

5090  
EV3/2011025  
22 December 2011

ENVIRONMENTAL WORK INSTRUCTION EV3.9

From: Environmental Restoration Product Line Coordinator, Naval  
Facilities Engineering Command Southwest  
To: Environmental Program Staff conducting CERCLA actions

Subj: **WORKING DRAFT STANDARD TEXT FOR APPLICABLE OR RELEVANT AND  
APPROPRIATE REQUIREMENTS (ARARs)**

Ref: (a) Naval Facilities Engineering Command Southwest, Working  
Draft Standard Text for Applicable or Relevant and  
Appropriate Requirements (ARARs)  
(b) SECNAV M-5216.5, DON Correspondence Manual (2010)

Encl: (1) Template Letter to Solicit State Chemical- and Location-  
Specific ARARs for Remedial Actions  
(2) Template Letter to Solicit State Action-Specific ARARs for  
Remedial Actions  
(3) Template Letter to Solicit State ARARs for Removal Actions

1. **PURPOSE**: This environmental work instruction (EWI) provides policy and procedural guidance for use of the Working Draft Standard Text for ARARs (reference (a)) in preparing and completing Engineering Evaluation/Cost Analyses (EE/CAs), Action Memoranda, Feasibility Studies, and Records of Decision under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). It also presents non-disclosure requirements.

2. **CANCELLATION**: EWI EVR.9 dated 04 September 2008

3. **BACKGROUND**: Reference (a) is intended for the internal use of the (DON) and its contractors in the preparation of supporting and decision documents under the Comprehensive Environmental Response, Compensation, and Liability Act. Its primary purpose is to assemble and organize the existing documentation of the DON's positions on a range of significant issues relating to interpretation of potential CERCLA federal and state ARARs and to ensure that consistent positions are taken by DON and its contractors in interpreting those ARARs issues at different sites.

4. **APPLICABILITY**: This EWI is applicable to all Installation Restoration Program (IRP) and Munitions Response Program (MRP) projects conducted within the Navy Environmental Restoration Program (NERP) in all regions where the NAVFAC SW Environmental Restoration Product Line Coordinator has been assigned NERP oversight duties by NAVFAC HQ or NAVFAC LANT. Currently, this includes all NAVFAC SW and

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NAVFAC BRAC PMO West IRP and MRP projects under which CERCLA response actions are selected and implemented. In addition, employees in NAVFAC SW environmental billets having oversight responsibilities for IRP and/or MRP sites must ensure compliance with this EWI.

5. **PROCEDURE:**

a. Use of Working Draft ARARs Standard Text. Chemical- and location-specific ARARs can begin to be identified following data collection of a remedial investigation or removal site evaluation. Potential action-specific ARARs are identified later in the FS or EE/CA. ARARs become finalized at the time the ROD or AM, containing ARARs, is finalized. Reference (a) includes instructions on how to use it to develop project-specific ARARs and document them for the Administrative Record for any potential future judicial review. CERCLA EE/CAs, Action Memoranda, FSSs, and Records of Decision, prepared at the direction of NAVFAC SW or NAVFAC BRAC PMO West, must incorporate and adhere to reference (a) and policy positions reflected therein unless a deviation is approved by the Environmental Restoration Product Line Coordinator and the Department of the Navy (DON) Counsel. The installation team, with assistance from their counsel, shall submit a 1-page point paper requesting the deviation to the NAVFAC SW Environmental Restoration Product Line Coordinator, with copy to the ARARs standard text manager in EV3. Because reference (a) currently does not take into account state differences, the point paper requirement may be relaxed for sites outside of California as long as the RPM and their DON Counsel are in agreement regarding the deviation.

b. Identification of Federal ARARs. DON, when serving as lead federal agent, is responsible for identifying federal ARARs for CERCLA sites.

c. Solicitation of State ARARs.

