GOLDEN GATE UNIVERSITY SCHOOL OF LAW

ENVIRONMENTAL LAW AND JUSTICE CLINIC

February 5, 2019

Thomas A. Macchiarella
BRAC PMO
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Re: PRG Calculations and the HPNS *Parcel G Work Plan* and *Five Year Review*

Mr. Macchiarella:

I am writing concerning the Navy's refusal to release its Preliminary Remediation Goal (PRG) calculations to the public in the above-referenced plans for the Hunters Point Naval Shipyard cleanup.

PRG calculations are not trivial details; they are the bedrock on which protectiveness rests.

Yet the comment period on the *Draft Parcel G Work Plan* opened and closed while the Navy withheld the PRG information. The Navy has since released a revised, supposedly *Draft Final* plan completely devoid of any PRG calculations.

Likewise, the Navy released a D*raft Five Year Review* and chose to omit any information about PRGs. The comment period opened and closed while the Navy withheld that information. The Navy is apparently about to release a revised, supposedly final draft of the *Five Year Review* without providing the public <u>any</u> information as to how the review addresses the PRGs or their impact on risk and protectiveness.

All these timing decisions were in the complete control of the Navy. As a result, it is reasonable to infer the Navy deliberately withheld any and all information about its handling of the PRGs in both the *Parcel G Work Plan* and the *Five Year Review* to prevent public scrutiny and comment.

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It is also clear the Navy has no intention of changing its public-be-damned approach. At a meeting of the Mayor's Citizens Advisory Board's Environment and Land Use Committee on January 28, 2019, Derek Robinson repeatedly stated that the Navy will not release its PRG calculations to the public until after EPA approves them, precluding public comment on the calculations and their impact on the *Draft Final Parcel G Work Plan* and *Five Year Review*.

EPA repeatedly asked the Navy to use the PRG calculators well before both the *Draft Parcel G Work Plan* and the *Draft Five Year Review* were released. For example in its March 26, 2018 comment to the original *Draft Work Plan,* EPA wrote:

> **Section 4.1.1 (Release Criteria);** As part of the fourth Five-Year Review occurring in parallel this year, the Navy is performing updated risk evaluations of these existing Remedial Goals (RG's). EPA has previously recommended that this evaluation should use the current versions of the USEPA's Preliminary Remediation Goals (PRG) Calculator for soil and the Building PRG Calculator for buildings (BPRG). The new work performed under this Work Plan should use cleanup criteria that reflect findings of the updated risk evaluations to ensure the protectiveness of the cleanup. (Emphasis added.)

EPA reiterated its request in its August 14, 2018 comments to the *Draft Parcel G Work Plan*:

> **Section 3.3 and 4.3, Remediation Goals for soil and buildings, respectively:** These sections list the current ROD RGs. The HPNS's Five-Year Review occurring in 2018 is evaluating whether the current selected remedies, including these ROD RGs, are still protective and whether any changes are necessary to ensure continued protectiveness. Based on national practices directed by EPA headquarters, EPA expects this process to use the most current version of the EPA Preliminary Remediation Goal (PRG) Calculator and Building PRG Calculator to assess the ROD radiological RGs. The Work Plan should use only those cleanup goals confirmed through this analysis to be protective. (Emphasis added.)

EPA even threatened to invoke the dispute resolution process in the Federal Facilities Agreement if the Navy did not revise the *Draft Parcel G Work Plan* to meet EPA objections.

Instead of acceding to EPA's repeated requests, however, the Navy released a *Draft Final Parcel G Removal Site Evaluation Work Plan* in November 2018 – 8 months after EPA's March 2018 written request that the Navy include the PRG calculations – and chose to omit any information about PRGs. In the *Draft Final Parcel G Work Plan*, the Navy deferred all discussion of PRGs to the revised *Five Year Review*, which remains unreleased as of this date.

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The law gives the public a right to comment on remedial plans precisely to prevent crucial decisions affecting the community to be made completely in the dark. Specifically, section 117 of CERCLA, 42 U.S.C. § 9617, requires that the Navy provide "sufficient information as may be necessary to provide a reasonable explanation of the proposed plan." Furthermore, section 121 of CERCLA, 42 U.S.C. § 9621(b)(1)(G), requires that the Navy provide the public with information regarding the "potential threat to human health and the environment associated with the excavation, transportation and redisposal, or containment" before assessing the viability of alternative remedial action.

The Navy has violated these sections – and the public's rights – in the *Parcel G Work Plan* and *Five Year Review* processes. The Navy's hide-the-ball tactics violate the public's right to comment on the most important question for any cleanup: remediation goals. The Navy should not subvert the CERCLA process.

Since the PRG calculations are essential to establishing remediation goals and protectiveness, they are essential to providing "a reasonable explanation of the proposed plan" and considering whether remedial goals are protective.

Because the Navy has finalized the *Parcel G Work Plan* without providing a formal comment period regarding the PRG calculations – the single most important basis for the remediation goals – it will be functionally as if the Navy had no comment period at all. Such actions are in violation of the law and are arbitrary and capricious. The same will be true of the *Five Year Review* unless the Navy reverses course.

The Navy must recirculate in draft form both the *Parcel G Work Plan* and the *Five Year Review* and open new formal comment periods after it has fully and completely released its PRG calculations to the public. Until and unless this is done, the Navy will continue to make a mockery of public participation as required by CERCLA.

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Thank you for your attention to this matter. Please let us know when the PRG calculations will be released and when a new formal comment period will open.

Sincerely,

Steve Castleman
Attorney for Greenaction for Health and Environmental Justice

cc: Derek Robinson, BRAC
Marvin Norman, BRAC
Enrique Manzanilla, EPA
Angeles Herrera, EPA
Lily Lee, EPA
Michelle Benson, EPA
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