



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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SUPERFUND &
EMERGENCY
MANAGEMENT DIVISION

October 21, 2022

Nicholas Acklam
Toxics Cleanup Program
Department of Ecology
PO Box 47600
Lacey, WA 98504-7600
nack461@ECY.WA.GOV

Re: Request for Support Agency Identification of Potential Applicable or Relevant and Appropriate Requirements (ARARs) for the Bremerton Gas Works Superfund Site Remedial Investigation/Feasibility Study

Dear Mr. Acklam:

As you are aware, EPA is working towards completion of the Remedial Investigation (RI) for the Bremerton Gas Works Superfund Site. A key element of this process is the identification of applicable or relevant and appropriate requirements (ARARs). Site characterization data have been collected and a draft RI report and baseline risk assessment is currently being prepared by Cascade Natural Gas. A list of potential ARARs was included in the RI/Feasibility Study (FS) Work Plan dated May 31, 2017, which was discussed with the state at our June 30, 2014, project scoping meeting. A significant amount of information has been generated since the work plan to facilitate development of a more refined and specific list of potential ARARs for the Site.

In accordance with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. § 300.515(h)(2), EPA requests that the Washington Department of Ecology (Ecology) identify potential ARARs for the Bremerton Gas Works Site. EPA requests that Ecology identify the specific statutory and regulatory cleanup standards, standards of control, and other substantive requirements, criteria, or limitations promulgated under state environmental or facility siting laws that may be potential ARARs for the Bremerton Gas Works Site. State requirements, like federal requirements, must also be substantive in nature to qualify as ARARs. Administrative or procedural state requirements are not ARARs. In that regard, please identify with some specificity the requirements in state law that may be chemical-specific, location-specific, or action-specific ARARs. EPA requests that Ecology provide its written list of potential ARARs within 30 days of receipt of this letter. State ARARs entries generally should include only the state regulation or statute citation(s) to the section(s) of the state regulation or statute that are more stringent than federal standards. The list of potential ARARs discussed during the project scoping meeting and included in the RI/FS Work Plan, although not a comprehensive or final list, is enclosed to assist Ecology with developing its list of ARARs for EPA to consider for this Site.

As the remedial alternatives are developed, EPA will request that Ecology identify additional state ARARs related to the alternatives. The state may also identify other pertinent advisories, criteria, or guidance that may be useful to consider in developing either the remedy's cleanup standard or which provide guidance on implementing the remedy for the Site.

Finally, I'd like to thank Ecology for its October 14, 2022, review of the Bremerton Gas Works Site-Specific Background Study (dated July 8, 2022) and clarify that establishing Site-specific background is part of the characterization process typically conducted during the RI/FS phase. This process is not an ARARs issue. Rather, development of the background data set is a Site-specific assessment conducted by EPA and the potentially responsible party in consultation with the state. EPA intends to engage with Ecology on identifying the appropriate Site-specific background data set and looks forward to our continued collaboration on that issue.

If you have any questions or wish to discuss this matter further, please contact me at (206) 553-1970 or demaria.eva@epa.gov. All inquiries from legal counsel should be directed to Stephanie Ebright at (206) 553-0774 or ebright.stephanie@epa.gov. Thank you for your cooperation in this matter.

Sincerely,

Eva DeMaria
Remedial Project Manager
Site Cleanup Section 2

Enclosure

cc: Chance Asher, Ecology
John Evered, Ecology
Kalle Godel, Cascade Natural Gas
Corey King, Ecology

