

AEROJET SUPERFUND SITE

BOU ROD PEER REVIEW

ARARs requested by the

Central Valley Regional Water Quality Control Board

July 2014

#	Source	Standard, Requirement, Criterion, or Limitation	Description	ARARs, or To Be Considered	Comments
1a	Porter-Cologne Water Quality Control Act (California Water Code Sections 13240, 13241, 13242, 13243)	Water Quality Control Plan (Basin Plan) for the Central Valley RWQCB. (See pages II-1 through II-8)	Establishes beneficial uses for surface and ground waters in the region. The beneficial uses for surface water are municipal, agricultural and industrial supply; contact and non-contact recreation; cold and warm freshwater habitat; wildlife habitat, fish migration and spawning. The beneficial used of groundwater are municipal, agricultural, industrial service and industrial process supply	Neither – source information for determining basis for actions.	Each Regional Water Board Basin Plan identifies beneficial uses of affected water bodies.
1b	Porter-Cologne Water Quality Control Act (California Water Code Sections 13240, 13241, 13242, 13243)	Water Quality Control Plan (Basin Plan) for the Central Valley RWQCB. (See pages III-1 though III-18	Establishes water quality objectives, including narrative and numerical standards, that protect the beneficial uses of surface and ground waters in the region. Describes implementation plans and other control measures designed to ensure compliance with water quality objectives.	Applicable	Specific applicable portions of the Basin Plan include beneficial uses of affected water bodies and water quality objectives to protect those uses. Any activity, including, for example, a new discharge of contaminated soils or in-situ treatment or containment of contaminated soils that may affect water

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					quality must not result in water quality exceeding water quality objectives. Implementation plans and other policies and requirements may also apply.
1c	Water Quality Control Plan (Basin Plan) for the Sacramento and San Joaquin River Basins	Chapter III, Water Quality Objectives, Water Quality Objectives for Inland Surface Waters	The water quality objectives apply to all surface waters [Sacramento River-San Joaquin River Basin], or as noted.	Applicable	Any activity, including, for example, a new discharge of contaminated soils or in-situ treatment or containment of contaminated soils, that may affect water quality must not result in water quality exceeding water quality objectives.
1d	Water Quality Control Plan (Basin Plan) for the Sacramento and San Joaquin River Basins	Narrative Toxicity Standard in the Water Quality Control Plan for the Sacramento River-San Joaquin River Basin]	Chapter III, Narrative Toxicity Objective, states as a policy that all waters shall be maintained free of toxic substances that produce detrimental physiological responses in human, plant animal, or aquatic life.	Applicable	The narrative toxicity objective is a federally required water quality objective for surface waters and set forth in all basin plans. The Central Valley Region and the Los Angeles Region have a narrative toxicity objective that applies to

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2	Porter-Cologne Water Quality Control Act (California Water Code Sections 13240, 13241, 13242, 13243)	Central Valley Regional Board Basin Plan, "Policy for Application of Water Quality Objectives"	This policy defines water quality objectives and explains how the Regional Water Board applies numerical and narrative water quality objectives to ensure the reasonable protection of beneficial uses of water and how the Regional Water Board applies Resolution No. 68-16 to promote the maintenance of existing high quality waters.		groundwater. This Policy is a program for implementation of water quality objectives.
3	Porter-Cologne Water Quality Control Act (California Water Code Sections 13000, 13140, 13263, 13304)	State Water Resources Control Board Resolution No. 68-16 ("Antidegradation Policy")	Requires that high quality surface and ground waters be maintained to the maximum extent possible. Degradation of waters will be allowed (or allowed to remain) only if it is consistent with the maximum benefit to the people of the state, will not unreasonably affect present and anticipated beneficial uses, and will not result in water quality less than that prescribed in RWQCB and SWRCB policies. If degradation is allowed, the discharge must meet best practicable treatment or control, which must prevent pollution or nuisance and result in the highest	Applicable	Applies to discharges of waste to waters of the state, including discharges to soil that may affect surface or ground waters. In-situ cleanup levels for contaminated soils must be set so that ground waters will not be degraded, unless degradation is consistent with the maximum benefit of the people of the state. If degradation is allowed, the discharge must meet best practical