(1) Soliciting potential state ARARs from the lead state agency is an important step in the ARARs identification process. Enclosures (1), (2), and (3) are sample letters to the state requesting them to identify state ARARs. These solicitation letters put the state on notice to be timely. Enclosure (1) is to be used for requesting chemical-specific and location-specific ARARs for a remedial action; it is intended to be used at the Remedial Investigation (RI) stage. Enclosure (2) is to be used for requesting action-specific ARARs at the Feasibility Study (FS) stage. Enclosure (3) is intended to be used to solicit all state ARARs for a removal action.

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(2) If the lead state agency informs the Navy that other state agencies and departments failed to respond to their request for identification of state ARARs, most FFAs and FFSRAs signed by the Navy in the State of California require that the Navy directly contact these other agencies and departments for purposes of state ARAR identification. If the FFA or FFSRA for an installation requires this, the assigned RPM shall track DTSC's progress and ensure that the proper follow-up is completed by the Navy.

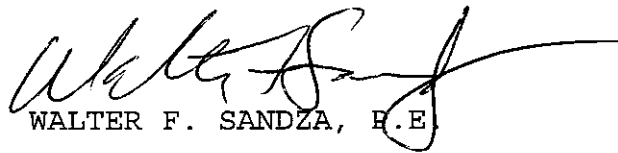
(3) ARAR solicitation letters from NAVFAC shall be consistent with the business letter format provided in chapter 11 of the [DON Correspondence Manual](#) (reference (b)), will be printed on command letterhead stationery, and will follow local correspondence control procedures regarding serialization. They should be sent by certified mail with return receipt requested. The template letters appearing in enclosures (1) - (3) contain bracketed passages with italicized red-font text. These passages are either guidance or fill-in-the-blank items needing site-specific information. All of these red-font passages must be removed from the final letters.

d. Distribution of Updates to Reference (a). Reference (a) is a working draft document that is updated and revised, periodically. The most recently approved version of reference (a) will be posted on a limited-access webpage of the NAVFAC SW private portal. Whenever ARARs are being selected or otherwise reviewed for specific sites, RPMs shall provide their authorized contractors the most recent versions of reference (a). It is recommended that RPMs also provide a copy of EWI EV3.9, when forwarding reference (a), as a reminder of our requirements and expectations. If changes are made to reference (a) prior to ARARs being finalized in the ROD or AM, RPMs will ensure that the ARARs are revised accordingly in their pending documents. RPMs and contracting officers will ensure that EWI EV3.9 is incorporated, by reference, into contracting vehicles for projects involving ARARs identification or review. In turn, prime contractors will ensure that sub-contracts also incorporate EWI EV3.9 before forwarding reference (a) to their sub-contractors.

e. Non-disclosure requirements. Reference (a) was prepared at the request of DON Counsel in anticipation of potential litigation, with the assistance of DON Counsel, and includes and reflects the advice of DON Counsel as well as internal DON deliberative processes that will result in DON CERCLA decisions. It is, therefore, considered to be a privileged document protected by law from disclosure by the attorney work product, attorney client communication, and deliberative process privileges. It should not be copied or distributed outside of the DON or its authorized

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contractors without the express written permission from the  
Environmental Restoration Product Line Coordinator and DON counsel.



WALTER F. SANDZA, P.E.

Distribution:

Environmental Restoration Business Line Team Leaders  
Remedial Project Managers  
Remedial Technical Managers  
EV4 Resources/Special Programs Business Line Team Leader

Copy to:

Deputy AOPS  
NAVFAC BRAC PMO Environmental Director  
NAVFAC BRAC PMO Base Closure Managers  
BRAC Environmental Coordinators  
Environmental Contracts Core

**[TEMPLATE LETTER #1]**

**[FOR REQUEST OF STATE CHEMICAL AND LOCATION SPECIFIC ARARS.  
This letter shall be on Command letterhead and serialized.  
Send certified mail, return receipt requested]**

**[5090  
code/serial  
date]**

**[Ms./Mr. \_\_\_\_\_]**

Project Manager  
State of California Environmental Protection Agency  
Department of Toxic Substance Control, Region [?]  
Site Mitigation Branch  
**[Appropriate Address]**

