



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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SUPERFUND &
EMERGENCY
MANAGEMENT DIVISION

November 21, 2022

Captain Richard N. Massie
U.S. Navy Commanding Officer, Naval Base Kitsap
120 South Dewey Street
Bremerton, Washington 98314

Re: Final Fifth Five-Year Review for Puget Sound Naval Shipyard (PSNS) Complex
Superfund Site, Bremerton Naval Complex, Bremerton, WA

Dear Captain Massie:

The Environmental Protection Agency (EPA) has completed its review of the Final Fifth Five-Year Review (FYR) report, signed by the Navy on October 11, 2022, for the Puget Sound Naval Shipyard (PSNS) Complex Superfund Site ("Site"), Bremerton Naval Complex, Bremerton, Washington. EPA's final remedy selection authority at Federal Facility National Priority List sites requires EPA to retain final authority to make protectiveness determinations. As you know, EPA and the Washington State Department of Ecology ("Ecology") entered into an agreement for managing Superfund sites in Washington, dated February 23, 2000, in which Ecology has lead oversight for Operable Units (OU) A, D and NSC, and EPA and Ecology have joint oversight for OU B. OU C is a petroleum-only OU and is being addressed under state authorities. EPA does not concur with the Navy's protectiveness determination for OU B Marine. EPA's determination is that OU B Marine is "Not Protective."

EPA's review found that the FYR report generally follows EPA's 2001 "Comprehensive Five-Year Review Guidance" and provides a thorough review of the clean-up status of each of the OUs at the Site. EPA provided comments on the initial draft FYR report on April 4, 2022 and on the draft final FYR on September 12, 2022. Not all of EPA's comments were addressed in the Navy's final Fifth FYR Report. This letter describes the changes to the document that EPA requested in both the first and second round review and with which the Navy disagreed. This has resulted in this nonconcurrency with the final Fifth FYR and EPA's independent finding of protectiveness for OU B Marine as "Not Protective."

After the response to comment (RTC) call on the draft FYR report, the Navy agreed to revise some of the OU protectiveness determinations. EPA now agrees with the Navy's final protectiveness determinations for the following OUs: OU A, OU B Terrestrial, OU D, and OU NSC. However, as discussed on the RTC call and described in EPA's initial comments on the FYR, EPA disagrees with parts of the rationale provided by the Navy for the OU A and OU B Terrestrial protectiveness determinations and EPA disagrees with the Navy's determination that the remedy at OU B Marine is "Protectiveness Deferred." EPA's determination is that the protectiveness determination for OU B Marine should be "Not Protective." Ecology and the Suquamish Tribe informed the Navy that they also do not agree with the Navy's protectiveness determination for OU B Marine. Further details are described below.

OU B Marine Protectiveness Determination

The Navy determined that the protectiveness determination for OU B Marine is “Protectiveness Deferred.” In EPA’s September 13, 2012 Memorandum, “Clarifying the Use of Protectiveness Determinations for Comprehensive Environmental Response, Compensation, and Liability Act Five-Year Reviews,” the “Protectiveness Deferred” determination is defined as appropriate for remedies where either 1) construction activities are ongoing; 2) construction activities are complete and the remedy is operating; or 3) construction activities are complete, remedial action objectives have been achieved, and operation and maintenance activities are occurring. This protectiveness determination is generally used when the available information does not provide sufficient data and documentation to conclude that all human and ecological risks are currently under control and no unacceptable exposures are occurring. According to the memo, the “Not Protective” determination applies to remedies under the same status of construction activities as “Protectiveness Deferred”; however, it is generally used when adequate data and documentation exists to conclude that the human and/or ecological risks *are not* currently under control.

EPA has determined that there are sufficient data and documentation to conclude that the human and/or ecological risks are not under control for OU B Marine because the Navy has documented human health risk from ongoing, uncontrolled mercury sources from PSNS, and is currently working on a Focused Feasibility Study to address these risks for OU B Marine. Therefore, EPA’s protectiveness determination will be reported to Congress as “Not Protective,” as follows:

The remedy at OU B Marine is not protective because there are known ongoing, uncontrolled sources of mercury from PSNS discharging to Sinclair Inlet that pose unacceptable human health risk in OU B Marine. The following actions need to be taken to ensure protectiveness:

- 1. Proceed with completing the currently drafted Focused Feasibility Study for a remedy in OU B Marine to address mercury contamination, and then complete a Proposed Plan and Record of Decision.*
- 2. Complete all necessary mercury source control actions before an in-water remedy can be completed.*

Rationale for OU A “Protectiveness Deferred” Determination

EPA agrees that the OU A determination should be “Protectiveness Deferred,” but the rationale should also include the uncertainty of the implications that concentrations of some groundwater contaminants of concern are increasing, and some are above the remedial goal. This has led to the need to update the fate and transport model to determine if these increases pose unacceptable risk. The Navy has committed to updating the groundwater fate and transport model and the Conceptual Site Model (CSM) but does not agree that this uncertainty affects protectiveness.

Rationale for OU B Terrestrial “Not Protective” Determination

EPA agrees that the OU B Terrestrial determination should be “Not Protective”, but the rationale should also include the uncertainty of the implications that concentrations of some groundwater contaminants of concern are increasing, and some are above the remedial goal. This has led to the need to update the fate and transport model to determine if these increases pose unacceptable risk. The Navy has committed to updating the groundwater fate and transport model and the CSM but does not agree that this uncertainty affects protectiveness.

CSM Issue

The Navy has stated that the need to update the CSM does not affect current protectiveness. EPA agrees with the need to update the CSM and that it is an issue that should be listed in the FYR but contends that this does affect current protectiveness and that the groundwater fate and transport model and CSM update should be included in the rationales for the OU A and OU B Terrestrial protectiveness determinations.

PFAS

EPA HQ has determined that potential exposures to PFAS should be explicitly considered under protectiveness, with specific lines of evidence articulated to support whether the potential PFAS exposures do or do not affect protectiveness, or if there are insufficient data to make this judgment. The Navy did not include PFAS in its evaluation of protectiveness for any of the OUs. The Navy has completed a PFAS Preliminary Assessment and is in the process of completing the Site Investigation (SI). Since the PFAS SI is required to evaluate potential exposures to PFAS chemicals, this must be added to the Issues and Recommendations sections. The Issues section should identify the need to complete the SI, and the Recommendations section should include a timeline.

Issues and Recommendations Milestone Dates

Each issue milestone date must list a month and year. Estimated years, “By the next FYR,” and “TBD” are insufficient. EPA recommended milestone dates for each of the 11 issues identified in the comments on the draft final report.

EPA recognizes all of the ongoing studies and work that the Navy is completing for OU A, OU B Terrestrial, and OU B Marine. EPA will be tracking all of the issues and recommendations in the FYR report that could affect protectiveness and their associated due dates. The next FYR is due on November 21, 2027.

If you have questions regarding the content of this letter, please feel free to contact me at terada.calvin@epa.gov or Anne Christopher, Remedial Project Manager, at 503-326-6554 or christopher.anne@epa.gov

Sincerely,

Calvin J. Terada
Director