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			water quality consistent with maximum benefit to the people of the state.		treatment or control, and result in the highest water quality possible consistent with the maximum benefit to the people of the state. In no case may water quality objectives be exceeded.
4	Porter-Cologne Water Quality Control Act (California Water Code Sections 13000, 13140, 13240, 13260, 13263, 13267, 13300, 13304, 13307)	State Water Resources Control Board Resolution No. 92-49 (As amended April 21, 1994)	Establishes requirements for investigation and cleanup and abatement of discharges. Among other requirements, dischargers must clean up and abate the effects of discharges in a manner that promotes the attainment of either background water quality, or the best water quality that is reasonable if background water quality cannot be restored. Requires the application of Title 23, CCR, Section 2550.4 requirements to cleanups.	Applicable	Applies to all cleanups of discharges that may affect water quality.

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4a	Porter-Cologne Water Quality Control Act (California Water Code Sections 13000, 13140, 13240, 13260, 13263, 13267, 13300, 13304, 13307)	State Water Resources Control Board Resolution 92-49, Section III.G	Section III.G of this Resolution states in part that dischargers are required to clean up and abate the effects of discharges in a manner that promotes attainment of background water quality, or the best water quality which is reasonable if background levels cannot be restored.	Applicable	Remedial alternatives evaluated must consider attainment of the highest water quality that is economically and technically achievable and protects beneficial uses. Used to establish soil cleanup levels protective of groundwater and surface water.
5	Porter-Cologne Water Quality Control Act (California Water Code Sections 13000, 13140, 13240)	State Water Resources Control Board Resolution No. 88-63 ("Sources of Drinking Water Policy") (as contained in the RWQCB's Water Quality Control Plan)	Specifies that, with certain exceptions, all ground and surface waters have the beneficial use of municipal or domestic water supply.	Applicable	Applies in determining beneficial uses for waters that may be affected by discharges of waste.
6	Staff Report of the RWQCB, CVR	The Designated Level Methodology for Waste Classification and Cleanup Level Determination	Provides guidance on how to classify wastes according to Title 27, CCR, Division 2, Subdiv.1/ Title 23, CCR, Division 3, Chapter 15, Article 10	To Be Considered	Performance standard to be considered in determining the classification of wastes and contaminated soils.

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7	Staff Report of the RWQCB, CVR	"A Compilation of Water Quality Goals"	Provides guidance on selecting numerical values to implement narrative water quality objectives contained in the Basin Plan.	To Be Considered	Performance standard to be considered in selecting appropriate numerical values to implement the Basin Plan for setting cleanup levels and discharge limits. The numerical values contained in the staff report may be applicable, relevant and appropriate, or to be considered, depending on the source of the values.
8	Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13304)	Title 27, California Code of Regulations (CCR), Division 2, Subdiv. 1 (Section 20080 et seq.), Title 23, CCR, Division 3, Chapter 15, (Section 2510 et seq.) Title 22, CCR, Division 4.5, (Section 66250 et seq.)	Establishes waste and siting classification systems and minimum waste management standards for discharges of waste to land for treatment, storage, and disposal. Engineered alternatives that are consistent with Title 27/ Title 23 performance goals may be considered. Establishes corrective action requirements for responding to leaks and other unauthorized discharges.	Applicable	Applies to all discharges of waste to land for treatment, storage, or disposal that may affect water quality. The application of some of the specific sections of Title 27/ Title 23 to different situations is discussed below. Provisions of Title 23 apply to hazardous waste and provisions of Title 27 apply to

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					designated and non-hazardous waste.
9	Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13269).	Title 23, CCR, Section, 2520, 2521	Requires that hazardous waste be discharged to Class I waste management units that meet certain design and monitoring standards.	Applicable	Applies to discharges of hazardous waste to land for treatment, storage or disposal.
10	Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13269).	Title 27, CCR, Section, 20200(c), 20210	Requires that designated waste be discharged to Class I or Class II waste management units.	Applicable	Applies to discharges of designated waste (nonhazardous waste that could cause degradation of surface or ground waters) to land for treatment, storage, or disposal.

