



DEPARTMENT OF THE NAVY  
NAVAL FACILITIES ENGINEERING SYSTEMS COMMAND NORTHWEST  
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Washington State Department of Ecology  
Toxics Cleanup Program  
5090  
N45/Ser 21-00128  
26 Mar 2021

Ms. Sandra L. Caldwell, Land Unit Supervisor  
Toxics Cleanup Program  
Washington Department of Ecology  
P.O. Box 47600  
Olympia, Washington 98504-7600

Dear Ms. Caldwell:

SUBJECT: NON-CONCURRENCE LETTER FOR NOVEMBER 2020 FIFTH FIVE-YEAR  
REVIEW, NAVAL BASE KITSAP KEYPORT, WASHINGTON

Site Name: U.S. Navy Keyport  
Site Address: Hwy 308 Keyport, 98345-0580 Kitsap  
Facility Site ID: 157  
Cleanup Site ID: 127

The Navy is in receipt of the Department of Ecology's (Ecology's) non-concurrence with the Navy's protectiveness determinations for Naval Base Kitsap, Keyport (Naval Undersea Warfare Engineering Station Superfund Site) for operable unit (OU) 1, as published by the Navy in the Final Fifth Five-Year Review (FYR) dated November 2020.

As requested, the Navy will add the non-concurrence to the 5YR. A copy of the below response will also be included.

### Ecology Concern #1

The Navy's protectiveness determination "Short-Term Protective" is not supported by Environmental Protection Agency (EPA) guidance on protectiveness determination (EPA, 2012)1.

In order to be "Short-Term Protective", per the guidance memo, answers to Questions A, B, and C provide sufficient data and documentation to conclude that the "...the human and ecological exposures are currently under control and no unacceptable risks are occurring." [See page 3 of the EPA memo]. The Navy answered "No" to Question B, "*Are the exposure assumptions, toxicity data, cleanup levels, and RAOs used at the time of the remedy still valid?*" Since the answer to Question B is "No", it cannot be concluded that "the human and ecological exposures are currently under control and no unacceptable risks are occurring".

## **Navy Response to Ecology Concern #1**

Ecology indicates that if you answer “No” to Question B indicating exposure assumptions, toxicity data, cleanup levels, and RAOs used at the time of the remedy are not still valid, the site cannot also conclude that “the human and ecological exposures are currently under control and no unacceptable risks are occurring.” However, if all known exposure pathways are currently controlled through other mechanisms, even a site where exposure assumptions, toxicity data, cleanup levels, and/or RAOs may have changed from those defined in the ROD can remain protective in the short term, as is the case with Keyport OU 1. At Keyport Site OU 1, known exposures, as defined by the baseline risk assessment, have been controlled using land use controls (LUCs) and, although the baseline risk assessment may not have been performed in the manner that current risk assessments would be performed, there are currently no data to show that additional receptors exist or that contamination from the Keyport OU 1 site is threatening any potential receptors (new or original). Therefore, until the results of additional investigations and the human health and ecological risk assessment have been evaluated and additional receptors have been identified, the Navy believes that “....the human and ecological exposures are currently under control and no unacceptable risks are occurring” [See page 3 of the EPA memo] and stands by our determination of “Short-Term Protective.”

## **Ecology Concern #2**

Ecology believes the most appropriate protectiveness determination for OU 1 would be “Protectiveness Deferred”. The EPA guidance memo provides the following example scenarios that make the case for “Protectiveness Deferred” determination.

**Scenario 1:** *“A new exposure pathway (e.g., vapor intrusion) has been identified and additional data are required to determine if an unacceptable risk is occurring;”*

In case of OU 1, the Navy stated that high levels of PCBs and TPH were found in the shallow soils of the north plantation during recent investigations [see page 4-29 of the FYR]. In addition, there may be other contaminants such as metals, PAHs and Dioxins in the former incinerator and burn area which is subject to further investigations by the Navy. Exposure to ecological receptors due to high levels of PCBs and TPH in the shallow soils has been identified and additional data are necessary to determine whether unacceptable risk exists. This clearly fits into the example scenario.

