



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 30 2010

Ms. Monique Harden
Co-Director & Attorney
Advocates for Environmental Human Rights
650 Poydras St., Suite 2523
New Orleans, LA 70130

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

Dear Ms. Harden:

Thank you for your follow-up letter dated August 24, 2010 concerning the former Hunters Point Naval Shipyard Superfund site. As agreed upon during our October 29 teleconference, I also received an email from your associate, Ms. Wilma Subra, on November 10, providing further clarification of your client's concerns. We spoke again on November 19 and are planning a face-to-face meeting, at your request, in San Francisco. My office has worked with EPA Region 9's Superfund program, which is EPA's lead office for overseeing the Shipyard cleanup, to prepare this response to your and Ms. Subra's correspondence.

Enclosed you will find information responding to your and Ms. Subra's questions and concerns regarding the early transfer process, the City's Environmental Impact Report and EPA's regulatory role over the Shipyard cleanup, which will assure public safety before and after transfer.

In addition, I am responding below to your August 24 questions and suggestions on related matters. First, you suggested, "In addition to sending a letter to the Board of Supervisors to clarify that EPA has taken no position on the redevelopment plans of the Naval Shipyard Superfund Site, you should post the letter on the EPA Region 9 website and send it to local residents who receive notices from EPA Region 9." EPA clarified its role at the Shipyard in the attached letter to the San Francisco Board of Supervisors, a copy of which you received previously. We have posted this correspondence on our web site for the Shipyard and will make copies available to the public at community meetings.

As we have discussed and stated in prior correspondence, EPA does not have a position on the specific development proposal approved by the San Francisco Board of Supervisors. EPA's testimony to the Board related to our assessment of contamination at the Shipyard and the processes in place, including EPA's ongoing role, to safeguard the community as remediation, redevelopment and land transfer proceed.

You also suggested, "Given the significant environmental justice issues involved, please provide information as to the protocols/criteria/regulations regarding an "early transfer."

Early transfers are commonly used in situations where certain aspects of the remediation can be appropriately implemented while development is underway. The authorizing legislation (CERCLA Section 120) and EPA Guidance require that a number of conditions be met to ensure that the transfer of title will not create unacceptable risks and that the remediation will be

completed in a timely manner and will be protective of human health and the environment. EPA carefully evaluates site conditions in light of anticipated use, identifies necessary limitations on use pending completion of remediation, assures that there will be a viable mechanism to accomplish the required cleanup, and retains our oversight role to ensure protection of human health and the environment throughout the process. EPA guidance covering early transfer is available at <http://www.epa.gov/fedfac/documents/hkfin.htm>.

Early transfer may not proceed until EPA approves a specific early transfer request. At the Shipyard, the proposed early transfers will follow the selection of remedial action by the Navy and EPA, following a public comment period, and partial implementation of the remedies by the Navy (including all radiation cleanup work and the required soil excavation work) to assure protection of human health and the environment during any development activities. Some development activities will be limited until all elements of the remedies have been completed. Prior to each parcel transfer, the Navy will prepare, in consultation with EPA, a Finding of Suitability for Early Transfer (FOSET) that describes the site conditions, the selected remedy, and the limitations on activity during the implementation of the remedy. Dialogue with the community on how this process works has already begun, and we will engage the community on development of the FOSET during regular monthly meetings. Once EPA is satisfied with the FOSET, it will be made available to the public for review and comment. The public comments and response to comments will be an integral part of EPA's evaluation prior to making a final decision regarding the request for early transfer, and will be in the public records for the site. In addition, EPA will enter into an Administrative Order on Consent (AOC) with the parties who will be completing the cleanup following early transfer. The AOC specifies the work to be performed and provides for EPA oversight of the cleanup. If the parties responsible for cleanup are unable to complete the work, the Navy remains responsible for the cleanup.

We have elaborated on early transfer further, in response to Ms. Subra's email, in the enclosed document.