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11	Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13269).	Title 27, CCR, Section 20230	Requires that inert waste does not need to be discharged at classified units	Applicable	Applies to discharges of inert waste to land for treatment, storage, or disposal.
12	Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13269).	Title 27, CCR, Section 20200(c),20220	Requires that nonhazardous solid waste be discharged to a classified waste management unit.	Applicable	Applies to discharges of nonhazardous solid waste to land for treatment, storage, or disposal.
13	Porter-Cologne Water Quality Control Act (California Water Code Sections	40 CFR Parts 122, 123, 124, National Pollution Discharge Elimination System, implemented by California Storm water Permit for	Regulates pollutants in discharge of storm water associated with hazardous waste treatment, storage, and disposal facilities, wastewater treatment plants, landfills, land application sites, and open dumps.	Applicable	Applies to storm water discharges from industrial areas. Includes measures to minimize and/or eliminate pollutants in storm water discharges and monitoring to

#	Source	Standard, Requirement, Criterion, or Limitation	Description	ARARs, or To Be Considered	Comments
	13260, 13263, 13370.5, 13372, 13373, 13374, 13375, 13376, 13377, 13383).	Industrial Activities, State Water Resources Control Board Order #97-03-DWQ.	Requirements to ensure storm water discharges do not contribute to a violation of surface water quality standards.		demonstrate compliance.
14	Porter-Cologne Water Quality Control Act (California Water Code Sections 13260, 13263, 13370.5, 13372, 13373, 13374, 13375, 13376, 13377, 13383).	40 CFR Parts 122, 123, 124, National pollution discharge elimination system, implemented by State Water Resources Control Board Order No. 99-08 DWQ	Regulates pollutants in discharge of storm water associated with construction activity (clearing, grading, or excavation) involving the disturbance of 1 acre or more. Requirements to ensure storm water discharges do not contribute to a violation of surface water quality standards.	Applicable	Applies to construction areas over 1 acre in size. Includes measures to minimize and/or eliminate pollutants in storm water discharges and monitoring to demonstrate compliance.
15	Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147	Title 27, CCR, Section 20080(g), Title 23, CCR, Section 2510(g)	Requires monitoring. If water quality is threatened, corrective action consistent with Title 27, Title 23 is required	Applicable	Applies to areas of land where discharges had ceased as of November 27, 1984 (the effective date of the revised Title 27/ Title 23 regulations).

#	Source	Standard, Requirement, Criterion, or Limitation	Description	ARARs, or To Be Considered	Comments
	13172, 13260, 13263, 13267, 13304).				
16 a	Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13304).	Title 27, CCR, Section 20090(d) Title 23, CCR, Section 2511 (d)	Actions taken by public agencies to clean up unauthorized releases are generally exempt from Title 27/ Title 23. One exception is that wastes removed from immediate place of release and discharged to land must be managed in accordance with classification (Title 27, CCR, Section 20200/ Title 23, CCR, Section 2520) and siting requirements of Title 27 or Title 23.	Applicable	Applies to remediation and monitoring of sites. Before action, waste must be classified and disposed of consistent with its classification.
16 b	Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13304).	Title 27, CCR, Section 20090(d) Title 23, CCR, Section 2511 (d)	Actions taken by public agencies to clean up unauthorized releases are generally exempt from Title 27/ Title 23. One exception is that wastes contained or left in place must comply with Title 27 or Title 23 to the extent feasible.	Applicable	Applies to remediation and monitoring of sites.