In addition, the Navy stated in Page 5-2, *“PCB sediment data indicate the potential for adverse risk/effects to human health and the benthic community”*. Although ingestion of fish/shellfish was previously identified as an exposure pathway, it was not evaluated for Suquamish Tribe’s current fish consumption rate. Additional data are necessary to determine if there are any unacceptable risk to Tribal (Suquamish) fishery due to consumption of seafood. Note that the Navy is currently conducting a revised risk assessment for the OU 1 exposure areas.

*(Note: beginning of Scenario 2 was missing from letter...)*

*site is protective or whether the selected remedy can achieve the new risk-based cleanup level;*

For OU 1, the Navy answered “No” to Question B, “*Are the exposure assumptions, toxicity data, cleanup levels, and RAOs used at the time of the remedy still valid?*” [page 5-2]. Table 5-2 of the FYR document showed new lower RGs, if established today, for most COCs. It is unlikely that the ROD selected remedy will achieve the new risk-based cleanup level within a reasonable restoration timeframe. The situation at OU 1 seems worse than the example scenario provided in the guidance.

**Scenario 3:** “*An emerging contaminant is present and the current risk has not been evaluated;*”

In case of OU 1, not one but two emerging contaminants or classes of contaminants have been detected at the site. They are 1,4- Dioxane [see page 4-10 of the FYR], and PFAS [see page 5-3 of the FYR]. Nature and extent of the contamination and associated risk (including cumulative) for these contaminants have not been evaluated yet. Therefore, the situation at OU 1 also fits the scenario example.

## **Navy Response to Ecology Concern #2**

As indicated above, all known exposure pathways at Keyport OU 1 are currently controlled by LUCs and, although Ecology indicates that the potential for additional impacts to receptors exists, no new pathways or receptors have yet been identified. Additional investigations and the human health and ecological risk assessment addendum will evaluate the potential for additional exposure pathways and /or receptors to exist at the site, however, these studies have not yet been completed. Therefore, new pathways or receptors have yet to be identified. So, regardless of newly identified contamination, new contaminants, or changes in RGs, the Navy believes “...human and ecological exposures are currently under control and no unacceptable risks are occurring” given that no new pathways or receptors have been identified, the newly identified contamination is within the areas of concern for currently identified risk receptors and LUCs are being used to mitigate any currently identified risk pathways.

The Navy is aware that EPA and the Suquamish Tribe also raised these issues and concerns during the FYR review process. However, the Navy hopes that the explanations above allow Ecology, EPA and the Suquamish Tribe to understand the Navy’s position with regard to the protectiveness statement for Keyport OU 1.

## **Ecology Concern #3**

The Navy has agreed with Ecology’s and other agency’s protectiveness determinations for OU 2. However, it decided not to change the protectiveness determination of OU 1 citing “*unachievable 1-year deadline on the on-going investigation and risk assessment work and delaying project work while a FYR addendum is developed and produced.*” While an addendum

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is necessary for "Protectiveness Deferred", it is not a task of difficult nature and Agencies can be confident with Navy's future commitment along with a deadline and schedule.

### **Navy Response to Ecology Concern #3**

A protectiveness statement of "Protectiveness Deferred" is generally only used during remedy construction and when the data collected is not sufficient to conclude that human health and ecological risks are under control. Given that a risk was just identified on the adjacent beach associated with this site and a remedy for this risk has yet to be developed, the Navy does not believe that "Protectiveness Deferred" is applicable. The Navy believes that the only appropriate protectiveness statement for Keyport OU 2 Area 8, in accordance with current EPA guidance, is "Not Protective."

The Navy will continue to work with Ecology to restore these operable units within a reasonable restoration timeframe as required by the Model Toxics Control Act and as practicable, given site conditions.

Please let me know if you have any additional questions or concerns. You can reach me at (360) 396-0226, or at [mark.wicklein@navy.mil](mailto:mark.wicklein@navy.mil). If you have any technical questions, please contact Carlotta Cellucci at (360) 396-0060, or at [carlotta.cellucci@navy.mil](mailto:carlotta.cellucci@navy.mil).

Sincerely,



Mark A. Wicklein P.E.  
Supervisor  
Environmental Restoration 31

cc:

Carlotta Cellucci, NAVFAC Northwest  
Harry Craig, EPA  
Denice Taylor, Suquamish Tribe  
Mahbub Alam, Ecology