Table 3-1 – Potential ARARs, Chemical-Specific

Bremerton Gas Works Superfund Site

Bremerton, Washington

Act/Authority	Criteria/Issue	Citation	Brief Description	Applicability/Appropriateness
Safe Drinking Water Act	Federal Primary Drinking Water Standards – MCLs and MCLGs	42 USC 300f; 40 CFR 141, Subpart O	Establishes drinking water standards for public water systems to protect human health. Includes standards for the following Site chemicals of concern: arsenic, benzene, and benzo(a)pyrene. The National Contingency Plan states that MCLs, not MCLGs, are ARARs for usable aquifers.	ARARs for groundwater that could potentially be used for drinking water, where the water will be provided directly to 25 or more people or will be supplied to 15 or more service connections.
Safe Drinking Water Act	Federal Secondary Drinking Water Standards – Secondary MCLs	42 USC 300f; 40 CFR 143	Establishes drinking water standards for public water systems to achieve the aesthetic qualities of drinking water (secondary MCLs).	TBC for groundwater that could potentially be a drinking water source (i.e., achieved as practicable).
Clean Water Act	Federal Ambient Water Quality Criteria	33 USC 1311–1317; 40 CFR 131	Under Clean Water Act, Section 304(a), minimum criteria are developed for water quality programs established by states. Two kinds of water quality criteria are developed: one for protection of human health, and one for protection of aquatic life. The federal recommended water quality criteria are published on EPA's website: http://water.epa.gov/scitech/swguidance/standards/current/index.cfm	ARARs for surface water if more stringent than promulgated state criteria.
EPA Superfund Soil Screening Guidance	Risk-Based, Site-Specific Soil Screening Levels (SSLs)		Provides guidance with a tiered framework for developing risk-based, site-specific soil screening levels (SSLs) for the protection of human health.	ARARs for soil
Surface Water Quality Standards	State Ambient Water Quality Criteria	Chapter 90.48 RCW; Chapter 173-201A WAC	Establishes water quality standards for protection of human health and for protection of aquatic life (for both acute and chronic exposure durations).	ARARs for surface water where Washington State has adopted, and EPA has approved, water quality standards.

Table 3-1 – Potential ARARs, Chemical-Specific

Bremerton Gas Works Superfund Site
Bremerton, Washington

Act/Authority	Criteria/Issue	Citation	Brief Description	Applicability/Appropriateness
Model Toxics Control Act	State Soil, Air, Groundwater, and Surface Water Cleanup Standards	Chapter 70.105D RCW; Chapter 173-340 WAC	Establishes cleanup levels for Site groundwater, surface water, soil, and air, including rules for evaluating cross-media protectiveness for all potential receptors (humans and terrestrial plants and animals). MTCA cleanup levels cannot be set at concentrations below natural background.	Promulgated numeric cleanup levels are ARARs for soil, air, groundwater, and surface water. Equations to develop cleanup levels are not ARARs.
Sediment Management Standards	State Sediment Quality Criteria	Chapters 90.48 & 70.105D RCW; Chapter 173-204 WAC	Establishes both numerical and biological wasting-based standards for the protection of benthic invertebrates in marine sediments. The current rule also defines methods for establishing cleanup levels protective of human health, including protection from risks associated with seafood consumption, analytical considerations, and natural and regional background contamination levels.	SMS cleanup levels will serve as ARARs for the development of sediment cleanup levels.

Notes:

ARAR = applicable or relevant and appropriate requirement

CFR = Code of Federal Regulations

EPA = U.S. Environmental Protection Agency

MCL = maximum contaminant level

MCLG = maximum contaminant level goal

MTCA = Model Toxics Control Act

RCW = Revised Code of Washington

SMS = Sediment Management Standards

TBC = to be considered

USC = United States Code

WAC = Washington Administrative Code

Table 3-2 – Potential ARARs, Location-Specific

Bremerton Gas Works Superfund Site
Bremerton, Washington

Act/Authority	Criteria/Issue	Citation	Brief Description	Applicability/Appropriateness
Endangered Species Act	Effects on Endangered Species	16 USC 1531 et seq.; 50 CFR 17	Actions authorized, funded, or carried out by federal agencies may not jeopardize the continued existence of endangered or threatened species or adversely modify or destroy their critical habitats, or must take appropriate mitigation steps.	ARAR for remedial actions that may adversely affect endangered or threatened species or critical habitat present at the Site.
Treaty of Point Elliott, 1855	Tribal lands, hunting, and fishing rights	Articles of agreement and convention made and concluded at Point Elliott, in the territory of Washington. Ratified March 8, 1859. Proclaimed April 11, 1859.	Article 5 secures Tribal right of taking fish at usual and accustomed grounds and stations.	ARAR for fish for shellfish harvest in and adjacent to the Site.
Safe Drinking Water Act	Underground Injection Control, Sole Source Aquifer Program, and Wellhead Protection Program	42 USC 300h–300h-8; 40 CFR 300.400(g)(4); Chapter 173-160 WAC; WAC 246-290-135	Resource planning programs designed to prevent contamination of underground sources of drinking water.	The requirements of the City’s wellhead protection program are TBCs as a performance standard for groundwater that is a potential drinking water source (i.e., achieved as practicable). (Note that there are no water supply wells near the Site that are currently regulated by the City’s program.)
Migratory Bird Treaty Act of 1918	Protection of Migratory Birds	16 USC 703-712 50 CFR 10.13	Makes it illegal to take, possess, sell, purchase or barter any migratory bird except under the terms of a valid permit.	ARAR if migratory birds are impacted during investigation or remedial action.