#	Source	Standard, Requirement, Criterion, or Limitation	Description	ARARs, or To Be Considered	Comments
17	Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13304).	Title 27, CCR, Section 20080 (d) Title 23, CCR, Section 2510(d)	Requires closure of existing waste management units according to Title 27/Title 23	Applicable	Applies to "existing" waste management units (i.e., areas where waste was discharged to land on or before 27 November 1984, but that were not closed, abandoned, or inactive prior to that date).
18	Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 1323, 13269).	Title 27, CCR, Section 21400, Title 23, CCR, Section 2582.	Requires surface impoundments to be closed by removing and treating all free liquid and either removing all remaining contamination or closing the surface impoundment as a landfill.	Applicable	If water quality is threatened, this section is relevant and appropriate for natural topographic depressions, excavations, and diked areas where wastes containing free liquids were discharged.
19	Porter-Cologne Water Quality Control Act (California Water Code	Title 27, CCR, Sections 20385-20435 Title 23, CCR, Section 2550 .	Where groundwater monitoring is required under 2510 or 2511 of Ch 15 (and equivalent for Title 27), applies to authorized waste management units as well as unauthorized discharges of waste to	Applicable	Applies to all areas in which waste has been discharged to land to determine the threat to water quality.

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	Sections 13140-13147, 13172, 13260 13263, 13267, 13269).		land and to closed abandoned or inactive units.		
20	Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260 13263, 13267, 13269).	Title 27, CCR, Section 20385, Title 23, CCR, Section 2550.1	Requires detection monitoring. Once a significant release has occurred, evaluation or corrective action monitoring is required.	Applicable	Applies to all areas in which waste has been discharged to land to determine the threat to water quality.
21	Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260 13263, 13267, 13269).	Title 27, CCR, Section 20390, Title 23, CCR, Section 2550.2	Requires establishment of a water quality protection standard consisting of a list of constituents of concern, concentration limits, compliance monitoring points and all monitoring points. This section further specifies the time period that the standard shall apply.	Applicable	Applies to all areas in which waste has been discharged to land where groundwater is threatened.

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22	Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13269).	Title 27, CCR, Section 20395, Title 23, CCR, Section 2550.3	Requires development of a list of constituents of concern which include all waste constituents that are reasonably expected to be present in the soil from discharges to land, and could adversely effect water quality.	Applicable	Applies to all areas in which waste has been discharged to land where groundwater is threatened.
23	Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13269).	Title 27, CCR, Section 20400, Title 23, CCR, Section 2550.4	Concentration limits must be established for groundwater, surface water, and the unsaturated zone. Must be based on background, equal to background, or for corrective actions, may be greater than background, not to exceed the lower of the applicable water quality objective or the concentration technologically or economically achievable. Specific factors must be considered in setting cleanup standards above background levels.	Applicable	If water quality is threatened, this section applies in setting soil cleanup levels for all cleanups of discharges of waste to land.

#	Source	Standard, Requirement, Criterion, or Limitation	Description	ARARs, or To Be Considered	Comments
24	Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13269).	Title 27, CCR, Section 20405, Title 23, CCR, Section 2550.5	Requires identification of the point of compliance, hydraulically down gradient from the area where waste was discharged to land.	applicable	Applies to all areas in which waste has been discharged to land where groundwater is threatened.
25	Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 513269).	Title 27, CCR, Section 20410 Title 23, CCR, Section 2550.6	Requires monitoring for compliance with remedial action objectives for three years from the date of achieving cleanup levels.	Applicable	Applies to all soil cleanup activities.
26	Porter-Cologne Water Quality Control Act (California Water	Title 27, CCR, Section 20415 Title 23, CCR, Section 2550.7.	Requires general soil, surface water, and ground water monitoring.	Applicable.	Applies to all areas in which waste has been discharged to land.

#	Source	Standard, Requirement, Criterion, or Limitation	Description	ARARs, or To Be Considered	Comments
	Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13269).				
27	Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13269).	Title 27, CCR, Section 20420, Title 23, CCR, Section 2550.8.	Requires detection monitoring to determine if a release has occurred.	Applicable	Applies to all areas where waste has been discharged to land and groundwater is threatened.
28	Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172,	Title 27, CCR, Section 20425 Title 23, CCR, Section 2550.9	Requires an assessment of the nature and extent of the release, including a determination of the spatial distribution and concentration of each constituent.	Applicable	Applies to sites at which monitoring results show statistically significant evidence of a release.