Dear **[Ms./Mr. \_\_\_\_\_:]**

SUBJECT: IDENTIFICATION OF STATE "APPLICABLE" OR "RELEVANT AND APPROPRIATE" REQUIREMENTS (ARARS) FOR THE REMEDIAL INVESTIGATION AND FEASIBILITY STUDY (RI/FS) AT **[Installation Restoration (IR) or Munitions Response Program (MRP) Site name/number or Operable Unit (OU)]** at **[Installation Name]**

**[Choose one of the following two paragraphs.]**

**[Use this paragraph for sites that do not have an FFSRA or FFA]**

Pursuant to our previous discussions and consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), we are hereby requesting that the **[Department of Toxic Substances Control (DTSC)/or appropriate lead State agency]** as the lead agency for the State of California, identify potential State chemical-specific and location-specific ARARS for **[OU/s # or IR Sites #]**. ARARS identified by the State will be considered and evaluated during the preparation of a feasibility study for the site.

**[Use this paragraph for sites that have an FFSRA or FFA]**

Pursuant to our previous discussions and paragraphs **[7.7(a) & (b)/appropriate sections of the Federal Facility Site Remediation Agreement (FFSRA)] [or Federal Facility Agreement (FFA) ¶s 7.6(a) & (b)/appropriate sections ]**, we are hereby requesting that the **[Department of Toxic Substances Control (DTSC)/or appropriate lead State agency]** as the lead agency for the State of California, identify potential state chemical-specific and location-specific ARARS for **[OUs # or IR Sites #]**. ARARS identified by the State will be considered and evaluated during the preparation of a feasibility study for the site.

**[Describe how the information needed by the State agency in order to identify State ARARS has been or will be conveyed to them. If reports have already been sent to regulatory agencies, then attachment would**

*not be required. Otherwise, include the necessary information in the text of this letter or as attachments to this letter. The following paragraphs are provided as sample text that may help you develop your own project specific language.]*

*[If site characterization data has previously been conveyed to the State, then use language similar to the following.]*

In our *[specify letter/work plan name/report name]* of *[date]*, we transmitted to you *[preliminary/final/etc.]* site characterization data for *[OU/s# or IR Sites #]*. In addition, we discussed this data at *[the Project Managers' meeting or other event and date]*. The site characterization data should allow you to begin to identify, with some specificity, State chemical-specific and location -specific ARARs. Please note that a similar request for action-specific ARARs will be transmitted after remedial alternatives have been screened and developed for the Detailed Analysis of Alternatives phase of the Feasibility Study.

*[If site characterization data is being transmitted in this letter or in an attachment to this letter, then use language similar to the following.]*

The following information is being provided to aid the State in their identification of potential chemical-specific and location-specific State ARARs. *[If the site characterization data needed to identify chemical and location-specific ARARs are too complex to adequately describe them in this letter, then include additional information as an attachment, and include the following statement.]* Additional information concerning site characterization can be found in *[reference attachment(s).]* The site characterization data should allow you to begin to identify, with some specificity, State chemical-specific and location-specific ARARs. Please note that a similar request for action-specific ARARs will be transmitted after remedial alternatives have been screened and developed for the Detailed Analysis of Alternatives phase of the Feasibility Study.

The State of California may also identify any other criteria, advisories, guidance, and proposed standards that the State requests be considered (TBCs) for the above-identified *[OU/s or IR Sites]*, which have entered the RI/FS phase.

Timely identification of potential State ARARs is required under Section 121(d)(2)(A) of CERCLA and under the National Contingency Plan (NCP), 40 CFR §§300.400(g) and 300.515(d) & (h). Experience to date around the country has shown that a failure to identify ARARs with sufficient precision, early in the RI/FS process, can cause severe disruptions in timely implementation of remedial action. To ensure timely and complete ARARs identification, for each individual *[OU or IR Site]* listed, above please include the following information:

1. A specific citation to the statutory or regulatory

provision(s) for the potential State ARAR and the date of enactment or promulgation.

