@sfgov.org](mailto:Jennifer.Johnston@sfgov.org) or (415) 554-4572 should you have any questions or wish to discuss this matter further in the meantime.

Sincerely,



Jennifer Johnston  
Deputy City Administrator

## Attachments (2):

- Email Director Beck on November 20<sup>th</sup>
- DTSC response to the Navy's request for ARARs for the Radiological Feasibility Study Addendum for Site 12 on Treasure Island (CDPH memorandum beginning at page 74)

CC: Thanne Berg, Deputy Director, Site Mitigation and Restoration Program, DTSC  
Bob Beck, Director, Treasure Island Development Authority  
AnMarie Rodgers, Deputy Director, Treasure Island Development Authority  
Eileen Mariano, Manager of State and Federal Affairs, Office of Mayor London Breed  
Anne Taupier, Mayor's Office on Economic and Workforce Development

**ATTACHMENT 1**

**From:** Berg, Thanne@DTSC <Thanne.Berg@dtsc.ca.gov>  
**Sent:** Wednesday, November 20, 2024 8:24 PM  
**To:** Beck, Bob (ADM) <bob.beck@sfgov.org>; Carver, Seth@DTSC <Seth.Carver@dtsc.ca.gov>; Rodgers, AnMarie (ADM) <anmarie.rodgers@sfgov.org>; Hayward, Sophie (ADM) <sophie.hayward@sfgov.org>; Johnston, Jennifer (ADM) <jennifer.johnston@sfgov.org>; Taupier, Anne (ECN) <anne.taupier@sfgov.org>; Austin, Kate (ADM) <kate.austin@sfgov.org>; Butler, Katherine@DTSC <Katherine.Butler@dtsc.ca.gov>; paul@syaslparkers.com; karen@syaslparkers.com; Erica Smith <Erica@SYASLpartners.com>; dylan@syaslparkers.com; Mariano, Eileen (MYR) <eileen.f.mariano@sfgov.org>  
**Cc:** Clifton Wilson <clifton@syaslparkers.com>; Brewer, Kathi@DTSC <Kathi.Brewer@dtsc.ca.gov>  
**Subject:** RE: Treasure Island Discussion

Bob and SF City Officials,  
Thank you for this information and meeting with us. I will follow-up with the team and look forward to continuing this conversation. The Treasure Island cleanup has some challenges that we both would like to resolve.

Best,  
Thanne



**Thanne Berg** (*she/her/hers*)  
Deputy Director  
Site Mitigation and Restoration Program  
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Department of Toxic Substances Control  
700 Heinz Avenue, Berkeley, California  
94710  
California Environmental Protection  
Agency

**From:** Beck, Bob (ADM) <[bob.beck@sfgov.org](mailto:bob.beck@sfgov.org)>  
**Sent:** Tuesday, November 19, 2024 3:01 PM  
**To:** Carver, Seth@DTSC <[Seth.Carver@dtsc.ca.gov](mailto:Seth.Carver@dtsc.ca.gov)>; Rodgers, AnMarie (ADM) <[anmarie.rodgers@sfgov.org](mailto:anmarie.rodgers@sfgov.org)>; Hayward, Sophie (ADM) <[sophie.hayward@sfgov.org](mailto:sophie.hayward@sfgov.org)>; Johnston, Jennifer (ADM) <[jennifer.johnston@sfgov.org](mailto:jennifer.johnston@sfgov.org)>; Taupier, Anne (ECN) <[anne.taupier@sfgov.org](mailto:anne.taupier@sfgov.org)>; Austin, Kate (ADM) <[kate.austin@sfgov.org](mailto:kate.austin@sfgov.org)>; Butler, Katherine@DTSC <[Katherine.Butler@dtsc.ca.gov](mailto:Katherine.Butler@dtsc.ca.gov)>; Berg, Thanne@DTSC <[Thanne.Berg@dtsc.ca.gov](mailto:Thanne.Berg@dtsc.ca.gov)>; paul@syaslparkers.com; karen@syaslparkers.com; Erica Smith <[Erica@SYASLpartners.com](mailto:Erica@SYASLpartners.com)>; dylan@syaslparkers.com; Mariano, Eileen (MYR) <[eileen.f.mariano@sfgov.org](mailto:eileen.f.mariano@sfgov.org)>  
**Cc:** Clifton Wilson <[clifton@syaslparkers.com](mailto:clifton@syaslparkers.com)>; Brewer, Kathi@DTSC <[Kathi.Brewer@dtsc.ca.gov](mailto:Kathi.Brewer@dtsc.ca.gov)>  
**Subject:** RE: Treasure Island Discussion

Director Butler and Deputy Director Berg, Thank you for your time today to discuss issues impacting programs in San Francisco and the Treasure Island program in particular. I'm writing to provide background to the issue I raised regarding



Director Butler and Deputy Director Berg,  
Thank you for your time today to discuss issues impacting programs in San Francisco and the Treasure Island program in particular.

I'm writing to provide background to the issue I raised regarding the State's March response to the Navy's request for Applicable or Relevant and Appropriate Requirements (ARARs) for the Radiological Feasibility Study Addendum for Site 12 on Treasure Island. The text of concern is found within the response from CDPH which begins on page 74 of the attached file. The CDPH response consists of a single page cover letter and an attached table containing three ARARs. The last of these ARARs appears on 82 of the file in the right hand column and concludes with the following language:

California regulations require unrestricted release; the absence of a regulatory process allowing for restricted release at radiologically impacted sites, together with a 2002 Governor's Executive Order (D-62-02) barring the disposal of radioactive material at unclassified sites, would mandate that federal sites not remediated to California's unrestricted release standards and federal sites subject to cap-in-place remedies remain under federal ownership and control.

We are seeking clarity on this statement which would appear to preclude many paths that the Navy might explore in drafting the Feasibility Study Addendum.

Thank you again for your time today and for DTSC's support over the years in overseeing the cleanup, transfer, and post-transfer monitoring of the lands of the former Naval Station Treasure Island. We will follow up later regarding our general concerns for the radiological guidance/standards for Site 12.

Thanks  
Bob