Finally, you suggested, "Also, please include information as to how EPA will ensure environmental justice in its decision-making regarding early transfers." EPA will continue our longstanding commitment to environmental justice in decision-making on the Shipyard pursuant to Executive Order 12898 and EPA's developing Plan EJ 2014 and the goals and actions contained in OSWER's Community Engagement Initiative. Some examples of past efforts include (1) requiring a soil cover in both residential and industrial use areas of the Shipyard to protect against risk from naturally occurring metals, (2) undertaking an independent review of dust and naturally-occurring asbestos control measures and air monitoring at the Shipyard, in response to community concerns, and (3) providing technical advisory, expertise, and assistance on an ongoing basis to help the community to have a significant and meaningful role in the decision-making process at the site.

Active community input on the cleanup is a basic tenet of the Superfund program, and the Navy and EPA are in the process of developing a new Community Involvement Plan (CIP) to more effectively engage the diverse interests in Bayview/Hunters Point. Earlier this year, EPA participated in more than 70 interviews of local residents by the Navy to obtain input for the new CIP. Through the community interviews, we have identified a number of new outreach activities

to better engage more members of the community. The draft CIP will be available for review by the community before the plan is finalized.

In the interim, EPA participates in the Navy's monthly community information meetings, which are open to the public. We have met and will also continue to meet with homeowners, tenants and merchant associations, churches, activists and nonprofits, schools and labor groups. Furthermore, we have an ongoing open invitation to meet with any group or individual in the community upon request.

I trust this letter conveys EPA's commitment to the residents of Bayview/Hunters Point and provides you with the additional information requested. If you have further questions or concerns, please contact Jane Diamond, Region 9's Superfund Director, at 415-947-8709, or Dana Barton, Region 9's Community Involvement Manager, at 415-972-3087.

Sincerely,



Mathy Stanislaus
Assistant Administrator

- Enclosure 1 – EPA responses to comments from Wilma Subra
- Enclosure 2 – EPA letter to SF Board of Supervisors
- Enclosure 3 – Overview of transfer process

EPA Responses to Comments Concerning Community Concerns with Superfund Cleanup and Property Transfer Related to the San Francisco Redevelopment Agency Environmental Impact Report for the Hunters Point Development Plan

A number of the issues raised by letters, emails, and telephone conversations among EPA, Wilma Subra and Monique Harden focus on the relationship between the Environmental Impact Report (EIR) and the Superfund cleanup at the Hunters Point Shipyard. To address these concerns, the following section is intended to answer some of the questions regarding the relative roles of the EIR and the Superfund process:

What is an Environmental Impact Report (EIR)?

The State of California requires a study of all the factors which a development project would have on the environment in the area, including population, traffic, schools, fire protection, endangered species, archeological artifacts, and community beauty. An EIR is the disclosure document which summarizes these impacts but does not address them. California law requires that an EIR be submitted to the local government before a development or project can be approved. This review and approval happens at the local level without any involvement from the US EPA. The EIR is not enforced by EPA nor is EPA authority limited by it. The EIR identified the Hunters Point Shipyard Superfund site but it provides no authority for addressing the cleanup. In contrast, the Superfund process provides full legal authority for EPA to be involved in depth in overseeing the cleanup.

If EPA doesn't review or approval of EIR, why did EPA Region 9 staff attend and speak at the EIR hearing?

While EPA Region 9 did not officially review the EIR, the Board of Supervisors requested Region 9 staff to appear at the Supervisors' hearing on the EIR to answer questions specific to the Superfund cleanup at the Shipyard and how that cleanup might affect development.

What isn't covered by an EIR?

An EIR is a disclosure document which includes a study of all the factors which a development project would have on the environment in the area, including population, traffic, schools, fire protection, endangered species, archeological artifacts, and community beauty. The EIR is intended to demonstrate that all potential impacts associated with the Redevelopment Plan have been evaluated. However, neither the EIR nor the Redevelopment Plan includes enforceable measures to address the identified impacts. If the project described in the EIR involves a Superfund cleanup, the EIR defers the specifics of the cleanup and

property transfer to the Superfund process. The EIR is not enforced by EPA nor is EPA authority limited by it.

What is covered under the CERCLA (Superfund) Cleanup process?

Superfund deals directly with the cleanup of hazardous substances and provides EPA with enforcement authority to oversee the cleanup. Under the proposed early transfer, EPA and the City/Lennar will execute an Administrative Order on Consent (AOC) which will require the City/Lennar to perform a portion of the remedial action selected by EPA and the Navy. The community will have an opportunity to comment on the AOC before the AOC is approved.