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	13260, 13263, 13267, 13269).				
29	Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13269).	Title 27, CCR, Section 20430 Title 23, CCR, Section 2550.10	Requires implementation of corrective action measures that ensure that cleanup levels (i.e., water quality protection standard established under section 2550.2) are achieved throughout the zone affected by the release by removing the waste constituents or treating them in place. Source control may be required. Also requires monitoring to determine the effectiveness of the corrective actions.	Applicable	If water quality is threatened, this section applies to all soil cleanup activities.
30	Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267,	Title 27, CCR, Section 20950; 22207 (a); 22212 (a), and 22222. Title 23, CCR, Section 2550.0 (b); 2580; 2580(f).	General closure requirements, including continued maintenance of waste containment, drainage controls, and groundwater monitoring throughout the closure and post-closure maintenance periods.	Applicable	Applies to partial or final closure of waste management units.

#	Source	Standard, Requirement, Criterion, or Limitation	Description	ARARs, or To Be Considered	Comments
	13269).				
31	Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13269).	Title 27 CCR Section 20950 (a)(2)(B)	(2) Performance Standards -The performance standards applicable to closure of a Unit and, for Units that are not clean-closed, to post-closure maintenance at the Unit are as follows: (B) Unit Clean-Closed - for Units that are clean-closed, the goal of closure is to physically remove all waste and contaminated materials from the Unit and from its underlying and surrounding environs, such that the waste in the Unit no longer poses a threat to water quality. Successful completion of clean-closure eliminates the need for any post-closure maintenance period and removes the Unit from being subject to the SWRCB-promulgated requirements of this subdivision.	Applicable	Applicable to excavated soil to determine partial or final closure of waste management units.

#	Source	Standard, Requirement, Criterion, or Limitation	Description	ARARs, or To Be Considered	Comments
32	Clean Water Act – National Pollutant Discharge Elimination System (NPDES) Program	California Toxics Rule (CTR) 40 CFR Part 131	Water quality standards: EPA adopted water quality criteria that apply in California, called the California Toxics Rule (CTR). The CTR establishes water quality standards that apply to NPDES discharges when certain conditions are met.	Applicable	The CTR establishes criteria for surface water quality; therefore, it is an ARAR for discharge of surface water runoff potentially polluted from up gradient sources.

EPA's Response to Central Valley Regional Water Quality Control Board ARAR request

From: Bradfish, Larry
Sent: Friday, January 23, 2015 3:08 PM
To: Coupe, David@Waterboards
Cc: Santiago-Ocasio, Carmen; MacDonald, Alex@Waterboards
Subject: RE: OU6 ROD

Thank you, David.

I am sending along a response to Alex's proposed ARARs that he sent to us with his initial comments on the OU-6 ROD back in July. Alex listed 32 ARAR candidates. I tried to go through his list and respond as to whether we included them or not. And, if not, why not. At the heart of our disagreement over what should be included as ARARs is what constitutes a "waste management unit" for purposes of OU-6. I am not sure that we can reach agreement on this point, but hopefully this compilation will let you see why we don't think some of the proposed ARARs should be added to the table.

Please see attached.

Larry

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ARARS Proposed by the RWQCB for OU-6 (July 11, 2014)

