From:	Gilkey, Douglas E CIV OASN (EI&E), BRAC PMO West
To:	Callaway, Rex CIV NAVFAC SW; Macchiarella, Thomas L CIV OASN (EI&E), BRAC PMO West; Forman, Keith S CIV OASN (EI&E), BRAC PMO West; Kito, Melanie R CIV NAVFAC SW; Larson, Elizabeth A CIV OASN (EI&E), BRAC PMO West; Cummins, John M CIV NAVFAC SW
Subject:	RE: HPNS Revised AOC.
Date:	Wednesday, October 27, 2010 5:07:00 PM

Rex, I think this can be on the FFA schedule so maybe comments end of next week?

-----Original Message-----
From: Callaway, Rex CIV NAVFAC SW
Sent: Tuesday, October 26, 2010 16:57
To: Gilkey, Douglas E CIV OASN (EI&E), BRAC PMO West; Macchiarella, Thomas L CIV OASN (EI&E), BRAC PMO West; Forman, Keith S CIV OASN (EI&E), BRAC PMO West; Kito, Melanie R CIV NAVFAC SW; Larson, Elizabeth A CIV OASN (EI&E), BRAC PMO West; Cummins, John M CIV NAVFAC SW
Subject: FW: HPNS Revised AOC.

Doug, etc.

It looks like we all got copies of the revised draft AOC directly from Bob Carr. I'd be happy to pull together our consolidated comments on this document. Doug, what should be our target deadline for internal review and comment?

-Rex

-----Original Message-----
From: Carr.Robert@epamail.epa.gov [mailto:Carr.Robert@epamail.epa.gov]
Sent: Tuesday, October 26, 2010 16:40
To: Steinberg, Barry P.
Cc: Amy Brownell; Celena.Chen@sfgov.org; Gilkey, Douglas E CIV OASN (EI&E), BRAC PMO West; Elaine.Warren@sfgov.org; Larson, Elizabeth A CIV OASN (EI&E), BRAC PMO West; Ericka M. Hailstocke-Johnson; Schlossberg, George R.; Gordon E. Hart; Joshua A. Bloom; Cummins, John M CIV NAVFAC SW; Forman, Keith S CIV OASN (EI&E), BRAC PMO West; Kito, Melanie R CIV NAVFAC SW; RBrandt@Geosyntec.com; Robert Elliott; Callaway, Rex CIV NAVFAC SW; Liotta, Rita M CIV WEST Counsel; RSteenson@waterboards.ca.gov; stephen.proud@lennar.com; Macchiarella, Thomas L CIV OASN (EI&E), BRAC PMO West
Subject: HPNS Revised AOC.

I am attaching a revised AOC which reflects the discussions we had last week. I have inserted the definitions from the ETCA draft but am not endorsing the proposed ETCA definitions because I am concerned that some of the proposed ETCA definitions create issues for the AOC.
Because of all the changes I have not attempted a redline version but perhaps someone with a smarter WP program can create a version which compares the text on a section by section basis. I have left in yellow highlights for sections we have been discussing but they do not reflect new language.
See paragraph 42 for my proposal regarding conditions which are discovered during remediation activities.

My primary concern relates to certain elements of the Special Exclusions definition. As noted below there are a number of areas where responsibility cannot be clearly/easily identified. Regulatory acceptance of this approach may require a commitment by the Navy, in the FFA Amendment, to address all contested "Environmental Conditions" pending resolution of disputes regarding the scope of Environmental Services.

The current draft of the ETCA identifies Special Exclusions which are neither Environmental Services or NRCs. This adds a layer of complexity because of the way certain of these elements are defined. See highlighted examples

Text is from proposed ETCA

"Special Exclusions" means any of the following:

a. Activities and associated costs necessary to conduct any additional remedial action required by an Amendment to, or Explanation of Significance Difference (ESD) from, the Parcels B and G CERCLA RODs, except to the extent such activities and associated costs are funded by the Environmental Insurance Policies, or except to the extent attributable to any of the following:

1. The negligence of the SFRA or any party acting on its behalf, or any failure to perform Long-Term Obligations;

2. Requests by the SFRA or other party acting on behalf of the SFRA for modification of a remedial action selected in the Parcels B and G CERCLA RODs that is not required as a result of a Navy Remedy Failure, or from the discovery of a Navy Retained Condition or one of the other Special Exclusions identified in paragraphs 2 through 7 of this Section;

Does this mean that activities which fall within the exception are Environmental Services and should be included within the AOC scope of work; or are they something else?
The term "are funded" implies that payment of a claim is dispositive of responsibility. The regulators must be satisfied that the required activity will be undertaken without regard to the question of who ultimately pays the cost.

b. Activities and associated costs necessary to address any Environmental Condition migrating onto Parcel B from IR Site 25 in Parcel C or an Environmental Condition migrating onto Parcel G from Building 406 (also known as the IR Site 36 groundwater contamination/treatment area) in Parcel E.
These activities remain the Navy's obligation under the FFA

c. Activities and associated costs, other than those required to implement the portions of the CERCLA RODs requiring the rebuilding of portions of the revetment wall on the Parcel B shoreline, necessary to address any Environmental Condition that has migrated onto Parcel F from Parcel B, except to the extent attributable to any negligence of the SFRA or any party acting on its behalf.

If migration results from negligent action by SFRA, does this become part of Environmental Services and the AOC?

d. Any activity and associated cost identified in the Amended Federal Facility Agreement (FFA) as a "Navy Obligation" or otherwise identified as the responsibility of the Navy. (Navy Note: Subject to further review and reconsideration as FFA amendment requirements are negotiated).

This is a circular definition we have been trying to eliminate for several drafts.

e. The performance of CERCLA five-year reviews for years 2013 and 2018 for remedies selected in the CERCLA RODs issued by the Navy.
Navy retained under the FFA

f. Any activity and associated cost related to an Unknown Condition Discovered Outside the Course of Remediation that is not funded by the Environmental Insurance Policies, provided the unavailability of insurance funds is not the result of the failure of SFRA or a named insured (other than the Navy) to comply with the requirements of the Environmental Insurance Policies.

This seems to be Navy Retained; is it therefore covered by the FFA? As noted above, does the term "funded" by the insurance policy leave the issue of a timely response unresolved?

g. (Place holder for any additional exclusions in the insurance policies mutually agreed by Navy and SFRA).

Robert Carr
415 972 3913
FAX 415 947 3570/71