2. A brief description of why the potential State ARAR is applicable or relevant and appropriate to the particular OU (or IR Site).

3. A description of how the potential State ARAR would apply to potential remedial action, including: specific numeric discharge, effluent, or emission limitations; hazardous substance/constituent action or cleanup levels; etc., if the State intends to take the position that the potential State ARAR includes such limitations, levels, etc.

4. If the State believes its proposed ARAR is more stringent than the corresponding Federal ARAR, please provide the rationale and technical justification for this position.

5. If the State determines that there is not enough information to fully respond to our request, please identify any additional information that would be required to support identification of State ARARs and their application.

Consistent with 40 CFR §300.515(h) (2), we are requesting that you send a response via first class mail addressed to me and postmarked within 30 calendar days of receipt of this request. Please direct any technical questions that you may have concerning this request to the undersigned [619-532-\_\_\_\_] and any legal questions to [name], Associate Counsel, NAVFAC SW [619-532-\_\_\_\_].

Sincerely,

**[SIGNER'S NAME IN ALL CAPS]**  
**[Title in Upper and Lower Case]**

By direction of the  
Commanding Officer

Copy to:

**[TEMPLATE LETTER #2]  
[FOR REQUEST OF STATE ACTION-SPECIFIC ARARS.  
This letter shall be on Command letterhead and serialized.  
Send certified mail, return receipt requested]**

**[5090  
code/serial  
date]**

**[Ms./Mr. \_\_\_\_\_ ]**

Project Manager  
State of California Environmental Protection Agency  
Department of Toxic Substance Control, Region [?]  
Site Mitigation Branch  
**[Appropriate Address]**

Dear **[Ms./Mr. \_\_\_\_\_ :]**

SUBJECT: IDENTIFICATION OF STATE "APPLICABLE" OR "RELEVANT AND APPROPRIATE" REQUIREMENTS (ARARS) FOR THE REMEDIAL INVESTIGATION AND FEASIBILITY STUDY (RI/FS) AT **[Installation Restoration (IR) or Munitions Response Program (MRP) Site name/number or Operable Unit (OU)]** at **[Installation Name]**

**[Choose one of the following two paragraphs.]**

**[Use this paragraph for sites that do not have an FFSRA or FFA]**

Pursuant to our previous discussions and consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), we are hereby requesting that the **[Department of Toxic Substances Control (DTSC)/or appropriate lead State agency]** as the lead agency for the State of California, identify potential State action-specific ARARS for **[OU/s # or IR Sites #]**. ARARS identified by the State will be considered and evaluated during the preparation of a feasibility study for the site.

**[Use this paragraph for sites that have an FFSRA or FFA]**

Pursuant to our previous discussions and paragraphs **[7.7(a) & (b)/appropriate sections of the Federal Facility Site Remediation Agreement (FFSRA)] [or Federal Facility Agreement (FFA) ¶s 7.6(a) & (b)/appropriate sections ]**, we are hereby requesting that the **[Department of Toxic Substances Control (DTSC)/or appropriate lead State agency]** as the lead agency for the State of California, identify potential State action-specific ARARS for **[OUs # or IR Sites #]**. ARARS identified by the State will be considered and evaluated during the preparation of a feasibility study for the site.

**[Describe how the information needed by the State agency in order to identify State ARARS has been or will be conveyed to them. If reports have already been sent to regulatory agencies, then attachment would**



*not be required. Otherwise, include the necessary information in the text of this letter or as attachments to this letter. The following paragraphs are provided as sample text that may help you develop your own project specific language. It is assumed that chemical and location specific ARARs have previously been requested, so the first paragraph references previous correspondence. The second paragraph is associated with the current request for action-specific ARARs.]*

In our *[specify letter/work plan name/report name]* of *[date]*, we transmitted to you *[preliminary/final/etc.]* site characterization data for *[OU/s# or IR Sites #]*. In addition, we discussed this data at *[the Project Managers' meeting or other event and date]*. These data were intended to assist the State in their identification of potential chemical and location-specific State ARARs. *[If the State has responded, then reference their response here. A request for any final chemical and location-specific ARARs can be added in cases of long time periods or minor changes since the first request.]* If there are any changes or additions to the list of potential chemical or location-specific ARARs previously submitted, then they can be submitted along with the action-specific ARARs being requested by this letter.

