

## **APPENDIX C: SUMMARY OF ALLEGED VIOLATIONS**

### **CERCLA**

42 U.S.C. § 9613(k): Failure to establish an administrative record at or near the former Hunters Point Naval Shipyard (“HPNS”).

42 U.S.C. §9617: Failure to provide a reasonable opportunity to provide meaningful comments regarding the remedial goals adopted by the Navy in what should have been a “remedial action,” but which the Navy improperly designated a “removal” action, precluding public comment.

42 U.S.C. § 9617(b): Failure to respond to significant public comments to the *Fourth Five Year Review* (“FYR”).

42 U.S.C. § 9620(e)(4): Failure to abide by EPA’s determinations as the final arbiter of protectiveness.

42 U.S.C. §§ 9621(b)(1) and 9621(c): Failure to select a remedial action that is protective of human health and the environment.

42 U.S.C. § 9621(c): Failure to comply with the statutory mandate that five-year reviews be done “no less often than each 5 years.”

42 U.S.C. § 9621(c): Failure of the *Fourth FYR* to identify corrective action needed to be taken to attain protectiveness, implement it, and report it to Congress.

42 U.S.C. § 9621(d)(1): Failure to attain a degree of cleanup in remedial actions that at a minimum assures protection of human health and the environment.

### **THE NCP**

40 C.F.R. § 300.430(f)(3)(i): Failure to provide an opportunity for the public to provide written and/or oral comments, attend a public meeting, and get a “response to each issue.”

40 C.F.R. § 300.430(f)(3)(ii): Failure to provide additional public comment in cases where new information that significantly affects the cleanup and could not have been reasonably anticipated by the public becomes available after public comment period has closed.

40 C.F.R. § 300.430: Failure to select a remedial action that is protective of human health and the environment and that maintains protection over time.

40 C.F.R. § 300.430(e)(2): Failure to select a remedial action that is protective of human health and the environment.

40 C.F.R. § 300.430(e)(2)(i): Failure to set remediation goals that establish exposure levels that are protective of human health and the environment.

## **THE FEDERAL FACILITIES AGREEMENT**

**Section 1.1(b):** Failure to conduct the HPNS cleanup “in accordance with” EPA Superfund guidance and policy.<sup>1</sup>

## **EPA GUIDANCES**

### *Citizen’s Guide to Capping:*

Failure to plan for and implement regular inspections to assure that “durable” covers are not damaged by weather, plant roots, and human activity.

### *Comprehensive Five-Year Review Guidance:*

Failure to determine whether there have been changes in toxicity or other contaminant characteristics which need to be investigated.

Failure to identify “recent toxicity data and their sources.”

Failure to investigate whether the exposure assumptions, toxicity data, and cleanup levels are still valid.

Failure to recalculate risk assessment to account for changes in standards and/or toxicity data.

Failure to investigate the question, “Has any other information come to light that could call into question the protectiveness of the remedy?”

### *Data Quality Objectives for Remedial Response Activities, Appendix C Sampling Considerations:*

Failure to do comprehensive sampling of the entire site “to ensure that no area of the site is overlooked.”

Failure to conduct sampling to “provide complete coverage of the area of interest,” before making “general inferences” about the site.

### *Draft Technical Guidance For RCRA/CERCLA Final Covers:*

Failure to assume a 30-year lifetime for proposed covers and failure to plan to monitor and maintain covers for that lifetime.

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<sup>1</sup> The FFA’s requirement to comply with EPA guidance is reinforced in: **Section 6.1** (“in accordance with CERCLA and CERCLA guidance and policy”); **Section 7.6** (“consistency with CERCLA, the NCP . . . and any pertinent guidance or policy issued by the EPA.”); **Section 7.7** (“consistency with CERCLA, the NCP . . . and any pertinent guidance or policy issued by the EPA.”); **Section 11.4** (“in accordance with pertinent EPA guidance”); **Section 26** (“shall comply with . . . relevant community relations provisions in . . . EPA guidances,” and **Section 26.2** (“in accordance with relevant provisions in . . . EPA guidances.”)

*Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA:*

Failure to conduct a proper site characterization to determine the nature and extent of contamination considering the historical record.

Failure to consider factors that may have caused contaminants to migrate from the release source.

Failure to follow a sampling approach that defines contamination in “both vertical and horizontal directions.”

Failure to identify “hot spots” only as a factor in where to *concentrate* sampling rather than to use them to limit the nature and extent of sampling or to exclude areas from sampling.

*A Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents:* Failure to make the Remedial Investigation/Feasibility Study (“RI/FS”), the proposed remediation plan, and other information that forms the basis for choosing a cleanup plan, available in the Administrative Record to enable public comment.

*Human Health Toxicity Values in Superfund Risk Assessments:* Failure to update Preliminary Remediation Goals (“PRGs”) with the most current toxicity data.

*PRG User’s Guide, Land Use Descriptions, Equations, and Technical Documentation:* Violating the allowance for exposure pathways to be switched off in PRG calculations only if “a route of exposure . . . is considered to be unreasonable” at the site, “both currently and in the future.”

*Radiation Risk Assessment at CERCLA Sites: Q & A:*

Failure to select a remedy consistent with the NCP’s risk range ( $10^{-4}$  to  $10^{-6}$  lifetime excess cancer risk).

Failure to follow EPA’s direction that “dose recommendations (e.g., guidance such as DOE orders and NRC Regulatory Guides) should generally not be used as to-be-considered materials,” when setting remediation goals.

*Risk Assessment Guide for Superfund, Part A:*

Failure to perform a site characterization that fully analyzes the “nature and extents of threats to human health and the environment.”

Failure to determine the potential extent of contamination, including spread of contaminants from their original sources.

Failure to gather information on what contaminants are present and in what concentrations, considering how “the environmental setting . . . may affect the fate, transport and persistence of the contaminants.”

Failure to conduct sampling that considers “routes of potential transport” of contamination.

Failure to assure investigation of contamination is comprehensive, obtaining “data on concentrations of contaminants in each of the source areas and media of concern.”

Failure to recognize that “because toxicity information may change rapidly and quickly become outdated, decision making must be based on “the most recent information available,” and instead using outdated toxicity information in making decisions.

Failure to accurately estimate the nature, extent, and concentration of contaminants.

Failure to use “the hierarchy for obtaining toxicity values” for risk based PRGs.

*Risk Assessment Guidance for Superfund, Part B:*

Failure to assess the cancer risk using Preliminary Remediation Goals (“PRGs”) during analysis and selection of remedial alternatives.

Failure to meet the risk range of protectiveness for lifetime cancer risk,  $1 \times 10^{-6}$  (one in a million) and in site specific circumstances between  $1 \times 10^{-6}$  and  $1 \times 10^{-4}$  (one in 10,000).

Failure to derive total risk posed for each contaminant and for each exposure pathway and then calculating a cumulative total risk.

Failure to develop PRGs during the “scoping phase” using default values and then modifying the PRGs based on site-specific characteristics determined in the Remedial Investigation.

Failure to use EPA methods and up-to-date toxicity data to assess contaminated buildings.

Calculating dose-per-year risk rather than calculating risk based on excess lifetime cancer risk.

Using RESRAD, a method not approved by EPA, as the basis for calculating building remedial goals rather than using EPA’s Building PRG Calculator (“BPRG”).

*Superfund Preliminary Remediation Goals for Radionuclides in Buildings (BPRG):* Failure to update remedial goals for buildings using the EPA’s BPRG.