Table 3-2 – Potential ARARs, Location-Specific

Bremerton Gas Works Superfund Site
Bremerton, Washington

Act/Authority	Criteria/Issue	Citation	Brief Description	Applicability/Appropriateness
Magnuson-Stevens Fishery Conservation and Management Act	Habitat Impacts	16 USC 1855(b); 50 CFR 600.920	Requires evaluation of impacts on EFH if activities may adversely affect EFH.	ARAR if the remedial action may adversely affect EFH.
Executive Order for Wetlands Protection	Wetlands Impacts	Executive Order 11990 (1977), 40 CFR 6.302(a); 40 CFR 6, App. A	Requires measures to avoid adversely affecting wetlands whenever possible, to minimize wetland destruction, and to preserve the value of wetlands.	ARAR for assessing impacts on wetlands, if any, from the remedial action and for developing appropriate compensatory mitigation.
Marine Mammal Protection Act, and the	Protection of Marine Mammals	16 USC Chapter 31	Prohibits the taking (to hunt harass, capture, or kill) of marine mammals in U.S. waters.	ARAR if marine mammals are impacted during investigation or remedial action.
Marine Protection, Research, and Sanctuaries Act	Ocean Dumping	16 USC § 1431 et seq. and 33 USC §1401 et seq.	Prohibits transportation of material from the U.S. for purpose of ocean dumping; transportation of material from anywhere for the purpose of ocean dumping by U.S. agencies or U.S.-flagged vessels; dumping of material transported from outside the U.S. into the U.S. territorial sea except under the terms of a valid permit.	ARAR if ocean dumping is planned to occur, except under the terms of a valid permit.

Table 3-2

Final RI/FS Work Plan
Page 2 of 3

2/28/2017

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Table 3-2 – Potential ARARs, Location-Specific

Bremerton Gas Works Superfund Site
Bremerton, Washington

Act/Authority	Criteria/Issue	Citation	Brief Description	Applicability/Appropriateness
Fish and Wildlife Conservation Act ("Nongame Act")	Conservation of nongame fish and wildlife	16 USC 2901-2911	Authorizes financial and technical assistance to the States for the development, revision, and implementation of conservation plans and programs for nongame fish and wildlife.	ARAR if conservation plans and programs for nongame fish and wildlife are implemented.
Bald Eagle Protection Act	Protection of Bald and Golden Eagles	16 USC 668(a); 50 CFR 22	Prohibits the take, possession, sale, purchase, barter, transport or import, of any bald or golden eagle, alive or dead, including any part, nest, or egg, except under the terms of a valid permit	ARAR if bald or golden eagles are impacted during investigation or remedial action.

Notes:

ARAR = applicable or relevant and appropriate requirement

CFR = Code of Federal Regulations

City = City of Bremerton

EFH = essential fish habitat

TBC = to be considered

USC = United States Code

WAC = Washington Administrative Code

Table 3-2

Final RI/FS Work Plan

Page 3 of 3

2/28/2017

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Table 3-3 – Potential ARARs, Action-Specific