The following information is being provided to aid the State in their identification of potential action-specific State ARARs. The following alternatives are proposed for *[OU#/Site #.]* *[List the alternatives with a brief explanation of each.]* *[If the alternatives are too complex to adequately describe them in this letter, then include additional information as an attachment or direct the State agency to information previously submitted for their review, and include the following statement.]* Additional information concerning these alternatives can be found in *[reference attachment(s) or documentation submitted under separate cover.]*

The State of California may also identify any other criteria, advisories, guidance, and proposed standards that the State requests be considered (TBCs) for the above-identified *[OU/s or IR Sites]*, which have entered the RI/FS phase.

Timely identification of potential State ARARs is required under Section 121(d)(2)(A) of CERCLA and under the National Contingency Plan (NCP), 40 CFR §§300.400(g) and 300.515(d) & (h). Experience to date around the country has shown that a failure to identify ARARs with sufficient precision, early in the RI/FS process, can cause severe disruptions in timely implementation of remedial action. To ensure timely and complete ARARs identification, for each individual *[OU or IR Site]* listed, above please include the following information:

1. A specific citation to the statutory or regulatory provision(s) for the potential State ARAR and the date of enactment or promulgation.
2. A brief description of why the potential State ARAR is

applicable or relevant and appropriate to the particular OU (or IR Site).

3. A description of how the potential State ARAR would apply to potential remedial action, including: specific numeric discharge, effluent, or emission limitations; hazardous substance/constituent action or cleanup levels; etc., if the State intends to take the position that the potential State ARAR includes such limitations, levels, etc.

4. If the State believes its proposed ARAR is more stringent than the corresponding Federal ARAR, please provide the rationale and technical justification for this position.

5. If the State determines that there is not enough information to fully respond to our request, please identify any additional information that would be required to support identification of State ARARs and their application.

Consistent with 40 CFR §300.515(h) (2), we are requesting that you send a response via first class mail addressed to me and postmarked within 30 calendar days of receipt of this request. Please direct any technical questions that you may have concerning this request to the undersigned [619-532-\_\_\_\_] and any legal questions to [name], Associate Counsel, NAVFAC SW [619-532-\_\_\_\_].

Sincerely,

**[SIGNER'S NAME IN ALL CAPS]**  
**[Title in Upper and Lower Case]**

By direction of the  
Commanding Officer

Copy to:

**[TEMPLATE LETTER #3]**  
**[FOR REQUEST OF STATE ARARS FOR A REMOVAL ACTION]**  
**This letter shall be on Command letterhead and serialized.**  
**Send certified mail, return receipt requested]**

**[Note: for a non-time critical removal action, this letter should be sent ASAP during the initial stages of preparing the EE/CA or for a time critical removal action, it should be sent at the very beginning of preparation of the AM with Navy legal counsel involvement as soon as it is known that a TCRA is planned.]**

**[5090  
code/serial  
date]**

**[Ms./Mr. \_\_\_\_\_]**

Project Manager  
State of California Environmental Protection Agency  
Department of Toxic Substance Control, Region ?  
Site Mitigation Branch  
**[Appropriate Address]**

Dear **[Ms./Mr. \_\_\_\_\_:]**

SUBJECT: IDENTIFICATION OF STATE "APPLICABLE" OR "RELEVANT AND APPROPRIATE" REQUIREMENTS (ARARS) FOR THE **[Time-Critical or Non-Time-Critical]** Removal Action at **[Installation Restoration (IR) or Munitions Response Program (MRP) Site name/number or Operable Unit (OU)]** at **[Installation Name]**

Navy policy requires removal actions to comply with ARARs to the extent practicable. Pursuant to our previous discussions and Navy policy, we are hereby requesting that the **[Department of Toxic Substances Control (DTSC)/or appropriate lead State agency]** as the lead agency for the State of California, identify potential State ARARs for **[OU/s # or IR Sites #]**. ARARs identified by the State will be considered and evaluated during the preparation of the **[Engineering Evaluation/Cost Assessment (EE/CA) or Action Memo]** for the proposed **[Non-Time-Critical or Time-Critical]** Removal Action at the site.