RWQCB No. from RWQCB's Proposed ARARs Table	Type of ARAR	EPA Response
Nos. 1a, 1b, 1c, 1d, 2	Basin Plan	EPA has included the water quality objectives and beneficial uses found in the basin plan in its ARARs table
No. 3	Res. No. 68-16	Included in EPA's ARARs table.
Nos. 4 & 4a	Res. 92-49	EPA has included 92-49, Section III.G in its ARARs table as it pertains to soil cleanups that may affect underlying groundwater quality.
No. 5	Res. No. 88-63	Included in the ARARs table
No. 6	Waste classification (Designated Level Methodology)	Included in ARARs table as TBC
No. 7	A Compilation of Water Quality Goals	Not included. These water quality standards are not tailored for the Site and could cause confusion in the future over the wide variety of water quality values set out in the compilation.
No. 8	Titles 22, 23, 27 CCR	Not included—citations are too general as they include dozens of regulations. Selected sections have been included in the ARARs table.
No. 9 & 10	23 CCR 2520, 2521	Regulations governing offsite disposal of hazardous wastes are not considered ARARs, including the federal offsite rule, 42 U.S.C. § 9621(d)(3). However, they are requirements that must be met when sending wastes from the site for offsite disposal. No onsite disposal of wastes is contemplated for the remedial actions to be carried out at OU-6.
No. 11	Inert waste does not need to be discharged at classified units	Not included. This does not seem to address the actual cleanup of hazardous

		substances, pollutants or contaminants under CERCLA. Although not an ARAR, it does address inert wastes possibly found during the cleanup.
No. 12	Non-hazardous solid waste to be discharged to classified waste management units.	Not included. This does not directly address the cleanup of hazardous substances, pollutants or contaminants under CERCLA. Although not an ARAR, it does address how any non-hazardous solid waste found during the cleanup should be handled.
Nos. 13 & 14	40 CFR Parts 122, 123, & 124	Part 122 is included in the ARARs table. Parts 123 and 124 are procedural requirements, whereas ARARs are only substantive requirements. Parts 123 and 124 are not included.
No. 15	Monitoring may be required for closed, inactive or abandoned waste management units and corrective action required if water quality impairment occurs.	Not included. No known waste management units located in OU-6.
No. 16	Exemption from Titles 23 and 27 for cleanups of waste management units undertaken by public agencies, provided applicable provisions of the relevant chapter/division are followed to the extent feasible.	Not included. Exemption provision is not a substantive requirement for a CERCLA cleanup. The cleanup of OU-6 does not involve waste management units. Where feasible, specific provisions of Titles 23 and 27 have been included in this ARARs table.
Nos. 17-27, 30-31	Specific references to sections in 23 CCR, Article 5, and 27 CCR, Subchapter 3, and related closure requirements	Not included. These water monitoring regulations, by their own terms, apply to waste management units, <u>specifically</u> to land disposal units, surface impoundments, waste piles and landfills. See 23 CCR § 2550.0(a); 27 CCR § 20380(a). None of these particular types of waste management units are known to exist on OU-6 and

		none are contemplated to be constructed on OU-6 as part of the remedy.
No. 28	27 CCR § 20425, 23 CCR § 2550.9	Included in ARARs table as relevant and appropriate to any natural topographic depressions, excavations, and diked areas in OU-6 where wastes containing free liquids may have been discharged.
No. 29	27 CCR § 20430, 23 CCR § 2550.10	Included in ARARs table as relevant and appropriate where there is statistically significant evidence of a release.
No. 32	California Toxics Rule, 40 CFR 131	Included in ARARs table.

Central Valley Regional Water Quality Control Board's response to EPA's ARARs response

From: Coupe, David@Waterboards
To: Bradfish, Larry
Cc: MacDonald, Alex@Waterboards
Subject: Aerojet OU-6 ROD
Date: Friday, April 24, 2015 1:23:58 PM
Attachments: [Agree to Disagree Language for Aerojet OU6 Draft to USEPA.docx](#)

Hi Larry:

Attached is a draft of the Central Valley Water Board's "agree to disagree" language. I believe this is the last item that needs to be completed before the ROD is completed and sent out for approval.

We should create a specific section for this language and it can also include a place for language from USEPA as we have done in previous RODs.

I am tied up for the rest of the day today and all day Monday but I could make some time Tuesday if you want to discuss.

Thanks,

David

David P. Coupe

Attorney IV

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California Regional Water Quality Control Board, Central Valley Region Position Concerning Applicable, Relevant and Appropriate Requirements (ARARs)

The Central Valley Regional Water Quality Control Board (Central Valley Water Board) has identified a number of ARARs that they believe are applicable or relevant and appropriate requirements under provisions of state law. The Water Board asserts that the below enumerated state law requirements, including but not limited to State Water Resources Control Board Resolution No. 92-49, are applicable or relevant and appropriate requirements for remedial actions that may impact waters of the state pursuant to Water Code section 13050. "Waters of the state" means any surface or ground water, including saline waters, within the boundaries of the state. The source of these state law provisions, standard, and description are not in the table below:

Source	Standard	Description
Porter-Cologne Water Quality Control Act (California Water Code Sections 13000, 13140, 13240, 13260, 13263, 13267, 13300, 13304, 13307)	State Water Resources Control Board Resolution No. 92-49 (As amended April 21, 1994)	Requirements for Investigation and Cleanup and Abatement of discharges of waste
Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13304)	Title 27, California Code of Regulations (CCR), Division 2, Subdiv. 1 (Section 20080 et seq.), Title 23, CCR, Division 3, Chapter 15, (Section 2510 et seq.) Title 22, CCR, Division 4.5, (Section 66250 et seq.)	Waste and siting classification, minimum waste management standards for treat, storage, disposal- corrective action requirements responding to unauthorized discharges
Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13269)	Title 23, CCR, Section, 2520, 2521	Hazardous waste to Class I/II waste management units (WMUs)
Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13269).	Title 27, CCR, Section, 20200(c), 20210	Designated waste to Class I/II WMUs
Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13269).	Title 27, CCR, Section 20230	Inert waste need not go to classified units
Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13269).	Title 27, CCR, Section 20200(c),20220	Nonhazardous solid waste to class WMU

Porter-Cologne Water Quality Control Act (California Water Code Sections 13260, 13263, 13370.5, 13372, 13373, 13374, 13375, 13376, 13377, 13383).	40 CFR Parts 122, 123, 124, National Pollution Discharge Elimination System, implemented by California Storm water Permit for Industrial Activities, State Water Resources Control Board Order #97-03-DWQ.	Storm water regulations for hazardous WMUs, landfills, treatment plants, land application sites
Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13304)	Title 27, CCR, Section 20080(g), Title 23, CCR, Section 2510(g)	Requires Monitoring - if water quality threatened - Correct Action Title 23/27
Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13304).	Title 27, CCR, Section 20090(d) Title 23, CCR. Section 2511 (d)	Wastes removed must be discharged in accordance with classification
Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13304).	Title 27, CCR, Section 20090(d) Title 23, CCR. Section 2511 (d)	Wastes contained or left in place must comply with Title 23/27 to the extent feasible (public agencies)
Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13304).	Title 27, CCR, Section 20090(d) Title 23, CCR. Section 2510 (d)	Closure of existing WMUs to Title 23/27
Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13269).	Title 27, CCR, Sections 20385-20435 Title 23, CCR, Section 2550	Groundwater Monitoring Required for unauthorized discharges
Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13269).	Title 27, CCR, Section 20385, Title 23, CCR, Section 2550.1	Requires Detection Monitoring - evaluation/corrective action monitor
Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13269).	Title 27, CCR, Section 20390, Title 23, CCR, Section 2550.2	Establish Water Quality Protection Standard
Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13269).	Title 27, CCR, Section 20395, Title 23, CCR, Section 2550.3	Development of a list of Constituents of Concern
Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13269).	Title 27, CCR, Section 20400, Title 23, CCR, Section 2550.4	Concentration limits must be established

Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13269).	Title 27, CCR, Section 20400, Title 23, CCR, Section 2550.5	Establish Point of Compliance in groundwater
Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13269).	Title 27, CCR, Section 20400, Title 23, CCR, Section 2550.6	Monitor for 3 years following achieving cleanup levels
Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13269).	Title 27, CCR, Section 20400, Title 23, CCR, Section 2550.7	Requires soil, surface and groundwater monitoring.
Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13269).	Title 27, CCR, Section 20400, Title 23, CCR, Section 2550.8	Requires detection monitoring
Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13269).	Title 27, CCR, Section 20950; 22207 (a); 22212 (a), and 22222. Title 23, CCR, Section 2550.0 (b); 2580; 2580(f).	General Closure Requirements
Porter-Cologne Water Quality Control Act (California Water Code Sections 13140-13147, 13172, 13260, 13263, 13267, 13269).	Title 27 CCR Section 20950 (a)(2)(B)	Clean closure requirements - no need for post closure requirements

With respect to the ARARs noted above, there are a few state law requirements that warrant a brief discussion. The first provision is a “waste management unit” or “Unit” which is defined in California Code of Regulations (CCR), title 27, section 20164 as an area of land, or portion of a waste management facility, at which waste is discharged. The term includes containment features and ancillary features for drainage control and for monitoring.

The second provision is CCR, title 27, section 20080, subdivision (d). This provision states that units which were operating on or before November 27, 1984 are designated as existing Units and that existing Units shall be closed and maintained after closure according to CCR, title 27, section 20950 et seq. Subdivision (g) states that persons responsible for discharges at Units which were closed, abandoned, or inactive on or before November 27, 1984 may be required to develop and implement a detection monitoring program in accordance with Section 20380 et seq. This section further states that if water quality impairment is found, such persons may be required to develop and implement a corrective action program under CCR, title 27, section 20380 et seq.

The third provision, CCR, title 27, section 20090, subdivision (d) says in pertinent part that actions taken by or at the direction of public agencies to cleanup or abate conditions of pollution or nuisance resulting from unintentional or unauthorized releases of waste or pollutants to the environment are exempt from Title 27, Division 2, Subdivision 1, provided that wastes, pollutants, or contaminated materials removed from the immediate place of release shall be discharged according to Section 20200 et seq. and further provided that remedial actions

intended to contain such wastes at the place of release shall implement applicable State Water Resources Control Board-promulgated provisions of Division 2 of Title 27 to the extent feasible.

In short, because this remedial action is being taken by or at the direction of a public agency to cleanup or abate conditions of pollution or nuisance resulting from unintentional or unauthorized releases of waste, and given that this remedial action in part is intended to contain such wastes at the place of release, it is the Central Valley Water Board's position that this remedial action should implement applicable SWRCB-promulgated provisions of Division 2 of Title 27 to the extent feasible.

Division 2 of Title 27 includes 27 CCR section 20005 through 27 CCR section 23014 and appendices but compliance with this provision is conditioned on SWRCB-promulgated provisions of Division 2. SWRCB-promulgated provisions of Division 2 also include 27 CCR section 20012 which allows for the use of CIWMB (now CalRecycle) requirements "where necessary to protect water quality." The Central Valley Water Board recognizes the phrase in 27 CCR section 20090(d) "to the extent feasible." This phrase allows for some element of discretion and the regulations, and depending on the site-specific circumstances, may not necessarily require a detection monitoring program, evaluation, evaluation monitoring program, and corrective action program for each and every area of land where waste was discharged.

The Central Valley Water Board believes that Title 23 applies to discharges of hazardous waste to land for treatment, storage, or disposal and Title 27 applies to discharges of designated waste, namely nonhazardous solid waste that could cause degradation of surface or ground waters to land for treatment, storage, or disposal. In this case, some portion of waste will remain at one or more areas of land, and although not subject to treatment, the waste remaining in place is being disposed of at an area of land.

The EPA disagrees with the Central Valley Water Board about the applicability of the state law provisions noted above for the remedial actions being selected in this Record of Decision. The Parties, however, desire to avoid invoking dispute resolution procedures on this issue since there is no substantive dispute as to the selected remedies and cleanup levels for this Record of Decision. Accordingly, the Water Board reserves any and all rights to assert any of these state law provisions as ARARs in any future Record of Decision and without prejudice to its position, the Water Board agrees to concur with this Record of Decision.