EPA will continue to oversee the cleanup and the AOC provides for stipulated penalties if the work is not performed to EPA's satisfaction. If EPA determines that the City/Lennar is in default, the Navy remains responsible to complete the work.

The Superfund process includes requirements that the cleanup has controls in place to protect the public from possible exposures to contaminants. As addressed more specifically in the following responses to comments, the Navy will have completed the vast majority of all cleanups prior to any early transfer. The Navy has spent nearly \$800 million dollars on the cleanup to date addressing the primary risks. EPA will continue our due diligence in meeting with the Navy and City before and after transfer and exercising our enforcement authority to make sure that the public is protected.

Comments Received by EPA from Wilma Subra on 11/10/2010

1) There was no response from EPA on the EIR that indicated there were specific items in the development plan that were not in compliance with EPA's regulations and policies. Silence was taken as EPA approval of the terms and conditions presented in the redevelopment plan by the San Francisco Board of Supervisors:

As described above, An EIR is a disclosure document which includes a study of all the factors which a development project would have on the environment in the area, including population, traffic, schools, fire protection, endangered species, archeological artifacts, and community beauty. The EIR is intended to demonstrate that all potential impacts associated with the Redevelopment Plan have been evaluated. However, neither the EIR nor the Redevelopment Plan includes enforceable measures to address the identified impacts. If the project described in the EIR involves a Superfund cleanup, the EIR defers the specifics of the cleanup and property transfer to the Superfund process. The EIR is not enforced by EPA nor is EPA authority limited by it.

California law requires that an EIR be submitted to the local government before a development or project can be approved. This review and approval happens at the local level without any involvement from the US EPA. In addition, the EIR referred the reader to the Superfund documents for the specifics of the Superfund cleanup and property. EPA's Superfund process will ensure that the public is not exposed to risks from Navy contaminants both during and after development.

Details on any proposed early transfer, including the nature of remaining remedial work, site access controls and long term land use controls will be available for public review and comment in the Finding of Suitability for Early Transfer (FOSET). This official public comment period is required by law and is in addition to the regular monthly meetings held between the Navy, EPA, City and the community to discuss all aspects of the cleanup. For more information about the early transfer legal process, please see the Attachment titled Description of the CERCLA Early Transfer Process.

2) After early transfer, the San Francisco Redevelopment Agency (SFRA) (or assigned) will be responsible for the development of the Remedial Design document, review and approval of the Remedial Design document and conducting required remedial actions:

The EIR laid out a general framework for how the transfer process will work, but the specifics will be addressed through the Superfund process.

Hunters Point, the Navy will complete the major aspects of both the remedial design and remedial actions prior to transfer. This includes completing the excavation of soil hotspots and completing all radiological de-contamination. The Navy has completed most of the groundwater treatment and will design the groundwater treatment for the remaining plume. Finally, the Navy will define the minimum design requirements for the soil cover and vapor barriers. Site specific design details for the soil cover and vapor barriers will be proposed by the SFRA for review and approval by EPA. EPA has full oversight of both remedial design and remedial actions, both before and after transfer, whether done by the Navy, developer or anyone else, and will continue to make sure that the public is protected and also involved in the process both before and after transfer. EPA guidance covering early transfer is available at <http://www.epa.gov/fedfac/documents/hkfin.htm>.

3) When the community objected to the early transfer of unremediated parcels, Region 9 of EPA verbally indicated that all excavation of waste must be completed on each parcel prior to early transfer. To our knowledge, this requirement, all excavation of waste must be completed on each parcel prior to early transfer, has not been put in writing, has not been required to be specified in the development plan, and the terms of the development plan have not been altered to require the Navy and not the

San Francisco Redevelopment Agency to conduct all excavation of waste activities prior to Early Transfer:

EPA has no specific requirement that all excavations be completed prior to transfer. EPA does require that the remediation has progressed to a point where post-transfer remediation will not pose a threat to the public.

The following is a description of the likely split of remedial work between the Navy and the City for early transfer of Parcels B and G. These are the two parcels that will be transferred first and they will serve as a template for the later transfer of the other parcels.

Pre-transfer Remedial Work: Prior to transfer, the Navy will complete the remaining soil excavations and remediation of radiological contamination. While the excavations will be completed prior to transfer for Parcels B and G, there may be situations on other parcels, such as soil under existing buildings, where some excavation will be completed after transfer. All excavations, whether before or after transfer, will be subject to requirements to prevent possible exposures to contaminants, such as controlling dust and preventing water run-off.

Post-transfer Remedial Work: For Parcels B and G, the only remedial work expected to occur post-transfer is:

- a) Groundwater and soil vapor treatment in a small area
- b) Installing a shoreline revetment wall to control shoreline erosion. This area does not contain contaminants requiring remediation. The work is being done exclusively for the purpose of physically stabilizing the area.
- c) Installing a cover over the entire area by placing clean imported soil or laying asphalt or concrete that are components of development. The cover is being required because the existing fill soil has naturally occurring metals and some organics that pose a potential risk within the EPA acceptable risk range. The law does not require a cleanup for naturally occurring metals and contaminants at concentrations within the acceptable risk range, but we are requiring a cover at Hunters Point to address concerns of and mitigate cumulative impacts.
- d) Perform long term groundwater monitoring
- e) Enforce Land Use Controls

The above activities will be fully documented in the Superfund transfer documents, which will be open to public comment. EPA applies the Superfund process, not the EIR, to control site access and verify that remedial actions are either complete or that they can be conducted safely during development.

4) EPA Region 9 has verbally stated that occupancy of redeveloped areas/parcels will not occur until remedial activities are complete. Once again, to our knowledge, this requirement has not been put in writing, has not been required to be specified in the development plan, and the terms of

the development plan have not been altered to specify no occupancy of redeveloped areas/parcels until remedial activities are complete:

EPA will control occupancy through the Superfund process, which, unlike the development plan, is directly enforceable by EPA. As the Parcels are remediated, there may be a point where some Parcels are ready to be occupied, while others are still being remediated. EPA will allow occupancy only after remediation has progressed to a point that the public will not be exposed to hazardous levels of contaminants from the remedial activities in nearby areas.

5) According to the Development Plan (EIR), redevelopment will occur on parcels while remedial activities will be in progress. Redevelopment contractors will be working in close proximity to remedial activities and the potential exist for exposure and contamination of redevelopment construction workers. The EPA has oversight authority over exposure and should have required specific measures be included or referenced in the Development Plan:

As noted in the first section above, the EIR and Development Plan do not address the specifics of the cleanup and EPA has no jurisdiction over the EIR or Development Plan. Community and worker exposures to potential contaminants will be controlled through the Superfund process.

The cleanup actions remaining to be completed at the early transfer parcels involve contaminants found in a typical construction or industrial site and do not require any special protective gear other than steel toed boots and hard hats for the workers. The only possible ways for the community to be exposed are through dust or vapors blowing over, dirt being tracked out by trucks or water running off the site. All these potential exposures will be strictly controlled.

6) The Development Plan (EIR) states that demolition or renovation of existing structures at Hunters Point Naval Shipyard could result in the potential exposure of students, teachers, staff and visitors at Bret Harte Elementary School and Muhammad University of Islam to hazardous building materials during construction. The Development Plan lacked mechanisms to adequately notify school staff when contractors fail to comply with regulations and measures that could be taken to protect the health of students, teachers, staff and visitors. The EPA has oversight authority over exposure and should have required specific mechanisms and measure be included or referenced in the Development Plan:

In addition to EPA's direct role in overseeing and enforcing Superfund cleanup requirements to protect the public during and after transfer, protective measures, including notification measures, for parcels which have completed remediation, are enforced by environmental laws through agencies like the Bay Area Air Quality Management District and San Francisco Dept. of Public Health. EPA will

continue to partner with local and state agencies to utilize our complementary authorities to make sure the community is protected.

7) The Development Plan (EIR) lacks adequate mechanisms to notify and educate residents, workers, and visitors to the restrictions and conditions of the institutional control requirements. The Development Plan (EIR) lacks requirements for adequate enforcement of institutional controls. The EPA has authority over implementing adequate institutional controls and enforcing the institutional controls. Appropriate measures should have been specified in the Development Plan to insure the adequacy and enforcement of institutional controls:

As noted previously, EPA has no control over the contents of the EIR; however, the enforcement of institutional controls is part of the Superfund process. We are developing detailed monitoring, inspection and enforcement procedures, , known as Institutional Controls (ICs) or Land Use Controls (LUCs), similar to those being implemented at many other Superfund sites. The LUCs will be written into the deed transfers and enforceable through the Superfund process.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

**75 Hawthorne Street
San Francisco, CA 94105-3901**

September 27, 2010

David Chiu, President
Board of Supervisors
City and County of San Francisco
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Dear Mr. Chiu,

As you know, Mark Ripperda of EPA testified at the Board of Supervisors July 13, 2010 hearing on the appeals challenging the City of San Francisco Environmental Impact Report for the former Hunters Point Naval Shipyard. By this letter, I am forwarding to you EPA's response to Monique Harden of Advocates for Environmental Human Rights who expressed concern that EPA's participation in the hearing may have implied that EPA has a position with respect to the specific development plans at the site. Our letter to Ms. Harden clarifies that EPA does not have a position on the specific development proposal approved by the Board. Consistent with EPA's testimony, EPA's role is to focus on the cleanup and ensure that the property is safe for any potential development. EPA will remain involved in the project before and after property transfer to assure that all necessary actions are taken prior to approving occupation or use of specific areas.

If you have any questions or concerns about EPA's role at Hunters Point, please contact me at 415-947-8709, or your staff may call Mark Ripperda at 415-972-3028.

Sincerely,

A handwritten signature in black ink, appearing to read "Jane Diamond", with a long horizontal flourish extending to the right.

Jane Diamond
Director
Superfund Division

cc: Monique Harden, Advocates for Environmental Human Rights

Description of the CERCLA Early Transfer Process

In addition to the regular monthly meetings held in Hunters Point to discuss the cleanup and transfer of the Shipyard, there is an official public comment period on the request for Early Transfer. As part of the Early Transfer process the United States Navy will prepare a Finding of Suitability for Early Transfer (FOSET) which will first be reviewed by the United States Environmental Protection Agency (EPA) and the State regulators, and then presented to the public for a 30 day comment period. The purpose of the FOSET is to present the Navy's findings that a Parcel is environmentally suitable for transfer prior to completing all remedial action, pursuant to the deferral provisions of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 120(h)(3)(C).

The FOSET will:

- 1) Describe the remedial actions taken by the Navy, including excavation of "hotspots" and the treatment of the groundwater.
- 2) Document regulatory approval of the completion of the excavation of all radiation associated with storm and sanitary sewer lines by the Navy
- 3) Document the free release of all buildings where radiological contamination was identified, or which were suspected of having radiological contamination. Note: The Navy must meet the requirements of free release prior to issuing this document as it is a condition of transfer.
- 4) Describe the proposed transfer and the mechanisms to assure that the remaining elements of the remedial action are properly conducted.
- 5) Describe the Administrative Order on Consent under which EPA and the State will oversee the remaining remediation.
- 6) Describe the restrictions which will be established to assure protection of human health and the environment during and after the development.

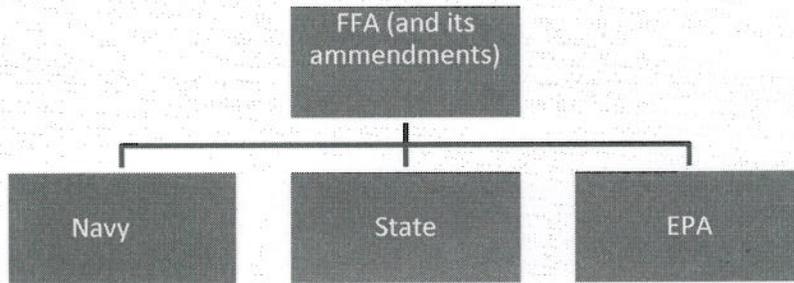
After the public has commented on the FOSET, the Navy will revise the FOSET in response to comments received before formally presenting it to EPA and the State as part of the package officially requesting approval of the Early Transfer. The Early Transfer package is called the Covenant Deferral Request (CDR) and it includes the information listed below. The CDR must be approved by EPA and by the Governor of the State of California before title to the property can be transferred to the City.

Federal departments or agencies proposing an early transfer must include the following information in the CDR they submit to EPA and other stakeholders:

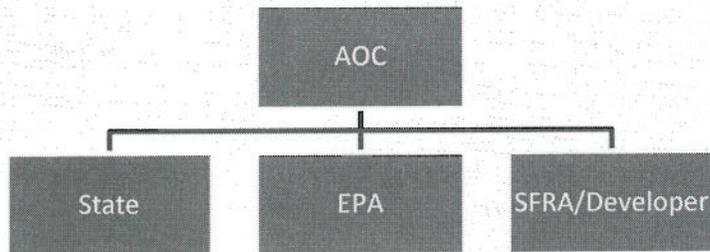
1. **Property Description** — a legal description of the property.
2. **Nature/Extent of Contamination** — includes the degree of uncertainty regarding the nature and extent of contamination, the future land use, who will perform the cleanup work, and existing information on the property.

3. **Analysis of Intended Future Land Use During the Deferral Period** — includes an analysis of whether the intended land use might result in exposure to CERCLA hazardous substances and a description of response actions that should be taken to prevent exposure.
4. **Results From a CERCLA Risk Assessment** — an analysis of risks to human health and the environment.
5. **Response/Corrective Action and Operation and Maintenance Requirements** — includes a projected date by which the selected cleanup action will be completed; allows for the transferee to conduct the cleanup with oversight from EPA and the State.
6. **Contents of the Deed/Transfer Agreement** — must include: a notice of site conditions; a written warranty that the federal government will conduct any cleanup found to be necessary after the transfer; a clause providing the federal government with access to the property in the future; and land use restrictions, cleanup schedules, and funding requirements.
7. **Responsiveness Summary** — the federal agency's responses to written comments received from the public.
8. **FOSET**
9. **Administrative Order On Consent:** An AOC is a legal agreement signed by EPA and the City/Developer which describes the actions to be taken, provides for regulatory oversight, including stipulated penalties for failure to comply with the obligations, and can be enforced in court.
10. **Early Transfer Cooperative Agreement (ETCA)**, under which the Navy will provide funding for the remaining remediation.
11. **Amended Federal Facilities Agreement**, which describes the Navy's responsibility for cleanup if the work is not completed under the AOC.

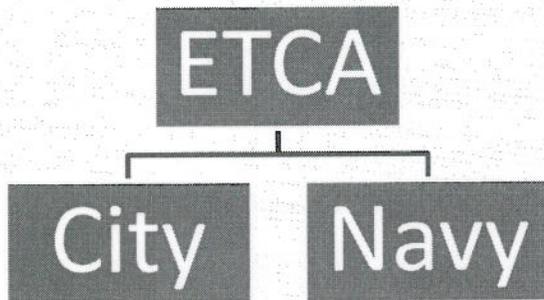
Parties involved in different CERCLA transfer related agreements:



The FFA is the enforcement agreement that we use to regulate the Navy.

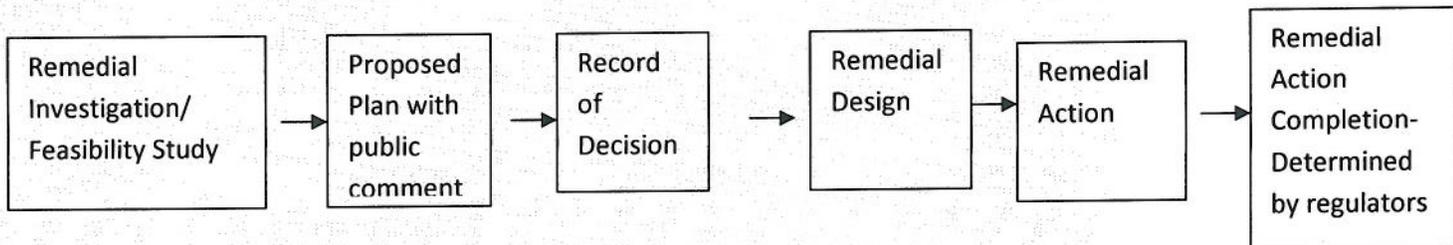


The AOC is the enforcement agreement that we will use to regulate the remediation if early transfer occurs.



The ETCA is a cost negotiation agreement between the City and the Navy.

Basic CERCLA Process



CERCLA Process with Early Transfer