Bremerton Gas Works Superfund Site

Bremerton, Washington

Remedial Activity	Act/Authority	Criteria/Issue	Citation	Brief Description	Applicability/Appropriateness
Soil Excavation and Upland Filling	Solid Waste Disposal Act	Management and Disposal of Solid Waste	42 USC 6901–6917; 40 CFR 257–258	Establishes requirements for the management and disposal of solid wastes.	ARAR for remedial actions that result in upland disposal of excavated or dredged material.
	Resource Conservation and Recovery Act (RCRA); Washington Hazardous Waste Management Act and Dangerous Waste Regulations	Generation and Management (Transportation, Treatment, Storage, and Disposal) of Hazardous Waste; Off-Site Land Disposal Considerations	42 USC 6921–22; 40 CFR 260, 261, and 268; Chapter 70.105 RCW; Chapter 173-303 WAC (Chapter 173-307 WAC Pollution Prevention Plans is a TBC)	Defines solid wastes subject to regulation as hazardous wastes. Requires management of hazardous waste from “cradle to grave” unless exemption applies. MGP wastes are subject to certain exemptions (e.g., Bevill Amendment provisions)	ARAR for wastes and soils sediments excavated from the Site for off-site disposal, and a TBC for on-site stabilization or containment actions.
	Hazardous Materials Transportation Act	Transport of Hazardous Materials	49 USC 5101 et seq.; 49 CFR 171–177	Establishes requirements for transport of hazardous materials.	ARAR for those hazardous materials (e.g., DNAPL) transported off site.
	Washington Hydraulics Code	Filling of Wetlands	Chapters 75.20 and 77.55 RCW; Chapter 220-110 WAC	Establishes requirements for performing work that would alter existing jurisdictional wetlands.	ARAR if remedial actions such as excavation or capping affect existing jurisdictional wetlands. Remedial actions must result in no net loss of aquatic habitat and function after sequential consideration of avoidance and mitigation, allowing for site-specific evaluations of existing wetland functions.

Table 3-3 – Potential ARARs, Action-Specific

Bremerton Gas Works Superfund Site

Bremerton, Washington

Remedial Activity	Act/Authority	Criteria/Issue	Citation	Brief Description	Applicability/Appropriateness
Soil Excavation and Upland Filling (Continued)	City of Bremerton Shoreline Master Program and Critical Areas Regulations	Shoreline of Statewide Significance; Fish and Wildlife Habitat Conservation Areas	Chapter 90.58 RCW; Chapter 173-14 WAC; City of Bremerton Ordinance #5299 (effective December 4, 2013); Critical Area Regulations (BMC 20.14) are incorporated into the SMP by reference	Establishes replacement requirements for FWHCAs affected by remedial actions to ensure no net loss of existing ecological function; also establishes requirements for buffers and setbacks from shorelines.	ARAR if remedial actions such as excavation or capping result in impacts within 200 feet of ordinary high water mark or designated FWHCAs. Remedial actions must result in no net loss of aquatic habitat and function after sequential consideration of avoidance and mitigation, allowing for site-specific evaluations of existing shoreline habitat and FWHCAs. Washington's vested rights rule governs which SMP requirements apply in a given circumstance. Substantive requirements of the SMP that were in effect when redevelopment project applications were filed may be ARARs for future redevelopment actions at the Site.
Dredging, Capping, and/or Discharge to Puget Sound	Clean Water Act	Federal Ambient Water Quality Criteria	33 USC 1311–1317; 40 CFR 131	Regulates activities that may result in discharges into navigable waters.	ARAR for control of short-term impacts on surface water due to implementation of remedial actions that include dredging, capping, and discharge of treated water into Puget Sound. Incorporates the substantive provisions of relevant and appropriate Joint Aquatic Resources Permit Application (JARPA), Nationwide Permit, and stormwater regulation requirements.

Table 3-3 – Potential ARARs, Action-Specific

Bremerton Gas Works Superfund Site

Bremerton, Washington

Remedial Activity	Act/Authority	Criteria/Issue	Citation	Brief Description	Applicability/Appropriateness
Dredging, Capping, and/or Discharge to Puget Sound (Continued)	Surface Water Quality Standards	State Ambient Water Quality Criteria	Chapter 90.48 RCW; Chapter 173-201A WAC	Regulates activities that may result in discharges into navigable waters.	ARAR for control of short-term impacts on surface water due to implementation of remedial actions that include dredging, capping, and discharge of treated water into Puget Sound. Incorporates the substantive provisions of relevant and appropriate requirements, where Washington State has adopted, and EPA has approved, water quality standards.
	Clean Water Act	Discharge of Materials into Puget Sound	33 USC 1344; 40 CFR 230	Regulates discharge of dredged and fill material into navigable waters of the United States.	ARAR for dredging and capping activities in Puget Sound.
	Clean Water Act	Discharge of Materials into Puget Sound	33 USC 1251; 40 CFR 122, 123 and 124	Implements the National Pollutant Discharge Elimination System (NPDES) Program, which regulates discharge of pollutants from any point source into waters of the United States.	ARAR for remedial actions if construction stormwater and/or treated water is discharged into Puget Sound.
	Fish and Wildlife Coordination Act	Discharge of Materials, Impoundment or Diversion of Waters in Puget Sound	16 USC 662 and 663; 40 CFR 6.302(g)	Requires federal agencies to consider effects on fish and wildlife from projects that may alter a body of water and mitigate or compensate for project-related losses, which include discharges of pollutants to water bodies.	ARAR for in-water remedial actions or if treated water is discharged into Puget Sound.
	River and Harbors Act	Placement of Structures in Puget Sound	33 USC 401 et seq.; 33 CFR 320–330	Prohibits the unauthorized obstruction or alteration of any navigable water. Establishes requirements for structures or work in, above, or under navigable waters.	ARAR for remedial actions in Puget Sound.

Table 3-3

Final RI/FS Work Plan

Page 3 of 5

Table 3-3 – Potential ARARs, Action-Specific

Bremerton Gas Works Superfund Site

Bremerton, Washington

Remedial Activity	Act/Authority	Criteria/Issue	Citation	Brief Description	Applicability/Appropriateness
Dredging, Capping, and/or Discharge to Puget Sound (Continued)	Washington Hydraulics Code	Filling in Puget Sound	Chapter 75.20 and 77.55 RCW; Chapter 220-110 WAC	Establishes requirements for performing work that would use, divert, obstruct, or change the natural flow or bed of Puget Sound.	ARAR for shoreline excavation, dredging, and/or capping actions. Remedial actions must result in no net loss of aquatic habitat or function after sequential consideration of avoidance and mitigation.
Other Remedial Activities	Federal Clean Air Act; Washington Clean Air Act; Puget Sound Air Clean Air Agency Regulations	Air Emission Discharges	42 USC 7401 et seq.; Chapter 70.94 RCW; Chapter 173-400 WAC; PSCAA Regulation III	Regulates air emission discharges.	ARAR for remedial activities that generate fugitive dust or other air emissions, including treatment operations.
	Washington State Minimum Standards for Construction and Maintenance of Wells	Well Construction	Chapter 18.104 RCW; Chapter 173-160 WAC	Establishes minimum standards for the construction and decommissioning of all wells in the state of Washington.	ARAR for remedial activities that include installation and construction of monitoring wells or remediation wells used to inject any substance to remediate or control contamination.
	Historic Preservation Act; Washington Historical Activities Act	Alteration of Historic Properties	16 USC 470 et seq.; 36 CFR 800; Chapter 27 RCW	Requires the identification of historic properties potentially affected by remedial actions, and ways to avoid, minimize, or mitigate such effects. Historic property is any district, site, building, structure, or object included in or eligible for the National Register of Historic Places, including artifacts, records, and material remains related to such a property.	ARAR if historic properties are affected by remedial activities. No historic properties have been identified at the Site to date but could potentially be identified during remedial design.
	Archeological and Historic Preservation Act	Alteration of Historic and Archaeological Properties	16 USC 469a-1	Provides for the preservation of historical and archeological data that may be irreparably lost as a result of a federally approved project and mandates only preservation of the data.	ARAR if historical and archeological resources may be irreparably lost by implementation of remedial activities.

Table 3-3 – Potential ARARs, Action-Specific

Bremerton Gas Works Superfund Site

Bremerton, Washington

Remedial Activity	Act/Authority	Criteria/Issue	Citation	Brief Description	Applicability/Appropriateness
Other Remedial Activities (Continued)	Native American Graves Protection and Reparation Act	Alteration of American Graves	25 USC 3001–3013; 43 CFR 10	Requires federal agencies and museums that have possession of or control over Native American cultural items (including human remains, associated and unassociated funerary items, sacred objects, and objects of cultural patrimony) to compile an inventory of such items. Prescribes when such federal agencies and museums must return Native American cultural items. “Museums” are defined as any institution or state or local government agency that receives federal funds and has possession of, or control over, Native American cultural items.	ARAR if Native American cultural items are present in an excavation or dredging area.

Notes:

ARAR = applicable or relevant and appropriate requirements

BMC = Bremerton Municipal Code

DNAPL = dense non-aqueous phase liquid

EPA = U.S. Environmental Protection Agency

FWHCA = Fish and Wildlife Habitat Conservation Area

MGP = manufactured gas plant

PSCCA = Puget Sound Clean Air Agency

RCW = Revised Code of Washington

SMP = Shoreline Master Program

TBC = to be considered

USC = United States Code

WAC = Washington Administrative Code