**[Describe how the information needed by the State agency in order to identify State ARARs has been or will be conveyed to them. If reports have already been sent to regulatory agencies, then reference those submissions. Otherwise, include the necessary information in the text of this letter or as attachments to this letter. The following paragraphs are provided as sample text that may help you develop your own project specific language.]**

**[If site characterization data has previously been conveyed to the State, then use language similar to the following.]**

In our **[specify letter/work plan name/report name]** of **[date]**,

we transmitted to you *[preliminary/final/etc.]* site characterization data for *[OU/s# or IR Sites #]*. In addition, we discussed this data at *[the Project Managers' meeting or other event and date]*. The site characterization data should allow you to begin to identify, with some specificity, State chemical-specific and location-specific ARARs.

*[If site characterization data is being transmitted in this letter or in an attachment to this letter, then use language similar to the following.]*

The following information is being provided to aid the State in their identification of potential chemical-specific and location-specific State ARARs. *[Summarize the site characterization data that will aid the state in their chemical and location-specific ARARs identification. If the site characterization data are too complex to adequately describe them in this letter, then include additional information as an attachment, and include the following statement.]* Additional information concerning site characterization can be found in *[reference attachment(s).]* The site characterization data should allow you to begin to identify, with some specificity, State chemical-specific and location-specific ARARs.

The following information is being provided to aid the State in their identification of potential action-specific State ARARs. The following alternatives are proposed for *[OU#/Site #.]* *[List the alternatives with a brief explanation of each.]* *[If the alternatives are too complex to adequately describe them in this letter, then include additional information as an attachment or direct the State agency to information previously submitted for their review, and include the following statement.]* Additional information concerning these alternatives can be found in *[reference attachment(s) or documentation submitted under separate cover.]*

The State of California may also identify any other criteria, advisories, guidance, and proposed standards that the State requests be considered (TBCs) for the above-identified *[OU/s or IR Sites]*, which will be addressed by this removal action.

Timely identification of potential State ARARs is crucial to the success of the proposed Removal Action. Experience to date around the country has shown that a failure to identify ARARs with sufficient precision, early in the Removal Action selection process, can cause severe disruptions in timely implementation of the Removal Action. To ensure timely and complete ARARs identification, for each individual *[OU or IR Site]* listed above please include the following information:

1. A specific citation to the statutory or regulatory provision(s) for the potential State ARAR and the date of enactment or promulgation.
2. A brief description of why the potential State ARAR is applicable or relevant and appropriate to the particular OU (or IR

Site).

3. A description of how the potential State ARAR would apply to potential remedial action, including: specific numeric discharge, effluent, or emission limitations; hazardous substance/constituent action or cleanup levels; etc., if the State intends to take the position that the potential State ARAR includes such limitations, levels, etc.

4. If the State believes its proposed ARAR is more stringent than the corresponding Federal ARAR, please provide the rationale and technical justification for this position.

5. If the State determines that there is not enough information to fully respond to our request, please identify any additional information that would be required to support identification of State ARARs and their application.

We are requesting that you send a response via first class mail addressed to me and postmarked within 30 calendar days of receipt of this request. Please direct any technical questions that you may have concerning this request to the undersigned **[619-532-\_\_\_\_\_]** and any legal questions to **[name]**, Associate Counsel), NAVFAC SW **[619-532-\_\_\_\_\_]**.

Sincerely,

**[SIGNER'S NAME IN ALL CAPS]**  
**[Title in Upper and Lower Case]**

By Direction of the  
Commanding Officer

Copy to: